

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16<sup>TH</sup> DAY OF OCTOBER, 2024

PRESENT



THE HON'BLE MR. N.V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE K.V. ARAVIND

WRIT APPEAL NO.498 OF 2024 (GM-RES)

**BETWEEN:**

- 1 . BUOYANT TECHNOLOGY  
CONSTELLATIONS PVT. LTD.  
A COMPANY INCORPORATED UNDER  
THE COMPANIES ACT 1956  
(FORMERLY KNOWN AS MANTRI TECHNOLOGY  
CONSTELLATIONS PVT. LTD.,)  
HAVING ITS REGISTERED OFFICE AT  
C-5, RICH HOMES, No.5/1, RICHMOND ROAD  
BANGALORE – 560 001  
REPRESENTED BY ITS DIRECTOR  
MR. HARIKRISHNA REDDY

... APPELLANT

(BY SRI S. BASAVARAJ, SENIOR ADVOCATE &  
SRI M.S. SHAM SUNDAR, SENIOR ADVOCATE A/W  
SRI ANISH ACHARYA, ADVOCATE)

**AND:**

- 1 . M/S MANYATA REALLTY  
A PARTNERSHIP FIRM REGISTERED UNDER  
THE PARTNERSHIP ACT, 1932  
HAVING ITS REGISTERED OFFICE AT  
NO 9/1, 1<sup>ST</sup> FLOOR, CLASSIC COURT  
RICHMOND ROAD  
BANGALORE – 560 025

- 2 . THE REGISTRAR  
NATIONAL COMPANY LAW TRIBUNAL  
BANGALORE BENCH  
CORPORATE BHAWAN  
12<sup>TH</sup> FLOOR, RAHEJA TOWERS  
M.G. ROAD, BENGALURU – 560 001
- 3 . UNION OF INIDA  
MINISTRY OF CORPORATE AFFAIRS  
B - WING, 2<sup>ND</sup> FLOOR  
PARYAVARAN BHAVAN  
CGO COMPLEX  
LODHI ROAD  
NEW DELHI – 110 003

... RESPONDENTS

(BY SRI OM PRAKASH, SENIOR ADVOCATE A/W  
SRI S. KIRAN KUMAR, ADVOCATE FOR C/R1 &  
SRI KUMAR M.N., CGC FOR R2 & 3)

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THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF  
THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET  
ASIDE THE ORDER PASSED BY THE LEARNED SINGLE  
JUDGE IN W.P. No.26977/2023 DATED 06.03.2024 AND ETC.

THIS WRIT APPEAL HAVING BEEN HEARD AND  
RESERVED FOR JUDGMENT, COMING ON FOR  
PRONOUNCEMENT THIS DAY, JUDGMENT WAS  
PRONOUNCED AS UNDER:

CORAM: HON'BLE THE CHIEF JUSTICE MR. JUSTICE  
N.V. ANJARIA  
and  
HON'BLE MR. JUSTICE K.V. ARAVIND

**C.A.V. JUDGMENT**

(PER: HON'BLE THE CHIEF JUSTICE  
MR. JUSTICE N.V. ANJARIA)

Whether the aspect about the maintainability of petition filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 for its merit content could be examined by the Registrar of the National Company Law Tribunal at the stage of its filing and presentation;

Whether it is permissible in law for the Registrar of the National Company Law Tribunal (NCLT) to enter into even the elementary adjudicatory process in relation to controversy between the parties;

Whether receiving and registering the petition under Section 95 of the Insolvency Code is a ministerial function or also permits an adjudicatory act at that stage by the Registrar, NCLT;

At what stage the adjudicatory functions starts under the provisions of Chapter-III, Part-III of the Insolvency and Bankruptcy Code, 2016;

1.1 These are the questions arise for their analysis and decision while examining the challenge to the judgment and

order dated 6<sup>th</sup> March 2024 of learned Single Judge, in the present appeal, preferred by the appellant-original respondent No.2, under Section 4 of the Karnataka High Court Act, 1961.

### **The Challenge**

2. Learned Single Judge allowed the writ petition. It was declared that e-filing of the petition by the appellant herein under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Insolvency Code') to be *non est* and illegal, consequently setting aside all the connected proceedings. It was provided that any action taken upon registration of the proceedings shall stand obliterated.

2.1 In the writ petition filed under Article 226 of the Constitution, the prayers made were to declare that the e-filing of petition No.2903111/01786/2023 by the appellant-respondent No.2 under Section 95 of the Insolvency Code was void *ab initio* and illegal. It was consequently prayed to restrict the NCLT from taking any action in furtherance of the said petition.

2.2 The NCLT was further sought to be restrained from completing the scrutiny of the petition and returning the petition for rectifying the defects and also to restrict from numbering

and registering the petition or placing the petition for hearing. The third limb of the prayer was to direct the NCLT to return and cancel the lodging of the petition.

### **Case in the Writ Petition**

3. Having seen the kind and nature of the prayers advanced as above in the writ petition, the case of the petitioner No.1 herein-M/s. Manyata Realty may be looked into. Questioning the legality of filing of petition under Section 95 of the Insolvency Code by the appellant herein-Boyount Technology Constellation Pvt. Ltd., it was stated that the petitioner was a partnership firm registered under the Partnership Act, 1932 and that the petition under Section 95 of the Code against it was not maintainable.

