NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, COURT-I, CHANDIGARH

CP(IB)No.133/Chd/Hry/2026

[Application/Petition Under Section 94 of the Insolvency and Bankruptcy Code 2016, Read With Rule 6(1) of The Insolvency and Bankruptcy Code 2016 (Application Of Adjudicating Authority For Insolvency Resolution Process For Personal Guarantor To Corporate Debtors) Rules, 2019.]

IN THE MATTER OF

Vijay Singh, son of Sh. Jai Dev Singh

(Personal Guarantor, M/s J.K. Matting House Private Limited)

HOUSE NO. 779, First Floor, Sector 26, Panchkula.

Pin: 134113

……Applicant

Order delivered on: 23.07.2026

<u>Coram</u>: **SH. KHETRABASI BISWAL, HON'BLE MEMBER (JUDICIAL)**
SH. SHISHIR AGARWAL, HON'BLE MEMBER (TECHNICAL)

PRESENT:-

For the Petitioner : Mr. Rohit Suri, Advocate
Mr. Samarth Suri, Advocate

ORDER

The instant Application has been filed by Mr. Vijay Singh under Section 94 of the Insolvency and Bankruptcy Code, 2016 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, for seeking initiation of the insolvency resolution process against himself in his capacity as an

Personal Guarantor of the corporate debtor, M/s JK Matting House Private Limited.

BRIEF FACTS

2. The brief facts of the case, as stated by the applicant, are summarised as follows:

   (i) It is the case of the Applicant that he is the son of Sh. Jai Dev Singh and is a co-borrower as well as a Personal Guarantor of a loan facility availed by the corporate debtor, M/s JK Matting House Private Limited, from Punjab and Sind Bank. The Applicant states that he is also a mortgagor of the property offered as security for the said facility.

   (ii) It is further the case of the Applicant that on account of default in repayment, the Bank issued a demand notice dated 01.12.2025 under Section 13(2) of the SARFAESI Act, 2002, declaring the loan account as NPA with an amount in default of Rs. 1,03,47,339/-.

   (iii) The Applicant states that he filed a reply/objections to the said demand notice on 28.01.2026, to which the Bank responded vide its reply dated 04.02.2026. It is averred that, without properly considering the objections so raised, the Bank thereafter issued a notice dated 09.02.2026 under Section 13(4) of the SARFAESI Act, taking symbolic possession of the secured property bearing address SCF 242, Motor Market, Manimajra, Chandigarh.

(iv) The Applicant further states that multiple requests preferred by him for restructuring of the loan account were not accepted by the Bank, and that the Bank ultimately issued a sale notice dated 09.03.2026, proposing to conduct auction of the said property on 28.04.2026.

(v) It is in this backdrop that the present application under Section 94 of the Code came to be filed on 07.04.2026.

<u>SUBMISSIONS</u>

3. It is the Applicant's further case, as advanced in the short written submissions filed pursuant to our Order dated 04.06.2026, that the demand notice dated 01.12.2025 issued under Section 13(2) of the SARFAESI Act should itself be treated as sufficient invocation of the guarantee for the purposes of Section 94 of the Code, and that his status as a Personal Guarantor stands established from the documents of the Bank on record, without the necessity of filing a separate Deed of Guarantee.

4. Learned Counsel for the Applicant has, in this regard, filed a note specifically on the question of maintainability, urging broadly three propositions.

(i) First, that service of a demand notice under Section 13(2) of the SARFAESI Act on the Applicant is, by itself, sufficient to constitute valid invocation of the guarantee, relying upon the decision of the Hon'ble NCLAT in ***Ujjwal Gupta v. Union Bank of India, Company Appeal (AT) (Ins) No. 2001 of 2024***.

(ii) Second, that the role of the Adjudicating Authority at the pre-notice stage under Section 94 is confined to examining whether a prima facie case is made out, and that a threadbare scrutiny of the guarantee deed is impermissible at this stage, the true adjudicatory function arising only under Section 100 after submission of the Resolution Professional's report for which reliance is placed on ***Dilip B. Jiwrajka v. Union of India, Writ Petition (Civil) No. 1281 of 2021***.

(iii) Third, that a co-borrower and a guarantor can be one and the same person, and that Section 126 of the Indian Contract Act, 1872 does not preclude such dual capacity, relying upon ***Pegasus Assets Reconstruction Private Limited v. Whiz Enterprise Private Limited, CP No. 530/(IB)-MB-V/2021***.

