IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - I

C.P. (IB) NO. 806/MB/2026

Under Section 94 of the Insolvency and Bankruptcy Code, 2016 r/w rule 6 (1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules 2019.

In the matter of

NARENDRA MITHAILAL AGARWAL

Personal Guarantor to M/s Rajrani Steel Casting Private Limited

[CIN: U51420MH2003PTC143324]

….. Personal Guarantor/

Petitioner/ Applicant

ORDER PRONOUNCED ON 19.11.2026

Coram:

Sh. Prabhat Kumar	Sh. Sushil Mahadeorao Kochey
Member (Technical)	Member (Judicial)

Appearances:

For the Petitioner	: Adv. Karan Singh
For Resolution Professional	: Adv. Krish Shah
For L&T Finance	: Adv. Mily Ghoshal and Adv. Shweta Thanekar

BRIEF FACTS:

1. The present Company Petition has been filed by **Mr. Narendra Mithailal Agarwal** (hereinafter referred to as "Personal Guarantor/Petitioner/Applicant"), Personal Guarantor of the Corporate Debtor, **M/s *Rajrani Steel Casting Private Limited*** (hereinafter referred to as "Corporate Debtor"), under section 94(1) of the Insolvency and Bankruptcy Code, 2016 ("the Code") 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 ("IBBI Rules") seeking to initiate Insolvency Resolution Process against himself being the Personal Guarantor of Corporate Debtor.

2. The Petitioner is an Indian citizen having his permanent address at Mittal House, Kaut Ghat Road, Near Nashik Hospital Dr. Homi Bhaba Nagar, Mumbai Naka, Nashik City 4, Taluka - Nashik, District - Nashik, Maharashtra - 422011.

3. The Corporate Debtor herein bears **CIN U51420MH2003PTC143324** and was incorporated on 28.11.2003 under Companies Act, 1956, having its registered office address at Plot No. D-130/131, Gat No.52, Malegaon MIDC, Sinner, Nashik, Maharashtra, India - 422103.

4. The Applicant is a Personal Guarantor to the Corporate Debtor for Credit facilities provided by Bank of India ("Financial Creditor"). The amount of default as stated in Part III of the Petition is **Rs. 19,61,00,000/- (Rupees Nineteen Crores Sixty-One Lakhs only)** and the date of default is stated to be 30.03.2026.

SUBMISSIONS OF THE PETITIONER:

5. It is submitted that, in the year 2024, the Corporate Debtor

approached Bank of India (hereinafter referred to as the "Financial Creditor") and availed financial facilities comprising a Cash Credit Facility of Rs. 13,00,00,000/- (Rupees Thirteen Crores Only) and a Term Loan Facility of Rs. 6,61,00,000/- (Rupees Six Crores Sixty-One Lakhs Only), aggregating to Rs. 19,61,00,000/- (Rupees Nineteen Crores Sixty-One Lakhs Only), together with applicable interest, charges and other amounts payable thereunder.

6. The Applicant herein is the Personal Guarantor of the Corporate Debtor and, in order to secure the aforesaid financial facilities availed by the Corporate Debtor from the Financial Creditor, the Applicant executed a Deed of Guarantee dated 19.09.2024 in favour of Financial Creditor, thereby guaranteeing the repayment of the financial facilities availed by the Corporate Debtor.

7. It is submitted that the Corporate Debtor failed to discharge its repayment obligations in respect of the aforesaid financial facilities within the stipulated time. Consequently, the loan accounts of the Corporate Debtor were classified as Non-Performing Assets (NPA) on 29.03.2026.

8. Thereafter, the Financial Creditor issued a demand notice dated 30.03.2026 under Section 13(2) of the SARFAESI Act, 2000, calling upon the Personal Guarantor to repay the outstanding dues payable in respect of the financial facilities availed by the Corporate Debtor. It is further Submitted that such notice constitutes valid invocation of Personal Guarantee as per the Deed of Personal Guarantee dated 19.09.2024.

9. Upon failure of the Corporate Debtor to regularise the loan accounts and discharge the outstanding dues, the Financial Creditor initiated measures under Section 13(4) of the SARFAESI Act, 2002, and issued a notice dated 04.06.2026 for taking

symbolic possession of the secured assets. The Financial Creditor also issued a public notice for conducting an auction on 23.07.2024, of the said secured assets towards recovery of its outstanding dues.

