

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.143/2024
(IA Nos.385/2024 & 306/2025)

In the matter of:

Mr. Rajesh Bhatia
B4/50 Paschim Vihar,
New Delhi – 110 063.
V

...Appellant

Canara Bank
Asset Recovery Management Branch
524, 8th floor, Circle Office Building
Anna Salai, Chennai – 600 018.

...Respondent No.1

Mr. Ramachandran Subramanian
IBBI/IPA-001/IP-P01440/2018-2019/12136,
29, Raju Naicken Street,
West Mambalam, Chennai – 600 033.

...Respondent No.2

Present :

For Appellant : Mr. Anandavenu, Advocate
For Mr. P.S. Suman, Advocate
For Respondents : Mr. MS. Viswanathan, Advocate for R1

WITH

Company Appeal (AT) (CH) (Ins) No.150/2024
(IA Nos.399/2024 & 307/2025)

In the matter of:

Mr. Ashwani Kumar Bhatia
B4/50 Paschim Vihar,
New Delhi – 110 063.
V

...Appellant

Canara Bank
Asset Recovery Management Branch,
524, 8th floor, Circle Office Building,
Anna Salai, Chennai – 600 018.

...Respondent No.1

Mr. Ramachandran Subramanian
IBBI/IPA-001/IP-P01440/2018-2019/12136,
29, Raju Naicken Street,
West Mambalam, Chennai – 600 033.

...Respondent No.2

Present :

For Appellant : Mr. Anandavenu, Advocate
For Mr. P.S. Suman, Advocate
For Respondents : Mr. MS. Viswanathan, Advocate for R1

JUDGMENT
(Hybrid Mode)

[Per : Justice Sharad Kumar Sharma, Member (Judicial)]

These are two connected Company Appeals which for the purposes of brevity they are being taken up together. **Comp App (AT) (CH) (Ins) No.143/2024**, Rajesh Bhatia Vs Canara Bank, Asset Recovery Management Branch & Anr., challenges the Impugned Order dated 20.03.2024, as it has been passed by the Learned NCLT, Chennai in CP(IB)/57(CHE)/2024, being the proceedings, which have been drawn under Section 95(1) of I & B Code, 2016.

Comp App (AT) (CH) (Ins) No.150/2024, Ashwani Kumar Bhatia Vs Canara Bank, Asset Recovery Management Branch & Anr., challenges the Impugned Order dated 19.03.2024, as it has been passed by the Learned NCLT, Chennai in CP(IB)/58(CHE)/2024, being the proceedings, which have been drawn under Section 95(1) of I & B Code, 2016.

Primarily, the Appellants in the capacity of being personal guarantor had come up with the case that they being the Managing Director of the

M/s. ARS Energy Private Limited (Corporate Debtor) had executed a Personal Guarantee Deed on 29.06.2017, for the purposes of securing financial assistance availed by the company for a sanctioned amount aggregating to Rs.397.64 crores, that the said loan amount was availed by the Corporate Debtor from a consortium of banks with its lead bank being the Canara Bank (who is Respondent No.1 herein), that the total outstanding dues as on 29.09.2023 stood at as 305.22 crore, that the Corporate Debtor could not pay the monthly instalments towards the sum borrowed and the loan account was declared as NPA on 29.08.2022, that Demand Notice was issued by the 1st Respondent under Section 13(2) of the SARFAESI Act, 2002 on 20.09.2023, and that the Possession Notice was issued on 02.12.2023 while exercising its powers under Section 13(4) of the SARFAESI Act, as against the secured assets of the Corporate Debtor.

The Corporate Debtor initiated a proceeding under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal which was numbered as SA No.2/2024, challenging the possession notice dated 02.12.2023 as issued under Section 13(4) of the SARFAESI Act, 2002, which is pending till date.

