

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 200 of 2025

[Arising out of Order dated 20.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Cuttack Bench), in C.P. (IB)-10/CB/2023]

IN THE MATTER OF:

Suresh Atlani

Atlani Villa, Khamahardih Road,
Opposite Sales Tax Colony,
Behind Shiv Mandir, Shankar Nagar,
Raipur, Chhattisgarh – 492007.

...Appellant

Versus

Omkara Asset Reconstruction Pvt. Ltd.

A Company incorporated under the Companies
Act, 2013
And having its registered office at
No.9, MP Nagar First Street,
Kongu Nagar Extension,
Tirupur, Coimbatore,
Tamil Nadu - 641607

...Respondent

Present:

**For Appellant : Mr. Ujjwal Anand Sharma, Mr. Justine George and
Mr. Tushar Saigal, Advocates.**

**For Respondents : Mr. Joy Saha, Sr. Advocate with Ms. Kiran
Sharma, Advocate.**

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal by a personal guarantor of corporate debtor, Geekay Colonizers and Builders Limited have been filed challenging the order dated 20.12.2024 passed by the adjudicating authority (National Company Law Tribunal, Cuttack Bench) admitting Section 95(1) application filed by the

financial creditor against the personal guarantor, the appellant herein. Appellant aggrieved by the admission of Section 95 application has filed this appeal.

2. Brief facts of the case necessary to be noticed for deciding the appeal are:

- i. The corporate debtor, Geekay Colonizers and Builders Limited were sanctioned a project loan of Rs.94 Crore by Dewan Housing Finance Ltd. (DHFL) out of which Rs.69 Crore was disbursed. Appellant provided guarantee in the aforesaid loan.
- ii. Corporate debtor was unable to pay loan and amount was declared as NPA on 01.01.2016.
- iii. DHFL recalled the entire credit facility on 15.06.2016. Section 13(2) notice was issued on 21.10.2016. Corporate debtor on 13.03.2018 submitted a One-Time Settlement (OTS) proposal under which partial amount stood paid.
- iv. In the Corporate Insolvency Resolution Process (CIRP) of DHFL, Piramal Capital and Housing Finance Limited acquired DHFL with effect from 30.09.2021.
- v. A demand notice dated 13.07.2022, under Rule 7(1) of the Insolvency and Bankruptcy Board of India (Resolution Process for Personal Guarantor) Rules, 2019 was issued demanding amount of making a

demand of defaulted amount. No payment having been made by the personal guarantor, Section 95 application was filed on 31.10.2022.

- vi. Piramal Capital & Housing Finance Ltd. assigned its financial debt to the Omkara Asset Reconstruction Pvt. Ltd. on 10.01.2023, in consequence of which Omkara Asset Reconstruction Pvt. Ltd. was substituted in place of Piramal Capital & Housing Finance Limited.
- vii. In application under Section 95 of the Insolvency and Bankruptcy Code, 2016 (for short 'the Code' or 'the IBC Code'), amount in default in Part III was claimed of Rs.103,25,42,189/-. Adjudicating authority on 16.01.2024 appointed Ms. Sneh Maheshwari as a Resolution Professional (RP) and directed for submission of report under Section 99.
- viii. On 02.02.2024, RP received communication of his appointment.
- ix. RP submitted its report on 02.02.2024 and amended report was also filed on 14.02.2024.
- x. On 24.06.2024, adjudicating authority directed the RP to carry out certain amendment and file fresh consent form.
- xi. The personal guarantor filed objection before the adjudicating authority to the report submitted by RP. Personal guarantor raised various objections, including the objection that report submitted by RP is beyond 10 days, hence cannot be accepted.

xii. Adjudicating authority, heard the counsel for the parties and vide order dated 20.12.2024 has passed an order under Section 100 admitting Section 95 application. Aggrieved by which order, this appeal has been filed.

3. We have heard Mr. Ujjwal Anand Sharma learned counsel appearing for the appellant. Learned Sr. counsel Mr. Joy Saha has appeared for the financial creditor. We have also heard learned counsel appearing for the RP.

