NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Ins) No. 1002 of 2025

[Arising out of the Order dated 21.04.2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Ahmedabad Bench, Court-II), in C.P(IB). No. 38 of 2025]

IN THE MATTER OF:

1. Prabhaben Ravjibhai Harkani
Residing at – Geeta Nagar, Atkot Road,
Jasdan, Rajkot – 360 050. **..Appellant**

Versus

1. Bank of Baroda
Having its office address at
"Jagnath Plot Branch", Jagnath Plot,
Dr. Yagnik Road, Rajkot – 360 001. **..Respondent No.1**

2. Axis Bank
Having its office address at
4th Floor, Shivalik Ishan,
Near C.N. Vidhyalaya,
Ambawadi, Ahmedabad – 380 006. **..Respondent No.2**

Present:

For Appellant	:	Counsel appeared but presence not marked.
For Respondent	:	Mr. Rohan Talwar and Ms. Preksha Divakar, Advocates for R1.

J U D G M E N T
(Hybrid Mode)

The instant appeal has been preferred by the appellant (Personal Guarantor) of M/s Shubham Ginning Pressing Pvt. Ltd. (CD) challenging the impugned order dated 21.04.2025 passed by National Company Law Tribunal, Ahmedabad (Court-II) (Adjudicating Authority) in CP IB No. 38 of 2025 filed by the appellant under Section 94 of the Insolvency and

Bankruptcy Code , 2016 (Code) for initiation of personal insolvency process against himself whereby the petition filed by him has been rejected as barred by limitation.

2. Brief facts necessary for the disposal of this appeal are that a petition under Section 94 of the Code read with Rule 6 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantor to Corporate Debtor) Rules 2019 (Personal Guarantors) Rules 2019, (PG to CD Rules) was filed by the Appellant for initiation of the Insolvency process against himself with the contention that on receipt of loan application from the Principal Borrower (Shubham Ginning Pressing Pvt. Ltd.), the Dena Bank (now Bank of Baroda) sanctioned various credit facilities to the CD and sanction letter for Rs. 15 Crore was issued by the Bank on 26.10.2013.

3. It is further reflected that another sanction letter was issued on 06.01.2015 by the Respondent Axis Bank in favour of the Principal Debtor and thus the total dues in favour of the Respondent No. 1 and Respondent No. 2 is stated to have become Rs. 205,798,655.77/- and Rs. 4,517,882.90/-. The date of default has been mentioned in the application as 29.07.2016 with regard to the Bank of Baroda, however no date of default has been mentioned with regard to the dues pertaining to the Respondent No. 2/ Axis Bank.

4. It is further reflected that the Appellant stood as a personal guarantor to the Principal Borrower to the CD to which the credit facilities were granted by the Bank of Baroda and with regard to Axis Bank the appellant himself had taken credit facilities independently in its individual capacity.

5. It is further reflected that for the repayment of the said credit facilities as deed of guarantee was executed by the appellant on 30.10.2013 for Rs. 15 crores and on 19.03.2015 for Rs. 20 Crore in favour of Bank of Baroda and further to secure the credit facilities various security documents including mortgage deed were executed.

6. It is further reflected that Bank of Baroda issued notice under Section 13 (2) of the SARFAESI Act, 2002 to the appellant on 19.09.2016 and also took possession of the secured asset of the appellant and further auction notice was published by Bank of Baroda on 15.05.2023 followed by auction notice on 28.11.2024.

7. It is further reflected that an Original Application bearing no. 813 of 2016 was also filed by the Dena Bank before DRT which is stated to be pending and another Original Application bearing OA No. 145 of 2017 was filed by the Respondent No. 2 Axis Bank which is also stated to be pending before the concerned DRT.

8. It is further reflected that Appellant filed the petition no. 38 of 2025 under Section 94 of the Code and by passing the impugned order the same has been dismissed on the ground being barred by the limitation.

9. We have heard Ld. Counsel for the parties and have perused the record.

10. Ld. Counsel for the Appellant while drawing our attention towards Section 94 of the Code and Section 238 A of the Code submits that Section 238 A of the Code was inserted in the Code on the recommendation of the report of the Insolvency and the Insolvency Law Committee wherein it was

noted that applicability of the Limitation Act, 1963 would be only for certain category of cases and the Limitation should not apply to applications filed by debtors themselves seeking initiation of Insolvency for their own debts and not by the creditors.

