

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) (Ins) No.429/2024
(IA Nos.1173 & 1174/2024)

In the matter of:

COMANDUR PARTHASARATHY

S/o late Dr. C.R Rajagopalan,
Aged 68 years, Occupation:
Business, R/o H. No. 8-2-293/82/A/648,
Plot No. 648, Road No. 34,
Jubilee Hills, Hyderabad, Telangana – 500033

... APPELLANT/PERSONAL GUARANTOR

V

LALIT KUMAR DANGI,

Resolution Professional,
104, M.K Bhavan, 300 Shahid Bhagat Singh Road,
Fort, Mumbai 400001 Maharashtra

...RESPONDENT NO.1/RESOLUTION PROFESSIONAL

SHINHAN BANK

Ranga Reddy Branch
SLN Terminus, 1st Floor, Survey No. 133,
Gachibowli- Miyapur Road,
Gachibowli, Telangana- 500032

...RESPONDENT NO.2/FINANCIAL CREDITOR

M/S KARVY DATA MANAGEMENT SERVICES LIMITED

R/o Karvy Gateway, Plot No. 38 & 39,
Nanakramguda, Financial District,
Gachibowli, Hyderabad- 500032

...RESPONDENT NO. 3/CORPORATE DEBTOR

Present :

For Appellant : Mr. Avinash Desai, Senior Advocate
for Ms. Kopal Sharraf &
Ms. Sivani Madugula, Advocate

For Respondents : Mr. Adarsh Ramanujan &
Ms. Madhupreeta Elango, Advocates for R1 & R2
Mr. Lalit Kumar Dangi - R1/RP

JUDGMENT
(Hybrid Mode)

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

A very trifling, but an interesting issue engages our consideration in the instant company appeal, where the Appellant puts a challenge to the impugned order of 21.10.2024, which was passed in IA No. 1987/2024 in CP (IB) No. 111/95/HDB/2024, contending thereof that the consequential effect of the impugned order would be that, he has been deprived from availing an opportunity to file his objection to the report that has been submitted in the proceedings under Section 95 of the I & B Code, 2016, at the stage when the proceedings have reached to Section 99 of the I & B Code.

2. In order to deal with the respective arguments of the learned counsel for the parties, reference to Section 99(4)(5) of the I & B Code, 2016, becomes mandatory. The same is extracted hereunder: -

(1)

(2)

(3)

(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.”

3. The issue would be, and as derived by the Ld. Tribunal while passing the impugned order, is in the light of the judgment of Surendra B. Jiwrajka vs Omkara Assets Reconstruction Private Limited, wherein it was observed thereof that till the proceedings which are being instituted under Section 95 reaches to the stage of the proceedings under Section 100 of the I & B Code, 2016, there is no vested right, which is created in favor of the opposite party to the proceedings to have any say in the matter. The issue would be as to whether the ratio propounded in the matters of Surendra B. Jiwrajka (Supra) could at all be extended to be made applicable when the proceedings of Section 95 are being carried out and had reached at the stage of Section 99 of the I & B Code, 2016, particularly in the context of the provisions contained under Section 99(4)(5) of the I & B Code, 2016, as already been extracted above.

4. If the language used under Section 99 (4) is taken into consideration, it has left it open, to be within an exclusive domain of the Resolution Professional “**who may**” seek such further “**information or explanation**” in connection with the application under Section 95 of the I & B Code, 2016, from the Debtor or the Creditor or any other person, who in the opinion of the Resolution Professional may provide the required information. The ambit of providing an explanation or furnishing information as per Section 99 (4) of the I & B Code, 2016, is wide enough to include within its ambit the creditors, the debtor and not even that, it stretches beyond to be made

applicable to any other person, from whom the information could be gathered, which could be vital for examining the application filed under Section 95 of the I & B Code, 2016, and for preparation of the Report to be submitted under Section 99(1) of the I & B Code, 2016.

5. Thus, the basic objective of the provision is that, in order to get the Report on the Application as preferred under Section 95 of the I & B Code, 2016, prepared to be utilized for the purposes of the proceeding under Section 100 of the I & B Code, 2016, it is required to collect the requisite information or the explanation needed to justify the propriety of the report itself.

6. It can be inferred from the above that the, provisions under Section 99 (4) of the I & B Code, 2016, is not limited in its applicability, though it starts with the rider that it is the prerogative of the Resolution Professional who, according to his own wisdom, may call for an explanation or information. The use of the word ‘**may**’ herein would be an absolutely discretionary exercise of powers by the Resolution Professional, which will absolutely depend upon his decision-making wisdom, depending on the requirements for preparing the report, whether to call for an explanation or information or not. In other words, it could be said and as argued by the Respondents Counsel also that, the provisions under Section 99 (4) of the I & B Code, 2016, since it uses the word ‘may’, and as the exercise of powers of calling for the information or explanation has been made discretionary at the

wisdom of the Resolution Professional, it is argued that the provisions under Section 99 (4) of the I & B Code, 2016, is not mandatory.

