

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 4 of 2025

[Arising out of the Impugned Order dated 08.10.2024 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi in C.P. (IB) No. 347 (ND)/2024]

In the matter of:

MR. MANOJ AGGARWAL

House No. A-35, Block-A,
Beside Shiv Ram Park, Uttam Nagar,
West Delhi- 110059

...Appellant

Versus

KARNATAKA BANK LIMITED

Asset Recovery Management Branch
Plot No. 8, First Floor,
Rajendra Park Pusa Road,
New Delhi-110060

...Respondent

Present:

For Appellant : Mr. Gulshan Kr. Sachdeva, Advocate.

For Respondent : Mr. Gautam K. Singhal, Ms. Anjali Maurya, Ms. Aastha Vishnoi, Ms. Swaksha Mandhyan, Mr. Rajat Chaudhary, Advocates.

WITH

Company Appeal (AT) (Insolvency) No. 2027 of 2024

[Arising out of the Impugned Order dated 24.09.2024 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi in C.P. (IB) No. 380 (ND)/2024]

In the matter of:

MRS. VIMLA DEVI

House No. A-35, Block-A,
Beside Shiv Ram Park Uttam Nagar West,
Delhi-110059

MR. MANISH JAIN

Insolvency Professional
IBBI/IPA-001/IP-P00874/2017-2018/11472
Shop No. 3, Ist Floor, Kailash Tower,
Opp. Income Tax Office Court Road,
Saharanpur, Utter Pradesh - 247001

...Appellant

Versus

KARNATAKA BANK LIMITED

Asset Recovery Management Branch
Plot No. 8, First Floor,
Rajendra Park Pusa Road,
New Delhi-110060

...Respondent

Present:

For Appellant : Mr. Gulshan Kr. Sachdeva, Advocate.

For Respondent : Mr. Gautam K. Singhal, Ms. Anjali Maurya, Ms. Aastha Vishnoi, Ms. Swaksha Mandhyan, Mr. Rajat Chaudhary, Advocates.

ORDER
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

Present is a set of two Appeals filed by two Appellants who are related to each other as mother and son and happen to be co-guarantors qua liability to the same Corporate Debtor. Both the Appellants had filed Section 94 petition which had been dismissed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Bench-III) by separate orders dated 24.09.2024 and 08.10.2024.

2. Though the subject matter and cause of action in both the Appeals are more or less identical, however, since the impugned orders are different, we propose to consider the Appeals separately hereunder.

Company Appeal (AT) (Insolvency) No. 2027 of 2024

3. We will first deal with Company Appeal (AT) (Insolvency) No. 2027 of 2024 which has been filed by Smt. Vimla Devi-Appellant. This Appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('IBC' in short) by

the Appellant arises out of the Order dated 24.09.2024 (hereinafter referred to as **Impugned Order**) passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Bench-III) in C.P.(IB)No.380(ND)/2024. By the impugned order, the Adjudicating Authority has rejected the restoration application No. 380 of 2024. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

4. Coming to the brief facts of the case, M/s MMR Agro Foods Pvt. Ltd.- Corporate Debtor had obtained credit facilities from the Respondent-Karnataka Bank. The present Appellant-Smt. Vimla Devi stood as a personal guarantor of the Corporate Debtor. The account of the Corporate Debtor was declared as NPA on 30.11.2022 following which a Section 13(2) Notice under SARFAESI Act was issued on 26.12.2022 on the principal borrower and the guarantors. On 26.05.2023, Possession Notice was sent to the guarantor by the Court Receiver for taking possession of her property on 17.06.2023. On 16.06.2023, which happened to be one day prior to taking the possession of the mortgaged property, the Appellant filed Petition No. 455 of 2023 under Section 94 of the IBC which was dismissed for non-prosecution on 01.04.2024 after several adjournments. Possession Notice was issued again on 09.05.2024 for taking possession of the mortgaged property on 30.05.2024. Thereafter, on 29.05.2024, the Appellant filed the second Section 94 application bearing Petition No. 380 of 2024 which happened to be coincidentally one day prior to the date when Court Receiver was to again take possession of the mortgaged property. The second Section 94 application also came to be dismissed for non-prosecution on 10.07.2024. Since the Petition

