

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH (COURT – II)

Item No. 215
IB-313/ND/2022

IA-1261/2025, IA-1210/2025

IN THE MATTER OF:

Karur Vyasa Bank

... Applicant/Petitioner

Versus

Vishnoo Mittal

... Respondent

Under Section: 95(1) of IBC, 2016

Order delivered on 02.07.2025

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. MAN MOHAN GUPTA
HON'BLE MEMBER (T)

PRESENT:

For the Applicant :

For the RP : Advocate Yashu Gupta

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-1261/2025 & IA-1210/2025: Having considered the application preferred under Section 95(1) of IBC, 2016, this Tribunal appointed Ms. Shruti Gupta IP as RP qua the debtor/PG. The relevant excerpt of the order dated 04.08.2022 reads thus:

12. The Applicant has not proposed the name of any Resolution Professional therefore, from the panel of IPs suggested by the IBBI, **this Bench appoints Ms. Shruti Gupta, IP having its registration no. IBBI/IPA-001/IP-P00303/2017-18/10567, and email id guptashrutica@gmail.com as Resolution Professional** in the present matter subject to filing of an affidavit within seven days by him that there is no disciplinary proceeding pending against him.

13. The Resolution Professional Ms. Shruti Gupta shall exercise all the powers as enumerated under Section 99 of the IBC, 2016 read with the Rules made there under. **He is directed to examine the Application and make recommendations along with the reasons in writing for acceptance or rejection of this Application, within the stipulated time as envisaged under the provisions of Section 99 of the IBC, 2016.** The RP shall give a copy of the report under Section 99(7) to the

Applicant/Creditor as soon as the same is filed before this Adjudicating Authority.

Having carried the process in terms of the provisions of Section 99 of IBC, 2016. The RP preferred the report/application under Section 99 of IBC, 2016. The report/recommendation made by the RP for admission of the application preferred under Section 95(1) of IBC, 2016 was accepted in terms of the order dated 02.12.2024 and the application preferred under Section 95(1) of the Code was admitted. The relevant excerpt of the order dated 02.12.2024 reads thus:

12. The Ld. Counsel for the Applicant could also raise the plea that an order appointing RP, prior to the judgment passed by Hon'ble Supreme Court in ***Dilip B. Jiwarajka v. Union of India & Ors.*** [Writ Petition (Civil) No. 1281 of 2021] cannot be relied upon by this Tribunal. In our view, in the judgment of *Dilip B. Jiwarajka (supra)*, the Hon'ble Supreme Court could provide that the principle of natural justice would apply only at the stage of filing of the report by the RP in terms of the provisions of Section 99 of IBC, 2016 and not at the stage of appointment of RP. The relevant excerpt of the judgment by the Hon'ble Supreme Court reads thus: -

"80. The legislature has evidently made provisions in Section 99, as we have construed earlier, to allow for the engagement of the debtor with the resolution professional before a report is submitted to the adjudicating authority. The process under Section 100 before the adjudicating authority must be compliant with the principles of natural justice."

86. *We summarise the conclusion of this judgment below:*

[...]

(vii) 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;

Having perused the judgment of Hon'ble Supreme Court, we are unable to appreciate that in what manner, the Ld. Counsel for Personal Guarantor is trying to draw support from the same.

13. From the same, as in the said judgment of the Hon'ble Supreme Court, has nowhere ruled that the orders passed by this Tribunal appointing the RPs prior to the date of the judgment would not be valid.

14. In the wake, we have no option but to admit the captioned applications. The applications i.e. IA-1190/2024, IA-332/2024, IA-4000/2022 and IA-1110/2024 preferred under Section 99 of IBC, 2016, are allowed and the petitions i.e. IB-313/ND/2022, IB-332/ND/2022, IB-335/ND/2022 and IB-336/ND/2022 preferred under Section 95 are admitted.

15. As a sequel of admission of the present application, a moratorium is declared to the following effect: –

- (a) any pending legal action or proceedings in respect of any debt qua the Respondent shall be deemed to have been stayed;
- (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Respondent; and
- (c) the debtors shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficiary interest therein.
- (d) The moratorium shall cease to have effect at the end of period of 180 days.

16. A public notice shall be issued by the RP within seven days of passing of this order, inviting claim from all creditors within 21 days of such notice. The notice shall include details of the present order, particulars of the Resolution Professional with whom the claims have to be registered and the last date for the submission of the claims. The notice shall be – (a) published in English and one Vernacular Language newspaper which is in circulation in the State where the debtor resides; (b) affixed in the premises of this Adjudicating Authority; and (c) placed on the website of the Adjudicating Authority.

17. We are sanguine the RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 104, 105, 106 , 107, 108, 112 and 113 of IBC, 2016, with the due deference of the procedure enshrined in Regulations 5, 7, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of the aforementioned code/ regulations and/or any other provisions of law applicable to him, in discharge of his duties as RP. The IRP Qua all the Personal Guarantors would be carried separately.

18. A copy of this order along with the copy of the application as also the report of Resolution Professional shall be provided to the Creditor (Applicant), Personal Guarantor (Respondent) and IBBI, by the Registry/Court Master within 7 days from today by email.

