NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1335 of 2026

IN THE MATTER OF:

Pankaj Chhabildas Sheth **...Appellant(s)**

Versus

Abhyudaya Co-Operative Bank Ltd. **...Respondent(s)**

Present:

For Appellant	**:**	Ms. Eshna Kumar, Ms. Sabari Kirubakaran & Ms. Artha Agrawal, Advocates
For Respondents	**:**	Appearance not marked

O R D E R
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

Instant appeal has been preferred by the appellant, who is the personal guarantor of the CD under Section 61 of the Insolvency and Bankruptcy Code, 2016 (Code), challenging the order dated 11/5/2026 (impugned order passed by the National Company Law Tribunal, Mumbai Bench-I, Adjudicating Authority in CP (IB) No. 185/2026), whereby the petition filed by the appellant under Section 94 of the Code has been dismissed.

2. Brief facts necessary for the disposal of this appeal are that:

- Appellant is a director of the corporate debtor, M/s Veer Wires Private Limited, which has availed credit facilities from the financial creditor, namely Abhayudya Cooperative Bank Limited, Buriwali Branch, Mumbai.

- The financial creditor sanctioned term loan facilities, namely TL1, TL2, and TL3, amounting to ₹18,90,000/-, ₹5,50,000/-, and ₹24,00,000/-, respectively, vide sanction letter dated 04/01/2020.

3. It is further reflected that, in consideration of the aforesaid credit facilities, the appellant executed a personal guarantee deed dated 31/1/2020 in favour of the financial creditor, undertaking joint and several liabilities for the repayment of the dues of the corporate debtor.

4. It is further reflected that the corporate debtor subsequently availed additional credit facilities from the financial creditor in the nature of a cash credit facility bearing account number CC/383, amounting to ₹3,50,000,00/- sanctioned vide sanction letter dated 02/03/2021.

5. It is also reflected that the corporate debtor failed to discharge its financial obligations, and the loan accounts of the corporate debtor were classified as a non-performing asset (NPA) on 31/7/2021. Thereafter, the financial creditor issued a demand notice dated 31/12/2021 under Section 13(2) of the SARFAESI Act, 2002, calling upon the corporate debtor to repay outstanding dues of ₹3,84,87,979.73/- and the guarantee against the appellant's personal guarantor was also invoked by the same notice.

6. It is also evident that upon the failure of the corporate debtor to regularize the loan account, pursuant to the demand notice issued under Section 13(2) of the SARFAESI Act, 2002 financial creditor proceeded to initiate measures for enforcement of its security interest. It issued a notice dated 11 March 2022 calling upon the CD to hand over vacant and peaceful possession of the secured assets. The said notice also recorded that an amount of ₹3,96,86,417.73/- is outstanding against the appellant, and the appellant was directed to deliver the possession on 25/3/2022.

7. It is further reflected that the financial creditor issued three recall notices upon the appellant dated 20/04/2022, calling upon the personal guarantor to repay the outstanding dues. It also initiated arbitration proceedings under Section 84 of the Multi-State Cooperative Societies Act, 2002, against the corporate debtor

and its guarantors, including the appellant. In the award dated 23/6/2023, the arbitrator held the CD and the guarantors jointly and severally liable to pay a sum of ₹4,20,94,708.73/- as on 31/7/2022, together with interest at the rate of 14.50% per annum from 01/08/2022 till its realization.

8. It is also reflected that the appellant filed an application under Section 94(1) of the Code on 01/11/2023, bearing CP (IB) No. 1054 (MB) 2023, before the Learned Adjudicating Authority, however, the same was dismissed as withdrawn on 13/10/2025, as the deed of guarantee was not annexed with the petition.

9. It is also reflected that after the withdrawal of the earlier petition moved by the appellant under Section 94 of the Code and the lapse of the moratorium on 13/10/2025, the court commissioner issued the possession notice dated 10/1/2026, fixing the date of physical possession of flat number 304 on 6/02/2026.