No. 380 of 2024 was dismissed on ground of non-prosecution, a restoration application vide Application No. New Rest.A-100/2024 was filed seeking restoration of Petition No. 380 of 2024. This restoration application was listed for hearing on 24.09.2024 on which date it was dismissed by the Adjudicating Authority for want of satisfactory explanation. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

5. It is the case of the Appellant that the Adjudicating Authority had erred in dismissing the restoration application. It is a well settled principle that restoration application should be determined based on reasons of non-appearance. It was asserted that though the reasons for non-appearance in the present case was genuine, the Adjudicating Authority had dismissed the restoration application without allowing an opportunity to explain the reasons leading to the non-appearance during the hearing of Petition No. 380 of 2024. Submission was pressed that when Petition No. 380 of 2024 was listed before the Adjudicating Authority for hearing on 10.07.2024, the counsel could not make an effective appearance due to a technical glitch. Thus, this absence was not intentional in nature nor occasioned by negligence or lack of diligence. Yet the Adjudicating Authority did not adjudicate on the tenability of the reasons for non-appearance of the Appellant.

6. It was also added that the Appellant is a senior citizen suffering from multiple ailments and diagnosed with cancer and due to her serious medical condition, she could not pursue the case properly. Being an elderly citizen suffering from health challenges she faced challenges in navigating legal proceedings and had to rely on legal counsel for representation. The counsel

had admittedly failed to follow up on the court proceedings in Petition No. 455 of 2023 for which lapse the Appellant cannot be held responsible. Being an elderly litigant, the Appellant should not be put to prejudice because of inaction on the part of the counsel. The Appellant having limited knowledge of court processes had no other choice but to rely on her counsel. Moreover, as she was suffering from bad health she could not participate in person before the court. Therefore, there was no deliberate or intentional omission on the part of the Appellant and hence she deserved a fair hearing on her restoration application. It was therefore urged that the restoration explanation should have been considered with leniency so that the Section 94 application could have been considered on merits to secure the ends of justice.

7. Repelling the arguments made by the Appellant, the Ld. Counsel for the Respondent Bank submitted that the Appellant has been misusing the process of law with malafide intention to defeat the recovery proceedings initiated by the Respondent Bank by seeking refuge of moratorium. The Adjudicating Authority had correctly held that the Appellant had failed to adduce satisfactory explanation for having filed the second Section 94 application vide Petition No. 380 of 2024 when their first Petition vide No.455 of 2023 had already been dismissed for non-prosecution. It was vehemently contended that the conduct of the Appellant was consistently dubious as she was always seeking adjournments so that the recovery proceedings would keep on getting stretched as they had no valid defence otherwise. It was also asserted that neither the Appellant nor her Counsel had ever informed the Adjudicating Authority about her illness and medical prescriptions have been placed before

this Tribunal for the first time which cannot be looked into at the appeal stage. It was contended that the Adjudicating Authority had taken into cognisance all antecedent facts and court proceedings before dismissing the restoration application after rightly noting that sufficient reasons have not been offered to justify admission of the prayer for restoration.

8. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

9. To arrive at our analysis and findings, it would be appropriate to chronologically sequence the court proceedings leading to the dismissal of the restoration application.

10. After the first Section 94 petition vide No. 455 of 2023 was filed, we notice that the matter was listed for hearing on 09.08.2023, 29.08.2023, 09.10.2023, 08.11.2023, 12.12.2023, 19.01.2024, 28.02.2024 and 01.04.2024. On six out of eight times that the matter was listed for hearing, the Appellant had sought time or adjournment from Adjudicating Authority. It would be useful to notice the six occasions on which the adjournments were sought and the relevant orders passed by the Adjudicating Authority.

ORDER
(09.08.2023)

As prayed by Ms. Nistha Rastogi, Proxy Counsel, matter is adjourned to 29.08.2023.

ORDER
(Dated 09.10.2023)

This is a petition under Section 94 of the IBC, 2016.
Proxy Counsel on behalf of the Petitioner present and submitted that the arguing counsel is not available today and therefore

sought adjournment. In view of this, list the matter on 08.11.2023. Ld. Counsel on behalf of the Respondent is also present.

