IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.302 & 303
C.P.(IB)/45(AHM)2024
In
IA/1390(AHM) 2024

Orders under Section 94 IBC

IN THE MATTER OF:

Jayesh Mehta ....**Applicant**
Vs
Canara Bank & Ors. ....**Respondent**

Order delivered on: 27/09/2024

Coram:
Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD

CP/IB/45/NCLT/AHM/2024
With
I.A. No. 1390 of 2024

(Filed under Section 94 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the IB (AAA for IRP for PGCD) Rules, 2019)

CP/IB/45/NCLT/AHM/2024

Mr. Jayesh K. Mehta
S/o Mehta K. Kantilal
Snehsetu, Ramvadi Vistar,
Bhachau, Kachchh-370140

... Personal Guarantor

VERSUS

1. **Canara Bank,**
Gandhidham Branch,
Anshu House, DBZ-N-192,
Opp. Hotel Shiv Regency,
Gandhidham-370201

2. **Pranam Timber Products Private Limited**
Shed No. 2, Mehta Minerals,
Mehta Industrial Complex,
S. No. 15/1 Paiki, 8A, National Highway,
Bhachau, Gujarat-370140

3. **M/s Sukam Timber Industries LLP**
C/o Mehta Minerals,
Survey No. 15/1, Paiki
National Highway No. 8A
Bhachau, Kutch, Gujarat-370140.

.... Respondents

I.A. No. 1390 of 2024

Mr. Bhavik Haribhai Rupapara
[Resolution Professional in matter of Mr. Jayesh K. Mehta]
Reg. No. IBBI/IPA-001/IP-P-02741/2022-23/14196
Having office at
C-804, Imperial Heights,
Opp. Big Bazar, 150 Feet Ring Road,
Rajkot-36005

... Applicant/IRP

VERSUS

1. **Canara Bank,**
   Gandhidham Branch,
   Anshu House, DBZ-N-192,
   Opp. Hotel Shiv Regency,
   Gandhidham-370201

2. **Pranam Timber Products Private Limited**
   Shed No. 2, Mehta Minerals,
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   Bhachau, Gujarat-370140

3. **M/s Sukam Timber Industries LLP**
   C/o Mehta Minerals,
   Survey No. 15/1, Paiki
   National Highway No. 8A
   Bhachau, Kutch, Gujarat-370140.

4. **Jayesh K. Mehta**
   Having address at
   SnehSetu, Ramvadi Vistar,
   Bhachau, Kachchh-370140

.... Respondents

Order pronounced on 27.09.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant	: Mr. Saurabh S. Rachchh, Advocate
For the IRP	: Mr. Bhavik Haribhai Rupapara, (IRP in Person)
For the Respondent	: Mr. Sunil Kumar, Advocate a/w. Mr. Chandra Shekhar Yadav, (Law officer for Canara Bank one of the Financial Creditors)
For the PG	: Ms. Prutha Bhavsar, Proxy Advocate for Ms. Natasha Shah, Advocate

ORDER
***Per:* Bench**

1. The Present Application is filed on 12.01.2024 through e-mode by the Applicant/Personal Guarantor under Section 94 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019.

2. The prayer made is to initiate the Insolvency Resolution Process (hereinafter referred as "IR Process") against the Applicant/Debtor who is the Personal Guarantor of the

Corporate Debtor namely Ms/. Pranam Timber Products Private Limited and M/s. Sukam Timber Industries LLP for an amount of Rs.7,53,90,935.60ps. in relation to the Credit Facility extended by the Canara Bank in favour of the M/s. Pranam Timber Products Private Limited and M/s. Sukam Timber Industries LLP (hereinafter referred as the "Corporate Debtors").

