

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1494 of 2024

&

I.A. No. 5389 of 2024

[Arising out of order dated 10.04.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Kolkata Bench, Court – II), in
IA(IBC)/449(KB)2024 in C.P. (IB)/54(KB)2021]

IN THE MATTER OF:

SUDIP DUTTA @ SUDIP BIJOY DUTTA

Adult Inhabitant, having Address at:

Flat No.1403, 14th Floor,
A Wing, Oberoi Garden I,
Oberoi Gardens CHS Ltd.,
Thakur Village, Kandivali East,
Mumbai 400 101

Email: contact@taplegal.co.in

...Appellant

Versus

PRASHANT JAIN

Resolution Professional
Regd. Add: A501, Shanti Heights,
Plot No. 2,3,9B/10, Sector 11,
Koparkharine, Thane,
Navi Mumbai- 400709, Maharashtra

...Respondent

Present:

For Appellant : Mr. Anando Mukherjee, Mr. Raja Ratan Bhura, Mr. Shwetank Singh, Advocates.

For Respondent : Mr. Kushal Bansal Advocate.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Personal Guarantor of the Corporate Debtor has been filed, challenging the Order dated 10.04.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Court-II), by which I.A. No. 449(KB)/2024 filed by the Resolution Professional (RP) has been allowed terminating the Insolvency Resolution Process of

Personal Guarantor and discharging the RP and further granting liberty to the Creditors of the Personal Guarantor to initiate Bankruptcy Process against the Personal Guarantor. Aggrieved by the Order, this Appeal has been filed by the Appellant, the Personal Guarantor.

- 2.** Brief facts necessary to be noticed for deciding the Appeal are:
- i. An Application under Section 95(1) was filed by the State Bank of India (SBI) against the Appellant being C.P. (IB) No. 54(KB)/2021. The Adjudicating Authority vide Order dated 03.08.2021, appointed the Respondent, Prashant Jain as RP.
 - ii. The RP after interacting with the Personal Guarantor submitted a Report under Section 99 recommending initiation of Insolvency Proceeding against the Personal Guarantor.
 - iii. Adjudicating Authority passed an Order on 16.06.2022, admitting Section 95 Application.
 - iv. The Appellant aggrieved by the Order dated 03.08.2021, appointing the RP has filed Comp. App. (AT) (Ins.) No. 807/2021 in this Tribunal. In the Appeal, Notices were issued, but no Interim Order was passed.
 - v. Against the Order dated 16.06.2022, admitting Section 95 Application, Appellant also filed Comp. App. (AT) (Ins.) No. 740/2022. After admission of Section 95 Application RP issued Public Notice on 21.06.2022. Claims were received under Section 104 of the Insolvency and Bankruptcy Code, 2016 (for short 'The IBC' or 'The Code') by the RP. RP prepared updated list of Creditors and intimated the Appellant to submit a Repayment Plan.

- vi. RP sent email dated 07.07.2022, 18.07.2022 and 02.08.2022, asking for providing the relevant document.
- vii. A Reply dated 03.08.2022 was sent to the email dated 02.08.2022 by the Appellant, where Appellant asked for details on which the claims have been arrived at. In response to the email dated 03.08.2022, RP on 04.08.2022, provided the list of Creditors to the Appellant.
- viii. RP sent several reminders informing that response is awaited, email dated 24.08.2022 was received from Appellant again requesting necessary documents on the basis of which the claims have been admitted for a verification of the Appellant.
- ix. The request sent by the RP, reminder was sent on 08.09.2022, no communication was received from the Appellant, no Repayment Plan having submitted by the Personal Guarantor. Appellant filed I.A. No.449(KB)/2024 before the Adjudicating Authority praying for following reliefs:

“a. Terminating the Insolvency Resolution Process of Personal Guarantor and discharging the Applicant from his role as the Resolution Professional.

b. Granting liberty to the Creditors of the Personal Guarantor to initiate Bankruptcy Process against the Personal Guarantor.

c. Directing the Creditors of Personal Guarantor to contribute to the Insolvency Resolution Process cost.

d. Pass such other and further orders as may be deemed fit in the matter.”