7. This may apparently seem to be quite acceptable, but practically it may not be always the case, particularly in the given set of circumstances of the instant case, the reason being that in the instant case, the Resolution Professional himself had exercised his discretion and had issued a notice on 21.06.2024 seeking information from the Appellant. However, in the said notice, the number of days, which was granted to submit the information was confined to two days. It is here where the controversy emerges regarding limiting the number of days within which the information was to be filed.

8. We are of the view that as soon as the Resolution Professional has issued a notice dated 21.06.2024 calling for necessary information from the Personal Guarantor/Appellant herein, it means that he has exercised his wisdom in this regard of the need to collect and collate information to prepare his Report. If that be so, as soon as the Resolution Professional has issued a notice on 21.06.2024, the provision contained under Section 99 (4) of the I & B Code, 2016, will be no more directory in nature, and the provision becomes 'mandatory', meaning thereby that the conditions following thereof would necessarily be required to be followed.

9. It is argued by the Ld. Counsel for the Appellant, that the notice which was issued on 21.06.2024, will be bad in the eyes of law for the reason being

that, it had provided only two days time for the purposes of submission of the explanation. Relevant part of the notice is extracted hereunder: -

“Pursuant to Section 99 (4) and (5) of the Insolvency and Bankruptcy Code, 2016, the Resolution Professional is entitled to seek information related to the Insolvency Resolution Process of the personal guarantor to debtor, creditor or any other person and such request of documents as may be required shall be furnished within 07 days of such request. In accordance with this provision, I kindly request your cooperation for providing the requested documents at the earliest possible.

Kindly provide us the details within 2 days, considering the paucity of time.

Your prompt attention to this matter would be greatly appreciated.”

10. It has been argued by the Ld. Counsel for the Appellant that, this notice of 21.06.2024 is bad in the eyes of law as it runs contrary to the provisions contained under Section 99 (5) of the I & B Code, 2016, which prescribes for, that when the Resolution Professional determines, after the exercise of his wisdom, to call for an explanation/information, in that eventuality, the provisions contained under Section 99 (4) of the I & B Code, 2016, take the shape of being a mandatory provision, and it becomes mandatory for the Resolution Professional to adhere to the period prescribed under Sub-Section (5) for allowing submission of such information/explanation as solicited under Section 99 (4) of the I & B Code, 2016.

11. Section 99 (5) of the I & B Code, 2016, stipulates that, the person from information/explanation is sought under Section 99(4) shall furnish the same within 7 days of receipt of such request. The Ld. Counsel for the Appellant argues that since only 2 days' notice was provided in the notice of 21.06.2024, the same would be in utter derogation to the procedural requirement and legislative intent and necessity providing for 7 days under Section 99 (5) of the I & B Code, 2016, and hence the impugned order of 21.10.2024 cannot be sustained.

12. It has been argued to the contrary by the Ld. Counsel for the Respondent that, though as per Notice of 21.06.2024, only two days' time was granted to submit information, that will not materially affect the right of the Appellant, because on 29.06.2024 the Appellant sought a copy of the company petition and 5 days from receipt of the said petition to provide the information, that he provided the copy of said petitions on 03.07.2024, reminding him to submit the information as called for by the notice of 21.06.2024, that he waited till 23.07.2024 for the required information and in the absence its receipt he filed his report on the Section 95 of the I & B Code, 2016, application on 23.07.2024. However, this argument made by Ld. Counsel for the Respondent in the light of the communications issued on 03.07.2024, itself will not make the provision contained under Section 99 (5) of the I & B Code, 2016, as to be *otiose*, by contending that the stipulations

to provide 7 days time as prescribed under Section 99 (5) of the I & B Code, 2016, stands satisfied by issuance of a subsequent letter of 03.07.2024.

13. As a matter of fact, we are of the considered view that issuance of the Letter dated 03.07.2024 by way of reminder, will not help the Resolution Professional overcome the shortcomings of initial notice of 21.06.2024, because at no point of time till 03.07.2024 he ever contemplated to issue a reminder and because he by his own admissions had finalized the report on 26.06.2024 itself. Hence, complying with the conditions of providing a time period upto 7 days to file the information under Section 99 (5) of the I & B Code, 2016, becomes mandatory for the Resolution Professional who issued the first notice on 21.06.2024 and non-compliance with the same cannot be ameliorated by issuance of a Letter on 03.07.2024, in the shape of a reminder, calling for a reply in pursuance to the notice of 21.06.2024, the reason being that the Letter of 03.07.2024, apart from the fact that, it will not have an independent existence, to satisfy the conditions contemplated under Section 99 (5) of the I & B Code, 2016, of providing time upto 7 days to file reply under Section 99 (5) of the I & B Code, 2016, which was to be complied at the stage when the first notice was issued on 21.06.2024.