ORDER
(Dated 12.12.2023)

Proxy Counsel on behalf of the Petitioner is present and submitted that the main Counsel is not available today. Ld. Counsel on behalf of the Respondent/Karnataka Bank is also present. List the matter on 19.01.2024.

ORDER
(Dated 19.01.2024)

Ld. counsel on behalf of the petitioner is present and sought time to file AFA as it exists now of the proposed IRP. Ld. Counsel for the Respondent is also present. List the matter on 28.02.2024.

ORDER
(Dated 28.02.2024)

This is a Section 94 Petition. An Authorized Representative C.A. Rakesh Jindal appears on behalf of the Petitioner and submitted that they have no further instructions from their client, and therefore they could not file valid AFA of the proposed IRP as it exist now. In view of this, the Personal Guarantor is directed to appear in person on the next date of hearing and explain his case, failing which the matter will be dismissed for non-prosecution. List the matter on 01.04.2024.

ORDER
(Dated 01.04.2024)

None appeared on behalf of the Petitioner at the time of hearing of the matter. As mentioned in the order dated 28.02.2024 the Authorized Representatives on behalf of the Petitioner had appeared and submitted that they had no further instructions from their client. Personal Guarantor was directed to appear in person on the next date of hearing. None appeared on behalf of the Personal Guarantor today. Therefore, this petition is dismissed for non-prosecution.

(Emphasis supplied)

11. From a reading of the above orders, it is clearly borne out that the Adjudicating Authority had given ample opportunity to the Appellant to make good their appearance to protect their interest. However, the Counsel on one pretext or the other did not appear. Furthermore, we also notice that on 28.02.2024, the Adjudicating Authority had clearly directed the Personal Guarantor to appear in person on the next date of hearing and had also allowed sufficient time-gap for the next hearing which was scheduled after a period of one month on 01.04.2024. Thus, the Adjudicating Authority had shown due deference to the principles of natural justice and accorded fair opportunity to the Personal Guarantor for personal appearance. We therefore find that the Adjudicating Authority had given ample opportunity to the Appellant to be heard. The Adjudicating Authority had also very clearly stated its mind that in the event of non-appearance of the Personal Guarantor, the mater will be dismissed for non-prosecution. In spite of this clear warning, the Appellant failed to mark presence either in person or through the Counsel leading to dismissal of Petition No. 455 of 2023.

12. When petition No. 455 of 2023 was dismissed for non-prosecution, the Appellant did not challenge the dismissal of this petition. Instead, the Appellant once again slipped into the dormant mode until the Respondent once again initiated steps to take physical possession of the mortgaged property. We notice that when the mortgaged property was to be again taken over on 30.05.2024, the Appellant filed the second Section 94 petition vide No. 380 of 2024. Curiously, the date of filing of the first and second Section 94 petitions was always one day prior to the date fixed by the Court Receiver to

take over possession of the mortgage property. This timing cannot be treated as a simple case of accidental coincidence but signifies the ulterior motive of the Appellant taking refuge of moratorium under Section 96 of the IBC and to hinder and delay the recovery proceedings as and when initiated by the Respondent Bank.

13. This now brings us to the second Section 94 petition bearing No. 380 of 2024 and see how it was dealt by the Adjudicating Authority. We find that the petition was dismissed on grounds of non- prosecution again. At this stage it may be useful to notice the orders of the Adjudicating Authority which reads as under:

ORDER
(Dated 10.07.2024)

This matter was passed over in the first call. No one has appeared even on the second call.
IB-380(ND)/2024 dismissed for non-prosecution.