However, CIRP Proceedings were not initiated and instead Respondent No.1, the Canara Bank as the lead member of the consortium of Financial Creditors issued a demand notice on 30.11.2023 under Section 95 Sub-Section (4) of the I & B Code, for an amount of Rs.93.46 crores, invoking the Personal Guarantee Deed as it was executed by the Appellants,

the Personal Guarantors. Thereinafter, Respondent No.1 filed a petition in CP(IB)57(CHE)/2024 before the Learned NCLT, Chennai under Section 95(1) of I & B Code and Learned NCLT after hearing both parties, passed the impugned order on 20.03.2024 appointing the RP, Respondent No.2 herein with directions to examine the application/petition filed under Section 95(1) of the Code, relevant documents and after examination of the propriety of the demand raised. The fact which is come on record is that the Resolution Professional Mr. Ramachandran Subramanian is appointed as an IRP in respect of the personal guarantors. Consequently, the NCLT by the Impugned Order dated 20.03.2024 examines the Application as set out under Section 95 for the purposes of taking an action under Section 97(6) of the Code, for the purposes of making recommendations for either acceptance or rejection of the Company Petition preferred under Section 95 of I & B Code.

As far as up to this stage, the proceedings are concerned, the Appellants' grievances were only as against the process of appointment of the Resolution Professional which was followed by the Learned Adjudicating Authority by contending thereof, that was in violation of the requirement of the provision contained under Section 97 of I & B Code and limiting the argument from the said perspective, the personal guarantors have submitted that once the process of appointment of the IRP itself happens to be bad, the entire process right from inception becomes illegal and could be

ventured into by filing a Company Petition as against the action of appointment of a Resolution Professional.

Primarily, if the provision contained under Section 97 of the I & B Code, is taken into consideration, it is the sole prerogative, and power which is vested with the Learned Adjudicating Authority to appoint the Resolution Professional for the purposes of carrying out the proceedings under Section 95. Section 97 which is extracted hereunder, which contemplates the process of appointment of a Resolution Professional and it has nowhere carved out an exception nor an avenue for the Personal Guarantor as against whom the proceedings under Section 95 have been initiated, to have any say in relation to the process adopted for the appointment of the Resolution Professional. Section 95 & 97 of I & B Code are extracted hereunder: -

“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.***

(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.

(4) An application under sub-section (1) shall be accompanied with details and documents relating to—

(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;

(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and

(c) relevant evidence of such default or non-repayment of debt.

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

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified”.

“97. Appointment of resolution professional.—*(1) If the application under Section 94 or 95 is filed through a resolution professional, the Adjudicating Authority shall direct the Board within seven days of the date of the application to confirm that there are no disciplinary proceedings pending against resolution professional.*

(2) The Board shall within seven days of receipt of directions under sub-section (1) communicate to the Adjudicating Authority in writing either—

(a) confirming the appointment of the resolution professional; or

(b) rejecting the appointment of the resolution professional and nominating another resolution professional for the insolvency resolution process.

(3) Where an application under Section 94 or 95 is filed by the debtor or the creditor himself, as the case may be, and not through the resolution professional, the Adjudicating Authority shall direct the Board, within seven days of the filing of such application, to nominate a resolution professional for the insolvency resolution process.

(4) The Board shall nominate a resolution professional within ten days of receiving the direction issued by the Adjudicating Authority under sub-section (3).

(5) 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).

(6) A resolution professional appointed by the Adjudicating Authority under sub-section (5) shall be provided a copy of the application for insolvency resolution process”.

Primarily, the gist of the argument of the Learned Counsel for the Appellants who had been the petitioners in the respective Company Petitions is that, at the stage when the Learned Adjudicating Authority was appoints the Resolution Professional under Section 97, no consultation of any nature whatsoever is required to be made with the creditors who are instrumental in the initiation of proceedings under Section 95, as it may vitiate the process and influence the decision of Learned Adjudicating Authority which can be detrimental to them. The Appellants further contend that consultation with Financial Creditor during appointment of Resolution Professional would be in violation of Section 97 of I & B Code and particularly, the provision as contained under Sub-Section (3) of Section 97 of I & B Code which according to the Appellant, if it is read in harmony with Sub-Section (4) of Section 97 of I & B Code, since the appointment of the Resolution Professional mean an exclusive prerogative of the Learned Adjudicating Authority, exercise of this power should not be affected by any influence brought upon by its creditors who have instituted the very proceedings

against them, the personal guarantors. Thus, in other words, the Appellant contended that, the appointment of the Resolution Professional since being a violation of Sub-Section (4) of Section 97 to be read with Sub-Section (3) of Section 97, that itself would be sufficient grounds for the Appellant to file a Company Petition as against the proceedings initiated against him under Section 95 of I & B Code.

