IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-V

I.A. NO. 4148/2024
AND
I.A. NO. 866/2025
IN
CP IB NO. 262/ND/2024

[Order under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 read with Section 100 of the Insolvency and Bankruptcy Code, 2016 Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 and Rule 11 Of NCLT Rules 2016]

IN THE MATTER OF:

In I.A. No. 4148/2024

MR. AMARPAL
RESOLUTION PROFESSIONAL FOR
MR. ARUN KUMAR MISHRA
IBBI/IPA-001/IP-P01584/2018-19/12411
A-304, PLOT NO.3C MANDAKINI APARTMENTS
SECTOR-2, DWARKA, NEW DELHI — 110075

... RESOLUTION PROFESSIONAL/APPLICANT

AND

IN THE MATTER OF:

In I.A. No. 866/2025

1. **Anil Sondhi 1596, Outram lines, Delhi-110009**

...Applicant No. 1

2. **Jyotsna Sondhi 1596, Outram lines, Delhi-110009**

...Applicant No. 2

3. **Ritika Sondhi 1596, Outram lines, Delhi-110009**

...Applicant No. 3

4. **Deepika Sondhi 1596, Outram lines,**

Delhi-110009

...Applicant No. 4

5. **Deepankur Sondhi 1596, Outram lines, Delhi-110009**

...Applicant No. 5

6. **Parnika Sondhi 1596, Outram lines, Delhi-110009**

...Applicant No. 6

VERSUS

1. **MR. ARUN KUMAR MISHRA**
   124, IInd Floor, Near Opposite Venkateshwar College, Satya Niketan, Chanakya Puri, New Delhi — 110021

.... Respondent No. 1

2. **Amarpal**
   Resolution Professional for Arun Kumar Mishra
   A-304, Plot No. 3C, Mandakini Apartments
   Sector-2, Dwarka, New Delhi-110075

...Respondent No. 2

IN

IN THE MAIN MATTER OF:

CP (IB) 262/2024

MR. ARUN KUMAR MISHRA
PERSONAL GUARANTOR OF DEBTOR
S/O SHRI V.N. MISHRA
RESIDENT OF: 124, IIND FLOOR
NEAR OPPOSITE VENKATESHWAR COLLEGE
SATYA NIKETAN CHANAKYA PURI,
NEW DELHI — 110021

...APPLICANT

FILED THROUGH
MR. AMARPAL (RESOLUTION PROFESSIONAL)
PROPOSED BY THE PERSONAL GUARANTOR
TO THE CORPORATE DEBTOR
INSOLVENCY PROFESSIONAL HAVING
IBBI REGISTRATION NO.IBBI/IPA-001/IP-P01584/2018-19/12411
A-304, PLOT NO.3C MANDAKINI APARTMENTS
SECTOR-2, DWARKA, NEW DELHI — 110075

...RESOLUTION PROFESSIONAL

Order Delivered On: 20.11.2026

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

MS. REENA SINHA PURI,
HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant:	Adv. Siddhant Surya & Adv. Yashraj Singh counsels for the Objectors and Applicants in IA 866/2025
For the PG:	Adv. Hritik
For the Objector:	Adv. Kumar Shashank, Adv. Srishty Kaul, Adv. Anisha
For the RP:	Adv. Utkarsh Kumar Pandey for the RP in IA No. 4148/2024
For the Respondent:	Advocate Ajay Fatyal

ORDER

1. The present proceedings arise from an application filed by Mr. Arun Kumar Mishra (Personal Guarantor) under Section 94 of the IBC[1] (the "Code"), read with Rule 6 of the IBC Rules[2], seeking initiation of PIRP[3] against himself. The application concerns alleged guarantees furnished by him in respect of loans advanced by Hindustan Buildcon Pvt. Ltd. and Singh Finlease Pvt. Ltd. to Chanakya Academy for Education and Training Pvt. Ltd. and

[1] Insolvency and Bankruptcy Code, 2016
[2] Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019
[3] Personal Insolvency Resolution Process

Sampoorn Academy Pvt. Ltd., for Rs. 2,03,86,000 and Rs. 3,26,36,780, respectively.

2. In IA No. 4148/2024, Mr. Amarpal (Resolution Professional/RP), has filed a report under Section 99 of the IBC recommending acceptance of the application. The Report records, inter alia, that the Personal Guarantor committed default; the debts are not excluded debts; he is not an undischarged bankrupt and is not undergoing a fresh-start, insolvency-resolution or bankruptcy process; no application under Chapter III of the Code was admitted against him during the preceding twelve months; and the application was filed in Form A with the prescribed fee.