14. When we look at the above order it is clear that the Appellant did not appear either on the first or the second revised call and hence the matter was dismissed for non-prosecution. It clearly shows that the Appellant was not serious of defending her case but was dragging the matter. When the Section 94 petition had already been dismissed once earlier, any vigilant litigant would not be as lackadaisical the second time. The same conduct of the Appellant of non-appearance on the dates of hearing had continued even after filing of the second section 94 petition. We are not persuaded to believe that technical malfunction as stated by the Appellant prevented the appearance especially when the matter was again taken up on revised call and the Appellant went

unrepresented. We also do not find that the Adjudicating Authority upto this stage was ever informed about the alleged adverse medical condition of the Appellant. The medical prescriptions have been placed before this Tribunal for the first time and hence we wish to refrain from making any observations on the illness of the Personal Guarantor. The conduct of the litigant is clearly dubious and it clearly appears that the Appellant was more interested in delaying the proceedings by absenting themselves from appearing before the Adjudicating Authority when the matter was listed for hearing. The intention of the Appellant was to buy more time so as to avoid the execution of the Possession Notice and avail the benefit of moratorium under Section 96 of IBC.

15. At this juncture, it would be pertinent to deal with the contention of the Respondent Bank that the Appellant had mischievously not disclosed while filing the second Section 94 petition vide No. 380 of 2024 that their first Section 94 petition had already been dismissed. It is also their contention that when the first order of 01.04.2024 dismissing the Section 94 petition was never challenged nor was any liberty granted to file a second Section 94 petition, the second Section 94 application could not have been filed. In their defence, it was submitted by the Appellant that there is no provision under the IBC or NCLT Rules, 2016 which bars the filing of a second petition after dismissal for non-prosecution and in support of their contention adverted to the judgment of this Tribunal in ***Venus Sugar Ltd. Vs SASF in CA(AT)(Ins) No. 1517 of 2019***. However, the facts of that case are clearly distinguishable. In that case, even though the party had failed to appear before the Adjudicating Authority when the matter was called for hearing but they later

registered their appearance on the same date and explained the reason to the Adjudicating Authority as to why they were not present when the matter was called in the first go. In that case the order for dismissal on grounds of non-prosecution was not passed unlike in the present case when the Appellant not only did not appear on the first call but continued to remain absent even on the revised call leading to the dismissal order on grounds of non-prosecution.

16. This brings us to the restoration application No. 100 of 2024 which was dismissed by the Adjudicating Authority. To find out the grounds as to why the Adjudicating Authority came to the conclusion that there was insufficient cause for the matter to be restored, we would like to reproduce the order which is as under:

ORDER
(Dated 24.09.2024)

New Rest.A-100/2024

This application has been filed seeking to restore the IB380(ND) / 2024 which was dismissed for non-prosecution by this Adjudicating Authority vide order dated 10.07.2024.

We find from the records that a similar application i.e. IB455(ND)/2023 filed between same parties "Mrs. Vimla Devi Versus Karnataka Bank Limited" under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 has been dismissed for non-prosecution on 01.04.2024 by Court No. VI.

Ld. Counsel for the Applicant submitted that IB455(ND)/2023 was dismissed for non-prosecution and therefore, the Applicant has filed IB-380(ND)/2024. The explanation given by the Ld. Counsel for filing the second application i.e. IB- 380(ND)/2024 after dismissal of IB-455(ND)/ 2023 is not satisfactory.

We take a serious view of the matter and dismiss the present application with costs of Rs. 20,000 /- (Rupees Twenty Thousand) to be deposited in Prime Minister's National Relief Fund by Applicant and file proof of deposit of cost.

RA-100/2024 dismissed.

17. When we look at the above order, it becomes clear that what seems to heavily weighed on the minds of the Adjudicating Authority to dismiss the restoration application was that even before the dismissal of Petition No. 380 of 2024, a similar Section 94 petition vide No. 455 of 2023 had been already dismissed by the Adjudicating Authority earlier. This led the Adjudicating Authority to seek an explanation from the Appellant for re-filing of another Section 94 petition. However, the Adjudicating Authority observed that the explanation offered was not satisfactory and therefore was constrained to take a serious view impelling the dismissal of the restoration application. When we look at the sequence of events, we have no doubts that the Appellant had preferred the second Section 94 petition on the same facts and for the same cause of action as the first petition though no such liberty was granted for filing a fresh Section 94 petition. It is also an indisputable fact that the Appellant did not disclose to the Adjudicating Authority about the dismissal of their first Section 94 application. We also notice that the Appellant did not present themselves before the Adjudicating Authority during the hearing of the second Section 94 application even during the revised call. Hence it was only reasonable on the part of the Adjudicating Authority to ascertain the reasons from the Appellant as to why they had filed the Section 94 petition again when it had already been dismissed earlier and not finding their explanation satisfactory, disallowed the restoration application.

