



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I, CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **02.04.2026** THROUGH VIDEO CONFERENCING

CORAM: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : Shoukath Sherif
Vs
Jammu & Kashmir Bank Ltd.

MAIN PETITION NUMBER : CP(IB)/151(CHE)/2025
(IA/MA) APPLICATION NUMBERS
IA(IBC)/1034(CHE)/2025

ORDER

Present: Ms. Abitha Banu, Ld. Counsel for the Applicant/Personal
Guarantor.
Shri. Chethan Sagar, Ld. Counsel for the Respondent/J&K Bank
Ltd.

Vide separate order pronounced in the Open Court, petition is dismissed.

File be consigned to records.

Sd/-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

Sd/-
[SANJIV JAIN]
MEMBER (JUDICIAL)

vs

Date: 02.04.2026



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI

CP(IB)/151(CHE)/2025

(Filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016)

Mr. Shoukath Sherif,
Son of (Late) Mr. Aleem Sherif,
No.23/15, Fortune Mills,
Tarapore Avenue,
Harrington Road, 8th Avenue,
Chetpet, Chennai-600 031

....Petitioner/Operational Creditor

Present:

For Personal Guarantor : *Mr. Aalok Jagga, Advocate*
Ms. Abitha Banu, Advocate

ALONG WITH
IA(IBC)1034(CHE)/2025
in
CP(IB)/151(CHE)/2025

(Filed under Section 99 of the Insolvency and Bankruptcy Code, 2016)

B. Mekala,
Interim Resolution Professional,
In the matter of Shoukath Sherif,
Personal Guarantor of M/s. A & Z Lifestyle Retail Pvt. Ltd.
No.55, Bhaiya Complex,
286, Purasawalkam High Road,
Purasawalkham, Chennai-600 007

.....Interim Resolution Professional

Vs

Jammu & Kashmir Bank Limited,
No.60, Rainbow Arcade,
Pondy Bazaar,
T. Nagar, Chennai-600 017

....Respondent



Present:

For IRP : Ms. B. Mekala, IRP in person.
For Jammu & Kashmir Bank : Mr. V.V. Sivakumar, Advocate
Mr. Chetan Sagar, Advocate

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 2nd April, 2026

COMMON ORDER

(Heard through Video Conferencing)

This petition CP(IB)151(CHE)2025 under Section 94(1) of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 has been filed by **Shoukath Sheriff (Personal Guarantor)** who stood guarantee for the loan facilities availed by the Corporate Debtor, A & Z Lifestyle Retail Private Limited from Jammu & Kashmir Bank Limited. The prayer made in the petition is to initiate Insolvency Resolution Process.

An application IA(IBC)/1034(CHE)/2025 under Section 99 of the Insolvency and Bankruptcy Code read with Rule 6 of the NCLT Rules, 2016 has been filed by Ms. B. Mekala, Interim Resolution Professional



for taking on record the report recommending initiation of insolvency proceedings against the Petitioner/Personal Guarantor.

2. **Part-I** of the petition sets out the details of the Petitioner, Shoukath Sherif. He was born on 29.11.1965. He has been living at No.23/15, Fortune Villa, Tarapore Avenue, Harrington Road, 8th Avenue, Chetpet, Chennai-600 031. His annual income is stated as Rs.31,51,610/-. He has given the details of his and his immediate family members assets at page 11 to 13 of the petition. He was Director in Sherif Global Services Pvt. Ltd & IKIGAI Enterprises Private Limited.

3. **Part-III** of the petition sets out the details of the Financial Creditor, Jammu and Kashmir Bank Limited. It has its office at No. 60, Rainbow Arcade, Pondy Bazaar, T. Nagar, Chennai-600 017 within the jurisdiction of this Tribunal. The amount of debt is stated to be Rs.1,31,27,407.45/-. The date of default is stated as 03.03.2020. Demand Notice under the SARFAESI Act, 2002 was issued by the bank on 03.01.2020.

