

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 180/2025
(IA No. 488/2025)

In the matter of:

**Mr. Sadananda Maiya P,
S/o. Late Mr. PYN Maiya,
Residing at: No.53,
7th B Main, 30th Cross,
4th Block, Jayanagar,
Bengaluru, Karnataka-560 011**

... Appellant

Versus

**Karnataka Bank Ltd,
Represented by its Authorised Representative,
Ms. Sasmita Pangari,
Having its Corporate Office at
Mahaveera Circle,
Kankanady,
Mangaluru, Karnataka-575 002**

**Regional Office at :
Minerva Circle Branch,
No.163, Ground Floor,
Rajeshwari Complex,
RV Road, VV Puram,
Bengaluru-575 002**

... Respondent No.1

**Mr. Balakrishnan Venkatachalam,
Interim Resolution Professional,
Reg No. IBBI/IPA-001/IP-P00229,
Having Office at:
4C-420, 3rd Floor,
Kempe Gowda Underpass Road,
5th Main, Ramamurty Nagar,
(Opposite to Aditi Eloquent Apartments),
Bengaluru, KARNATAKA-560 016**

... Respondent No.2

WITH
Company Appeal (AT) (CH) (Ins) No. 181/2025
(IA No. 490/2025)

In the matter of:

**Mr. Sudarshan Maiya ,
S/o. Mr. Sadananda Maiya,
Residing at: No.53,
7th B Main, 30th Cross,
4th Block, Jayanagar,
Bengaluru, Karnataka-560 011**

... Appellant

Versus

**Karnataka Bank Ltd,
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(Opposite to Aditi Eloquent Apartments),
Bengaluru, KARNATAKA-560 016**

... Respondent No.2

WITH

**Company Appeal (AT) (CH) (Ins) No. 182/2025
(IA No. 491/2025)**

In the matter of:

**Mrs. Sunanda Maiya,
W/o. Mr. Sadananda Maiya,
Residing at: No.53,
7th B Main, 30th Cross,
4th Block, Jayanagar,**

Bengaluru, Karnataka-560 011

... Appellant

Versus

**Karnataka Bank Ltd,
Represented by its Authorised Representative,
Ms. Sasmita Pangari,
Having its Corporate Office at
Mahaveera Circle,
Kankanady,
Mangaluru, Karnataka-575 002**

**Regional Office at :
Minerva Circle Branch,
No.163, Ground Floor,
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RV Road, VV Puram,
Bengaluru-575 002**

... Respondent No.1

**Mr. Balakrishnan Venkatachalam,
Interim Resolution Professional,
Reg No. IBBI/IPA-001/IP-P00229,
Having Office at:
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Kempe Gowda Underpass Road,
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(Opposite to Aditi Eloquent Apartments),
Bengaluru, KARNATAKA-560 016**

... Respondent No.2

Present:

For Appellant : Mr. G. Sridhar, Advocate
For Mr. NP. Vijaykumar, Advocate

JUDGMENT
(Hybrid Mode)

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

These are three connected Company Appeals, the details of, which are respectively given hereunder, as they engage consideration of a common question of fact and law, the Appeals they are being decided together.

2. In **Company Appeal (AT) (CH) (Ins) No. 180/2025**, Mr. Sadananda Maiya V Karnataka Bank Ltd. & Another, the Appellant seeks to impugn the order dated **28.01.2025**, which was passed by the Learned NCLT Bengaluru in **C.P. (IB) No.06/BB/2025**, by virtue of which, the Learned NCLT, while exercising its powers under Section 97 of the I & B Code, 2016, has appointed the Resolution Professional Mr. Balakrishna Venkatachalam (herein Respondent No.2), who has been recommended by Respondent No.1 (Financial Creditor). According to the Appellant, this appointment happens to be in contradiction to the provisions contained under the I & B Code, 2016.

3. In **Company Appeal (AT) (CH) (Ins) No. 181/2025**, Mr. Sudarshan Maiya V Karnataka Bank Ltd. & Another, the challenge has been given by the Appellant as against the impugned order of **28.01.2025** which has been passed by the Learned NCLT Bengaluru in **C.P. (IB) No.05/BB/2025**, wherein, almost an akin question has been raised pertaining to the appointment of the Resolution Professional, for carrying out the proceedings of CIRP under Section 95 of the I & B Code, 2016, who has been appointed on the recommendations made by the Respondent No.1, which the Appellant alleges to be, in contradiction to the provisions contained under the I&B Code, 2016.

4. In **Company Appeal (AT) (CH) (Ins) No. 182/2025** Mrs. Sunanda Maiya V Karnataka Bank Ltd. & Another, the challenge given herein by the Appellant is as against the Impugned Order dated **28.01.2025** as it was passed in **C.P.(IB)**

No.04/BB/2025, whereby the Respondent No.2, has been appointed as Resolution Professional on the recommendation made by the Respondent No.1, which the Appellant contends that, such an appointment of the Resolution Professional happens to be in an apparent contradiction to the provisions contained under Section 97 of the I & B Code, 2016.

