

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) (Ins) No.121/2025

In the matter of:

INDIAN BANK,

Stressed Assets Management Branch,
No. 55, IInd Floor, Zonal Office Building,
Ethiraj Salai, Egmore, Chennai – 600 008.

.... APPELLANT

V

T. PRABHAKAR

No. 74/4 (A-4), Green Centaur,
Cenotaph Road, Chennai – 600 008.

....RESPONDENT

Present :

For Appellant : Mr. Pranava Charan, Advocate

For Respondent : Mr. AS. Satish Kumar, PCS

JUDGMENT

(Hybrid Mode)

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

The facts, which are not in dispute in this company appeal are that, the Appellant is a Financial Creditor, and in his capacity as a Financial Creditor, he challenges the impugned order dated 13.12.2024, as it has been passed by the Ld. NCLT, Chennai Bench in C.P (IB) 83/2024, discussing his petition filed under Section 95 of the I & B Code, 2016 against the Respondent herein, the Personal Guarantor of the Corporate Debtor.

2. The petition thus preferred by the Appellant under Section 95 of the I & B Code, 2016, has been dismissed by the impugned order on the ground that as per the memorandum filed by the Respondent, (that is Mr. T. Prabakar), a petition under Section 95 of the I & B Code, 2016, for initiation of the personal insolvency proceedings has already been already initiated against the Personal Guarantors (PG) by way of C.P. (IB) No. 785/2020 by IDBI Trusteeship Services Limited and when the same is pending consideration and the interim moratorium is in force, in the light of the provisions contained under Section 96 of the I & B Code, 2016, no legal proceedings can be initiated against the Personal Guarantor by any other Financial Creditor. The question, which arose for consideration was as to, ***“whether, at the stage when the moratorium has been imposed under Section 96 of the I & B Code, 2016, whether at all, any other legal proceedings can be initiated by the Personal Guarantors, by any other Financial Creditor”***. The answer to the aforesaid question has been given in a negative by the Ld. Tribunal by the impugned order dated 13.12.2024 holding thereof that, owing to the specific bar created by Section 96 of the I & B Code, 2016, subsequent filing of an application under Section 95 of the I & B Code, 2016, by another Financial Creditor during the period of subsistence of an Interim Moratorium, would not be maintainable.

3. For the purposes of appreciating the tenacity of argument extended by the Ld. Counsel for the Appellant, it becomes inevitable for us to extract Section 96 of the I & B Code, 2016, as it exists as of today in the statute books. Section 96 of the I & B Code, 2016, is extracted hereunder: -

“96. Interim-moratorium.—(1) When an application is filed under Section 94 or Section 95—

(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and

(b) during the interim-moratorium period—

(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and

(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

4. Section 96(1)(b) of the I & B Code, 2016, quite explicitly provides that for any legal proceedings or legal action pending in relation to any debt, there would be a deeming presumption that, there would be a stay on the same and Section 96(1)(b)(ii) creates an absolute bar that, the creditors

of the debtor shall not initiate any legal action or proceedings in respect of any debt for which the proceedings have already been drawn. This has been attempted to be argued to the contrary by the Ld. Counsel for the Appellant, contending thereof that the enforcement of the provisions contained under Section 96 of the I & B Code, 2016, would suffer from the vices of a “**purposive construction or mischief rule**”. For the said purpose, the Learned Counsel for the Appellant has made reference to the contents of para 29 of the judgment rendered by the Hon’ble Apex Court in the matter of *Yash Ahuja and Others versus Medical Council of India and Others* as reported in *2009, Volume 10, SCC page 330*. The principles, of rules of mischief, which have been considered in the said judgment may not be adopted to be made applicable as a common yardstick to be applied in the instant case, particularly, when the provisions of the I & B Code under Section 238, has been given an overriding effect since being a special statute, which contemplates the conclusion of the proceedings in a time bound fashion, whereas the principle, of rule of mischief has been considered by the Hon’ble Apex Court in the matters pertaining to the issue of grant of permanent registration to those acquiring foreign medical degrees by the Medical Council of India, where the issue involved was as to whether the persons acquiring medical qualification granted by a Medical College in Nepal, which is recognized by the Medical Council of India, should be granted provisional as well as permanent

registration without qualifying the screening test. The entire controversy, was confined to the domain of medical education, governed under the Indian Medical Council Act, 1933 and later on under the Indian Medical Council Act, 1956. In the said Acts certain restrictions were imposed upon with regards to licensing of the members of the medical profession who have obtained foreign medical qualification in order to enable them to practice in India in accordance with the provisions of the said Acts.