3. **The facts of the Case are as follows**: -

i. It is stated that the Applicant stood as the Personal Guarantor of Corporate Debtors i.e. Pranam Timber Products Pvt. Ltd. and M/s Sukam Timber Industries LLP for the various Credit Facilities Availed by them from the Respondent No.1/Canara Bank. The Applicant signed Guarantee Agreements on 21.05.2010, 05.01.2017 & 16.08.2017 in favour of the Respondent No.1/Canara Bank.

ii. It is stated that after availing the various credit facilities the Corporate Debtors failed to repay the same. Hence, the Financial Creditor classified the loan accounts of the both the Corporate Debtors as Non-

Performing Asset on 30.04.2019 & 31.03.2019 and issued Recall Notice dated 07.05.2019 and 05.07.2019 in consonance with the Guarantee executed for M/s. Pranam Timber Products Private Limited and Sukam Timber Industries LLP.

iii. Further, it is pertinent to note that thereafter the Financial Creditor i.e. Canara Bank gone ahead with the SARFAESI proceedings when they issued SARFAESI Act, 2002 section 13(2) notices upon both the corporate debtors i.e. M/s Pranam Timber Products Private Limited and Sukam Timber Industries LLP dated 08.05.2019.

iv. In furtherance to the section 13(2) notices, the Financial Creditor also issued notice under section 13(4) of SARFAESI Act, 2002 dated 24.10.2019 for taking symbolic possession of the properties of both the corporate debtors i.e. M/s Pranam Timber Products Private Limited and Sukam Timber Industries LLP.

v. Thereafter, the financial creditor went on to issue a legal notice dated 17.08.2020 upon the personal guarantor as well as the corporate debtors. The personal guarantor also provided response to the same notice on 25.08.2020.

vi. Thereafter, the financial creditor has preferred an original application under section 19 of The Recovery of Debts and Bankruptcy Act, 1993 against both the corporate debtors i.e. M/s Pranam Timber Products Private Limited and Sukam Timber Industries LLP vide Original Application No. 701 of 2020 and Original Application No. 702 of 2020 respectively.

vii. Also, the personal guarantor has preferred a securitization application in consonance with symbolic possession being taken in both the corporate debtors i.e. M/s Pranam Timber Products Private Limited and Sukam Timber Industries LLP vide Securitization Application No. 38 of 2021 and Securitization Application No. 39 of 2021 respectively.

viii. Further, it is pertinent to note that the Personal Guarantor in order to stop the further possession of the properties have offered various one-time settlement offers but unfortunately all have been rejected by the financial creditor. Hence, it is submitted that the cause of the Financial Creditor is yet not over which makes it the event of the Personal Guarantor filing the application under Section 94 of the Insolvency and Bankruptcy Code, 2016.

ix. Owing to such actions, the Personal Guarantor has preferred to file an application under Section 94 of the Insolvency and Bankruptcy Code, 2016 before this Hon'ble Tribunal on 13.01.2024. The Section 94 application was listed before this Hon'ble Tribunal on 29.01.2024 for consideration and this Hon'ble Tribunal has been pleased to appoint the Applicant as Resolution Professional to file report under Section 99 of the Insolvency and Bankruptcy Code, 2016..

4. On presentation of the application by the Applicant/Debtor, this Authority vide order dated 29.01.2024 has appointed the Resolution Professional viz., Mr. Bhavik Haribhai Rupapara having registration no. IBBI/IPA-001/IP-P-02741/2022-2023/14196 &

directedIRP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016.

5. Thereafter, Resolution Profession filed his Report dated 25.03.2024 through I.A. No.1390 of 2024, under Diary No. E-2150 on **20.08.2024** recommending the admission of the application filed under section 94 of IBC, 2016. The grounds for admission of the application recorded in the Report are as follows: -

i. *I have examined the application CP (IB) No. 45 OF 2024 and the same is found to be satisfying all the requirements of section 94 of the IBC, 2016.*

ii. *I have sent an email dated 28/02/2024 to CANARA Bank (Financial Creditor) and Personal Guarantor / Applicant (Mr. Jayesh K. Mehta) intimating about me being appointed as Interim Resolution Professional and further asking for information and details of Assets and Liabilities and other required information to prepare this report.*

iii. *In consonance to the aforementioned email, on 06.03.2024, I have received a response vide email from Canara Bank (Financial Creditor) in which bank has provided some information and documents which is* sufficient to consider this application is fit for recommendation of acceptance.

