

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

IA (IBC) 1063/ (CHE)/ 2025

In

CP (IB) 109/ (CHE)/ 2023

*(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the
NCLT Rules, 2016)*

In the matter of *K C MOHANAN*

THE SOUTH INDIAN BANK,
Regional Office-Chennai
No.43, Ground Floor, Hameedia Centre,
Haddows Road, Nungambakkam,
Chennai – 600 006.

... Applicant/ 2nd Respondent

-vs-

MR. K.C. MOHANAN,
No. 2, Jagajeevanram Street,
Hindustan Lever Colony,
Pammal, Chennai – 600 075.

...Respondent/ Applicant

Order pronounced on 10.10.2025

CORAM

SHRI. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present;

For Applicant/ 2nd Respondent: M/s. Ramalingam & Associates, Advocates

For Respondent/ Applicant: Mr.E.Om Prakash, Advocate

ORDER

(Hearing through hybrid mode)

This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code'/ 'IBC') read with Rule 11 of the NCLT

Rules, 2016 ('Rules') by the Applicant/ 2nd Respondent " **THE SOUTH INDIAN BANK** ", seeking the following reliefs:

"V. RELIEF SOUGHT: -

It is most humbly prayed that this Hon'ble Tribunal may be pleased to:

a) Reject C.P. No. 109 Of 2023 filed by the respondent/ personal guarantor under Section 94 Of the Insolvency and Bankruptcy Code, 2016, as the same has been filed only to misuse the provisions of law and to unjustly avail the moratorium benefits without any intention to resolve the debt or reach a settlement;

b) Pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

2. SUBMISSIONS OF THE APPLICANT (SOUTH INDIAN BANK)

2.1. The Applicant Bank submits that C.P. No. 109 of 2023 was filed by the Respondent/ Personal Guarantor, Mr. K.C. Mohanan, under Section 94(1) of the IBC seeking initiation of insolvency resolution proceedings. In that petition, a Resolution Professional (RP) was appointed, who has recommended initiation of insolvency proceedings.

2.2. The Bank contends that the RP's recommendation has been made without fully examining the fraudulent conduct of the Respondent, including attempts to conceal assets, misstate liabilities, and mislead creditors. The Applicant argues that the petition has been filed only to frustrate genuine recovery proceedings.

2.3. The Applicant narrates that since 2017 onwards, substantial financial facilities were availed by the Corporate Debtor, M/s We Two Engineering Private Limited, wherein the Respondent stood as Director and Personal

Guarantor. The facilities sanctioned included overdraft, cash credit, term loans, letters of credit, bank guarantees, WCTLs, FITL, and ECLGS loans. The Respondent, along with co-guarantors, executed multiple loan documents, guarantees, acknowledgements of debt, and created mortgage by deposit of title deeds.

2.4. Despite repeated renewals and restructuring of the credit facilities up to 2022, the Corporate Debtor and the Respondent committed persistent defaults. Consequently, the Applicant Bank classified the accounts as Non-Performing Assets (NPA) on 16.05.2022.

2.5. The Bank further submits that SARFAESI proceedings were initiated, and a demand notice dated 14.07.2022 was issued under Section 13(2) of the SARFAESI Act, calling upon the Respondent to clear the dues. The Respondent neither replied to the notice nor discharged the liabilities.

2.6. It is the Bank's submission that the Respondent has misused the provisions of Section 94 of IBC solely to secure the moratorium benefit and stall recovery actions, without any bona fide intention to resolve debts. The Respondent has been enjoying moratorium protection for the past two years by citing supposed settlement talks, but has taken no real steps towards repayment.

2.7. The Applicant relies on the decision of the NCLT Bengaluru Bench in CP No. 8 of 2024, which held that Section 94 cannot be misused merely to thwart SARFAESI measures already at an advanced stage.

2.8. The Applicant therefore prays that this Tribunal may be pleased to reject C.P. No. 109 of 2023 as being a mala fide attempt to misuse IBC

provisions and unjustly enjoy moratorium, and pass such further orders as this Tribunal may deem fit in the interest of justice.

3. FINDINGS OF THE TRIBUNAL

3.1. We have carefully considered the submissions of the Applicant/ Financial Creditor South Indian Bank, as well as the materials placed on record in support of the present application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

3.2. The record reveals that the Respondent, in his capacity as Director and Personal Guarantor of the Corporate Debtor, M/s. We Two Engineering Private Limited., had availed multiple credit facilities from the Applicant Bank since 2017, aggregating to substantial amounts. The Respondent, along with other guarantors, executed necessary loan and security documents, mortgage by deposit of title deeds, and acknowledgements of debt from time to time. The Applicant has also placed on record various sanction letters and renewal documents extending until 2022.

3.3. It is not in dispute that the accounts of the Corporate Debtor and guarantors were classified as Non-Performing Assets (NPA) on 16.05.2022, and consequent SARFAESI proceedings were initiated by issuance of demand notice under Section 13(2) of the SARFAESI Act on 14.07.2022. The default in repayment of dues is admitted and acknowledged by the Respondent through multiple documents executed in favour of the Bank.

3.4. The Respondent thereafter invoked Section 94(1) of the IBC by filing C.P. No. 109 of 2023, thereby obtaining the statutory moratorium. The Applicant contends that the said petition is mala fide, filed only to thwart

the recovery measures lawfully initiated under SARFAESI, and to enjoy the shield of moratorium without any genuine intent to arrive at settlement or repayment of debts. It is further contended that though the Resolution Professional appointed has recommended initiation of insolvency proceedings, such recommendation was made without fully investigating the conduct of the Respondent, including alleged concealment of assets and misstatement of liabilities.

3.5. This Bench notes that the Respondent has been enjoying the protection of moratorium for more than two years without any meaningful progress towards resolution or settlement. Even as per the Applicant's submissions, repeated representations were made by the Respondent citing "ongoing settlement discussions", yet no concrete steps were taken to discharge admitted liabilities. The prolonged pendency of the Section 94 petition thus appears to have operated to the sole benefit of the Respondent, while severely prejudicing the legitimate recovery rights of the Financial Creditor.

3.6. Reliance has rightly been placed by the Applicant on the decision of the Hon'ble NCLT, Bengaluru Bench in C.P. No. 8 of 2024, wherein it was observed that the provisions of Section 94 of the IBC cannot be permitted to be misused merely to thwart recovery actions initiated under the SARFAESI Act, particularly when such measures are already at an advanced stage. The principle squarely applies to the present case, where the Respondent's filing under Section 94 has effectively stalled recovery proceedings for an extended period without any bona fide attempt at repayment.

3.7. Considering the totality of facts, this Tribunal is of the view that the present petition under Section 94 of the IBC, namely C.P. No. 109 of 2023, has been filed with mala fide intent to misuse the statutory moratorium, and cannot be allowed to continue. Consequently, the present application under Section 60(5) of the IBC, filed by the Financial Creditor seeking rejection of C.P. No. 109 of 2023, deserves to be allowed.

4. Accordingly, **IA (IBC) 1063/ (CHE)/ 2025 in CP (IB) 109/ (CHE)/ 2023 is allowed.**

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)