18. In the given backdrop, we find that the Appellant was persistently not appearing after filing the Section 94 applications without sufficient cause or explanation. This is a clear case of the Appellant resorting to repeat litigations

for the same cause of action thus abusing the process of law and wasting the valuable time of the Adjudicating Tribunal. It would not be far from truth to infer that the underlying intent of the Appellant was to prevent the Respondent from taking legal action for the recovery of its outstanding dues against the Appellants including enforcement actions undertaken under SARFAESI Act. We have no reasons to disagree with the Adjudicating Authority that it did not find any satisfactory basis for allowing the restoration application. We are of the considered view that the dismissal of the restoration application is not for unjustified reasons. The Adjudicating Authority cannot be faulted for rejecting the restoration application.

Company Appeal (AT) (Insolvency) No. 04 of 2025

19. We will now deal with Company Appeal (AT) (Insolvency) No. 04 of 2025 which has been filed by Shri Manoj Aggarwal-Appellant. This Appeal filed under Section 61 of IBC by the Appellant arises out of the Order dated 08.10.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Bench-III) in C.P.(IB)No.347(ND)/2024. By the impugned order, the Adjudicating Authority has dismissed the Section 94 application filed by the Appellant. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant seeking restoration of the Section 94 petition.

20. Coming to the brief facts of the case, M/s MMR Agro Foods Pvt. Ltd.-Corporate Debtor had obtained credit facilities from the Respondent-Karnataka Bank. The present Appellant-Shri Manoj Aggarwal who is the son of Smt. Vimla Devi and both had stood as personal guarantors of the Corporate

Debtor. As already noticed, after the account of the Corporate Debtor was declared as NPA, Section 13(2) Notice under SARFAESI Act was issued on 26.12.2022 on both the guarantors including the present Appellant. On 26.05.2023, Possession Notice was sent to the guarantor by the Court Receiver for taking possession of his property on 17.06.2023. On 16.06.2023, which happened to be one day prior to taking the possession of the mortgaged property, the Appellant filed Petition No. 364 of 2023 under Section 94 of the IBC which was dismissed for non-prosecution on 10.01.2024 after several adjournments. Possession Notice was issued again on 09.05.2024 for taking possession of the mortgaged property on 30.05.2024. Thereafter, on 24.06.2024, the Appellant filed the second Section 94 application bearing Petition No. 347 of 2024. The second Section 94 application also came to be dismissed for non-prosecution on 08.10.2024. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

21. It is the case of the Appellant that he was dependent on his counsel who had admittedly failed to follow up on the court proceedings in Petition No. 364 of 2023 leading to dismissal of the same. The Appellant having limited knowledge of court proceedings had no other choice but to rely on a counsel to defend his interest. On dismissal of CP No. 364 of 2023, a fresh Section 94 Petition was filed by the Appellant with the same counsel who this time assured diligent handling of the matter. However, the counsel admittedly failed in pursuing the matter in serious earnest and this resulted in the Adjudicating Authority issuing a Show Cause Notice on 08.08.2024 seeking an explanation within 10 days on the failure on the part of the Appellant to

disclose that they had already filed a Section 94 petition which had already been dismissed. However, when the matter was heard on 08.10.2024, the Adjudicating Authority remained dissatisfied with the explanation offered in the Affidavit for non-disclosure of dismissal of the first Section 94 petition and dismissed the Section 94 petition. It was submitted that since the existing counsel was not dealing with the court proceedings properly, as a remedial measure, he had already changed the counsel and engaged a new one who prayed for adjournment on the date of hearing i.e. 08.10.2024. The Adjudicating Authority however declined the prayer of the new counsel seeking adjournment. It is the contention of the Appellant that both himself and his mother were faced by serious medical handicap which prevented them from following the court proceedings. The Adjudicating Authority by not considering the submissions made by the new counsel while passing the impugned order did not act in conformity with the principles of natural justice. This had deprived the Appellant an opportunity of being heard causing miscarriage of justice. It was also pointed out the Adjudicating Authority had dismissed this Section 94 application keeping in mind that the earlier Section 94 application of the Appellant had already been dismissed once for non-prosecution. Even if the earlier petition was dismissed it had not acquired finality as it had been dismissed for non-prosecution. Hence the Appellant was well within his rights to file the second Section 94 petition.

