

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 814 of 2025

[Arising out of Order dated 24.04.2025 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) in I.A. No.737 of 2025 in C.P. No. (IB) 334/ND/2024]

IN THE MATTER OF:

**Nandini Choudhary
W/o Mr. Rahul Chaudhary,
R/o 48844/24, Daryaganj,
New Delhi - 110002**

...Appellant

Versus

**1. Canara Bank
Asset Recovery Management Branch - 1,
Karol Bagh, New Delhi -110005.**

**2. Ms. Maya Gupta,
Resolution Professional,
3585/7, Narang Colony,
Tri Nagar, New Delhi, 110035.**

...Respondents

Present:

**For Appellant: Mr. Mayank Bhargava and Mr. Rajdeep Saraf,
Advocates.**

**For Respondents: Mr. Brijesh Kumar Tamber and Mr. Prateek
Kushwaha, Advocates for R-1.**

**Mr. Sandeep Bajaj, Mr. Devansh Jain, Ms.
Shrishti Jeswani, Advocates for R-2.**

O R D E R

Ashok Bhushan, J.

This Appeal by a Personal Guarantor has been filed challenging the order dated 24.04.2025 passed by the Adjudicating Authority (National

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Company Law Tribunal), New Delhi Bench (Court-II) in I.A. No.737 of 2025 filed by the Appellant. The Adjudicating Authority by the impugned order has rejected the I.A. No.737 of 2025. Aggrieved by which order this appeal has been filed.

2. Brief facts necessary to be noticed for deciding the appeal are:

2.1 Appellant and her husband Mr. Rahul Chaudhary are the Personal Guarantors of the Corporate Debtor – Servel India Pvt. Ltd. The Canara Bank, Respondent herein has extended financial facilities to the Corporate Debtor to which personal guarantee was executed both by the Appellant and her husband, Mr. Rahul Chaudhary.

2.2 Canara Bank, the Financial Creditor after giving a notice in Form B to both Appellant and her husband filed Section 95 application. In Section 95 application filed against the Appellant, Company Petition (IB) 334/ND/2024 was registered and in the application under Section 95 filed against the husband of the Appellant, Company Petition (IB) 335/ND/2024 was registered.

2.3 Both (IB) 334/ND/2024 and (IB) 335/ND/2024 were listed as Item No.210 and 211 on 13.11.2024. On 13.11.2024, Advocate Mayank Bhargava appeared for both Appellant and her husband in (IB) 334/ND/2024 and (IB) 335/ND/2024 and prayed for two weeks' time to file reply to the report of the Resolution Professional. The

Resolution Professional undertook to serve complete set of application along with all annexures to the learned counsel for the Personal Guarantor and matter was adjourned to 06.12.2024.

2.4 On 06.12.2024, both the cases i.e. (IB) 334/ND/2024 and (IB) 335/ND/2024 were listed as Item No.205 and 206. In the husband's case appearance of learned counsel for the Appellant was noticed, who informed the Court that the Personal Guarantor is ill and submitted medical prescriptions. Further time was allowed to file reply and matter was directed to be listed on 27.01.2025. In case of the Appellant i.e. (IB) 334/ND/2024 no appearance of counsel was noticed and the Adjudicating Authority noticing its earlier order dated 13.11.2024 observed that in view of the non-filing of the reply by the Personal Guarantor and there being no appearance on her behalf, proceedings are set ex-parte and next date fixed was 09.12.2024.

2.5 On 09.12.2024, none appeared on behalf of the Appellant. The Adjudicating Authority passed an order admitting section 95 application.

2.6 Appellant filed an application for recall of both the orders dated 06.12.2024 and 09.12.2024 and prayed that Appellant be permitted to file a reply to the report. The application for recall of the order dated 06.12.2024 and 09.12.2024 was opposed by learned counsel for Canara Bank. The Adjudicating Authority by the impugned order

dated 24.04.2025 has dismissed the recall application, aggrieved by which order this appeal has been filed.

2.7 The Adjudicating Authority in the impugned order has observed that during course of the hearing learned counsel for the Appellant was asked to state his defence, on which a request for adjournment was prayed for by learned counsel for the Appellant. The Adjudicating Authority referring to the order dated 10.03.2025, which was passed in the appeal filed by the Appellant, did not accede to the request and has rejected the application. IN Para 14 of the order, the Adjudicating Authority made following observations:

“14. In any case, in due deference to the principles of natural justice, we gave opportunity to Ld. Counsel for the Applicant/ PG to put forth his stand even on merits and the plea raised by him on merit could be found contrary to the documents on record. Though he sought adjournment in the matter, but he himself produced the order of Hon'ble NCLAT, in terms of which Hon'ble NCLAT expected us to decide the application expeditiously as possible. Thus, in the interest of judicial precedence we deem it appropriate to reject the application.”