10. The appellant again filed a petition under Section 94 of the Code on 01.02.2026 and the Learned Adjudicating Authority appointed Shri Kamal Kumar Jadwani as the RP, who, after examining the application, sought additional information from the financial creditor and personal guarantor and filed his report under Section 99(1) of the Code (through IA No. 1399 of 2026), recommending the admission of the petition for initiation of the insolvency resolution process against the personal guarantor.

11. The financial creditor appears to have filed objections with regard to this report. The adjudicating authority, by passing the impugned order dated 11/5/2026, rejected the application filed by the appellant under Section 100 of the Code, holding that the appellant's intent is not for genuine insolvency resolution, but to frustrate the process of possession initiated by the financial creditor. The appellant, feeling aggrieved by the said order, has filed instant appeal.

12. We have heard learned counsel for the appellant and have perused the record.

13. Ld. Counsel for the Appellant submits that Appellant's earlier application, being CP (IB) No. 1054 of 2023, filed on 1/11/2023, was a genuine and bona fide application filed with the intent of initiating the PIRP and proposing a repayment plan, however, the same was compelled to be withdrawn on 13/10/2025 solely because the original guarantee deed could not be annexed, despite the Appellant's sincere efforts.

14. It is further submitted that thereafter, the applicant filed this second application under Section 94 of the Code, and the same is not barred by res judicata, as in the earlier application no issue was framed and decided. Reliance in this regard has been placed on ***Ebix Singapore Private Limited versus Committee of Creditors of Educomp Solutions Limited and another, Civil Appeal No. 3224 of 2020***.

15. It is further submitted that the principle of res judicata would also not apply in the facts of this case, on the ground that the earlier petition was withdrawn purely on technical ground (i.e., non-production of the guarantee deed), and there was no adjudication on merits.

16. It is further submitted that the learned adjudicating authority has relied on the law laid down in ***Sirajis Salikin Khadri versus Edelweiss Asset Reconstruction Company Limited and another, Company Appeal (Insolvency) No. 455 of 2025***, in order to brand the application as an abuse of process , however, the said law is not applicable to the facts of the instant case and the said law itself distinguishes ***Getz Cables Private Limited versus State Bank of India and another Company Appeal (AT) (Insolvency) (No.) 1953 of 2024.***

17. It is further submitted that in Sayyad Siraj's case, the SARAFAESI proceedings were pending since 2012, and the Section 94 application was filed after

13 years thereafter. However, no such gap exists here, as the guarantee against the appellant was invoked on 31/12/2021, and the first Section 94 application was moved on 1/11/2023, well within limitation. Shortly after the possession notice was moved and the appellant was compelled to file the second application under Section 94 of the Code after obtaining the guarantee deed.

18. It is further submitted that the bona fide of the appellant is reflected in the fact that he undertakes to satisfy the debt to the extent of ₹3 Crore, as against the aggregate of Rs. 19,74,97,585.95/- outstanding across the corporate debtor and related group entities (for which 5 to 7 co-guarantors, including the Appellant, stand jointly and severally liable).

19. It is further submitted that no prejudice is being caused to the financial creditor, as keeping in view Section 110(2)(3) and (5) of the Code, the financial creditor preserve the right to decline the repayment plan and can independently enforce its security.

20. It is further submitted that the application of the appellant has been dismissed on hyper-technical ground by the Ld. Adjudicating Authority. Therefore, the impugned order passed by the Ld. Adjudicating Authority be set aside.

21. We have heard learned counsel for the appellant and have perused the record and notice that the Learned Adjudicating Authority in the impugned judgment has recalled the principle laid down by this Appellate Tribunal in the case of ***Syed Sirajis Salikin Khadri (supra)***, wherein the order passed by the Ld. Adjudicating Authority dismissing the application filed by the personal guarantor under Section 94 of the Code was upheld on the ground of misuse of interim moratorium provisions to stall the proceedings under the SARFAESI Act. It has also distinguished its earlier decision passed in the case of ***Getz Cables Private Limited (supra)***.

