



NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI

Item No. P-5.

IA(I.B.C)/ 3594(MB)2025 IN C.P.(IB)/ 1138(MB)2023

CORAM

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING DATED **25.08.2025**

NAME OF THE PARTIES : **Rinki Prakash Kumar**
Vs
The Bank Of Maharashtra Limited

Under Section 95 of the IBC, 2016.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//SKS//

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

IA (I.B.C) 3594/MB/2025

IN

CP (IB) No. 1138/MB/2025

*[Under Section 95 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 11 of the National Company Law Tribunal Rules, 2016]*

Rinki Prakash Kumar

...Applicant
(Original Respondent)

Vs.

The Bank of Maharashtra Limited

...Respondent
(Original Petitioner)

Vs.

Mahesh Sureka

...Resolution
Professional/Respondent

IN THE MATTER OF:

The Bank of Maharashtra Limited

[CIN No.: U99999MH1935 PTC002399]

Industrial Finance Branch, Office No. 23 & 24

2nd Floor, Maker Chamber-III, Nariman

Point Mumbai -400 021.

...Petitioner/Creditor

Vs.

Rinki Prakash Kumar

[PAN No.: AIHPR0099M]

102, Nikunj Chhaya CHS Ltd.

Mathuradas Road, Near Asian Bakery

Kandivali (W), Mumbai – 400 067.

...Respondent/Personal Guarantor



AND

Mahesh Sureka

...Resolution Professional

Pronounced:08.2025

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv. Agam H Maloo a/w Adv. Arif Bhati

For Financial Creditor: Adv. Subir Kumar a/w Adv.
Vaishnavi Pawar, Adv. Darshil Desai
i/b SDS

For RP: Adv. Kartikee Korgaonkar a/w Adv. Nikita Mishra

ORDER

[PER: CORAM]

1. BACKGROUND

1.1 I.A. (I.B.C.) 3594/MB/2025 has been filed in CP (IB) No. 1138/MB/2023 (Main Application) on 14.07.2025 by Rinki Prakash Kumar, (the Applicant) under Rule 11 of the National Company Law Tribunal Rules, 2016 (NCLT Rules) against the Respondent, i.e. The Bank of Maharashtra Limited seeking dismissal of the petition filed under Section 95 of the Insolvency and Bankruptcy Code, 2016.

2.1 This IA has been filed by the Respondent in the CP(IB)No. 1138 (MB) of 2023 seeking the following prayers:

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- a. Dismiss the petition filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 being CP(IB) No. 1138 (MB) of 2023, as not maintainable, and tainted by fraud and material non-disclosures;
 - b. Alternatively, stay all further proceedings, including consideration of the resolution professional's repayment plan, pending outcome of investigation or other appropriate civil proceedings pertaining to the fraudulent sale and defective security;
 - c. Recall and set aside the ex parte order if any, admitting the petition under Section 95;
 - d. Pass such other or further orders as may be deemed just and proper in the interest of justice;

2.2 This IA was filed under Rule 11 of NCLT, Rules 2016 challenging the maintainability of petition filed under Section 95 of the IBC, 2016 on the ground of fraud, material concealment and non-compliance with mandatory statutory provisions.

2.3 It is stated that the Respondent is arrayed as personal guarantor to the credit facilities extended by the petitioner to one M/s RPJ Overseas & Exim Pvt. Ltd. (Company).

2.4 It is stated that the respondent was induced to sign guarantee documents.

2.5 It is stated that the petitioner sanctioned certain loan facilities to the company upon mortgage of 3 flats situated in Sarah House, Bandra West Mumbai as collateral security.

2.6 It is stated that subsequently it came to light that the said properties were fraudulently sold to multiple third-party purchasers prior to mortgage,

which is admitted by the petitioner in the CP through the letter dated 28.12.2022 attached as Exhibit-A.

- 2.7 It is stated that this admission vitiates the basis of the guarantee itself. It is the case of the Applicant that guarantees were obtained without disclosure of this critical defect, which is a suppression within the meaning of Sections 17 to 19 of the Indian Contract Act 1872 rendering it voidable.
- 2.8 It is stated that the Financial Creditor proceeded to invoke personal guarantee under Section 95 of the IBC. The Applicant states that no demand notice was received by them under Section 95(4)(b) of IBC, 2016.
- 2.9 It is stated that, no copy of the Application was served upon the Applicant of the Section 95 petition being CP(IB) No. 1138 (MB) of 2023.
- 2.10 It is submitted that on 08.03.2023 the Financial Creditor has issued a demand notice under Section 13(2) of SARFAESI Act, 2002 demanding to pay the debt, which is 60 days pursuant to which possession notice under Section 13(4) of SARFAESI Act was taken on 09.05.2023. The Applicant in the IA has attached both the notices as Annexures-B & C. The said notices were replied by the Applicant herein on 10.05.2023 copy of the letter is attached as Exhibit-D. Thereafter, the Financial Creditor has given a rejoinder, which is dated 18.05.2023 and attached as Exhibit-E of the Application.
- 2.11 It is submitted that due to unprecedented and prolonged adverse impact of the COVID-19 Pandemic, the business operation of the Company suffered severe & irrevocable losses due to which the borrower company was unable to meet its financial obligation including repayment of monthly EMI's under the credit facilities availed from the Financial Creditor. The

Applicant further states that the default was not wilful but was caused purely due to circumstances beyond the control of the Company and its management. The Applicant herein states that they are pursuing the recovery actions taken by the Financial Creditor and according to the Applicant invocation of personal guarantee is an abuse of the process.