3. Learned counsel for the Appellant challenging the order submits that same counsel was appearing on behalf of both of the Personal Guarantors, Appellant and her husband and both matters were listed on 13.11.2024 and learned counsel for the Appellant appeared and prayed for time to file reply

and on the next date i.e. 06.12.2024 the appearance of Appellant's counsel is noticed in (IB) 335/ND/2024 i.e. husband's case but on the same day noticing that none appearing on behalf of the Appellant in (IB) 334/ND/2024, the order was passed to proceed ex-parte against the Appellant. It is the case of the Appellant that on 06.12.2024, both cases were listed as Item No.205 and 206 and when counsel for Appellant has appeared for husband and informed about his illness and time was allowed and matter was fixed for 27.01.2025, there was no occasion for learned counsel for the Appellant to not appear in the case of the wife whose non-appearance is noted. It is submitted that order dated 06.12.2024 was uploaded only on 13.12.2024 and 06.12.2024 being Friday, on next working day i.e. on 09.12.2024 again noticing absence of the Appellant, order has been passed admitting Section 95 application. It is submitted that the Appellant has made out sufficient case for recall of both the orders, which was not considered as a sufficient cause. Learned counsel for the Appellant had appeared before the Court on 06.12.2024 and made request for time, which was allowed but order was noted in only husband's case. It is submitted that the Adjudicating Authority committed error in rejecting the recall application. The order passed on 09.12.2024 is in violation of Principles of Natural Justice and deserve to be set aside.

4. Learned counsel appearing for the Resolution Professional and Canara Bank both has opposed the submissions of the Appellant. It is submitted that the Adjudicating Authority even during hearing has asked the learned

counsel the Appellant to state his defence but no submission was raised by learned counsel for the Appellant and he sought for adjournment, which clearly means that there is no valid defence of the Appellant. It is submitted that on 06.12.2024, Mr. Mayank Bhargava, Advocate appeared but his presence noted only in (IB) 335/ND/2024 i.e. husband's case where as presence is not noticed in (IB) 334/ND/2024. It is submitted that ample opportunity was given to file reply to the report of the Resolution Professional but Appellant had not filed the reply and was not present on 06.12.2024 when the case was called.

5. We have considered the submissions of learned counsel for the parties and perused the record.

6. On 13.11.2024, cases of both wife and husband i.e. (IB) 334/ND/2024 and (IB) 335/ND/2024 were listed together and in the case which was filed against the Appellant following order was passed on 13.11.2024:

"ORDER

IA-4500/2024: *As prayed by the Ld. Counsel appearing for the PG, 2 weeks time is granted for filing the reply to the report/application filed under Section 99 of IBC, 2016.*

Let advance copy of reply be served upon both the RP as also the Creditor.

Ld. Counsel for the PG submitted that only copy of IA/report preferred under Section 99 of IBC, 2016 could be made available to him and the annexure enclosed thereto could not be supplied to him. Ld. Counsel for the RP undertakes to send a complete set of application along with all annexures to Ld. Counsel for the PG during the course of the day through e-mail.

List on 06.12.2024.”

7. Similar order was also passed in (IB) 335/ND/2024 i.e. husband's case. On next date, 06.12.2024, both the matters were again listed together at Item No.205 and 206. In (IB) 335/ND/2024 i.e. husband's case, Advocate Mayank Bhargava appeared, whose presence was noticed and following order was passed on 06.12.2024:

“ORDER

IA-4498/2024: *Ld. Counsel appearing for the creditors submitted that the RP has not made a copy of report available to the creditor. Let the report be made available to the creditor within one week from today. Ld. Counsel for the personal guarantor submitted that the reply could not be filed within the given time, as the personal guarantor is unwell. He also sought to produce the medical prescription to buttress his plea regarding personal guarantor. The medical prescription produced before us is kept on record. As prayed by Ld. Counsel for the personal*

guarantor, further one week time is granted to file the reply.

List on 27.01.2025.”

8. On same date, 06.12.2024, although presence of counsel for the Appellant Mr. Mayank Bhargava was noted but noticing earlier order dated 13.11.2024, Court had directed to proceed ex-parte since no reply has been filed nor the counsel who represented her on 13.11.2024 is present. Next dated 09.12.2024 was fixed by setting Appellant ex-parte and on 09.12.2024 order admitting Section 95 application was passed.