5. The controversy was dealt with by Hon'ble Apex Court by interpreting Section 13(4A) of Indian Medical Council (MCI) Act, 1956, using the rule of "purposive constructions or, mischief rule". This rule as expounded in the said judgment states that when a Section is capable of bearing two constructions, firstly consideration of four matters may be done while construing an act, namely,

- (i) What was the law before making of the Act?
- (ii) What was the mischief or defect for which the law did not provide
- (iii) What is the remedy that the Act has provided,
- (iv) and What is the reason for remedy

and then the courts must adopt that construction of law which suppresses the mischief and advances the remedy

6. The arguments by the Ld. Counsel for the Appellant in the light of the aforesaid preposition of the 'mischief rule', concept, may not be

applicable in the instant case, for the reason being that, after the I & B Code, 2016, was enforced vide its Gazette notification having been carried with the Presidential assent on 28.05.2016, the provisions as contained therein, particularly in the context of the provisions contained under Chapter III of the I & B Code, 2016, was put to challenge before the Hon'ble Apex Court, where the constitutional validity of the provisions contained under Section 95 to 100 of the I & B Code, 2016, was put to challenge. The said issue has been decided by the Hon'ble Apex Court in a decision rendered in Civil Appeal No. 1281/2021, in Dilip. B. Jiwarjka V Union of India & Others, as decided on 09.11.2023, holding the provisions of the said Sections of the I & B Code, 2016, to be intravires. Now the question arises as to in the given circumstances, where the constitutional validity of a provision has been upheld by the Hon'ble Apex Court, whether at all the same could be interpreted to the contrary by applying the principles of 'mischief rule?'. We are of the opinion that, the answer would be 'no', because if we interpret the implications of the 'mischief rule', for the purposes of applying to Section 95 of the I & B Code, 2016, to be read with Section 96 of the I & B Code, 2016, it would be amounting to that we would be distorting the interpretation given by the Hon'ble Apex Court, in Dilip B. Jiwarjka (Supra) case, particularly in the context of the challenge given to the constitutional validity of Section 95 of the I & B Code, 2016,

which has been upheld, holding it to be, not to be ultra-vires to the Constitution of India.

7. The alleged concept of the ‘mischief rule’, as it has been sought to be argued by the Ld. Counsel for the Appellant in the context of the provisions contained under Section 96(1) of the I & B Code, 2016, creating a bar against initiation of a proceeding by the Financial Creditor as against the Corporate Debtor, this Appellate Tribunal is of the view that, it doesn't at all barges upon to bring the issue within the ambit of the principles of the ‘mischief rule’, as argued by the Ld. Counsel for the Appellant.

8. We have been consistently facing this situation in quite a number of occasions, in various proceedings which are being carried before this Appellate Tribunal, where particularly the counsels had been taking their written submissions as submitted before the Ld. NCLT, as to be the basis of the appeal, so as to elaborate their argument in the appeal, preferred under Section 61, of the I & B Code, 2016 or under Section 421 of the Companies Act, 2013. Often this controversy has been in debate “*whether written submissions could at all be treated as to be a pleading*”. We are of the view that, though there is a vacuum in relation to the provisions of the I & B Code, as to how the pleadings would be construed even it does not provide for any specific provision of filing written submission, in that eventuality, the general rule will have to be taken into consideration where,

the Civil Procedure Code describes in its Order VI as to what the pleadings would be, where under Order VI Rule 1 of Civil Procedure Code, 1908, the pleadings have been defined as under, it would mean the plaint and the written statement. The provisions contained under Order VI Rule 1 Civil Procedure Code, 1908, are extracted hereunder: -

“1. Pleading.— “Pleading” shall mean plaint or written statement.”

9. On a simple reading of the aforesaid provision, the pleading even for the purposes of the proceedings before the Ld. NCLT would be, the petition and reply to the petition as filed by the opposite party, and no other document or pleadings placed on record in any manner, could be treated as to be the part of the pleading either for the purposes of carrying the proceedings before the Ld. NCLT or for the purposes of carrying out the proceedings at an appellate stage before the NCLAT. Why this is being observed is that, if a rational interpretation is not given to the provisions contained under Order VI Rule 1 of Civil Procedure Code, 1908, in relation to the concept of pleading, it will result into a distorted application of the restrictions imposed by Order VIII Rule 9 of the Civil Procedure Code, 1908, which is extracted hereunder: -

“Order 8 Rule 9. Subsequent pleadings

[9. Subsequent pleadings.— No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.]”