- x. It is also relevant to notice that both the Company Appeals filed by the Appellant being Comp. App. (AT) (Ins.) No. 807/2021 as well as Comp. App. (AT) (Ins.) No.740/2022 filed against Order appointing Resolution

Professional as well as the Order dated 16.06.2022, admitting Section 95 Application were dismissed by detailed Judgment by this Tribunal on 29.07.2022. Against the Order dated 29.07.2022 passed by this Tribunal dismissing both the above Company Appeals, Civil Appeal No. 7100 & 7101/2022 was filed by the Appellant which Appeals were also dismissed by the Hon'ble Supreme Court on 12.12.2022:

“1 We find no reason to interfere with the impugned order dated 29 July 2022 passed by the National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) No 740 of 2022 and Company Appeal (AT) (Insolvency) No 807 of 2020.

2 The Civil Appeals are accordingly dismissed.

3 Pending applications, if any, stand disposed of.”

- xi. In the above background of the fact that Adjudicating Authority has passed the Impugned Order dated 10.04.2024. Adjudicating Authority after noticing the provisions of Section 114, 115 & 121 of the IBC came to the conclusion that when no repayment Plan is proposed, the provisions of Section 114 & 115 is to apply and Creditors are entitled to file an Application for Bankruptcy under Chapter IV. In Para 7, following observations and directions have been made by the Adjudicating Authority:

“7. Since, we have failed to decipher any specific provision contemplating a situation where no repayment plan is proposed, we consider it fit to apply provisions under Section 114 and Section 115 that envisages a situation when an Adjudicating Authority rejects a repayment plan under Section 114(1) and Section 115(2), the creditors are entitled to file an application for bankruptcy under Chapter IV. We thus pass the following Orders: -

i. We thus allow the prayer(s).

ii. With the above directions, IA(IBC)/449(KB)2024 is allowed and disposed of.

iii. The Registry is directed to send e-mail copies of the order forthwith to the Board and all the parties and their Ld. Counsel for information and for taking necessary steps.”

xii. Challenging the Order, this Appeal has been filed by the Appellant.

4. Learned Counsel for the Appellant challenging the Order contends that Order passed by the Adjudicating Authority is in violation of Principle of Natural Justice since I.A. No.499/2024 was neither served on the Appellant nor Appellant was given any hearing. Noticing the submission of the Appellant, Notices were issued in this Appeal on 02.08.2024 in response to which Notice, Reply has been filed by the RP. Learned Counsel for the Appellant contends that Appellant has replied to the emails sent by the RP asking for certain details so as to finalise the Repayment Plan which Reply was sent by the Appellant by email dated 03.08.2022 and the stand taken by the RP that there was non-cooperation by the Appellant is wholly incorrect. It is submitted that Appellant has also filed a Writ Petition on 03.09.2022, challenging the provisions of Section 95 or Section 100 of the IBC, which Writ Petition came to be dismissed on 09.11.2023, upholding the constitutional validity of Section 95 to Section 100. It is submitted that Appellant was entitled to be given an opportunity by the Adjudicating Authority before passing any Order on I.A. 449/2024. Learned Counsel for the Appellant has relied on Regulation 19 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtor), Regulations 2019 and contend that the Regulation obliged the RP to provide copies of all documents filed before the Adjudicating Authority, which Regulation also obliged the RP to serve copy of the I.A. 449/2024.

