

(2025) 10 NCLAT CK 0022

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Appeal (AT) (Insolvency) No. 1644 of 2025 & I.A. No. 6465 of 2025

Maria Kuresh Rajkotwala

APPELLANT

Vs

Rozina Firoz Hajiani & Ors.

RESPONDENT

Date of Decision : 30-10-2025

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 94, 96, 99

Citation : (2025) 10 NCLAT CK 0022

Hon'ble Judges : Ashok Bhushan, Chairperson; Barun Mitra, Member

Bench : Division Bench

Advocate : Eshna Kumar, Jenil Shah , Akshita Sharma

Final Decision : Dismissed

Judgement

I.A. No. 6465/2025

1. This is an application praying for condonation of 27 days delay in refiling of the appeal.

2. We find that sufficient cause has been shown in the application for condonation of 27 days delay in refiling.

Application is allowed.

Comp. App. (AT) (Ins.) No. 1644/2025

1. Heard learned counsel for the appellant, learned counsel for the Bank as well as learned counsel appearing for the Auction Purchaser.

2. This appeal has been filed against an order passed by the adjudicating authority (National Company Law Tribunal, Mumbai Bench – I) dated

02.09.2025 in Intervention Petition 81/MB/2025 and Intervention Petition No. 82/MB/2025 in C.P. (IB) No. 391/MB/2025. An application under Section 94 was filed

by the appellant on 24.12.2024 which application by the impugned order has now been admitted after receipt of the report under Section 99. On basis of intervention application filed by the Auction Purchaser and the Bank, the adjudicating authority has excluded the assets which have been auctioned in favour of the Auction Purchaser on 13.12.2024. Appellant aggrieved by only part of the order by which the said assets have been excluded has come up in this appeal.

3. Learned counsel for the appellant challenging the order submits that appellant has submitted the application under Section 94 on 24.12.2024 for which due receipt was issued. It is submitted that sale certificate which is claimed by the Bank of same date i.e., 24.12.2024 is unsigned and signed sale certificate was issued on 26.12.2024 hence the assets could not have been taken out from the Section 94 application and the direction issued by the adjudicating authority is incorrect.

4. Learned counsel appearing for the Bank submits that the assets which were sold was in the 10th Auction, 9 Auction were earlier held and there was no challenge by the personal guarantor to any of the auction. Auction having been held on 13.12.2024 which was confirmed on 18.12.2024, no right is left in the personal guarantor to question and the moratorium as claimed by the appellant on 14.12.2024 is not applicable to the assets.

5. Learned counsel for the Auction Purchaser refuting the submissions of the appellant submits that auction was conducted on 13.12.2024 which was confirmed by the Bank on 18.12.2024, hence the Auction Purchaser has obtained full right and the issuance of certificate is only ministerial act and

that shall have no effect.

6. We have considered the submissions of the counsel for the parties and perused the records.

7. The challenge to the order which has been laid by the appellant in the present appeal is to paragraphs 15 to 20 which are as follows:

"15. The primary issue before this Bench is whether the Petition filed under Section 94 of the Code by the Personal Guarantor seeking to initiate the insolvency resolution process against herself, can be admitted in light of the intervention petitions filed by the Auction Purchasers and the Creditor. It is noted that though these intervenors have sought dismissal of the Petition, however the prayer for dismissal of this Petition is only to protect the auction sale of Secured Asset concluded on 18.12.2024. It is submitted that the complete auction money was received on 24.12.2024 and the sale certificate was issued on that day. It is stated that the present Petition was filed on 24.12.2024, accordingly the registration of said sale certificate was kept on hold in view of moratorium under section 96 of the Code coming into force.

