NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) (Ins) No. 29/2025
IA No. 115/2025

In the matter of:

IQBAL JUMABHOY
S/o (Late) Ameerali R. Jumabhoy
Aged about 67 years
Residing at 53 Holand Park, Singapore –249493 **… Appellant**
V
SHRI MANOJ KUMAR ANAND
Resolution Professional of the Personal
Guarantor
3rd Floor, 2nd Community Centre,
Naraima, New Delhi - 110028 **...Respondent No. 1**

ASSETS CARE AND RECONSTRUCTION ENTERPRISE LIMITED
Represented by its Authorised Signatory
2nd Floor, No. 13 Mohan Dev Building,
Tolstoy Marg, New Delhi – 110001 **...Respondent No. 2**

Present :

For Appellant : Mr. PH Arvindh Pandian, Senior Advocate
For Mr. Avinash Krishnan Ravi, Mr. Mohamed Wasif Khan & Ujjwal Jain, Advocates

For Respondents : Mr. SK Sharma & Dyuti Ghai, Advocates for R1/RP
Mr. Abhijeet Sinha, Senior Advocate,
Mr. Angad Varma, Mr. Prashant Kumar,
Ms. Nikita Menon, Mr. Kevin Chadha,
Mr. Adithya Devarayan, Ms. Mallika Kamal, Advocates, for R2

WITH
Company Appeal (AT) (CH) (Ins) No. 34/2025
IA No. 124/2025

In the matter of:

HUSSAIN SOMJEE
S/o (Late) Shahrukh Somjee
Aged about 36 years
Residing at 12A Dalkeith Road
Singapore – 299641 **… Appellant**
V
SHRI MANOJ KUMAR ANAND
Resolution Professional of the Personal
Guarantor
3rd Floor, 2nd Community Centre,
Naraima, New Delhi - 110028 **...Respondent No. 1**

ASSETS CARE AND RECONSTRUCTION
ENTERPRISE LIMITED
Represented by its Authorised Signatory
2nd Floor, No. 13 Mohan Dev Building,
Tolstoy Marg, New Delhi – 110001 **...Respondent No. 2**

Present :

For Appellant : Mr. PH Arvindh Pandian, Senior Advocate
For Mr. Joshua H Samuel, Advocate

For Respondents : Mr. SK Sharma & Dyuti Ghai, Advocates for R1/RP
Mr. Abhijeet Sinha, Senior Advocate,
Mr. Angad Varma, Mr. Prashant Kumar,
Ms. Nikita Menon, Mr. Kevin Chadha,
Mr. Adithya Devarayan, Ms. Mallika Kamal, Advocates,
for R2

JUDGMENT
(Hybrid Mode)

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

These appeals were elaborately heard at the Admission Stage itself.

The Appellant, in the instant company appeals, who happens to be the personal guarantor, has questioned the propriety of the Impugned Order dated 06.11.2024, as rendered in IA No. 447/2024 in CP (IB) No. 15/BB/2023, which is under challenge in **Company Appeal (AT) (CH) (Ins) No. 29/2025**.

2. In the other connected company appeal, that is **Company Appeal (AT) (CH) (Ins) No. 34/2025,** the Appellant who happens to be a personal guarantor, questions the propriety of the Impugned Order dated 06.11.2024 as rendered in IA No. 445/2024 in CP(IB)No.14/BB/2023.

3. The Ld. Senior Counsel for the Appellant in both these appeals, has confined his argument from a very limited perspective, as to whether at the stage of considering the report submitted by the Resolution Professional under Section 99(7) of the I & B Code, 2016, an elaborate hearing is required to be considered and recorded by the Ld. Adjudicating Authority, before passing an order under Section 100 of the I & B Code, 2016, admitting an application preferred under Section 95 of the Code for initiation of the Insolvency Resolution Process (IRP) in respect of the personal guarantors.

4. The brief facts of the respective appeals as it engages consideration before this Tribunal are that applications were filed under Section 95 of the I & B Code, 2016, against respective personal guarantors/Appellants, that the Resolution Professional submitted his report under Section 99 of I & B Code, 2016, recommending acceptance of the said applications and that the Ld. Adjudicating

Authority passed orders under Section 100 of the I & B Code, 2016, admitting the respective applications preferred under Section 95, thus ordering initiation of Insolvency Resolution Process against the Appellants. It is the contention of the Appellants, as contended by Ld. Senior Counsel for the Appellants that the impugned orders are bad in the eyes of law, because at this stage, prior to passing of order under Section 100 of the Code, they ought to have been heard prior to the acceptance of the report under Section 99 of I & B Code, 2016, which has constituted as to be the reason and basis for admitting the petition under Section 95 of the I & B Code, 2016.