5. Precisely, the facts that involve consideration in each of the cases are that, the proceedings under Section 95 of the I & B Code, 2016, stood initiated on an application which was filed by the financial creditor (Respondent No.1), for drawing the proceedings of Insolvency Resolution Process (IRP), as against the Appellants. It is upon the filing of the applications under Section 95 of the I & B Code, 2016, that in all these three Company Petitions, the interim moratorium was imposed under Section 96 of the I & B Code, 2016 and the Resolution Professional was appointed under Section 97 of the I & B Code, 2016. The controversy germinates from this juncture. The provisions as contained under Section 97 of the I & B Code, 2016, reads as under: -

“Section.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”.

6. Primarily, on reading of the provisions contained under Section 97 of the I & B Code, 2016, on the face of it, if the same is taken into consideration, it contemplates that if an application is filed under Section 94 or 95 of the I & B Code, 2016, through a Resolution Professional (RP), the Learned Adjudicating Authority under Section 97(1) shall direct the IBBI Board, within 7 days from the date of filing of the application, to confirm that there is no disciplinary

proceedings pending against the said RP and that the Board shall thereafter, within 7 days of the receipt of directions under Sub-section (1) of Section 97 of I&B Code, 2016, communicate to the Learned Adjudicating Authority confirming the appointment of RP or rejecting the same and nominating another RP for the said insolvency resolution process. Further, if the said application under Section 94 or 95 has been filed by the debtor or the creditor himself, as the case may be and not by a RP, Learned Adjudicating Authority shall direct the Board under Section 97(3) to nominate a RP and the Board will nominate a RP within 10 days of receipt of such direction. After this, under Section 97(5) the Learned Adjudicating Authority will proceed to appoint the RP.

7. It is argued by the Learned Counsel for Appellant that, in the instant case, the application has been preferred under Section 95 of the I & B Code, 2016, by the Financial Creditor and Learned Adjudicating authority, instead of directing IBBI to nominate a RP, has proceeded to appoint the RP whose name was proposed by the Financial Creditor, to undertake the Insolvency Resolution Process. It is contended by the Appellant that, the prescribed procedure laid down in Section 97 (3) was not resorted to, and therefore the appointment of the Resolution Professional, on the recommendation of Respondent No.1, is bad because it was mandatory on the part of the Learned Adjudicating Authority, to have directed IBBI to nominate a RP, to be appointed, for the purposes of carrying out the process under Section 95 of I&B Code, 2016. It is further argued by the

Learned Counsel for Appellant that, the Learned Adjudicating Authority should have resisted itself from appointing the Resolution Professional as nominated by the Financial Creditors, in view of the stipulations contained under Section-Section 97(3) of the I & B Code, 2016. Further, it was argued that the Learned Adjudicating Authority had acted against the mandate of Section 97 of the I & B Code, 2016, in appointing the Resolution Professional thus nominated by the creditor, as has been observed by the Impugned Order.

8. The precise question, that emerges for consideration before us is that, ***“whether at all, the Appellants have got a cause of action, as of now to prefer an Appeal against the impugned order of 28.01.2025”***, as respectively passed in each of the Company Appeals, appointing the Resolution Professional, i.e., even during the stage of the proceedings from its initiation under Section 95 of the I & B Code, 2016, to the stage of submission of the Report by the RP under Section 99 of the I & B Code, 2016, when only at the stage of Section 100 when Learned Adjudicating Authority sets out to decide on the admission or rejection of the application for admission of the Personal Guarantor into the IRP Proceedings, the personal guarantors, the Appellants herein or the opposite party to the Company Petition as the case may be, get an opportunity or a cause to question, any irregularity, which has chanced in between the proceedings which are held under Section 95 to 100 of the I & B Code, 2016, since all the decisions, which are required to be taken prior to Section 100 are ministerial and procedural in nature.

Hence, it cannot be said that the anomaly as raised by the Appellants would grant a cause of action to them to prefer an Appeal against the nomination of the Resolution Professional, because Section 97 of the I&B Code, 2016, would be only an enabling provision, and not substantive provision, which could give a right of challenge to the appellants under Section 61 of the I&B Code, 2016.

