NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 03.07.2026 AT 10.30 A.M. THROUGH VIDEO CONFERENCING:

CORAM : SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)

APPLICATION NUMBER	**: --**
PETITION NUMBER	**: CP (IB)/199(CHE)2025**
NAME OF THE PETITIONER	**: Mr. D. Manuel Anand (Guarantor)**
NAME OF THE RESPONDENT(S)	**: Deutsche Bank**
UNDER SECTION	**: Sec 94(1) of IBC, 2016**

ORDER

Present: Ld. Counsel for the Deutsche Bank.

Vide separate order pronounced in open court, IRP is appointed.

-SD-	**-SD-**
RAVICHANDRAN RAMASAMY	**JYOTI KUMAR TRIPATHI**
Member (Technical)	**Member (Judicial)**

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

CP(IBC)/199(CHE)2025

(Under Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019)

D. MANUEL ANAND

C-11, Venkatraman Road, Periyar Nagar,

Jawahar Nagar, Chennai – 600 082.

... Applicant & Personal Guarantor

Order pronounced on 03.07.2026

CORAM

SHRI. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:

For Applicant: K Koteswara Rao, Advocate

For Respondent: AG Sathyanarayana, Advocate

ORDER

1. This Petition has been filed u/s. 94(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 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 by **D. Manuel Anand** ("Personal Guarantor") to initiate the Insolvency Resolution Process in respect of the Petitioner, being the Personal Guarantor for Servo Craft HR Solutions Private Limited ("Corporate Debtor").

2. It is submitted that the Applicant, along with his wife, promoted and managed the corporate entities, namely M/s. Servo Craft HR Solutions Private Limited and M/s. Job Biz Private Limited. In connection with the financial assistance sanctioned by the Respondent Bank to the said entities, the Applicant executed deeds of personal guarantee and also created security by mortgaging his undivided 50% share in the immovable properties situated at Periyar Nagar and Kilpauk, Chennai, in favour of the Respondent Bank. It is also submitted that by virtue of the said guarantees, he became jointly and severally liable for repayment of the dues owed to the Respondent Bank.

3. As per the averments made in the petition, Servo Craft HR Solutions Private Limited had taken credit facilities from Cholamandalam Investment and Finance Company Limited and Union Bank of India (Financial Creditor) and the Applicant herein had given personal guarantee to the said loans. The Corporate Debtor defaulted in meeting its repayment. As a result of the default, the financial creditor invoked the personal guarantee through the demand notices dated 14.03.2024 and 07.08.2024 respectively under Section 13(2) of SARFAESI Act, 2002. It is also submitted that the Applicant has also availed a

Housing Loan from Yes Bank Limited and which is a non-performing asset.

4. In Part-III of the petition, the petitioner has given the particulars of debt and default pertaining to the Respondent, Deutsche Bank as Rs.85,70,233.60/- (Rupees One Crore Twenty Nine Lakhs Eighty Nine Thousand Six Hundred and Sixty Six) and the date of default mentioned as 04.06.2021. The Applicant has placed copy of demand notices dated 31.02.2022 under Sec 13(2) of SARFAESI Act, 2002.

5. It is submitted that the principal borrower committed persistent defaults in repayment of the loan facilities, resulting in the loan accounts being classified as Non-Performing Assets. Consequently, the Respondent Bank initiated recovery proceedings against the borrower, the co-borrowers and the personal guarantors under the provisions of the SARFAESI Act and also instituted proceedings before the Debts Recovery Tribunal for recovery of the outstanding dues. Despite the recovery measures initiated by the Respondent Bank, the outstanding liability remained unpaid.

6. It is submitted that owing to the financial distress of the principal borrower and the consequent invocation of the personal guarantees, he has become incapable of discharging the debt due to the Respondent

Bank and is therefore constrained to invoke the provisions of Chapter III of Part III of the Code.

7. It is further submitted that he has filed the prescribed application in Form A together with the Statement of Affairs and all supporting documents as required under the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The Statement of Affairs discloses that the Applicant's principal assets comprise his undivided 50% share in the residential properties situated at Periyar Nagar and Kilpauk, certain loans and advances, and nominal bank balances, whereas his liabilities predominantly consist of the outstanding secured dues payable to the Respondent Bank together with other statutory and personal liabilities.