10. It is submitted that the Corporate Debtor has, till date, failed to discharge its outstanding debt and repayment obligations towards the Financial Creditor. The liability of the Applicant, in his capacity as Personal Guarantor, under the Deed of Guarantee dated 19.09.2024, is co-extensive with that of the Corporate Debtor and continues to subsist until the guaranteed obligations are duly discharged.

11. In view of the aforesaid continuing liability, the Applicant seeks to repay the amount payable under the Personal Guarantee and intends to propose a repayment plan covering the claims of all his creditors, including the liability arising out of the personal guarantee furnished in respect of the debts of the Corporate Debtor, in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.

12. It is contended that proceedings under Part III of the IBC can be initiated by or against a Personal Guarantor even in absence of CIRP against the Corporate Debtor, as recognized by the Hon'ble NCLAT in ***State Bank of India, Stressed Asset Management Branch Vs. Mahendra Kumar Jajodia, Company Appeal (AT) (Insolvency) Nos. 60 & 61 of 2022.*** No application under Section 95 has been filed against the Applicant till date.

13. The Applicant further Submitted that the debt in respect of which the present Application is filed, does not include any 'excluded debt' as defined under the provisions of the Insolvency and Bankruptcy Code, 2016, namely:

(i) any liability to pay fine imposed by a Court or Tribunal;

(ii) any liability to pay damages for negligence, nuisance, or breach of statutory, contractual or other legal obligations;

(iii) any liability to pay maintenance to any person under any law for the time being in force;

(iv) any liability in relation to a student loan; and

(v) any other debt as may be prescribed under Section 79(15)(e) of the Insolvency and Bankruptcy Code, 2016.

14. On the above grounds, the Applicant has prayed for initiation of insolvency resolution process under Section 94 of the IBC.

SUBMISSIONS OF THE RESOLUTION PROFESSIONAL

15. Vide order dated 17.08.2026, this bench appointed **Mr. Sahil Shanker Agarwal,** having Insolvency Registration No. **IBBI/IPA-003/ICAI-N00392/2022-2023/14074,** to act as the Resolution Professional in the present matter & directed RP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016. Accordingly, the Resolution Professional has submitted his Report vide **IA (I.B.C.) No. 3987 (MB)/2026** under Section 99(1) of the Insolvency and Bankruptcy Code, 2016, recommending admission of the application for initiation of insolvency resolution process against the Personal Guarantor, **Narendra Mithailal Agarwal.** The said Report has been taken on record by this Tribunal vide Order dated 11.09.2026.

16. The Resolution Professional, in pursuance of the provisions of Section 99(6) of the Insolvency and Bankruptcy Code, 2016, has stated that the present application is in compliance with the requirements of Section 94 of the Code.

17. It is further stated by the resolution professional that:

"In view of the foregoing facts, circumstances and findings, and after undertaking the examination contemplated under

Section 99 of the Insolvency and Bankruptcy Code, 2016, the undersigned Resolution Professional is of the considered opinion that the Application filed by Mr. Narendra Mithailal Agarwal under Section 94 of the Code satisfies the statutory requirements prescribed under the Insolvency and Bankruptcy Code, 2016 and the rules framed thereunder. Accordingly, in exercise of the powers conferred under Section 99(7) read with Section 99(9) of the Code, the undersigned recommends that the Hon'ble Adjudicating Authority may be pleased to admit the present Application under Section 100 of the Insolvency and Bankruptcy Code, 2016 and pass such further orders as may be deemed fit and proper in the facts and circumstances of the case."

FINDINGS:

18. We have considered the submissions advanced by the Ld. Counsel for the Petitioner, the report submitted by the Resolution Professional under Section 99 of the Code and the material available on record.

19. We observed that the Ld. Counsel appearing on behalf of L&T Finance had appeared before this Tribunal and sought time to file its objections. Accordingly, this Tribunal, vide order dated 06.10.2026, recorded as follows: "*Ld. Counsel for the L&T Finance seeks further time to file their objections. Time is allowed. Needless to say, Resolution Professional shall submit the Report upon the Counsel for L&T Finance, forthwith, if not served earlier.*" However, despite the opportunity granted by this Tribunal, no reply or objections have been filed by L&T Finance on record.

