



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 16159 OF 2026 (GM-RES)

BETWEEN:

MR K C M GOWDA
S/O SHRI K. CHANNAPPA,
AGED ABOUT 68 YEARS,
RESIDING AT #99, 2ND CROSS,
NEAR ISRO LAYOUT, SRI SAI LAYOUT,
HAROHALLI, SINGANAYAKANAHALLI,
BENGALURU - 560 064.
EMAIL KCMGOWDA51@GMAIL.COM

...PETITIONER

(BY SRI. A S VISHWAJITH., ADVOCATE)

AND:

1. ADITYA BIRLA CAPITAL LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT,
HAVING ITS REGISTERED / BRANCH OFFICE AT
NO.1(78), STAR AVENUE, 6TH CROSS,
VICTORIA LAYOUT,
BANGALORE 560025.
BY ITS MANAGER
E-MAIL AMIT.THAKUR@ADITYABIRLACAPITAL.COM/
SAURABH.SHARMA17@ADITYABIRLACAPITAL.COM
2. ACE EMBEDDED INTENSIVE CARE
UNITS PRIVATE LIMITED
(UNDER CORPORATE INSOLVENCY
RESOLUTION PROCESS)
CIN U74999KA2018PTC114976
PLOT NO. SPECIAL Q3 & R,
NO 9, TKN TOWER, BANNERGHATTA ROAD,
BANGALORE SOUTH,





BANGALORE, KA 560 076.
BY ITS MANAGER.
E-MAIL DRJAGADIS10@GMAIL.COM1

...RESPONDENTS

(BY SRI. C.K. NANDAKUMAR SR. ADVOCATE FOR
SRI. AHAAN MOHAN &
MRS. AKANKSHA CHOUDHARY., ADVOCATE FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION QUASHING AND SETTING ASIDE THE IMPUGNED ORDER DATED 30.03.2026 (UPLOADED ON 21.05.2026) PASSED BY THE HONBLE NCLT, BENGALURU IN CP (IB) NO.240//BB/2025 ANNEXURE-A AND ETC.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. The Petitioner is before this Court seeking for the following reliefs:

a. Issue an appropriate writ in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the Impugned Order dated 30.03.2026 (uploaded on 21.05.2026) passed by the Hon'ble NCLT, Bengaluru in CP (IB) No.240//BB/2025; Annexure A

b. Direct the Hon'ble the Hon'ble National Company Law Tribunal, Bengaluru to appoint a Resolution Professional in terms of section 97 of the Insolvency and Bankruptcy Code, 2016 in CP (IB) No.240//BB/2025;



c. Pass any such further orders as may be deemed just and expedient in the facts and circumstances of the present case, in the interest of justice and equity.

2. The Petitioner had instituted proceedings before the National Company Law Tribunal, Bengaluru Bench, in CP(IB) No.240/BB/2025 under Section 94(1) of the Insolvency and Bankruptcy Code, 2016. The case of the Petitioner before the Tribunal was that he had furnished a personal guarantee in favour of M/s. Aditya Birla Capital Limited in respect of credit facilities extended by the said financial creditor to Ace Embedded Intensive Care Units Private Limited. According to the Petitioner, the personal guarantee was invoked pursuant to a notice dated 20.05.2025 issued by M/s. Aditya Birla Capital Limited under Section 13(2) of the SARFAESI Act, 2002. On that basis, the Petitioner asserted that he was entitled to invoke Section 94 of the Insolvency and Bankruptcy Code, 2016 and seek initiation of the insolvency resolution process in his capacity as a personal guarantor.
3. Upon issuance of notice and after hearing the parties, the National Company Law Tribunal, by its order dated 30.03.2026, dismissed the application, holding that the Petitioner lacked the requisite locus



standi to maintain the proceedings. Aggrieved by the said order, the Petitioner has approached this Court in the present writ petition challenging its legality and correctness.

