IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT - IV

I.A. (IB) No. 1975 of 2026
IN
C.P. (IB) No. 1149/MB/2025

[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016]

In the matter of:

UV Asset Reconstruction Company Ltd.

…Applicant

Vs.

Mr. Abhishek Ajit Naker

…**Respondent**

In the matter of

Mr. Abhishek Ajit Naker

…Applicant (Personal Guarantor)

V/s.

UV Asset Reconstruction Company Ltd.

…Respondent (Financial Creditor)

Pronounced: 14.10.2025

CORAM:

SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)

SHRI K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

Appearances: Hybrid

For Applicant	:	Adv. Rathira Maravarman
For Respondent	:	Adv. Meet Sawant a/w Adv. Mohd Ziyad i/b Apex Law.

ORDER

1. The present Application has been filed by the assignee and present Financial Creditor in respect of the credit facilities previously sanctioned by ICICI Bank Ltd. to Aztek Processors Pvt. Ltd. (Corporate Debtor) seeking the following reliefs:

   a. *Hold and declare that the Interim Moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 does not extend to or affect the secured immovable property bearing:*

      "Plot No. TS-2, MIDC Phase II, Manpada Road, Dombivali Industrial Estate (Functional Industrial Estate), Village Sagaon, Kalyan, District Thane, Maharashtra - 421204",

      being the secured asset exclusively owned by the Borrower Company, in respect of which measures under the SARFAESI Act, 2002, including ***Section 14 order passed under the SARFAESI act for taking physical possession of the secured asset*** *to initiation of the present proceedings;*

   b. *Exclude and carve out the aforesaid secured asset, namely: "Plot No. TS-2, MIDC Phase II, Manpada Road, Dombivali Industrial Estate (Functional Industrial Estate), Village Sagaon, Kalyan, District Thane, Maharashtra - 421204",*

      from the purview of the Interim Moratorium and from the scope of the present insolvency proceedings under Section 94/95 of the Code;

   c. *Permit the Financial Creditor (UVARCL) to proceed with and complete all enforcement actions, including sale, auction and realisation of the aforesaid secured asset, without any impediment arising from the pendency of the present proceedings;*

   d. *Record a finding that the said secured asset does not form part of the personal estate of the Applicant (Personal Guarantor), and that the rights*

of the Financial Creditor in respect thereof had crystallised prior to filing of the present application;

e. Pass such further and consequential orders as this Hon'ble Tribunal may deem fit in the interest of justice, equity and protection of secured creditor rights.

2. Brief Facts

2.1 Mr. Abhishek Ajit Naker, the Original Applicant in C.P.(IB)No.1149(MB)2025, filed the Company Petition under Section 94 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, seeking initiation of Insolvency Resolution Process against himself being a Personal Guarantor to the Corporate Debtor. The Personal Guarantor states that he gave a Personal Guarantee to the Corporate Debtor *vide* guarantee deed dated 30.12.2019 for the financial facilities availed from ICICI Bank. ICICI Bank assigned the debt to the Applicant herein *vide* Assignment Deed dated 29.01.2025. In this Company Petition, a Resolution Professional was appointed by order dated 10.12.2025, and he has filed the report along with IA.No.981/2026. Pending admission of the Company Petition, the present Application has been filed.

3. Submissions of Applicant

3.1 The present Applicant asserts that the Personal Guarantor did not file the Company Petition due to any legitimate insolvency issues or with a sincere intention to restructure his personal financial situation. Instead, it represents the culmination of a prolonged pattern of obstruction and delay in the repeated enforcement actions initially undertaken by ICICI Bank and subsequently by this Applicant. During the enforcement action, this Applicant obtained physical possession of the asset pursuant to an order dated 19.09.2025 issued by the Learned Chief Judicial Magistrate, Thane, under Section 14 of the SARFAESI Act.

3.2 It is submitted that the property situated at Plot TS-2, MIDC Phase II, Manpada Road, Dombivali Industrial Estate, Village Sagaon, Kalyan, District Thane, Maharashtra (Subject Property) is exclusively owned by the Corporate Debtor. When ICICI Bank took enforcement action on the Subject Property, the Personal Guarantor approached the Ld. Debt Recovery Tribunal (DRT) at the stage of the auction notice, seeking to suspend the recovery process on the pretext of challenging the Auction Notice dated 16.02.2024 by filing SA No. (D) 435/2024 at DRT-II at Mumbai. Due to procedural roadblocks and frivolous litigation initiated by the Personal Guarantor, ICICI Bank had to make multiple attempts to sell the Subject Property through auction notices dated 16.02.2024, 16.04.2024, 22.05.2024, 20.06.2024, and 31.07.2024. The Applicant submits that the actions of the Personal Guarantor have obstructed these multiple sale attempts, warranting the assignment of the debt, including the underlying security interest, guarantees, and enforcement rights, to the Applicant.

