

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 2184 of 2024

&

I.A. No. 8158 of 2024

[Arising out of Order dated 03.10.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Division Bench, Court – 1, Ahmedabad),
in C.P (IB)/158/NCLT/AHM/2024 with IA/893 (AHM) 2024]

IN THE MATTER OF:

Mrs. Rajani Ajay Gupta

(Personal Guarantor to M/s. Metrix Healthcare
Pvt. Ltd.

Address: A-14, Sangath-3,
Near Motera Road,
Sabarmati, Ahmedabad – 380005
Email: aniketargupta@gmail.com

...Appellant

Versus

Indian Bank

Stressed Assets Management
(SAM) Branch,
Address: 2nd Floor, Deshnachambers, b/h
H. Kadva, Patidar Vadi,
Usmanpura Cross Road,
Opposite AMC Water Tank,
Ashram Road, Ahmedabad – 380014,
Gujarat.

Email: armbahnedabad@indianbank.co.in

...Respondent

Present:

**For Appellant : Mr. Manu Aggarwal, Ms. Ishita Pandey and Mr.
Shubham Bhudiraja, Advocates.**

For Respondent : Mr. Ritesh D. Patadia, Advocate.

Mr. Rathin Majumdar, Advocate for RP.

WITH

Company Appeal (AT) (Insolvency) No. 2228 of 2024

[Arising out of Order dated 03.10.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Division Bench, Court – 1, Ahmedabad), in C.P (IB)/161/NCLT/AHM/2024 with IA/892 (AHM) 2024]

IN THE MATTER OF:

Mrs. Nirupama Yogesh Gupta

(Personal Guarantor to M/s. Metrix Healthcare Pvt. Ltd.

Address: Bungalow No.-B/3, Sangath,
Classic Q, Opp. Shyam Shree,
Dev Pride Lane,
Sabannati, Ahmedabad – 380 005
Email: yogesh1947bjp@gmail.com

...Appellant

Versus

Indian Bank

Stressed Assets Management
(SAM) Branch,
Address: 2nd Floor, Deshnachambers, b/h
H. Kadva, Patidar Vadi,
Usmanpura Cross Road,
Opposite AMC Water Tank,
Ashram Road, Ahmedabad – 380014,
Gujarat.
Email: armbahnedabad@indianbank.co.in

...Respondent

Present:

**For Appellant : Mr. Manu Aggarwal and Ms. Ishita Pandey,
Advocates.**

For Respondent : Mr. Ritesh D. Patadia, Advocate.

Mr. Rathin Majumdar, Advocate for RP.

WITH

Company Appeal (AT) (Insolvency) No. 2229 of 2024

[Arising out of Order dated 03.10.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Division Bench, Court - 1, Ahmedabad),
in C.P (IB)/160/NCLT/AHM/2024 with IA/890 (AHM) 2024]

IN THE MATTER OF:

Mrs. Anjali Anil Gupta

(Personal Guarantor to M/s. Metrix Healthcare
Pvt. Ltd.

Address: A-14, Sangath-3,
Near Motera Road,
Sabarmati, Ahmedabad – 380005, Gujarat
Email: yogesh1947bjp@gmail.com

...Appellant

Versus

Indian Bank

Stressed Assets Management
(SAM) Branch,

Address: 2nd Floor, Deshnachambers, b/h
H. Kadva, Patidar Vadi,
Usmanpura Cross Road,
Opposite AMC Water Tank,
Ashram Road, Ahmedabad – 380014,
Gujarat.

Email: armbahnedabad@indianbank.co.in

...Respondent

Present:

**For Appellant : Mr. Manu Aggarwal and Ms. Ishita Pandey,
Advocates.**

For Respondent : Mr. Ritesh D. Patadia, Advocate.

Mr. Rathin Majumdar, Advocate for RP.

WITH

Company Appeal (AT) (Insolvency) No. 2243 of 2024

[Arising out of Order dated 03.10.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Division Bench, Court - 1, Ahmedabad), in C.P (IB)/162/NCLT/AHM/2024 with IA/891 (AHM) 2024]

IN THE MATTER OF:

Mr. Yogesh Roshanlal Gupta

(Personal Guarantor to M/s. Metrix Healthcare Pvt. Ltd.