3. IA No. 866/2025 has been filed by six creditors—Mr. Anil Sondhi, Mrs. Jyotsna Sondhi, Mr. Deepankur Sondhi, Ms. Ritika Sondhi, Ms. Deepika Sondhi and Ms. Parnika Sondhi (collectively - Objectors). Since the objections raised in the said application have a bearing on the Section 99 Report and the application under Section 94, both applications are considered together. The Objectors seek, in substance, a declaration that CP (IB)-262 (ND)/2024 was filed with malicious intent to defraud creditors, dismissal of that petition, imposition of a penalty on the Personal Guarantor, and such other relief as may be appropriate.

Proceedings in IA No. 4148/2024

4. Vide order dated 28.08.2024, this Adjudicating Authority directed the Resolution Professional to issue notices to the Personal Guarantor and the Financial Creditors, calling upon them to file their responses to the Report.

Further opportunities were granted to the Financial Creditors vide orders dated 30.09.2024 and 21.11.2024. Hindustan Buildcon Pvt. Ltd. and Singh Finlease Pvt. Ltd. filed replies on 15.10.2024 and 26.11.2024 respectively.

5. Hindustan Buildcon Pvt. Ltd. submits that the Personal Guarantor failed to make full and true disclosure of his assets, income, liabilities and other material particulars, and that the Resolution Professional did not adequately examine his financial capacity. It disputes that the post-dated cheques relied upon were issued by the Personal Guarantor in his individual capacity, asserting that they were drawn by Chanakya Academy for Education and Training Pvt. Ltd. and signed by him as its Director. It further alleges that he did not disclose an outstanding claim of approximately Rs. 5 crore against the Government of NCT of Delhi under the Higher Education and Skill Development Guarantee Scheme. It also relies on an independent auditor's report concerning the financial statements of that Corporate Debtor, which is said to record substantial discrepancies and irregularities during the Personal Guarantor's tenure as Director.

6. Singh Finlease Pvt. Ltd. submits that the Personal Guarantor disclosed only limited sources of income through his income-tax returns and withheld particulars of other possible income and recoveries. It points to an annual salary of Rs. 98,50,000 reportedly drawn from Chanakya IAS Academy Pvt. Ltd. during Assessment Year 2023–24 and his directorships in other companies, and submits that the Resolution Professional should have examined whether he derived income from those companies. It also contends that the alleged receivables from the Government of NCT of Delhi and the

Personal Guarantor's reported income should have been considered in assessing his financial position and the circumstances in which he filed the application.

7. By order dated 09.01.2025, individual creditors were also permitted to file objections to the Section 99 Report. The Objectors contend that the Report does not examine whether the Personal Guarantor has sufficient means to meet the costs of the insolvency-resolution process, including publication, verification of claims, the Resolution Professional's fees, professional fees and incidental expenses, or whether he can formulate and submit a repayment plan. They note that, despite declaring annual income of Rs. 98,36,390 in his income-tax return, he disclosed no assets.

8. The Objectors also dispute the existence and invocation of the alleged guarantees. As to Singh Finlease Pvt. Ltd., they state that no deed of guarantee was annexed to either the Section 94 application or the Section 99 Report. Although the Personal Guarantor is described as a guarantor in the loan offer letter, the Objectors submit that the sanction letter contains no stipulation permitting recovery from him personally upon the borrower's default. They further contend that the loan-recall notice neither addresses him as guarantor nor demands payment from him in that capacity.

9. As to Hindustan Buildcon Pvt. Ltd., the Objectors submit that the Personal Guarantor gave no particulars of invocation of the alleged guarantee in Column 14 of the application and that the Report contains no clear finding that the guarantee was invoked. According to them, the notices dated

14.10.2023 and 25.02.2024 concern dishonour of cheques issued by the Corporate Debtor and do not invoke a personal guarantee. They also state that the cheques were drawn by Chanakya Academy for Education and Training Pvt. Ltd., not by the Personal Guarantor in his individual capacity.

10. The Objectors further contend that the application is incomplete because Part III of Form A does not disclose all creditors, the application is unsigned, and no explanation is given for the dates of debt and default stated as 31.10.2023 and 25.02.2024.

11. In rejoinder to Hindustan Buildcon Pvt. Ltd., the Personal Guarantor and the Resolution Professional deny concealment of material particulars and maintain that the application complies with the IBC. They submit that the proceedings are in personam when filed and assume an in-rem character upon admission, after which other creditors may submit claims. The Personal Guarantor states that, although he is a director in various companies, he drew no salary from them. He says that the amounts described as receivable from the Government of NCT of Delhi relate to services rendered by Chanakya Academy for Education and Training Pvt. Ltd. and Chanakya IAS Academy Pvt. Ltd. under the Jai Bhim Yojana, and are not his personal receivables. He also submits that the suit for specific performance relied upon by the Financial Creditor was instituted on 03.06.2024, after service of the present petition on 08.05.2024, and is a separate proceeding. The Resolution Professional denies overlooking any material matter and states that the Report was prepared after examining the

information and documents supplied by the Personal Guarantor and the Financial Creditors

12. In rejoinder to Singh Finlease Pvt. Ltd., the Personal Guarantor and the Resolution Professional reiterate that the Personal Guarantor's income was disclosed in his income-tax returns. The Resolution Professional states that the relevant information and documents provided by the Personal Guarantor and the Financial Creditors were examined while preparing the Report.

