

**NATIONAL COMPANY LAW APPELLATE ‘TRIBUNAL’,
CHENNAI BENCH CHENNAI
APPELLATE JURISDICTION
Company Appeal(AT)(CH)(Insolvency) No. 220 of 2021**

[Arising out of Impugned Order dated 23rd July, 2021 passed by the Adjudicating Authority/National Company Law Tribunal, Hyderabad Bench, Hyderabad in I.A.(IBC) No. 346 of 2021 in C.P. (IB) No. 02/95/HDB/2021]

IN THE MATTER OF:

L. Ramalakshamma

Flat 103, Plot 132, Sai Krishna Residency,
Kavuri Hills, Phase II, Madhapur,
Hyderabad – 500081

...Appellant

Vs

State Bank of India

Having its Office at
Stressed Assets Management Branch – I
11th Floor, Jawahar Vyapar Bhavan
STC Building, 1 Tolstoy Marg
Janpath, New Delhi

Through Resolution Professional
Proposed by State Bank of India Under
Section 85 of the I&B Code, 1016
Mr. Anil Kohli
'Insolvency Professional'
Having IBBI Registration No. IBBI/IPA-001/IP-
P00112/2017-2018/10219
Having its office at
409, 4th Floor
Ansal Bhawan
16 KG Marg
New Delhi - 110001

....Respondent

With

Company Appeal(AT)(CH)(Insolvency) No. 221 of 2021

[Arising out of Impugned Order dated 23rd July, 2021 passed by the Adjudicating Authority/National Company Law Tribunal, Hyderabad Bench, Hyderabad in I.A.(IBC) No. 347 of 2021 in C.P. (IB) No. 03/95/HDB/2021]

IN THE MATTER OF:

L. Madhusudan Rao

G-101, Catriona Ambience,
Gurugram- 110061
Haryana

...Appellant

Vs

State Bank of India

Having its Office at
Stressed Assets Management Branch – I
11th Floor, Jawahar Vyapar Bhavan
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Through Resolution Professional
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Ansal Bhawan
16 KG Marg
New Delhi - 110001

....Respondent

Present:

For Appellant : Mr. Arjun Syal, Advocate
For Ms. Manju Dasgupta,
Mr. Shreyan Das,
Mr. Akhyil Wahal,
Mr. Saai Shudharsan, Advocates

For Respondent/IRP: Mr. Abhishek Anand, Advocate
For Mr. Viren Sharma, Advocate

J U D G E M E N T
(Virtual Mode)

M. Venugopal, J:

The Appellants have preferred these Appeals before this 'Tribunal' on being dissatisfied with the 'Impugned Orders' dated 23.07.2021 in I.A.(IBC)

No. 346 of 2021 CP(IB) No. 02/95/HDB/2021 and I.A.(IBC) No. 347 of 2021 in CP(IB) No. 03/95/HDB/2021 passed by the 'Adjudicating Authority' (National Company Law 'Tribunal', Hyderabad).

2. The 'Adjudicating Authority' had passed the 'Impugned Orders' dated 23.07.2021 in I.A.(IBC) No. 346 of 2021 CP(IB) No. 02/95/HDB/2021 and I.A.(IBC) No. 347 of 2021 in CP(IB) No. 03/95/HDB/2021 whereby and whereunder he had appointed Mr. Anil Kohli as an 'Interim Resolution Professional' and directed him to file report under Section 90 of IBC, within 5en days from the date of his appointment etc.

3. The Learned Counsel for the Appellants submits that the 'Impugned Orders' are cryptic, unreasoned, nonest and non-speaking orders which were passed in violation of the ingredients of the Insolvency and Bankruptcy Code, 2016 (in short '**IBC**').

4. According to the Appellants during the year 2017, IDBI Bank initiated proceeding for the 'Corporate Insolvency Resolution Process' (in short '**CIRP**') under Section 7 of IBC against Lanco Infratech Ltd before the 'Adjudicating Authority' and that the said Application was admitted on 07.08.2017 by the said authority and Mr. Savan Godiavala was appointed as Interim Resolution Professional (In short '**IRP**').

