



**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**IA No.1773 of 2024**

Under Section 60(5) of Insolvency and Bankruptcy  
Code, 2016

**ANIL DHIRAJLAL AMBANI**

**...Applicant**

V/s

**STATE BANK OF INDIA & ANR.**

**...Respondent**

In the matter of

**C.P.(IB) NO. 916 (MB) OF 2020**

STATE BANK OF INDIA

**...Petitioner**

V/s

ANIL DHIRAJLAL AMBANI

**...Respondent**

***Order delivered on: 15.07.2025***

***Coram:***

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)

***Appearances:***

For the Applicant : Sr. Adv. Prateek Seksaria a/w Adv.  
Kartik Hede

For Respondent : Adv. Jash Shah a/w Adv. Astha Ojha



a/w Adv. Prateek Kumar

**ORDER**

1. This Application IA No.1773 of 2024 is filed by Mr. Anil Dhirajlal Ambani (“Applicant/Personal Guarantor”), on 16.01.2024 under Section 179 r/w Section 60(5) of the Code a/w Rule 11 of NCLT Rules, 2016. The Applicant has made following prayers:

- a. *This Hon'ble Tribunal be pleased to pass an order rejecting the Report filed by Mr. Jitender Kothari as the resolution professional, being Report dated 31st May 2021.*
- b. *This Hon'ble Tribunal be pleased to pass an order replacing Mr. Jitender Kothari as the resolution professional in the Insolvency Application i.e., Company Petition (IB) No. 916 (MB) of 2020 in accordance with section 98 of the IBC.*
- c. *This Hon'ble Tribunal be pleased to pass an order directing the newly appointed Resolution Profession to prepare and file a fresh report under section 99(1) of IBC in accordance with law in the Insolvency Application i.e., Company Petition (IB) No. 916 (MB) of 2020.*
- d. *Pending the hearing and final disposal of this application, keep the hearing of the Insolvency Application i.e., Company Petition (IB) No. 916 (MB) of 2020 in abeyance.*
- e. *Pending the hearing and final disposal of this application, restrain Respondent No. 2, Mr. Jitender Kothari, from taking any steps whatsoever as a resolution professional in the present Insolvency Application.*
- f. *For ad interim and interim reliefs in terms of prayer ( d) and ( e) above.*
- g. *For costs.*
- h. *For such other and further reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of this case.*



2. The Applicant has filed the present Application for setting aside the Report dated 31st May 2021 ("Report") issued by the Resolution Professional Mr. Jitender Kothari ("RP/Respondent No. 2"), under section 99(1) of the IBC alleging such Report being illegal, stale and contrary to the law laid down by the Hon'ble Supreme Court in the case of *Dilip Jiwrajka Vs. Union of India (2023) ibclaw.in 147 SC*.
3. The brief facts leading to filing of Company Petition CP(IB) 916(MB) of 2020 are as follows :
  - a. The Applicant had executed a personal guarantee dated 23<sup>rd</sup> September, 2016 in favor of State Bank of India ("SBI/Respondent No. 1") to secure the credit facility extended by SBI to Reliance Communications Limited in terms of facility agreement dated 29.8.2016. The said credit facility was classified as non-performing assets retrospectively with effect from 26th August 2016.
  - b. The Respondent No. 1, by its demand notice dated 31<sup>st</sup> January 2019 invoked the said Guarantee and called upon the Applicant to pay a sum of Rs. 1384,81,64,562/- within 21 (days) from the date thereof. The Respondent, thereafter, issued a demand notice on 24<sup>th</sup> February, 2020 to the Applicant. Thereafter, on or about 12th March 2020, the Respondent filed an Application registered as CP(IB) 916(MB) of 2020 to initiate Insolvency Resolution Process in case of the Applicant Personal Guarantor in terms of Part III of Insolvency & Bankruptcy Code, 2016 ("IBC") .
4. Brief facts leading to filing of present application are stated as under :
  - a. This Tribunal appointed Respondent No. 2 as Resolution Professional vide its Order dated 20.08.2020 to file its Report in terms of Section 99 of IBC after examining the Company Petition 916 of 2020.
  - b. The RP issued an email dated 22.8.2020 22.45 PM asking the Applicant to provide the information as stated in Annexure 2 of the said email besides also requiring the Applicant to give (a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor; (b) evidence of encashment of a

cheque issued by the debtor; or (c) a signed acknowledgment by the creditor accepting receipt of dues. The details sought at Annexure 2 are stated as below :