3.1 It was stated that the petitioner with other entities, all are engaged in the business of real estate development. One of such entity is Manyata Infrastructure Developments Pvt. Ltd., which is a private limited company. The partners of the petitioner have interest in the said private limited company, it was stated. The said Manyata Infrastructure Pvt. Ltd. and the petitioner, it was averred, have been instrumental in developing several projects as a leader in the field of construction. It was

stated that, the petitioner along with the land owners of certain properties entered into Memorandum of Understanding dated 23<sup>rd</sup> December 2009 and Addendum dated 20<sup>th</sup> July 2012 with respondent No.2-appellant herein-Buyont Technology.

3.1.1 In light of the said Memorandum of Understanding, the petitioner firm Manyata Pvt. Ltd. and appellant have entered into separate joint developmental agreements between the years 2010 and 2015. It was further stated that the joint development agreements covering in total 103 Acres of land. The petitioner produced one of such agreement dated 26<sup>th</sup> August 2010.

3.1.2 It was alleged by the petitioner that the appellant did not commence the development works, delayed the same and failed to discharge its contractual obligation, that the construction activity is at a stand-still and that losses were suffered. Consequently, by notice dated 7<sup>th</sup> February 2019, the petitioner and Manyata Pvt. Ltd., terminated six of the joint development agreements and partially terminated three.

3.1.3 The issues and differences worsened. The petitioner-Manyata Infrastructure Private Limited issued notice dated 16.07.2022 to the appellant reiterating the termination of Joint

Development Agreements. It was stated that the Memorandum of Understanding dated 23.12.2009 as well as each of the joint development agreements contained arbitration covenant. The disputes between the parties came to be referred to the panel of three arbitrators which was constituted pursuant to the notice dated 10.10.2022 by the Manyata Development Private Limited by invoking the arbitration clause. It is the allegation of the petitioner that the appellant herein was interested in delaying the arbitration proceedings and several proceedings were instituted by it before the several courts. The details of such legal proceedings were mentioned in the petition. It was also alleged that the arbitral proceedings had reached at an advanced stage.

3.1.4 It was then averred that the petitioner received Demand Notice on 21.10.2023 from the appellant under Section 95 of the Insolvency Code. Therein, the partners of the petitioner firm were called upon to pay a sum of Rs.8,11,49,54,687/- for the alleged debt of Rs.40 crores stated to be due under the Agreement dated 06.11.2012. It is the say of the petitioner that this very claim is the subject matter of one of the counter claims by the appellant before the arbitrator. The said demand notice was replied to by the petitioner raising several grounds.

3.1.5 It was contended that despite the reply given to the notice, the appellant-respondent No.2 served copy of the petition filed under Section 95 of the Code before the NCLT. It was sought to be contended that the Ministry of Corporate Affairs by the Notification dated 15.11.2019, notified Sections 94 to 187 of the Insolvency Code, (both inclusive) only in relation to the personal corporate guarantors and that therefore, it would not apply to the partners of the petitioner firm. It was contended that the partnership firm was neither a corporate debtor nor a corporate person.

3.1.6 It is the case that the provisions of Section 95 of the Code are not applicable and that the petition filed by the appellant could not have been maintained before the NCLT. It was further contended that the intention on part of the appellant-respondent No.2 was only to delay the arbitration proceedings. It was claimed that the appellant wanted to take benefit of Section 96 of the Insolvency Code inasmuch as upon filing of the petition under Section 95 of the Code, the provision of Section 96 would operate under which an interim moratorium would come into force. It was submitted that the petition under



Section 95 of the Code could not have been registered by respondent No.1-Registrar, NCLT.

### **Section 95 Petition**

3.2 The case and contents of the petition under Section 95 of the Insolvency Code filed by the creditor-M/s. Buoyant Technology Limited-appellant herein, may be highlighted. It is stated that the petition was against the personal guarantors. It was stated that admittedly there was a default on part of the said corporate debtors which had failed to discharge its obligation under the Loan Agreement dated 6<sup>th</sup> November 2012 as also in respect of invocation of personal guarantors. It was stated that the corporate debtor-Manyata Infrastructure Private Limited was a private limited company registered under the Companies Act, 2013 and was an affiliate entity of Manyata Realty and that the individual partners of the firm had interest in the said private limited company. It was further stated that number of agreements were entered into amongst the financial creditor-applicant-appellant, the corporate debtor-Manyata Infrastructure as well as its affiliate concern-Manyata Realty.

3.2.1 Following was the case pleaded in paragraph 4 of the petition under Section 95,

“The substructure of the Loan Agreement dated 06.11.2012 was such that the M/s Manyata Realty had undertaken to stand as the Corporate Guarantor and the partners of the aforesaid firm. Personal Guarantors/ Respondents of the present Application, had accordingly undertaken to serve as the Guarantors in respect to the loan availed by the Corporate Debtor/Principal Borrower.”

3.2.2 It was further pleaded as under,

“... Although the M/s Manyata Realty would also qualify to be the Corporate Guarantor, yet since it is a settled proposition of law that any partnership concern constituted under the provisions of the Indian Partnership Act, 1932, by virtue of the law, is indispensable from its partners and as such the liability of the partners in any partnership concern is unlimited. Therefore, all the partners of the M/s Manyata Realty (who have been arrayed as Party Respondent in the instant application) would qualify to fall under the purview of 'Personal Guarantors' and since the partnership concern M/s Manyata Realty, is indispensable from the aforesaid Partners/Personal Guarantors.”