20. We further observe that the brother of the Petitioner, namely, Mr Arvind Mithailal Agarwal, has also filed a Petition under Section

94 of the IBC before this Tribunal, bearing CP (IB) No. 805 of 2026, arising out of a default under the same Deed of Guarantee. The Interlocutory Application bearing I.A. (I.B.C)/4548/2026 was filed by Axis Finance Limited (hereinafter referred to as the "Intervenor/Objector") in CP (IB) No. 805 of 2026, seeking to intervene in the proceedings and to challenge the initiation of the personal insolvency resolution process against the Personal Guarantor therein, namely, Mr Arvind Mithailal Agarwal. This Tribunal, vide order dated 14.10.2026, recorded as follows: "*Learned Counsel for Axis Finance Limited informs that an Intervention Application is yet to be filed by them and also seeks time to argue the matter*." However, no such application has been filed on record in the present Petition, nor have any further documents or objections been placed on record by any of the creditors. Nevertheless, considering the similarity of facts and the common cause of action involved in both Petitions, it would suffice if the objections and contentions of Axis Finance Limited raised in the case of Mr Arvind Mithailal Agarwal are also addressed in this Petition.

21. It is the contention of the intervenor that the petitioner has included the Intervenor in the list of creditors without disclosing that the liability towards the Intervenor arises out of a Business Loan Agreement dated 15.07.2025, under which the Petitioner had executed the agreement as a Co-Borrower and had undertaken to repay the loan jointly and severally with the Corporate Debtor. It is contended that the said liability does not arise out of any contract of guarantee furnished by Petitioner in favour of the Intervenor.

22. Further, it is pertinent to refer to Section 5(22) of the Code, which defines a "*Personal Guarantor means an individual who is the*

surety in a contract of guarantee to a corporate debtor". Further, Rule 3(1)(e) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, defines a "*Guarantor means a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part*". Further, Section 126 of the Indian Contract Act, 1872, defines a *"Contract of guarantee", "surety", "principal debtor" and "creditor" - A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written*". Thus, the liability of a Surety arises under a contract of guarantee in respect of the Principal Debtor's default, whereas a Co-Borrower assumes an independent and direct obligation to repay the loan under the Loan Agreement. Accordingly, the mere fact that the Petitioner is a Co-Borrower under the Loan Agreement does not, by itself, establish that the Petitioner is a Personal Guarantor within the meaning of Section 5(22) of the Code.

23. Upon perusal of the Loan Agreement dated 15.07.2025, placed on record by the Intervenor, we observe that the Petitioner is a Co-Borrower under the said Loan Agreement. We further observe that the liability of a co-borrower and that of a personal guarantor arise from distinct contractual arrangements. A co-borrower assumes an independent repayment obligation under the terms of the Loan Agreement, whereas a personal guarantor undertakes liability

pursuant to a contract of guarantee.

24. An individual may incur financial liabilities in different capacities, including as a borrower, co-borrower or personal guarantor. The mere fact that an individual has furnished a personal guarantee in respect of the debt of one Corporate Debtor does not result in all other financial liabilities undertaken by such individual in his personal capacity being treated as liabilities arising under a contract of guarantee. Each such liability must be examined independently with reference to the contractual arrangement under which it arose.

25. Further, the Form A prescribed under Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, requires the Applicant to furnish particulars of debts on a creditor-wise basis, including the nature of the debt, amount due, amount in default and whether the debt is secured or unsecured. The prescribed form further requires disclosure of the Applicant's secured and unsecured debts, including excluded debts, in the statement of affairs. Thus, the disclosure of other personal financial liabilities is relevant to assessing the Applicant's overall financial position and the resolution of his debts under the statutory framework.

26. Accordingly, the fact that the Applicant has other outstanding liabilities arising from loans availed in his capacity as a Co-Borrower cannot, by itself, be a ground to treat such liabilities as personal guarantee obligations or to reject the application under Section 94 of the Code. However, the Applicant is required to disclose all such liabilities and to establish their nature through the relevant loan agreements and other supporting documents. The liability arising under each such arrangement shall retain its

independent contractual character and shall be dealt with in accordance with the applicable provisions of the Code.