5. The facts leading to the institution of the instant company appeals, challenging the Impugned Order dated 06.11.2024, are that Indiabulls Housing Finance Limited (IHFL) entered into a loan agreement dated 21.03.2018 with M/s. Raffles Residency Private Limited and in the said agreements, Mr. Iqbal Jumabhoy and Mr. Hussain Somjee, the Appellants herein, in the respective appeals, stood as personal guarantors, that the aforesaid Indiabulls Housing Finance Limited (IHFL) had raised a demand notice on 14.02.2020, issued under Section 13 (2) of the SARFAESI Act, 2002 and also another notice dated 20.02.2020 under Rule 7 (1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, and that, Indiabulls Housing Finance Limited (IHFL) also filed

applications before DRT, Bengaluru in IR No. 39 of 2020 and IR. No. 40 of 2020 on 12.08.2020 for invoking the personal guarantee of the Appellants.

6. However, pursuant to the settlement agreement, which is said to have been arrived at on 01.02.2022, said proceedings before the DRT, Bengaluru Bench, were later on withdrawn against the Appellants. The issue would be as to whether the withdrawal of the proceedings pending before the DRT, Bengaluru Bench on the basis of the settlement agreement of 01.02.2022, would at all have a bearing on the proceedings initiated under Section 95 of the I & B Code, 2016, which is altogether an absolutely and independent proceedings drawn under special statute where a factum of default is established prima facie for the purposes of putting the Corporate Debtor to face the IRP proceedings.

7. It is submitted that IHFL had assigned debt to the Indiabulls Asset Reconstruction Company Private Limited (IBARCL) on 30.09.2020, who further assigned the debt to Asset Care and Reconstruction Enterprise Limited (ACRE) i.e. Respondent No. 2 herein, on 26.04.2021. The settlement agreement dated 01.02.2022 was entered into between the Appellants herein, IHFL, IBARCL, ICCL (India Bulls Commercial Credit Limited), and Catalyst Trusteeship Limited with regards to the debt owed by the principal borrower, Raffles Residency Private Limited Company. But the settlement agreement was terminated by Catalyst Trusteeship Limited, vide its letter dated 16.06.2022 on the premises that an event of default was triggered. Consequent to this, Respondent No. 2 herein, issued a

notice dated 12.07.2022 to the Appellants and the Corporate Debtor about the revival of all legal proceedings before appropriate forums/courts/authorities.

8. Further, Respondent No. 2 in the instant company appeals, proceeded to institute the respective petitions, being Company Petitions, **Company Petition (IB) No.15/BB/2023** and **Company Petition (IB) No.14/BB/2023,** respectively, as involved in the two company appeals herein, as against these Appellants based upon the demand notice in Form - B dated 20.02.2020. The Appellant has contended that in between the process was kept in abeyance because of a case in the Hon'ble Apex Court and when the cases got revived, in fact, no fresh Form - B was ever issued to the Appellant by the Financial Creditor. He further submitted that though the settlement agreements, which the Financial Creditors have entered into, should have extinguished the original loan and personal guarantee agreements, the Financial Creditor has relied upon the same loan agreement and the personal guarantee agreement, to file the application Under Section 95 of the I & B Code, 2016, which is fundamentally flawed.

9. In these company petitions which involve consideration, being Company Petition (IB) No.15/BB/2023 and Company Petition (IB) No.14/BB/2023, Respondent No. 1, has been appointed as Resolution Professional. In CP(IB) No. 15/BB/2023, the Respondent No. 1, after being appointed as a Resolution Professional, has filed an application, being IA No. 447/2024, before the Ld. Adjudicating Authority in which he has submitted his report as contemplated under

Section 99 of the I & B Code, 2016, recommending the acceptance of the Application filed under Section 95 of the I & B Code, 2016, for initiation of the Insolvency Resolution Process (IRP) against the Appellant personal guarantors. The Appellant contend that in the said IA No. 447/2024, they have not been made a party and that since the report under Section 99 of I & B Code, 2016, being in violation of the rules, because of non-provision of effective hearing to the Appellants/Personal Guarantor, it deserves not to be accepted and not to be taken as the foundation for the purposes of initiation of the Personal Insolvency proceedings.