22. Repelling the arguments made by the Appellant, the Ld. Counsel for the Respondent Bank submitted that the Appellant has been misusing the process of law with malafide intention to defeat the recovery proceedings initiated by

the Respondent Bank by seeking refuge of moratorium. The Adjudicating Authority had correctly held that the Appellant had failed to adduce satisfactory explanation for filing the second Section 94 petition when their first Section 94 petition vide No.364 of 2023 had already been dismissed for non-prosecution. It was vehemently contended that the conduct of the Appellant was not bonafide. The Appellant was not interested in pursuing the Section 94 application but was seeking to avail the benefits of moratorium to prevent the recovery proceedings. The bogey of illness of the Appellant and his mother was contrived as an afterthought to justify the repeated adjournment which were being sought to protract the Court proceedings. It was contended that the Adjudicating Authority had rightly taken into cognisance of the unbecoming and contumacious conduct of the Appellant seeking repeated adjournments for no justifiable reason while dismissing the second Section 94 petition.

23. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

24. To arrive at our analysis and findings, it would be appropriate to chronologically sequence the court proceedings leading to the dismissal of the restoration application.

25. After the first Section 94 petition vide No. 364 of 2023 was filed, we notice that the matter was listed for hearing on 05.07.2023, 18.08.2023, 15.09.2023, 31.10.2023, 13.12.2023 and 10.01.2024. Three out of six times that the matter was listed for hearing, the Appellant had either sought time or

prayed for adjournment from Adjudicating Authority. It would be useful to notice the dates on which the adjournments were sought and the relevant orders passed by the Adjudicating Authority.

ORDER

(Dated 05.07.2023)

*As prayed for by Ld. Proxy Counsel appearing for the Applicant, the matter is adjourned to **18.08.2023**.*

ORDER

(Dated 13.12.2023)

*On the request made by Proxy Counsel appearing for the Applicant, the matter is adjourned to **10.01.2024**.*

ORDER

(Dated 10.01.2024)

Mr. Narendra Singh, Proxy Counsel appearing on behalf of the Applicant seeks an adjournment. We have noticed from the records that on 05.07.2023 and 13.12.2023 a Proxy Counsel appearing for the Applicant sought adjournments and the matter was adjourned. It appears that the Applicant is not interested in pursuing the matter and taking advantage of the moratorium.

*Therefore, the application is **dismissed** for non-prosecution.*

26. From a reading of the above orders, it is clearly borne out that the Adjudicating Authority had given enough opportunity to the Appellant to be heard. However, the Counsel on one pretext or the other did not appear whenever the matter was not getting adjourned on its own steam due to paucity of time. Thus, facts on records show that the Adjudicating Authority having given sufficient opportunity and latitude to the Appellant to defend his interest cannot be said to have violated the principles of natural justice.

27. When petition No. 364 of 2023 was dismissed for non-prosecution, we find that the Appellant did not challenge the dismissal of this petition. Instead,

the Appellant remained quiet and stirred into action on realising that the Respondent had re-initiated steps to take physical possession of the mortgaged property and Possession Notice was sent by the Court Receiver for taking over mortgaged property on 30.05.2024. As noticed in the other connected matter where the Appellants' mother is the co-personal guarantor, qua the same facility, a second Section 94 petition already been filed by her on 29.05.2024 and moratorium stood invoked. Soon thereafter, the present Appellant also filed the second Section 94 petition vide No. 347 of 2024 which clearly signifies the ulterior motive of both the Appellant and her mother trying to take refuge of moratorium under Section 96 of the IBC with the overall design to drag the recovery proceedings by the Respondent Bank.