5. Learned Counsel for the RP refuting the submission of the Counsel for the Appellant contends that in spite of repeated request by the RP to the Appellant to provide details after forwarding the list of Creditors, no documents were supplied. It is submitted that RP has requested the Appellant to submit a Repayment Plan and requested to provide relevant necessary documents to verify the claims submitted by the Creditors so as to finalise the Repayment Plan. No documents were provided by the Appellant nor any Repayment Plan could be prepared. When no Repayment Plan has been submitted, the process is *akin* to rejection of the Repayment Plan, hence further steps have to be taken by the Adjudicating Authority. Rejection of Repayment Plan and non-submission of Repayment Plan has to be kept on same footing so as to take further steps. The Personal Guarantor who failed to cooperate so as to prepare a Repayment Plan cannot be heard in questioning the steps taken by the Adjudicating Authority under Section 115. It is submitted that when there is no approved of Repayment Plan, the Creditors are entitled to file an Application for Bankruptcy under Chapter IV, the Order of the Adjudicating Authority for giving liberty is in accordance with Section 115(2), which is statutory entitlement of the Creditors. Even if no liberty would have been granted by Adjudicating Authority in the Impugned Order, right of Creditor to file an Application for Bankruptcy under Chapter V is fully provided for in Section 115(2). It is submitted that all Reports which were required to be submitted by RP under Section 99 were already sent to the Personal Guarantor and after considering the Report, the admission Order was passed on 16.06.2022. It is submitted that no Repayment Plan was submitted by Appellant nor any such Repayment Plan could be placed before the Creditors for restructuring of the debts or affair of the Creditors. When

there was no Repayment Plan prepared, there was no question of submission of any Repayment Plan or documents along with the Repayment Plan. Learned Counsel for the RP submitted that Appellant was not required to be heard by the Adjudicating Authority in an Order under Section 115 of the IBC.

6. We have considered the submission of Counsel for the Parties and perused the record.

7. From the submission of the Appellant, it is clear that only ground which is being pressed by the Appellant is that Impugned Order has been passed in violation of Principle of Natural Justice since the Appellant was not given an opportunity in I.A. 449/2024, which was filed by the RP for termination of Insolvency Resolution Process of the Personal Guarantor and discharge of the RP and liberty to the Financial Creditor to file a Bankruptcy Application.

8. We had noticed above that the Appellant had challenged the Order appointing the RP by the Adjudicating Authority on 03.08.2021 by filing Comp. App. (AT) (Ins.) No.807/2021, in which no Interim Order was passed by this Tribunal after Appointment of RP, RP prepared the Report under Section 99 and the Adjudicating Authority admitted Section 95 Application by Order dated 16.06.2022, which Order was again challenged by the Appellant by Comp. App. (AT) (Ins.) No.740/2024. Both the Appeals filed by the Appellant was dismissed by a detailed Judgment of this Tribunal on 29.07.2022, which Order was also challenged by the Appellant before the Hon'ble Supreme Court and his Civil Appeal No. 7100 & 7101/2022 was also dismissed by the Hon'ble Supreme Court on 12.12.2022. After admission of the Section 95 Application, RP has sent a communication immediately. RP
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on 18.07.2022, asking the Appellant to provide details of the Creditor along with the email dated 18.07.2022. The RP has sent the details of six Creditors along with the total claim as per 'Form-B'. RP again sent a reminder on August 2, 2022 to the Appellant to cooperate. Response to the email was sent by the Appellant on 03.08.2022, which is as follows:

"Dear Sir,

With respect to the documents sought by you vide email dated 07.07.2022, it is brought to your kind attention that I am making the necessary arrangements to provide the necessary document, however, in order to do so certain clarifications are sought from your end

1. Kindly explain as to what is meant by the term excluded assets and excluded debts.

2. With respect to the guarantees, I would like to state that no guarantees had been issued by me for any of my debt or otherwise of anybody else's debt.

3. With regard to the financial statements for the business owned, it is submitted that the Company Ess Dee Aluminium Ltd is already under liquidation and the financial statements and relevant documents have already been provided.