10. In the connected company appeal, the facts remain the same. The Appellant herein has argued that, the very fact of acceptance of the report in the Company Petition (IB) No.14/BB/2023 and consequentially deciding the IA No. 445/2024 which was similar to IA No. 447/2024, is bad, because the same suffers from the vices of having not provided an effective personal hearing and therefore, the actions thus taken therein is in apparent violation of the principles of natural justice. The Appellants contend that since as a consequence of the Impugned Order passed, there had been a deprivation for the Appellants, from putting up their case as against the report submitted by the Resolution Professional under Section 99 of the I & B Code, 2016, which stood accepted, consequentially, resulting into admission of the Application filed under Section 95 of the I & B Code, 2016, and consequent

initiation of Insolvency Resolution Process (IRP) against them which would not be sustainable in the eyes of law.

11. In other words, what the Ld. Senior Counsel for the Appellant intends to argue is that, at the stage of deciding the respective IAs, i.e., IA No. 445/2024 and IA No. 447/2024 which contained the report of the Resolution Professional under Section 99 of the I & B Code, 2016, which formed the basis for issue of direction under Section 100 of the I & B Code, 2016, for admitting the application under Section 95 of the I & B Code, 2016, for initiation of Insolvency Resolution Process (IRP), the Appellants ought to have been heard and since they were not heard, the respective orders issued under Section 100 of the I & B Code, 2016, are bad in law. For the aforesaid purpose, the Ld. Senior Counsel for the Appellant had relied upon a ***judgment reported in 2024, Volume 5 SCC Page 435, Dilip B Jiwrajka Vs. Union of India & and others***, where a bunch of petitions was decided by the Hon'ble Apex Court, where Part III of I & B Code, 2016, dealing with personal insolvency were challenged on the grounds of being arbitrary, violative of natural justice and violative of Article 14 of the Constitution. Hon'ble Apex Court in its judgment, has laid down the scope of applicability of the principle of natural justice in the processes starting from Section 95 to Section 100 of the I & B Code, 2016. Ld. Senior Counsel for the Appellant, had drawn the attention of this Tribunal to the conclusion which has been arrived at in the judgment of ***Dilip B Jiwrajka Vs. Union of India & and others***, (Supra). Particularly, he has referred to the

conclusion which has been arrived at in Para 85 of the judgment, laying down the principles of adherence to principle of natural justice. The relevant portion of Para 85 of the aforesaid judgment is extracted hereunder: -.

> *"85. For the above reasons, we have come to the conclusion that the impugned provisions of IBC do not suffer from any manifest arbitrariness so as to offend Article 14 of the Constitution. This is subject to the clarification on the interpretation of Section 99 in the text of this judgment."*

12. The Ld. Senior Counsel for the Appellant while elaborating his argument, has further drawn the attention of this Tribunal to the contents of para 53 and 54 of the judgment of Dilip B Jiwrajka Vs. Union of India & and others (Supra), wherein Hon'ble Apex Court has held postulated, that the Resolution Professional while examining the application under Section 95 of the I & B Code, 2016, has to ascertain only two things, one that the application satisfies the requirement of Section 94 or Section 95 of the I & B Code and secondly, the Applicant has the information, and furnished the explanation, which is sought under Sub-Section 4 of Section 99 of the I & B Code, 2016 and that after such examinations as envisaged under Section 99(6) he may recommend either the acceptance or the rejection of the application by submitting the report under Section 99(7). Hon'ble Apex Court has further added that the report has to record reasons, and a copy of such has to be furnished to the debtor/creditor, and that, upon submission of report, the role of Resolution Professional prior to adjudication process ends, and the matter then lies

within the jurisdiction of the Ld. Adjudicating Authority, who has to pass an order either admitting or rejecting the application within 14 days from the date of submission of the report under Section 99 of the I & B Code, 2016, Hon'ble Apex Court has further held that the role of Resolution Professional under Section 99 of the I & B Code, 2016, is only that of a facilitator and that his role is to gather relevant information which will aid the Ld. Adjudicating Authority to adjudicate on the admissibility of an application preferred under Section 94 or Section 95 of the I & B Code, 2016.