4. Learned counsel for the appellant challenging the order of the adjudicating authority dated 20.12.2024 submits that RP was obliged to submit a report within 10 days of his appointment, i.e., up to 26.01.2024, whereas, he filed the report only on 02.02.2024, which was beyond the period provided for submitting a report. No application for condonation of delay in filing the report was filed nor at any point of time, delay in the filing the report was condoned. Subsequent to filing of the first report, the RP filed an amended report without leave of the court on 13.02.2024, which is also impermissible. On 22.04.2024, appellant has filed objection to the reports submitted by the RP. Adjudicating authority committed error in accepting the report which was time barred and was not filed within the time prescribed. It is submitted that period of 10 days provided in the statute for submission of the report is a mandatory. There is no provision for condonation of delay in submission of the report which is clear from the scheme of the IBC. It is submitted that there is no provision in the IBC empowering the RP to submit a second report/amended report. Timelines which are provided for the RP to

submit a report is a mandatory. The expression “shall” has been used in Section 99 regarding submission of the report by the RP, which has to be given its due meaning and purpose. There is also no provision in Section 99 for filing application for condonation of delay in filing the report, thus report submitted beyond the period of 10 days cannot be taken on record. It is submitted that adjudicating authority committed error in relying on the reports of the RP and admitting Section 95 application.

5. Learned counsel for the appellant has also relying on the judgment of the Hon’ble Supreme Court in the matter of **‘V. Nagarajan’ Vs. ‘SKS Ispat & Power Ltd. & Ors.’** reported in **(2022) 2 SCC 244**, contend that IBC is a complete Code and law on limitation in IBC is settled and power to condone delay is tightly circumscribed and conditioned upon showing sufficient cause within the condonable period. Court is not empowered to condone the delay beyond statutory prescription.

6. Learned Sr. counsel Mr. Joy Saha appearing for the financial creditor opposing the submission of the appellant contends that the 10 days period provided for submission of report by RP is a directory provision. There were sufficient reasons explained before the adjudicating authority for submitting the report on 02.02.2024. It is submitted that the report as well as the amended report dated 14.02.2024 were filed by the RP which was accepted on record by adjudicating authority, which clearly means that adjudicating authority has accepted the said report for consideration. It is submitted that submission of the appellant that report could not have been looked into

cannot be accepted. The adjudicating authority directed RP to carry out certain amendment on 24.06.2024, thereafter, amended report was also filed. Adjudicating authority has considered the submission which is sought to be advanced by the appellant and has rightly rejected the same by considering the report of the RP as well as amended report filed by the RP.

7. Learned counsel for the RP has also submitted that in compliance of the order of the adjudicating authority, amendments were carried out by the RP.

8. We have considered the submissions of counsel for the parties and perused the records.

9. The question which need to be considered in the present appeal is as to whether 10 days period provided to the RP for submitting a report under Section 99 is mandatory and whether report which is submitted after period of 10 days cannot be taken on record by adjudicating authority or looked into for passing an order under Section 100. The RP is appointed under Section 97. Section 97(5) provides for appointment of RP by adjudicating authority and under sub-Section (6), the RP is required to provide the copy of the application for insolvency resolution process. Section 97(5) & (6) are as follows:

“97. Appointment of resolution professional.–

(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.

10. Section 99 deals with the submission of report by the RP. Section 99(1) is as follows:

“99: Submission of report by resolution professional.–

(1) The resolution professional shall examine the application referred to in [section 94](#) or [section 95](#), as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.”

11. Section 99(1) requires the RP to examine the application referred to in Section 94 and Section 95 within 10 days of his appointment and submit a report. Sub-Section (4) of Section 99 empowers the RP to seek further information or explanation in connection with the application as may be required from the debtor or the creditor. Sub-Sections (4), (5), (6) & (7) of Section 99 are as follows:

“99: Submission of report by resolution professional.–

(4) For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.

(5) The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.

(6) The resolution professional shall examine the application and ascertain that—

(a) the application satisfies the requirements set out in [section 94](#) or [95](#);

(b) the applicant has provided information and given explanation sought by the resolution professional under sub-section (4).