Address: A-14, Sangath-3,
Near Motera Road,
Sabarmati, Ahmedabad – 380005, Gujarat
Email: yogesh1947bjp@gmail.com

...Appellant

Versus

Indian Bank

Stressed Assets Management (SAM) Branch,
Address: 2nd Floor, Deshnachambers, b/h
H. Kadva, Patidar Vadi,
Usmanpura Cross Road,
Opposite AMC Water Tank,
Ashram Road, Ahmedabad – 380014,
Gujarat.
Email: armbahnedabad@indianbank.co.in

...Respondent

Present:

For Appellant : Mr. Manu Aggarwal and Ms. Ishita Pandey, Advocates.

For Respondent : Mr. Ritesh D. Patadia, Advocate.

Mr. Rathin Majumdar, Advocate for RP.

WITH

Company Appeal (AT) (Insolvency) No. 2259 of 2024

[Arising out of Order dated 03.10.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Division Bench, Court - 1, Ahmedabad),
in C.P (IB)/159/NCLT/AHM/2024 with IA/888 (AHM) 2024]

IN THE MATTER OF:

Mr. Manoj Hariom Gupta

(Personal Guarantor to M/s. Metrix Healthcare
Pvt. Ltd.

Address: A/3, Sangath-3,
Near Motera Stadium Road,
Sabarmati, Ahmedabad – 380005
Email: yogesh1947bjp@gmail.com

...Appellant

Versus

Indian Bank

Stressed Assets Management
(SAM) Branch,
Address: 2nd Floor, Deshnachambers, b/h
H. Kadva, Patidar Vadi,
Usmanpura Cross Road,
Opposite AMC Water Tank,
Ashram Road, Ahmedabad – 380014,
Gujarat.
Email: armbahnedabad@indianbank.co.in

...Respondent

Present:

**For Appellant : Mr. Manu Aggarwal and Ms. Ishita Pandey,
Advocates.**

For Respondent : Mr. Ritesh D. Patadia, Advocate.

Mr. Rathin Majumdar, Advocate for RP.

WITH

Company Appeal (AT) (Insolvency) No. 2260 of 2024

[Arising out of Order dated 03.10.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Division Bench, Court - 1, Ahmedabad),
in C.P (IB)/163/NCLT/AHM/2024 With IA/889 (AHM) 2024]

IN THE MATTER OF:

Mr. Anuj Roshanlal Gupta

(Personal Guarantor to M/s. Metrix Healthcare
Pvt. Ltd.

Address: A-14, Sangath-3,
Near Motera Road,
Sabarmati, Ahmedabad – 380005, Gujarat
Email: yogesh1947bjp@gmail.com

...Appellant

Versus

Indian Bank

Stressed Assets Management
(SAM) Branch,
Address: 2nd Floor, Deshnachambers, b/h
H. Kadva, Patidar Vadi,
Usmanpura Cross Road,
Opposite AMC Water Tank,
Ashram Road, Ahmedabad – 380014,
Gujarat.
Email: armbahnedabad@indianbank.co.in

...Respondent

Present:

**For Appellant : Mr. Manu Aggarwal and Ms. Ishita Pandey,
Advocates.**

For Respondent : Mr. Ritesh D. Patadia, Advocate.

Mr. Rathin Majumdar, Advocate for RP.

J U D G M E N T

ASHOK BHUSHAN, J.

I.A. No. 8158/2024

In

Comp. App. (AT) (Ins.) No. 2184/2024

1. Sufficient cause has been shown for condonation of 4 days delay in refiling of the Appeal.

Refiling delay condoned.

Comp. App. (AT) (Ins.) Nos. 2184, 2228, 2229, 2243, 2259 & 2260 of 2024

1. These appeals by personal guarantors of the corporate debtor M/s. Metrix Healthcare Private Ltd. have been filed challenging the identical order passed by the adjudicating authority dated 03.10.2024, admitting Section 95 application filed by the Indian Bank. Aggrieved by the order impugned, these appeals have been filed by all the appellants who are the personal guarantors of the corporate debtor.