Proceedings in IA No. 866/2025

13. The Objectors state that, in addition to the loans advanced to the Corporate Debtors, they extended financial assistance of Rs. 50,00,000 to the Personal Guarantor personally. The Section 94 application was registered on 15.05.2024, and Mr. Amarpal was appointed Resolution Professional by order dated 03.07.2024. The Objectors allege that, without informing them of the Section 94 application, the Personal Guarantor issued cheques between 15.05.2024 and 12.06.2024 towards liabilities said to have been incurred by him personally and on behalf of the companies. The cheques were dishonoured for insufficiency of funds, and proceedings under Section 138 of the Negotiable Instruments Act, 1881, followed. The Objectors contend that the cheques were issued during the interim moratorium to mislead creditors and evade repayment.

14. The Objectors further state that the Personal Guarantor issued cheques on behalf of Chanakya Academy for Education and Training Pvt. Ltd. and Chanakya IAS Academy Pvt. Ltd. as an authorised signatory. Relying on

Sections 104(1) and 104(2) of the Code and the definition of "creditor" in Section 3(10), they submit that creditors whose particulars are disclosed in a Section 94 application must be included in the list of creditors and that omission of creditors prejudices them and renders the application incomplete.

15. The Objectors reiterate that the Report does not assess the Personal Guarantor's ability to bear the process costs or submit a repayment plan. They state that the only liquid assets disclosed were fixed deposits of Rs. 47,456 and Rs. 1,70,142 with ICICI Bank, which they say are inadequate to meet the process costs. They also rely on the reported annual salary of Rs. 98,50,000 from Chanakya IAS Academy Pvt. Ltd. for Assessment Year 2023–24, contending that it is inconsistent with the claimed insolvency.

16. The Objectors also contend that the requirements of Rule 3(e) of the Rules are not met because the alleged guarantees were not invoked. They repeat that no deed of guarantee in favour of Singh Finlease Pvt. Ltd. is on record and that Hindustan Buildcon Pvt. Ltd. did not issue a notice invoking its alleged guarantee. In their submission, notices concerning dishonoured cheques cannot be treated as invocation notices.

17. In his reply dated 06.03.2025, the Personal Guarantor disputes that the Objectors advanced Rs. 50,00,000 and submits that they have produced no documentary evidence of disbursement to him or to the companies. He questions their locus and denies any obligation to inform them that he had filed a Section 94 application. He alleges that the Objectors concealed

material facts and implicated him to exert pressure. He denies issuing or drawing the cheques towards any legally enforceable debt or liability, whether personally or as an authorised signatory of a company.

18. The Personal Guarantor further alleges that, on 06.03.2024, Applicant No. 1 and others unlawfully entered leased premises over an alleged rent default and took possession of the premises and its contents, including furniture, fixtures, computers, digital boards, documents, his blank signed cheque book and cheque books belonging to other companies. He states that complaints were made to Mukherjee Nagar Police Station by letter dated 03.06.2024 and email dated 07.06.2024. He alleges that the Objectors, acting in collusion with his family members, presented the cheques to initiate criminal proceedings against him.

19. The Personal Guarantor reiterates that he drew no salary from other companies in which he is a director and that his income was disclosed in his income-tax returns. In its reply dated 10.03.2025, the Resolution Professional states that the relevant material furnished by the Personal Guarantor and the Financial Creditors was examined and considered, and reaffirms the findings and submissions in the Section 99 Report

Analysis and Findings

20. We have heard learned counsel for the Personal Guarantor, the Financial Creditors and the Objectors, and have considered the pleadings, the Section 99 Report and the documents placed on record in both applications.

21. IA No. 866/2025 raises objections to the bona fides of the Section 94 proceedings as well as to the foundation of the Personal Guarantor's alleged liability. We therefore consider those objections before deciding whether to accept the recommendation in the Section 99 Report.