9. The Appellant contends that, any anomaly in the appointment of the Resolution Professional under Section 97 of the I & B Code, 2016, itself could be an appropriate stage to raise an objection and the Appellants, in the status of being the Personal Guarantor can question the process of appointment of the Resolution Professional, for the purposes of nipping the problems at its bud. But that may not be an argument, which could be accepted by this Appellate Tribunal for the reason being that, it is a settled proposition of law as held by the Hon'ble Apex Court in a judgment reported in **2024 Volume 5 SCC page 435 Dilip B. Jiwrajka V. Union of India and others**, particularly the ratio as it has been dealt by the Hon'ble Apex Court in para-84 & 86, where it has been observed that, the proceedings, which are drawn between Section 95 to 100 of the I & B Code, 2016, are purely administrative in nature, and that plates that the provisions contained under Part III of the I & B Code, 2016, cannot be held to be Retroactive in nature and being a violation of Article 14 of the Constitution of India. Summarizing its findings the aforesaid issue and settling the law, the Hon'ble Apex Court has derived its conclusion in para 86, which is extracted hereunder: -

“86. We summarise the conclusion of this judgment below:

86.1. *No judicial adjudication is involved at the stages envisaged in Section 95 to Section 99 IBC;*

86.2. *The resolution professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application;*

86.3. *The submission that a hearing 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) IBC is rejected. 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;*

86.4. *The resolution professional may exercise the powers vested under Section 99(4) IBC for the purpose of examining the application for insolvency resolution and to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;*

86.5. *There is no violation of natural justice under Section 95 to Section 100 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;*

86.6. *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*

86.7. The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 for the purpose of determining whether to accept or reject the application;

86.8. The purpose of the interim moratorium under Section 96 is to protect the debtor from further legal proceedings; and

86.9. The provisions of Section 95 to Section 100 IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution.”

10. In para 86.2 in particular, the Hon’ble Apex Court has observed that appointment of the Resolution Professional under Section 97 of the I & B Code, 2016, is only intended to facilitate for the purposes of collating the facts and materials which has to assimilated for examination of the Application preferred under Section 95 of the I & B Code, 2016, in order to justify the initiation of the IRP proceedings under Section 95, as against the Personal Guarantor. The stages under Section 95 and 97 of the I & B Code, 2016, in itself is not an initiation of proceedings which would be giving a cause of action to the Appellants to invoke an Appellate Jurisdiction under Section 61 of I&B Code, 2016, because it is not the adjudicatory function discharged by Learned Adjudicating Authority where a right is determined. Owing to the aforesaid ratio laid down in para 86 of the judgment of *Dilip B. Jiwrajka V. Union of India* (supra), at the stage when the Resolution Professional is appointed even though if it suffers from any legal error it may not be, at that stage, taken as to be a cause for filing of an Appeal against

the decision taken by the Learned Adjudicating Authority under Section 97 of the I & B Code, 2016, which only entails the procedure for collating of facts and assimilating the records, where no right is determined or prejudiced. If that be the situation and particularly in the light of the ratio which has been laid down as extracted above, the instant Appeal as against the impugned order of 28.01.2025, where the Resolution Professional while exercising its powers under Section 97 of the I & B Code, 2016, in respective Company petitions, had observed that the proposal of name given by the Financial Creditor for appointing Insolvency Professional falls to be within Part IV of Form C enclosing the consent given by the Resolution Professional, to be appointed in the said capacity for which an affidavit was filed, whereby the Resolution Professional whose name is thus proposed has given an undertaking that there is no disciplinary proceedings pending or carried against him, which is a step in accordance with Section 97 of the I & B Code, 2016, which requires for furnishing of the details of pending proceedings under consideration before the Board. Thus, the Learned Adjudicating Authority after examining the entire documents on record, while observing that the stage under Section 99 of the I & B Code, 2016, is yet to be achieved, either recommending for approval or rejection of the petition as referred under Section 99(1) of the I & B Code, 2016, coupled with the facts that since the interim moratorium under Section 96(1)(a) has already commenced as observed in the impugned order of 28.01.2025, directing thereof that, the

Resolution Professional is directed to serve the copy of the Report on the Personal Guarantor i.e. the Appellants herein.

11. Owing to the findings, which has been recorded in the impugned order, coupled with the ratio which has been laid down in the judgment of the *Dilip B. Jiwrajka* (supra), the Appellant do not have any cause of action, as such as of now to file an Appeal under Section 61 of the I & B Code, 2016, for exercise of powers by the Learned Adjudicating Authority under Section 97 of the I & B Code, 2016, which forms to be the Provision contained under Part III of I&B Code. Thus, since there is no final determination of any of the rights nor any right as such is prejudiced, these Appeals lack merits, and the same are accordingly ‘dismissed’.

12. However, the dismissal of these Appeals at this stage would be without prejudice to the rights of the Appellant, to raise all the questions qua the appointment of the Resolution Professional, if at all tenable under law, at the stage, when admission of the proceedings of insolvency resolution process initiated under Section 95 of the I & B Code, 2016, is taken up for consideration under Section 100 of the I & B Code, 2016. It is clarified that none of the observations made by this Appellate Tribunal in the preceding paragraph will prejudice the minds of the Learned Adjudicating Authority to decide the aforesaid question, if raised after the admission of the Personal Guarantor into the Insolvency Resolution Proceedings under Section 95 of the I & B Code, 2016.

13. Subject to the above, these ' Appeals' lack 'merits,' and the same are accordingly 'dismissed.' The pending Interlocutory Applications, if any, are closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

30/04/2025
PA/MS/RS