*Details required from the Personal Guarantor Mr. Anil Dhirajial Ambani*

*Annexure-2*

- (a) Income-tax returns for the last 3 years*
- (b) Computation of income for the last 3 years*
- (c) Personal balance sheet for the last 3 years*
- (d) List of associates of the guarantor, including relatives*
- (e) Bank account details for all the Bank Accounts (Joint and Several) alongwith the latest Bank Statement*
- (f) List of assets of guarantor, anywhere in the world, as on the application date 12 March, 2020 (to the extent known) and including any legal or beneficial interest in any assets, property or rights.*
  - (i) Immovable, with the area, Khasra No. and cost of acquisition*
  - (ii) Movable, with complete break up*
  - (iii) Vehicles with Registration No.*
  - (iv) Shares in listed companies, with the name of the company and number of shares held*
  - (v) Shares in other companies, with the name of the company and number of shares held*
  - (vi) Life insurance policy, with Policy No.*
  - (vi) Jewellery or bullion, with complete detail*
  - (vii) Pension policy or plans*
  - (ix) Complete details Investment in Mutual Funds*
  - (x) Investment in partnerships and other business concerns*
  - (xi) Any intellectual property*
  - (xii) Any other movable property*
  - (xiii) Any interest in Hindu undivided family property,*
  - (xiv) Any legal or beneficial interest in any trust,*
  - (xv) Any other assets or right, title or interest therein*

*Note: this will include all assets of guarantor, irrespective of them being excluded assets.*

*(g) Number of directorships held in the preceding three years (along with name of company in which directorship is held) and CIN of such companies*

*(h) Details regarding personal guarantor*

*(i) Name of corporate debtor for which guarantee is given*

*(ii) Any current or past position held in the corporate debtor (to the extent known)*

*(i) Identification number of the corporate debtor*

*(ii) Whether corporate debtor is an associate (to the extent known)*

*(iii) Any securities held in corporate debtor for whom guarantee is given*

*(i) Particulars of total debt (including any interest or penalties)*

*(i) Amount in default*

*(ii) Date on which debt was due*

*(iii) Date on which default occurred ( )*

*(iv) Nature of the debt*

*(vi) Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable)*

*(vii) Unsecured debt (as applicable)*

*(viii) Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)*

*(ix) Details of any mutual credit, mutual debts, or other mutual dealings between the guarantor and the creditor, which may be set-off against the claim (attach proof)*

*(x) Copies of any documents relating to any debt.*

*(j) Market value of the aforesaid assets and the basis of calculation of market value*

*(k) Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)*




- (l) Record of default with the information utility, if any (attach a copy)
- (m) Provision of law, contract or other document under which debt has become due (attach a copy)
- (n) A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the corporate debtor, from the date on which the debt was incurred (attach a copy)
- (o) Certified copy of the resolutions as received by the Resolution professional and intimated to the NCLT for RCOM and RITL.
- (p) Guarantee of Mr Anil Dhirajlal Ambani to any other financial institution and details of the same with the supporting documents. Also provide the NOC obtained, if any from State Bank of India with this regards.
- (q) Details of any legal proceedings filed against Mr Anil Dhirajlal Ambani.
- (r) Any other documents that may be relevant in connection with the subject matter.
- (s) Reasoned submission with supporting evidence if you believe that the amounts under the guarantee are not payable.
- c. Thereafter, this email was followed by another email dated 25.08.2020 17.08 PM requiring further information i.e. (a) Copy of the order passed by the Hon'ble High Court of England and Wales; (b) Copy of the Petitions and replies filed with Hon'ble High Court of England and Wales.
- d. Aggrieved by the initiation of the Insolvency Proceedings, the Applicant filed a Writ Petition (C) 5720 of 2020 before the Hon'ble Delhi High Court and the Hon'ble Delhi High Court passed the following order on 27.08.2020 :

*“In the meantime, the proceedings would continue in relation to the Corporate Debtor and while dealing with those proceedings, the liability of the petitioner may also be examined by the IRP. However, the proceedings against the petitioner under Part-III of the IBC shall remain stayed. We restrain the petitioner from transferring, alienating, encumbering, or*

*dealing with, or disposing of any of his assets, or his rights, or beneficial interest therein till the next date.”*