(7) After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.

12. The above scheme of Section 99 clearly indicates that although Section 99(1) provides that RP shall examine the application referred to Section 94 or Section 95 within 10 days of his appointment and submit his report. But subsequent provisions, i.e., sub-Section (4) of Section 99 empowers the RP to seek such other information or explanation in connection with the application and by virtue of sub-Section (5) of Section 99, the person who has been asked for information is required to submit information within seven days from receipt of the request.

13. When we look into the scheme as delineated by Section 99(1), (4), (5), (6) & (7) as noticed above, it is clear that submission of report within 10 days from appointment of the RP is only directory and cannot be held to be mandatory. When the RP after examining the application, if come to the conclusion that certain further information or explanation are required, he may ask for the information from the debtor or the creditor or any other person. The person from whom information is asked for is required to give information within seven days of the receipt of the request and under sub-Section (6) the RP has to again examine the information received from under sub-Section (4) and thereafter submit his recommendation and sub-Section

(7) of Section 99. The above legislative scheme clearly indicates that legislature never intended that period of 10 days for submitting a report for appointment of RP is mandatory. The use of expression “shall” although generally indicate mandatory nature of provision but use of “shall” is always not conclusive and whether expression “shall” cast a mandatory duty or only directory depends on the scheme of the statute.

14. In this context, we may refer to the judgment of this Tribunal in **Comp. App. (AT) (Ins.) No.583/2021** in the matter of **‘Aditya Kumar Tibrewal’ Vs. ‘Om Prakash Pandey & Ors.’**. In the above case, this Tribunal had occasion to consider the provisions of Regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 (for short the ‘CIRP Regulations, 2016’). Regulation 35A was inserted in regulations by amendments made with effect from 03.07.2018. Regulation 35A provides as follows:

“35A. Preferential and other transactions.–

(1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections [43](#), [45](#), [50](#) or [66](#).

(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections [43](#), [45](#), [50](#) or [66](#), he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date.

(3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on

or before the one hundred and thirtieth day of the insolvency commencement date.

(3A) The resolution professional shall forward a copy of the application to the prospective resolution applicant to enable him to consider the same while submitting the resolution plan within the time initially stipulated.

(4) The creditors shall provide to the resolution professional, relevant extract from the audits of the corporate debtor, conducted by the creditors such as stock audit, transaction audit, forensic audit, etc.”

15. In all sub-regulation of Regulation 35A, the rule making authority has used the expression “shall” and use of the expression “shall” is preface by a timeline. For example, under sub-regulation (1) of 35A on or before 75th date of the insolvency commencement date, RP shall form an opinion whether the corporate debtor has been subjected to in transaction covered under Sections 43, 45, 50 or 66. This Tribunal after considering the scheme of Regulation 35 has held that provisions, the timeline provided in 35A is only directory. Following are the relevant observations of this Tribunal in the above case:

“11. Questions I & II

v. What is intend and purpose of using the expression “shall” in Regulation 35A of the CIRP Regulations has to be looked into for coming to a conclusion as to whether non-compliance of time period prescribed in Regulation 35A of the CIRP Regulations vitiates all actions taken by Resolution Professional. In the present case, the case of the Appellant is that he came to know about the fraudulent transaction i.e. lease deed dated 30th November, 2016 only on 15th January, 2020 when Respondent No. 1 shared lease deed with the Resolution Professional and thereafter the Application I.A. 742/2020 was filed. The Application filed being I.A. No. 742/2020 was obviously filed beyond the period of 135th Day of Insolvency Commencement Date. The rules of statutory

interpretation for finding out true nature of statutory provision, whether the mandatory or directory, are well settled. Hon'ble Supreme Court in '**State of Uttar Pradesh Vs. Manbodhan Lal Shrivastava**' AIR1957 SC 912 at page 917 made following observations:

"..Hence, the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding, or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that noncompliance with those provision will not render the proceeding invalid. In that connection, the following quotation from Crawford on 'Statutory Construction'- art. 261 at p. 516, is pertinent:

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provisions but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other...."