3.2.3 It was further averred that the applicant-financial creditor had entered into ancillary agreement referred to as contractual framework with the corporate debtor as well as the corporate guarantor, an affiliate named M/s. Manyata Realty concern of the corporate debtor for acquiring developmental rights in respect of the part of the land at Bengaluru and that in lieu of the said Understanding, the corporate debtor as well as its

abovenamed connected entity agreed in the contractual framework to grant developmental rights to the applicant. It was stated that the applicant had disbursed the sum of Rs.183,50,00,000/- on different dates to the corporate debtor as well as its affiliated entity.

3.2.4 It was next stated that the corporate debtor and its affiliate entity along with other partners thereof had agreed to restructure the entire transaction in such a manner that a certain sum out of total paid up amount already disbursed in various trenches would be initially treated as loan/financial debt. It was stated that as a consequence, Loan Agreement dated 6<sup>th</sup> November 2012 was entered into which was a separate and independent document, which was duly executed by the applicant-financial creditor and the corporate debtor as well as its affiliated entity.

3.2.5 It was further averred that both the entities-corporate debtor and its affiliate concern agreed to treat the initially disbursed sum of Rs.40 crores to be a financial debt within the meaning of Section 5(8) of the Code. The applicant furnished the details thereof as part of the pleadings, the details of the treatment of total of Rs.183,50,00,000/- in various trenches on

various dates to the said entities. It was sought to be highlighted that the loan agreement envisaged certain conditions attached to the advancement of Rs.40 crores and the conditions were to be fulfilled by the said entities on or before 31.03.2013 failing which, the said money was to be returned to the financial creditor-applicant along with interest.

3.2.6 It was the case that there is material breach of the covenants of the loan agreement and the corporate debtor and its affiliated entity failed to respond despite the applicant-financial creditor called upon them to repay the said loan amount.

3.2.7 It was further pleaded and contended, extracting from paragraph 13 of the application,

“It is pertinent to accentuate herein that that the structure of the financial transaction arising out of the Contractual Framework was restructured in such a manner that the Corporate Debtor would be deemed to be the Principal Borrower and the affiliated entity, namely, M/s Manyata Realty along with its all partners would be deemed to be the Personal Guarantors and the Corporate Guarantor, as the case may be. Since the Guarantor namely, M/s Manyata Realty, is a registered partnership firms thus the partners of the said firm are jointly and severally liable for the acts of the firm and thereby would also be deemed to be personal guarantors. Therefore, in the light of the well settled legal proposition that

the liability of partners in any partnership firm, also applicable in the instant case to the Firm, duly constituted under the provisions of Indian Partnership Act, 1932, is unlimited. Thus, relying upon the settled proposition of the law and its principals, partners of the said Guarantor Firm, ipso facto, would be deemed to be as Personal Guarantors.”

3.2.8 It was stated that the Demand Notice dated 21.10.2023 was issued upon the personal guarantors under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The reply was received and the personal guarantors failed to comply with their obligations. It was stated that the default has admittedly occurred at the end of the corporate debtor.

3.2.9 It was stated that thus by filing application under Section 95 of the Code read with Rule 7(2) of the Rules of 2019, the applicant-financial creditor was entitled to commence the insolvency proceedings against the debtor and its affiliate entity and the partners who are personal guarantors. It was submitted that the cardinal principles for triggering insolvency within the ambit of Section 95 of the Code were satisfied from the documents on record inasmuch as money was disbursed

and that there was default by the corporate debtor which default was reported by the Information Utility.

### **View in Impugned Judgment**

3.3 It was held by learned Single Judge, who framed the question as to whether petition filed by the appellant was maintainable under Section 95 of the Code, thus proceeded to address the merits of the petition. The core question required to be considered was whether the Registrar while receiving the petition could go into the merits and to decide the maintainability.

3.3.1 Learned Single Judge proceeded to consider merits and to analyse the provisions of the Code including the definition of 'corporate person', 'corporate debtor' and consider the aspect that prima facie respondent was partnership firm and that in view of notification dated 15<sup>th</sup> November 2019, the provisions were not invocable. Learned Single Judge held that there was no personal corporate guarantor and insolvency resolution process could not have been initiated by the petitioner.

3.3.2 The submission of the appellant-respondent was that respondent No.1-Registrar at the stage of scrutiny of the petition cannot decide on the maintainability and could not

have judged whether the petition fell within the ambit of the provisions. The contention that the petition was at the stage of scrutiny and had never come up before the Tribunal was negated by learned Single Judge observing thus, extracting from paragraph 16 of the judgment,

“I decline to accept the said submission, as it is fundamentally flawed. If a quasi judicial authority or a Tribunal does not have jurisdiction to entertain a petition merely because it is at the stage of filing, it cannot be permitted to be proceeded further. If these submissions of the learned senior counsel is to be accepted, then it would be diluting the concept of jurisdiction itself, which dilution this Court would never even attempt to make. Therefore, if the petition is not fileable before the Tribunal, it cannot be allowed to be proceeded up to the stage of whether it is entertainable. A non-fileable petition has dire consequences, let alone its entertainment. Therefore, such proceedings which are on the face of it, *de hors* jurisdiction must be nipped in the bud and should never be allowed to germinate any further.” (para 16)

3.3.3 Learned Single Judge leaned towards the aspect that the effect of filing petition under Section 94 or 95 of the Code would be the immediate operation of Section 96 of the Code which has serious consequences in as much as it would place interim moratorium upon the corporate debtor and that it is an axiomatic consequence in the facts of the case. Learned

Single Judge held, 'the very acceptance of filing by the Tribunal is contrary to law'.