iv. The Canara Bank has provided the copy of Sanction Letter of account M/s Pranam Timber products Private Limited and M/s Sukam Timber Industries LLP and Guarantee Agreement executed by Mr. Jayesh Mehta in both the accounts.

v. The Canara Bank has also provided the details of outstanding dues of M/s Pranam Timber Products Private Limitd and M/s Sukam Timber Industries LLP as on 29.02.2024 in which Mr. Jayesh Mehta had executed personal guarantees which is as follows.

Sr	Name of Account	Outstanding Liability as on 29.02.2024
1	M/s Pranam Timber Products Private Limited	Rs. 3,95,78,939.51
2	M/s Sukam Timber Industries LLP	Rs. 3,58,11,996.13

vi. The Canara Bank has also provided the CIBIL report of Personal Guarantor i.e. Mr. Jayesh K. Mehta wherein the credit score is very much depicting that the account of the Corporate Debtor is irregular in repayment of debt.

vii. The Canara Bank has also informed by email that two properties has been transferred by Mr. Jayesg K. Mehta to his close relative by way of Gift deed after filling of DRT suits before Hon'ble DRT: -

Sr No.	Description of the personal properties	Property Status at the time of filing OA	Present Position of the property
1	Shop No. 14, Arihant Complex, S.T. Road, Bhachau, Adm. 23.86 Mtrs.	Doc No. 265 /1994 (Defendant No. 2 Jayesh Kantilal Mehta)	As per Doc. No. 100/2021 The said property is already transferred to Mehta Vipulkumar Kantilal by way GIFT Deed.
2.	Plot No. 92, R.S. No. 1262, Vardhman Nagar, Bhachau, Adm. 167.27 Sq. Mtrs.	Doc No. 1345/1991 (Defendant No. 2 Jayesh Kantilal Mehta)	As per Doc. 99/2021 The said property is already transferred to Mehta Manojkumar Kantilal by way GIFT Deed.

viii. Thereafter, Canara Bank has informed that they have filed before Hon'ble Debts Recovery Tribunal, suit in accounts M/s Pranam Timber Products Private Limited and M/s Sukam Timber Industries LLP before Hon'ble DRT II Ahmedabad. The details of suit is as follows:-

SR	Name of Account	DRT Suit Number
1	M/s Pranam Timber Products Private Limited	701/2020
2	M/s Sukam Timber Industries LLP	702/2020

ix. Thereafter, Canara Bank has also informed that they have issued a Demand Notice under Section 13(2) of the SARFAESI Act, 2002 and recall notice dated 17.08.2020 which proves the default of debt repayment by Personal Guarantor i.e. Shri Jayesh K. Mehta.

x. The Canara Bank has also shared information about information received from professional agency that Personal Guarantor holds properties in the name of his relative / family member:

No.	Property details	Owner name	Document No
1.	Shop No. 1, Plot No. 92 Revenue Survey No. 1262P, Bhachau	Mehta Manojkumar Kantilal	Document No. 99 and Year 2021. Property transferred by executing Gift Deed by Mehta Jayeshkumar Kantilal
2.	Shop No. 2, Plot No. 92 Revenue Survey No. 126P, Bhachau	Mehta Manojkumar Kantilal	Document No. 99 and Year 2021. Property transferred by executing Gift Deed by Mehta Jayeshkumar Kantilal
3.	Plot No. 54, Khta No. 1554, Revenue Survey no. 772, Bhachau	Bhariben Jayeshbhai Mehta	Document no 1545, year 2012
4.	Plot No. 55, Khta No. 1554, Revenue Survey no.	Bhariben Jayeshbhai Mehta	Document No. 1546, year 2012

	772, Bhachau		
5.	Shop no. 14, GF, Arihant Complex, S T Road, Bhachau -- 370140	Mehta Manojkumar Kantilal	Document no. 100, Year 2021 Property transferred by executing Gift Deed by Mehta Jayeshkumar Kantilal
6.	Plot No. 35, Khata no. 6166, Revenue Survey no. 2000/40/8, Bhachau	Bhartiben Jayeshbhai Mehta	Document no. 1419 and year 2012.