vi. The I&B Code, 2016 contains timeline for different actions the time period prescribed under Regulation 35A of the CIRP Regulations is time period which casts a duty on the Resolution Professional to take measures as prescribed in Regulation 35A of the CIRP Regulations. The Privy Council in '**Montreal Street Railway Vs. Normandin**' AIR 1917 PC 142 had laid down following principles of statutory interpretation:

"When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those who are entrusted with the duty, and at the

same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only.”

vii. The above preposition of the Privy Council was quoted with approval by Hon’ble Supreme Court. The same preposition was reiterated by Hon’ble Apex Court in (2016) 11 SCC 31 in **‘Lalaram Vs. Jaipur Development Authority’** wherein paragraph 106 following has been held:

“106. As noticed hereinabove, it is affirmatively acknowledged as well that where provisions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of these have the potential of resulting in serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, such prescriptions are generally understood as mere instructions of the guidance of those on which the duty is imposed and are regarded as directory. It has been the practice to hold such provisions to be directory only, neglect of those, though punishable, would not, however, affect the validity of the acts done. At the same time where however, a power or authority is conferred with a direction that certain regulation or formality shall be complied with, it would neither be unjust nor incorrect to exact a rigorous observance of it as essential to the acquisition of the right of authority.”

viii. Regulation 35A of the CIRP Regulations imposes a duty on the Resolution Professional to take measure within the timeline as prescribed. In performance of such duty the public in general has no control including the Corporate Debtor. In event it is held that any action taken by Resolution Professional beyond the time prescribed in Regulation 35A of the CIRP Regulations is prohibited, it shall cause serious general inconvenience or injustice to the Corporate Debtor. One of the objective of the Code is to maximise the assets of the Corporate Debtor. In event the actions taken by the Resolution Professional after the timeline prescribed in Regulation 35A of the CIRP Regulations are to be annulled, the undervalued and fraudulent transactions will go out of the reach of Resolution

Process, reach of the Court and shall cause great inconvenience and injustice to Corporate Debtor. Hence, we are of the view that timeline prescribed in Regulation 35A of the CIRP Regulations is only directory and any action taken by the Resolution Professional beyond the time prescribed under Regulation 35A of the CIRP Regulations cannot be held to be non-est or void only on the ground that it is beyond the period prescribed under Regulation 35A of the CIRP Regulations. There may be genuine and valid reasons for Resolution Professional not to file application for avoiding the transactions within time prescribed which are question relating to each case and has to be examined on case-to-case basis and if there are reasons due to which Resolution Professional could not file the Application within time the same has to be examined on merit.

x. The view which we are taking with regard to the interpretation of Regulation 35A of the CIRP Regulations fully finds support from the Judgment of the Hon'ble Supreme Court in (2017) 16 SCC 143 in **'Surendra Trading Company Vs. Juggilal Kamlapat Jute Mills Company Limited and Ors.'**. The Hon'ble Apex Court in the above case had occasion to consider the provisions of Section 7 of the Code, Section 9(5) proviso and Section 7(5) proviso and Section 10(4) proviso. Under Section 9 (5) a period of 14 days have been given by the statute to the Adjudicating Authority to take a decision to admit or reject the Application which was held to be directory and the decision taken by the NCLT holding the provision directory was approved by the Hon'ble Supreme Court. Similarly other provisions which came for consideration Proviso Section 7(5) and Proviso Section 9(5) and Proviso Section 10(4) to remove the defects within seven days was held to be mandatory by this Appellate Tribunal against which the Appeal was allowed by the Hon'ble Supreme Court and Judgment of this Tribunal was reversed holding the period of 7 days to remove the defects is directory. The Hon'ble Supreme Court has quoted with approval the reasons given by the Appellate Tribunal for holding the provisions of Section 9(5) directory, Section 9(5) provides:

“Section 9(5)The Adjudicating Authority shall, within fourteen days of the receipt of the application under subsection (2), by an order-

(i). admit the application and communicate such decision to the operational creditor and corporate debtor if,-

(a) the application made under subsection (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under subsection (4), if any.