4. Though it was brought to the notice of the learned counsel for the Petitioner that an efficacious alternative statutory remedy was available by way of an appeal before the National Company Law Appellate Tribunal, the learned counsel, upon instructions from the Petitioner, nevertheless insisted that the matter be heard on merits. In view thereof, this Court put the Petitioner on notice that, should the matter be entertained and ultimately decided against him, the Court would be inclined to impose exemplary costs, having regard to the availability of the alternative appellate remedy and the insistence on invoking the extraordinary writ jurisdiction of this Court.
5. The submissions of Sri A.S. Vishwajith, learned counsel appearing for the Petitioner submits that Section 94 of the Insolvency and Bankruptcy Code, 2016 enables a debtor to initiate an insolvency resolution process by making an application before the Adjudicating Authority. According to him, the



expression “debtor” occurring in Section 94 is of sufficient amplitude to include a personal guarantor and, therefore, a personal guarantor is entitled to invoke the said provision.

6. Though, during the course of hearing, certain queries were raised by this Court as to the manner in which a personal guarantor would answer the description of a debtor for the purposes of Section 94, Sri Nandkumar, learned Senior Counsel appearing for the respondent, submitted that he would not press that aspect of the matter. His principal contention, however, was that the Petitioner is not a personal guarantor at all, but is, in fact, a co-borrower in respect of the credit facility extended by M/s. Aditya Birla Capital Limited.
7. It is in the above factual backdrop that learned counsel for the Petitioner was called upon to identify and place on record the personal guarantee allegedly executed by the Petitioner in favour of M/s. Aditya Birla Capital Limited, on the strength of which the Petitioner seeks to invoke Section 94 of the Code.
8. In response thereto, learned counsel relied upon the sanction letter issued by M/s. Aditya Birla Capital Limited in favour of Ace Embedded Intensive Care



Units Private Limited as the principal borrower and certain other persons associated with the transaction. He contended that the said sanction letter was also addressed to the Petitioner, who is described therein as a co-borrower.

9. Learned counsel further relied upon the Facility Agreement dated 11.11.2023 and, in particular, the recital relating to the parties thereto. Referring to the said recital, he submitted that the agreement distinguishes between "borrowers", who are described in Schedule I, Part A, and "co-borrowers", who are described in Schedule I, Part B. The name of the Petitioner finds place in Schedule I, Part B. However, neither the recital nor the schedules make any reference to the Petitioner as a personal guarantor.
10. Learned counsel also referred to the deed evidencing the creation of an equitable mortgage by deposit of title deeds, under which properties belonging to the borrower as well as certain properties belonging to the Petitioner were offered as security. On that basis, he contended that the demand and enforcement measures initiated by M/s. Aditya Birla Capital Limited are, in substance, referable to the obligations



undertaken by the Petitioner as a personal guarantor.

11. In support of the aforesaid contention, learned counsel placed reliance on the demand notice dated 24.06.2025 issued in Form B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. According to him, the very issuance of such notice demonstrates that M/s. Aditya Birla Capital Limited itself treated and recognised the Petitioner as a personal guarantor.
12. On the basis of the above materials, learned counsel contended that the Petitioner satisfies the requirements of Section 94 of the Insolvency and Bankruptcy Code, 2016 and that the National Company Law Tribunal ought to have entertained the application and proceeded in accordance with law by appointing a Resolution Professional under Section 97(5) of the Code, either on the recommendation of the Board or otherwise in terms of the statutory scheme.
13. It was further contended that, at the stage of considering an application under Section 94, the



Adjudicating Authority is not vested with the jurisdiction to adjudicate upon the disputed question as to whether the applicant is, in fact, a personal guarantor. According to learned counsel, the Tribunal exceeded the limits of its jurisdiction by undertaking such an adjudication and dismissing the application on that basis.

