Sl.No.01

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
16.07.2026 AT 10:30 A.M.

Company Petition IB/156/95/2023
U/s 95 of IBC

IN THE MATTER OF:
State Bank of India **…Petitioner**

Vs

Vijay Latha Jain **…Respondent**

CORAM:-
SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL

ORDER

Present: Mr. VVSN Raju, Ld. Counsel for the Petitioner.

Mr. Aman Agarwal, Ld. Counsel for the Respondent.

In view of the separate order, question of maintainability is disposed of.

Mr. Sivarama Prasad Bhamidi, having IBBI Registration No.IBBI/IPA-003/IP-N00084/2017-18/10822. (validity upto 29.08.2026), Phone No:9490797603 and email id: bsprasad9@gmail.com, is hereby appointed as Resolution Professional in this matter. The RP is directed to submit his report under Section 99 of IBC within 10 days. The remuneration of the RP is fixed at Rs.50,000/- (Rupees Fifty Thousand only), to be paid by the FC.

Matter is adjourned to 12.08.2026.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

siva

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

CP(IB) NO. 156/95/HYD/2023

IN THE MATTER OF
SMT. VIJAY LATHA JAIN (PERSONAL GUARANTOR TO SURYAJYOTI SPINNING MILLS LTD)

BETWEEN:

STATE BANK OF INDIA
STRESSED ASSETS MANAGEMENT
Corporate Office at State Bank Bhavan, Madam Cama Road,
Nariman Point Mumbai Maharashtra 400021
having branch office, interalia,
at SAMB Secunderabad, Prabhat Towers,
Gunfoundry, Hyderabad-1
Rep.by its Asst. General Manager

...Petitioner/Financial Creditor

AND

1. SMT. VIJAY LATHA JAIN,
D/o Vasudev Agarwal
58, Friends Colony East, New Delhi-110065

...Respondent No 1/Personal Guarantor

2. SURYAJYOTI SPINNING MILLS LTD
Registered Office at Burgul Village,
Farooq Nagar Mandal, Mahabubnagar District,
509202, Andhra Pradesh, Telangana

.... Respondent No 2/ Corporate Debtor

Date Of Order: 16.07.2026

CORAM:
Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Shri Sanjay Puri, Hon'ble Member (Technical)

Counsels Present:
For the Petitioner : Mr. VVSN Raju and Ms. Aishwarya, Ld. Counsels
For the Respondent/PG: Mr. Sunil Fernandes, Ld. Senior Counsel along with Mr. D. Pavan Kumar, Ms. Renuka Iyer & Mr. Aman Agarwal, Ld. Counsels.

Order

1. The short question that arises for consideration is whether, in a petition filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (**IBC**), the Personal Guarantor is entitled to be heard, before the appointment of a Resolution Professional under Section 97 of the IBC, on the limited question of jurisdictional facts.
2. The present Company Petition has been filed by the State Bank of India (**Financial Creditor/Petitioner**) under Section 95 of the IBC against Smt. Vijaylatha Jain **(Personal Guarantor/Respondent No.1**), who had allegedly executed a personal guarantee for securing the credit facilities extended to M/s. Suryajyoti Spinning Mills Ltd. (**Corporate Debtor/Respondent No.2**). It is the case of the Petitioner that the Corporate Debtor committed default in repayment of the financial debt and, consequently the guarantee executed by Respondent No.1 was invoked vide notice dated 15.03.2017. The petition has been filed along with the particulars and documents contemplated under Section 95(4) of the IBC.
3. Since the present petition had been instituted prior to the judgment of the Hon'ble Supreme Court in ***Dilip B. Jiwrajka v. Union of India***[1]**,** Respondent No.1 filed a counter before the appointment of the Resolution Professional under Section 97 of the IBC raising, inter alia, the following objections

> *(i) No fresh and unconditional personal guarantee was executed at the time of restructuring of the loan facilities; only a Share Pledge Agreement dated 27.06.2013 was executed, followed by creation of an equitable mortgage.*

---
[1] *(2023) ibclaw.in 147 SC*

(ii) The alleged Personal Guarantee dated 28.08.2014 was not an independent contract of guarantee but collateral to the equitable mortgage, with liability restricted under Clause 12 thereof to the value of the mortgaged properties or ₹73 lakhs, whichever is higher.

(iii) The Petitioner's correspondence dated 03.12.2018 addressed to ECGC Ltd. and the pleadings before the Debts Recovery Tribunal acknowledged the liability of Respondent No.1 as being limited.