5. It is represented on behalf of the Appellants that the 'Adjudicating Authority' on 27.08.2018 passed an order for liquidation of Lanco Infratech Ltd and because of the reason that no Resolution Plan was approved by the

‘Committee of Creditors’ (in short ‘**CoC**’), Mr. Savan Godiavala was appointed as ‘Liquidator’.

6. Further, it is brought to the notice of this ‘Tribunal’ that on 15.11.2019 that Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 were notified by the ‘Ministry of Corporate Affairs’ and that the validity of Rules was assailed through numerous Writ Petitions and the said petitions were finally heard by the Hon’ble Supreme Court of India.

7. The Learned Counsel for the Appellants points out that in the year 2021, the First Respondent filed Company Petition No. 03/95/MDB/2021 as per Section 95 of ‘IBC’ against the Appellants before the ‘Adjudicating Authority’ and that on 31.05.2021, the Hon’ble Supreme Court of India had upheld the validity of the Rules. Moreover, through an order dated 23.07.2021, the ‘Adjudicating Authority’ had allowed the Application filed by the First Respondent for ‘Urgent Hearing’ and listed the matters for ‘Hearing’ on the same day. In fact, the ‘Adjudicating Authority’ by the “Impugned Orders” had appointed Mr. Anil Kohli as the ‘IRP’ without adhering to the mandatory Section 97 of ‘IBC’.

8. The Learned Counsel for the Appellants contends that Section 95(1) of the ‘IBC’ enjoins that a Creditor may, either by himself or through a Resolution Professional file an Application for initiating ‘Insolvency Resolution Process’ against the ‘Personal Guarantor’ or a Partnership Firm. Also, that it is the stand of the Appellants that even Application under Section 95 of ‘IBC’

is filed through Resolution Professional, as in the instant case, then Section 97(1) & (2) of the 'IBC' can get attracted. In this connection, the Learned Counsel for the Appellants refers to Section 97(1), 97(2) & 97(5) of the IBC which runs as under:

“95. Application by creditor to initiate insolvency resolution process.

(1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the 'Adjudicating Authority' for initiating an insolvency resolution process under this section by submitting an application.

(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against—

(a) any one or more partners of the firm; or

(b) the firm.

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.”

9. It is the contention of the Learned Counsel for the Appellant that within 7 (seven) days of filing of the Application under Section 95(1) of 'IBC', the 'Adjudicating Authority' shall direct the 'Board' to confirm that there are disciplinary proceedings pending against the Resolution Professional and the Board within 7(seven) days of receipt of the directions under sub-Section (1) is required to communicate the 'Adjudicating Authority' in writing either confirming or rejecting the appointment of Resolution Professional. Indeed, the 'Adjudicating Authority' upon Board's confirming/rejecting the Resolution Plan as per Section 97(1) of 'IBC' shall pass the orders in terms of Section 97(5) of the Code appointing such person as the 'Resolution Professional'.

10. The Learned Counsel for the Appellants adverts to Rule 8(1) of the Insolvency and Bankruptcy (Application to 'Adjudicating Authority' for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 which provides that for the purposes of sub-Section (2) of Section 97 and sub-Section (5) of Section 97. The Board may share the database of the 'Insolvency Professional's including the information about disciplinary proceedings against them with the 'Adjudicating Authority' from time to time and that the 'Adjudicating Authority' shall accordingly pass an order in terms of Section 97(5) of 'IBC'.

11. The stand of the Appellants is that the 'IBC' 2016 provides that appointment of the 'IRP' under Section 97(5) of IBC requires mandatory compliance of Sections 97(1) and 97(2) of IBC read with Rule 8 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. Clearly, before 'IRP' being appointed the same was to seek confirmation from the IBBI that no disciplinary proceedings are against him. However, in the instant case, the 'Impugned Orders' are completely silent as to whether the 'Adjudicating Authority' was in receipt of communication issued by the IBBI confirming the appointment of the 'IRP' under Section 97 of 'IBC' or in receipt of any database to confirm that no disciplinary proceedings are pending against the 'IRP' under Rule 8 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. Besides this, the

‘Impugned Orders’ had relied on 96(1)(a) of “IBC’ and that the ‘Adjudicating Authority’ had appointed Mr. Anil Kohli as the ‘IRP’.