14. Learned counsel therefore submits that the impugned order is without jurisdiction and liable to be set aside and a consequential remand of the matter to the National Company Law Tribunal for consideration of the application afresh and for appointment of a Resolution Professional in accordance with the provisions of the Code.
15. Per contra, Sri C.K. Nandakumar, learned Senior Counsel appearing on behalf of the respondent, vehemently opposed the writ petition and supported the order passed by the National Company Law Tribunal. His submissions, in substance, are as follows:
 - 15.1. Learned Senior Counsel submitted that the entire edifice of the Petitioner's argument proceeds on an erroneous understanding of the statutory scheme contained in Part III of the



Insolvency and Bankruptcy Code, 2016. According to him, the filing of an application under Section 94 does not automatically result in the commencement of an insolvency resolution process requiring the appointment of a Resolution Professional. The provisions contained in Sections 94 to 100 of the Code contemplate a structured process involving scrutiny by the Adjudicating Authority at different stages, and the Tribunal is not expected to function as a mere post office mechanically forwarding every application for appointment of a Resolution Professional.

- 15.2. Learned Senior Counsel submitted that every judicial or quasi-judicial forum is required, at the threshold, to satisfy itself that the person invoking its jurisdiction possesses the requisite legal standing to do so. The requirement of locus standi is a foundational jurisdictional requirement and constitutes the minimum threshold that must be crossed before any statutory process can be set in motion. Unless the applicant demonstrates that he falls within the category of persons entitled to invoke the



particular provision, the question of proceeding further under the statute would not arise.

15.3. It was submitted that Section 94 can be invoked only by a person who answers the description of a debtor entitled to seek initiation of the insolvency resolution process under the statutory framework. Therefore, when an application is presented under Section 94 on the assertion that the applicant is a personal guarantor, the Adjudicating Authority is necessarily required to satisfy itself, at least prima facie, as to whether such assertion has any factual or legal foundation. Such an examination, according to learned Senior Counsel, is not only permissible but is indispensable to the exercise of jurisdiction under the Code.

15.4. Learned Senior Counsel contended that in the present case the National Company Law Tribunal has undertaken only such a limited examination. The Tribunal has not entered upon any adjudication of rival rights and liabilities nor has it rendered any finding on the merits of any insolvency claim. The Tribunal has merely



examined the documents produced by the Petitioner and considered whether those documents disclose the existence of a personal guarantee executed by the Petitioner in favour of the respondent-financial creditor.

15.5. According to learned Senior Counsel, upon a consideration of the material placed before it, the Tribunal found that the documents relied upon by the Petitioner consistently described him as a co-borrower and not as a personal guarantor. In such circumstances, the Tribunal concluded that the Petitioner had failed to establish the very basis upon which jurisdiction under Section 94 was sought to be invoked. It is this limited conclusion which forms the basis of the impugned order.

15.6. Learned Senior Counsel submitted that there is a fundamental distinction between examining whether a person has the legal standing to maintain proceedings and adjudicating upon the substantive rights arising in such proceedings. While the former is a threshold jurisdictional inquiry, the latter involves a determination of disputed questions affecting the rights and



liabilities of the parties. The Tribunal, according to him, has confined itself entirely to the former exercise and has not ventured into the latter.

15.7. It was further submitted that the adjudicatory functions contemplated under Chapter III of Part III of the Code arise only after the statutory process is validly invoked by a person competent to do so. The determination of issues relating to repayment plans, claims of creditors, obligations of debtors, approval or rejection of proposals and other substantive matters contemplated under the Code would constitute adjudication on merits. The inquiry undertaken by the Tribunal in the present case is qualitatively different and precedes the commencement of such adjudicatory functions.

15.8. Learned Senior Counsel submitted that acceptance of the Petitioner's contention would lead to an anomalous situation whereby any person, irrespective of whether he possesses the status claimed by him, could invoke the jurisdiction of the Adjudicating Authority and compel the commencement of statutory proceedings merely by making a bald assertion.



Such an interpretation would render the threshold scrutiny by the Tribunal wholly redundant and would be contrary to the scheme and object of the Code.

15.9. Learned Senior Counsel also contended that the Tribunal, being a creature of statute entrusted with the administration of the insolvency regime, necessarily possesses incidental and ancillary powers to ascertain whether the jurisdictional facts required for invocation of its authority exist. The determination of such jurisdictional facts cannot be equated with an adjudication of the substantive dispute between the parties.

