



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH - I**

**C.P. (IB) NO. 76/MB/2026**

Under Section 94 of the Insolvency and  
Bankruptcy Code, 2016 r/w rule 6 of  
the Insolvency & Bankruptcy  
(Application to Adjudicating Authority  
for Insolvency Resolution Process for  
Personal Guarantors to Corporate  
Debtors) Rules 2019.

*In the matter of*

**Shri Nirmal D Jain,**

Personal Guarantor to M/s. Kankria  
Agro Limited

[CIN: U15400MH2019PLC329553]

**..... Personal Guarantor/  
Petitioner/ Applicant**

**Order pronounced on 02.06.2026**

*Coram:*

Sh. Prabhat Kumar  
Member (Technical)

Sh. Sushil Mahadeorao Kochey  
Member (Judicial)

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*Appearances:*

For the Applicant	: Adv. Rachana Lad
For Resolution Professional	: Adv. Mahesh Surekha
For Bank of India (FC)	: Adv. Ashlesha Rane i/b PRM Legal

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**Brief facts:**

1. The present Petition has been filed on 22.01.2026 by Mr. Nirmal



D. Jain (“Petitioner/Personal Guarantor”) under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 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 as the Personal Guarantor of M/s. Kankria Agro Limited (“Corporate Debtor”).

2. The Petitioner is an Indian citizen having his permanent address at 2310/11 1st Floor, Tilak Road Sonar Gali Nirmal Agencies, Nandurbar, Maharashtra 425412.
3. The Corporate Debtor, bearing CIN U15400MH2019PLC329553, was incorporated on 21.08.2019 under the Companies Act, 2013, having its registered office at Flat No. 403, Shree Heights, Guhkul Society, behind Kashinath Lodge, Jalgaon, Maharashtra – 425003.
4. The Petitioner stood as Personal Guarantor for the credit facilities availed by the Corporate Debtor from Bank of India, Jalgaon Branch (“Financial Creditor”). The date of default is stated as March 2025 and the amount in default is Rs. 5,01,64,000/-.

**SUBMISSIONS OF THE PETITIONER:**

5. It is submitted that Bank of India (“Financial Creditor”) sanctioned various credit facilities in favour of M/s. Kankria Agro Limited (“Corporate Debtor”) vide sanction letter dated 23.12.2019, which were subsequently renewed and reviewed from time to time. The said facilities were secured, inter alia, by a Deed of Guarantee dated 06.03.2020 executed by the Applicant along with other personal guarantors, namely Mr. Sudarshan Ravindra Jain, Mrs. Madhubala Ravindra Jain, Mrs. Kantabai Dagdulal Jain and Mr. Vinodkumar Kevalchand Jain. Pursuant thereto, the immovable properties of the



guarantors were mortgaged in favour of the Financial Creditor as collateral security.

6. It is further submitted that the Financial Creditor, vide sanction letter dated 29.09.2021, sanctioned and restructured credit facilities aggregating to Rs. 11,71,63,000/- in favour of the Corporate Debtor, comprising Cash Credit, Term Loans and FITL facilities.
7. The Applicant executed a Personal Guarantee dated 06.03.2023 in favour of the Financial Creditor guaranteeing repayment of the aforesaid facilities availed by the Corporate Debtor.
8. It is submitted that the credit facilities were thereafter revised vide review letter dated 20.03.2023, whereby the Financial Creditor continued and revised the existing Cash Credit, Term Loan and FITL facilities in favour of the Corporate Debtor.
9. It is submitted that upon failure of the Corporate Debtor to discharge its financial obligations, the loan account was classified as Non-Performing Asset (NPA) on 28.06.2025.
10. It is further submitted that the Financial Creditor issued a demand notice dated 01.07.2025 under Section 13(2) of the SARFAESI Act, 2002, calling upon the Corporate Debtor and the personal guarantors to repay an amount of Rs. 5,01,11,035.45 together with applicable interest and other charges within 60 days from the date of said notice.
11. It is submitted that the Personal Guarantee was invoked on 01.07.2025 and a further invocation notice dated 02.07.2025 was also issued by the advocate for the Financial Creditor, calling upon the guarantors to pay an amount of Rs. 5,01,64,035.45 together with contractual interest and charges within 60 days from the date



of said notice, failing which appropriate recovery proceedings were proposed to be initiated before the competent forum.