8. It is submitted that his liabilities far outweigh his presently available liquid resources and income, rendering him unable to meet his repayment obligations as and when they fall due.

9. As per Rule 6(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, the Guarantor has served the copy of the petition to Financial Creditor and the Corporate Debtor

for whom the Applicant is the personal guarantor. The Guarantor has also annexed proof of service to the creditor and Corporate Debtor.

10. SUBMISSIONS OF THE RESPONDENT

10.1. The Respondent Bank submits that the present application is devoid of bona fides and constitutes an abuse of the process of this Adjudicating Authority.

10.2. It is contended that the Applicant had earlier instituted an identical petition in CP(IB)/266(CHE)/2024, which was permitted to be withdrawn on 16.04.2025 on the ground that a One Time Settlement (OTS) had been sanctioned by the Respondent in respect of one of the secured properties. Having voluntarily withdrawn the earlier proceedings, the Applicant is estopped from re-agitating the same cause of action by filing the present application.

10.3. It is further stated that the Applicant has deliberately suppressed material facts by seeking initiation of insolvency proceedings solely on the basis of the alleged default in Loan Account No. 300025472130028, while ignoring the existence of the other loan facilities availed from the Respondent Bank.

10.4. It is stated that one of the loan accounts, namely Loan Account No. 300025472130019, stood settled pursuant to the OTS and the secured property was redeemed. However, the remaining loan facilities continue to remain outstanding with substantial dues. According to the Respondent, the Applicant has failed to disclose the complete financial position and the aggregate liabilities, thereby rendering the application misleading and contrary to the statutory requirements under the Insolvency and Bankruptcy Code, 2016.

10.5. It is further stated that the application is not maintainable for non-compliance with the statutory requirements prescribed under the Code and is liable to be rejected at the threshold.

10.6. It is contended that the Applicant has invoked the insolvency jurisdiction without making a full and candid disclosure of the outstanding liabilities and has attempted to misuse the provisions of the Code.

10.7. It is also stated that the present proceedings have been initiated with the ulterior motive of obstructing the recovery proceedings lawfully commenced by the Bank under the SARFAESI Act, 2002. It is pointed out that the Respondent had already issued demand notice under Section 13(2) dated 31.05.2022 and possession notice under Section 13(4) dated 21.09.2022 for enforcement of its security interest.

11. FINDINGS OF THE TRIBUNAL

11.1. We have heard Learned Counsel for the Petitioner and the Respondent and have carefully perused documents placed on record.

The present application has been preferred by the Applicant under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 seeking initiation of the insolvency resolution process in respect of himself as a Personal Guarantor.

11.2. The Applicant has pleaded that he had executed personal guarantees in favour of the Respondent Bank in connection with the credit facilities extended to the principal borrower and, upon default in repayment, has become unable to discharge his obligations. Along with the application, the Applicant has also furnished the Statement of Affairs and other particulars as contemplated under the provisions of the Code and the Rules framed thereunder.

11.3. The principal objection raised by the Respondent is that the Applicant had earlier filed CP(IB)/266(CHE)/2024 under Section 94 of the Code and subsequently withdrew the same after obtaining the benefit of a One Time Settlement in respect of one of the secured loan accounts.

11.4. According to the Respondent, the present application amounts to suppression of material facts and is therefore liable to be rejected. The Respondent has further contended that the Applicant has not disclosed the entire extent of his liabilities and has approached this Adjudicating Authority with unclean hands.

11.5. We are unable to accept the said contention at this stage. The withdrawal of the earlier application pursuant to settlement of one of the loan accounts, by itself, does not operate as a statutory bar against the filing of a fresh application under Section 94 in respect of the subsisting liabilities, particularly when the Applicant asserts that he continues to remain unable to repay the outstanding debts.

11.6. Likewise, the allegation regarding incomplete disclosure of liabilities or suppression of material particulars constitutes a matter requiring examination on the basis of the records and financial information to be verified in accordance with the mechanism prescribed under Chapter III of Part III of the Code.