27. It is further contended by the Intervenor that the Report submitted by the Resolution Professional does not satisfy the requirements of Section 99 of the Code. In this regard, it is pertinent to note that the report submitted by the Resolution Professional under Section 99 is recommendatory in nature and does not bind this Adjudicating Authority. The Resolution Professional performs a facilitative role of examining the application, collating relevant facts and submitting a report recommending acceptance or rejection of the application. The ultimate adjudicatory function of determining whether the application is to be admitted or rejected vests with this Adjudicating Authority under Section 100 of the Code. Further, the Hon'ble Supreme Court in ***Dilip B. Jiwrajka v. Union of India & Ors., 2023 INSC 1018,*** has clarified the respective roles of the Resolution Professional and the Adjudicating Authority in proceedings under Sections 94 and 95 of the Code. The relevant observations of the Hon'ble Supreme Court are reproduced hereinbelow:

> "*54. ……..The role under Section 99 which is ascribed to the resolution professional is that of a facilitator and is to gather relevant information on the basis of the application which has been submitted under Section 94 or Section 95 and after carrying out the process which is referred to in sub-section (2), sub-section (4) and sub-section (6) of Section 99, to submit a report recommending the acceptance or rejection of the application. Significantly, the statute has used the expression "examine the application", "ascertain" and "satisfies the requirements" and "recommend" the acceptance or rejection of the application. The use of these*

expressions leaves no manner of doubt that the resolution professional is not intended to perform an adjudicatory function or to arrive at binding conclusions on facts. The role of the resolution professional is purely recommendatory in nature and cannot bind the creditor, the debtor or, the adjudicating authority.

59. The resolution professional submits a report to the adjudicating authority. The report is purely recommendatory in nature and does not bind the adjudicating authority. ……."

28. It is further contended by the Intervenor that the present Company Petition is not a bona fide attempt towards insolvency resolution but has been filed with the intention of obstructing and frustrating the recovery proceedings initiated by Bank of India under The SARFAESI Act, 2000. Further, the account of the corporate debtor was classified as NPA on 29.03.2026, followed by issuance of a demand notice under Section 13(2) of the SARFAESI Act on 30.03.2026, recall of the loan facilities on 08.04.2026 and subsequent measures under Section 13(4) of the SARFAESI Act, including issuance of a public notice for auction dated 04.06.2026. It is further pointed out that the present Company Petition was filed on 28.07.2026, along with a parallel petition filed by Mr. Arvind Mithailal Agarwal, being Company Petition (IB) No. 805 of 2026 which was filed on 23.07.2026.

29. It is pertinent to note that the initiation of recovery proceedings by a Financial Creditor under the SARFAESI Act, including classification of the account as a Non-Performing Asset, issuance of a demand notice, recall of loan facilities and initiation of measures for enforcement of security interest, does not, by itself, operate as a statutory bar against the Personal Guarantor from

invoking the remedy available under Section 94 of the Code, provided that the statutory requirements for maintaining such an application are fulfilled.

30. Hon'ble NCLAT in the case of ***Naseema Bano v. State Bank of India and Ors., (2026) ibclaw.in 212 NCLAT*** held that *the law declared in Getz Cables Pvt. Ltd. Vs. State Bank of India & anr. [(2024) ibclaw.in 766 NCLAT] [CA (AT) (Ins.) No. 1953 of 2024, dated 21.11.2024 will apply on all force, for Section 94 is parallel to Sec. 10 IBC*. In that case, it was held that **"***There mere fact that application is filed, consequent of which the recovery proceedings may be halted, cannot lead to conclusion that intent and purpose of the application is malicious and fraudulent. We, thus, are satisfied that Adjudicating Authority committed error in allowing Section 65 application filed by the SBI.***"**

31. Further, the decision in the case of ***Syed Sirajis Salikin Khadri v. Edelweiss Asset Reconstruction Company Ltd. and Anr., (2025) ibclaw.in 294 NCLAT*** was distinguished by this Tribunal in the case of ***Nirmal D Jain, (2026) ibclaw.in 1879 NCLT*** holding that "*43…. Hon'ble NCLAT upheld the order passed by adjudicating authority after observing that section 94 petition came to be filed after about a decade coinciding with the notice issued for taking possession of mortgaged properties in that case. However, in the present case, it is noted that the financial creditor have acted swiftly to exercise its rights under SARFAESI Act within less than one month of default and proceeded to put the mortgaged properties for auction within 4 months of occurrence of default. The Insolvency and Bankruptcy Code permits a Personal Guarantor to invoke the provisions of Section 94 and seek resolution of his liabilities by placing his assets before the*