(iv) The petition was barred by limitation, the date of default being stated as 28.12.2015.

(v) Material facts had been suppressed by not placing on record the alleged Personal Guarantee dated 28.08.2014 and by relying upon a document to which Respondent No.1 was not a party.

(vi) The claim amount was inflated and inconsistent with the demand raised in the earlier proceedings under the SARFAESI Act.

(vii) A sum of ₹5 Crores had already been deposited during the One-Time Settlement negotiations and, together with the value of the mortgaged properties, fully discharged the alleged capped liability.

(viii) The present petition was barred by the principles underlying Order II Rule 2 of the Code of Civil Procedure, 1908, as no claim had been made against Respondent No.1 in her personal capacity in the earlier proceedings.

4. During the pendency of the present proceedings, Respondent No.1 also approached the Hon'ble High Court for the State of Telangana by filing Writ Petition No. 1995 of 2024 challenging the maintainability of the proceedings. The Hon'ble High Court, by order dated 12.02.2024, directed that the question of maintainability be considered.
5. We have heard the learned counsel appearing for the Petitioner as well as Respondent No.1 and have perused the material available on record.

Findings

6. The objections raised by Respondent No.1 fall to be considered in the backdrop of the statutory scheme contained in Chapter III of Part III of the Insolvency and Bankruptcy Code, 2016. The ambit of the enquiry permissible at the stage of appointment of a Resolution Professional under Section 97 of the Code has now been conclusively explained by the Hon'ble Supreme Court in ***Dilip B. Jiwrajka v. Union of India*** supra. It is, therefore, necessary to examine whether the objections urged by Respondent No.1 are capable of adjudication at this stage of the proceedings.
7. Respondent No.1 has raised several objections questioning, inter alia, the existence and enforceability of the alleged personal guarantee, limitation, suppression of material facts, quantum of liability, maintainability of the Petition, and various other allied issues. Learned Senior Counsel Mr. Sunil Fernandes appearing for Respondent No.1 submitted that, before appointing a Resolution Professional under Section 97 of the Code, this Adjudicating Authority is required to examine whether the foundational facts necessary to invoke its jurisdiction under Chapter III of Part III of the Code are satisfied. According to the learned Senior Counsel, such foundational facts include the existence of a legally enforceable debt and default, a valid contract of personal guarantee, limitation and other jurisdictional prerequisites. It was, therefore, contended that the appointment of a Resolution Professional necessarily presupposes a judicial determination of these issues after affording an opportunity of hearing to the Personal Guarantor.

8. Per contra, learned counsel appearing for the Petitioner submitted that the controversy is no longer res integra in view of the judgment of the Hon'ble Supreme Court in ***Dilip B. Jiwrajka v. Union of India*** supra. It was contended that the statutory scheme does not contemplate any adjudicatory exercise by the Adjudicating Authority prior to the appointment of the Resolution Professional and that all objections touching upon the maintainability of the application or merits of the claim are liable to be considered only after the Resolution Professional submits a report under Section 99 and before an order is passed under Section 100 of the Code.
9. The principal contention advanced on behalf of Respondent No.1 stands authoritatively concluded by the judgment of the Hon'ble Supreme Court in ***Dilip B. Jiwrajka v. Union of India*** supra. The very contention urged before us, namely, that the Adjudicating Authority must determine the existence of debt, default and other alleged jurisdictional facts before appointing a Resolution Professional under Section 97, was specifically advanced before the Hon'ble Supreme Court, as noticed in paragraphs 24 and 25 of the judgment.
10. The Hon'ble Supreme Court rejected the said contention in unequivocal terms. In paragraph 72 of the judgment, the Court held that Section 97 merely contemplates the appointment of a Resolution Professional to undertake the statutory exercise envisaged under Section 99 and does not envisage any adjudicatory determination by the Adjudicating Authority at that stage. The Court further held, in paragraph 74, that questions relating to the subsistence of debt and the continuance of the debtor-creditor relationship, are not pure questions of law but involve mixed questions of law and fact. Such issues cannot be adjudicated while exercising powers under Section 97, as doing so would amount to importing into the provision an adjudicatory function which the legislature has consciously omitted

11. The Hon'ble Supreme Court further explained that under the statutory scheme, the Resolution Professional performs a facilitative and recommendatory role under Section 99 by examining the application, seeking such further information or explanation as may be necessary from the debtor and the creditor, and thereafter submitting a report containing recommendations to the Adjudicating Authority. It is only after the submission of such report that the Adjudicating Authority undertakes the judicial determination contemplated under Section 100 after affording an opportunity of hearing to the parties. The report of the Resolution Professional is merely recommendatory and does not bind the Adjudicating Authority.