- e. The issue before Hon’ble Delhi High Court got settled by Hon’ble Supreme Court decision dated 21.05.2021 in ***Lalit Kumar Jain vs. Union of India (2021) 9 Supreme Court Cases 321*** upholding the validity of notification issued by the Government of India dated 15.11.2019 and dismissing the writ petitions, transferred cases and transfer petitions on this aspect.
- f. The Respondent No. 2/RP sent an email dated 21.5.2021 requiring the information/copies of the documents sought in his letters dated 22.8.2020 and 25.8.2020 on or before 28.5.2021 and informing that in case of failure he shall submit the report under section 99 of IBC to this Tribunal based on the information available with him.
- g. Respondent No. 1/SBI also sent an email dated 24.5.2021 to the RP/Respondent No. 2 enclosing documents required by RP and also requiring him to submit his report recommending admission or rejection of the Company Petitions to this Tribunal on or before 25.5.2021.
- h. On 24.5.2021, the legal counsel of the Applicant also wrote a letter to RP asking him to provide Applicant with appropriate time so as to enable him to submit reply to RP’s Letter after the lockdown is lifted, private offices are permitted to reopen, and staff are permitted to commute and attend private offices, citing the Orders dated 13 April 2021, 29 April 2021 and 12 May 2021 issued by Government of Maharashtra whereby restrictions were imposed till 1<sup>st</sup> June, 2021.
- i. On 27.5.2021, the legal counsel of the Applicant again wrote a letter to RP to draw his attention to the Order dated 27 April 2021 and 23 March 2020 passed in *Suo Motu Writ Petition (Civil) No. 3/2020* titled *IN RE: COGNJZANCE FOR EXTENSION OF LIMITATION* by Hon’ble Supreme Court and asked the RP that *“Based on a perusal of the said orders of the Hon’ble Supreme Court, it is evident that the 10 day period and 7 day period set out in Sections 99(1) and 99(5) of the Insolvency and Bankruptcy Code, 2016, do not apply until 15 July*



2021. We therefore request that you do not insist on receipt of the information as per your letters.”

- j. On 27.05.2021, the RP wrote back stating that “*The orders of the Hon'ble Supreme Court referred to you by you only pertain to exclusion of time period for the purpose of computing the limitation period prescribed for instituting proceedings, outer limits (within which the courts or tribunal can condone delay), and termination of proceedings. The orders of the Hon'ble Supreme Court referred by you do not contemplate the exclusion of period for computing the time period of 10 days and 7 days set out in Sections 99( 1) and 99(5) of the Insolvency and Bankruptcy Code, 2016.*”, and again asked the Applicant to provide the information as sought earlier.
- k. The RP filed his Report in terms of Section 99 of the IBC on 31.5.2021 before this Tribunal recommending the admission of the Company Petition to initiate Insolvency Resolution Process in the matter. The RP has stated in the said Report that

*“2. Pursuant to the Hon'ble Supreme Court passing the above-mentioned Order dated May 21,2021, the RP in order to follow and comply with the spirit with the provisions of Section 99 of the Code addressed an email to the Applicant and the Personal Guarantor giving them 7 days' time from the date of the order i.e. May 21, 2021 till May 28, 2021 to submit the required information to enable the RP to examine the application and prepare and file his report on or before May 31, 2021 in accordance with Section 99 of the Code.*

*6. In view of the letters dated May 24,2021 from the Applicant and the advocates of the Personal Guarantor, the RP has filed two separate applications, inter-alia, seeking directions of this Hon'ble Tribunal that; (a) the 10 days period to file the Report as enumerated under Section 99(1) of the Code commences from May 21,2021, i.e. the date of the Order passed by the Hon'ble Supreme Court (b) that the 7 days period to obtain information as enumerated in Section 99(5) of the Code commences from May 21,2021.*

*The aforesaid applications are pending before this Hon'ble Tribunal and the RP has sought urgent listing of the same.*

8. *On May 28,2021, the RP received another letter by email from the advocates of the Personal Guarantor stating, inter alia, the following;*


*a. "As per Section 99(4) read with Section 99(1) of the Insolvency and Bankruptcy Code, 2016, it is evident that the Resolution Professional can only seek information from the applicant (in this case SBI). Your letters requesting information from our Client are beyond the scope of the functions of the Resolution Professional as per Section 99*

*b. You are therefore requested to withdraw your requests for information as per your letters .*