(However, the information provided above is required to be re-verify with supporting documents)

xi. *Thereafter, while going through the section 94 application, we have also found the acknowledgement of debt vide the response dated 25.08.2020 which was issued against the legal notice dated 17.08.2020 which was against both the Corporate Debtors as well as the Personal Guarantor (the applicant herein).*

xii. *Thereafter, while going through the section 94 application, we have also found the Securitization Application filed by both the Corporate Debtors separately against the CANARA Bank (herein the Financial Creditor) and also the CANARA Bank in their email response has provided the section 13(4) Possession Notice.*

xiii. *Lastly, we have also been provided the One-Time Settlement offers which were made by the Personal Guarantor upon the Canara Bank (Financial Creditor) however, the same was rejected by them. Hence, such One-Time Settlement offer gives a fresh cause of action to file present application since debt has been acknowledged as well as the default in repayment of original amount has been confirmed since the one-time settlement offer has been extended. Therefore, with regard to the limitation this application is filed within the purview of limitation period.*

xiv. *Further, I did not receive any evidence/records of payment of debt as mentioned in section 94 petition from Mr. Jayesh K. Mehta.*

xv. *I have not received any document whereby the Guarantee agreement dated 21.05.2010 or 05.01.2017 or 16.08.2017 was cancelled by both the parties.*

xvi. *I have not received any order of court or any other forum whereby the guarantee agreement dated 21.05.2010 or 05.01.2017 or 16.08.2017 was cancelled or set aside.*

xvii. *The Security documents are valid and enforceable.*

xviii. *Moreover, the undersigned has no knowledge of any other pending suit / litigation against the Guarantor.*

Hence, Resolution Professional is of the opinion that application should be accepted and proceedings should be initiated with respect to the Individual Insolvency Resolution Process of Mr. Jayesh K. Mehta in order to recover the outstanding debt payable to CANARA BANK as per Personal Guarantee deed executed.

6. Further, the IRP has also attached an email dated **23.04.2024** at **Annexure-B** page No. 196 email sent by the Personal Guarantor to the Resolution Professional regarding withdrawal of CP (IB) No.45 of 2024 before this Adjudicating Authority. The relevant paragraph of the said email is reproduced as under:

"With reference to the above state subject, my application for Insolvency procedure is running before Hon'ble National Company Law Tribunal-1, Ahmedabad Branch wide application No. CP (IB) 45 of 2024, Now I Don't wish to continue the same and want to withdraw the same hence please withdrawn the same. Please do the same."

7. Submission by the Respondent/Canara Bank:-

A reply filed by the Respondent i.e. Canara Bank on 13.09.2024, vide inward Diary No.D-7042 and they have made following observations:

i. *It is submitted that Corporate Debtor M/s. Pranam Timber Products Private Limited availed credit facility of Rs. 1.80 Cr. Vide sanction letter dated 03.08.2017 and Corporate Debtor M/s. Sukam Timber Industries LLP availed credit facility of Rs.1.20 Crore vide sanction letter dated 03.01.2017. The Applicant Mr. Jayesh Mehta, stood as Personal Guarantor as well as Mortgagor for the aforesaid creditor facility availed by both the Corporate Debtors. However, after availing the creditor facilities both the Corporate Debtors failed to repay the same and committed default. Accordingly, their loan accounts were classified as NPA and recalled by the Respondent / Financial Creditor.*