12. The prime submission of the Learned Counsel of the Appellants is that the word ‘shall’ has been employed in Section 97 of ‘IBC’ is a mandatory character of the legislative intent and in short Sections 97(1) & 97(2) of ‘IBC’ are mandatory pre-condition which ought to be satisfied before the ‘Adjudicating Authority’ can proceed to pass order under Section 97(5) of ‘IBC’.

13. The Learned Counsel for the Appellants comes out with the plea that when a statute prescribes certain formalities to be complied with, those prescribed formalities are very much essential to do something which is mandatory in nature and the same cannot be simply ignored or given a go-by in haste and in this connection the Learned Counsel for the Appellants places reliance on the decision of the Hon’ble Supreme Court of India in the matter of ‘**The State of Haryana and Anr. Versus Raghubir Das**’ reported in (1) (1995)1SCC 133 and in ‘**Mohan Singh & Ors. Vs. International Airport Authority**’ in (1997) 9 SCC 132.

14. The Learned Counsel for the Appellants takes a state that without determining the aspect of non-compliance of Section 97 of ‘IBC’, any determination under Section 100 of ‘IBC’ shall affect the vital rights of the Appellants. That apart, the Learned Counsel for the Appellants submits that the ‘IBC’ is a complete, exhaustive and inclusive Code and any deviation from the prescribed procedure would defeat the intent and purposes of the Code

and refers to the decision of the Hon'ble Supreme Court of India in '**M/s Innoventive Industries Ltd. Vs. ICICI Bank & Anr.**' Reported in AIR 2017 SC 4084 and '**M/s Embassy Property Developers Pvt. Ltd. Vs. State of Karnataka**' reported in (2020) 13 SCC 308.

15. The Learned Counsel for the Appellants points out that the 'Impugned Orders' passed by the 'Adjudicating Authority' had ignored the Judgment of the 'National Company Law Tribunals' whereby the directions were issued to the Board to confirm the name of the 'IRP' prior to the passing of an order under Section 97(5) of 'IBC' and relies on the following cases:

- a) 'Tata Capital Financial Services Limited Vs. G. Ramakrishna Reddy in IBA/475/2020;
- b) State Bank of India Vs. Shagufta khan in (IB)-947(PB)/2020;
- c) State Bank of India Vs. Farah Khan in (IB)-950(PB)/2020;
- d) State Bank of India Vs. Nazuk Khan in (IB)-949 (PB)/2020;
- e) State Bank of India Vs. Waseem Ahmad Khan in (IB)-951 (PB)/2020 and
- f) State Bank of India Vs. Sameer Ahmad Khan in (IB)-948(PB)/2020

16) Conversely, it is the submission of the Learned Counsel for the Respondents/SBI that ingredients of Section 97 of 'IBC' are not mandatory and in fact, the 'Insolvency Professional' is to act as 'IRP', Liquidators, Resolution Professionals and Bank Trust Trustees (Recommendation) Guidelines, 2021 reads as follows:

- 5. *"At the time of reference/directions received from the AA, the Board does not have information about the volume, nature and complexity of an insolvency or*

bankruptcy process and the resources available at the disposal of an IP. In such a situation, the Board is unlikely to add such value by recommending an IP for the process. Further, it takes some time for a reference or a direction from the AA to reach the Board. The Board may take up to ten days to identify an IP for the purpose. It also takes some time for the recommendation of the Board to reach the AA, after which the AA could appoint the recommended IP. The process of appointment may entail 2-3 weeks, which could be saved if the AA has a ready Panel of IPs recommended by the Board and it can pick up any name from the Panel for appointment while issuing the Order itself.