### **Insolvency Resolution Process**

3.4 In order to address the subtle issue of law involved in the controversy, surveying and comprehending the provisions relating to insolvency resolution process in Chapter-III of the Insolvency and Bankruptcy Code, 2016 is necessary. Section 94 and Section 95 respectively provide for filing of application by debtor or creditor to initiate the insolvency resolution process. Section 95 says that a creditor may apply for initiating the insolvency resolution process by submitting an application.

3.4.1 Section 95 of the Code since relevant, is reproduced herein,

**"95. Application by creditor to initiate insolvency resolution process –**

(1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.

(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against—

- (a) any one or more partners of the firm; or
- (b) the firm.



(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.

(4) An application under sub-section (1) shall be accompanied with details and documents relating to—

(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;

(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and

(c) relevant evidence of such default or non-repayment of debt.

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified.”

3.4.2 Section 96 says that when an application is filed under Section 94 or 95 of the Code, an interim moratorium shall commence in relation to all the debts and shall cease to have effect on the date of admission of such application. During the interim moratorium period, any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed and the creditors of the debtor shall not initiate any legal action in respect of any debt. The next provision is Section 97 under which the appointment of resolution professional is provided for. Section 98 is about the replacement of the resolution professional.

3.4.3 Section 99 provides for submission of the report by resolution professional. The Section is extracted,

**“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 sections 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.”

3.4.4 Section 100 is about the admission or rejection of the application, reading as under,

**“100. Admission or rejection of application –**

(1) The Adjudicating Authority shall, within fourteen days from the date of submission of the report under section 99 pass an order either admitting or rejecting the application referred to in sections 94 or 95, as the case may be.

(2) Where the Adjudicating Authority admits an application under sub-section (1), it may, on the request of the resolution professional, issue instructions for the purpose of conducting negotiations between the debtor and creditors and for arriving at a repayment plan.

(3) The Adjudicating Authority shall provide a copy of the order passed under sub-section (1) along with the report of the resolution

professional and the application referred to in sections 94 or 95, as the case may be, to the creditors within seven days from the date of the said order.

(4) If the application referred to in sections 94 or 95, as the case may be, is rejected by the Adjudicating Authority on the basis of report submitted by the resolution professional that the application was made with the intention to defraud his creditors or the resolution professional, the order under sub-section (1) shall record that the creditor is entitled to file for a bankruptcy order under Chapter IV.”

3.4.5 The above provisions for their nature, effect and operation came to be discussed by the Supreme Court to explain the statutory scheme emanating therefrom, in **Dilip B Jiwrajka v. Union of India [(2024) 5 SCC 435]**. This decision is referred to and discussed in its details in the succeeding paragraphs.

4. Heard learned Senior Advocates Mr. S. Basavaraj and Mr. M.S. Sham Sundar with learned advocate Mr. Anish Achar for the appellant, learned Senior Advocate Mr. Om Prakash assisted by learned advocate Mr. S. Kiran Kumar for respondent No.1 and learned Central Government Standing Counsel Mr. M.N. Kumar for respondent Nos.2 and 3, at length.

## **Submissions of Appellant**

4.1 Learned Senior Advocate for the appellant assailed the impugned judgment and order by submitting that the learned Single Judge exceeded his jurisdiction in upholding the adjudication of maintainability of the petition filed under Section 95 of the Code by the Registrar, to conclude that the petition was liable to be rejected. It was next submitted that the adjudicatory role could be performed only at a subsequent stage by the National Company Law Tribunal when it receives the report from the resolution professional. It was submitted further it was only NCLT who could examine the contents and documents to pronounce upon the merits and maintainability at that stage.

4.1.1 Learned Senior Advocate thereafter proceeded to explain that the partners of the respondent were personal corporate guarantors by pointing out aspects of loan having been taken jointly by Manyata Realty and the Pvt. Ltd. Company-Manyata Infrastructure, the nature of liability of the partners under the law and various other attendant aspects, which according to the learned counsel make the persons personal corporate guarantors. It is not necessary to elaborate

these submissions, and give finding thereon, in view of what is being decided herein.

4.1.2 Learned Senior Advocate submitted that merely that moratorium under Section 96 of the Insolvency Code would come into operation upon filing of Section 95 petition, is no ground to judge the maintainability and to debar the creditor or debtor to initiate the action permissible under the law. It was submitted that coming into force of interim moratorium is statutory consequence. It was further submitted the appellant also filed a petition under Section 7 of the Insolvency and Bankruptcy Code against the Company, which Company is a corporate debtor. It was submitted that for Section 7 petition, no interim moratorium would come into effect, unlike upon filing of Section 95 petition. He relied on several decisions as to continuance of arbitral proceedings *vis-a-vis* the coming into operation of moratorium.