13. The exact role of Resolution Professional in Personal Insolvency Resolution Process, the nature of his powers within Chapter III of the Code as compared to those exercised by a Resolution Professional under Chapter II of the Code & the implications of his report under Section 99 of I & B Code, vis-a-vis the process of admission of an application under Section 95 of Insolvency Resolution Process (IRP) has been examined in some detail by the Hon'ble Apex Court in para 54, of the said judgment. Para 54 is extracted hereunder.

> *"54. The salient aspect which emerges from the above analysis is that the resolution professional does not possess an adjudicatory function in terms of the provisions of Section 99. In Chapter III of Part III, the legislature has dealt with the resolution of individual or partnership insolvencies and bankruptcies. Therefore, the legislature considered it appropriate to interpose the resolution professional before the adjudicatory function of the adjudicating authority commences under Section 100. The resolution professional*

does not have the kind of power which their counterpart has in Part II. No provision has been made in Part III empowering the resolution professional to take over the assets or the business which is being carried on by the individual or the partnership. The role under Section 99 which is ascribed to the resolution professional is that of a facilitator and is to gather relevant information on the basis of the application which has been submitted under Section 94 or Section 95 and after carrying out the process which is referred to in sub-section (2), sub- section (4) and sub-section (6) of Section 99, to submit a report recommending the acceptance or rejection of the application. Significantly, the statute has used the expression "examine the application", "ascertain" and "satisfies the requirements" and "recommend" the acceptance or rejection of the application. The use of these expressions leaves no manner of doubt that the resolution h professional is not intended to perform an adjudicatory function or to arrive at binding conclusions on facts. The role of the resolution professional is purely recommendatory in nature and cannot bind the creditor, the debtor or, the adjudicating authority."

14. It was observed therein that the legislature has considered it appropriate to interpose the professionals, before the adjudicatory function is taken over by the Ld. Adjudicating Authority to commence the proceedings, which stands initiated only at the stage of Section 100 of the I & B Code, 2016, that the Resolution Professional does not have the kind of power which the Ld. Adjudicating Authorities has and no power has been provided to the Resolution Professional under the provisions contained under Part III of the Code to take over assets or the business, and that the role of Resolution Professional is purely recommendatory in nature and it cannot bind the creditor, the debtor or, the Ld. Adjudicating Authority.

15. In fact, on a simpliciter reading of the language of Section 99 of the I & B Code, 2016, one will also come to the same conclusion. The said Section is extracted hereunder: -

> ***"99. Submission of report by resolution professional.***
>
> *(1) The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.*
>
> *(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).

(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."

16. What it enjoins is, that the Resolution Professional at the stage of submission of the report under Section 99 of the I & B Code, 2016, is only a facilitator to the proceedings, providing assistance to the Ld. Adjudicating Authority by way of imparting information in the shape of a report under section 99 of the I & B Code, 2016, after collating the relevant information from various sources including the personal guarantors to arrive at a conclusion as to whether, under the given set of circumstances the application under Section 95 of I & B Code, 2016, can be taken up for consideration. Thus, the said report to be presented under Section 99 of I &

B Code, 2016, has to be considered only for the purposes of stepping into the stage of Section 100 of the I & B Code, 2016, and that the acceptance or rejection of the application is exclusively the prerogative of the Ld. Adjudicating Authority. The use of the expressions therein such as “examine the application”, “satisfies the requirements”, & “recommend” leave no doubt that the Resolution Professional’s report under Section 99 does not have any element of adjudicating a right of any of the parties, as against whom the process under Section 95 of the I & B Code, 2016, is contemplated to be initiated. It is to be held that there cannot be any iota of doubt, that the function of the Resolution Professional in this context is not adjudicatory in nature, that the Resolution Professional is not meant to perform any adjudicatory function or to arrive at a binding conclusion on facts, which will require adherence to the principles of natural justice, that the role played by and the acts committed by the Resolution Professional at this stage is only recommendatory in nature and it will neither prejudice nor bind any of the parties to the proceedings under Section 95 of the I & B Code, 2016. The need for adherence to the principles of natural justice, at that stage of Section 99 of I & B Code, 2016, has been considered by the Hon’ble Apex Court in para 62 of the said judgment, and the relevant conclusion has been drawn in para 63 of the said judgment. The said paragraphs are extracted hereunder: -