2. It shall be sufficient to notice facts in Comp. App. (AT) (Ins.) No. 2184/2024, for deciding all the appeals:

i. Indian bank has extended financial facilities to M/s. Metrix Healthcare Private Limited. Working capital facility as well as FITL was extended by the bank. The appellant has executed personal guarantee deed in favour of bank guaranteeing the repayment.

ii. Accounts of the corporate debtor were declared as NPA on 30.07.2019 with effect from 30.04.2019.

- iii. On 16.07.2020, bank filed an O.A. No.191/2020 before the Debt Recovery Tribunal, Ahmedabad against the corporate debtor and the personal guarantor for recovery of the dues.
- iv. On 27.02.2020, Indian Bank issued recall notice to the personal guarantors and the corporate debtor demanding an amount of ₹7,88,34,245/-.
- v. The corporate debtor has also given compromise proposal on 05.07.2021 and 09.03.2022, which were rejected by the Bank vide letter dated 18.04.2022.
- vi. A demand notice in 'Form-B' dated 16.03.2024 was issued. After issuance of the demand notice, Company Petition (IB) No.-158/AHM/2024 was filed against Mrs. Rajini Ajay Gupta.
- vii. The adjudicating authority wide order dated 10.05.2024 appointed Resolution Professional (RP). RP sent an email dated 15.05.2024 to the financial creditor and the corporate debtor asking for information.
- viii. RP sent email to the personal guarantors. On behalf of the personal guarantors Yogesh Roshanlal Gupta email was sent by her daughter on 16.05.2024 and 21.05.2024. It was informed that personal guarantor is in judicial custody.
- ix. Issue regarding the debt as claimed was also raised.
- x. RP submitted its Report on 23.05.2024, in pursuance of which, the adjudicating authority has passed the impugned order under Section 100 of the Insolvency and Bankruptcy Code, 2016 (for short `the Code

or 'the IBC') admitting Section 95 application and issued consequential directions.

3. We have heard learned counsel Mr. Manu Aggarwal appearing for the appellant. We have also heard learned counsel appearing for Indian Bank and RP appearing in person.

4. Learned counsel, Mr. Manu Aggarwal appearing for the appellant challenging the order impugned submits that adjudicating authority without entering into adjudication of any issues and especially regarding the debt which is owed by the corporate debtor have admitted the application under Section 95 filed by the Indian Bank mechanically relying on the report of the RP. It is submitted that the application which was filed by the Indian Bank was not complete since record of default as required by Regulation 2A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for short '2016 Regulations') has not been filed. It is submitted that the Regulations i.e., Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (for short '2019 Regulations') does not provide for necessary documents to be filed hence Regulation 2A is applicable. It is further submitted that the bank had already filed a Section 7 application against the corporate debtor in which application, the adjudicating authority has passed various orders, directing the bank to place on record the account statement of C.C. Limit and FITL accounts of relevant period when default occurred prior to date of NPA of year 2019. It is submitted that in spite of the various orders issued by the adjudicating

authority, the bank could not substantiate its claim of amount of ₹7,42,47,755/- claimed in Section 7 application and ultimately Section 7 application has been withdrawn by the Indian Bank. When the amount which is due on the corporate debtor has not yet been ascertained, there is no question of proceeding with personal insolvency of the guarantors. It is submitted that guarantors have to submit a repayment plan and unless the amount due on the corporate debtor i.e., payable by the guarantors is not ascertained, no repayment plan can be submitted by the personal guarantors. It is submitted that adjudicating authority has not given any finding with regard to the amount which is due on the corporate debtor. Adjudicating authority has only observed that corporate debtor has committed default in repayment of loan facility granted by applicant bank. There was sale of mortgaged properties of corporate debtor and personal guarantors in SARFAESI and substantial payment was received by the bank which has not been adverted to the RP in its Report or by adjudicating authority. The observation that the adjudicating authority has left with no option or choice except to admit application is uncalled for. Adjudicating authority has to apply its mind to all matters which may have bearing on admission of the application.