12. It is submitted that the Financial Creditor has also taken symbolic possession of the personal property of the Applicant vide possession notice dated 23.09.2025.

13. It is further submitted that, owing to mounting debts and financial hardship, the Applicant has filed the present Application seeking initiation of insolvency resolution process under Section 94 of the Code. The Applicant has stated that he is willing to offer all his assets towards resolution of the outstanding liabilities in accordance with the provisions of the IBC, 2016.

14. The Applicant has disclosed total liabilities of Rs. 9,05,67,826.49, comprising secured debt of Rs. 5,01,64,035.45 payable to Bank of India and unsecured debt of Rs. 4,04,03,791.04. The total assets of the Applicant are stated to be valued at approximately Rs. 2,11,55,889/-, including mortgaged properties valued at Rs. 2,11,40,000/- and bank balance of Rs. 15,889/-.

15. It is also submitted that the Applicant had earlier filed an application under Section 94 of the Code being CP(IB) No. 16(MB)2026 on 23.12.2025. However, the same came to be dismissed as defective on 08.01.2026 with a liberty to take an action in accordance with the law in future, after observing that a copy of the Deed of Guarantee and Invocation of Guarantee of the PG to the captioned Company Petition is not attached.

16. On the aforesaid grounds, the Applicant has sought initiation of insolvency resolution process under Section 94 of the Insolvency and Bankruptcy Code, 2016.



17. The Applicant has placed reliance upon the decision in *Sammunati Agro Solutions Pvt. Ltd. v. Shikha Tayal (2025) ibclaw.in 2912 NCLT Indore Bench* to contend that the Hon'ble NCLAT in *State Bank of India v. Mahendra Kumar Jajodia* has held that pendency of a CIRP is not a sine qua non for maintaining a petition under Section 95 and that an application cannot be rejected solely on the ground that no CIRP or liquidation proceeding is pending against the corporate debtor, and section 96 provides for an interim moratorium from the date of filing of an application under Section 94 until its admission or rejection. The interim moratorium is a statutory consequence and cannot, by itself, constitute a ground to dismiss a petition that is otherwise maintainable under law.

18. The Applicant has further relied upon the decision in *Harshbhai Gopalbhai Soni v. Bank of Baroda in CP (IB) No. 172/94(AHM)2025 decided on 10.11.2025*, to contend that evidence of collusion is required to be placed by the Financial Creditor or by the IRP, and abuse of process requires intent to pervert justice; while the petition herein seeks resolution per Code object, moratorium statutory.

**SUBMISSIONS OF THE RESOLUTION PROFESSIONAL:**

19. Vide order dated 30.01.2026, this Bench appointed Mr. Mahesh Sureka as the Resolution Professional in the present matter and directed him to submit a report under Section 99 of the Insolvency and Bankruptcy Code, 2016. Pursuant thereto, the Resolution Professional filed his report in IA (IBC) No. 1261(MB)/2026 under Section 99(1) of the Code recommending admission of the present application for initiation of insolvency resolution process against the Personal Guarantor, Shri Nirmal D. Jain. The said report was taken on record vide order dated 01.04.2026.



20. The Resolution Professional has stated that he received a copy of the application along with the annexures filed by the Personal Guarantor before this Tribunal and thereafter sought additional information from the Financial Creditor as well as the Personal Guarantor, which was duly considered while preparing the report.
21. The Resolution Professional has further observed that Bank of India sanctioned various credit facilities to M/s. Kankria Agro Limited (“Corporate Debtor”), including facilities sanctioned vide letter dated 29.09.2021 aggregating to approximately Rs. 11.71 crore comprising Cash Credit, Term Loans and FITL facilities. The said facilities were secured, inter alia, by a Deed of Guarantee executed by the Applicant and creation of mortgage over immovable properties belonging to the guarantors.
22. It has further been noted that the Corporate Debtor committed default in repayment of the loan facilities and the account was classified as NPA on 28.06.2025. Thereafter, the Financial Creditor invoked the securities, including TDRs amounting to Rs. 4.10 crore, issued notice under Section 13(2) of the SARFAESI Act, took symbolic possession of secured assets and instituted O.A. No. 657/2025 before the DRT, Aurangabad for recovery of approximately Rs. 5.11 crore.
23. On the basis of the material placed on record, the Resolution Professional has concluded that a financial debt is due and payable by the Applicant, being the Personal Guarantor, to Bank of India and that default has occurred.
24. The Resolution Professional, in terms of Section 99(6) of the Insolvency and Bankruptcy Code, 2016, has stated that the present application is complete and in compliance with the requirements of



Section 94 of the Code.