*Subsequently, on May 29,2021, the undersigned received un affirmed copies of two interim applications proposed to be filed on behalf of the Personal Guarantor seeking, inter-alia, to stay the operation of the letters dated August 22, 2020, August 25,2020 and May 21, 2021 addressed to the Personal Guarantor by the RP.*


*9. The RP has given an opportunity to the Personal Guarantor to provide information and prove repayment of the debt claimed as unpaid by the Applicant if any, but the Personal Guarantor has failed to avail of the opportunity. After first stating in his advocates' letter dated May 24,2021 that he will in good faith, seek to provide information that is readily available, to the RP within the period specified in his letter he has by his advocate's letter dated May 27,2021 done a volte face."*

1. On 4.6.2021, this Tribunal disposed of IA 1162/2021 filed by RP seeking extension of time for filing his Report u/s 99 of IBC and IA 1202 of 2021 filed by Applicant Personal Guarantor seeking extension of time for providing information as infructuous in view of filing of Report by RP on 31.5.2021.
- m. The Applicant filed a Writ Petition (Civil) 519 of 2022 before Hon'ble Supreme Court challenging the constitutional vires of certain provisions of Part III of the



IBC, which was tagged with Special Leave petition (Civil) No. 16464 of 2021 filed against the order of Hon'ble Bombay High Court by one Mr. Surendra Jiwarajka. In that matter, the Hon'ble Supreme Court directed the Resolution Professional not to proceed with filing of the report. All these matters came to be finally decided in terms of judgement dated 9.11.2023 passed in the case of *Dilip Jiwarjka vs. Union of India* ([2023 ibclaw.in 147 SC](#)).

- n. The Applicant has claimed that he was provided the RP's report on 14.12.2023.
5. It is case of the Applicant that the RP has acted in undue haste manner denying fair and proper opportunity to the Applicant to provide the required information, after having opted to seek information from him. The Applicant has also alleged that the RP's has exceeded the mandate of IBC in seeking unrelated information demonstrating bias on his part in so far as he sought information, which he ought not to have, and denying the fair opportunity for provision of required information during the period of COVID-19 induced restrictions.
  6. The RP has denied existence of any bias on his part in discharge of his duties as Resolution Professional and has submitted that he had given mandatory 7 days time to the Applicant for providing the required information. It was submitted that RP's conduct can not be faulted simply because he ensured strict adherence to the timelines provided in the IBC for furnishing of Report u/s 99 of the IBC. It was further contended that no prejudice is caused to the Applicant even if the Applicant was restrained on account of COVID restriction as the Applicant has not demonstrated till now that he has something more to say so as to have bearing on the Report furnished by the RP.
  7. SBI has supported the case of the RP and reminded this Tribunal that this matter is languishing since long and the Applicant has been indulging into delay tactics so as not to allow this Tribunal to proceed further to pass appropriate orders in terms of Section 100 of the IBC.
  8. Heard the Learned Counsel for the parties. The Counsel for Applicant, RP and SBI have placed reliance in case of Dilip Jiwarajka (Supra) to buttress their arguments.
  9. Section 98 of the IBC deals with replacement of Resolution Professional and reads as under :



**98.** (1) *Where the debtor or the creditor is of the opinion that the resolution professional appointed under section 97 is required to be replaced, he may apply to the Adjudicating Authority for the replacement of the such resolution professional.*

(2) *The Adjudicating Authority shall within seven days of the receipt of the application under sub-section (1) make a reference to the Board for replacement of the resolution professional.*

(3) *The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (2), recommend the name of the resolution professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.*

(4) *Without prejudice to the provisions contained in sub-section (1), the creditors may apply to the Adjudicating Authority for replacement of the resolution professional where it has been decided in the meeting of the creditors, to replace the resolution professional with a new resolution professional for implementation of the repayment plan.*

(5) *Where the Adjudicating Authority admits an application made under sub-section (1) or sub-section (4), it shall direct the Board to confirm that there are no disciplinary proceedings pending against the proposed resolution professional.*

(6) *The Board shall send a communication within ten days of receipt of the direction under sub-section (5) either—*

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

*(b) rejecting appointment of the nominated resolution professional  
and recommend a new resolution professional.*


(7) *On the basis of the communication of the Board under sub-section (3) or sub-section (6) , the Adjudicating Authority shall pass an order appointing a new resolution professional.*

(8) *The Adjudicating Authority may give directions to the resolution professional replaced under sub-section (7)—*

