

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

**Company Appeal (AT) (Insolvency) No. 1146 of 2024  
& I.A. No. 4112, 4113 of 2024**

[Arising out of Order dated 17.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Court-I in Company Petition (IB) No. 60/Chd/HP/2024]

**IN THE MATTER OF:**

**Gursev Singh, Personal Guarantor**

**....Appellant**

**Vs.**

**IDBI Bank & Anr.**

**...Respondents**

**For Appellant:            Mr. A.S. Likhari, Advocate**

**For Respondents:        Mr. Harsh Garg and Mr. Pulkit Goyal, Advocates  
for IDBI  
Ms. Nishi Chaudhary, Ms. Yashartha Gupta and  
Mr. Mayuresh Rishabh, Advocates for PNB.**

**Company Appeal (AT) (Insolvency) No. 1147 of 2024  
& I.A. No. 4114, 4115 of 2024**

[Arising out of Order dated 17.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Court-I in Company Petition (IB) No. 61/Chd/HP/2024]

**IN THE MATTER OF:**

**Gagandeep Kaur, Personal Guarantor**

**....Appellant**

**Vs.**

**IDBI Bank & Anr.**

**...Respondents**

**For Appellants:            Mr. A.S. Likhari, Advocate**

**For Respondents:        Mr. Harsh Garg and Mr. Pulkit Goyal, Advocates  
for IDBI**

**Ms. Nishi Chaudhary, Ms. Yashartha Gupta and  
Mr. Mayuresh Rishabh, Advocates for PNB.**

**J U D G M E N T**  
**(30<sup>th</sup> August, 2024)**

**Ashok Bhushan, J.**

These two Appeals have been filed by two personal guarantors of the Corporate Debtor challenging the order of the same dated 17.05.2024 passed in Company Petition (IB) No. 60/Chd/HP/2024 and Company Petition (IB) No. 61/Chd/HP/2024 respectively by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Court-I. Facts including dates and events of both the Appeals being same, it shall be sufficient to refer to facts and pleadings in Company Appeal (AT) (Insolvency) No. 1146 of 2024 for deciding both the Appeals.

2. Brief facts of the case are:-

2.1. Mr. Gursev Singh is personal guarantor of the Corporate Debtor, M/s. Ram Harbi Motors Pvt. Ltd., Ram Hari AXuto's Pvt. Ltd. and Ram Hari Cars Pvt. Ltd. The CIRP against the Corporate Debtor commenced on 14.02.2020 by order of the Adjudicating Authority. Gursev Singh, the Personal Guarantor filed an application under Section 94 of the IBC which was numbered as CP (IB) No. 77/CH/HP/2021. On 06.05.2022, the Adjudicating Authority directed the Applicants/ Appellant to file compliance and eligibility affidavit. Several opportunities were granted by the Adjudicating Authority for compliance. On 01.02.2023, Adjudicating Authority again passed an

**Company Appeal (AT) (Insolvency) No. 1146 of 2024**  
**& I.A. No. 4112, 4113 of 2024**  
**With**  
**Company Appeal (AT) (Insolvency) No. 1147 of 2024**  
**& I.A. No. 4114, 4115 of 2024**

order directing the Applicant to comply with the provisions of Section 94(4) and 94(5) of the IBC within three weeks. On 01.02.2024, application came before the Adjudicating Authority and by order dated 01.02.2024, Adjudicating Authority dismissed the application for non-compliance. After the order dated 01.02.2024, Appellant filed an IA being IA No.519 of 2024 for recall and restoration of the application which came for consideration before the Adjudicating Authority on 28.02.2024. Counsel for the Applicant after making arguments prayed that he be permitted to withdraw the application with liberty to re-file the petition under Section 94 of the Code as per law. Adjudicating Authority has permitted the Applicant/ Appellant to withdraw IA No.519 of 2024 with liberty as prayed. After the order dated 28.02.2024, Appellant filed a fresh application under Section 94 on 29.02.2024. When the application came for consideration issue regarding maintainability of the application was raised. On the question of maintainability of the application, parties were heard and order was reserved on 04.04.2024 and by impugned order dated 17.05.2024, Adjudicating Authority has dismissed the application under Section 94(1) as not maintainable. Aggrieved by the impugned order, Company Appeal (AT) (Insolvency) No.1146 of 2024 has been filed.