10. Order VIII Rule 9 of the Civil Procedure Code, 1908, as specifically creates a restriction that, apart from the pleading as defined under Order VI Rule 1, no other pleading would be permitted to be taken on record in any judicial proceedings to be read in support or in opposition to a case until and unless the same is presented with a **“prior leave of the court”**. Meaning thereby, though the law doesn't create an absolute bar that, subsequent pleadings cannot be taken on record, they are permissible but subject to satisfying the conditions contained under Order VIII Rule 9, of Civil Procedure Code, 1908, that there has had to be a prior permission of court discharging judicial functions before the said subsequent pleading submitted by way of written submissions is permitted to be taken to be read as a part of defence either before the Ld. NCLT or NCLAT. In the instant Company Appeal the Ld. Counsel for the Appellant had attempted to read the written submissions, which he has preferred before the Ld. NCLT during the course of the pleading in support of his contention by making

reference to various contentions, qua the implications pertaining to Section 96 of the I & B Code, 2016, and as to in what manner it has to be interpreted without the same being part of pleadings in the proceedings.

11. With all due reverence at our command, we are of the opinion that, admittedly, it is not the case of the Appellant that the written submissions submitted by him before the Ld. NCLT, would be satisfying the ingredients and the parameters contemplated under Order VIII Rule 9 of the Civil Procedure Code, 1908 (though the Civil Procedure Code would not apply, but still because of a vacuum in law in this field, the principle of pleadings would be made applicable). And since the written submissions on, which the reference has been made by the Ld. Counsel for the Appellant is not part of the pleading contemplated under Order VI, Rule 1 of the Civil Procedure Code, no extract of the same could be permitted to be read by the Appellant at this stage of appeal under Section 61 of the I & B Code, 2016, in support of his contention as against the impugned order which is under challenge.

12. The Ld. Counsel for the Appellant has further contended that, the principles of the 'mischief rule', would be treated to be self-imbibed in the provisions contained under Section 96 of the I & B Code, 2016, and that argument is being extended in the light of an "**Discussion Paper**", bearing File No. 30/38/21, Insolvency, Government of India, Ministry of Corporate

Affairs, dated 18.01.2023. What he aims to contend that even the Ministry of Corporate Affairs has felt that, there was a necessity to deal with the restrictions imposed by Section 96, of the I & B Code, 2016, for the purposes of overcoming the restriction imposed for initiation of any proceedings after the imposition of Interim Moratorium under Section 96 of the I & B Code, 2016. The question for consideration would be as to, whether at all a “**Discussion Paper**”, which expresses preliminary views and which is circulated for inviting comments could at all be applied for the purposes of establishing or denouncing a right to a party to the judicial proceedings, which are being conducted under a special self-contained code. Yet again, we are of the view that the answer would be ‘**no**’, the reason being that the Ministry of Corporate Affairs, might have felt the necessity to deal with the implications of Section 96 of the I & B Code, 2016 but admittedly it has not pursued the matter further. It is not the case of the Appellant that, at any stage or by any subsequent decision taken by the Government of India by virtue of a Gazette notification, amendments in Section 96 of the I & B Code, 2016 was ever carried out. In that eventuality, the notification of 18.01.2023 which is essentially a Discussion Paper, cannot be said to be a guiding force to be treated as law for the purposes to substantiate the argument of the Ld. Counsel for the Appellant qua the ‘mischief rule’, as contemplated to be applied in the context of the implications flowing from Section 96 of the I & B Code, 2016.

13. There is another reason for not accepting the concept of ‘mischief rule’ in light of the executive directions issued by the Ministry of Corporate Affairs on 18.01.2023, because under the definition of ‘law’ as provided under **Article 13** of the Constitution of India, it defines ‘law’. The definition of law as extracted under the Constitution of India, will not include within its ambit any executive directions, particularly, when it was mandatorily required to be notified under Article 245 of the Constitution of India. To be treated to the law under Article 13(3)(a) is described hereunder.

“13. Laws inconsistent with or in derogation of the fundamental rights.—(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not

previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368.”

14. If Article 13 is read in its totality, what has been contemplated to be brought within the ambit of law is “*Ordinance, Order, Bylaws, Rule, Regulations, Notification, Custom, and or Usages*”, none of the covenants or categories provided under Article 13 of the Constitution of India, bring the notification of 18.01.2023, within its ambit to be treated as to be law governing a specified field covered under the Constitution particularly that under List 1 of Schedule 7 of the Constitution of India. Thus, this notification cannot be read by the Appellant as if it has to be mandatorily applied for the purposes of satisfying the ‘rule of mischief’, as argued by the Ld. Counsel for the Appellant.