11. It is further submitted that the report of the Insolvency Law Committee, 2018 has been relied on by the Hon'ble Supreme Court in many cases such as **BK Educational Services Pvt. Ltd. vs. Parag Gupta and Associates (2019) 11 SCC 633, Innoventive Industries Ltd. vs. ICICI bank (2018) 1 SCC 407 and Independent Sugar Corporation Ltd. vs. Girish Sriram Juneja (2025) 5 SCC 209** in order to interpret the Code including the applicability of the Limitation Act, 1963 and thus the Insolvency Law Committee Report of 2018 is required to be considered while deciding the applicability of Limitation Act, 1963 to Section 94 of the Code and it would be evident that the Limitation Act, 1963 would not be applicable to the debtors who have filed the proceedings under Section 10 or 94 of the Code.

12. It is further submitted that Section 10 is pari materia to Section 94 of the Code and this Tribunal in **BK Educational Services Pvt. Ltd. (supra)** while holding that Limitation Act, 1963 will not be applicable to Section 7 and 9 of the Code also held that the Limitation Act would also not be applicable to Section 10 proceedings, since the same is filed by the debtor himself and not by the creditor. The Hon'ble Supreme Court in the judgment delivered on appeal in i.e. **BK Educational Services Pvt. Ltd. (2019) 11 SCC 633 (supra)** while setting aside the judgment of this Appellate Tribunal only opined about the applicability of the Limitation Act to Section 7 and 9

of the Code and did not disturb the finding of this Appellate Tribunal with regard to the non- applicability of the Limitation Act to Section 10 of the Code. Thus, the judgment passed by the Hon'ble Supreme Court in BK Educational Services Pvt. Ltd. will not have any applicability with regard to the proceedings either under Section 10 or 94 of the Code.

13. While referring to the judgment passed by the NCLT, Delhi in **Worldview Tours Pvt. Ltd. CP (IB) No. 865 of 2020 dated 09.03.2021 and Parquet Furnishers Pvt. Ltd. CP (IB) No. 152 of 2024 dated 14.11.2025** and the judgment passed by the NCLT Bengaluru in **four flavours LLP (2024) SCC Online NCLT 3682 dated 20.11.2024** it is submitted that in all these cases it has been held that the Limitation Act, 1963 will not be applicable to the proceedings filed under Section 10 of the Code and the same Principle would apply to Section 94 of the Code.

14. It is further submitted that the observation of this Appellate Tribunal in **Suyog Jain vs. Arvind Kumar, (2025) SCC** holding that Limitation Act, 1963 is applicable to an application filed under Section 94 of the Code is not a binding precedent as it has not dealt the issue as to whether the limitation Act, is applicable to applications filed under Section 94 of the Code and in that case it was admitted by the debtor himself that the limitation act applies to Section 94 of the Code and he was seeking the benefit of Section 14 of the Limitation Act, therefore the ratio of **Suyog Jain (supra)** will not operate as a binding precedent.

15. Ld. Counsel for the appellant has also highlighted the law laid down by the Hon'ble Supreme Court in **Bharat Petroleum Corporation vs. NR**

Vairamani (2004) 8 SCC 579 highlighting that the observation of the Court must be read in the context in which they have been stated.

16. It is further submitted that the **Suyog Jain (supra)** has been challenged before the Hon'ble Supreme Court and is pending for disposal.

17. It is further submitted, with considerable force, that the application of the appellant moved under Section 94 of the Code has been disposed of without appointing the Resolution Professional under Section 97 and without considering the report which may be submitted by him under Section 99. While referring to the law laid down by the Hon'ble Supreme Court in **Dilip B. Jiwrajka vs. Union of India (2024) 5 SCC 435** it is submitted that it is mandatory for the Adjudicating Authority to appoint Resolution Professional before adjudicating the application moved either under Section 94 or 95 of the Code while no such exercise has been taken by the Tribunal in this case.

18. While referring to the law laid down by this Appellate Tribunal in **CL Sharma vs. Bank of Maharashtra, CA (AT) (Ins) No. 316 of 2024 dated 27.02.2024** it is submitted that even the issue of limitation cannot be adjudicated without appointing the RP under Section 97 of the Code.

19. It is submitted that the impugned judgment passed by the Tribunal could not stand with the legal scrutiny and therefore is liable to be **set aside**.

20. Ld. Counsel appearing for the Respondent No. 1 i.e. Bank of Baroda submits that the application under Section 94 of the Code was filed by the Appellant for the sole purpose of obstructing the SARFAESI recovery efforts

of the bank, which have concluded and the same has rightly been dismissed.