3. Another Company Appeal (AT) (Insolvency) No.1147 of 2024 has been filed on same facts and challenging the identical order passed by the Adjudicating Authority.

**Company Appeal (AT) (Insolvency) No. 1146 of 2024**  
**& I.A. No. 4112, 4113 of 2024**  
**With**  
**Company Appeal (AT) (Insolvency) No. 1147 of 2024**  
**& I.A. No. 4114, 4115 of 2024**

4. We have heard Counsel for the Appellant, Counsel appearing for the IDBI Bank and Counsel for the Punjab National Bank.

5. Counsel for the Appellant in support of the Appeal contends that when the Adjudicating Authority granted liberty by order dated 28.02.2024 to re-file the application under Section 94(1), the application could not have been rejected as not maintainable. It is submitted that liberty granted to re-file was availed by the Appellant and immediately on 29.02.2024, a fresh application was filed which cannot be held to be non-maintainable. It is submitted that when the Court grants liberty to file fresh application, the Appellant was well within its rights to file fresh application under Section 94 and the earlier order dated 01.02.2024 dismissing the application for non-compliance cannot come in the way of the Appellant.

6. Counsel appearing for the Financial Creditor- Respondents herein has opposed the submissions of the Appellant and it is submitted that the Appellant had filed Section 94 application in the year 2020 being CP (IB) No. 77/CH/HP/2021. On 06.05.2022, Adjudicating Authority directed the Appellant to file an Affidavit for compliance. Appellant allowed defective application to continue to enjoy the Moratorium which commenced on filing of the application and in spite of several orders passed by the Adjudicating Authority did not cure the defects and Adjudicating Authority ultimately dismissed the application on 01.02.2024. The order dated 01.02.2024 was never challenged by the Appellant and that become final. The restoration application filed being IA No.519 of 2024 was heard and when the Court was

not inclined to entertain, Appellant choose to withdrew the said application with liberty to re-file. Withdrawal of the restoration application with liberty to re-file cannot take away the effect and consequences of the order dated 01.02.2024.

7. We have considered the submissions of the Counsel for the parties and perused the record.

8. There is no dispute between the parties regarding sequence of the events. The fact that Appellant filed the application under Section 94 in the year 2020 i.e. 24.09.2020 is undisputed. Punjab National Bank has also filed an Affidavit in this Appeal where it has been pleaded that the Appellant has been misusing the Interim Moratorium under Section 96 of the IBC for the last four years due to which Bank was unable to initiate any recovery proceeding under the SARFAESI or RDBFI Act for the recovery of the dues. It is stated that after dismissal of CP (IB) No.66 of 2024, Bank proceeded to sale the mortgaged properties under the SARFAESI Act and e-auction held on 14.06.2024 has been successful which e-auction has also been confirmed by DRT, Chandigarh by order dated 28.06.2024. Entire sale consideration has been received and sale certificate has also been issued.