creditors, thereby enabling a fresh financial start, which remedy is distinct from proceedings under the SARFAESI Act. Even though, the present petition as well as earlier dismissed petition were filed on the eve of schedule date of auction, it can not be ignored that the personal guarantor has a right to invoke provisions of IBC for resolution of his insolvency in the manner provided under the Code, and such right can not be taken away merely because of swift action on the part of financial creditor to realise its security interest under SARFAESI Act. We do not find any inordinate delay on the part of the personal guarantor to invoke provisions of IBC for resolution of his insolvency in terms of provisions of section 94 of IBC, which provide for time bound resolution of insolvency of guarantors and also allows the creditors a choice to stay away from such process. Hence, we are of considered view that the action of personal guarantor to approach this tribunal for resolution of his insolvency in terms of section 94 of IBC can not be faulted by deciphering an ill motive, which does not seem to exist in the present case."

32. In view of the aforesaid discussion, we do not find any merit in the Intervention filed by intervenor.

33. The total outstanding debt as stated by the Applicant is the amount of default as stated in Part III of the Petition is **Rs. 19,61,00,000/- (Rupees Nineteen Crores Sixty-One Lakhs only)** and the date of default is stated to be 30.03.2026. The Application is complete in terms of Section 94 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

34. On perusal of the record, this Bench is satisfied that the Applicant is a Personal Guarantor to a Corporate Debtor; a debt exists, and

default has occurred; the Application is maintainable under Section 94 of the Code; and that the debt does not fall within the excluded category under Section 79(15) of the Code.

35. It may be noted that under Section 128 of the Indian Contract Act, 1872, when a default is committed, the Principal Borrower and Surety are jointly and severally liable to the Creditor, and the Creditor has the right to recover its dues from either of them or both of them simultaneously. For benevolent reference, the said section of the Indian Contract Act, 1872 is reproduced below:

> *"The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract."*

The Hon'ble National Company Law Appellate Tribunal in the matter of ***State Bank of India Vs. Athena Energy Venture Private Limited*** **in** ***Company Appeal (AT)(Ins) No. 633 of 2020*** observed as under: -

> ***"19. It is clear that in the matter of guarantee, CIRP can proceed against Principal Borrower as well as Guarantor."***

ORDER

36. Therefore, in view of the above averments, we are of the considered opinion that is a fit case for admission and proceed against the Personal Guarantor/Petitioner and initiate Insolvency Resolution Process. Hence, we admit **CP(IB) No. 806 of 2026** filed under the provisions of section 94 of IBC,2016 under Section 100 of the IBC, 2016 by following order:

I. Initiate Insolvency Resolution Process against the Petitioner/Personal Guarantor and moratorium in relation to

all the debts is declared, from today i.e. date of admission of the application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period;

a) Any pending legal action of proceeding in respect of any debt shall be deemed to have been stayed; and
b) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
c) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
d) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

II. The Resolution Professional *viz.* **Mr. Sahil Shanker Agarwal**, having Registration No. **IBBI/IPA-003/ICAI N 00392/2022- 2023/14074**, having Address 56, Sahil, Lendra Park, Ramdaspeth, B/H Shri Ram Bhavan, Nagpur, Maharashtra, 440010 and having E-mail address casahilagarwal@gmail.com and Contact No. 9881061567, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Mumbai Bench, inviting claims from all Creditors, within 21 days of such issue. The Resolution Professional shall discharge the functions/duties

casted upon him under the provisions of the Code in this relation within time bound manner and shall be empowered to exercise the powers vested in him for discharge of such functions/duties.

III. The Applicant is directed to deposit **INR 75,000/-** (Indian Rupees Seventy-Five Thousand) or such amount as is agreed between the Resolution Professional and the Applicant to the bank account of the Resolution Professional within **one week**, towards his fees and out of pocket expenses, which shall be such as is approved by the applicant herein and subsequently confirmed by the Creditors. This shall be subject to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

IV. The Registry is directed to communicate a copy of order to the Resolution Professional immediately after the pronouncement of order, and upload the same on the website within seven working days after the pronouncement of order.

V. Ordered accordingly.

SD/-

Sh. Prabhat Kumar
Member (Technical)

SD/-

Sh. Sushil Mahadeorao Kochey
Member (Judicial)

Vipul Ghate