25. It is stated that the Resolution Professional, vide email dated 06.02.2026, sought objections from Bank of India. In response thereto, the Financial Creditor, vide email dated 12.02.2026, raised objections to the present application primarily on the grounds that: (i) the application under Section 94 is an abuse of process and has been filed only to obtain the benefit of interim moratorium under Section 96 and stall SARFAESI proceedings; (ii) the Applicant acted mala fide by allegedly selling certain mortgaged properties without prior consent of the Financial Creditor and without appropriating the sale proceeds towards the loan account; and (iii) reliance was placed upon the judgment in *Syed Sirajis Salikin Khadri v. Edelweiss Asset Reconstruction Company Ltd. and Anr.*, [\(2025\) ibclaw.in 294 NCLAT](#) to contend that the petition deserves rejection as an attempt to obstruct recovery proceedings.

26. The Resolution Professional, however, observed that the Code does not prohibit a Personal Guarantor from invoking Section 94 merely because proceedings under the SARFAESI Act or before the DRT are pending. It was further observed that the earlier petitions filed by the Applicant were dismissed on technical grounds and not on merits. Distinguishing the judgment in *Syed Sirajis Salikin Khadri v. Edelweiss ARC*, the Resolution Professional noted that the said case involved repeated and serial litigations solely intended to obstruct recovery proceedings, whereas in the present case, although the conduct of the Applicant in relation to sale of certain mortgaged assets without consent may warrant scrutiny, the material presently available on record is insufficient to reject the application at the threshold, particularly when the existence of debt and default stands established.



27. The Resolution Professional has further stated in his recommendation under Section 99(7) of the Insolvency and Bankruptcy Code, 2016 that,

*Recommendation under Section 99 (7) along with reason: In light of the above examination under Section 99(1), I am of the considered opinion that:*

*1. The application under Section 94 is complete and within limitation.*

*2. There exists a financial debt and default on the part of the Applicant, as personal guarantor.*

*3. Although the conduct of the Applicant warrants close scrutiny, the material presently on record is insufficient to conclude that the petition is a purely sham or fraudulent proceeding of the kind deprecated in Syed Sirajis. I therefore recommend that this Hon'ble Tribunal admit the application under Section 100 of the Code .”*

**SUBMISSIONS OF THE FINANCIAL CREDITOR:**

28. The Financial Creditor, Bank of India, has opposed admission of the present petition by filing Interlocutory Application No. 1310(MB)2026, contending that the present proceedings constitute an abuse of the provisions of Section 96 of the Insolvency and Bankruptcy Code, 2016.

29. It is submitted that during the subsistence of the security arrangements, certain mortgaged properties owned by the personal guarantors, namely Mr. Vinodkumar Kevalchand Jain, Mr. Nirmal Jain and Mrs. Madhubala Jain, came to be sold without prior intimation to or consent of the Financial Creditor.



30. It is stated that thereafter, vide Review Proposal dated 24.06.2024, Bank of India approved acceptance of a Term Deposit Receipt (TDR) aggregating to Rs. 4.10 crore in substitution of the mortgaged properties allegedly sold by the personal guarantors.
31. It is submitted that upon commission of default, the loan account of the Corporate Debtor was classified as Non-Performing Asset (NPA) on 28.06.2025. Thereafter, Bank of India issued a demand notice dated 01.07.2025 under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor and the Personal Guarantors calling upon them to repay outstanding dues of Rs. 5,01,11,035/- together with applicable interest and other charges. Subsequently, a legal notice dated 02.07.2025 was issued through the advocate for the Financial Creditor demanding payment of Rs. 5,01,64,035/- with further interest. It is further submitted that possession notices dated 23.09.2025 were issued in respect of the mortgaged properties of the Personal Guarantors and the same were published in the newspapers Free Press Journal and Navshakti on 26.09.2025, pursuant to which symbolic possession of the secured assets was taken. The Financial Creditor also instituted O.A. No. 657 of 2025 before the DRT, Aurangabad seeking recovery of Rs. 5,11,13,334/.
32. It is further submitted that the Financial Creditor thereafter issued an e-auction notice dated 22.11.2025 for conducting auction of the secured assets on 24.12.2025. However, one day prior to the scheduled auction, the Personal Guarantors, namely Mr. Nirmal Jain and Mrs. Madhubala Jain, filed Company Petitions bearing CP No. 16 of 2026 and CP No. 17 of 2026 respectively under Section 94 of the Code before this Tribunal. The said petitions were subsequently dismissed as defective vide order dated 08.01.2026.
33. It is further submitted that thereafter a fresh e-auction notice dated