9. The fact is undisputed that in application under Section 94 filed on 24.09.2020, Adjudicating Authority passed various orders directing the Appellant to make the application in order. An order was passed by the Adjudicating Authority on 01.02.2023 granting three weeks' further time for

making compliance of the earlier order. On 01.02.2023, following order was passed:-

*“A date is requested by learned counsel for the petitioner for making compliance of order dated 06.05.2022. Let the same be done within three weeks, failing which appropriate orders will be passed. List the matter on 21.03.2023.”*

10. Subsequently, on 01.02.2024, the application being CP (IB) No. 77/CH/HP/2021 came for consideration on which date Adjudicating Authority passed an order dismissing the application for non-compliance. In the appeal, Appellant has not filed the copy of the order dated 01.02.2024. However, the order dated 01.02.2024 has been quoted by the Adjudicating Authority in paragraph 6 of the order. Order dated 01.02.2024 reads as under:-

*“It is seen that the present petition was filed in the Year 2021 and vide order dated 06.05.2022, learned counsel for the petitioner was directed to make compliance under Section 94(4) & (5) of the Code within four weeks. However, it is seen that from the last few dates of hearing neither did he appear before the Court nor did he comply with the order. On the last date of hearing, he was given one last opportunity to appear before the Court and comply with the order dated 06.05.2022. Valid AFA of the proposed RP has also not been filed for last so many dates of hearing.*

*At this stage, it is pointed out by learned counsel for the Petitioner that he has already filed the affidavit in compliance with the order dated 06.05.2022 vide Diary No. 01343/1 dated 17.02.2023, but the same was not taken on record because of the non-appearance of the petitioner before the Court. As he has not complied with the order in due course of time, the same is not be taken on record. **Moreover, he has also stated that the valid AFA of the proposed RP has not been filed yet.***

*It is pointed out by learned counsel for the Respondent-Corporate Bank-IDBI that the mortgaged property of the*

*Petitioner is being put for auction under the provisions of the SARFAESI Act, 2002 but because this interim moratorium has been misused by the petitioner for the last three years and there is no need to adjourn the matter again.*

*In these circumstances, there is no reason to again adjourn the matter for necessary compliance. **Thus, the present petition is dismissed for non-compliance. However, we are refraining ourselves from imposing the cost upon the learned counsel for the Petitioner for misuse of the process of law. File be consigned to record room.***

*(Emphasis placed)"*

11. When we look into the order dated 01.02.2024, it is clear that the order was passed after hearing the Counsel for the Appellant as well as Counsel appearing for the IDBI Bank where it was pleaded that mortgaged property has been put for auction under the provisions of the SARFAESI Act, 2002 but because of the interim moratorium being misused by the Appellant for the last three years and there is no need to adjourn the matter again. Adjudicating Authority after noticing the aforesaid, dismissed the application, which reads as follows:-

*"However, we are refraining ourselves from imposing the cost upon the learned counsel for the Petitioner for misuse of the process of law. File be consigned to record room."*

12. The order dated 01.02.2024 was not challenged and has become final. Appellant has filed application being IA No.519 of 2024 praying for restoration of the Application. Application being IA No.519 of 2024 came for consideration on 28.02.2024 on which date, following order was passed:-

*"This application has been filed by learned counsel for the applicant seeking restoration of the main Company Petition*

**Company Appeal (AT) (Insolvency) No. 1146 of 2024  
& I.A. No. 4112, 4113 of 2024  
With  
Company Appeal (AT) (Insolvency) No. 1147 of 2024  
& I.A. No. 4114, 4115 of 2024**

*bearing CP(IB) No. 77(CH) 2021 filed under Section 94(1) of the Code, which was dismissed on 01.02.2024. After arguing sometime, it is stated by learned counsel for the applicant that he may be permitted to withdraw the present petition with liberty to refile the petition under Section 94(1) of the Code as per law, Keeping in view the statement made by learned counsel for the applicant, IA No. 519/2024 is dismissed as withdrawn with liberty aforesaid.”*

13. When we look into the order dated 28.02.2024, it is clear that after making some submissions in the restoration application IA No. 519 of 2024, Appellant prayed that he be permitted to withdraw the application with liberty to re-file the petition under Section 94(1) of the Code as per law. Adjudicating Authority has noted the aforesaid in following words:-