6. *Given that every IP is equally qualified to be appointed as the IRP, Liquidator, RP or BT of any corporate or individual insolvency resolution, liquidation or bankruptcy process, as the case may be, if otherwise not disqualified and in the interest of avoiding administrative delays, the Board considers necessary to have these guidelines to prepare a Panel of IPs for the purpose of section 16(4), 34(6), 97(4), 98(3), 125(4), 146(3) and 147(3)."*

17) The Learned Counsel for the Respondents refers to serial No. 2 of the Guidelines which mentions as under:

“2. The Board has been making available Panels of IPs to the AA for appointment as IRP or Liquidator, as the case may be. Such Panels in advance by the Board has been found useful as indicated below:

(a) The AA in its order dated January 8, 2018 in Innovsource Private Limited Vs. Getit Grocery Private Limited observed:

“The Insolvency and Bankruptcy Board of India vide its letter dated 01.01.2018 has recommended a Panel of ‘Insolvency Professional’s for appointment of Insolvency Resolution Professional in compliance with Section 16(3) (a) of the Code in order to cut delay. The list of recommended ‘Insolvency Professional’s provides instant solution to the Adjudicating Authority to pick up the name and make appointment. It helps in meeting the time line given in the Code and the unnecessary time wasted firstly in asking the Insolvency and Bankruptcy Board of India to recommended the name and then to appoint such Interim Resolution Professional by the Adjudicating Authority.”

(b) The NCLAT, in its order dated February 28, 2019 in Sandeep Kumar Gupta, Resolution Professional Vs. Stewarts & Lloyds of India Ltd. & Anr., observed: “.... Further, the list of ‘Resolution Professionals’ being made available by the ‘Board’, to the Adjudicating Authorities, any person is appointed out of the said list submitted by

the 'Board', it should be treated to be an appointment of 'Resolution Professional'/ 'Liquidator' on the recommendation of the 'Board' “

18) The Learned Counsel for the Respondents relies on the Judgment of this 'Tribunal' dated 12.08.2021 in '**Mr. Ravi Ajit Kulkarnis Vs. State Bank India**' vide Company Appeal (AT)(Insolvency) No. 316 of 2021 wherein at paragraphs 26 to 29 observed as under:

“26. Coming to Section 97, it deals with appointment of the Resolution Professional. It is clear from Section 97 that the Creditor can apply by himself or jointly with other Creditors or through the Resolution Profession Subsection (1) of Section 97 states that if the application under Section 95 is filed through the Resolution Professional, the 'Adjudicating Authority' shall direct the Board within 7 days of the date of the application to confirm that there are no disciplinary proceedings pending against Resolution Professional and the Board has to communicate within 7 days of receipt of directions in writing either to confirm the appointment of the Resolution professional or to reject the appointment of the Resolution professional and to nominate another Resolution Professional in the insolvency resolution process.

27. In this context Rule 8 needs to be referred to, which reads as under: —8. Confirmation or nomination of

‘Insolvency Professional’.— (1) For the purposes of sub-section (2) of section 97 and sub-section (5) of section 98, the Board may share the database of the ‘Insolvency Professional’s, including information about disciplinary proceedings against them, with the Adjudicating Authority from time to time. (2) For the purposes of sub-section (4) of section 97 and subsection (3) of section 98, the Board may share a panel of 27 Company Appeal (AT) (Insolvency) No. 316 of 2021 & 317 of 2021 ‘Insolvency Professional’s, who may be appointed as resolution professionals, with the Adjudicating Authority.

28. It is argued by the Learned Counsel for the Respondent that the IBBI from time to time puts on its database particulars regarding the ‘Insolvency Professional’s including information regarding disciplinary proceedings against them and that the panel of the ‘Insolvency Professional’s is shared with the Adjudicating Authorities and such procedure helps the Adjudicating Authorities take timely action in the proceedings and the Adjudicating Authority in the present matters could appoint the Resolution Professional through whom the application under Section 95 had been filed.