21. It is further submitted that the guarantee of the appellant was invoked on 19.09.2016 and since then the Bank has gone from pillar to post to recover its amount but the efforts of the bank were obstructed by the appellant at every stage by filing frivolous litigation and the Bank was forced to file multiple proceedings to recover its dues since 2016.

22. It is submitted that at first an OA was filed before the DRT in 2016 and thereafter by giving notices under Section 13 (2) and 13 (4) of the SARFAESI Act the proceeding in this act were initiated in 2017 and when the Respondent Bank sought assistance of the District Magistrate to take possession the appellant challenged the proceedings before the DRT and it was only after 7 years i.e. in 2023 the Respondent was able to get physical possession.

23. It is further submitted that on 24.12.2024 the Bank conducted a Successful Auction with regard to the Jasdan Property and to negate the auction process, when the auction purchaser has paid the entire the consideration, the appellant filed its second application under Section 94 application on 03.01.2025.

24. It is vehemently submitted that the appellant has filed his first application under Section 94 of the Code on 20.11.2023 which was dismissed on 20.11.2023 with the liberty to file a fresh and cleverly, to place hurdle in the smooth process of the selling of the property the appellant filed second Section 94 application on 21.04.2025, almost after 17 months which itself is sufficient to show the mala fide of the appellant.

25. It is further submitted that after the dismissal of the second application moved by the appellant on 21.04.2025, by passing the impugned order the sale certificate has been issued to the auction purchaser on 17.05.2025 and it is thereafter the instant appeal was filed.

26. It is also submitted that this Appellate Tribunal in **Agroha Paper Industries Pvt. Ltd. vs. Bank of Maharashtra CA (AT) (Ins) No. 1342 of 2023** has held that applications for insolvency could not be filed to disturb the auction process under the SARFAESI Act.

27. It is further submitted that the Interim moratorium created by moving the application does not bar alienation of assets and such bar could only arise after admission of the application under Section 100 when the moratorium has commenced under Section 101 of the Code. In this regard paragraph no. 60 of **Dilip Jiwrajka (supra) and Saranga Anilkumar Aggarwal vs. Bhavesh Dhirajlal Sheth and Ors., Civil Appeal no. 4048 of 2024** has been highlighted and reliance has also been placed on the law laid down by this Appellate Tribunal in **Ramesh Kumar Chugh vs. Assets Care and Construction Enterprises, (2024) SCC Online 1164**.

28. It is also submitted that the application moved by the appellant is barred by limitation as the guarantee was invoked on 19.09.2016 while the application has been filed in January, 2025 and thus there was no requirement to appointment of the RP as the application is ex facie time barred.

29. It is further submitted that the application has been filed with an ulterior motive and for misusing the process of law and the appellant may

not get any help from law laid down in **CL Sharma (supra)** where in the guarantee was invoked on 26.07.2022 while in the instant case the guarantee was invoked on 19.09.2016.

30. It is further submitted that the appellant could also not get any benefit from the law laid in **Worldviews Tour Pvt. Ltd. (supra)** which is pertaining to Section 10 of the Code and in the reasoning of the said judgment the emphasis has been given on the right of the company which may be defeated if the application is held time barred, while in the instant appeal the application has been moved by the individual guarantor under Section 94 of the Code.

31. It is further submitted that there is no illegality in the impugned order and the appeal is liable to be dismissed.

32. Having heard Ld. Counsel for the parties and having perused the record, it is reflected that appellant is a personal guarantor to the loan granted by Respondent No. 1 Bank of Baroda to the Principle Borrower and is a Borrower in Loan Sanctioned by Respondent No. 2-Axis Bank. The guarantee deed was executed by the appellant on 30.10.2013 and 19.03.2015 for Rs. 15 Crores and Rs. 20 Crores respectively and the same was invoked on 19.09.2016 by sending a notice to the appellant under Section 13 (2) of the SARFAESI Act by Respondent No. 1 Bank of Baroda.