15.10. It was therefore submitted that the finding recorded by the Tribunal that the Petitioner lacks the requisite locus standi is merely a determination of a jurisdictional fact and not an adjudication of the Petitioner's rights under the Code. Consequently, the contention of the Petitioner that the Tribunal has exceeded its jurisdiction or exercised a power not vested in it is wholly misconceived.



- 15.11. Learned Senior Counsel lastly submitted that the impugned order is a reasoned order passed upon consideration of the documents relied upon by the Petitioner himself and does not suffer from any jurisdictional error, perversity, procedural irregularity or patent illegality warranting interference under Articles 226 and 227 of the Constitution of India. The writ petition, according to him, is therefore liable to be dismissed both on the ground of availability of an efficacious statutory appellate remedy and also on merits.
16. Heard Sri A.S.Vishwajith, learned counsel for the Petitioner and Sri C.K.Nandakumar, learned Senior counsel for respondent No.1. Perused papers.
17. In the above factual and legal backdrop, the short question that arises for consideration in the present matter is:

Whether, upon an application being filed under Section 94 of the Insolvency and Bankruptcy Code, 2016, the National Company Law Tribunal is empowered to examine and determine the locus standi of the applicant to invoke the said provision and, if so, whether such an examination and determination would amount to an adjudication on the merits of the



insolvency application or constitute a mere threshold jurisdictional scrutiny?

18. Section 94 of IBC, 2016 is reproduced hereunder for easy reference:

94. Application by debtor to initiate insolvency resolution process.—(1) A debtor who commits a default may apply, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application.

(2) Where the debtor is a partner of a firm, such debtor shall not apply under this Chapter to the Adjudicating Authority in respect of the firm unless all or a majority of the partners of the firm file the application jointly.

(3) An application under sub-section (1) shall be submitted only in respect of debts which are not excluded debts.

(4) A debtor shall not be entitled to make an application under sub-section (1) if he is—

- (a) an undischarged bankrupt;
- (b) undergoing a fresh start process;
- (c) undergoing an insolvency resolution process; or
- (d) undergoing a bankruptcy process.

(5) A debtor shall not be eligible to apply under sub-section (1) if an application under this Chapter has been admitted in respect of the debtor during the period of twelve months preceding the date of submission of the application under this section.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied with such fee as may be prescribed.



19. A perusal of Section 94 of the Insolvency and Bankruptcy Code, 2016 makes it clear that the right to initiate an insolvency resolution process is not conferred upon every person who approaches the Adjudicating Authority. The provision specifically enables a debtor who has committed a default to initiate the insolvency resolution process by filing an application before the Adjudicating Authority. Thus, the very invocation of jurisdiction under Section 94 is predicated upon the existence of certain foundational requirements. The applicant must demonstrate, at least prima facie, that he falls within the category of persons entitled to invoke the provision, that the statutory conditions prescribed therein are satisfied, and that none of the disqualifications contained in the provision operate against him.

20. Sub-sections (2) to (6) of Section 94 prescribe various conditions, limitations and disqualifications governing the maintainability of an application. The legislative scheme therefore does not contemplate automatic acceptance of every application filed under Section 94. The entitlement to invoke the provision is conditioned by statutory requirements which necessarily require examination by the Adjudicating



Authority before the statutory process can be permitted to proceed further.

21. It is a settled principle that every judicial and quasi-judicial authority possesses the power, and indeed the obligation, to ascertain whether the jurisdictional facts necessary for assumption of jurisdiction exist. Jurisdictional facts are those foundational facts upon the existence of which the authority's power to act depends. Unless such facts are established, the authority cannot be compelled to proceed further merely because an application has been presented before it.
22. In the present case, the Petitioner's assertion that he is a personal guarantor constitutes the very foundation upon which he seeks to invoke Section 94. The respondent disputes that assertion and contends that the Petitioner is merely a co-borrower. The existence or otherwise of such status is therefore not an incidental issue but a jurisdictional fact which directly bears upon the maintainability of the application.
23. When jurisdiction is invoked on the basis of a particular legal status claimed by an applicant, the Adjudicating Authority cannot be expected to accept



such assertion at face value and proceed mechanically. Jurisdiction cannot be conferred by a mere assertion made in an application. The existence of the jurisdictional fact must first be established before the authority proceeds to exercise powers under the statute.