4. As per the averments made, in 2016, the Corporate Debtor, A & Z Lifestyle Retail Private Limited had availed cash credit facilities to the tune of Rs.72,00,000/- and term loan for Rs.95,78,000/- from



Jammu and Kashmir Bank Limited for its business purpose. To secure the credit facilities, the Petitioner and others had given their personal guarantees by executing the Guarantee Deeds. The loan of the Corporate Debtor was declared as NPA by the Bank/Financial Creditor. On 03.01.2020, the Financial Creditor issued a demand notice under Section 13(2) of the SARFAESI Act, 2002 claiming Rs.1,31,27,407.45, to the Corporate Debtor and the Guarantors after invoking the bank guarantees. It also initiated recovery proceedings and scrutinisation proceedings against the Corporate Debtor and the Guarantors.

5. It is stated that the statement of affairs shows that the Petitioner does not have sufficient means to clear the entire debt of the creditors with the available resources though he wishes to repay to the creditors and resolve the state of insolvency under the aegis of IBC. The available means would enable him to submit a reasonable repayment plan under Section 105 of IBC, 2016 with the support of the RP for resolving the stage of insolvency on account of accumulation of debt and non-payment. It is stated that this petition has been filed with an intent that the insolvency be resolved in a time-bound manner for value maximization, overall debts be resolved by not restricting to only one creditor and the past claims be settled. It is stated that the



Petitioner is neither the undischarged bankrupt nor is undergoing fresh start process or insolvency resolution process. It is stated that initiating recovery action will not cure the defect nor will enable the Petitioner to restructure or clear or settle the debt. IBC is not a recovery legislation but a resolution legislation with recovery being a byproduct. The repayment plan would envisage a plan basing the properties of the Personal Guarantor which will be utilized in the plan and Section 105 would permit a buyer to enable a wholesome plan for consideration of the creditors. It is stated that the Petitioner has other secured and unsecured debts as described in Part-III of the petition and the statement of affairs. It is stated that non-initiation of CIRP against the Corporate Debtor would not bar the Petitioner from filing this petition and this Tribunal under Section 60(1) of IBC has jurisdiction to entertain this petition filed under Section 94 of IBC, 2016.

6. **On this petition, a report from the IRP was called** under Section 99 of IBC, 2016. She submitted the report in IA(IBC)/1034(CHE)/2025 recommending initiation of insolvency proceedings against the Personal Guarantor. In the report, the debt outstanding is stated as Rs.43,45,33,043/- inclusive of interest as on 31.12.2019. It is stated that the guarantor had given personal guarantee



for the Corporate Debtor A & Z Lifestyle Retail Private Limited and the Company, Sherif Cargo dated 28.12.2016 and 06.11.2017 for Rs.1,67,78,000/- Rs. 35,00,000/- to Jammu and Kashmir Bank in respect of financial debt. The bank had served the demand notice to the guarantor on 03.10.2020 but despite receipt of notice, he did not make the payment. The IRP has placed the copy of the sanction letters (Annexure-2), Deed of Guarantee (Annexure-3), Demand Notice (Annexure-4) and the letters given by the Personal Guarantor on 02.08.2024, 13.08.2024 and 11.11.2024 (Annexure-5) to the bank for One-Time Settlement.

7. **On getting notice of the petition, Jammu and Kashmir Bank Ltd./Financial Creditor filed the reply** stating that it is a secured creditor within the meaning of Section 2(1)(d) of the SARFAASI ACT, 2002. It had granted credit facilities to Sherif Cargo (Partnership Firm), A & Z Lifestyle Retail Private Limited (Corporate Debtor), Shoukath Sherif and Rubia Sherif (Individuals) to the tune of Rs.35.0 Crores, Rs.1.67 Crores and Rs.8.0 Crores respectively. As a common collateral security for the three loans, two immovable properties details mentioned at page-6 of the reply were mortgaged by the Petitioner and his wife. The Respondent has priority of charge on all the debts payable by the borrowers including the Petitioner. The Petitioner and



his wife had provided guarantee for securing the debts. It is stated that the loan accounts were highly irregular and were classified NPA by the Financial Creditor on 31.12.2019, 30.09.2019 and 31.12.2019 respectively. The demand notices were given on 03.01.2020, 04.10.2019 and 03.01.2020 respectively for the outstanding dues of Rs.1.31 Crores, Rs.34.10 Crores and 8.03 Crores giving 60 days time to make the payment. It is stated that the Financial Creditor enforced the secured assets by issuing the demand notice. Since the Petitioner failed to discharge his obligations as per the demand notices, the Financial Creditor took the physical possession of the mortgaged properties under Section 14 of the SARFAESI Act, 2002. It also filed the petitions under Section 19 of RDB Act before DRT-III at Chennai which are pending.