28. At this juncture, it would be pertinent to deal with the contention of the Respondent Bank that the Appellant had deliberately not disclosed while filing the second Section 94 petition vide No. 347 of 2024 that their first Section 94 petition had already been dismissed. It is also their contention that when the first order of 10.01.2024 dismissing the Section 94 petition was never challenged nor was any liberty granted to file a second Section 94 petition, the second Section 94 application could not have been filed.

29. At this stage it may be useful to notice the orders of the Adjudicating Authority how it dealt with the second Section 94 petition bearing No. 347 of 2024. The relevant orders are sequentially reproduced as under:

ORDER
(Dated 03.07.2024)

*Proxy Counsel appearing on behalf of Ms. Bharti Hemant Nawlani,
main counsel for Applicant seeks an adjournment.
List the matter on **23.07.2024.***

ORDER
(Dated 08.08.2024)

This application has been filed by Mr. Manoj Aggarwal, Personal Guarantor of M/s MMR Agro Foods Private Limited, seeking initiation of Insolvency Resolution Process against the Respondents namely Karnataka Bank for the alleged default of Rs. 3,68,00,383/- as on 26.12.2022, M/s. Moneywise Financial Services Private Limited for the alleged default of Rs. 8,13,308/- as on 14.12.2022 and Unity Small Finance Private Limited for the alleged default of Rs. 17,79,354/- as on 14.11.2022.

Mr. Gautam Singhal, Learned Counsel, during the course of the arguments submitted that the same Personal Guarantor had earlier filed IB364/2023, through the same Counsel, Mr. Narendra Singh, with respect to the same subject matter which was dismissed for non-prosecution on 10.01.2024. He, therefore, submitted that the present application is not maintainable.

We find that the Applicant has failed to disclose the above facts in the present application and filed second application under Section 94 of IBC, arising out of the same subject matter and transaction, which according to our considered view, the amounts grows abuse of process of law. We therefore, issue show-cause notice to the Applicant, Mr. Narendra Singh, Learned Counsel who has filed the present application and Vakalatnama and Mr. Rakesh Jindal, Chartered Accountant, who has appeared today, and directed them to file an affidavit explaining the conduct within ten days.

*List the matter on **04.09.2024**.*

ORDER
(Dated 08.10.2024)

Mr. Gulshan Kumar Sachdev, Ld. Counsel appearing on behalf of Applicant seeks adjournment.

We may note that this matter was listed for the first time on 03.07.2024 and was adjourned on the request made on behalf of Ld. Counsel for Applicant.

On 08.08.2024, during the course of the arguments, it was revealed that the same Personal Guarantor had filed IB-364 (ND) /2023, through the same Counsel namely Mr. Narendra Singh, with respect to the same subject matter and the said matter was dismissed for non-prosecution 10.01.2024. This Adjudicating Authority directed Mr. Narendra Singh, Ld. Counsel who had filed the said application and Vakalatnama, and Mr. Rajesh Jindal, Chartered Accountant, who

appeared on behalf of Applicant on 08.08.2024 to file an affidavit explaining the conduct.

On 04.09.2024, the matter was adjourned to enable Mr. Rakesh Jindal, Chartered Accountant and Mr. Narendra Singh Ld. Counsel to bring the affidavits on record.

We have perused the affidavit filed by Mr. Rakesh Jindal, Chartered Accountant and Mr. Narendra Singh Ld. Counsel. We are not satisfied with the explanation given in the said affidavits. We are also not inclined to give any adjournment as prayed for by Mr. Gulshan Kumar Sachdev, Ld. Counsel Appearing today for Applicant.

We are of the view that filing of the present application particularly after dismissal of IB-364(ND)/2023 by the same party for the same subject matter amounts to gross abuse of process of law.

IB-347(ND)/2024 dismissed accordingly.

30. When we look at the above orders, it is clear that when the matter was listed for hearing the first time on 05.07.2023 the Appellant prayed for adjournment which was allowed. Thereafter when the matter came up for hearing on 08.08.2024, the Adjudicating Authority observed that the Appellant had failed to disclose that a Section 94 petition had been filed in respect of the same subject matter which had already been dismissed. The Adjudicating Authority observed that filing of second Section 94 petition in the given circumstances was an abuse of the process of law. It however desired to appreciate the reasons for filing of second Section 94 petition and hence directed the Applicant to file an Affidavit explaining their conduct within 10 days. The Adjudicating Authority fixed the next hearing on 04.09.2024.