4.1.3 Learned Senior Advocate for the appellant extensively relied on the decision of the Supreme Court in **Dilip B Jiwrajka (supra)**. On the basis of the law laid down by the Apex Court, it was submitted that the adjudicatory role could never be attributed to respondent No.1-Registrar, NCLT, when he

receives and registers petition under Section 95 of the Code. It was submitted that the petition has to travel through stages before it reaches at the juncture where it would be adjudicated for its maintainability, and therefore for approval or rejection by the adjudicating authority.

### **Submissions of respondents-original petitioners**

4.2 Learned Senior Advocate for the respondent-original petitioner, on the other hand steadfastly supported the judgment of learned Single Judge. It was submitted that the application of the appellant under Section 95 of the Insolvency Code was totally misconceived and on the bare facts, it was not maintainable. In that light, it was submitted, the Registrar, NCLT was justified to look into the merits of the case of the petitioner to decide about maintainability of such petition. It was submitted that the petition was filed against a firm and in no way the partners of the firm could be treated as personal corporate guarantors, nor they can be said to be stepping into shoe of personal corporate guarantors to maintain the petition.

4.2.1 It was sought to be highlighted that the provisions of Sections 94 to 187 having notified by the Ministry of Corporate Affairs only in so far as they relate personal guarantors of



corporate debtors. It was submitted that on merits, this aspect was not satisfied which was a legal irregularity liable to be considered at the stage of filing itself. Notification dated 15th November 2019 issued by the Ministry of Corporate Affairs was sought to be relied on.

4.2.2 Learned Senior Advocate for the respondent referred to the definition of 'Corporate Person' as found in Section 2(7), of 'Corporate Debtor' contained in Section 2(8), that of 'person' in Section 2(23) of the Code. He further referred to 'Corporate Guarantor' in Section 5(5A) of the Code. On the basis of such provisions, learned Single Judge contended that no personal corporate guarantor is involved to maintain the petition.

4.2.3 Decision of the Supreme Court in **Lalit Kumar Jain v. Union of India [(2021) 9 SCC 321]** was referred to for the observations contained in paragraph 95, to highlight the provisions in part-III of the Code as they operate before amendment of 2018 and post amendment. Several decisions were relied on by learned Senior Advocate for the respondent to advance legal propositions and to buttress his submissions. On the basis of the decision of the Supreme Court in **S. Govinda Menon v. Union of India [AIR 1967 SC 1274]**, it was

submitted by referring to observations in paragraph 5 thereof that writ of prohibition is issued to restrain the court or inferior tribunal from exercising a jurisdiction which they do not possess or when they exceed the jurisdiction. For same proposition, another decision in **Bengal Immunity Company Ltd. v. State of Bihar [AIR 1955 SC 661]**, paragraphs 52 and 53] was pressed into service.

4.2.4 With reference to paragraph 334 in the decision of the Apex Court in **Mafatlal Industries Ltd. v. Union of India [(1997) 5 SCC 536]**, the concept of 'jurisdiction' was highlighted. Yet another decision in **Indian Farmers Fertilisers Cooperative Society Ltd. v. Bhadra Products [(2018) 2 SCC 534]**, was relied on, again to submit that the 'jurisdiction' is a coat of many colours and the word take the colour from the context it is placed.

4.2.5 Learned Advocate proceeded to explain the nature and power of jurisdiction under Article 226 of the Constitution from paragraphs 15 to 18 in **Embassy Property Developments (P) Ltd. v. State of Karnataka [(2020) 13 SCC 308]**. For similar purpose, and also to highlight when the writ of certiorari could be issued, yet another decision of the Apex Court in **Central**

**Council of Research in Ayurvedic Sciences v. Bikaratan Das [2023 SCC Online SC 996]**, was referred to for its paragraphs 53 to 60.

### **Ministerial versus Adjudicatory**

5. Since in accepting the prayer of the petitioner and setting at naught the filing of the petition under Section 95 of the Code by the appellant, the learned Single Judge has viewed that the adjudicatory role is permissible by respondent No.1-Registrar at the time of receipt of the petition, the distinction between ministerial act or administrative function on one hand, and the judicial function or adjudicatory task may be considered. The core issue would be whether respondent No.1-Registrar could enter into realm of adjudication.

5.1 The conceptual and jurisprudential distinction between ministerial act and judicial act or administrative function and adjudicatory function came to be analysed elaborately, lucidly and pertinently by the Supreme Court in **Jamal Uddin Ahmad Vs. Abu Saleh Najmuddin and another [(2003) 4 SCC 257]**. Though slightly in different context, what was delineated and laid down by the Supreme Court provides a guidance to address the controversy involved in this case. It was in the

context of presentation of election petition under Section 81 of the Representation of the People Act, 1951 that the Supreme Court discussed the difference between the ministerial function and adjudicatory function and further that by which authority and at which stage such functions, both of different kinds, could be performed.

5.1.1 Noticing few facts with relevance from **Jamal Uddin Ahmad (supra)**, the appellant before the Supreme Court was declared duly elected in the elections held to the Badarpur Legislative Assembly Constituency of Assam. The contesting respondent filed an election petition under Sections 80/81 of the Representation of the People Act, to challenge the election of the appellant. The election petition was presented before the Stamp Reporter-cum-Oath Commissioner of the High Court of Assam. The Stamp Reporter received the election petition, conducted preliminary scrutiny and put up the same before the Designated Election Judge. The appellant upon receipt of the copy of the election petition filed an application raising a preliminary objection to the maintainability of the petition, seeking its dismissal in limine under Section 86 of the Representation of the People Act on the ground of non-compliance with Section 81 of the Act.