10.01.2026 was issued by Bank of India for auction scheduled on 28.01.2026. It is alleged that once again the Personal Guarantors, namely Mr. Nirmal Jain and Mrs. Madhubala Jain, filed fresh petitions under Section 94 of the Code being CP No. 76 of 2026 and CP No. 88 of 2026 on 22.01.2026 and 26.01.2026 respectively.

34. On the aforesaid basis, the Financial Creditor has contended that the present petition has been filed solely with the intent to obstruct proceedings initiated under the SARFAESI Act and to misuse the benefit of interim moratorium under Section 96 of the Code. It is further contended that the e-auction process would have enabled expeditious recovery of the outstanding dues, whereas proceedings under the Code would result in delay and prejudice to the secured Financial Creditor owing to the statutory timelines prescribed therein.

35. Reliance was placed on order dated 25 April 2025 passed by the Hon'ble NCLAT in the matter of *Syed Sirajis Salikin Khadri v. Edelweiss Asset Reconstruction Company Ltd. and Anr.*, [\(2025\) ibclaw.in 294 NCLAT](#) wherein it was held that the proceedings under Section 94 of the IBC were not initiated with the intent of genuine insolvency resolution but as a tool to obstruct lawful recovery with an intent to seek refuge of moratorium under Section 96 of IBC.

*“13. When we look at the impugned order, we find that the Adjudicating Authority at para 5 thereof has exhaustively listed out the details of the multiple legal proceedings initiated by the Appellant before various Courts/Tribunals/Forums. This leaves no doubt in our mind that each time physical possession of the secured residential premises was sought to be taken by the Respondent No.1 by*



*following the due process laid down under the SARFAESI Act, the Appellant tried to circumvent the possession notice and stall/defer these proceedings by initiating some legal proceeding or the other. This pattern of conduct of the Appellant underlines an entrenched pattern of evasion of recovery proceeding on one pretext or the other.”*

*“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”*



**FINDINGS:**

36. Heard Learned Counsel for the Petitioner. Perused the record. The Report submitted by the Resolution Professional, along with the objections filed by the Financial Creditor thereto and the reply filed by the Personal Guarantor to such objections, has also been considered.

37. In the present case, notice under Section 13(2) of the SARFAESI Act was issued on 01.07.2025 to the Corporate Debtor and the Personal Guarantors for recovery of outstanding dues of Rs. 5,01,11,035/-. Thereafter, Bank of India issued possession notices dated 23.09.2025 in respect of the properties mortgaged by the Applicant–Personal Guarantor and subsequently took symbolic possession thereof. The Financial Creditor also instituted O.A. No. 657 of 2025 before the DRT, Aurangabad. Subsequently, an e-auction notice dated 22.11.2025 was issued fixing auction of the secured assets on 24.12.2025.

38. It is pertinent to note that one day prior to the scheduled e-auction, the Personal Guarantors, namely Mr. Nirmal Jain and Mrs. Madhubala Jain, filed CP No. 16 of 2026 and CP No. 17 of 2026 respectively under Section 94 of the Code before this Tribunal. The said petitions came to be dismissed as defective vide order dated 08.01.2026 on account of non-filing of the Deed of Guarantee. Consequently, the interim moratorium under Section 96 of the Code, which had commenced on 23.12.2025, ceased to operate upon dismissal of the said petitions. Thereafter, Bank of India issued a fresh e-auction notice dated 10.01.2026 scheduling auction on 28.01.2026. In the interregnum, the present petition came to be filed by the Applicant on 22.01.2026.