5. Learned counsel for the bank refuting the submissions of the counsel for the appellants submit that application filed by the Indian Bank was complete and debt as on 15.03.2024 was Rs.7,51,73,872/-. The application was fully complete since all relevant materials were brought on the record in Section 95 application. It is submitted that in the Section 95 application, the

bank has clearly mentioned about the amount which was realised from sale of the mortgaged assets and the amount claimed as due was after adjusting the amount which was realised by the sale of mortgaged assets. There being default committed by the corporate debtor in repayment of dues, bank has rightly proceeded against personal guarantor. There is no error in the order passed by the adjudicating authority admitting Section 95 application.

6. RP also supported the submission of the bank and submits that application filed by the bank under Section 95(1) contains all relevant details, including the amount received from sale of the mortgaged assets. It is submitted that RP has submitted the Report after considering all relevant materials on record which Report has rightly been relied by the adjudicating authority for admitting Section 95(1) application.

7. We have considered the submissions of the counsel for the parties and perused the records.

8. The first submission which has been raised by the counsel for the appellant is that application filed under Section 95(1) does not contain relevant record or evidence of default. Reliance on Regulation 2A of 2016 Regulations has been placed, which is as follows:

“2A: Record or evidence of default by financial creditor.— For the purposes of clause (a) of sub-section (3) of [section 7](#) of the Code, the financial creditor may furnish any of the following record or evidence of default, namely:-

(a) certified copy of entries in the relevant account in the bankers’ book as defined in clause (3) of section 2 of the Bankers’ Books Evidence Act, 1891 (18 of 1891);

(b) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired.]”

9. The rules have been framed namely Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules 2019, (for short ‘2019 Rules’) which rules provides for filing of application under Sections 94 and 95 and documents. Rule 7 of 2019 Rules provides for application by a creditor, which is as follows:

“7. Application by creditor.—

(1) A demand notice under clause (b) of sub-section (4) of section 95 shall be served on the guarantor demanding payment of the amount of default, in Form B.

(2) The application under sub-section (1) of section 95 shall be submitted in Form C, along with a fee of two thousand rupees.

(3) The creditor shall serve forthwith a copy of the application referred to in sub-rule (2) to the guarantor and the corporate debtor for whom the guarantor is a personal guarantor.

(4) In case of a joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors.”

10. The notice is required to be given by the bank in ‘Form-B’ to the personal guarantor before filing the application. In the present case notice was issued in ‘Form-B’ dated 16.03.2024 and the application is filed in ‘Form-C’. ‘Form-C’ contains all relevant documents regarding particulars of debt. The mode and manner of filing application under Section 95(1) is thus covered by Rules 2019. Necessary documents which are required to be filed has been clearly provided in ‘Form-C’ under which application is filed. We are not in

agreement with the submission of the appellant that record or evidence of default has to be filed as per Regulation 2A of 2016 Regulations.

11. The submission which has been much pressed by the appellant is that adjudicating authority has not adverted to the question of debt and no finding has been returned about the debt and no adjudication has been carried out by adjudicating authority and just referring to report in para 16 of the judgement, in para 17 conclusion was recorded that adjudicating authority is left with no other option but to admit application.

12. Learned counsel for the appellant has also placed much reliance on orders passed in Section 7 application which was filed by the Indian Bank against the corporate debtor being C.P. (IB) 141/2024, along with the additional affidavit filed. Appellant has brought all orders passed in the said application on record. On 05.04.2024, adjudicating authority passed following order:

“Ld. Counsel for the applicant seeks time to place on record the account statements of C.C. Limit and FITL accounts of relevant period when default occurred prior to the date of NPA of year 2019.

Ld. Counsel is at liberty to file by way of additional affidavit.

Re-list on 24.04.2024.”