29. Under Section 97(3), where an application under Section 95 is filed by the Creditor himself, and not through the Resolution Professional, the Adjudicating Authority is required to direct the Board, within 7 days, to nominate a Resolution Professional and the Board needs to nominate the same within 10 days and then the Adjudicating Authority shall, by order, appoint the Resolution Professional recommended under Sub-section (2) or as nominated by the Board under sub-section (4). Here again, the procedure as provided under the Rules vide Rule 8 would apply and Section 97 of IBC will have to be read with Rule 8.”

19 The Learned Counsel for the Respondents by placing reliance on the Judgment of this ‘Tribunal’ in **‘Mr. Ravi Ajit Kulkarnis Vs. State Bank India’** vide Company Appeal (AT)(Insolvency) No. 316 of 2021 contends that the provisions of Sections 97(1) & 97(2) of ‘IBC’ whereby the ‘Adjudicating Authority’ is required to confirm the Board before appointing ‘Resolution Professional’ is directory in nature and the same is not mandatory one. Moreover, the Rule 8(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 specifically mentions that the Board may provide the ‘Adjudicating Authority’ the database containing the requisite details of ‘Resolution Professional’ to enable the ‘Adjudicating Authority’ to appoint ‘Resolution Professional’ in a timely manner to further the objects of ‘IBC’.

20. The Learned Counsel for the Respondents bringing to the notice of this 'Tribunal' that I.A. No. 414 of 2014 was filed by the 'Appellants' as per Section 98 of 'IBC' and that the Respondents filed its 'Reply Affidavit' and that on 03.09.2021, time was sought on behalf of the Appellants to file response to the report submitted by Respondent/Resolution Professional, and till date, no response to the report was filed by the 'Appellants' and is now seeking to confound the issue in question.

21. The Learned Counsel for the Respondents with reference to the Application under Section 98 of 'IBC' refers to the Judgment of this 'Tribunal' in '**Mr. Ravi Ajit Kulkarnis Vs. SBI**' vide Company Appeal (AT)(Insolvency) No. 316 of 2021 dated 12.08.2021, wherein at paragraph-31 observed as under:

"31. Going through Section 98 of IBC, we do not find that Section 98 is stage specific. Section 98 itself shows that the Section could be resorted to even on stages like implementation of repayment plan which would be stage beyond Section 116, where implementation and supervision of repayment plan is provided for. Thus, the argument that before report of Resolution Professional the Debtor must get a chance to seek replacement of Resolution Professional and thus notice was required to be given has no substance. It is only after the Resolution Professional is

appointed by the ‘Adjudicating Authority’ under Section 97(5), that step under Section 98 is contemplated.”

22. The Learned Counsel for the Respondents points out that the Appellants by placing reliance upon the order dated 06.01.2001 in ‘**State Bank of India V. Sagufta Kang**’ vide (IB)/94/PB/2020 furthered the case of the Respondent/Bank as the Respondent/Resolution Professional was appointed as the Resolution Professional in the said matter by the “Adjudicating Authority” (Principal Bench) wherein it is observed as follows:

“It is an application moved by the Resolution Professional on the creditor behalf for appointment of Mr. Anil Kohil [IBBI/IPA-001/IP-P00112/2017-18/10219] because in the earlier order appoint of the Resolution Professional is missed out. Elaborate order has already been passed under section 95 of the Code.

Upon having found that the RP is continuing on the rolls of IBBI as on date, we hereby direct that RP shall submit his report within 10 days of his appointment as stated u/s 99 of the Code.

Accordingly, this (IB)-947(PB)/2020 is hereby allowed”

23. The Learned Counsel for the Respondents contends that the use of the word ‘shall’ under Section 97 of ‘IBC’ is directory and not mandatory and call for substantial and not rigid interpretation as used in Section 97 of “IBC’. In this regard, the Learned Counsel for the Respondent adverts to the decision

of the Hon'ble Supreme Court in **"Kailash Vs. Nanhku & Ors."** reported in (2005) 4 SCC 480 wherein in paragraph-8 it is observed as under:

"All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal and stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice."

24. The Learned Counsel for the Respondents submits that where the expression 'shall' has been used it would not necessarily mean that it is mandatory and it will always depend upon the facts of the given case. The conjoint reading of relevant provision together with other provisions of the Rules, the purposes sought to be achieved and the object beginning implementation of such a provision as per decision in **'Dinesh Chandra Pandey Vs. High Court of M.P. & Anr.'** Reported in (2010) 11 SCC 500.

