

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

17.12.2025

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)
MR. ARUN BAROKA, MEMBER (TECHNICAL)
MR. INDEVAR PANDEY, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.843 of 2025

Manish Mahendra Somani

...Appellant

Vs

1. Bank of Baroda,

...Respondent No.1

Through its Authorized Representative
Stressed Assets Management Branch

2. Rajendra Jain

...Respondent No.2

Resolution Professional of Manish Mahendra Somani

(Arising out of Order dated 17th April 2025 passed by the Adjudicating Authority
(National Company Law Tribunal, Ahmedabad Bench) in I.A. No. 337 of 2025 in
C.P. (IB) No.14 of 2024)

WITH

Company Appeal (AT) (Ins) No. 845 of 2025

Manoj Mahendra Somani

...Appellant

Vs

1. Bank of Baroda,

...Respondent No.1

Through its Authorized Representative
Stressed Assets Management Branch

2. Rajendra Jain**...Respondent No.2**

Resolution Professional of Manish Mahendra Somani

(Arising out of Order dated 17th April 2025 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench) in I.A. No. 336 of 2025 in C.P. (IB) No.13 of 2024)

Appeal No.	For Appellant	For Respondent
CA 843/2025 CA 845/2025	Mr. Aditya Kumar, Mr. Parv Verma, Mr. Ish Chopra, Advocates	Ms. Manvi Damle, Advocate for R-1

JUDGEMENT**Per Justice N. Seshasayee, Member (Judicial)**

These twin appeals arise out of two separate orders of the Adjudicating Authority dated 17.04. 2025 in I.A. No. 337 of 2025 in CP (IB) No. 14 of 2024 and I.A. No. 336 of 2025 in CP (IB) No. 13 of 2024. Vide these Orders, the separate petitions which the appellants had filed under Section 94 IBC were dismissed.

2. Both the cases involve a common issue both on facts and law. The appellants stood as personal guarantors for a loan advanced by the first respondent to the Corporate Debtor. Now, the following facts, which are common in both the cases and relevant for the current purpose, are stated as below:

- a) On 04.10.2023 both the appellants had filed their separate petitions under section 94 IBC.
- b) On 16.01.2024 the matter came to be posted before the Adjudicating Authority, on which date the Adjudicating Authority appointed a

Resolution Professional (since the appellants have not chosen to nominate the RP of their choice) and directed the appellants to serve the copies of their respective petitions on the RP. Both the appellants however, did not comply with this direction and failed to serve a copy of their respective petitions on the RP.

- c) A little over a year passed. The Financial Creditor, the first respondent herein, filed I.A. No. 337 of 2025 in CP No. 14 of 2024 (from which CA (AT) (Ins) No. 843 arises) and I.A. No. 336 of 2025 in CP No. 13 of 2024 (from which CA (AT) (Ins) No. 845 is preferred), wherein it inter alia sought a direction to the RP to file its report under Sec. 99 of IBC.
- d) On 04.04.2025 the Adjudicating Authority ordered notice on these two applications filed by the the first respondent, and listed the matter on 17.04.2025. On 17.04.2025, the RP didn't appear. On that very date (17.04.2025), invoking its inherent powers under Rule 11 of the NCLT Rules, the Adjudicating Authority chose to dismiss both the petitions filed by both the appellants under Section 94 IBC on the ground:
 - that the appellants have not served the copies of their respective petitions on the RP as directed by its order dated 16.01.2024; and
 - that RP has not filed his report in terms of Section 99 of the IBC.

3. Aggrieved by the said Orders of the Adjudicating Authority, the appellants have now preferred the present set of appeals. The learned counsel for the appellant submitted:

- a) The Adjudicating Authority ought not to have dismissed the petitions filed under Sec.94 IBC without receiving the report of the RP as mandated in

Section 99 IBC. Indeed, the financial creditor has filed it I.A No. 337 of 2025 and 336 of 2025 in the two petitions which the appellants have filed *inter alia* only for a direction to the RP to file his report under Sec. 99 IBC. Unless RP submits his report, the Adjudicating Authority cannot take a decision under Sec. 100 IBC, and the decision to dismiss the petitions under Sec.94 without the report of the RP does not fit in with the scheme of the IBC.

- b) At any rate the Adjudicating Authority should not have invoked its inherent powers under Rule 11 of the NCLT Rules to dismiss the petition under Section 94 IBC for the failure of the RP to file the report. For the failure of the RP to file the report, appellants should not be penalised.
- c) So far as the failure of the appellants to supply copies of their respective petitions are concerned, it is more a lapse in procedure for which cost is the ideal panacea in procedure. Indeed, inasmuch as the appellants have not named the RP of their choice in their respective petitions, and since the Adjudicating Authority itself has appointed a RP of its choice, the appellants were under a bonafide impression that the Registry of the NCLT would serve the RP with the copies of the petitions which the appellants had filed, since this has been the practice which is ordinarily followed. A bonafide error of the appellants should not be allowed to have its reflection on the maintainability of the very petitions that they had filed under Sec.94 IBC, more so, when the financial creditor has only required costs.