33. The appellant has moved a petition under section 94 (1) of the Code for initiation of Personal Insolvency Process wherein the Respondent no. 1 Bank of Baroda appear and oppose the application and by passing the impugned order Ld. Adjudicating Authority has dismissed the petition. The relevant part of the impugned order is reproduced as under:

7. We note that the applicant is a personal guarantor to the loan granted by Respondent no.1 and is a borrower in loan sanctioned by Respondent no.2 wherein there are independent proceedings before the DRT. However, the stated guarantee issued on 30.10.2013 & 19.03.2015 for Rs.15,00,00,000/- & Rs.20,00,00,000/- respectively were invoked on 19.09.2016 under Section 13(2) of the SARFAESI Act by Respondent no.1. Respondent no.1 filed vakalatnama and appeared in the matter and opposed the application which it stated was filed to gain interim moratorium, at such juncture, when the properties mortgaged were put up for sale under the SARFAESI Act, 2016. This application is filed beyond the period allowed under limitation which expired on 18.09.2019 and the applicant has filed this application which is not to be allowed under Section 137 of the Limitation Act, 1963 and Section 238A of the IBC, 2016 clearly to circumvent the action of the financial creditor to recover its dues.

8. In view of the same, we pass the following order:

ORDER

CP (IB) No. 38 of 2025 is dismissed and disposed of.

34. The main grievance of the appellant as is emerging from the submissions made by Ld. Counsel for the appellant is that the provisions of the Limitation Act are not applicable to the proceedings under Section 94 of the Code as the same is pari materia to the proceedings of Section 10 of the Code and the law laid down by the Hon'ble Supreme Court in **B.K. Educational Services Pvt. Ltd. (supra)** is not applicable to either Section 10 or Section 95 proceedings and the observations of this Appellate Tribunal in **Suyog Jain (supra)** is not applicable to the proceedings under Section 94 of the Code and is not a binding precedent as it never dealt with the issue of applicability of the Limitation Act and moreover the **Suyog Jain** judgment has been challenged and is pending before the Hon'ble Supreme Court for adjudication and relying on various cases decided by various Benches of the

NCLT it is projected that the Provisions of Limitation Act would not be applicable to the proceedings of Section 10 and 94 of the Code.

35. The other submission of the Ld. Counsel for the Appellant is with regard to the fact that without appointment of any RP under Section 97 and without considering the report which may be filed by the RP under Section 99 the petition has been dismissed in violation of the law laid down by the Hon'ble Supreme Court in ***Dilip B. Jiwrajka (supra)***.

36. The Respondent Bank however maintained that the account of Principle Borrower was declared NPA on 29.07.2016 and by issuing notice under Section 13 (2) of the SARFAESI Act the guarantee was invoked against the appellant by the Respondent no. 1 on 19.09.2016 and by these dates the proceedings may be filed before the Ld. Adjudicating Authority either on or before 29.07.2019 or 19.09.2019.

37. The contention of the Respondent Bank is also in terms that the proceedings were initiated against the appellant before DRT- Ahmedabad wherein the order for taking possession of the properties of the appellant was passed on 06.02.2018 and second possession order was issued on 26.03.2018 and thereafter the Respondent Bank took possession of the properties and has issued auction notices on 17.05.2023 and it was thereafter the first application under Section 94 of the Code was filed by the appellant on 08.06.2023 which was dismissed on 20.11.2023 granting liberty to the appellant to file fresh petition giving complete information and particulars and in the meantime, the Respondent Bank issued auction notice on 09.01.2024 for the auction of Jangvad Property on 31.01.2024 against which the appeal was filed by the Principle Borrower before DRT-

Ahmedabad. It is also the contention of the Bank that again auction notices were issued for auction of Jangvad and Jasdan Properties on 28.11.2024 and the auction held on 24.12.2024 and 26.12.2024 M/s Pramukh Developers emerged as Successful Bidder and have deposited the EMD of 25% and it is thereafter the second application under Section 94 of the Code has been filed by the appellant which has been dismissed by passing the impugned order and that the application has only been filed to obstruct SARFAESI Recovery efforts undertaken by the Bank.

38. So far as the first contention of the appellant with regard to the non-applicability of the provisions of the Limitation Act to the proceedings under Section 94 of the Code is concerned we notice that this Appellate Tribunal in **Suyog Jain (supra)** has taken a view that the provisions of the Limitation Act would be applicable to Section 94 proceedings though it is claimed by the appellant that the **Suyog Jain** judgment has been challenged before the Hon'ble Supreme Court but we find that the judgment has not been stayed.

39. The learned counsel for the Appellant has also relied upon the judgment of the Hon'ble Supreme Court in **Dilip Jiwrajka v. Union of India**, **(2024) 5 SCC 435**, to contend that once an application under Section 94 is filed, the Adjudicating Authority is required to appoint a Resolution Professional before examining the application on merits. It is, therefore, necessary to consider whether the said judgment has any application to the facts of the present case.