39. The order dated 08.01.2026 passed in CP (IB) No. 16(MB)2026 filed by the Personal Guarantor records as under:

*“2. During the course of the hearing, it is noticed that the Applicant has not attached a copy of the Deed of Guarantee and Invocation of Guarantee of the PG to the captioned Company Petition. In the absence of a Personal Guarantee and Invocation, the PG is not entitled to invoke the provisions of Section 94 of the IBC.*

*3. In view of the aforesaid, the present Company Petition, i.e., C.P. (IB)/16(MB)2026, is dismissed as defective.*

*4. The Applicant is at liberty to take an action in accordance with the law in future.”*

40. The filing of an incomplete application registered as CP (IB) 16 of 2026 one day prior to scheduled 3-auction date of the property in possession of the Financial Creditor may demonstrate the intent and object of the personal guarantor to avoid the auction of said property. It is pertinent to note that the personal guarantor, having committed default on expiry of 60 days from date of guarantee invocation i.e. 30.8.2025 didn't contemplate insolvency resolution, and it is only when the personal guarantor came to realise that the mortgaged properties are likely to be disposed of by the financial creditor in the scheduled auction, that he suddenly woke up. After dismissal of CP (IB) 16 of 2026 as defective on 8.1.2026, the petitioner filed the present petition on 22.1.2026 when the e-auction was again scheduled for 28.1.2026 in terms of notice dated 10.1.2026.

41. It is noted that the personal guarantor committed default in his obligations towards the financial creditor on 30.8.2025 only, after



expiry of 60 days period provided in notice invoking the guarantee, and the financial creditor proceeded to take over symbolic possession of the mortgaged properties owned by the personal guarantor on 23.09.2025 to auction the said properties in order to realise its security interest. The said auction was initially scheduled on 24.12.2025, which was thwarted by filing CP (IB) 16 of 2026 a day prior to said date.

42. In case of Syed Sirajis Salikin Khadri (Supra), Hon'ble NCLAT distinguished its earlier decision in Getz Cables Pvt. Ltd. v. State Bank of India. The relevant observations from the said judgment are reproduced hereinbelow:

*“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.”*

43. It is pertinent to note that Hon’ble NCLAT upheld the order passed by adjudicating authority after observing that section 94 petition came to be filed after about a decade coinciding with the notice issued for taking possession of mortgaged properties in that case. However, in the present case, it is noted that the financial creditor have acted swiftly to exercise its rights under SARFAESI Act within less than one month of default and proceeded to put the mortgaged properties for auction within 4 months of occurrence of default. The Insolvency and Bankruptcy Code permits a Personal Guarantor to invoke the provisions of Section 94 and seek resolution of his liabilities by placing his assets before the creditors, thereby enabling a fresh financial start, which remedy is distinct from proceedings under the SARFAESI Act. Even though, the present petition as well as earlier dismissed petition were filed on



the eve of schedule date of auction, it can not be ignored that the personal guarantor has a right to invoke provisions of IBC for resolution of his insolvency in the manner provided under the Code, and such right can not be taken away merely because of swift action on the part of financial creditor to realise its security interest under SARFAESI Act. We do not find any inordinate delay on the part of the personal guarantor to invoke provisions of IBC for resolution of his insolvency in terms of provisions of section 94 of IBC, which provide for time bound resolution of insolvency of guarantors and also allows the creditors a choice to stay away from such process. Hence, we are of considered view that the action of personal guarantor to approach this tribunal for resolution of his insolvency in terms of section 94 of IBC can not be faulted by deciphering an ill motive, which does not seem to exist in the present case.

44. Insofar as the reliance placed by the Financial Creditor on Syed Sirajis Salikin Khadri v. Edelweiss Asset Reconstruction Company Ltd. is concerned, the said decision turned on facts where the proceedings under Section 94 were found to have been initiated after inordinate delay of about 10 years solely to obstruct lawful recovery proceedings, which were likely to culminate in dispossession of mortgaged properties and auction thereof. In the present case, considering the facts in totality, it can not be said that the present petition has been filed without any genuine intent of insolvency resolution.