16. The Hon'ble NCLAT in Pratibha Industries Ltd. Through Its Liquidator v. Yes

Bank Ltd. & Anr. dated 4 April 2025 (Comp. App. (AT)(Ins) No. 1049 of 2024) observed that the jural relationship between the debtor and the secured creditor terminates on the publication of the auction notice. The relevant para is reproduced as under :

32. The issue in this regard is as to whether the relationship in respect of first property between the CD and the R1 came to end on the day when the notice for e-auction was issued in terms of amended provision of Section 13(8) of the Act. In this regard, it may be mentioned that a specific question was formulated by the Hon'ble Supreme Court in the case of Celir LLP (Supra) which read thus:- "what is the impact of the amended section 13(8) of the Act on the borrower's right of redemption in an auction conducted under the Act? Or in other words, what is the effect of amendment to Section 13(8) of the Act r/w Section 60 of the 1882 Act?"

33. In this regard, the Hon'ble Supreme Court has held that "in view of the aforesaid discussion, we hold that as per the amended section 13(8) of the Act, once the borrower fails to tender the entire amount of dues with all costs and charges to the secured creditor before the publication of auction notice, his right of redemption of mortgage shall stand extinguished / waived on the date of publication of the auction notice in the newspaper in accordance with Rule 8 of the 2002 Rules."

17. It is an admitted fact that the Personal Guarantor executed a personal guarantee dated 05.11.2013 in favour of the Union Bank of India for financial assistance extended to Principal Borrower. The Principal Borrower account was declared NPA on 28.02.2017, following which SARFAESI proceedings were lawfully initiated and symbolic possession of the mortgaged property was taken by the Creditor pursuant to an order by the CMM, Mumbai on 26.11.2019 and the order extended to 08.10.2024. Subsequently, an e-auction of the Secured Asset was held on 13.12.2024, following a sale notice issued on 28.11.2024, where the Auction Purchasers emerged as the highest bidders, paid the full consideration along with stamp duty and other statutory dues and were issued a sale certificate by the Union Bank of India on 24.12.2024. However, on the same date, the Personal Guarantor filed the present Petition under Section 94 of the Code, leading the Creditor to withhold the process of registration and possession of the property, citing the moratorium under Section 96 of the Code.

18. At the outset, it is pertinent to note that the proceedings under the SARFAESI Act, 2002 and the issuance of a sale certificate pursuant to a concluded e-auction, are governed by a separate legal framework and are intended to enable financial creditors to enforce their security interest. In present case, the sale was completed prior to the filing of the insolvency petition under Section 94 of the Code and the sale certificate had already been issued before the moratorium under Section 96 could take effect.

19. With respect to the Petitioner contention regarding the invocation of the

moratorium under Section 96 upon filing the Petition, it is well settled that such moratorium applies prospectively and does not have the effect of invalidating or reversing actions or transactions lawfully completed prior to its commencement. In the present case, the sale of the Secured Asset was concluded and the rights of the Auction Purchasers were crystallized on 24.12.2024, before the moratorium period came into effect.

20. Accordingly, the right of redemption of the Personal Guarantor in relation to Secured Asset stood extinguished on 28.11.2024 much prior to commencement of moratorium u/s 96 of the Code. In view of aforesaid decision, we are of considered view that the auction asset stands excluded from the property of Personal Guarantor prior to commencement of moratorium. Accordingly, the interveners i.e. Auction Purchasers and Secured Creditor shall have right to proceed further for registration of the Sale Certificate and the auctioned assets shall not form part of the estate of personal guarantor. In terms of this, Intervention Petition 81 of 2025 and Intervention Petition 82 of 2025 are disposed of.”

8. From the facts which has been brought on the record it is clear that appellant has filed the Section 94 application in the NCLT on 24.12.2024 on which date receipt was issued. The assets which are covered by the directions issued by the adjudicating authority were auctioned on 13.12.2024 in favour

of the Auction Purchaser which was confirmed on 18.12.2024. Even if we accept the submission of the appellant that sale certificate was signed on 26.12.2024 and 24.12.2024 was only unsigned sale certificate, that shall have no effect on the competition of the auction which took place on 13.12.2024

and confirmed on 18.12.2024 by the Bank. The rights of the personal guarantor came to an end after auction held on 13.12.2024 was confirmed.

9. We are of the view that adjudicating authority had not committed any error in excluding the assets from Section 94 proceeding.

We thus are of the view that no grounds have been made out to entertain this appeal. Appeal is dismissed.