8. It is stated that the Petitioner is not inclined to settle the outstanding dues. The Financial Creditor has taken the measures under the SARFAESI Act and RDB Act to realize its dues.

9. It is stated that the date of default for the loan account of A & Z Lifestyle Retail Private Limited is 03.03.2020. The petition should have been filed by 02.03.2023 but it has been filed on 02.05.2025 thus barred by limitation. The Adjudicating Authority for individuals



and partnership firm is the DRT as held by *Hon'ble Madras High Court in Rohit Nath vs. KEB Hana Bank Ltd. CRP No.2513 of 2022* in the judgment dated 30.03.2023. In respect of the car loan taken from HDFC, the date of default is described as 'no default'. In respect of GST claims, Petitioner is only one of the partner and not the guarantor. It is stated that this petition has been filed to thwart the recovery measures initiated by the Financial Creditor. It has issued auction sale notice under the SARFAESI Act on 05.04.2025 fixing the date of auction as 07.05.2025. However, this petition has been filed on 02.05.2025. By virtue of moratorium under Section 96 of IBC, Financial Creditor could not take further action. Reference is made of the case *Syed Sirajis Salikin Khadri vs. Edelweiss Asset Reconstruction Company Limited in Company Appeal (AT) (Insolvency) No.455 of 2025* to contend that the provisions of Section 94 cannot be allowed to be misused for thwarting the process taken under the SARFAESI Act which is in an advanced stage. It is stated that as on 30.04.2025, a sum of Rs.81,34,68,820.70 is due and payable by the borrowers/guarantors. The default is since 2019.

10. **The Creditor/V.O. Chidambaram Port Authority also filed the objections vide S.R. No. 3958 dated 18.09.2025** stating that this petition has been filed to avoid the legal action initiated under the



SARFAESI Act by Jammu and Kashmir Bank Limited. The Port Authority has already filed Arbitration O.P. (Com. Div.) No. 571 of 2024 before Hon'ble High Court of Madras against the partnership firm. The Petitioner with a malicious intention to avoid arbitration proceedings, added the Port Authority as one of the creditors though it has no connection with the present petition. The claim of the Authority is only against M/s. Sherif Cargo managed by Mrs. Rubia Sherif who is not the Petitioner in the present petition.

11. **The creditors Mrs. Deepa Venkatachalam and Ms. Shilpa Venkatachalam also filed their objections vide S.R. No.5123 dated 28.11.2025** wherein they reiterated what has been stated by the Port Authority. It is stated that the Petitioner is their tenant in respect of the property bearing No.B-2. II Floor, Kasthuri Estate, Chennai vide unregistered lease agreement. The Petitioner had paid Rs. 7,50,000/- as Advance-cum-Interest-free Security Deposit on 15.07.2021. After expiry of lease, the creditor issued a notice dated 28.10.2022 terminating the lease but the Petitioner refused to vacate and demanded compensation. The Petitioner is still in illegal possession of the property. He is in arrears of rent of Rs.63,19,931/-. It is stated that they have filed a suit for recovery and mesne profit vide O.S. No.



1049/2024 and this petition has been filed to stall the recovery proceedings.

12. **We have heard Ld. Counsels for the parties** and perused the written synopsis and the case laws relied upon by the parties. We have also examined the report of the IRP filed under Section 99 of IBC, 2016.