*“After arguing sometime, it is stated by learned counsel for the applicant that he may be permitted to withdraw the present petition with liberty to refile the petition under Section 94(1) of the Code as per law, Keeping in view the statement made by learned counsel for the applicant, IA No. 519/2024 is dismissed as withdrawn with liberty aforesaid.”*

14. Counsel for the Appellant submits that the aforesaid is a clear liberty to re-file Section 94 application. When we look into the order passed above, it is clear that the request was made by the Appellant to permit the Appellant to withdraw the petition with liberty to re-file the petition under Section 94(1) of the Code as per law. The aforesaid request was accepted by the Adjudicating Authority, hence, at best the order can be read that ***re-filing was permitted as per law.***

15. Adjudicating Authority by the impugned order dated 17.05.2024 relying on earlier order dated 01.02.2024 has held that subsequent application filed by the Appellant was not maintainable. The judgment



which was relied by the Appellant in support of the submission was duly noted and has been distinguished. In paragraphs 12 and 13 of the judgment, following was held:-

*“12. Even if the liberty by this Adjudicating Authority was given to the Applicant to file a fresh Application, we are of the view that this Adjudicating Authority is sufficiently empowered to examine maintainability of an Application. We find that the Applicant herein has preferred a second Application based on the same facts and for the same cause of action, and a complete earlier application No. without bothering to file 77/Chd/HP/2021 either suo moto or pursue the same after complying with the directions given by this Adjudicating Authority vide order dated 06.05.2022 (that were not complied by the Applicant for a prolonged period of more than one year and nine months) which clearly indicates the blatant misuse of interim moratorium available under Section 96 of IBC 2016, by the Applicant.*

*13. In the facts and circumstances discussed above, we have no other option but to dismiss the present application No.60/Chd/HP/2024.”*

16. The Adjudicating Authority has come to the finding that filing of the application under Section 94 by the Appellant was nothing but misuse of the interim moratorium available under Section 96 of the IBC.

17. The facts as noted above clearly indicate that while dismissing the application on 01.02.2024 by the Adjudicating Authority, no liberty was granted to file a fresh petition. While dismissing the application in non-compliance, Adjudicating Authority has not granted any liberty to file any fresh petition for the reasons which have been given in paragraph 12 itself. Reliance of the Appellant on the order dated 28.02.2024 claiming that clear

liberty was granted to file fresh petition need to be noticed. As noted above, liberty to re-file was granted on the request made by the Appellant himself that he wanted to withdraw the petition with liberty to re-file under Section 94 of the Code as per law. The Appellant was permitted to withdraw IA No.519 of 2024 with liberty to re-file under Section 94(1) of the Code. Adjudicating Authority in order dated 28.02.2024 has not expressed any opinion as to whether application which is to be re-filed by the Appellant under Section 94(1) shall be maintainable or not. ***The Appellant himself taken liberty to re-file the petition under Section 94 (1) of the Code as per law.*** Thus, the Adjudicating Authority did not commit any error in dwelling on the question as to whether the application which is filed on 29.02.2024 being Company Petition (IB) No. 60/Chd/HP/2024 is maintainable or not. As noted above, no liberty to file fresh petition was granted when order was passed on 01.02.2024. At a time of withdrawal of IA No.519 of 2024 only liberty was granted to re-file as per law. Liberty by withdrawing the restoration application cannot be treated to be liberty to file fresh application under Section 94(1) wiping out the earlier order dated 01.02.2024. The 1<sup>st</sup> order dated 01.02.2024 dismissing Section 94 application for reasons stares in the face of the Appellant which order has neither been modified nor appealed. We do not find any error in the order of the Adjudicating Authority rejecting the application being Company Petition (IB) No. 60/Chd/HP/2024.

18. In view of the foregoing discussions, we do not find any error in the impugned order dated 17.05.2024 passed by the Adjudicating Authority

which has been challenged in these two Appeals. In result, both the Appeals are dismissed.

**[Justice Ashok Bhushan]**  
**Chairperson**

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

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

**New Delhi**  
Anjali