ii. *Thereafter, the Respondent / Financial Creditor initiated SARFAESI proceedings under Section 13(2) of the Act on 08.05.2019. Thereafter, the Financial Creditor took the symbolic possession of the secured assets under Section 13(4) of the SARFAESI Act on 24.10.2019.*

iii. *Thereafter, the Financial Creditor filed application under Section 14 of the SARFAESI Act, 2002 before the District Magistrate, Kacchh-Bhuj for taking the physical possession of the immovable property of the Corporate Debtors and Personal Guarantor. Learned District Magistrate vide order dated 12.10.2021 allowed the* *application and directed the Mamlatdar to take the possession of the secured assets.*

iv. *Meanwhile, the Financial Creditor has also filed a recovery suit being O.A No. 701/2020 before the Debts Recovery Tribunal, Ahmedabad. The Corporate Debtor also filed S.A No. 38/2021 before the DRT against the SARFAESI action of the Financial Creditor and on the basis of false commitment got an order dated 14.06.2022 and Financial Creditor could not take the physical possession of the properties on 15.06.2022.*

v. *When OTS could not materialize and Canara bank was in process to take the physical possession of the said property. Then, Mr. Jayesh K. Mehta informed through it's advocate vide mail dated 01.08.2023 that guarantor Mr. Jayesh K Mehta to the financial facilities availed by M/s. Pranam Timber Products Private Limited and M/s Sukam Timber Industries LLP, filed an application under Section 94 of the Insolvency and Bankruptcy Code, 2016 before the Hon'ble National Company Law Tribunal, Ahmedabad on 31.07.2023.*

vi. *It is submitted that a with a view to avoid proceedings under SARFAESI as well as before the Debts Recovery Tribunal in OA no. 701/2020 and to derail the recovery of public money, with an ill intention of securing moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016, Petitioner has approached this*

Hon'ble Tribunal under Section 94 of Insolvency and Bankruptcy Code, 2016.

vii. *It is further submitted that Personal Guarantor who is the Director of the Borrower company M/s Pranam Timber Products Private Limited has defrauded answering that Applicant as Director of the Borrower Company has availed huge finance from answering Respondent and thereafter failed to utilize the same for the purpose for which finance was availed. To the best of our knowledge, and has systematically siphoned off funds and thereby caused huge loss of public money to the Respondent Bank.*

viii. *It is further submitted that Mr. Jayesh K Mehta is the personal guarantor of M/s Pranam Timber Private Limited as well as M/s Sukam Timber Industries LLP and because of his mala fide intentions and actions filed the present application and as a result of which Bank could not proceed under SARFAESI due to interim moratorium under section 96 of IBC 2016.*

ix. *It is further submitted that total outstanding debt of the both the borowal Companies namely M/s Pranam Timber Pvt Ltd and M/s Sukam Timber Industries LLP jointly and severally along with the Personal Guarantor towards answering Respondent is Rs. 2,15,92,139.86 (Rupees Two Crore Fifteen Lakhs Ninety Two Thousand One Hundred Thirty Nine and Paisa Eighty Six Only) as* on date of filing of Original Application No. 701 of 2020 before Ld. DRT-2, Ahmedabad and Rs. 2,11,20,578.62 (Rupees Two Crore Eleven Lakhs Twenty Thousand Five Hundred Seventy Eight and Paisa Sixty Two Only) in Original Application No. 702 of 2020 respectively.

x. It is submitted that present Resolution Professional report is even otherwise required to be rejected as it is filed at a belated stage. It is submitted that the as per section 99 of the Insolvency and Bankruptcy Code, 2016, the resolution professional ought to have filed his report within 10 days of the appointment, as the date of the order passed by this Hon'ble tribunal is 29.01.2024. Further, no valid reasons are stated in the report with regard to the delay in filing the report. This inordinate delay in filing the report has caused loss of time and as such the proceedings are dragged for more than 187 days resulting in frustration of the further proceedings. If the report was filed on time it would have enabled the adjudicating authority to pass appropriate order for further proceedings in the matter.