13. It is not in dispute that the Corporate Debtor A & Z Lifestyle Retail Private Limited had availed cash credit facilities and term loan from the Financial Creditor, Jammu and Kashmir Bank Ltd. for business purposes. To secure the credit facilities, the Petitioner and others had given personal guarantee by executing the guarantee deeds. The Corporate Debtor failed to repay the loan and its account was declared NPA on 31.12.2019. There were two immovable properties in the name of the Petitioners and his wife which were mortgaged with the bank as security towards repayment of the loan amount. The Financial Creditor/Jammu and Kashmir Bank recalled the loan, invoked the bank guarantee and issued the demand notice on 03.01.2020 under the SARFAESI Act to the Corporate Debtor and the guarantors to repay the loan.



14. The partnership firm M/s. Sherif Cargo now known as M/s. Sherif Global being managed by Mrs. Rubia Sherif, wife of the Petitioner had also availed loan to the tune of Rs.35.0 Crores from Jammu and Kashmir Bank Ltd. It also failed to repay the loan. Repayment was guaranteed by the Petitioner and his wife. In addition, the Petitioner and his wife availed personal loans to the tune of Rs.1.80 crores. A common collateral security for all the three loans in the form of two immovable properties, were provided by the guarantors which were mortgaged with the bank. The bank also recovered the possession of both the properties from the guarantors under the SARFAESI Act on 09.01.2020. The physical possession was taken on 09.02.2022 in terms of the order passed by Ld. CMM in Criminal M.P. No. 1097/2020 and Criminal M.P. No. 1098/2020.

15. It is seen from the proceedings that the Petitioner and his wife did not initiate any action against taking over the physical possession of two immovable properties in February, 2022. They came into action only when the bank issued the auction sale notice on 05.04.2025 fixing the date of auction as 07.05.2025 by filing the petition on 02.05.2025.

16. In the present case, the guarantee was invoked on 03.01.2020. The limitation for filing the petition under Section 94 of IBC is three



years which expired on 02.01.2023. Excluding the period as held by Hon'ble Supreme Court in the case of *Cognizance* for extension of limitation in suo moto W.P. (c) No. 3 of 2020 vide order dated 10.01.2022 reported in (2022) 3 SCC 117 from 15.03.2020 to 28.02.2022, the limitation for filing the petition was upto **28.02.2025 (minus 72 days)**. **This petition has been filed on 02.05.2025 and is therefore barred by limitation. It is well settled that limitation shall also apply to the proceedings under IBC.**

17. There is no denial to the legal proposition as held in the case of *Gets Cables Private Limited v. State Bank of India and another in CA/AT(Ins)/No.1953 of 2024* that the right under section 94 given to a personal guarantor/individual cannot be taken away only on the ground that SARFAESI proceedings had been initiated prior to filing of Section 94 petition but in the present case, despite having taken physical possession of two immovable properties belonging to the Personal Guarantor by the Financial Creditor under the SARFAESI Act, the Petitioner kept silent and did not come in motion. It appears that he was waiting for the auction notice. He came in motion immediately after the sale notice was issued and auction date was fixed as 07.05.2025. No plausible explanation has been given for taking the action so late when Section 94 remedy was available to him



on the day the physical possession of two properties was taken. It assumes significance because there were other creditors whom the dues were payable. The Petitioner even did not pay the rental of the leased premises nor vacated the premises despite the lease period had expired. The partnership firm had huge debts to be paid to the Financial Creditor, Jammu and Kashmir Bank Limited. We failed to understand how by submitting a repayment plan, there will be resolution as pleaded in the petition.

18. Hon'ble NCLAT in *Syed Srijis* supra, went through the chronological sequence of events right from the initiation of the SARFAESI proceedings to the initiation of Section 94 petition and noted that the Corporate Debtor had failed to discharge its repayment obligations and its account was classified as NPA way back in 30.06.2021. The Appellant as Personal Guarantor had acknowledged the outstanding debt as early as on 13.08.2012. He also acknowledged the debt liability in the financial statements of the Corporate Debtor for FY 2017-18. The SARFAESI notice was issued on 06.08.2012. The bank initiated the recovery measures under the SARFAESI Act following which the Appellant filed the petition to prevent the bank from taking possession of the assets. Despite commitment, he breached the commitment. It was observed that this pattern of conduct of the



Appellant underlines an entrenched pattern of evasion of recovery proceedings on one pretext or the other.