22. The Objectors allege that the Personal Guarantor issued cheques between 15.05.2024 and 12.06.2024, after filing the Section 94 application, towards repayment of liabilities and without disclosing the pending application to them. The Personal Guarantor disputes the underlying advances and denies issuing the cheques towards a legally enforceable liability; he also alleges that the cheques were taken from premises by the Objectors. The alleged issuance, purpose and circumstances of the cheques are therefore disputed. The subsequent dishonour and any liability under the Negotiable Instruments Act are matters for the competent court. We make no finding on criminal liability. For present purposes, however, the allegations and the material concerning the cheques are relevant as part of the surrounding circumstances bearing on the purpose and bona fides of the insolvency application

23. The more fundamental objection concerns whether the material establishes a personal liability of the Applicant under the alleged guarantees. As regards Singh Finlease Pvt. Ltd., no deed of guarantee has been placed on record with the application or the Section 99 Report. The Personal Guarantor's description as a guarantor in the loan offer letter, by itself, does not establish the terms of a personal guarantee. The sanction letter relied upon does not, on the material described before us, contain a stipulation enabling the

Financial Creditor to proceed against him personally upon the borrower's default. Nor does the loan-recall notice address him as guarantor or demand payment from him in that capacity. The contractual basis and enforceability of the alleged personal obligation to Singh Finlease Pvt. Ltd. have therefore not been established.

24. As regards Hindustan Buildcon Pvt. Ltd., the notices dated 14.10.2023 and 25.02.2024, on which reliance is placed, concern dishonour of cheques drawn by the Corporate Debtor. The record identified before us does not show that either notice demanded payment from the Personal Guarantor in his individual capacity or invoked a personal guarantee. The application also contains no clear particulars of such invocation.

25. The deficiency is not confined to the absence of a notice of invocation. The material placed on record does not sufficiently establish the terms of either alleged guarantee or the personal obligation said to have been undertaken by the Applicant. The existence of outstanding debts against the Corporate Debtors, without material establishing the corresponding personal liability of the Applicant, cannot by itself support an insolvency application against him as a Personal Guarantor. Although a guarantor's liability may be co-extensive with that of the principal debtor under Section 128 of the Indian Contract Act, 1872, the contractual foundation of the guarantee must first be shown. On the record before us, that foundation has not been satisfactorily established.

26. We have also considered the objections concerning the completeness of the disclosures, the Personal Guarantor's financial position and his ability to meet the costs of the process or submit a repayment plan. The parties have offered conflicting explanations concerning his income, directorships, the alleged Government receivables and the disclosed assets. The Resolution Professional states that the material supplied was examined; the Objectors contend that the Report did not adequately evaluate it. Be that as it may, the failure to establish the underlying personal liability, along with the surrounding circumstances and the deficiencies raised in the Report process, is decisive.

27. The interim moratorium under Section 96 is a statutory consequence of filing an application under Section 94. The interim moratorium is intended to operate as a temporary protective mechanism to facilitate a genuine insolvency resolution process. It cannot be permitted to be invoked as a device to obstruct lawful criminal proceedings or to defeat the legitimate rights of creditors In *Syed Sirajis Salikin Khadri v. Edelweiss Asset Reconstruction Company Ltd. & Anr.*[4], decided on 24.05.2025, the Hon'ble NCLAT considered the timing of a Section 94 application alongside the history of recovery proceedings and the applicant's communication invoking the moratorium to prevent imminent enforcement. On those facts, it held that the application was not filed for genuine insolvency resolution but to obstruct recovery. The relevant part of the decision reads:

[4] Syed Sirajis Salikin Khadri v. Edelweiss Asset Reconstruction Company Ltd. & Anr., Company Appeal (AT) (Insolvency) No. 455 of 2025

> *14. .....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***. (Emphasis supplied)

28. This decision requires the surrounding circumstances to be considered. In the present matter, the Objectors' allegations concerning the cheques and the Personal Guarantor's disclosures are disputed and cannot, on their own, sustain a finding of malicious intent. We have nevertheless considered them cumulatively with the timing and circumstances asserted by the parties, the disputed completeness of the disclosures, and, in particular, the absence of material establishing the personal guarantees on which the application is founded. In that context, the Section 94 application cannot be accepted as a properly substantiated attempt to resolve the Personal Guarantor's liability under the alleged guarantees. The Section 99 Report's recommendation does not adequately resolve these foundational objections.

29. The IBC does not require mechanical acceptance of a Section 99 recommendation. At the stage of Section 100, this Adjudicating Authority must consider the application, the Report, and the objections on record. On that consideration, we are unable to accept the recommendation to admit the application. This conclusion rests on the failure to establish the

Applicant's personal liability under the alleged guarantees and the resulting absence of a sufficient foundation for the process sought against him. We express no view on the liability, if any, of the Corporate Debtors or on the merits of proceedings under the Negotiable Instruments Act.

30. In view of the above, **IA No. 866/2025** is allowed to the extent stated herein. The Report filed under Section 99 of the IBC in **IA No. 4148/2024**, recommending acceptance of the application under Section 94, is not accepted. Consequently, the application filed by Mr. Arun Kumar Mishra under Section 94 of the Code in **CP (IB)-262 (ND)/2024** is rejected.

Sd/- **Sd/-**

(REENA SINHA PURI)
MEMBER (TECHNICAL)

(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (JUDICIAL)