31. When we look at the sequence of events, we have no doubts that the Appellant had preferred the second Section 94 petition on the same facts and for the same cause of action as the first petition though no such liberty was granted for filing a fresh Section 94 petition. It is also an indisputable fact that

the Appellant did not disclose to the Adjudicating Authority about the dismissal of their first Section 94 application. We therefore do not find anything unusual or unreasonable on the part of the Adjudicating Authority to ascertain the reasons from the Appellant as to why they had filed Section 94 petition again when it had already been dismissed earlier. We also notice that the Adjudicating Authority in the order dated 08.10.2024 which has already been reproduced above has clearly stated that it perused the affidavit by which explanation had been offered but was not satisfied with the explanation given.

32. Likewise, as in the Restoration Application filed by the present Appellants' mother, even in this appeal it is contended by the Appellant that there is no provision under the IBC or NCLT Rules, 2016 which bars the filing of a second petition after dismissal for non-prosecution by relying on the judgment of this Tribunal in **Venus Sugar judgment supra**. However, we have already noticed at para 15 above that the facts of **Venus Sugar judgment supra** was specific to that case and hence this judgment does not help the present Appellant either.

33. It has been contended by the Appellant that for the fault of the counsel, the Appellant cannot be made to suffer and in support of their contention has relied on the judgment of the Hon'ble Supreme Court in **Ashok Kumar Vs New India Assurance Company** in **CP No. 4758 of 2023** in which the Hon'ble Supreme Court had held that for the fault of the Advocate, complainant cannot be made to suffer. It was also pointed out by the Appellant that corrective action of engaging a substitute counsel had also been taken.

34. We have no quarrel with the justice-oriented approach that for negligence of lawyers, litigants cannot be made to suffer so that substantive justice is not denied to a serious litigant. Be that as it may, while adopting a liberal approach, we cannot afford to overlook that IBC is a special legislation designed to resolve insolvency and bankruptcy cases in a timely and efficient manner. Adherence to timelines enjoys a special place in the scheme of IBC as it imparts certainty and predictability to the resolution framework. For the process of resolution to remain efficient and effective, the Adjudicating Authority is required to act against unjustified delays caused by repeated and unnecessary adjournments. We are therefore of the considered view that Adjudicating Authority was not precluded from scrutinizing the tenability, reasonability and bonafide of the grounds on which the second Section 94 petition was filed when the first petition had already been dismissed.

35. When we look at the order of the Adjudicating Authority of 08.10.2024, we notice that even though the Adjudicating Authority had given a months' time to the Appellant to file reply to explain their conduct, the lethargy and inertia on the part of the Appellant persisted. When the Section 94 petition had already been dismissed once earlier, any vigilant litigant would have taken care not to be lackadaisical again. However, even the newly engaged counsel also sought adjournment. This clearly shows that Appellant and the new counsel was still non-serious in pursuing the matter on merits. The same elusive conduct of the Appellant of non-appearance or seeking of adjournment on the dates of hearing clearly continued. The conduct of the litigant is clearly dubious and the Appellant was still interested in pushing the strategy of

delaying the proceedings as the intention of the Appellant was clearly to buy time so as to avoid execution of the Possession Notice and avail the benefit of moratorium under Section 96 of IBC. Putting the entire blame upon the earlier set of counsel to wriggle out of their own lack of bonafide does not meet our countenance. The lack of due diligence and proper care on the part of the litigant is writ large.

36. We are therefore, of the considered view that the dismissal of the second Section 94 petition of this Appellant by the Adjudicating Authority was made on cogent grounds.

ORDERS

37. Having heard the parties and carefully considered all material facts in both the Appeals, we do not find any merit in these two Appeals. The Appeals are dismissed. We do not find any good ground to interfere with the order of the Adjudicating Authority including imposition of cost of Rs 20,000/- (Rupees Twenty Thousand Only) on Smt. Vimla Devi to be deposited in the Prime Minister's Relief Fund.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

**Place: New Delhi
Date: 02.09.2025**

Harleen/Abdul