*(a) to share all information with the new resolution professional in respect of the insolvency resolution process; and*

*(b) to co-operate with the new resolution professional in such matters as may be required.*

10. Section 99 of the IBC deals with the Report of RP and reads as under :



99. (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.*

(2) *Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing—*

*(a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;*

*(b) evidence of encashment of a cheque issued by the debtor; or*

*(c) a signed acknowledgment by the creditor accepting receipt of dues.*

(3) *Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.*

(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.*

(8) *Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under section 94 be treated as an application under section 81 by the Adjudicating Authority.*



(9) *The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).*

11. *(10) The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.*”

12. Section 98 of the IBC clearly empowers a debtor to apply to the Adjudicating Authority for the replacement of the resolution professional, if he is of such opinion. The Hon’ble NCLAT in the case of **Mr. Vinay Rai vs. Technology Development Board and Anr. (2024) ibclaw.in 724 NCLAT** held that “8..... Section 98, sub-section (1) does not contain or enumerate grounds, on which replacement can be asked for. The statutory provision only requires “Where the debtor or the creditor is of the opinion...”. Although, the opinion to be formed under Section 98, sub-section (1) is subjective opinion of the debtor or the creditor, which may entitle them to make an application for replacement of RP, it goes without saying that opinion should be founded on rational basis and objective consideration.”

13. In case of **Mr. Ravi Ajit Kulkarni v. State bank of India, (2021) ibclaw.in 396 NCLAT**, it was held that “31. Going through Section 98 of IBC, we do not find that Section 98 is stage specific. Section 98 itself shows that the Section could be resorted to even on stages like implementation of repayment plan which would be stage beyond Section 116, where implementation and supervision of repayment plan is provided for. Thus, the argument that before report of Resolution Professional the Debtor must get a chance to seek replacement of Resolution Professional and thus notice was required to be given has no substance. It is only after the Resolution Professional is appointed by the Adjudicating Authority under Section 97(5), that step under Section 98 is contemplated.”

14. 32. Section 99 require the Resolution Professional to “examine the application” and to “submit the report” to the Adjudicating Authority “recommending for approval or rejection of the application”. What the Resolution Professional does under Section 99(2) is to “require the Debtor to prove repayment of the debt claimed as unpaid by the Creditor” by furnishing (a) evidence of electronic transfer of the unpaid amount from the bank account of the Debtor; (b) evidence of encashment




of a cheque issued by the Debtor; or (c) a signed acknowledgement by the Creditor accepting receipt of dues. This is mere collection of evidence. These provisions give opportunity to the Debtor to submit material in his favour. Section 99(3) provides that where the debt for which an application has been filed by a Creditor is registered with the information utility, "the Debtor shall not be entitled to dispute the validity of such debt". Thus, where debt concerned is registered with information utility is established, it would be conclusive evidence of valid debt and Personal Guarantor is not entitle to raise dispute regarding validity of the debt. Thus, where the debt is registered as mentioned, dispute of validity of debt cannot be raised and thus Adjudicating Authority need not adjudicate on it.

15. In view of this decision, this Tribunal is required to examine only whether the opinion formed by the Applicant Personal Guarantor is founded on rational basis and objective consideration.

16. Before we proceed further, it is pertinent to refer the case of **S. Parthasarathi vs. State of Andhra Pradesh (1974) 3 Supreme Court Cases 459**, wherein it was held that :

*13.....We are of the opinion that the cumulative effect of the circumstances stated above was sufficient to create in the mind of a reasonable man the impression that there was a real likelihood of bias in the inquiring officer. There must be a "real likelihood" of bias and that means there must be a substantial possibility of bias. The court will have to judge of the matter as a reasonable man would judge of any matter in the conduct of as own business (see R. v. Sunderland JJ [1901] 2 K. B. 357 at 373.*

*14. The test of likelihood of bias which has been applied in a number of cases is based on the "reasonable apprehension" of a reasonable man fully cognizant of the facts. The courts have quashed decisions on the ,strength of the reasonable suspicion of the party aggrieved without having made any finding that a real likelihood of bias in fact existed [see R. v. Huggins [1895] 1 Q. B. 563]; R. v. Sussex JJ., ex. p. McCarthy [1924] 1 K. B. 256; Cottle v. Cottle [1939] 2 Ail E. R. 535; R. v. Abingdon JJ. ex. p. Cousins [1964] 108 S. J. 840. But in R. v. Camborne ff., ex. p. Pearce*



[1955] 1 Q. B. 41 at 51, the Court, after a review of the relevant cases held that real likelihood of bias was the proper test and, that a real likelihood of bias had to be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries.