13. Affidavit was filed by the bank and bank sought to amend ‘Form-A’ which was permitted by the adjudicating authority. It is further relevant to notice that adjudicating authority has noticed the affidavits and materials brought by the Indian Bank and gave several opportunities to the bank to bring all relevant materials. It is useful to notice the order dated 30.08.2024,

directing the bank to file complete account statement of both the loan accounts with proper calculation sheet of unapplied interest of monthly quarterly basis, whichever is applicable.

14. It is on the record that the bank subsequently could not satisfy the Court about the actual amount which is due and had prayed for withdrawal. Section 7 application was thus permitted to withdrawn on 03.12.2024, which order is as follows:

“A withdrawal affidavit has been filed by the applicant bank on 02.12.2024, vide inward diary No.D-8656. The same is taken on record. However, by way of this affidavit it has been stated that since the Form-1 is incomplete and defective, therefore, the applicant wishes to withdraw the present applicant, with a liberty to file a fresh one with better particulars and complete settlement documents.

*Accordingly, **C.P.(IB)/141(AHM) 2024** is dismissed as withdrawn as prayed for.”*

15. Learned counsel for the appellant has laid much emphasis on the order passed under Section 7 application and submits that when the amount of debt against the corporate debtor could not be proved by filing a Section 7 application, insolvency process against the personal guarantor cannot be allowed to proceed on basis of unsubstantiated debt.

16. Before we proceed further, we need to notice the statutory scheme contained under the IBC with regard to proceeding under the personal guarantor. Under Section 95(1) creditor is entitled to initiate proceeding after serving a notice in ‘Form-B’. There is no dispute that notice in ‘Form-B’ was served. It is relevant to notice that the recall notice which was dated 27.02.2020 amount of ₹7,88,34,245/- was mentioned and the notice which

was issued on 16.03.2024 amount of ₹7,51,73,872/- was claimed as on 15.03.2024. From the application which has been filed by the bank under Section 95, bank has filed the application claiming the same debt of ₹7,51,73,872/-. It is relevant to notice that in the Company Petition, bank itself has mentioned the sale of assets under SARFAESI of the corporate debtor and personal guarantors. In column 11 of the application details of the sold units have been mentioned in Part III, Item No. 6, it was clearly mentioned that amount of ₹5,92,92,750/- was received. Column 6 of the Part III is as follows:

PART – III

PARTICULARS OF DEBT	
6.	<p><i>Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable), and details of securities.</i></p>
	<p><i>Please see Para No.11 of (Part-II)</i></p> <ul style="list-style-type: none"> • <i>That the property as mentioned in Para No.11, at SR No.1,3,4 and 5 were sold by the Applicant bank under the SARFEASI Act and bank has recovered total Rs.5,92,92,750/- and the said amount has been adjusted in the loan account of the corporate debtor company. Further, the property as mentioned SR No.2 is not sold till date.</i>

17. Now we come to the Report of the RP, which was filed by RP on 23.05.2024. In the report, RP has noted the email sent from daughter of one of the personal guarantors where it was clearly mentioned that against the debt of ₹7.52 Crore about ₹6 Crore have already been realised and one property worth ₹1.66 Crore is in bank's possession under SARFAESI, which

is sufficient to meet out the bank dues. The email has reproduced by the RP in paragraph 3 of the Report which Report has been brought on record as Annexure A-6 to the appeal. It is useful to extract the email received on 21.05.2024 from daughter on behalf of the personal guarantor:

“The email received on May 21, 2024 from Marchi Gupta is as under: -

“This is in reference to your order date 10/05/2024 Item no. 8 C.P.(IB)/162(AHM)2024.

I, Marchi Gupta (elder) daughter of Yogesh Gupta want to bring some facts in your kind notice that my father Mr. Yogesh Gupta is presently under judicial custody in a false case hearing of which is scheduled in next month and in his absence I am unable to submit any resolution plan. Therefore, kindly allow me time.

Further I want to bringing in your kind notice that bank has auctioned our 4 properties and approximately realised ₹6.00 cr. Out of their total dues of ₹7.52 cr. apart from it this one property valued at ₹1.66 cr. is in bank’s possession under securitisation act which itself is sufficient to meet out the bank dues.