24. The distinction between an inquiry into jurisdictional facts and an adjudication on merits must also be borne in mind. An inquiry into jurisdictional facts is concerned only with determining whether the authority can validly entertain the proceedings. Adjudication on merits, on the other hand, concerns the determination of substantive rights, liabilities and entitlements of the parties. The former necessarily precedes the latter.
25. Thus, when the National Company Law Tribunal examines whether an applicant possesses the requisite locus standi to maintain an application under Section 94, it is not adjudicating the insolvency claim itself. It is merely determining whether the applicant has crossed the threshold necessary for the invocation of the statutory mechanism.



26. Such an exercise is akin to a civil court examining whether a suit is maintainable, whether the plaintiff possesses locus standi, whether the action is barred by limitation, or whether the court possesses jurisdiction to entertain the proceedings. The determination of such preliminary issues cannot be equated with adjudication of the substantive dispute.
27. Therefore, this Court is of the considered opinion that the power to determine whether an applicant satisfies the threshold requirements of Section 94 inheres in the jurisdiction of the Adjudicating Authority itself. Such a determination neither amounts to adjudication on merits nor constitutes an impermissible exercise of jurisdiction.
28. As noticed hereinabove, this Court is not called upon in the present proceedings to decide the larger question as to whether a personal guarantor would, in every circumstance, fall within the ambit of the expression "debtor" occurring in Section 94 of the Code. Learned Senior Counsel appearing for respondent No.1 fairly submitted that he would not press that contention. Consequently, this Court refrains from expressing any opinion on the said



issue and leaves all questions relating thereto open for consideration in an appropriate proceeding.

29. The controversy before this Court is considerably narrower. The issue is whether a person claiming to be a personal guarantor must first establish, at least prima facie, the existence of such status before the statutory machinery under the Code can be set in motion.
30. The principal submission of the learned counsel for the Petitioner is that upon presentation of an application under Section 94, the Adjudicating Authority is required to proceed under Section 97 and appoint a Resolution Professional and that no inquiry regarding the applicant's locus standi can be undertaken until a report is submitted under Section 99.
31. According to the learned counsel, any examination of the Petitioner's status as a personal guarantor amounts to an adjudicatory exercise which falls outside the scope of the powers vested in the Tribunal at the threshold stage. It is therefore contended that the Tribunal exceeded its jurisdiction in examining the Petitioner's locus standi prior to appointment of a Resolution Professional.



32. This Court is unable to accept the aforesaid submission.
33. The submission proceeds on the assumption that the filing of an application under Section 94 automatically obligates the Adjudicating Authority to appoint a Resolution Professional irrespective of whether the applicant possesses the legal capacity or eligibility to invoke the provision. Such an interpretation is neither borne out by the language employed in the statute nor consistent with the overall scheme of the Code.
34. The appointment of a Resolution Professional under Section 97 cannot be viewed in isolation. The statutory process presupposes that the application has been validly instituted by a person entitled to invoke the jurisdiction of the Adjudicating Authority. Before the machinery contemplated under Sections 97, 99 and 100 is set in motion, the Tribunal is necessarily entitled to satisfy itself that the foundational jurisdictional facts exist.
35. If the contention advanced on behalf of the Petitioner were to be accepted, the Adjudicating Authority would be compelled to appoint a Resolution Professional even in cases where the application is



filed by a person who is demonstrably not entitled to invoke Section 94. Such an interpretation would render the threshold scrutiny inherent in every exercise of judicial power wholly redundant.