> ***"B. Applicability of the Principles of Natural Justice***
>
> *62. Having thus analysed the provisions of Part III of Chapter II, we shall now analyse the impact of the requirements of natural justice. It is a well-settled principle of law that natural justice postulates two requirements: firstly, audi alteram partem i.e. an opportunity of being heard to a person who is liable to be affected by an investigation, enquiry, proceeding or action; and secondly, nemo judex in causa sua, which means that the person should not be a judge in their own cause.*
>
> *63. The principles of natural justice have also been expanded to require that a reasoned order be passed against an individual who is liable to be affected. Though, at one stage, in the evolution of law, a distinction was sought to be drawn between administrative action, on one hand, and judicial or quasi-judicial, on the other, as the law has progressed, that distinction has been substantially watered down, if not obliterated. In other words, the requirement to observe the principles of natural justice arises both in the context of purely judicial or quasi-judicial action as well as administrative action which has an adverse impact on the individual or entity against which action is initiated."*

17. From the above it is clear that when the report under Section 99 of the I & B Code, 2016, is being considered for the purposes of passing an order under Section 100 of the Code, admitting a proceeding under Section 95 of the I & B Code, it requires that a reasoned order is to be passed on the recommendations contained in the report of the Resolution Professional as it is likely to affect the concerned individual.

18. The necessity to adhere to the principles of natural justice, as rightly held by Hon'ble Apex Court, arises both in the context of a purely judicial or a quasi-judicial action, as well an administrative action which has an adverse impact on the individual or the entity against, which the action is initiated. Dwelling on the issue as to what would be the necessity of hearing the parties to the proceedings at the stage of preparation of report under Section 99 of I & B Code, 2016, Hon'ble Apex Court, in the matters of Dilip B Jiwrajka (Supra), after summarizing the rationale and the implication of principles of natural justice has come to a conclusion, there is no violation of principles of natural justice under Section 95 to Section 100 of the I & B Code, 2016, as during these stages, the Debtor is not at all deprived of an opportunity to participate in the process of the examination of an application by the Resolution Professional, and as no judicial determination, takes place until the Ld. Adjudicating Authority decides, whether at all to accept or reject an application under Section 95 of the I & B Code, 2016. Para 86 of Dilip B Jiwrajka (Supra) 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."

19. It has been specifically observed that, the report of the Resolution Professional, is only recommendatory in nature and it is not binding on the Adjudicating Authority, during the exercise of its jurisdiction under Section 100 of the I & B Code, 2016 and that the principles of natural justice will be made applicable, as soon as the proceedings reaches to the stage or Section 100 of the I & B Code, 2016, at the stage of determining, whether to accept or reject the application based on the report of Resolution Professional under Section 99 of I & B code, 2016.

20. The question would be as to whether in both the appeals, the orders sought to be challenged, which were passed in IA No. 447/2024 and IA No. 445/2024, by the Ld. Adjudicating Authority, were passed without giving adequate opportunity to the Appellants to present their case, thus depriving them of their right of defence, which is violative of the principles of natural justice as expounded by the Hon'ble Apex Court in the matters of Dilip B Jiwrajka (Supra). Ld. Senior Counsel states that an order under Section 100 of the Code can only be passed after hearing the Appellants, that they were not heard, that on 28.06.2024 the right of Appellants to file reply/response was forfeited, that on 19.08.2024 Appellant sought time which was not given and that, on 11.09.2024 the matter was reserved for orders without hearing him and passed the orders on 06.11.2024.

21. However, Ld. Adjudicating Authority records in his order dated 06.11.2024 that numerous opportunities were given to the Appellants to furnish necessary

information and reply in the matter and that they have not availed of such opportunity. The relevant portion are extracted hereunder: -

> *"10. iv. Despite More than 25 opportunities provided via E-Mail/Whatsapp message/whatsapp calls/Normal calls, PG didn't provide any reply. Further advocate of PG stated in the 19th January 2024 that settlement I open Court hearing is going on but no relevant as on settlement has also been submitted*
> *to me."*
> *"12. On 29.04.2024 & 14.06.2024, the Respondent was granted time to file reply to the report filed by the RP. In spite of availing sufficient time, no reply has been filed by the Respondent. In the circumstances, the right to file reply of the Respondent was forfeited"*