5.1.2 The gist of the plea raised by the appellant was the petition should have been presented either before the Designated Election Judge or the Chief Justice of the High Court and that having not been done, the petition was liable to be dismissed without trial. The Supreme Court considered the question as to whether the High Court was competent to frame rule for making provision for receiving the election petitions presented to the High Court under Section 81 of the Representation of the People Act. It is in that context that the Supreme Court elucidated the difference between ministerial act and adjudicatory act. It was observed, "By no stretch of imagination can it be said that the "presentation" of an election petition is part of the "trial" of an election petition".

5.1.3 The Supreme Court stated that the term "High Court" in Section 81 denoted the institution as a whole and not literally the High Court as constituted within the meaning of Article 216 of the Constitution. Even as it was highlighted that the functions discharged by a High Court is divisible broadly into judicial and administrative functions. It was stated that the judicial functions cannot be delegated which are to be essentially discharged by the Judges. On the other hand, the

administrative functions need not necessarily be discharged by themselves. There may be administrative or ministerial staff which is, although part of the High Court, are invested with discharging of administrative and ministerial functions of dealing with the presentation of the cases.

5.1.4(a) The Supreme Court stated,

“Receiving a cause or a document and making it presentable to a Judge for the purpose of hearing or trial and many a functions post-decision, which functions are administrative and ministerial in nature, can be and are generally entrusted or made over to be discharged by the staff of the High Court, ...”  
(para 13)

5.1.4(b) It was further observed,

“The Judges rarely receive personally any document required to be presented to the Court. Complaints, petitions, memoranda or other documents required to be presented to the Court are invariably received by the administrative or ministerial staff, who would also carry out preliminary scrutiny of such documents so as to find that they are in order and then make the documents presentable to the Judge, so that the valuable time of the Judge is not wasted over such matters as do not need to be dealt with personally by the Judge.”  
(para 13)

5.1.5 The Supreme Court in **Jamal Uddin Ahmad (Supra)** observed that the judicial function entrusted to a Judge is inalienable and differs from administrative or ministerial

function which can be delegated for once whereof may be secured through authorisation. The Supreme Court explained thus,

"The judicial function consists in the interpretation of the law and its application by rule or discretion to the facts of particular cases. This involves the ascertainment of facts in dispute according to the law of evidence. The organs which the State sets up to exercise the judicial function are called courts of law or courts of justice. Administration consists of the operations, whatever their intrinsic nature may be, which are performed by administrators; and administrators are all State officials who are neither legislators nor judges"

(See Constitutional and Administrative Law, Philips and Jackson, Sixth Edition, p. 13). P. Ramnath Aiyer's Law Lexicon defines judicial function as the doing of something in the nature of or in the course of an action in court, (p. 1015). The distinction between "judicial" and "ministerial acts" is:

**If a judge dealing with a particular matter has to exercise his discretion in arriving at a decision, he is acting judicially; if on the other hand, he is merely required to do a particular act and is precluded from entering into the merits of the matter, he is said to be acting ministerially."**

(para 14)  
(emphasis supplied)

5.1.5(a) The Supreme Court proceeded further to elaborate,

**"Judicial function is exercised under legal authority to decide on the disputes, after hearing the parties, may be after making an enquiry, and the decision affects the rights**

**and obligations of the parties. There is a duty to act judicially. The Judge may construe the law and apply it to a particular state of facts presented for the determination of controversy. A ministerial act, on the other hand, may be defined to be one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act done** (Law Lexicon, Ibid., p. 1234). In ministerial duty nothing is left to discretion; it is a simple, definite duty. Presentation of election petition to the High Court within the meaning of Section 81 of the Act without anything more would mean delivery of election petition to the High Court through one of its officers competent or authorized to receive the same on behalf of and for the High Court.” (para 14)  
(emphasis supplied)

5.1.6 The word ‘ministerial’ is defined in Black’s Law Dictionary (Ninth Edition) as ‘of or relating to an act that involves obedience to instructions or laws instead of discretion, judgment or skill’. Similarly, the word ‘ministerial act’ is defined as ‘an act performed without the independent exercise of discretion or judgment’. If the act is mandatory, it is also termed as ministerial duty.

5.1.7 The status in the nature of duty discharged by respondent No.1-Registrar at the time of receiving the petition under Section 95 of the Code, satisfies the above tests. The



Registrar has no discretion, but to receive and register the application once the procedural requirements are fulfilled.

### **Registering Petition, a Ministerial Act**

5.2 The above proposition and principles apply analogically and directly to the situation obtaining in the facts of the present case. The Registrar of NCLT is necessarily part of the administrative segment of the Tribunal. As an administrative staff, the office of the Registrar would receive the applications filed under Section 95 of the Code along with the documentations presented therewith. The function of receiving the petitions which are filed or presented is a procedural stage. It is an administrative or ministerial function. What calls for at that stage is the scrutiny of compliance of procedural requirements to mean that the petition is filed in orderly manner. The examination of the petition on merits for its maintainability or any such other stand point of merit, is foreign and alien at such stage. The aspect whether the petition presented with the Registrar is maintainable, is a part of merit and it necessarily travels in the realm of judicial function. The Registrar is not entitled to look into this aspect.