Therefore, I request you to kindly allow us two months time. After consulting my father we will submit a resolution plan.

Marchi Yogesh Gupta

9825912222”

18. RP in the Report, although has noticed the realisation, the amount realised by the bank as was claimed, but in paragraph 7 of the report has not made any statement with regard to amounts which has been realised by the bank and as to what is the amount which is due on the corporate debtor.

19. The entire statutory scheme under the IBC including the functions of the RP and the adjudicating authority at the stage of adjudicatory process has been examined by the Hon’ble Supreme Court in the matter of **‘Dilip B.**

Jiwrajka' Vs. 'Union of India & Ors.' reported in **(2024) 5 SCC 435.**

Hon'ble Supreme Court in paragraphs 73 & 74 while dealing with the role of adjudicating authority has made following observations:

“2. Role of the adjudicatory authority

73. *Section 100(1) stipulates that the adjudicating authority must issue an order within fourteen days of receiving the report, either admitting or rejecting the application filed under Sections 94 or 95, depending on the circumstances. Importantly, the adjudicating authority does not mechanically accept or reject applications based solely on the resolution professional's report. Instead, it must actively engage in a fair process, affording the debtor a fair opportunity to present their case. The adjudicating authority arrives at its determination by considering arguments supported by relevant material particulars. In essence, the adjudicating authority conducts an independent assessment, not solely relying on the resolution professional's report, to decide the fate of applications under Section 94 or 95 IBC.*

74. *The true adjudicatory function of the authority commences under Section 100 after the submission of the report. Another reason why we are not inclined to accept the submission is that what is described as a jurisdictional question by the petitioners may not be a simple matter to be decided as a question of law. The jurisdictional questions of the nature which have been suggested by the petitioners, namely, on whether there is a subsisting debt or whether the relationship of debtor and creditor subsists, would involve a decision on mixed questions of law and fact. The entire scheme of Sections 99 and 100 implicates timelines which have been laid down by Parliament. The entire process of implementing these timelines would be rendered nugatory if an adjudicatory role were to be read into the provisions of Section 97(5). The final reason which would militate against accepting the submission is that the provisions of Section 99 do not as such implicate any adverse civil consequences particularly if those provisions are read in the manner in which we now propose to elucidate.”*

20. The law is well settled by the Hon'ble Supreme Court that adjudicatory functions of the adjudicating Authority commences under Section 100 after the submission of the Report. It was further held that adjudicating authority has to conduct an independent assessment not solely relying on the RP's Report to decide the fate of application. In the present case, adjudicating authority has not carried any assessment which is clear from the order of the adjudicating authority. In paragraph 16, adjudicating authority had made following observation referring to the report of the IRP and in paragraph 17, the adjudicating Authority has recorded its conclusion and directed for admission of application. Paragraphs 16 & 17 are as follows:

"16. Moreover, From the report of IRP, it is clear to us that:

i. IRP has recommended to accept the application for the reason as stated in the report dated 23.05.2024.

ii. The Respondent has executed the last Guarantee Agreement on 19.03.2018.

iii. The Corporate Debtor, M/s. Metrix Healthcare Private Limited has committed default in repayment of Loan Facility granted by the Applicant Bank

iv. The Applicant has demanded the amount outstanding from the Respondent vide Demand Notice dated 16.03.2024.

v. The copy of the petition and the report was duly served upon the Corporate Debtor in terms Rule 7(3) which is under liquidation as confirmed by the counsel appearing for the liquidator of the Corporate Debtor.

vi. Resolution Professional report states that no evidence was placed before him by the Respondent having paid the amount demanded by the Applicant and as such in over view entire amount demanded is un-serviced as on the date of order.

vii. In our view the application is also not hit by limitation or qua Limited liability as claimed by the Respondent/Guarantor.