The question then is : whether a real likelihood "of bias existed is to be determined on the probabilities to be inferred from the circumstances by court objectively, or, upon the basis of the impressions that might reasonably be left on the minds of the party aggrieved or the public at large. The tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision [see per Lord Denning, M.R. in Metropolitan Properties Co, (F.G.C.) [Ltd. v. Lannon and Others](#), etc. (1968) 3 W. L. R. 694 at 707]. We should not, however, be understood to deny that the court might with greater propriety apply the "reasonable suspicion" test in criminal or in proceedings analogous to criminal proceedings."

17. In the present case, the Resolution Professional had sought voluminous information vide his first email dated 22.08.2020 and thereafter also sought some information



vide email dated 25.08.2020 in relation to the proceedings before foreign jurisdiction. The RP was appointed by this Tribunal on 20.08.2020 and he was communicated of his appointment by SBI on 21.8.2020, however, before expiry of 10 days, the Hon'ble Delhi High Court stayed the proceedings vide Order dated 27.08.2020, which came to be vacated only on 21.05.2021. The RP issued his Report on 31.05.2021 after requiring the Applicant vide email dated 21.05.2021 to share the information/documents sought vide email dated 22.08.2020 and 25.08.2020. It is pertinent to refer to decision of Hon'ble NCLAT Chennai Bench in case of **Comandur Parthasarathy v. Lalit Kumar Dangi (2025) ibclaw.in 436 NCLAT**, wherein it has been held that the use of the word 'may' in Section 99(4) means that powers conferred on Resolution Professional are absolutely discretionary, however, once RP has issued a notice, Section 99(4) will be no more directory in nature and becomes mandatory. In view of this decision, the Respondent No. 1/SBI asking RP to submit his Report by 25.5.2021 was totally uncalled for as the RP having exercised his discretion to seek information/documents from the Applicant was duty bound to wait till 28.5.2021 for those information.

18. It is pertinent to note that RP was asked time by the Applicant vide his counsel's mail dated 24<sup>th</sup> May, 2021 and 27<sup>th</sup> May, 2021 citing the circumstances arising from COVID-19 pandemic causing restricted moveability and working of the persons across India and also apprising the Applicant about an Order dated 12.05.2021 issued by Maharashtra Government extending the restrictions till 1.6.2021. as well the Order dated passed by Hon'ble Supreme Court in Suo Moto Writ Petition extending the time lines for suits/litigation under Limitation Act till 15.7.2021. However, the RP proceeded to finalise his Report u/s 99 of IB Code.

19. The learned Counsel for the Applicant relied upon the decision in case of **V. S. Palanivel v. P. Sriram 2024 SCC Online SC 2413** wherein the Hon'ble Supreme Court held that "32.6..... *We are not inclined to accept the submission made on behalf of the appellant that the word 'Litigants' used in the order dated 23rd March, 2020 passed in the Suo Moto Writ Petition ought to be given a narrow interpretation so as to exclude a party like the Auction Purchaser herein as stricto sensu, it was not a litigant who was required to file any*



*petition/application/suit/appeal or other proceeding before any Court/Tribunal/Authority within the period of limitation prescribed under a general law of limitation or under the special laws. It must be emphasised that a judgment can neither be read like a Statute nor can the expressions used in a judgment be assigned a narrow meaning or curtailed. In the larger contextual background of the Covid-19 breakout, a liberal interpretation would have to be adopted and the Auction Purchaser would be entitled to the benefit of the order dated 23rd March, 2020 read with Regulation 47A of the IBBI Regulations, 2016. The appellant cannot be heard to state that when the entire country was engulfed by the Covid-19 pandemic and a countrywide lockdown was imposed on 25th March, 2020 that was extended from time to time, the Auction Purchaser ought to have deposited the balance sale consideration within the stipulated 90 days. In such a situation, a lenient view would have to be taken by the Court.”*