ANALYSIS AND FINDINGS

5. We have heard the Learned Counsel for the Petitioner and perused the material available on record.

6. Section 94(6) of the Code requires that an application by a debtor be filed in such form and manner as may be prescribed, and Rule 6(1) of the 2019 Rules correspondingly mandates that an application under Section 94(1) be filed in Form A along with the documents and records required thereunder. The Deed of Guarantee is the foundational document from which the Applicant's very status as a ***"Personal Guarantor"*** and consequently the cause of action for invoking Part III of the Code is derived. Its omission from the annexures is not merely a

procedural defect that can be cured by relying on SARFAESI notices or other bank correspondence.

7. This is also a matter that touches upon the jurisdiction of this Adjudicating Authority. Under Section 2(e) of the Code, Part III applies only to a person who answers the description of a ***"Personal Guarantor to a Corporate Debtor."*** Whether the Applicant answers that description is a jurisdictional fact, and in the absence of the underlying contract of guarantee, we do not have before us the primary material necessary to verify it.

8. We are conscious that the Hon'ble Supreme Court in ***Dilip B. Jiwrajka v. Union of India, Writ Petition (Civil) No. 1281 of 2021*** has held that questions such as whether a subsisting debt exists, or whether the relationship of debtor and creditor subsists, involve mixed questions of law and fact ordinarily to be examined through the Sections 99–100 of the Code. That observation, in our view, presupposes an application that is otherwise properly constituted with the requisite foundational documents; it does not dispense with the threshold requirement of placing the contract of guarantee itself on record, without which even a prima facie assessment of guarantor status cannot meaningfully be undertaken.

9. A contract of guarantee is governed by Sections 126 and 128 of the Indian Contract Act, 1872. The nature and extent of the guarantor's liability, whether the guarantee is continuing or payable on demand, the manner of its invocation, and the point at which the guarantor's liability and limitation commence must be determined from the terms

of the guarantee itself. In ***Syndicate Bank v. Channaveerappa Beleri, (2006) 11 SCC 506***, the Hon'ble Supreme Court held that the liability of the principal debtor and the guarantor may arise at the same time or at different points of time, depending upon the terms of the contract of guarantee. The same principle has been applied by the Hon'ble NCLAT in ***Mavjibhai Nagarbhai Patel v. State Bank of India, Company Appeal (AT) (Insolvency) Nos. 1702, 1711 and 1712 of 2024***, decided on 18.12.2024, and ***State Bank of India v. Deepak Kumar Singhania, Company Appeal (AT) (Insolvency) No. 191 of 2025***, decided on 28.02.2025. In the absence of the Deed of Guarantee, the nature, scope and enforceability of the alleged guarantee, and whether it has correctly been invoked, cannot be properly ascertained.

10. The mere production of a notice under Section 13(2) of the SARFAESI Act does not, by itself, conclusively establish valid invocation of the personal guarantee. At the same time, such a notice cannot be disregarded merely because it was issued under the SARFAESI Act. In ***Asha Basantilal Surana v. State Bank of India, Company Appeal (AT) (Insolvency) No. 84 of 2025***, decided on 15.05.2025, the Hon'ble NCLAT held that whether a notice under Section 13(2) amounts to invocation of the guarantee must be determined from the language and intent of the notice, read with the relevant terms of the guarantee agreement. Therefore, the notice has to be tested against the specific clauses of the Deed of Guarantee. Where the guarantee deed itself has not been produced, such

comparison cannot be undertaken, and the Section 13(2) notice alone would be insufficient to conclusively establish valid invocation of the guarantee.

11. We further note that in ***Ujjwal Gupta v. Union Bank of India (supra)***, relied upon by the Applicant, the Deed of Guarantee was in fact on record before the Adjudicating Authority and the Appellate Tribunal, which is not the position obtaining before us. That decision, in our respectful view, therefore does not assist the Applicant in the facts of the present case.

12. We may also observe that under Section 99(1) and (6) of the Code, the Resolution Professional is required to examine the application and ascertain, inter alia, whether the guarantee has been invoked and the date of such invocation. Where the foundational contract of guarantee is itself absent from the record, the Resolution Professional would be placed in a position of being unable to meaningfully discharge this statutory function, and any recommendation for admission made in such circumstances would not, in our view, be consistent with the scheme envisaged under Sections 99 and 100 of the Code.

CONCLUSION

13. In view of the foregoing, we are of the considered opinion that the application, in its present form, does not disclose the foundational document necessary to establish the Applicant's status as a Personal Guarantor.

14. Accordingly, **CP(IB) No. 133/Chd/Hry/2026** is ***dismissed and disposed of.***

Sd/- **Sd/-**

(SHISHIR AGARWAL)
MEMBER (TECHNICAL)

(KHETRABASI BISWAL)
MEMBER (JUDICIAL)

Yuvraj