3.3 It is submitted that following the assignment, the Applicant undertook actions in accordance with the SARFAESI Act and took physical possession of the Subject Property on 13.10.2025, pursuant to the order dated 19.09.2025 passed by the Learned Chief Judicial Magistrate. This order was challenged before the Learned DRT on the ground of pendency of the Application under Section 94, although no interim relief or stay was granted in favour of the Personal Guarantor. After taking physical possession of the Subject Property, the Applicant initiated steps to sell the secured assets under the SARFAESI Act, and an auction was scheduled for 17.11.2025. In response to the auction notice, the Borrower Company approached the Hon'ble Bombay High Court seeking a stay on the proposed auction. Subsequently, the Personal Guarantor/Corporate Debtor submitted unviable one-time settlements and is taking steps to stall the enforcement action under SARFAESI. These proceedings under Section 94 are also an exercise carefully crafted to disrupt the lawful enforcement of the securities created in favour of the Applicant.

3.4 The misuse of multiple judicial fora is evident from the actions initiated by the Personal Guarantor, namely initiating a SARFAESI Appeal before the Ld. DRT, filing a Writ Petition before the Hon'ble Bombay High Court, and thereafter filing the present Application under Section 94 with the intent to invoke an interim moratorium under Section 96 of the Act.

3.5 The Applicant submits that the Application filed by the Personal Guarantor is a calculated and mala fide misuse of Section 94, timed solely to obstruct the SARFAESI enforcement, which is at its final stage. The Personal Guarantor has deliberately suppressed material facts and approached this Tribunal with unclean hands; he seeks to use the personal insolvency mechanism to freeze enforcement action against the Subject Property, which he does not own, an action that is legally impermissible. The conduct of the Personal Guarantor constituted forum shopping and abuse of multiple judicial processes. In support of the Applicant's submissions, the Applicant relied on the judgment in *Syed Sirajis Salikin Khadri v. Edelweiss ARC*, [Company Appeal (AT) (Ins) No.455 of 2025] to emphasize that insolvency provisions cannot become a refuge for those seeking to avoid legal recovery.

4. Submissions of Respondent

4.1 In response to the notice issued by this Tribunal, the Personal Guarantor accepted notice on 13.05.2026 and sought time for his reply. Subsequently, on 08.07.2026, this Tribunal directed the Respondent/Personal Guarantor to clearly state whether the Subject Property belongs to the Personal Guarantor or the Corporate Debtor.

4.2 The records indicate that the Respondent/Personal Guarantor has not submitted any response nor provided clarification regarding the ownership status of the Subject Property by the Personal Guarantor.

5. Analysis and Findings

5.1 We have heard the Ld. Counsel appearing for both the parties and perused the records carefully.

5.2 The Applicant has asserted that, despite the fact that the Subject Property is not owned by the Personal Guarantor, the Company Petition filed under Section 94 of the Code is being used primarily to delay the enforcement action related to the Subject Property. In these circumstances, the questions before us are whether the facts and circumstances of the case are sufficient to hold that the Personal Guarantor has resorted to a Section 94 Application as a means to obstruct the recovery actions of the Applicant, and whether the moratorium under Section 96 of the Code applies to the Subject Property.

5.3 For a proper appreciation of the issue in hand, it may be useful at this stage to go through the chronological sequence of events right from issuance of notice under SARFAESI Act. The records indicate that the Corporate Debtor defaulted on repayment of the facilities granted by ICICI Bank, culminating in the issuance of the SARFAESI Notice dated 21.03.2023 to enforce the securities created by them. Following the notice issued under Section 13(2), ICICI Bank took symbolic possession of the Subject Property on 21.07.2023. Thereafter, attempts were made to sell the Subject Property through auction notices dated 14.02.2024, 16.04.2024, 22.05.2024, 20.06.2024 and 31.07.2024. As the enforcement could not be completed, ICICI Bank assigned the financial asset to the present Applicant, who obtained an order under Section 14 of the SARFAESI Act on 19.09.2025. Accordingly, the Applicant took physical possession of the Subject Property on 13.10.2025, and thereafter put the Subject Property for public auction on 29.10.2025. The enforcement action against the Subject Property was challenged in SARFAESI Appeal No. 105/2024 before the Ld. DRT. As no order of stay was granted by the Ld. DRT, the Corporate Debtor filed Writ Petition No. 36839/2025 challenging the auction notice dated 29.10.2025, seeking a stay on the implementation and operation of the said auction notice dated 29.10.2025. The Hon’ble Bombay High Court, in its order

dated 17.11.2025, directed that status quo be maintained as of that date in respect of the pre-bid auction notice dated 29.10.2025. Subsequently, the Hon'ble Bombay High Court disposed of the Writ Petition with a direction to the Ld. DRT to hear and dispose of the Interim Application No. 2505/2025 along with the amendment application on 24.11.2025. On 24.11.2025, the Ld. DRT, upon hearing the aforesaid IAs, noted the pendency of the Company Petition before this Tribunal and observed that the moratorium has thus been in effect in the matter since 04.10.2025. Consequently, the Ld. DRT directed the Applicant not to take any coercive steps in this matter until this Tribunal alters or lifts the moratorium. In this background, the the present Application has been filed.