ii. reject the application and communicate such decision to the operational creditor and the corporate debtor, if-

(a) the application made under subsection (2) is incomplete;

(b) there has been payment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional;

Provided that Adjudicating Authority, shall before rejecting an application under sub-

clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.”

xii. The Hon’ble Supreme Court further noticed the view of this Tribunal that period of 7 days for rectification of defects as contained in Proviso Section 7(5) and Proviso Section 9(5) and Proviso Section 10(4) are mandatory. Following was noted in Paragraph 20 of the judgment. The view of the Tribunal holding 7 days period as mandatory was reversed by the Hon’ble Supreme Court and following was laid down in Paragraph 24:

“Further, we are of the view that the judgments cited by NCLAT and the principle contained therein applied while deciding that period of fourteen days within which the adjudicating authority has to pass the order is not mandatory but directory in nature would equally apply while interpreting the proviso to sub-section 5 of Section 7, Section 9 of sub-Section 4 of Section 10 as well. After all, the applicant does not gain anything by not removing the objections inasmuch as till the objections are removed, such an application would not be entertained. Therefore, it is in the interest of the applicant to remove the defects as early as possible.”

xiii. The Law laid down by the Hon’ble Supreme Court in the above judgment which deals with the interpretation of provisions of the Code itself are applicable to interpretation of Regulation 35A of CIRP Regulations and following the above judgment we hold that timeline prescribed in Regulation 35A of CIRP Regulations is directory and not mandatory.”

16. Now coming to the facts of the present case, adjudicating authority has noticed sequence of filing the report on 02.02.2024 and filing of subsequent report on 13.02.2024 and 14.02.2024. The reason of submission of supplementary report on 14.02.2024 has also been noticed in paragraph 20. RP filed the amended report due to the reason that response which was called from financial creditors was received only after submission of the first report

and supplementary affidavit was filed by the RP. It is further relevant to notice that both the reports were taken on record by the adjudicating authority vide order dated 05.03.2024. It is useful to extract paragraphs 19 & 20 of the order of the adjudicating authority, where following observations have been made:

“19. At the very outset it is imperative to state that though the respondent is challenging the amended report filed by the RP through a supplementary affidavit but it is evident that the Counsel for the Respondent has not objected to it when the same was taken on record in IA (IB) 56/CB/2024 vide order dated 11.07.2023. But in the interest of justice and transparency this Tribunal will compare the substance of both the reports to feign away any form of conundrum. It is noted from the records that the RP had filed the first report on 02.02.2024 and subsequently through a supplementary affidavit the RP had filed the amended report on 13.02.2024/14.02.2024. It is pertinent to mention that the RP had filed IA (IB) No.56/CB/2024 to take on record the Report u/s 99 which was not on board along with the main petition on 06.02.2024 as it was pending under scrutiny. It was listed for the first time on 05.03.2024 and in the intervening period between 06.02.2024 and 05.03.2024 the RP had filed the amended report in the form of a supplementary affidavit on 14.02.2024.

It is a fact that no prior leave of this court was taken before filing the amended report. It is also fact that the first report was filed on 02.02.2024 and the amended report was filed on 14.02.2024 but both the reports were presented before this tribunal i.e. listed for order, together on 05.03.2024 and hence vide order dated 05.03.2024 both the original report and the amended report were taken on record together. Moreover, the amended report was treated as part of the original report and not as a substitute of the original report. So, it cannot be said that the amended report was filed after the original report was taken on record and that a completely new report was filed subsequent to the original report.

20. It is also inferred upon perusal of both the reports that the only substantial difference between the original report and the amended report is the incorporation of the responses provided by the petitioner to the RP and the responses of the petitioner as stated in the report, only strengthens the recommendation of the RP and does not dilute it.”

17. The present is a case where necessity of submitting amended report arose because of receipt of the information from financial creditor subsequent to the submission of first report on 02.02.2024. Reports were brought on record by a supplementary affidavit, which were taken on the record. We are of the view that there was no such undue delay in submission of the report on 02.02.2024 or submission of the amended report on 14.02.2024, that the said report were required to be ignored and rejected by the adjudicating authority. We having come to the conclusion that timeline of 10 days provided in Section 99(1) being directory and no consequences having been provided in Section 99 of not filing the report within 10 days, clearly strengthens our conclusion that provisions is only directory.

