NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.202
Inv.P/4(MP)2024
in
CP(IB)/46(MP)2023

Order under Section Rule 11

IN THE MATTER OF:

ABBA Consultants Pvt Ltd **.....Applicant**
V/s
Susheel Kumar Gupta, RP for Smita Bharat Patel **.....Respondent**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 27/10/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-
MAN MOHAN GUPTA
MEMBER (TECHNICAL)

Sd/-
BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

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ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
BENCH AT INDORE

Inv.P/4(MP)2024
in
CP(IB)/46(MP)2023

Inv.P/4(MP)2024

[An Application filed under Rule 11 of the NCLT Rules, 2016]

ABBA Consultants Private Limited
Through its Director Shri Anil Bhargava
107, Siddhartha Chambers
55-A, Kalu Sarai, Hauz Khas
New Delhi - 110016

Email**:** **anilbhargava@gmail.com** **.....Applicant/Objector**

Vs.

Mr. Susheel Kumar Gupta
Resolution Professional for Mr. Bharat S Patel
104/7255, First Floor
Ajindra Complex, Shakti Nagar
New Delhi - 110007

Email: **patel.insolvency@gmail.com** **....RP/Respondent**

In the matter of: CP(IB)/47(MP)2023

[An Application under Section 94 of the Insolvency and Bankruptcy Code, 2016]

Smita Bharat Patel,
W/o Mr. Bharat S. Pate.
16, Malviya Nagar Hazur,
C.T.T. Bhopal, Madhya Pradesh -462003 **.....Applicant/Debtor**

Coram: Brajendra Mani Tripathi, Hon'ble Member (J)
Man Mohan Gupta, Hon'ble Member (T)

Appearance:

For Applicant : Mr. Mahesh Kumar, Adv (Online)

For the Respondent : Mr. Yashraj Singh Adv (Physical)

Order Pronounced On 27.10.2026

O R D E R

1. The present Application has been filed by the Applicant under Rule 11 of the National Company Law Tribunal Rules, 2016 with the following prayers:-

> *(i) Allow the Applicant to intervene in the Personal Insolvency Petition bearing C.P. (IB) No. 46 (MP)/2023 filed by the Debtor Ms. Smit B. Patel.*
>
> *(ii) Direct the Resolution Profession to delete the name of the Applicant company in the list of creditors of the Debtor Ms. Smit B. Patel in his report dated 16.02.2024 filed before this Hon'ble Tribunal.*

2. It is stated in the present Application that the main Company Petition, i.e., CP(IB)/46(MP)2023, has been filed by Ms. Smita Bharat Patel under Section 94 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of the Personal Insolvency Resolution Process.

3. In the said proceedings, Mr. Susheel Kumar Gupta was appointed as the Interim Resolution Professional, who is the Respondent in the present Application. In furtherance of the proceedings, the IRP has also placed his Report on record, wherein the present Applicant has been reflected as a creditor. The Applicant contends that he is a creditor of the Personal Guarantor, Ms. Smita Bharat Patel, and that, in the course of their commercial dealings, Ms. Smita Bharat Patel had issued a cheque in favour of the Applicant, which was subsequently dishonoured.

4. Consequently, a complaint under Section 138 & 141 of the Negotiable Instruments Act, 1881, was filed before the Court of the Metropolitan Magistrate, New Delhi District, Patiala House District Courts, New Delhi, being titled ABBA Consultants Private Limited vs. Sandhya Prakash Limited and Ors. It is further submitted that the Applicant company had also impleaded the Debtor Ms. Smita B Patel as the Accused No. 3 in the said

Complaint under Section 141 of the Negotiable Instruments Act, 1881. In the said proceedings, Ms. Smita B Patel was convicted and sentenced to imprisonment for one year, along with the imposition of a fine.

5. The Metropolitan Magistrate also directed payment of compensation in favour of the present Applicant. It is the Applicant's contention that Ms. Smita B Patel filed the petition under Section 94 of the IBC to avoid payment of the said compensation. The Applicant further submits that, since he has been reflected as a creditor in the report filed by the IRP, he may be permitted to intervene in the main petition.

6. The Respondent/IRP filed a reply to the present Application on 28.07.2024, controverting the averments made therein. In his reply, the Respondent has stated that the report was submitted in compliance with the directions of this Tribunal and is merely recommendatory in nature. The report, by itself, does not constitute conclusive evidence of the status of the Applicant as a creditor.

7. It has further been submitted by the Respondent/IRP that the report filed in a petition under Section 94 of the IBC is recommendatory in nature and is limited to making a recommendation regarding the admission or rejection of the petition filed under the said provision.

8. We have heard the rival submissions made by the Ld. Counsel for the parties and examined the record.

9. The main petition, bearing CP(IB)/46(MP)2023, has been filed under Section 94 of the IBC by Ms. Smita B Patel, who has been stated to be a Personal Guarantor of the Corporate Debtor, Sandhya Prakash Limited. The petition pertains to the guarantee executed by the Personal Guarantor in favour of the Financial Creditor. It is stated that the Financial Creditor invoked the said guarantee and demanded payment of the guaranteed amount from the Personal Guarantor.

10. Thereafter, Ms. Smita B Patel filed the petition under Section 94 of the IBC, in which Mr. Susheel Kumar Gupta was appointed as the IRP. The IRP

subsequently filed his report recommending admission of the main petition. At this stage, the present Applicant has no right to intervene in the main petition merely on the basis of his status as a Financial Creditor or Operational Creditor, as such status is not relevant to the determination of whether the petition under Section 94 of the IBC is to be admitted or rejected. Upon admission of the main petition, the Applicant may exercise such rights as are available to him under the applicable provisions of the IBC in the ensuing PIRP proceedings.

11. As regards the proceedings under Section 138 of the Negotiable Instruments Act, 1881, it is a settled position of law that the moratorium under the IBC does not, by itself, bar the continuation of such criminal proceedings. With respect to the compensation amount, the Applicant may pursue such remedies as are available to him under the applicable law and may participate in the PIRP proceedings, subject to the provisions of the IBC, or choose not to participate therein. In these circumstances, we do not find it appropriate to permit the Applicant to intervene in the petition filed under Section 94 of the IBC.

12. Accordingly, **Inv.P/4(MP)2024** stands **dismissed** and **disposed of.**

Sd/- Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

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