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

I.A. NO. 537/2023
IN
CP IB NO. 699/ND/2022

IN THE MATTER OF:

MRS. POONAM JAIN
R/O SHANKER GANJ, HAPUR
UTTAR PRADESH-245101
Email: pkjaini@hotmail.com

.....PERSONAL GUARANTOR

AND

IN THE MATTER OF:

ASHISH SINGH
IBBI/IPA-002/IP-N00416/2017-18/11230
RESOLUTION PROFESSIONAL FOR POONAM JAIN
FLAT NO. 901, TOWER-A, CLEO COUNTY,
SECTOR-121, NOIDA, UTTAR PRADESH, 201301
Email: ashishsinghcs@gmail.com

.....RESOLUTION PROFESSIONAL

Order Delivered On: 21.08.2026

CORAM:

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

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

APPEARANCES:

For the Union Bank : Adv. Sandeep Bhuraria, Adv. Vaishnavi Prakash

For the RP : Adv. Gurcharan Singh

ORDER

1. Under consideration is a Report filed by Mr. Ashish Singh, Resolution Professional, under Section 99 of the IBC[1] in IA No. 537/2023 in CP IB No. 699/ND/2022.

2. The original petition under Section 94 of the Code was filed by Mrs. Poonam Jain, Personal Guarantor to M/s Jain Timber Co. Pvt. Ltd. and M/s Mittal Lumber Pvt. Ltd. (Corporate Debtors), seeking initiation of the insolvency resolution process in respect of herself. On presentation of the petition, this Adjudicating Authority, vide order dated 22.12.2022, appointed the Resolution Professional and directed him to examine the application and submit a report under Section 99 of the Code.

3. The Resolution Professional has filed his report recommending admission of the application under Section 94 of the Code. As per the Report, the Personal Guarantor has committed default in repayment of debts; the debts mentioned in the application are not excluded debts; the Personal Guarantor is not an undischarged bankrupt and is not undergoing fresh start, insolvency resolution or bankruptcy process; no application under Chapter III of the Code had been admitted in respect of the Personal Guarantor during the twelve months preceding the filing of the present application; and the application has been filed in the prescribed Form-A with the requisite fee.

4. This Adjudicating Authority, vide order dated 02.02.2024, directed the Resolution Professional to issue notice by all modes to the Personal Guarantor and Union Bank of India, Financial Creditor. Thereafter, vide orders dated 31.05.2024 and 05.09.2024, last opportunity was granted to the Financial Creditor to file its response. The Financial Creditor filed its reply on 16.10.2024.

[1] Insolvency and Bankruptcy Code, 2016

5. In its reply, the authorized signatory of the Financial Creditor, Mr. Amit Kumar, Senior Manager of the Bank, stated that the Personal Guarantor was a director in both Jain Timber Co. Pvt. Ltd. and Mittal Lumber Pvt. Ltd. and had stood as personal guarantor for the credit facilities availed by the said companies from the Financial Creditor, then Corporation Bank. It is submitted that personal insolvency resolution process of Mrs. Poonam Jain may be initiated since both the Corporate Debtors are under liquidation and due to operation of the interim moratorium under Section 96 of the IBC triggered by the filing of the present Section 94 petition, the Financial Creditor has been unable to proceed with recovery action against the Personal Guarantor and the secured assets.

Analysis and Findings

6. We have heard the submissions of the Applicant/Personal Guarantor and the Financial Creditor, and have perused the petition, reply and documents placed on record.

7. From the material on record, it is evident that the Applicant stood as Personal Guarantor in respect of the credit facilities availed by Jain Timber Co. Pvt. Ltd. and Mittal Lumber Pvt. Ltd. from Union Bank of India, formerly Corporation Bank.

8. The loan accounts of Jain Timber Co. Pvt. Ltd. and Mittal Lumber Pvt. Ltd. were classified as NPA on 30.09.2016 and 31.08.2016, respectively. Demand notices under Section 13(2) of the SARFAESI Act were issued on 09.12.2016, demanding repayment of outstanding dues of Rs. 9,23,55,669/- and Rs. 6,76,39,555/-, respectively. Upon non-payment, possession notice dated 30.03.2017 was issued under Section 13(4) of the SARFAESI Act and symbolic possession of the mortgaged properties was taken by the Financial Creditor.

