

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH, BENGALURU**  
*[Through Physical hearing/VC Mode (Hybrid)]*

**ITEM No.36**  
**C.P.(IB)No. 57/BB/2024**

**IN THE MATTER OF:**

Mr. M J Robert

... Petitioner

**Order under Section 94 (1) of Insolvency & Bankruptcy Code, 2016**

**Order delivered on: 24.04.2024**

**CORAM:**

**SH. K. BISWAL**  
**HON'BLE MEMBER (JUDICIAL)**

**SH. MANOJ KUMAR DUBEY**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Petitioner : Mr. Gajendra Ravi, Proxy Counsel

**ORDER**

1. Heard the Ld. Proxy Counsel appearing for the Petitioner.
2. This Petition has been filed on 09.10.2023 under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 by the Applicant/Personal Guarantor, Mr. M. J. Robert to initiate insolvency resolution process in terms of Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority for Insolvency Resolution Process for Personal Guarantors) Rules, 2019. On perusal of the Petition, it is observed that, the Deed of Guarantee, Letter/ Notice for Invocation of Guarantee and the copies of relevant ownership and title documents for all assets are not annexed to the present Petition.
3. The Applicant has filed copy of the Demand Notice dated 26.09.2022 issued by ICICI Bank, U/s.13(2) of SARFAESI Act, 2002 addressed to the Principal Borrower as annexed at Annexure-1 with the Petition. However, the Applicant has not annexed Possession Notice which is issued U/s.13(4) of the SARFAESI Act, 2002 read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002.
4. On perusal of the records available, it is noted that there is nothing on record to show that any other notice has been issued by the Financial Creditor to the Applicant in the capacity of Personal Guarantor to invoke the Personal

Guarantee. Additionally, the Demand Notice U/s. 13(2) of the SARFAESI Act, 2002 issued on 26.09.2022 that was sent was for enforcing the secured assets cannot be construed as notice invoking guarantee in light of the decision of Hon'ble NCLAT in the matter of *Amanjyot Singh V. Navneet Kumar Jain & Ors. (Company Appeal (AT) (Insolvency) No. 961 of 2022)*. Moreover, no document is annexed by the Applicant that clarifies the terms and conditions for invocation of guarantee and the ownership and title of the secured assets.

5. Further, in the present case there is no 'Deed of Guarantee' attached with the Application, which is the basic document for proceeding U/s 94 of the Insolvency & Bankruptcy Code, 2016. In spite of order dated 18.03.2024, the Petitioner has failed to file the 'Deed of Guarantee' even after a passage of 5 weeks. Therefore, the Applicant has not proved that it falls within the definition of 'Guarantor' according to Rule 3(f) of the Insolvency and Bankruptcy (Application to Adjudication Authority for Insolvency Resolution Process for Personal Guarantors) Rules, 2019. The Petition is therefore defective.
6. On perusing the material placed on record in the present case, we are of the view that the present Petition is defective and premature. Hence, **C.P.(IB).57/BB/2024 stands dismissed** with liberty to file the same along with the requisite documents as per the provisions of the Code.

-Sd-

**MANOJ KUMAR DUBEY**  
**MEMBER (TECHNICAL)**

-Sd-

**K. BISWAL**  
**MEMBER (JUDICIAL)**