14. The Ld. Counsel for the Respondent further has contended that the principles prescribed to be followed under the judgment of Surendra B. Jiwrajka (Supra) will be applicable in this case pertaining to the rights of the Personal Gurantor/Appellant to have a say in the proceedings under Section

95 of the I & B Code, 2016, till it reaches to the stage of Section 100 and that bare minimum opportunity should be given to the Personal Guarantor. This contention may not be correct, for the reason being that, the legislature has aptly thought to be appropriate that before the report is taken as to be the basis for admission of the procedure under Section 95 of the I & B Code, 2016, at the stage of Section 100 of the I & B Code, 2016, the report is required to be embellished with as much information and explanation as possible and therefore a procedure to obtain such information has been outlined in Section 99(4) & Section 99 (5) of the I & B Code, 2016. Though calling for such information is purely at the discretion of Resolution Professional, but it will have to comply with the conditions of time frame prescribed under Section 99 (5) of the I & B Code, 2016.

15. Meaning thereby, the judgment of Surendra B. Jiwrajka (Supra) did not take into account a right, which stands created by exercise of wisdom by the Resolution Professional of calling for an explanation/information under Section 99 (4) of the I & B Code, 2016. Hence the principle, which has been attempted to be borrowed from the judgment of Surendra B. Jiwrajka (Supra) may not be applicable when the Resolution Professional himself has already exercised its discretion and had issued a notice on 21.06.2024. In that eventuality, if the spirit of Section 99 (5) of the I & B Code, 2016, is required to be complied with, it has to be complied with in a symphonised reading of Section 99 (5) of the I & B Code, 2016, and that would be an independent

provision, to be read in the light of the ratio laid down in the judgment of Surendra B. Jiwrajka (Supra).

16. The Ld. Counsel for the Respondent submitted that the Resolution Professional submitted the report on 14.08.2024, (which is placed on record at Page 238 of the Paper book) and that the Appellant had the liberty to submit his information/explanation till that date and that would suffice to meet the objective of granting upto 7 days of time for furnishing the explanation/information as provided under Section 99 (5) of the I & B Code, 2016. That may not be a case, which could have much ground to stand, because all actions taken thereafter the issuance of notice of 21.06.2024, were unilateral action taken at the behest of the Resolution Professional, of preparing the report on 26.06.2024, of issuing the letter of 03.07.2024 and of submission of the report on 14.08.2024, because all these acts at the hands of the Resolution Professional cannot camouflage or dilute the legislative spirit and purpose as aimed under Section 99 (5) of the I & B Code, 2016, which has to be read along with Section 99 (4) of the I & B Code, 2016.

17. The Ld. Counsel for the Respondent has further referred judgments as reported in *2023 SCC online, Supreme Court page 989, in the matter of State of Gujarat and Others Versus Multiplex Assn. of Gujarat through its President, the judgment of 2012, volume 19, SCC page 706* and the judgment of the Principle Bench as rendered in *CA (AT) (INS) No. 200/2025 in the matter of Suresh Atlani Vs. Omkara Asset Reconstruction Pvt. Ltd.,*

to argue that his action is in order. It is seen that these judgments are from the perspective of two principles, that is, of substantial compliance and the principles of natural justice.

18. The issue of substantial compliance cannot be substituted herein, under the given facts; According to the argument of the Ld. Counsel for the Respondent, issuance of letter dated 03.07.2024, provided substantial compliance of the provisions of Section 99(4) of the I & B Code, 2016. However, issuance of a mere reminder letter will not constitute substantial compliance unless it is shown that such action fulfils the codal provisions of Section 99(5) of the I & B Code, 2016. Mere submission of the report of 14.08.2024 or a prior act of issuance of a letter of 03.07.2024 cannot be construed as to be substantial compliance post facto. Hence, the aforesaid principle, which has been sought to be argued by the Ld. Counsel for the Respondent, may not be applicable. So far, as the judgment, which was reported in 2012, volume 19, SCC page 706 is concerned, that is based upon the logic of principles of natural justice in relation to an act of complaint under service jurisprudence, which deals with the aspect of post-decisional opportunity. But this post-decision opportunity would be only to eradicate, the prejudice not the opportunity to reply, which is to be caused to an employee because of not being provided with an effective opportunity of hearing.

19. The principle laid down in the aforesaid judgment cannot be attracted to be applied, when the provisions under Section 99(4)&(5) of the I & B Code, 2016, are basically incorporated under law for the purposes to enable the Resolution Professional, to test the veracity of the report. The prejudice or post-decisional opportunity, would be a concept alien to the proceedings and will not be applicable, particularly in respect of the proceedings under special statute.

20. In view of the matter as discussed above, the impugned order dated 21.10.2024 is hereby quashed. The matter is remitted back to be decided afresh after providing a time period of seven days from the date of the receipt of the certified copies of this order by the Ld. Adjudicating Authority for filing a reply furnishing information as contemplated under Section 99 (5) of the I & B Code, 2016. For the aforesaid reason, the ‘appeal’ would stand ‘allowed’, the ‘impugned order’ is ‘quashed’, and all pending ‘interlocutory applications’ would stand ‘closed’.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

19/06/2025
SN/MS/RS