19. **IA-1190/2024 in IB-313/ND/2022, IA-332/2024 in IB-332/ND/2022, IA-4000/2022 in IB-335/ND/2022 and IA-1110/2024 in IB-336/ND/2022 stands disposed of accordingly. To come up for consideration of Status Report to be filed by RP, within 8 weeks.**

The Applicant preferred IA-1210/2025 espousing that the PG namely Mr. Vishnoo Mittal has not extended any co-operation to RP and did not respond to the missives sent by RP to him. The averments made in application to the effect have been made in paras 8 & 9 of IA-1210/2025. The paras read thus:

8. That as per Section 105 of IBC, 2016, the debtor shall prepare a repayment plan in consultation with Resolution Professional but in the instant case, Debtor i.e. Personal Guarantor Mr. Vishnoo Mittal could not be contacted despite best efforts. Hence no repayment plan received from Personal Guarantor till filing of this application. A copy of letter dated 13.01.2025 sent, E-mail dated 13.01.2025 sent to personal guarantor are annexed herewith as **Annexure 6.**
9. As mentioned above no repayment plan has been received from Personal Guarantor as stipulated under section 106, the first meeting of Creditors was called on 23-1-2025 to notify the same in a meeting of creditors and their opinion was obtained for further proceedings. In second meeting of creditors held on 13.02.2025, it has been reaffirmed that the RP should file an application of non-cooperation against the PG before the Hon'ble NCLT. A copy of Minutes of First Meeting of Creditors is annexed herewith as **Annexure-7.** It is pertinent to mention that the notice of second meeting (dated 11.02.2025) and the minutes of second meeting (dated 13.02.2025) were also mailed to the personal guarantor which remain undelivered. A copy of Minutes of Second Meeting of Creditors is annexed herewith as **Annexure-8.**

Subsequently, the RP preferred IA-1261/2025 under Section 106 of IBC, 2016. The prayer made in the application reads thus:

“Allow the present report and take the present report u/s 106 of IBC on record.”

Also in IA-1261/2025, the RP has taken a stand that no repayment plan has been received by him from the PG/debtor. Para 6 & 9 of the application reads thus:

*“6. That the Resolution Professional also personally visited on 11.12.2024 at the last known two addresses of the Personal guarantor at Najafgarh, Delhi 110043. Out of that one address turned out to be wrong and in second one, after enquiring from neighbours got the information that this house/address belongs to the parents of the wife of the Personal Guarantor and no one has seen him from last 20 years. Moreover, no one replied from the house. The visit of Resolution Professional on 17.12.2024 at the address of Vasant Kunj of Personal Guarantor also proved vain as the Personal guarantor had left that place in 2019 and some other tenant is residing there (Mr. Soumendra Bobby Jena with his family) since 2019. Photos of the visit undertaken by Resolution Professional are annexed as **Annexure-4.***

*9. That no repayment plan has been received from Personal Guarantor as stipulated under section 106, the Meeting of Creditors was called on 23-1-2025 and their opinion was obtained for further proceedings, the RP till date of filing has not received the voting on resolutions and she is waiting for the decision of Creditors, meanwhile creditors recommended that the RP should proceed with the filing of report before Hon'ble NCLT. A copy of minutes of First Meeting of Creditors is annexed herewith as **Annexure-7.**”*

As can be seen from the provisions of proviso to Section 106(2) of IBC, 2016, for the recorded reason the RP may avoid calling the meeting of the creditors. The Section 106(2) of IBC, 2016 reads thus:

“106. Report of resolution professional on repayment plan. –

(2) The report referred in sub-section (1) shall include that-

- (a) the repayment plan is in compliance with the provisions of any law for the time being in force;*
- (b) the repayment plan has a reasonable prospect of being approved and implemented; and*

(c) there is a necessity of summoning a meeting of the creditors, if required, to consider the repayment plan:

Provided that where the resolution professional recommends that a meeting of the creditors is not required to be summoned, reasons for the same shall be provided.”

As per proviso of Section 114(1) of the Code, where a meeting of the creditors is not summoned, the Adjudicating Authority shall pass an order on basis of the report prepared by the Resolution Professional under Section 106 of the Code. The Section 114(1) of the Code reads thus:

“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.”

The conjoint reading of provisos to Section 114(1) and Section 106(2) of the Code gives an indication that this tribunal may pass an order either on the basis of the report under Section 112 of IBC, 2016 or the report under Section 106(2) of the Code. However, an amendment was carried in IBBI (Resolution Professional for Personal Guarantor to Corporate Debtor, Regulations 2019 and in terms of the proviso of Regulations 17A of the Regulations, the meeting of creditors is required to be summoned even when no repayment plan is offered by the debtor. Nevertheless, such meeting is required only to notify non-availability of the repayment plan. Even otherwise also when any anomaly between the provisions of the Regulations framed by IBBI and the provisions of IBC, 2016, is there we need to give credence to the provisions of IBC which is an act of the Parliament.

As has been noted hereinabove, no repayment plan has been offered by the PG, thus the RP filed his report indicating the position to the effect. Apparently, the ramification of non-availability of the resolution plan would be same as that of rejection of the repayment plan by the creditors, thus the

same consequences as are of rejection of repayment plan would follow. In the circumstances, in due deference to the proviso to the provisions of Section 114(1) of the Code, we direct the closure of the Insolvency Resolution Process. The creditors/debtor would initiate process as per provisions of Section 114 & 115 (2) read with Section 121 & 123 of IBC, 2016. Subject to aforementioned order, **both the applications are disposed of.**

Sd/-
(MAN MOHAN GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)