20. Further, in case of **GPR Power Solutions Private Limited (2021) 17 Supreme Court Cases 312**, the Hon’ble Supreme Court condoned the delay in filing of claim by a creditor in view of Orders passed by Court in *Suo Motu Writ Petition (Civil) No. 3 of 2020*. Reliance was also placed on decision of Hon’ble Bombay High Court in case of **Shri S. B. Jadhav v. The State of Maharashtra W.P. (ST) No. 92298 of 2020** and decision of Hon’ble Delhi High Court in case of *Urban Improvement Co. Pvt. Ltd. v. National Faceless Assessment Centre Delhi W.P. © 6131/2021 & CM Appl. 19413/2021* wherein decision taken by authorities in terms of show cause notice, which could not be responded on account of COVID-19 pandemic were set aside. These decisions clearly support the case of the Applicant that RP ought to have given fair opportunity to provide the information/documents to him in view of Covid 19 Pandemic induced restrictions, once he had exercised his option to call for information/documents from the Applicant, and ought to have heeded to the request of the applicant to provide some more time even if not beyond 1<sup>st</sup> June, 2021/15<sup>th</sup> July 2021 in terms of Order of Maharashtra Government and Hon’ble Supreme Court’s Order in *Suo Moto Writ Petition*. Instead, we note that the RP didn’t even wait for adjudication of his application pending before this Tribunal seeking relaxation of 10 days timeline and a cross application of the Applicant before this Tribunal requiring more time in view of COVID-19 pandemic restrictions. These



facts clearly lead us to a conclusion that though the time of strict 7 days was allowed but such strict adherence in the facts and circumstances of the case resulted into denial of proper and fair opportunity to the Applicant in adducing the information/documents called by the Applicant vide his email dated 22.8.2020.

21. Learned Counsel for the RP argued that the principle of natural justice does not have application where no prejudice is caused to the applicant, and in this case, since the applicant has nothing more to submit to RP and he could do so before this Tribunal as well during course of hearing u/s 100 of IBC, the Applicant's argument on ground of denial of opportunity ought to be rejected. We have given due consideration to this argument of the learned Counsel for RP. It is pertinent to refer to the decision in case *Sree Metaliks Ltd. & Ors. v. The Union of India & Ors* [[2017](#)] [ibclaw.in](#) 03 HC, the absence of following the principle of natural justice under Section 7 of the IBC was challenged before the Calcutta High Court. In this case, the petitioner argued that when a petition is filed under section 7 of the IBC, the corporate debtor is not provided with a reasonable opportunity of hearing. The Court observed, "*Where a statute is silent on the right of hearing and it does not in express terms, oust the principles of natural justice, the same can and should be read into.*" The Court decided that pursuant to section 424 of the CA, 2013, the Adjudicating Authority is bound to provide a "*reasonable opportunity of hearing*" to the corporate debtor when it receives an application filed under section 7 of the IBC. Accordingly, we are of considered view that RP, having exercised option to seek information/documents from the Applicant, was duty bound to extend reasonable opportunity to the Applicant, hence, in the absence of same, the Report of the Resolution Professional deserve to be sent back for fresh consideration after providing an opportunity of 7 days in providing the information/documents called for by mail dated 22.8.2020.

22. Having said so, it is pertinent to examine whether the opinion formed by the Applicant is founded on rationale and objective considerations. We have held in the preceding para that RP acted in haste manner to discharge his duties under section 99 of the IBC and ought to have given due consideration to the ground realities arising from COVID-19 pandemic. It was argued before us that there exists real likelihood of a bias arising from RP requiring information vide email dated



25.8.2020 which are not connected to the matter in the Company Petition, accordingly, the facts of the case can clearly lead to "reasonable apprehension" in the mind of a reasonable man fully cognizant of the facts.

23. It is pertinent to refer to Dilip Jiwrajka (Supra), wherein the Hon'ble Supreme held that "66. *The resolution professional cannot decide that issue in the absence of an opportunity to the debtor to furnish an explanation and to produce material evidencing the payment of the debt. Likewise, sub-section (4) of Section 99 empowers the resolution professional, in the course of carrying out an examination of an application to seek further information or explanation in connection with the application from the debtor or the creditor. The expression "in connection with the application" indicates that Parliament has not contemplated a roving enquiry by the resolution professional but an enquiry for the purpose of making the ultimate recommendation in the report on the nature of the application itself. The resolution professional, after carrying out the process which is evidenced in sub-sections (2) and (4), in particular, is then required to make an ascertainment in terms of sub-section (6). It is thereafter that the resolution professional would submit a report either recommending the acceptance or rejection of the application together with the reasons in support of the report.*" It further elucidated that "67. .... Though, the ultimate report of the resolution professional has only a recommendatory value, the legislature has ensured that the recommendation is made after taking into account the information or, as the case may be, the explanation that is furnished by the debtor. Thus, it cannot be said that there is any element of bias in a report submitted by an RP who is nominated by the creditor. In the decision in *Ravi Ajit Kulkarni v. State Bank of India*<sup>18</sup>, it has been emphasized that under Section 98 of the IBC, the debtor retains the option to replace the RP appointed under Section 97 by filing an appropriate application with the adjudicating authority. *the Role of Resolution is to collate facts as a facilitator.*" It further states that "81. *The resolution professional in exercise of their duty under Section 99 may not embark on a roving enquiry into the affairs of the debtor or personal guarantor, as the case may be. The information sought by the resolution professional from the debtor, the creditor, or third parties must be relevant to the*