xi. It is submitted that the IRP ought to have filed his report within 10 days of the Hon'ble Tribunals order dated IND 29.01.2024 i.e. 8th February, 2024 but kept quiet and filed his delayed report thereby causing loss of time in the proceedings resulting in delay of disposal of the matter.

xii. In the light of the foregoing and under the circumstances explained hereinabove, it is submitted that the Resolution Professional has not been able to make out a case warranting intervention by this Hon'ble Tribunal under the provisions under the IB Code. The Applicant is not entitled to any relief claimed in the Report and therefore, this Hon'ble Tribunal be pleased to reject the report in favour of the Respondent and against the Applicants.

xiii. It is submitted that without prejudice to our rights and contentions in reference to the maintainability of the present application, the respondent financial creditor would like to propose the name of Mr. Sunil Kumar Kabra (IBBI/IPA-001/IP-P01101/2017-18/11662) as Resolution Professional. Written consent of the Resolution Professional under FORM-A (under regulation 4(2) of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors, Regulation 2019) in annexed herewith this reply as Annexure-R/11.

8. On 21.09.2024, the Resolution Professional also filed an additional affidavit giving an explanation of delay in filing the Interlocutory Application. The relevant part of the said affidavit is reproduced as under:-

1. I humbly state and submit the vide order dated 29.01.2024 this Hon'ble Tribunal appointed me as an interim resolution professional, however I was orally made aware about such order only on 07.02.2024. Thereafter, intimation mails were sent to Financial Creditor, Personal Guarantor and Corporate Debtor on 28.02.2024, 28.02.2024 and 07.02.2024 respectively. The intimations were also served upon the Financial Creditor vide RPAD on 01.03.2024 which was received by them on 04.03.2024. The Financial Creditor responded to the intimation sent vide email dated 28.02.2024 on 06.03.2024. The copies of intimation sent to Financial Creditor, Personal Guarantor and Corporate Debtor on 28.02.2024 and Financial Creditor's reply vide email dated 06.03.2024 are herein marked and annexed as Annexure A (Colly). The copies of intimation sent to Financial Creditor, Personal Guarantor and Corporate Debtor on 28.02.2024 and Financial Creditor's reply vide email dated 06.03.2024 are herein marked and annexed as Annexure A (Colly).

2. However, post that I as well as my family suffered from health issue Mumps Virus and other issues by the reason of which I was to unable to prepare and file the report incorporating the information provided by the financial creditor and personal guarantor.

3. *Hence, after getting cured from the infection, I resumed my work and the first report under section 99 of IBC, 2016 was filed vide an interlocutory application which was e-filed on 05.04.2024 with E- filing No. 2401105/00902/2024 and physically filed on 08.04.2024. It is pertinent to note that there was also a delay of 66 days in filing the earlier interlocutory application.*

4. *Thereafter, the registry of this Hon'ble Tribunal vide mail dated 16.04.2024 detected few defects/objections in the interlocutory application E-filing No. 2401105/00902/2024 filed by me. However, only few pages were removed in the defects issued and hence again on 23.04.2024 a further time was provided to remove the defects in interlocutory application E-filing No. 2401105/00902/2024. But, I received an email dated 23.04.2024 from the personal guarantor regarding withdrawal of the application however there was no reason provided for such withdrawal. The copies of mail received from registry of this Hon'ble Tribunal dated 16.04.2024 and 23.04.2024 are herein marked and annexed as Annexure D (Colly).*

5. *Further, it is pertinent to note that during the time we waited for any kind of further clear instructions from the personal guarantor, my grandmother fell ill and hence I had to visit her in Junagadh frequently from*

Rajkot. However, it was on 13.06.2024 she expired and hence post that I have to stay there for Puja Vidhi for atleast 15 days and also was not in mental state to attend work. The copy of death certificate of my late grandmother, along with other documents are herein marked and annexed as ***Annexure-E.***

6. *Thereafter, the captioned interlocutory application was e-filed on 16.08.2024 which was physically filed on 20.08.2024 which is filed with a delay of 187 days.*

7. *Therefore, it is humbly submitted that as per the aforementioned grounds there has been an inordinate delay of 187 days which was not intentional. Hence, this Hon'ble Tribunal may kindly condone the delay taking into consideration the above reasons.*

9. We have heard the learned Counsel for both the parties and perused the documents on record. We have also gone through the report dated 20.08.2024 filed by the IRP.