19. The Petitioner, in the present case, has also tried to thwart the recovery proceedings by filing this petition at the last stage after about three years of taking physical possession of the properties of the Personal Guarantor.

20. In the case of *Nagpur Nagrik Sahakari Bank Ltd. vs. Mohanlal Ayyappan Pillai and Ors. (2025) ibclaw.in 381 NCLAT*, the Hon'ble NCLAT has held that as per the amended Section 13(8) of the Act, once the borrower fails to tender the entire amount of dues with all costs and charges to the secured creditor before the publication of auction notice, his right of redemption of mortgage shall stand extinguished / waived on the date of publication of the auction notice in the newspaper in accordance with Rule 8 of the 2002 Rules. The Hon'ble Supreme Court in the case of *Celir LLP vs. Bafna Motors (Mumbai) Private Limited and Ors., 2023 SCC Online SC 1209*, held as under:

“91. Thus what is discernible from above is that it is the duty of the courts to zealously protect the sanctity of any auction conducted. The courts ought to be loath in interfering with auctions, otherwise it would frustrate the very object and



purpose behind the auctions and deter public confidence and participation in the same.

92. *Any other interpretation of the amended Section 13(8) will lead to a situation where multiple redemption offers would be encouraged by a mischievous borrower, the members of the public would be dissuaded and discouraged from in participating in the auction process and the overall sanctity of the auction process would be frustrated thereby defeating the very purpose of the Act. Thus, it is in the larger public interest to maintain the sanctity of the auction process under the Act."*

21. It was observed that sanctity of auction is to be protected. The only reason to file the petition under Section 94 is to frustrate the auction sale. The amount realized in the auction sale is more than the loan dues.

22. In the present case also, the auction notice was published prior to filing of the petition under Section 94 of the IBC. The Corporate Debtor / Guarantor did not come forward to repay the debt to the Financial Creditor / Respondent and his right of redemption of mortgage stood extinguished / waived on the date the auction notice was published. We are therefore of the view that this petition has been filed just to frustrate the auction sale.



23. In the case of *Syed Sirajis Salikin Khadri* supra, the Hon'ble NCLAT observed that the Financial Creditor had taken the physical possession by following the due process laid down under the SARFAESI Act. It was the Appellant who tried to circumvent the possession notice and stall / defer the proceedings by initiating some legal proceeding or the other. Section 94 application was filed by the Appellant within weeks after the issuance of possession notice upon him by the Financial Creditor. This clearly reveals the intention of the Appellant to stall the recovery proceedings by taking undue benefit of the moratorium provisions. It was observed that these proceedings were not initiated with an intent of genuine insolvency resolution but as a tool to obstruct lawful recovery of enforcement with 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. The Hon'ble NCLAT also distinguished the case of *Getz Cables Private Limited vs. State Bank of India and Other in Company Appeal (AT) [Insolvency] No.1953 of 2024* observing that in that case, the insolvency proceedings under Section 94 of IBC was instituted immediately after initiation of SARFAESI proceedings but in the present case, there is a



yawning time-gap. In the present case also, the auction notice has been issued. The auction notice was issued on 05.04.2025. This petition has been filed on 02.05.2025. The Personal Guarantor instead of settling with the Financial Creditor / Respondent after receipt of demand notice, filed this petition with a sole aim to stall / defer the proceedings initiated by the Financial Creditor under the SARFAESI Act.

24. Considering the facts and circumstances in totality, we are of the view that the petition is barred by limitation. Further, this petition is not fit to be admitted for initiating insolvency proceedings under Section 94 of IBC, 2016 against the Personal Guarantor/Petitioner Shoukath Sherif.

25. For the foregoing reasons, we **dismiss** the petition CP(IB)/151(CHE)/2025 with no orders as to costs after taking on record the report of the IRP filed vide IA(IBC)/1034(CHE)/2025.

25. File be consigned to records.

Sd/-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-
SANJIV JAIN
MEMBER (JUDICIAL)

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