40. It is relevant to note that the proceedings before the Hon'ble Supreme Court in *Dilip Jiwrajka* arose out of an application filed by a **creditor under Section 95** of the Insolvency and Bankruptcy Code, 2016. The Hon'ble

Supreme Court was considering the constitutional validity of the provisions relating to insolvency proceedings against personal guarantors and the procedure prescribed under Sections 95 to 100 of the Code. The observations made regarding the appointment of the Resolution Professional and submission of the report under Section 99 were, therefore, made in the context of proceedings initiated by a creditor under Section 95.

41. The present case arises from an application filed by the debtor herself under **Section 94** of the Code. The issue before us does not relate to the constitutional validity of the provisions of section 95-100 of the Code or with the procedure governing an application under Section 95. The question before us is whether, in the facts of the present case, the Adjudicating Authority committed any error in rejecting the application filed under Section 94. Since the issues involved in *Dilip Jiwrajka* are different from those arising in the present appeal, we do not consider it necessary to examine the said judgment in detail. It is well settled that a judgment is an authority for what it actually decides, and its observations have to be understood in the context of the issues which arose for consideration before the Court.

42. The Appellant has contended that the Adjudicating Authority could not have rejected the application under section 94 without first appointing a Resolution Professional under Section 97 and obtaining a report under Section 99 of the Code. This submission deserves to be examined.

43. The Appellant has relied on the judgment of this Appellate Tribunal in ***Mr. CL Sharma v. Bank of Maharashtra & Anr., Company Appeal (AT) (Insolvency) No. 316 of 2024***. However, the said case pertained to Section

95 filed by the bank and not by personal guarantor under Section 94 as in the present set of facts. Therefore, the ratio of the said judgment is not applicable to the present factual matrix.

44. In this regard, we take note of the decision of this Appellate Tribunal in **Arnita Kiran Sheth v. ____,** ***Company Appeal (AT) (Ins.) No. 675 of 2025,*** decided on *25.09.2025*. In this case, the appellant, a personal guarantor, had filed an application under Section 94, which was rejected by the Adjudicating Authority on the ground of limitation. The Adjudicating Authority decided the case at the maintainability stage itself without appointing the Resolution Professional and following the procedure as laid down in section 97-100 of the Code. In his prayers, the appellant specifically sought a direction from this Appellate Tribunal for appointment of a Resolution Professional and for proceeding further in accordance with the provisions of the Code. However, this Appellate Tribunal did not direct appointment of a Resolution Professional. Instead, it examined the finding of Adjudicating Authority on limitation, and found it in order, it therefore, upheld the order of the Adjudicating Authority and dismissed the appeal, while observing that such dismissal would not prevent the appellant from raising all available defences before the Debt Recovery Tribunal or any other forum in accordance with law. The decision of this Appellate Tribunal has not been challenged in Hon'ble Supreme Court and has therefore attained finality.

45. The above decision shows that appointment of a Resolution Professional is not an essential requirement in every case under section 94. The Adjudicating Authority, where it finds, on the admitted facts and the

applicable law, that the application is not maintainable, it can reject an application under Section 94 before appointing the RP. The order cannot be said to be invalid merely because a Resolution Professional was not appointed. The validity of such an order has to be examined in the facts of each case.

46. We also find it necessary to examine the conduct of the Appellant in the light of the sequence of events preceding the filing of the present application. The personal guarantee was invoked on 19.09.2016, following which recovery proceedings under the SARFAESI Act and before the Debt Recovery Tribunal continued for several years. The Appellant had earlier filed an application under Section 94, which came to be dismissed on 20.11.2023, with liberty to file a fresh application after furnishing complete particulars. Despite such liberty, no fresh application was filed for more than a year. Thereafter, the Respondent Bank issued a fresh auction notice dated 28.11.2024 and conducted the e-auction on 24.12.2024, in which M/s Pramukh Developers emerged as the successful bidder for the Jasdan Property. The successful auction purchaser had already deposited the EMD of Rs.7,26,000/- and thereafter deposited a further sum towards the mandatory 25% sale consideration. It was only thereafter, on 03.01.2025, that the Appellant filed the present application under Section 94 and, by communication dated 07.01.2025, called upon the Bank not to proceed further by relying upon the interim moratorium under Section 96. The Bank, in fact, deferred further action pursuant to the auction in view of the pendency of the Section 94 application.