22. In fact, the daily orders reveal a different picture than what the Appellant's counsel is trying to project. The relevant orders of 29.04.2024, 14.06.2024 & order dated 28.06.2024 IA No. 447/2024 in CP(IB) No. 14/BB/2023 are extracted hereunder: -

a. CP(IB) No. 15/BB/2023 : order delivered on 29.04.2024

1. *Heard the Ld. Counsels for the Petitioner, the Respondent and the RP.*
2. *Ld. Counsel for the RP submits that due to some technical difficulties, she is unable to file their report and seeks further time to file the same. Therefore, she is directed to resolve the issue with the Registry and file the same within a period of seven days from today, after duly serving a copy on the other side. Failing which the cost will be levied for not filing the RP report on the next date of hearing.*

3. *Thereafter, one week time is granted to the Respondent for filing his reply to the report filed by the RP, if any, after duly serving the copy on the other side.*
4. *List the matter on* ***14.06.2024****.”*
5.

b. CP(IB) No. 15/BB/2023: order delivered on 14.06.2024.

I.A.No.447/2024:

1. *Heard the Ld. Counsel appearing for the Applicant and the Respondent.*
2. *In spite of availing sufficient time, Ld. Counsel for the Respondent sought further time to file objection. Therefore, finally one week's time is granted to the Respondent to file objection, failing which, the right to file objections shall stand forfeited and Application will be decided based on the available record.*
3. *List the case on* ***28.06.2024****.”*

c. CP(IB) No. 15/BB/2023: order delivered on 28.06.2024

I.A.No.447/2024:

1. *Heard the learned counsels for the parties.*
2. *On 29.04.2024 & 14.06.2024, the Respondent was granted time to file reply to the report filed by the RP. In spite of availing sufficient time, no reply has been filed by the Respondent till date. In this circumstances, the right to file reply of the Respondent is forfeited.*
3. *List the matter on* ***31.07.2024****.*

In the other company petition CP(IB)No. 34/BB/20203, almost similar orders have been passed.

23. Hence, in as much as the contention raised that, the principles of ratio propounded by Dilip B Jiwrajka (Supra) was violated, we are of the view that at the stage of the submission of the report under Section 99 of the I & B Code, 2016, which only facilitates the Ld. Adjudicating Authority to collate the necessary material in order to adjudicate on the need for initiation of the IRP proceeding under Section 95 of the I & B Code, 2016, no principle of natural justice has been violated, and that the Resolution Professional has given sufficient opportunities to present their cases. Further, as far as providing an opportunity to the Appellants to participate in the process of examination of the application/ report submitted by the Resolution Professional is concerned, the report has been given to them, and they have been given two months time to file their reply before right to file reply was forfeited. As I & B Code is a special statute, prescribing very strict timelines for the process thereunder, we hold that the opportunities given to the Appellants were sufficient.

24. Apart from the contention that they were not given sufficient opportunity to present their case, the Appellants have also raised other grounds of objection, as given below:

i) Appellant, being Singapore national, is barred by Regulation 3A of Foreign Exchange Management Regulations, 2000, to issue guarantee in favour of an Indian company.

ii) Impugned Order should have been issued in the main company petition and not in IA No. 445/2024 and IA No. 447/2024, and hence the order lacks jurisdiction.

iii) After termination of the settlement agreement, 2nd Respondent should have issued a fresh demand notice.

iv) There is a difference in the amount mentioned in demand notice dated 20.02.2020 and in the Section 95 application filed subsequently.

These contentions, the Appellants should have raised before Ld. NCLT in their reply, which they failed to file and also before the Resolution Professional when he was collating information which they miserably failed to do. Having not done so, they cannot raise these grounds at this Appellate stage.

25. After having heard the counsels for the parties, and after giving a thoughtful consideration to the recordings in the impugned order in light of the ratio particularly stressed upon by the Ld. Senior Counsel for the Appellant on basis of para 86 of Dilip B Jiwrajka (Supra), we are of the view that the Ld. Adjudicating Authority in the impugned order has followed principles of natural justice by giving sufficient opportunity to the Appellants herein and has protected all the rights of the Appellants by, directing thereof for a strict adherence to the provisions contained under Sections 108, 109, 110, and 111 of I & B Code, 2016. Thus, the impugned orders, which is subject matter of challenge in the instant appeals, do not call for any interference at this stage.

26. Thus the 'appeals', lack merit, and the same are 'dismissed'. All pending 'interlocutory applications' would too hereby stand 'closed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

07/04/2025
SN/MS