Apparently, the ground as pleaded and argued seem to be very logical enough because of the alleged defects which have been claimed to have chanced in the appointment of the Resolution Professional allegedly to be in violation of Sub-Section (4) of Section 97 to be read with Sub-Section (3) of Section 97 of I & B Code. But the fact remains that the Appellant admits the fact that there had been a credit facility extended to the Corporate Debtor of which the Appellant was a personal guarantor and that the account was declared as a Non-Performing Asset on 29.08.2022, the Financial Creditor initiated proceeding under Section 95 of I & B Code. This and the ground behind Section 95 proceedings have not been challenged by the Appellants. The Learned Counsel for the Appellants has confined his challenge to the Impugned Order passed by the Learned Adjudicating Authority on 20.03.2024, with regards to the appointment of Resolution Professional. To us, this challenge is not sustainable in view of the ratio laid down by the Hon'ble Apex Court in ***Writ Petition (Civil) No.1281 of 2021, Dilip B Jiwrajka Vs Union of India & Ors***, where the Hon'ble Apex Court

in a proceeding held under Section 95 of I & B Code, has held that at up to the stage of Section 100 since none of the steps contemplated between Section 95 to 100 have any element of a judicial adjudication of any right of the party against whom the proceedings are expected to drawn under Section 95 of the Code, it has held that no person can have a cause to file a petition until or unless there is an admission of Section 95 proceedings by passing of an order under Section 100. Thus the stages of the proceedings from Section 95 to Section 100 do not have any adjudicatory effect and since it would be inclusive of Section 97 in itself, the entire cause agitated by the Appellant in the Company Petition as well as in the Company Appeal cannot be subjected to a judicial scrutiny either by the NCLT or this Appellate Tribunal as against the order passed by the NCLT. It is exclusively on the aforesaid ground that the Learned Tribunal has observed that since the entire exercise of powers of appointment of a Resolution Professional is being exclusively vested with the Learned Adjudicating Authority and particularly, the personal guarantor has got no role to play till the stage under Section 100 is achieved, and accordingly hold that the proceedings drawn by the Appellant by way of the aforesaid Company Petition is not tenable.

Further, if the Order of the Learned Tribunal is considered, the Learned Tribunal has protected the interest of the Appellant in the light of the provisions contained under the I & B Code, where all objections at the hands of the Appellant have been left open to be agitated, once the

Resolution Professional submits the report under Section 99 of I & B Code. It was observed that since the Resolution Professional thus appointed under Section 97 is vehement for the purposes of collating the records, to enable the Learned Adjudicating Authority to pass an order under Section 95 of I & B Code, it does not materially affect any personal right of the Appellant to enable him to file Company Petition and the consequential Company Appeal too, as all his rights are safeguarded by raising an objection to the report of Resolution Professional to be submitted. That is why the Learned Adjudicating Authority has observed that the Resolution Professional who has been thus appointed under Section 97 would collate all facts and records relevant to the application, would examine the application as per the provisions of Sub-Section (6) of Section 97 and after examining the records will submit its report under Section 99 of the Code to Learned Adjudicating Authority for either accepting or rejection of application.

Owing to the fact that up to the stage of Section 99, which obviously includes within itself Section 97 too, the Appellant cannot be said to be aggrieved persons since the proceedings not being judicial proceedings their petition are not sustainable.

Since, as per the Impugned Order under challenge and even as per Sub-Section (6) of Section 97, all rights of the Appellant are safeguarded by filing an objection against the report to be submitted, they cannot be said to

be aggrieved persons by any of the actions taken up to the stage of Section 97 of I & B Code.

Since, the Impugned Order itself protects the interest of the Appellant leaving all issues open to be argued and objected, no prejudice is caused to the Appellants, and lastly, so far as the Judgment of ***Dilip B Jiwrarka*** is concerned, since it is a ratio already decided by the Hon'ble Apex Court and it still holds good in the light of the observations made in para 86 of the Impugned Order (which has not been extracted have to avoid loading this Judgment). Therefore, the Appellants have got no material sustainable rights to be pressed either in the Company Petition or in the instant Company Appeal as against the Impugned Order. Thus, both the Appeals lack merit and deserve to be dismissed. Based on the above reasoning, the Appeal CA (AT) (CH) (Ins) No.143/2024 and the Appeal CA (AT) (CH) (Ins) No.150/2024 are dismissed. The connected pending Interlocutory Applications, if any, are closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

30.04.2025
VG/MS/RS