9. It is the case of the Appellant that order dated 06.12.2024 was uploaded only on 13.12.2024, hence, there was no occasion for the Appellant to notice order for proceeding ex-parte against the Appellant. Appellant has filed I.A. No.737 of 2025 praying for recall of orders. In the application, it has been pleaded that on 06.12.2024, both the matters listed as Item Nos.205 and 206 were taken up together, in which counsel appeared and prayed for time, which was allowed, which has been stated in Para 7 of the application, which is to the following effect:

“7. That on 06.12.2024, IB-335/ND/2024 (Canara Bank v. Rahul Chaudhary (Husband of Applicant)) and the captioned matter (IB-334/ND/2024) were listed together as Item No. 205 and 206, respectively. Both the matters were called and taken up together when the undersigned entered appearance for the Applicant and Husband of the Applicant in both the

matters informed that the Husband of the Applicant has been ill due to which the undersigned counsel could not sit with them. Based on the aforesaid submission and reviewing the proof of medical diagnosis, this Hon'ble Tribunal granted more time and renotified the matter to 27.01.2025. After giving the date, Item No. 207 was called, and the undersigned counsel left the courtroom. Copy of the order dated 06.12.2024 passed in IB-335/ND/2024 has been annexed herewith as Annexure-G.”

10. The sequence of the events and facts clearly indicate that on 06.12.2024 both the matters were listed together as Item No.205 and 206. Learned counsel appeared and prayed for time. Although the said request has been noticed in one case i.e. IB-335/ND/2024 i.e. Section 95 application filed against husband whereas in IB-334/ND/2024 Court proceeded ex-parte and observed that none appeared.

11. The application which was filed for recall of orders was supported by affidavit of the Appellant where it was stated by the Appellant that due to illness of the husband Applicant had to take care of him and could not meet the counsel and prepare the reply, which has been clearly pleaded in Para 6 of the Application, which is to the following effect:

“6. That the Husband of the Applicant had not been keeping well and has been ill. In November, 2024 and December, 2024, Applicant's husband was suspected of thalassemia and other related

ailments and has become extremely weak and frail. He was not able to do any chores or move around much. It is owing to Applicant's Husband's ill health that neither the Husband nor the Applicant who was taking care of him could meet the undersigned counsel and prepare the reply. Copy of the medical diagnosis dated 22.11.2024 has been annexed herewith as Annexure-E. Copy of the medical diagnosis dated 04.12.2024 has been annexed herewith as Annexure-F.”

12. The Adjudicating Authority in the order has not returned any finding as to why the statement of the counsel that he appeared in both the cases and prayed for time and due to illness of the husband, which is recorded in order dated 06.12.2024, wife also could not prepare reply, the cause given in the application praying for recall has not been adverted to. The Adjudicating Authority in the impugned order has observed that Appellant was asked to given his defence on the merits of Section 95 application, where the Appellant prayed for adjournment.

13. The present is a case where application under Section 95 has been filed to initiate CIRP both against husband and wife who had both having given personal guarantee to the bank with respect to facilities extended to the Corporate Debtor. Both the matters were proceeding together and it is submitted that now they are also listed together and next date is 18.08.2025. From the pleadings on the record, it is clear that order to

proceed ex-parte was passed on 06.12.2024 which was Friday and on the next date i.e. 09.12.2024 order for admission has been passed stating that none has appeared.

14. In the facts of the present case, we are of the view that ends of justice would have met in allowing the application filed by the Appellant for recalling order dated 06.12.2024 and 09.12.2024.

15. The submission of the learned counsel for the Respondent that Appellant was asked to address on merits of the application which was not addressed and Appellant asked for adjournment, we do not find any substance in the above submission. When the reply was not even filed by the Appellant to the report of the Resolution Professional, asking the Appellant to address on merits of Section 95 application was not required at that stage. It is not finding of the Adjudicating Authority that Appellant is unnecessarily delaying the process and deliberately has absented on 06.12.2024.

16. In result, we are of the view that order impugned deserved to be set aside. We allow I.A. No.737 of 2025 and set aside order dated 06.12.2024 and 09.12.2024. The report of the Resolution Professional being already filed; Appellant is also allowed two weeks' time to file reply to the report. The Adjudicating Authority may proceed to consider IB-334/ND/2024 in accordance with law.

17. We make it clear that we have not entered into the merits of application under Section 95 and it is for the Adjudicating Authority to consider the submissions and decide the application in accordance of law. Appeal is disposed of accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

18th August, 2025

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