25. The Learned Counsel for the Respondents contends that 'time is the essence of the Code' and further that the Hon'ble Supreme Court in the decision of **'Mohan Singh & Ors. Vs. International Airport Authority'** in

(1997) 9 SCC 132 has observed and held that the Court is required to keep in view the impact of the Professional necessity of its compliance if the word 'shall' is considered as having mandatory character, the mischief that would ensue by such construction.

26. While rounding up, the Learned Counsel for the Respondents contends that the intention of the legislature in using the word 'shall' in Section 97 of 'IBC' cannot be mandatory as it is evident from the fact that from time to time, the IBBI releases the guidelines being the 'Insolvency Professionals' to act as Interim Resolution Professional, Liquidator, Resolution Professional, Bank Trust Trustees (Recommendation) coupled with Rule 8(1) of the Insolvency and Bankruptcy (Application to 'Adjudicating Authority' for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019.

27. The Core pleas of the Appellants in these two Appeals are that the 'Impugned Orders' 23.07.2021 in I.A.(IBC) No. 346 of 2021 CP(IB) No. 02/95/HDB/2021 and I.A.(IBC) No. 347 of 2021 in CP(IB) No. 03/95/HDB/2021 are silent on the List/panel of 'Insolvency Professional' as enumerated by IBBI and that Section 95(1) of 'IBC' provides that a Creditor may apply either by himself or jointly with other Creditors or through Resolution Professional may file an application to the "Adjudicating Authority" for initiation of CIRP and that as per Section 97(1) of 'IBC', if the Application under Section 94 or 95 is filed through the Resolution Professional, the "Adjudicating Authority" shall direct the Board within 7 (seven) days of the date of Application to confirm that there are no disciplinary proceedings pending against the Resolution Professional. Moreover, as per Section 97(2)

of 'IBC', the Board within 7 (seven) days of receipt of direction under sub Section (1) communicate the 'Adjudicating Authority' either (a) confirm the appointment of the Resolution Professional or (b) reject the appointment of the Resolution Professional and nominate another Resolution Professional for Insolvency Resolution Process. As per Section 97(5) of 'IBC', the "Adjudicating Authority" by an order appoint the Resolution Professional recommended under sub Section (2) or as nominated by Board under sub Section (4). Rule 8(1) of the Insolvency and Bankruptcy (Application to 'Adjudicating Authority' for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019 relates to confirmation or nomination of 'Insolvency Professional' by the Board which may share data base of the 'Insolvency Professional' including information about the disciplinary proceedings against them with the "Adjudicating Authority" from time to time. As such the contents raised on behalf of the Appellants that the requirements under Section 97(1) and 97(2) were not fulfilled by the 'Adjudicating Authority' at the time of passing of the 'Impugned Orders' especially in the teeth of word 'shall' employed in Section 97 of 'IBC'. To put it differently, the stand of the Appellants is that before the "Adjudicating Authority" can pass order as per Section 97(5) of 'IBC', the word 'shall' employed under Sections 97(1) & 97(2) if IBC are to be satisfied and in the instant case, the "Adjudicating Authority" had not fulfilled the requirements as enunciated by 'IBC' and as such, the "Impugned Orders" are not sustainable in the eye of law.

28. The other contention projected on the side of the 'Appellants' is that without determining the aspect of non-compliance of Section 97 of 'IBC', any

decision under Section 100 of 'IBC' shall affect the vital rights of the Appellants.

29. According to the Respondents, the provision of Section 97(1) & 97(2) of 'IBC' whereby the 'Adjudicating Authority' is required to obtain confirmation of the Board prior to the appointment of 'Resolution Professional' is only directory in nature and not a mandatory one and further that the Rule 8(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 that the Board may share database containing the relevant details in regard to the Resolution Professional to enable the 'Adjudicating Authority' to appoint of 'Resolution Professional' in a time bound manner.