Further, with regard to the Creditors Claim it is stated that I have not executed or am aware of any debt to any of the banks on my personal capacity, It is submitted that I would require the documents or the agreements on the basis of which you have indicated the Claims.

With regard to the documents, due to some personal difficulty, I have been unable to collate and arrange for providing the same, therefore I kindly request you to provide me with a slight accommodation. In the meanwhile, please provide me with the document so as to determine the basis on which the claims have been admitted.

Thank you for your kind consideration."

9. RP again immediately responded to the email dated 03.08.2022, asking to provide the details at the earliest. Several emails were sent by RP. On

24.08.2022, Appellant again wrote to the RP to provide the necessary documents on basis of which claims have been submitted.

10. Now we notice the Statutory Scheme after admission of Section 95 Application under Section 100. Section 102 provides for Public Notice and claim for Creditors which Public Notice was duly issued by RP. On 21.06.2022, claims were also received which was also forwarded to the Appellant. Section 104 provides for preparation of list of Creditors. The list of Claimants of prepared, 6 claims received were tabulated by the RP and was forwarded to the Appellant vide email dated 18.07.2022, which is brought on record as Annexure 2 to the Reply of the RP. Section 105 provides for Repayment Plan. Section 105 is as follows:

“105. Repayment Plan.–(1) The debtor shall prepare, in consultation with the resolution professional, a repayment plan containing a proposal to the creditors for restructuring of his debts or affairs.

(2) The repayment plan may authorise 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.

(3) The repayment plan shall include the following, namely:—

(a) justification for preparation of such repayment plan and reasons on the basis of 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.”

11. Section 106 contemplate Report of RP on Repayment Plan. Section 105 required the Debtor to prepare in consultation with the RP Repayment Plan. As per Section 106, the Report which requires to be submitted within 21 days

from the last date of submission of claims under Section 102. The facts brought on the record indicates that there has been no communication from the Appellant after 24.08.2022. No Repayment Plan having prepared by the Debtor or submitted, no Proceeding for convening of the Meeting of Creditors or conduct of Meeting could take place. Section 111 provides for approval of Repayment Plan by Creditors, which is as follows:

“111. Approval of repayment plan by creditors.—*The repayment plan or any modification to the repayment plan shall be approved by a majority of more than three-fourth in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors.*”

12. Section 112 provides for Report of Meeting of Creditor on Repayment Plan and Section 114 contemplates Order of Adjudicating Authority on Repayment Plan, which is as follows:

“114. Order of Adjudicating Authority on repayment plan.—*(1) The Adjudicating Authority shall by an order approve or reject the repayment plan on the basis of the report of the meeting of the creditors submitted by the resolution professional under [section 112](#):*

Provided that where a meeting of creditors is not summoned, the Adjudicating Authority shall pass an order on the basis of the report prepared by the resolution professional under [section 106](#).

(2) The order of the Adjudicating Authority approving the repayment plan may also provide for directions for implementing the repayment plan.

(3) Where the Adjudicating Authority is of the opinion that the repayment plan requires modification, it may direct the resolution professional to re-convene a meeting of the creditors for reconsidering the repayment plan.”

13. In the present case, no Repayment Plan having been prepared there arose no occasion to pass an Order for either accepting or rejecting the

Resolution Plan. Section 115 provides for effect of Order of Adjudicating Authority on Repayment Plan, which provision is as follows:

“115: Effect of order of Adjudicating Authority on repayment plan.–(1) Where the Adjudicating Authority has approved the repayment plan under section 114, such repayment plan shall—

(a) take effect as if proposed by the debtor in the meeting; and

(b) be binding on creditors mentioned in the repayment plan and the debtor.

(2) Where the Adjudicating Authority rejects the repayment plan under section 114, the debtor and the creditors shall be entitled to file an application for bankruptcy under Chapter IV.

(3) A copy of the order passed by the Adjudicating Authority under sub-section (2) shall be provided to the Board, for the purpose of recording an entry in the register referred to in section 196.”