47. The above sequence of events assumes significance while examining the bona fides of the present proceedings. This Appellate Tribunal, in ***Ashwani Kumar Oberoi v. State Bank of India & Ors., Company Appeal (AT) (Ins.) Nos. 741 & 742 of 2026***, held that where an application under Section 94 is instituted after recovery proceedings have substantially progressed, particularly after the auction has been concluded and third-party rights have been created, the timing of the application and the conduct of the personal guarantor are relevant considerations in determining whether the insolvency process has been invoked for its intended purpose of resolution or merely to stall lawful recovery proceedings. Relevant paragraphs 14-17 of the said judgment are extracted below:

> *"14. Reverting to the facts of the present case, it is seen that notice under Section 13(2) was issued on 31.12.2019 and thereafter Bank also enforced its rights under Section 13(4) by issuing possession notice. Notice for sale of the assets dated 19.03.2024 was issued fixing 11.04.2024 for the sale of the assets by e-auction. E-auction was held on 11.04.2024 and auction was also confirmed by the Bank on 12.04.2024. It was thereafter on 27.04.2024 Section 94 application was filed by the appellant. Appellant also filed Securitization Application 340/2024 before the DRT challenging the auction which was the appropriate remedy availed by the appellant. Securitization Application was dismissed on 09.08.2024, when appellant could not get any relief from the DRT who refuse to grant relief by order dated 09.08.2024, applications have been filed under Section 94 giving rise to this appeal. In the facts of the case as noticed above, we are of the view that initiation of proceeding under Section 94 by the personal guarantor was not with object of resolution of insolvency of the personal guarantor rather it was only with the intent to somehow create hurdles in the conclusion of the proceedings initiated by the Bank for recovery of its debts when auction was already held Comp. App. (AT) (Ins.) Nos. 741 & 742 of 2026 17 of 18 on 11.04.2024 which was confirmed on 12.04.2024, filing of the application on 27.04.2024 clearly was not bona fide application and the application was an abuse of process of Court and we are not inclined to interfere with the*

impugned order passed by the adjudicating authority rejecting the application filed by the appellant in facts of the present case.

15. Learned counsel for the appellant as well as learned counsel for the respondent have made submissions relying on various judgments of the Hon'ble Supreme Court and this Tribunal, according to the appellant unless the Sale Certificate is issued, the rights of the personal guarantors are not extinguished, whereas as per learned counsel for the respondent where auction notice is published on 25.03.2024, the right of redemption of mortgage comes to an end and no right is left in the personal guarantor thereafter. Learned counsel for the appellant has relied on the judgment of the Bombay High Court in 'Arrow Business Development Consultants Private Limited' (supra) in support of his submissions.

16. We however having already found that filing of application under Section 94 by the appellant was clearly abuse of process of the Court, the appellant cannot be allowed to scuttle auction proceedings which have already concluded on 11.04.2024 and were confirmed on 12.04.2024. The Sale Certificate have already been issued in favour of the auction purchaser on 31.05.2024 which was already challenged by the appellant before the DRT in Securitization Application No.340/2024, it is open for the appellant to pursue his remedy before the DRT, where auction held on 11.04.2024 is challenged.

17. We thus are of the view that adjudicating authority has not committed any error in rejecting the two applications filed by the appellant in Section 94 application. Rejection of applications cannot be faulted in the facts and sequence of the events of the present case as noted above. 18. We thus do not find any merit in the appeals. Appeals are dismissed."

48. The facts of the present case stand on a similar footing. The Appellant remained aware of the recovery proceedings since 2016 and even had the liberty to institute a fresh application after 20.11.2023. However, the present application was filed only after the auction had been successfully conducted, the successful bidder had deposited the EMD and part of the sale consideration, and the Bank had reached the stage of completing the sale. These circumstances lend support to the finding recorded by the Adjudicating Authority that the application was filed at a stage when the

recovery proceedings had substantially matured. Thus, the present case is squarely covered by the ratio laid down in the judgment of this Appellate Tribunal in *Ashwani Kumar Oberoi (supra).*

49. In view of the above findings, we are of the view that the Adjudicating Authority has rightly rejected the application filed by the Appellant under Section 94 of the Insolvency and Bankruptcy Code, 2016. We do not find any factual or legal infirmity in the Impugned Order dated 21.04.2025 calling for interference by this Appellate Tribunal. Accordingly, the appeal is **dismissed**. There is no order as to costs. Pending IA's if any are also disposed of.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

New Delhi.
07.08.2026

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