22. This Appellate Tribunal, in Ashwani Kumar Oberoi v. State Bank of India & Ors., CA (AT) (Ins) No. 741 & 742 of 2026, held that where an application under Section 94 is instituted after recovery proceedings have substantially progressed, particularly after the auction has been concluded and third party rights have been created, the timing of the application and the conduct of the personal guarantor are relevant considerations in determining whether the insolvency process has been invoked for its intended purpose of resolution or merely to stall lawful recovery proceedings. Relevant paragraphs 14-17 of the said judgment are extracted below:

> *"14. Reverting to the facts of the present case, it is seen that notice under Section 13(2) was issued on 31.12.2019 and thereafter Bank also enforced its rights under Section 13(4) by issuing possession notice. Notice for sale of the assets dated 19.03.2024 was issued fixing 11.04.2024 for the sale of the assets by e-auction. E-auction was held on 11.04.2024 and auction was also confirmed by the Bank on 12.04.2024. It was thereafter on 27.04.2024 Section 94 application was filed by the appellant. Appellant also filed Securitization Application 340/2024 before the DRT challenging the auction which was the appropriate remedy availed by the appellant. Securitization Application was dismissed on 09.08.2024, when appellant could not get any relief from the DRT who refuse to grant relief by order dated 09.08.2024, applications have been filed under Section 94 giving rise to this appeal. In the facts of the case as noticed above, we are of the view that initiation of proceeding under Section 94 by the personal guarantor was not with object of resolution of insolvency of the personal guarantor rather it was only with the intent to somehow create hurdles in the conclusion of the proceedings initiated by the Bank for recovery of its debts when auction was already held Comp. App. (AT) (Ins.) Nos. 741 & 742 of 2026 17 of 18 on 11.04.2024 which was confirmed on 12.04.2024, filing of the application on 27.04.2024 clearly was not bona fide application and the application was an abuse of process of Court and we are not inclined to interfere with the impugned order passed*

by the adjudicating authority rejecting the application filed by the appellant in facts of the present case.

15. Learned counsel for the appellant as well as learned counsel for the respondent have made submissions relying on various judgments of the Hon'ble Supreme Court and this Tribunal, according to the appellant unless the Sale Certificate is issued, the rights of the personal guarantors are not extinguished, whereas as per learned counsel for the respondent where auction notice is published on 25.03.2024, the right of redemption of mortgage comes to an end and no right is left in the personal guarantor thereafter. Learned counsel for the appellant has relied on the judgment of the Bombay High Court in 'Arrow Business Development Consultants Private Limited' (supra) in support of his submissions.

16. We however having already found that filing of application under Section 94 by the appellant was clearly abuse of process of the Court, the appellant cannot be allowed to scuttle auction proceedings which have already concluded on 11.04.2024 and were confirmed on 12.04.2024. The Sale Certificate have already been issued in favour of the auction purchaser on 31.05.2024 which was already challenged by the appellant before the DRT in Securitization Application No.340/2024, it is open for the appellant to pursue his remedy before the DRT, where auction held on 11.04.2024 is challenged.

17. We thus are of the view that adjudicating authority has not committed any error in rejecting the two applications filed by the appellant in Section 94 application. Rejection of applications cannot be faulted in the facts and sequence of the events of the present case as noted above. 18. We thus do not find any merit in the appeals. Appeals are dismissed."

23. This Appellate Tribunal, in ***Syed Sirajis Salikin Khadri vs. Edelweiss Asset Reconstruction Company Ltd. & Anr., CA (AT) (Ins) No. 455 of 2025***, the case referred to by Appellant in para no. 14, 15 and 16 held as under:

"14. This now brings us to the filing of the Section 94 application on 03.12.2022 and its timing. We notice that Section 94 application was filed by the Appellant within weeks after the issue of a possession notice upon them on 11.11.2022 by the Respondent No.1. When after the 4th