12. The contention that the principles of natural justice stand violated by postponing the hearing was also rejected by the Hon'ble Supreme Court. As observed in paragraph 80, the Personal Guarantor is entitled to participate before the Resolution Professional during the preparation of the report under Section 99 by furnishing explanations and relevant material. Thereafter, before any order is passed under Section 100 either admitting or rejecting the application, the Personal Guarantor is again entitled to a hearing before the Adjudicating Authority.

13. The legal position was authoritatively summarised in paragraph 86 of the judgment. The Hon'ble Supreme Court, inter alia, held that:

> (i) <u>No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC</u>;
>
> (iii) The submission that a hearing <u>should be conducted by the adjudicatory authority for the purpose of determining 'jurisdictional facts' at the stage when it appoints a resolution professional under Section 97(5) of the IBC is rejected</u>. No such adjudicatory function is contemplated at that stage. To read in such a

requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;

(v) There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional;

(vi) No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100.

14. The aforesaid view also finds support from the decision of the Hon'ble NCLAT in ***Ravi Ajit Kulkarni v. State Bank of India***[2], wherein it was held that the Code does not contemplate any hearing to the Personal Guarantor before the appointment of a Resolution Professional under Section 97 and that, once an application under Section 95 is filed, the next statutory step is the appointment of the Resolution Professional. The Appellate Tribunal observed:

> "41………. Before the stage of appointment of the Resolution Professional, the Code or Rules and Regulations do not provide for any hearing as such to be given to the Debtor. Undertone of Section 97(5) also is to bind Adjudicating Authority to appoint Resolution Professional as nominated by the Board. Thus, once application under Section 95 is "filed" the next step for Adjudicating Authority is to appoint the Resolution Professional."

15. The aforesaid position has been reiterated by the Hon'ble NCLAT in ***Central Bank of India vs. Deepen Arun Parekh***[3], wherein it was held that the Adjudicating Authority exceeds its jurisdiction if it enters into adjudicatory issues before the stage contemplated under Section 100 of the

[2] *(2021) ibclaw.in 396 NCLAT*
[3] *Company Appeal (AT) (Insolvency) No. 697 of 2024*

Code. The Hon'ble Appellate Tribunal clarified that all objections on merits are required to be considered only after the Resolution Professional submits the report under Section 99 and the application is taken up for consideration under Section 100.

16. The decisions relied upon by Respondent No.1 do not advance her case as the Personal Guarantor. None of the said decisions lays down that, before appointing a Resolution Professional under Section 97 of the Code, the Adjudicating Authority is required to adjudicate upon the objections raised by the Personal Guarantor or determine the so-called jurisdictional facts. The said decisions are, therefore, distinguishable on facts as well as on law.

17. Applying the aforesaid principles to the facts of the present case, this Adjudicating Authority is of the view that, at the stage of exercising jurisdiction under Section 97 of the Code, the enquiry is limited to satisfying itself that the Petition under Section 95 has been filed in accordance with the requirements of the Code, including compliance with Section 95(4), so as to enable the appointment of a Resolution Professional. The objections raised by Respondent No.1, insofar as they seek an adjudication upon the validity or enforceability of the alleged personal guarantee, the existence or extent of liability, limitation, maintainability and other defences on the merits, fall outside the ambit of the enquiry under Section 97. Such objections may be considered, if necessary, after the Resolution Professional submits the report under Section 99 and before this Adjudicating Authority exercises its jurisdiction under Section 100 of the Code.

18. At this stage, therefore, the enquiry of this Adjudicating Authority is confined to satisfying itself that an application under Section 95 of the Code has been presented in the prescribed form and is accompanied by the particulars and documents contemplated under the statute so as to enable

appointment of a Resolution Professional under Section 97. Since the present application satisfies the statutory requirements, no adjudication upon the disputed objections raised by Respondent No.1 is called for at this stage.

19. Accordingly, the objections raised by Respondent No.1 are kept open to be urged, at the stage contemplated under Section 100 of the Code and stand disposed of for the purposes of the present proceedings under Section 97.

Sd/-	**Sd/-**
(Sanjay Puri)	**(Rajeev Bhardwaj)**
Member (Technical)	**Member (Judicial)**