11.7. It is also relevant to note that the pendency of recovery proceedings initiated by the Respondent under the SARFAESI Act, 2002 or any other recovery mechanism does not, by itself, render an application under Section 94 of the Code non-maintainable. The Insolvency and Bankruptcy Code provides an independent statutory framework for insolvency resolution of personal guarantors, and the existence of parallel recovery proceedings cannot be treated as a ground for rejecting the application at the threshold.

11.8. At this stage, this Adjudicating Authority is not required to adjudicate upon the correctness of the rival claims or determine the exact quantum of debt or alleged suppression. The statutory scheme envisages that, upon receipt of an application under Section 94, the Adjudicating Authority shall proceed in accordance with Sections 97 and 99 of the Code, whereupon the Resolution Professional is required to examine the application, verify the particulars furnished by the Applicant, consider the objections of the creditor, if any, and submit a report recommending admission or rejection of the application. The issues raised by the Respondent are therefore matters which can appropriately be examined by the Resolution Professional while preparing the report under Section 99 of the Code.

11.9. In the facts and circumstances of the present case, we are satisfied that the application cannot be rejected merely on the basis of the objections raised by the Respondent.

11.10. Since the application has been presented under Section 94 of the Code and there is no statutory impediment to the continuation of the process at this stage, we are of the considered view that it is a fit case for appointment of a Resolution Professional under Section 97 of the Insolvency and Bankruptcy Code, 2016, who shall examine the application in accordance with law and submit a report under Section 99 for further consideration by this Adjudicating Authority.

11.11. Section 94 of IBC provides that a debtor may apply either by himself, or jointly with Partners, or through a Resolution Professional to the Adjudicating Authority for initiating an Insolvency Resolution Process under the Section by submitting a Petition.

11.12. Hon'ble Supreme Court in the matter of **Dilip B Jiwrajka –Vs- Union of India & Ors in *Writ Petition (Civil) No 1281 of 2021***while dealing with the jurisdiction of NCLT in relation to adjudication of cases filed under Section 94 and 95 of IBC, 2016 has summarized in para-86 as follows;

"86. We summarise the conclusion of this judgment below:

(x) No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC;

(xi) The resolution professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application;

(xii) The submission that a hearing should be conducted by the adjudicatory authority for the purpose of determining 'jurisdictional facts' at the stage when it appoints a resolution professional under

Section 97(5) of the IBC is rejected. No such adjudicatory function is contemplated at that stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;

(xiii) The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;

(xiv) There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional;

(xv) No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100;

(xvi) The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 for the purpose of determining whether to accept or reject the application;

(xvii) The purpose of the interim-moratorium under Section 96 is to protect the debtor from further legal proceedings; and

(xviii) The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution."

11.13. The Hon'ble Supreme Court has held that no judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC and also there is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the petition by the resolution professional. The Respondent will be given an opportunity to file a reply if any once the RP has filed his Report under Section 99 of IBC, 2016.

11.14. Considering the above facts and the case supra, we appoint the Resolution Professional who will collate all the facts relevant to the examination of the Petition for the commencement of the Insolvency Resolution Process in respect of the Personal Guarantor. In the instant case, the Applicant has not proposed the name of any Resolution Professional. We therefore, upon verification of disciplinary status with the IBBI portal appoint **Sowmya Parasuraman** with **Reg. No. IBBI/IPA-002/IP-N01299/2024-2025/14476 (email id: psowmya29@yahoo.com.in)** as Interim Resolution Professional in respect of the Personal Guarantor.

11.15. The Resolution Professional is directed to examine the Petition as set out in Section 97(6) of IBC, 2016 who after examining, may recommend for the acceptance/rejection of the Petition as provided under Section 97(6) of IBC, 2016, within a period of 10 days as contemplated under Section 99(1) of IBC, 2016.

11.16. The Applicant is directed to pay a sum of **Rs. 40,000/- (Rupees Forty Thousand only)** to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him.

12. The Applicant is directed to serve copy of the Petition and the order on the Interim Resolution Professional.

13. List this Petition for report / hearing on **20.07.2026.**

-Sd-	-Sd-
RAVICHANDRAN RAMASAMY	**JYOTI KUMAR TRIPATHI**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)