36. The consequences flowing from an application under Section 94 are neither procedural nor insignificant. Upon filing of such an application, the interim moratorium contemplated under Section 96 comes into operation. Such moratorium affects the rights and remedies of creditors and places legal restraints on proceedings relating to the debt concerned. The legislature could not have intended that such consequences should follow merely upon a self-serving assertion made by an applicant without any scrutiny whatsoever by the Adjudicating Authority.
37. The requirement of a preliminary examination by the Adjudicating Authority therefore serves an important statutory purpose. It acts as a safeguard against abuse of the insolvency process and ensures that only those persons who possess the requisite legal status are permitted to invoke the protections and consequences contemplated under the Code.
38. The determination of locus standi at the threshold stage is therefore not only permissible but necessary



for preserving the integrity of the insolvency framework. Such a determination is confined to maintainability and jurisdiction and does not amount to adjudication on the merits of the insolvency claim.

39. Applying the aforesaid principles to the facts of the present case, this Court finds that the Petitioner has failed to establish the very jurisdictional fact upon which his application is founded.
40. The sanction letter relied upon by the Petitioner describes him as a co-borrower. The Facility Agreement also categorises him as a co-borrower. Neither document records the execution of any contract of guarantee by the Petitioner.
41. The mortgage documents produced before this Court further indicate that the Petitioner represented the borrower and participated in the creation of security in favour of the creditor. These documents likewise do not describe him as a personal guarantor.
42. The significance of these documents lies not merely in what they state but equally in what they omit. Commercial documents of this nature ordinarily identify and distinguish the borrower, co-borrower, guarantor and security provider. If the Petitioner had



in fact executed a personal guarantee, the same would ordinarily find place either in the transaction documents themselves or in a separate deed of guarantee.

43. Despite repeated opportunities granted both before the Tribunal and before this Court, no deed of guarantee, contract of guarantee, undertaking of guarantee or any other instrument creating liability as a guarantor has been produced.
44. The only material relied upon by the Petitioner in support of his claim is the demand notice dated 24.06.2025 issued under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules.
45. Merely because the creditor has described the Petitioner as a personal guarantor in the said notice, it does not follow that the Petitioner acquires the legal status of a personal guarantor. Such status must arise from a valid contractual instrument creating obligations of guarantee and not from a unilateral description contained in a subsequent notice.



46. Whether a person is a guarantor must be established from the contractual documents governing the transaction. In the absence of any document evidencing the execution of a personal guarantee, the demand notice by itself cannot establish the jurisdictional fact upon which the maintainability of the application depends.
47. Thus, even assuming that the creditor has proceeded on the footing that the Petitioner is a personal guarantor, such an assertion cannot substitute for proof of the underlying guarantee. The Petitioner's claim ultimately rests upon a unilateral description contained in the demand notice, which is wholly insufficient to establish the foundational fact necessary to invoke Section 94.
48. The National Company Law Tribunal was therefore fully justified in concluding that the Petitioner had failed to establish the foundational requirement necessary for invocation of Section 94. The impugned order represents a determination of maintainability based on the absence of jurisdictional facts and cannot be faulted either on facts or in law.
49. For all the aforesaid reasons, this Court finds no infirmity, illegality, perversity or jurisdictional error in the order passed by the National Company Law Tribunal warranting interference under Articles 226 and 227 of the Constitution of India. The writ petition is accordingly liable to be dismissed.



50. Having regard to the conduct of the Petitioner in invoking the jurisdiction of the National Company Law Tribunal without establishing the foundational facts necessary to maintain an application under Section 94, and thereafter persisting with the present proceedings despite the availability of an efficacious statutory appellate remedy, this Court is of the considered view that the matter warrants imposition of exemplary costs.
51. Accordingly, the writ petition stands ***dismissed*** with costs quantified at ₹1,00,000/- (Rupees One Lakh only). The said amount shall be deposited by the Petitioner with the Karnataka State Legal Services Authority within a period of four weeks from today. In the event the amount is not deposited within the stipulated period, the Karnataka State Legal Services Authority shall be entitled to recover the same in accordance with law as arrears of land revenue.

**SD/-
(SURAJ GOVINDARAJ)
JUDGE**