5.2.1 The Supreme Court clearly stated that receiving an election petition presented under Section 81 of the Act is certainly not a judicial function which needs to be performed by a Judge alone. In the same way, presentation of petition under Section 95 of the Insolvency Code before the Registrar, NCLT is not a judicial function and the judicial scrutiny does not take place at such stage. As there is no discretion in receiving an election petition and it is to be received when presented in the same conceptual way, the Registrar does not have any discretion to judge the maintainability of petition under Section 95 of the Code and for that purpose go into the merit part of the contents of the petition. It is a ministerial function simpliciter.

5.2.2 If the Registrar who is a purely administrative authority is entrusted with the power or permission to examine the presentation of the petition for its merit contents, the adjudicatory stages statutorily contemplated in the Insolvency Code would turn upside down. The judicial task of examining the merits of the case of the party presenting the petition including its maintainability is a matter to be examined only by the NCLT at the stage when such stage is reached. If at the stage of presentation of petition such aspects are permitted to

be gone into by the ministerial staff, it may lead to even corrupt practices and serious errors of judgments. Even otherwise, the issues which are in the judicial domain cannot be permitted to be dealt with or tested by the administrative wing. It would amount to topsy turving the entire legal framework and adjudicatory mechanism. If the administrative authority is permitted to go into the merits, it would amount to creating additional tier in the adjudicatory framework.

5.2.3 There will be gainsaying that the Registrar of NCLT acting to receive the applications under Section 95 of the Code which was the stage of filing of the application, acts administratively. The function of registering the applications filed under Section 5 of the Insolvency Code is a ministerial function and a procedural act. This stage does not store any adjudicatory process. The role of the Registrar while registering the application under Section 95 of the Code is not adjudicatory in nature and this duty of the Registrar, NCLT was in no way adjudicatory trapping. Application of judicial mind towards merits has no place in discharge of a ministerial or clerical function. For the Registrar, it is not permissible at the time of registering the petition which is filed by the debtor or creditor.

5.2.4 The case as pleaded by the applicant-appellant in its application under Section 95 of the Insolvency Code filed before the NCLT had definite adjudicatory element and demonstrable adjudicatory trappings.

### **Jiwrajka Finally Answers**

5.3 The scheme of the provisions in Chapter-III, Part-II and Part-III and the distinction between the two came to be discussed by the Supreme Court in **Dilip B Jiwrajka (supra)**. It was stated that Part-II deals with the eventuality namely the initiation of liquidation broadly in situations where the resolution plan is not received or is rejected by the adjudicating authority for non-compliance of the requirements specified for the approval of such plan in Section 31 of the Code. The role of resolution professional under Part-II provisions are contra-distinguishable from the role ascribed to a resolution professional in Part-III.

5.3.1 Section 94 and 95 of the Code provide for application for the debtor or creditor for the initiation of the insolvency resolution process in relation to insolvencies and bankruptcies of the individuals and partnership firms. Section 97 provides for appointment of resolution professionals. In contrast to Part-

II provisions where the role of adjudicating authority is contemplated right at the threshold, the appointment of resolution professionals under Part-III provisions does not mark commencement of adjudicatory process. The duties of the resolution professionals appointed under Part-III are as contained in Section 99.

5.3.2 The resolution professional examines the application which may have been filed under Section 94 or 95 of the Code, thereafter the resolution professional may require a debtor to prove the debt claimed to have been unpaid. The information which the resolution professional gathers is to be channelised for the purpose of functions to be discharged by him under Section 99(1) of the Code. Section 99 provides for submission of report by the resolution professional to the adjudicating authority for approval or rejection of the application. Section 100 contemplates admission or rejection of the application by the adjudicating authority. 'Adjudicating Authority' as defined in Section 5(1) is the National Company Law Tribunal constituted under Section 408 of the Companies Act, 2013.

5.3.3 The issue as to whether when the adjudicating function commences under the Insolvency and Bankruptcy Code, 2016

could be said to be no longer *res integra* in view of the judgment of Supreme Court in **Dilip B. Jiwrajka (supra)**. The Supreme Court stated therein as to when the adjudicatory function of adjudicatory authority commences. It was held that adjudicatory function of adjudicatory authority commences under Part III of the Code, 2016 after submission of a recommendatory report by the resolution professional. In challenging the constitutional validity of Section 95 to Section 100 of the Code, 2016 which was negated by the Supreme Court, the same nature of submissions were advanced on behalf of the petitioners before the Supreme Court. It was contended that certain aspects made to operate by the statute after filing application under Section 95 of the Code, 2016 was highly prejudicial. Inasmuch as without judicial intervention for adjudication, there would operate an automatic interim moratorium, for the resolution professional would be appointed who would seek from the guarantor and would examine the information received and then submit report.