*examination of the application of IRP. In this process, the debtor would inevitably be furnished with a fair opportunity by the resolution professional.....”*

24. The decision in Dilip Jiwrajka clearly emphasises that the Resolution Professional can not indulge into a roving inquiry and can only seek information/documents which are strictly relevant to the examination of the application. In the present case, the information/documents sought vide email dated 25.8.2020 are clearly not connected to the examination of the application under this Petition, as that application only seeks determination of existence of debt and default therein on part of the Personal Guarantor in connection with the Guarantee executed by him to secure the debt owed by a Corporate Debtor and those information squarely falls under the domain of roving inquiry. This can certainly cause a reasonable apprehension in the mind of a reasonable man as to the intent of the Resolution Professional qua the Personal Guarantor. Accordingly, we are of considered view that the opinion of the Applicant Debtor is founded on a reasonable consideration and can not said to be farce or bald.

25. If we look at the Scheme under Chapter III relating to Personal Insolvency of Guarantors, the said scheme is different from the scheme contemplated for resolution of Corporate Debtor. In the case of Personal Insolvency Resolution Process, Section 105(1) of IBC provides that the debtor shall prepare, in consultation with the resolution professional, a repayment plan containing a proposal to the creditors for restructuring of his debts or affairs, while in Corporate Insolvency Resolution Process, the suspended Board has no role in the consideration of Resolution Plans. Since, the debtor is required to be in consultation with the Resolution Professional and it is their mutual co-ordination which can ensure the successful resolution of personal insolvency, the statute had vested express right in the debtor as well to seek replacement of Resolution Professional, which is absent in case of Corporate Insolvency Resolution Process, where only Creditors are vested with such right. Though, we do not find any negligence or explicit bias on part of the Resolution Professional in this case, however, we are of considered view since the Insolvency Resolution Process after commencement has to be run in close co-ordination of Debtor and Resolution Professional, it is imperative that the incumbent Resolution Professional gives way to a new



Insolvency Professional so that the process of Insolvency Resolution can be expedited. Accordingly, we discharge the Respondent No. 2/RP from his duties as Resolution Professional in this matter with immediate effect. However, the Respondent No. 1 shall settle his account in relation to fees and expenses incurred by him so far. Needless to say, these expenses shall be borne by the Applicant herein, who shall reimburse these expenses to the Respondent No. 1 within 15 days from the date of communication of the fees & expenses of Respondent No. 2 by Respondent No. 1, since the existing Resolution Professional is being replaced at the behest of the Applicant Debtor.

26. In view of aforesaid, we appoint Mr. Prashant Jain having registration no. IBBI/IPA-001/IP-P01368/2018-2019/12131, Address: A501, Shanti Heights, Plot No. 2,3,9B/10 ,Sector 11, Koparkharine,Thane ,Navi Mumbai,Maharashtra ,400709, email Id : [ipprashantjain@gmail.com](mailto:ipprashantjain@gmail.com); Ph. : [9322743902](tel:9322743902) as the Resolution Professional in the matter and direct him to file his report in terms of Section 99 of IBC. The Respondent No. 1 shall fix the fees of newly appointed Resolution Professional and the cost of Insolvency Resolution Process, including newly appointed RP's fees shall be dealt with in accordance with the provisions of the IBC. However, the Respondent No. 1 shall make available the amount, as required by newly appointed RP, to fund the Insolvency Resolution Process.

27. In view of aforesaid, IA 1773 of 2024 is allowed and disposed of.

-Sd/-

**Prabhat Kumar**  
Member (Technical)

-Sd/-

**Justice V.G. Bisht**  
Member (Judicial)