SA was disposed of, the Appellant realised that it had failed to secure any further relief from the DRT and that dispossession from the subject residential premises was imminent that the present Section 94 petition was filed on 03.12.2022 and a communication sent on 06.12.2022 to the Respondent No.1 to hold its hand from taking over possession of the residential premises on account of 14. This now brings us to the filing of the Section 94 application on 03.12.2022 and its timing. We notice that Section 94 application was filed by the Appellant within weeks after the issue of a possession notice upon them on 11.11.2022 by the Respondent No.1. When after the 4th *SA was disposed of, the Appellant realised that it had failed to secure any further relief from the DRT and that dispossession from the subject residential premises was imminent that the present Section 94 petition was filed on 03.12.2022 and a communication sent on 06.12.2022 to the Respondent No.1 to hold its hand from taking over possession of the residential premises on account of 14. This now brings us to the filing of the Section 94 application on 03.12.2022 and its timing. We notice that Section 94 application was filed by the Appellant within weeks after the issue of a possession notice upon them on 11.11.2022 by the Respondent No.1. When after the 4th* *SA was disposed of, the Appellant realised that it had failed to secure any further relief from the DRT and that dispossession from the subject residential premises was imminent that the present Section 94 petition was filed on 03.12.2022 and a communication sent on 06.12.2022 to the Respondent No.1 to hold its hand from taking over possession of the residential premises on account of moratorium. This letter of 06.12.2022 clearly reveals the intention of the Appellant to stall the recovery proceedings by taking undue benefit of the moratorium provisions. Filing of the Section 94 application at this juncture leaves no room for doubt in our mind that these proceedings were not initiated with the intent of genuine insolvency resolution but as a tool to obstruct lawful recovery of enforcement with the manifest intent of the Appellant being to seek refuge under the moratorium provision under Section 96 of the IBC in an effort to prevent enforcement of possession of the secured residential premises.*

15. At this stage we advert our attention to the ***Getz Cable judgment supra*** *on which the Appellant has placed their reliance. We have no quarrel with the proposition of law laid down in* ***Getz Cable judgment supra*** *that the right under Section 94 given to a personal guarantor/individual cannot be taken away only on the ground that SARFAESI* *proceedings have been initiated prior to filing of Section 94 application. Be that as it may, it is pertinent to notice that the said judgement has also observed that the Adjudicating Authority has to decide each case depending on the specific and individual facts of each case.*

16. This is a case clearly where the Appellant on one excuse the other has all along tried to delay the handing over of the security to the Respondent No.1. We find that steps under SARFAESI Act have been pending since 2012. The Appellant has consistently misused the benevolent indulgence afforded by various adjudicatory forums to the Appellant in the past to resolve the matter. Each time the Appellant got relief from the court it slept over its commitment to either handover the subject residential premises to the Respondent No.1 or to make payment by selling the said property to clear the outstanding debt. The present Section 94 proceedings have been filed 13 years after symbolic possession had been taken by the Bank of India on 10.12.2012. We notice that when the SARFAESI proceedings were on the verge of completion and all manoeuvres adopted by the Appellant to stall and delay the recovery proceedings having come to a naught, the Appellant now sought to wriggle out of this situation by resorting to filing of the Section 94 application. In view of the persistent lack of good faith displayed by the Appellant, the Adjudicating Authority cannot be said to be wrong in concluding that the Appellant on having received the possession notice once again from the Respondent No.1 has again tried to dodge the said notice by filing a Section 94 application. Hence, the reliance placed by the Appellant on the judgment in ***Getz Cables judgment supra*** *is misplaced. The facts of the present case and that of* ***Getz Cables supra*** *are distinguishable. In the matter of Getz Cables supra, the insolvency proceedings under Section 94 of IBC was instituted immediately after initiation of SARFAESI proceedings. In comparison to the close proximity between the SARFAESI proceedings and filing of Section 94 petition in* ***Getz Cables judgment supra****, in the present case there is a yawning time-gap of more than a decade between the SARFAESI and Section 94 proceedings. In the present case, the SARFAESI proceedings have been going on since 2012 and the Appellant has unleashed a chain of litigations which have been doggedly and relentlessly pursued in various courts of law to derail the recovery proceedings. Section 94 proceedings have been initiated by the Appellant more or less coinciding with the issue of possession notice dated 11.11.2022 by Respondent No.1. The present Section 94*

> *application is clearly yet another salvo on the part of the Appellant to stall the recovery by taking advantage of moratorium. This clearly shows that the Appellant has been ceaselessly orchestrating litigative proceedings and embroiled the Respondent No.1 in these proceedings clearly to subvert the recovery proceedings initiated against them and not for the purpose of the insolvency resolution. In the given fact situation, we are inclined to agree with the findings returned by the Adjudicating Authority that the Appellant had approached the Adjudicating Authority by filing the Section 94 application with an intent other than insolvency resolution".*

24. We notice that the notice under Section 13 of the SARAFAESI Act was issued on 31 December 2021 (after the credit facilities advanced to the principal borrower) were classified as NPA on 31/7/2021.