2.12 It is submitted that initiation of Insolvency proceedings on the basis of guarantee **i.e. itself the product of fraud**, mis-representation, defective security amounts to an unjustified invocation of extraordinary jurisdiction under the code and warrants judicial intervention.

2.13 It is submitted that the Respondent has also not been served a copy of the repayment plan IA filed by the Resolution Professional.

2.14 It is submitted that this Tribunal admitted the petition under Section 95 through an ex-parte order on 07.01.2025. The Applicant, thereafter, seeks prayers as mentioned above.

2.15 The said IA was first listed on 11.08.2025, where none was present for the Applicant and was listed for maintainability again on 13.08.2025.

Analysis & Findings

3.1 We have heard the Applicant and have perused the records as placed before us.

3.2 It is seen that, in CP(IB) No. 1138 (MB) of 2023 one Mr. Mahesh Sureka was appointed as the Resolution Professional for the Personal Guarantor vide an order of this Tribunal dated 04.12.2023.

3.3 Thereafter, on 22.12.2023 the RP has filed the report recommending to proceed with the Resolution Process of the Personal Guarantor. Order

dated 04.12.2024 records that Form-B notice was served upon the Applicant in the IA on 07.09.2023 in Form-D.

- 3.4 This Tribunal has passed a common order in CP(IB)/1138(MB)2023 and CP(IB)/1139(MB)2023 vide an order dated 07.01.2023. In both these CP the Respondent/PG were set ex-parte vide an order dated 04.12.2024. For the reasons stated in the said order dated 07.01.2023 this Tribunal ordered for initiating Insolvency Resolution Process against Ms. Rinki Prakash Kumar (Applicant herein) and Mr. Prakash Kumar and admitted the petition filed under Section 95(1) of IBC, 2016. Further, directions were issued for submission of repayment plan and moratorium was imposed. Mr. Mahesh Sureka was appointed as the Resolution Professional in the matter. Certain directions were issued to the Personal Guarantor in the matter by the same order.
- 3.5 From the averments made in the Application it is seen that the Personal Guarantor (Applicant herein) admits the execution of a Personal Guarantee document and is not denying the factum that a Personal Guarantee was indeed executed by the Applicant herein.
- 3.6 The Applicant also admits that the Corporate Debtor i.e. M/s RPJ Overseas & Exim Pvt. Ltd. obtained the loan from the Applicant/Financial Creditor. (Applicant in C.P.)
- 3.7 We are of the view that any defect in the title of the security does not vitiates the Personal Guarantee which was duly executed by the Applicant herein. Specifically when the Personal Guarantor admits to execution of the Guarantee.



- 3.8 The Applicant in the IA more particularly, in para no. 12 of this IA states that due to unprecedented and prolonged adverse impact of the COVID-19 Pandemic the business operation of the Company suffered severe & irrevocable losses due to which the borrower company was unable to meet its financial obligation including repayment of monthly EMIS under the credit facilities availed from the Financial Creditor. The Applicant further states that the default was not wilful but was caused purely due to circumstances beyond the control of the Company and its management. The Applicant states that they are pursuing the recovery action taken by the Financial Creditor and according to the Applicant invocation of personal guarantee is an abuse of the process. The Applicant also admits that SARFAESI proceedings were initiated by the Financial Creditor for enforcement of the security interest created upon 3 flats, which were mortgaged to the Applicant/Financial Creditor in the CP(IB) No. 1138 (MB) of 2023.
- 3.9 It is the case of the Applicant herein that the title of the properties mortgaged was defective and there were fraudulent sales by third party purchasers prior to the mortgage.
- 3.10 When the Applicant herein admits that a guarantee was issued, SARFAESI proceedings were initiated, the main borrower was unable to meet the repayment commitments, we fail to understand how the transactions is vitiated by fraud.
- 3.11 As regards the other issue of non-service of the Application filed under Section 95 and the report of RP, we see from the order dated 14.07.2025 that the RP has filed an AOS (Affidavit of Service), which is dated

12.07.2025 along with that the RP has annexed at page no. 7 an acknowledgment/receipt of the CP and IA by the Personal Guarantor. In our view the service of the Section 95 Application and the IA filed by the RP was complete.

3.12 We also record here that vide the order dated 14.07.2025 last opportunity was given to the Applicant herein to file reply in IA(IBC)2710(MB)2025 being the IA filed by the RP seeking closure of the process under Section 95 of IBC. However, despite the last opportunity given no reply was ever filed by the Applicant herein to IA(IBC)2710(MB)2025.

3.13 During the hearing held on 13.08.2025 a pointed query was raised by the Bench to the Applicant's Counsel whether any appeal has been filed to the order dated 07.01.2025 passed by this Tribunal whereby Personal Insolvency Proceedings commenced against the Personal Guarantor (Applicant herein). In reply Ld. Counsel appearing for the Applicant has candidly committed that no appeal against the said order was ever filed by the Applicant herein. As such the order dated 07.01.2025 through which the Personal Guarantor was admitted to insolvency in our view has assumed finality.

3.14 Before we concluded the hearing on 13.08.2025 we have given an opportunity explaining the entire situation to the Applicant's Counsels and an opportunity was given to the Applicant's Counsel to pursue the Application or to withdraw the same. The Applicant's Counsel after seeking instructions persisted with the Application and hence this Tribunal reserved the matter for order on maintainability.



3.15 For the reasons explained above we do not find any merit in the present Application. IA/3594(MB)2025 is hereby dismissed as non-maintainable.

3.16 For wasting the precious judicial time of this Tribunal, we hereby levy a cost of Rs. 25,000/- upon the Applicant herein to be deposited in the Prime Minister National Relief Fund within a period of 7 days from the date of this order.

3.17 Relist this IA for compliance on payment of cost on 16.09.2025.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

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