30. On behalf of the Respondents, it is brought to the notice of this 'Tribunal' that the Appellants had filed I.A. No. 414 of 2021 (under Section 98 of 'IBC') to replace 'Resolution Professional'.

31. To be noted, that the 'Insolvency Professional' to act as 'IRP', Liquidator, Resolution Professional and Bankruptcy Trustee (Recommendation) Guidelines, 2021 at serial no. 7.1 under the caption 'Panel of IPs beginning from serial no. 7.1 to 7.5 which read as under:

"Panel of IPs

7.1 The Board will prepare a common Panel of IPs for appointment as IRP, Liquidator, RP and BT and share the same with the AA (Hon'ble NCLT and Hon'ble DRT) in accordance with these Guidelines.

7.2 The Panel will have Zone wise list of IPs based on the registered office (address as registered with the Board) of the IP.

7.3 The Panel will have validity of six months and a new Panel will replace the earlier Panel every six months. For example, the first Panel under these Guidelines will be valid for appointments during July-December 2021, and the next Panel will be valid for appointments during January-June 2022.

7.4 The NCLT may pick up any name from the Panel for appointment of IRP, Liquidator, RP or BT, for a CIRP, Liquidation Process, Insolvency Resolution or Bankruptcy Process relating to a corporate debtors and personal guarantors to corporate debtors, as the case may be.

7.5 The DRT may pick up any name from the Panel for appointment as RP or BT, for an Insolvency Resolution or Bankruptcy Process for personal guarantors to corporate debtors, as the case may be.”

32. A ‘Resolution Professional’ is an indispensable person in ‘Insolvency Resolution Process’, as he has a pivotal part to play. No wonder, an ‘Adjudicating Authority’ can exercise his judicial discretion in appointing a

‘Resolution Professional’ in a given case, based on the facts and circumstances of the case, which float on the surface.

33. Moreover, if viewed from the object and purpose to be achieved by ‘IBC’, the word ‘employed’ in Section 97(1) shall can only be construed as ‘directory’ by any stretch of imagination and not a mandatory one, that too by adopting a purposeful, meaningful, practical, pragmatic and result oriented approach, with a view to prevent an aberration of justice and to secure the ends of justice.

34. In the instant case on hand, ongoing through word ‘shall’ occurred in Section 97(1) of ‘IBC’ employed in Section 97(1) of ‘IBC’, this ‘Tribunal’ is of the considered view that it is only ‘Directory’ and not ‘Mandatory’ and holds it so, in the teeth of Rule 8(1) of the Insolvency and Bankruptcy (Application to ‘Adjudicating Authority’ for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 and also by which the NCLT may pick up any one from the Panel for appointment of ‘IRP’ Liquidator, Resolution Professional and Bankruptcy Trustee. As such, when the ‘Adjudicating Authority’ had exercised its judicial discretion in fair manner for the appointment of Mr. Anil Kohli as an ‘IRP’, the same cannot be found fault with as opined by this ‘Tribunal’.

35. In view of the foregoings, the contra plea, taken on behalf of the Appellants that before passing of an order under Section 97(5) of ‘IBC’, the ingredients of sections 91 and 92 of ‘IBC’, are ought to be satisfied, is not acceded to by this ‘Tribunal’. Looking at from any angle, the ‘Impugned

Orders' dated 23.07.2021 in I.A.(IBC) No. 346 of 2021 CP(IB) No. 02/95/HDB/2021 and I.A.(IBC) No. 347 of 2021 in CP(IB) No. 03/95/HDB/2021 for appointment of Mr. Anil Kohli as 'IRP' and directing him to file 'Report' under Section 19(9) of 'IBC' are free from any legal patent legal errors. Hence, the 'Appeals' fail.

In fine, the Company Appeal(AT)(CH)(Insolvency) No. 220 of 2021 Company Appeal(AT)(CH)(Insolvency) No. 221 of 2021 are dismissed. No costs.

[Justice M. Venugopal]
Member(Judicial)

(Kanthi Narahari)
Member(Technical)

22nd November, 2021

Akc