9. The Financial Creditor thereafter initiated recovery proceedings before the Debt Recovery Tribunal. The said proceedings culminated in orders dated 05.09.2019 and 14.09.2019, pursuant to which Recovery

Certificates were issued for Rs. 9,32,29,868.69/- and Rs. 6,83,54,916/- respectively, against the Corporate Debtors and their personal guarantors.

10. Since Jain Timber Co. Pvt. Ltd. and Mittal Lumber Pvt. Ltd. were unable to pay the outstanding dues, applications being CP IB No. 38/2020 and CP IB No. 237/2021 respectively, were filed under Section 10 of the IBC. These Section 10 petitions were admitted by the Adjudicating Authority vide order dated 04.08.2023 and 24.05.2023 respectively. The Financial Creditor submitted its claim of Rs. 29,45,71,719/- and Rs. 15,05,69,131.90/- respectively, which were admitted by the Resolution Professional. The Financial Creditor became the sole Financial Creditor constituting 100% voting share in the Committee of Creditors of Jain Timber Co. Pvt. Ltd. and Mittal Lumber Pvt. Ltd. Subsequently, both the Corporate Debtor were ordered to be liquidated vide order dated 25.09.2024 in IA No. 6248/2023 and order dated 02.09.2024 in IA No. 6267/2023.

11. The present petition under Section 94 of the Code was filed by the Personal Guarantor on 01.09.2022, i.e., after the Financial Creditor had already obtained orders from the Debt Recovery Tribunal and Recovery Certificates against the Corporate Debtors and the personal guarantors.

12. The timing of the filing of the present petition is significant. The petition has been filed after crystallisation of recovery proceedings against the Personal Guarantor and after initiation of measures by the Financial Creditor for enforcement of its security. The filing of the petition resulted in the automatic triggering of interim moratorium under Section 96 of the IBC, thereby stalling recovery action against the Personal Guarantor and the secured assets.

13. The interim moratorium under Section 96 of the IBC is intended to operate as a temporary protective mechanism to facilitate a genuine insolvency resolution process. It cannot be permitted to be used as a

device to obstruct lawful recovery proceedings or to defeat rights already crystallised in favour of creditors.

14. In the present case, the facts indicate that the Section 94 petition was not filed as a bona fide attempt towards insolvency resolution, but as a tactical measure to obtain the benefit of interim moratorium and frustrate recovery proceedings already initiated by the Financial Creditor.

15. In *Syed Sirajis Salikin Khadri v. Edelweiss Asset Reconstruction Company Ltd. & Anr.*[2], the Hon'ble NCLAT held that a Section 94 application is liable to be dismissed where it is filed with the intent to stall recovery proceedings by seeking refuge under the moratorium provision contained in Section 96 of the IBC. The Hon'ble NCLAT observed that filing of a Section 94 application in such circumstances cannot be regarded as a genuine attempt at insolvency resolution, but amounts to use of the IBC as a tool to obstruct lawful recovery. The relevant part of the decision is reproduced hereinunder:

> *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)

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[2] Syed Sirajis Salikin Khadri vs. Edelweiss Asset Reconstruction Company Ltd. & Anr. [CA (AT) (Ins.) No. 455 of 2025]

16. Applying the aforesaid principles to the facts of the present case, we are of the considered view that the present petition has been filed with the object of taking advantage of the interim moratorium under Section 96 of the IBC and obstructing the recovery process initiated by the Financial Creditor.

17. IBC cannot be allowed to be used in a manner that defeats or delays legitimate recovery proceedings. The existence of a statutory mechanism under Section 94 does not mean that every petition filed by a debtor must be admitted mechanically, particularly where the surrounding circumstances indicate abuse of process.

18. In the present case, the filing of the petition after DRT orders and Recovery Certificates, coupled with the effect of the interim moratorium on the Financial Creditor's recovery action, clearly demonstrates that the petition lacks bona fides and is intended to stall enforcement.

19. In view of the foregoing discussion, we are not inclined to accept the Report submitted by the Resolution Professional under Section 99 of the Code recommending admission of the Section 94 petition.

20. Accordingly, the Report submitted by the Resolution Professional in **IA No. 537/2023 in CP IB No. 699/ND/2022** is rejected. Consequently, **CP IB No. 699/ND/2022**, filed under Section 94 of the 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, is dismissed.

SD/-	**SD/-**
(REENA SINHA PURI)	**(MANNI SANKARIAH SHANMUGA SUNDARAM)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**