5.4 When we look at the order dated 24.11.2025 passed by Ld. DRT, it is clear that the restraining order has been passed by the Ld. DRT on the assumption that the moratorium applies to the Subject Property due to the pendency of the present Company Petition filed by the Personal Guarantor.

5.5 This brings us to the Company Petition which has been filed by the Personal Guarantor under Section 94 of the Code on 04.10.2025. Before the amendment of Section 96 in 2026, filing of resolution applications under Section 94 of the Code would automatically trigger an interim moratorium, thereby preventing any legal action or proceeding in respect of any debts owed by the personal guarantor. This interim moratorium is intended to give genuine personal guarantors an opportunity to resolve their debts as per the provisions of the Code. In the present case, the earlier actions, initially before the Ld. Tribunal, then before the Hon'ble Bombay High Court and presently before this Tribunal, coupled with the successive settlement proposals dated 21.09.2025, 27.09.2025, and 13.08.2025, cause a doubt as to the real purpose of the Company Petition, as the Applicant has been arguing that the Company Petition is being used as a tool to stall the enforcement action on the Subject Property and not for genuine resolution of the Personal Guarantor. However, this aspect may not be relevant to this

Application, as the Applicant has asserted that the Subject Property does not belong to the Personal Guarantor's personal estate.

5.6 In *Ramesh Kumar Chugh v. Assets Care and Construction Enterprises Limited,* [Company Appeal (AT) (Ins.) No. 1726/2024], the Hon'ble NCLAT observed that the moratorium under Section 96 would apply only to the security interest created by the personal guarantor. Consequently, it is evident that the moratorium specified under Section 96 pertains solely to the assets owned by or the security interest created by the Personal Guarantor. In this background, by order dated 08.07.2026, the Personal Guarantor was directed to state clearly whether the Subject Property belongs to the Personal Guarantor or the Corporate Guarantor (Corporate Debtor). Although the Personal Guarantor was present, the Personal Guarantor has not produced any document showing that the Subject Property belongs to the Personal Guarantor. In contrast, the Applicant has produced a copy of the memorandum of entry evidencing the creation of an equitable mortgage in respect of the Subject Property by the Corporate Debtor. This demonstrates that the Subject Property is owned by the Corporate Debtor (Corporate Guarantor), which created the mortgage as security for the financial assistance granted by ICICI Bank, and is presently assigned to the Applicant. Therefore, the moratorium in respect of the Personal Guarantor, resulting from the Company Petition filed by the Personal Guarantor under Section 94, does not extend to the Subject Property.

5.7 Even otherwise, it is pertinent to notice that Section 96 of the Act has been amended to insert subsection 4 by the Insolvency and Bankruptcy Code (Amendment) Act, 2026, as per which the provisions of moratorium shall not apply when an application is filed for initiating an insolvency resolution process in respect of a personal guarantor to a corporate debtor. However, the Ld. Counsel for the Personal Guarantor contends that the amendment provision has not been notified and that the moratorium in respect of the application filed before the amendment shall continue.

5.8 We observe that the amendment has been duly notified and brought into effect on 26.05.2026 pursuant to a notification dated 22.05.2026. The effect of this amendment on applications filed before the aforesaid amendment was considered by the Hon'ble Bombay High Court in *Tata Capital Financial Services Limited v. Neel Motors LLP & Ors.,* [Commercial Arbitration Petition No. 620/2021 dated 24.07.2026], and held that the amendment operates retroactively from 26.05.2026. Similarly, the Hon'ble Delhi High Court in *IDBI Trusteeship Services Limited v. Manish Jain & Ors. CS* [(COMM)800/2025 dated 19.08.2026] confirmed 'quasi retroactivity' applying to continuing states of affairs. Therefore, the interim moratorium under Section 96 of the Code is no longer available to a personal guarantor to a corporate debtor, regardless of whether the insolvency resolution process is initiated prior to or after the amendment. As a result, the Personal Guarantor is not entitled to the benefit of moratorium under Section 96 of the Code.

5.9 Given this backdrop, we are of the considered view that, under the current circumstances of the case, the moratorium stipulated under Section 96 of the Code does not apply to the Subject Property in question and no order of admission of the Company Petition under Section 100 of the IBC has been passed till date. Consequently, the ongoing status of the Company Petition before this Tribunal does not hinder the enforcement actions pertaining to the Subject Property.

5.10 In view of the foregoing discussion, we **allow IA.No.1975/2026** with **no order as to costs.**

Sd/-	**Sd/-**
ANIL RAJ CHELLAN	**K. R. SAJI KUMAR**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**