45. It is further noted that the present application under Section 94 contains particulars of the guarantee executed by the Personal Guarantor, details of the loan facilities sanctioned to the Corporate Debtor, and copies of the invocation notices issued by the Financial Creditor. Significantly, Bank of India has neither disputed the existence of debt and default nor the invocation of the guarantee.



The principal objection of the Financial Creditor is that it is the sole secured financial creditor and that recovery proceedings initiated under the SARFAESI Act would enable expeditious recovery, whereas proceedings under the Insolvency and Bankruptcy Code are subject to the timelines prescribed therein. On this basis, it has been contended that the present proceedings are intended to frustrate the SARFAESI action.

46. The aforesaid contention of the Financial Creditor does not merit acceptance. Proceedings under the SARFAESI Act are essentially recovery proceedings enabling secured creditors to enforce security interests without intervention of civil courts, whereas the object of the Insolvency and Bankruptcy Code, 2016 inter-alia, as reflected in its Preamble, is resolution of insolvency and balancing of interests of stakeholders. Part III of the Code specifically provides a mechanism for insolvency resolution of individuals and personal guarantors. Section 94 enables a debtor to initiate insolvency resolution upon inability to pay debts, while Section 96 provides for an interim moratorium from the date of filing of the application.

47. The interim moratorium under Section 96 is a statutory consequence flowing from the filing of an application under Section 94 of the Code. In view of the overriding effect accorded to the Insolvency and Bankruptcy Code, 2016 under Section 238, pendency of recovery proceedings under the SARFAESI Act cannot, by itself, render the present application non-maintainable. In the absence of material demonstrating mala fides or abuse of process, the present proceedings cannot be rejected solely on the ground that recovery proceedings had already been initiated by the Financial Creditor. Though the filing of the present application immediately prior to the scheduled e-auction may raise suspicion, the same, in the absence of any further material, cannot by itself



constitute a ground for rejection of the application.

48. In view of the foregoing discussion, **CP (IB) No. 76 of 2026** filed under Section 94 of the Insolvency and Bankruptcy Code, 2016 is **admitted** under Section 100 of the Code. Consequently, **Interlocutory Application No. 1310 (MB) 2026** filed by the Financial Creditor opposing admission of the Section 94 application stands **rejected**.

49. The present petition is complete in all respect. Therefore, we are of the considered opinion that is a fit case for admission and proceed against the Personal Guarantor/Petitioner and initiate Insolvency Resolution Process. Hence, we admit CP(IB) No. 76 of 2026 filed under the provisions of section 94 of IBC,2016 under Section 100 of the IBC, 2016 by following order:

- I. Insolvency Resolution Process is initiated against the Personal Guarantor and moratorium in relation to all the debts is declared, from today *i.e.* date of admission of the application, and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Section 101 of IBC, 2016. During the moratorium period:
  - a) Any pending legal action of proceeding in respect of any debt shall be deemed to have been stayed; and
  - b) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
  - c) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;



- d) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- II. The Resolution Professional *viz.* Mr. Mahesh Sureka, **having Insolvency Registration No. IBBI/IPA-001/IP-P00413/2017 18/10736** having registered address at 173, Udyog Bhavan, Sonawala Road, Goregaon (E), Mumbai, Maharashtra – 400 063, having E mail Id : mahesh(@mrsureka.com, Contact No. 9322581414 is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Mumbai Bench, inviting claims from all Creditors, within 21 days of such issue. The Resolution Professional shall discharge the functions/duties casted upon him under the provisions of the Code in this relation within time bound manner and shall be empowered to exercise the powers vested in him for discharge of such functions/duties.
- III. The Petitioner is directed to deposit **INR 75,000/-** (Indian Rupees Seventy-Five Thousand) or such amount as is agreed between the Resolution Professional and the Petitioner to the bank account of the Resolution Professional within **one week**, towards his fees and out of pocket expenses, which shall be such as is approved by the Petitioner herein and subsequently confirmed by the Creditors. This shall be subject to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- IV. The Registry is directed to communicate a copy of order to the Resolution Professional immediately after the pronouncement of order, and upload the same on the website within seven working days after the pronouncement of order.



50. Ordered accordingly.

**Sd/-**

Sh. Prabhat Kumar  
Member (Technical)  
Vijay Andhale

**Sd/-**

Sh. Sushil Mahadeorao Kochey  
Member (Judicial)