25. It is also evident that in the arbitration proceedings initiated by the financial creditor, an award was passed on 23 June 2023 against the principal borrowers and the guarantors to pay the outstanding dues jointly and severally.

26. We also notice that it is stated by learned adjudicating authority that the financial creditor issued the possession notice for taking over the physical possession of the secured assets owned by the appellant in terms of the order dated 24/5/2023 under Section 14 of the SARFAESI Act.

27. It appears that the first application under Section 94 of the Code was filed by the appellant on 01/11/2023, bearing CP (IB) No. 1054 of 2023, which was admittedly dismissed as withdrawn on 13/10/2025 for want of guarantee deed. Thus, it is evident that the appellant enjoyed the benefit of interim moratorium under Section 96 of the Code for about two years.

28. It also appears to be admitted to the appellant that, consequent to the withdrawal of the application filed by the appellant under Section 94 of the Code and after the lifting of the moratorium on 13.10.2025, the court commissioner issued a possession notice on 10.1.2026, fixing the date of physical possession of flat number 304 as 06.02.2026 and immediately thereafter, on 01/02/2026, the

appellant filed a second petition under Section 94 of the Code, whereon the impugned order has been passed **"and on 02/02/2026 an email"** was also sent by the appellant to the financial creditor intimating the commencement of interim moratorium in terms of Section 96 of the Code.

29. We also notice that the Learned Adjudicating Authority in its impugned judgment has stated, which has not been denied by the appellant, that the court commissioner appointed in case number 1768/SA/2022, on 24/5/2023, was authorized by Ld. CMM to take possession of the secured assets. The court commissioner had also issued a possession notice on 30/10/2023 to the Commissioner of Police and the principal borrowers and guarantors, informing them of the fixation of the date for taking possession as 21/11/2023. The appellant filed an application, namely 1054 of 2023, on 1/11/2023 apparently for initiation of interim moratorium under Section 96 of the Code and frustrating the possession taking process of its property by the financial creditor.

30. An application under Section 94 of the IBC enables a personal Guarantor in default to initiate insolvency resolution and to place a repayment plan before the Adjudicating Authority, providing a structured measure to resolve liabilities instead of facing creditor enforcement.

31. The Appellant/Personal Guarantor has not attempted repayment in the two years after the demand notice sent by financial creditor, nor in the proceedings of first PIRP and It was only upon receipt of the possession notice, he rushed to file the Section 94 petitions on both occasions. This clearly shows that the petitions are not a bona fide attempt of resolution but an attempt to misuse the interim moratorium under Section 96 to stall SARFAESI proceedings and shield the secured asset.

32. Therefore, in our considered opinion, it has been rightly held by the learned adjudicating authority that the purpose of filing both the petitions under Section

94 of the Code by the applicant was not for repayment of the loan, rather, the same was for obtaining an interim moratorium to frustrate the possession-taking process initiated by the financial creditor and the Learned Adjudicating Authority has rightly held that the ratio of ***Syed Sirajis Salikin Khadari (supra)*** is squarely applicable to the facts of this case.

33. We recall that section 94 of the Code has been enacted for the benefit of those personal guarantors who are genuinely interested in the PIRP and in submitting repayment plan. However, the said process may not be allowed to be misused by those personal guarantors who are using the same only as a shield to frustrate the recovery proceedings initiated by the financial creditors for enforcement of their security interest.

34. In view of above, we do not find any good ground to interfere in the judgment passed by the learned adjudicating authority. Resultantly, the appeal filed by the appellant appears to be without merits and is **dismissed** as such.

35. There is no order as to costs.

36. Pending IA's are also disposed of.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi
07.09.2026
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