15. The Ld. Counsel for the Appellant has submitted that the judgment suffers from the vices of “*Audi alteram partem*”. It is not necessary that under all eventualities of the proceedings of a given case before the Court created under the statute, to have an elaborate discussion on the grounds taken by the Appellant, and that too particularly in the context of the grounds taken in the written submissions, which are not part of the pleadings to deal with all the vitalities when the provision itself is an

answer to the contentions raised by the Appellant, and particularly, in the context of the provisions contained under Section 95 of the I & B Code, 2016, to be read with Section 96, the constitutional validity of, which has been upheld by the Hon'ble Apex Court. And thus the reason which has been assigned in the impugned order is that, the Appellant in the capacity of being a Financial Creditor after the imposition of an Interim Moratorium under Section 96 of the I & B Code, 2016, cannot be permitted to draw any proceedings, which is barred by statute as contained under Section 96(1)(b) of the I & B Code, 2016, and particularly the statute which is of a special nature.

16. Thus the Ld. NCLT, while holding the proceedings to be barred by Section 96 of the I & B Code, 2016, by the impugned order didn't require to go into factual matrix, calling for an elaborate discussion. Rather to the contrary, on the simple reading of the order, it is apparently reflects that the Appellant was heard and the contentions which, were raised by the Appellant before the Ld. Tribunal were considered and ultimately, the analysis drawn by the Ld. Tribunal that, the legal actions already initiated in respect of a debt against a Corporate Debtor by virtue of the provisions contained under Section 96 of the I & B Code, 2016, the Financial Creditor would be restrained to initiate any further new legal proceedings or an

action in respect of any debt against the Personal Guarantor for which the proceedings have already been undertaken or is being carried.

17. The Ld. Counsel for the Appellant has argued that, the time since being the essence of law and predominant concept in the proceedings under the I & B Code, 2016, was flouted, owing to the fact that, there had been various adjournments, which had been taken. And for the aforesaid purpose, he has made reference to the pleadings taken before the Ld. Tribunal. We are of the view that, whenever an Appellate Tribunal is called upon to answer or judicially scrutinize an order passed under a statute, it has had to confine itself to the grounds taken and the arguments extended by the counsel for the parties. At the stage of exercising the Appellate jurisdiction of scrutinizing the judicial propriety of orders passed by the Ld. NCLT, the Appellate Tribunal is not required to traverse into the conduct of the party to the proceedings before the Tribunal. And that is what has been contemplated and laid down by the Ld. Single Judge of Hon'ble High Court of Judicature at Allahabad in a judgment reported in *1996 Volume 28 ALR 397, Qaiser Sibtain versus District Judge Allahabad and others*. Wherein, the Ld. Single Judge has held that, at an Appellate stage or even at the stage of considering any miscellaneous application, the past conduct is not required to be gone into, and the courts are required to exclusively consider and deal with the grounds which had been taken in the application,

which is under consideration before it and it has not to go into the previous proceedings or conduct as they would be irrelevant for the purposes of deciding the appeal.

18. Owing to the above, the view expressed by the Tribunal in the impugned order dated 13.12.2024 rejecting the proceedings drawn under Section 95 of the I & B Code, 2016, by the Appellant because of the embargo created due to Section 96 of the I & B Code, 2016, do not suffer from any apparent error of fact and law.

19. The grievance of the Appellant is that he has been denied to file an application under Section 95 of the I & B Code, 2016, because another application under Section 95 of the I & B Code, 2016, has already been filed and the interim moratorium is in place. In normal circumstances, once orders are passed under Section 100, either admitting or rejecting the said application, the grievances will be addressed. If the application gets admitted, he can file his claims with the Resolution Professional. If it is rejected, he can file his own Section 95 application. He contends that he is unable to do so because the proceedings are dragging on for nearly four years as per his claim. His grievance can be addressed by requesting Ld. Adjudicating Authority to expedite the pending proceedings under Section 95 filed by IDBI Trusteeship Limited in CP (IB) No. 785/2020.

20. Accordingly, Ld. Adjudicating Authority to hereby requested to expedite the said proceedings. Apart from this, the 'appeal' lacks 'merit' and the same is accordingly 'dismissed'.

217. All pending 'Interlocutory Applications' would stand 'closed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

30/04/2025

SN/MS