10. It is seen from the records that, the IRP has issued notice/intimation to the Financial Creditor as well on Personal Guarantor only on 28.02.2024, and first report under Section 99 of the IBC, 2016 was stated to be filed through e-mode only on 05.04.2024, which was declined to be registered for want to removal of defects by the Registry. The present IA No. 1390 of 2024 was filed thereafter, on 20.08.2024, vide inward diary No.E-2150 to place on record Report.

11. The IRP has tried to explain the circumstances which prevented him from filling the report under Section 99 of the IBC, 2016, within a period of **ten days** due to personal medical difficulties and due to bereavements in the family.

12. There is a delay of 187 days in filing the present report under Section 99 of the IBC, 2016 for which IRP has sought for condonation of delay by filing the additional affidavit, which was filed on 23.09.2024, vide inward diary No. D-7212. The explanation for delay of 187 days on basis of Medical Certificates & other documents in filing the Report is not convincing to the Tribunal.

13. Further, it is seen that the present CP(IB) was filed by the Personal Guarantor under Section 94 of the IBC, 2016 on 16.01.2024, who is not only a Personal Guarantor to both

the Corporate Debtor, but also a Directors and mortgagor of the same.

14. On 23.04.2024, through e-mail the Personal Guarantor informed the IRP as well as to his Counsel stated there in that, "*my application for Insolvency procedure is running before the Hon'ble National Company Law Tribunal -1, Ahmedabad Bench wide application No. CP (IB) 45 of 2024. Now i don't wish to continue the same and want to withdraw the same hence please withdraw the same. Please do needful for the same.*" The said email letter is forming part of the IRP report as Annexure-B page No. 196.

15. Though, not only IRP but also the Financial Creditor has recommended for acceptance of the report of IRP. But, the Personal Guarantor through an aforementioned letter has taken U-turn stating *don't wish to continue* with the Insolvency proceedings and want to withdraw the same.

16. However, it is observed that during this entire period no such application was filed by the Personal Guarantor before the Tribunal as whose instance the present proceedings were initiated, and enjoyed the benefit of moratorium which commenced on 29.01.2024, under Section 96 of the IBC, 2016 and prevented the Respondent /Financial Creditor to proceed further under the SARFAESI Act and before the DRT, Ahmedabad. In fact, the Personal Guarantor has abused the process of law under garb of section 94 of the IBC, 2016 to gain undue advantage by stalling the legitimated recovery process of the Respondent Bank.

17. Therefore, In view of above facts and observations, the proceedings initiated under Section 94 of the IBC, 2016 through C.P (IB) 45 (AHM) 2024 are hereby withdrawn and terminated.

18. The moratorium commenced in terms of section 96 of the IBC 2016 in relation to all the debts and assets of the Personal Guarantor shall ceases to have effect from the date of this order.

19. Further, **C.P. (IB) 45 (AHM) 2024** filed by the Personal Guarantor is hereby **dismissed** with exemplary a cost of

Rs.2.00 Lakh to be deposited with the **Prime Minister National Relief Fund**, within a period of seven days from the date of this order

20. **IA No. 1390 of 2024** is disposed of accordingly. The IRP stands discharged from his duties.

21. The Registry is hereby directed to share the copy of this order with the **IBBI** as well as **IPA** of the IRP for information as well as necessary action for the conduct of the IRP.

22. List the matter on **21.10.2024** for reporting compliance.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-
SHAMMI KHAN
MEMBER (JUDICIAL)

VP/Steno