17. In view of the foregoing we are left with no other choice but to order as under: -

I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e. date of admission of the application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period,

a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, And

b) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and

c) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein:

d) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

II. The Resolution Professional viz., **Mr. Rathin Amishbhai Majmudar**, having Registration No: IBBI/IPA-001/IP-P02576/2021-2022/13928 having address at: 604, Scarlet Gateway, Opp. Rivera Antilia, Corporate Road, Near Prahladnagar Garden, Ahmedabad — 380 015, (E-mail ID: info@carathin.com] who was appointed when the Section 97 application was allowed vide Order dated 10.05.2024, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Ahmedabad Bench, inviting claims from all Creditors, within 21 days of such issue The notice under Sub Section (1) of Section 102(2) shall include: -

- a) details of the order admitting the application;
- b) particulars of the resolution professional with whom the claims are to be registered; and
- c) the last date for submission of claims.

III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

IV. The Resolution Professional in the exercise of the powers conferred under Section 104 shall prepare a Est of creditors on the basis of a) the information disclosed in the application filed by the debtor under Sections 94 or 95 as the case may be, and

- a) the information disclosed in the application filed by the debtor under Sections 94 or 95 as the case may be, and
- b) Claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.

The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.

V. The repayment plan may authorize or require the Resolution Professional to:

- a) Carry on the debtor's business or trade on his behalf or in his name: or
- b) Realise the assets of the debtor; or
- c) Administer or dispose of any funds of the debtor. The repayment plan shall include the following, namely; -
 - a) Justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;

b) Provision for payment of fee to the Resolution Professional;

c) Such other matters as may be specified.

VI. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 105.

VII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons therefor. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 day or more than 28 days from the date of submission of the Report under sub-section (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors (as per the list prepared shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.

VIII. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 85 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

IX. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.

X. The Registry is directed to communicate a copy of order, report and application within seven working days and upload the same on the website immediately after the pronouncement of order.”

21. The adjudicating authority has adverted to the issue of limitation in paragraph 14 and has observed in paragraph 15, that when default is committed by principal borrower surety are jointly and severally liable to creditor. In the present case, it was admitted fact that under SARFAESI bank has already realised ₹5,92,92,750/- from the sale of the assets and by email on behalf of the personal guarantor, it was communicated that one property which is in possession of the bank is sufficient to liquidate the entire debt. The above relevant issue which was raised on behalf of the personal guarantors was neither adverted by the RP in its report nor adverted by the adjudicating authority in the impugned order. There is a difference between the scheme and under Section 7 of the IBC and Section 100. Sub-section (5) provides that where adjudicating authority satisfied that default has occurred and application is complete, the application has to be admitted. Section 7(5) is as follows:

“7. Initiation of corporate insolvency resolution process by financial creditor.–

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending⁵ against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

22. In view of the law laid down by the Hon'ble Supreme Court in '**Dilip B. Jiwrajka' (Supra)**, adjudicating authority has to apply its mind and not to mechanically follow the Report of the IRP. Observation of the Hon'ble Supreme Court are "in essence, the adjudicating authority conducts an independent assessment, not solely relying on the RP's report to decide the fate of application under Section 94 & 95 of the IBC". Present is a case where adjudicating authority has not adverted to any adjudicatory issue, has not adjudicated on any of the issues which was raised before the RP and as reflected in the Report of the RP itself. It was submitted on behalf of the personal guarantor that amount of ₹6 Crore has already been realised, and the assets of the corporate debtor are already with the bank amounting to ₹1.66 Crore which are sufficient to meet out the bank dues. These factors are required to be adverted to by the adjudicating authority before admitting the application.

23. In view of the forgoing discussions, we are of the view that order of the adjudicating authority impugned in the present appeal is unsustainable. In result, the impugned order is set aside.

24. In the facts of the present case, we are of the view that a fresh opportunity be given to the personal guarantors to file an objection to the Report within 30 days from today and the adjudicating authority after considering all relevant material, including the Report and the objection, pass a fresh order under Section 100.

25. In result, all the appeals are allowed, impugned orders are set aside. Applications under Section 95(1) are revived before the adjudicating authority for afresh consideration in accordance with law.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

NEW DELHI

02nd April, 2025

himanshu