14. Sub-Section (2) of Section 115 provides that where the Adjudicating Authority reject the Repayment Plan under Section 115, Debtor and Creditor shall be entitled to file an Application for Bankruptcy under Chapter IV. Thus, the entitlement of Creditor to file an Application for Bankruptcy under Chapter IV flows from Statutory Scheme under Section 115(2).

15. As noted above, the Adjudicating Authority took the view that when the Repayment Plan has not been received, the effect and consequence of rejection of Plan has to ensue by virtue of Section 115. The Application I.A. 449/2024, which was filed by RP, and the Prayers made thereunder were in accordance with Statutory Scheme under Section 115. Repayment Plan having not been submitted by Debtor, natural consequence was Creditors to file an Application for Bankruptcy under Chapter IV.

16. The present is the case where Appellant right from very beginning has been challenging every action of the Adjudicating Authority and acts of Resolution Professional unsuccessfully. Appellant has never submitted any Repayment Plan to be finalised by the RP.

17. From the facts and sequence of the event which has been brought on the record, it is clear that at no point of time, subsequent to receiving request from the RP for submitting a Repayment Plan, Appellant raised any grievance or filed any proceeding before the Adjudicating Authority, raising his grievances and grounds for not being able to submit a Repayment Plan. The Appellant kept silence for years together and when consequential Order under Section 115 has been passed by the Adjudicating Authority, he is raising grievance of not being heard by the Adjudicating Authority.

18. Now we come to the Regulation 19 on which much reliance has been placed by the Counsel for the Appellant to contend that even the Application I.A. 449/2024 was required to be served on the Appellant. Regulation 19 provides as follows:

“19. Filing with the Adjudicating Authority.–(1)
The resolution professional shall file the repayment plan, as approved by the creditors, along with the report mentioned in sections 106 or 112, as the case may be, with the Adjudicating Authority on or before completion of one hundred and twenty days from the resolution process commencement date.

(2) The resolution professional shall provide the copies of the documents filed with the Adjudicating Authority under sub-regulation (1) to the guarantor and the creditors, within three days from the date of such filing.”

19. Appellant has referred to Regulation 19(2) to contend that when Regulation requires that copies of documents filed by the Adjudicating

Authority are required to be provided to the Guarantors, Appellant was required to be heard when Order under Section 115 has been passed.

20. When we look into the Regulation 19, it is clear that the Regulation refers to filing of Repayment Plan by RP and Repayment Plan has to be submitted within 120 days from the Resolution Process commencement date. Resolution Process commencement date is 16.06.2022 and 120 days came to an end in the Year 2022 itself. Copies of the documents filed before the Adjudicating Authority which was required to be given to the Guarantor as contemplated in Regulation 19(2) relates to the documents which are filed along with the Report submitted by RP under 106 & 112. In the present case, when Repayment Plan has not been submitted by Debtor, nor was finalised by the RP and no Report has been submitted by RP to the Adjudicating Authority, the question of submitting or giving any documents along with the Report regarding Repayment Plan does not arise, hence, Regulation 19 is not applicable in the facts of the present case nor Appellant can rely on Regulation 19. No Repayment Plan having been submitted or finalised, Adjudicating Authority has not committed any error in giving liberty to the Creditors to file an Application for Bankruptcy under Chapter IV, which is a statutory consequence under Section 115(2). In so far as discharge of the RP is concerned, the discharge is also consequential to completion of Insolvency and Bankruptcy Process against the Appellant under the provisions of Chapter III of the Code.

21. In the Appeal, also Appellant has not been able to show any substantial ground to interfere with the Order impugned, except on harping on the argument that he was not given opportunity in I.A. No.449/2024.

22. In the facts of the present case, we do not find any ground to interfere with the Impugned Order passed by the Adjudicating Authority.

There is no merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

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

NEW DELHI

6th November, 2024

himanshu