Reliance was placed on the ratio in ***Dilip B. Jiwarajka v. Union of India*** [(2024) 5 SCC 435], ***Bank of Baroda v. Farooq Ali Khan and Others*** [Civil Appeal No.

2759 of 2025 dated February 20, 2025], **Central Bank of India v. Deepen Arun Parekh** [CA (AT) (Ins.) No. 697 of 2024 dated November 11, 2024], **Tata Chemicals Limited v. Commissioner of Customs (Preventive), Jamnagar** [(2015) 11 SCC 628], **Babu Verghese and Others v. Bar Council of Kerala and Others** [(1999) 3 SCC 422], **Glas Trust Company LLC v. Byju Raveendran and Others** [Civil Appeal No.9986 of 2024 dated October 23, 2024] and **Report of the Bankruptcy Law Reforms Committee (November 2015) headed by the Chairperson, Dr. T.K. Viswanathan.**

4. Per contra, the learned counsel for the Financial Creditor, the first respondent in both the appeals, submitted that failure of the appellants to supply the copies of their respective petitions on the RP is not just a procedural lapse, since they have secured to themselves a procedural advantage of moratorium for about 15 months. And if the appellants are allowed to cure their failure now and allowed to continue their petitions, then it would confer an unmerited advantage on the appellants.

Discussions and Decision:

5. The impugned order apparently has clubbed two issues to produce one effect: it has considered both the failure of the appellants to serve copies of their respective petitions which they had filed under Sec. 94 to RP, and RP's failure to file his report under Sec.99 IBC. The Adjudicating Authority had taken them together for the same treatment. To the credit of the appellants, it must be stated that both these issues are distinct and they produce different consequences in

law. But the issue is whether the course adopted by the Adjudicating Authority would vitiate the Orders now under challenge entirely?

6. The impugned orders are severable. The issue of appellants' failure to serve copies of their petitions to RP and RP's failure to file the report, as stated earlier, are two independent issues. If the RP has not filed its report, then the duty is cast on the Adjudicating Authority to either to ensure that the RP files his report, or to replace the RP. Therefore, no petition under Section 94 can be dismissed more so under Rule 11 of the NCLT Rules for the failure of RP to file the report. To this extent the Orders of the Adjudicating Authority cannot be sustained.

7. Turning to the second aspect – the failure of the appellants to serve the copy of their respective petitions on the RP in terms of the Order of the Adjudicating Authority dated 16.01.2024, the learned counsel for the appellant made a valiant effort to impress upon this Tribunal that the appellants had bonafide believed that the Registry of the NCLT would serve these copies on the RP (since the RP is an appointee of the Adjudicating Authority). It appears that no such practice has evolved as contended by the appellant in working a nascent legislation which the IBC is. But, the fact remains that the appellants have been positively directed by the Adjudicating Authority to serve copies of their respective petitions on the RP. Where then is the space for any entertaining any bonafide belief contrary to the positive Orders of the tribunal?

8. This Tribunal is conscious that the procedural lapse should not ordinarily be allowed to have consequences which may have penalising effect such as dismissal of the petitions. However, a distinction may have to be made where on

the strength by a procedural lapse the defaulting party has gained an advantage in law, then such procedural lapse is required to be viewed more seriously. Very evidently from 16.01.2024 to 17.04.2025 the appellants in both the appeals have been enjoying the moratorium, owing to which the first respondent, the financial creditor, is disabled from enforcing the personal guarantee in the manner known to law. Had these appellants complied with the directions of the Adjudicating Authority dated 16.01.2024, then it is quite possible that the RP would have filed his report in time, which might have enabled the Adjudicating Authority to take a decision on it within a reasonable time. But, the appellant had enjoyed moratorium for about 15 months, and as rightly contended by the counsel for the first respondent, this has disabled the first respondent from proceeding against appellants. Therefore, there is a compelling need for this tribunal to balance the failure of the appellants to comply with what the Adjudicating Authority had directed to them do vide its Orders dated 16.01.2024, and the impact it had on the substantive right of the first respondent to enforce the personal guarantee against the appellants. If the appellants were to be granted a reprieve now, it then would surely confer an unmerited additional advantage of an extended moratorium on the appellants. We consider that the appellant's do not deserve it.

9. So far as exercising its inherent powers under Rule 11 of the NCLT Rules goes, the Adjudicating Authority has the authority to pass such directions as would meet the ends of justice. Given the circumstances in which the Adjudicating Authority had invoked its powers Rule 11, we do not consider it unreasonable.

10. To conclude, both these appeals are dismissed, and the Orders of the Adjudicating Authority dated 17.04.2025 in I.A. No. 337 of 2025 in C.P. (IB) No.14 of 2024 and I.A. No. 336 of 2025 in C.P. (IB) No.13 of 2024 are hereby confirmed.

The Appeals are dismissed.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)