18. Adjudicating authority having taken on record both the reports by order passed on 05.03.2024. Adjudicating authority had rightly considered the said reports for taking a decision under Section 100 of the IBC Code. Adjudicating authority has further noticed that even before the first report dated 02.02.2024 was taken on record on 05.03.2024, the amended report was filed on 14.02.2024, and both the report was taken on record on 05.03.2024.

19. We, thus are satisfied that submission of the appellant that the report filed on 02.02.2024 i.e., beyond 10 days of appointment of the RP could not

have been looked into cannot be accepted. We need to notice that period of 10 days provided for submission of the report by RP is not a period of limitation prescribed from doing an act. The provisions of the IBC contains timeline for early resolution of the insolvency and providing timelines for various steps is with the object of early completion of the resolution process, but the period of 10 days prescribed for RP to submit a report in no manner can be accepted to be period of limitation prescribed.

20. The submission of the appellant that provisions does not indicate that there is any provision for condonation of delay in filing the report also does not commend us. The application for filing condonation of delay as prescribed under Section 5 of the Limitation Act and other statutes are applicable is required to be made when an application is filed beyond the prescribed period. The period of 10 days provided for submission of the report is not a period providing for any limitation. Hence there is no question of applying Section 5 of the Limitation Act. Adjudicating authority before whom such reports are filed in event, the reports are unduly delayed, it is open for the adjudicating authority not to consider the reports. However, delay in submission of the report if properly explained, adjudicating authority is well within its jurisdiction to accept the report and rely on the same.

21. Insofar as the judgment of the Hon'ble Supreme Court in '**V. Nagarajan' (Supra)**, Hon'ble Supreme Court in the said case was considering the period of limitation prescribed under Section 61 for filing an appeal in the Appellate Tribunal and in the above context, it was observed that power to

condone the delay is tightly circumscribed and conditional upon showing sufficient cause. The said observations of the Hon'ble Supreme Court were in different context and has no application in the facts of the present case. We have already observed above that period of 10 days under which RP is required to submit a report is only directory.

22. We, thus are of the view that the report dated 02.02.2024, as well as the amended report dated 14.02.2024 filed vide supplementary affidavit were rightly taken on record by the adjudicating authority and looked into. Adjudicating authority in paragraph 40 of the order has rightly observed that purpose of Section 99 report is to aid the Tribunal in deciding a petition under Section 94 or 95 and the RP by submitting a report works as an officer of the Court and not an interested party itself. Observations made in paragraph 40 of the order are as follows:

“40. The purpose of a section 99 report is to aid this Tribunal in deciding a petition filed u/s 94 and 95 of the Code. The RP while submitting a report works as an officer of this court and not as an interested party itself. The 10 days timeline provided in section 99(1) is to ensure that the RP submits its report in an expeditious manner, but this tribunal does not feel that if a reasonable delay is caused on the part of the RP to file its report, it adversely affects the adjudication process or for that matter unduly benefit any of the contesting parties. In the present instance the initial report has been filed with a delay of 7 days when computed from the date of appointment.”

23. We record our full concurrence to the view taken by the adjudicating authority in the aforesaid paragraph. We, thus do not find any substance in the submission of the appellant that report 02.02.2024 which was filed

beyond 10 days from date of appointment of the RP on 16.01.2024 could not have been taken on the record or relied by the adjudicating authority. Adjudicating Authority has rightly relied on the report dated 02.02.2024 as well as amended report dated 14.02.2024. Reason for submitting amended report was also explained by the RP before the adjudicating authority, which has been noticed by adjudicating authority in paragraph 20 of the order as noted above.

24. We, thus do not find any substance in the submission raised by the appellant for challenging the impugned order admitting Section 95 application.

There is no merit in the appeal. Appeal dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

NEW DELHI

04th April, 2025

himanshu