5.3.4 The Supreme Court held that the role of the resolution professional was prior to adjudication process and that the resolution professional is only a facilitator,

“The resolution professional is required to examine the application and to ascertain two things: firstly, that the application satisfies the requirement of Section 94 or Section 95 and, secondly, that the applicant has provided the information and furnished the explanation which is sought under sub-section (4). Having carried out the process of examination and ascertainment as specified in sub-section (6), the resolution professional may either recommend the acceptance or the rejection of the application by submitting a report. The report has to record reasons and a copy of the report has to be furnished to the debtor or the creditor, as the case may be. The role of the resolution professional prior to the adjudication process by the adjudicating authority comes to a conclusion with the submission of a report. Upon the submission of the report, the matter then lies within the jurisdiction of the adjudicating authority. This is evident from the fact that Section 100(1) stipulates that the adjudicating authority has to pass an order either admitting or rejecting the application within fourteen days from the date of the submission of the report under Section 99.” (para 53)

5.3.5 It was further observed in paragraph 54 that it was salient aspect to emerge that the resolution professional does not possess any adjudicatory function in terms of provisions of Section 99. The Legislature considered it appropriate to impose the resolution professional before the adjudicatory function of the adjudicatory authority which commences under Section

100. It was stated that the resolution professional does not have the power under part III which is counter part as in part II, it was observed that under Section 99, part III which is ascribed to the resolution professional to that of a facilitatory and is to gather the relevant information on the basis of the application which is submitted under Section 94 of Section 95 of the Code, 2016.

5.3.6 The Supreme Court further stated thus,

“...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 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.” (para 54)



## **Adjudicatory Stage Subsequent**

5.4 In view of the above, it is an inescapable conclusion that even the stage when the resolution professional functions together the information to prepare the report to be submitted to the adjudicatory authority-NCLT, the adjudicatory stage does not reach and no adjudication of rights of the parties takes place. Therefore, it could not be said at any stretch of imagination that the Registrar, NCTL, while accepting or receiving the petition under Section 95 of the Code, 2016 has any adjudicatory permission, much less such power, or that at such stage of filing petitioner, adjudication can take place in any manner whatsoever.

5.4.1 The role of adjudicatory authority starts once the report is submitted by the resolution professional. Such report is also a purely recommendatory and does not bind the adjudicatory authority, stated the Supreme Court,

“The resolution professional submits a report to the adjudicating authority. The report is purely recommendatory in nature and does not Bind the adjudicating authority. Section 100(1) requires the adjudicating authority to pass an order either admitting or rejecting the application within fourteen days from the date of the submission of the report under Section 99. The adjudicating authority has the power to instruct the debtor and

the creditor to enter into negotiation if it admits the application. It may also entitle the creditors to file for bankruptcy if it rejects the application on the ground that it was intended to defraud the creditors or the resolution professional. The provisions dealing with moratorium under Section 101(2) (c) correspond broadly to the provisions of Section 14(1)(b) in relation to Part II. Significantly, clause (c) of Section 101(2) which places a restraint on the transfer, alienation or disposal of assets does not find a place in Section 96(1)(b). It consequently operates only after the admission of an application under Section 100.” (para 59)

5.4.2 The Supreme Court further observed,

“This analysis would indicate that the adjudicatory function of the adjudicating authority commences, under Part III, after the submission of a recommendatory report by the resolution professional. Evidently, bearing in mind the clear differences between CIRP under Part II and insolvency resolution process for individuals and partnership under Part III, the legislature has carefully calibrated:

- (i) The role of the resolution professional;
- (ii) The imposition of the moratorium; and
- (iii) The stage at which the adjudicating authority steps in under Part II, on one hand, and Part III, on the other.” (para 60)

5.4.3 The submission was negated by the Supreme Court that an adjudicatory role should be interposed on the stage of Section 94(5). The role of adjudicating authority was

highlighted in the following observations. The adjudicatory sphere commences once the realm of functions of resolution professional ends,

“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.”  
(para 73)

5.4.4 It was further illustrated thus,

“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.” (para 74)

5.4.5 The contention was canvassed in Dilip B Jiwrajka (supra) that sub-section (2) of Section 95 indicated that an application under sub-section (1) can be initiated only in respect of partnership debt owed to the creditor. The court rejected the contention to observe that it was not a correct reading and that provisions of sub-section (2) cannot control the ambit of sub-section (1) of Section 95. This interpretation is of significance also in the context of the present controversy.

5.4.6 Conclusions were drawn by the Apex Court in paragraph 86 and in paragraph 86.6, it was in terms observed and held that no judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. It was stated that the report of the resolution

professional was only recommendatory which would not bind the adjudicatory authority.

### **Moratorium A Statutory Effect**

6. The contention that moratorium period would come into play by virtue of operation of Section 96 of the Code, and therefore the Registrar while registering the application under Section 95 is permitted or is justified to look into and assess the merits in relation to maintainability of the petition is misconceived and does not stand to reason, when the filing and registering of the application under Section 95 of the Code in its nature does not travel beyond administrative process and that it is a procedural exercise. The moratorium under Section 96 of the Code is a statutory contemplation to operate as a sequator. A party filing an application under Section 95 of the Code would automatically get advantage of operation of Section 96.

6.1 This by itself does not give credence to the argument that for such reason the Registrar would be entitled to go into the aspect of maintainability of the petition and for that purpose to delve into the merit part thereof. When legitimately invoked, any provision of law can be used either as a shield or as a

sword to assert, defend and protect the rights by litigant. Filing an application under Section 95 does not render non-maintainable or examination of merits thereof at such stage, would not be justified, merely for the reason that the applicant-party will be invested with the benefit of Section 96.

6.1.1 For the reason of operation of Section 96 under the statute, party filing application under Section 95 could not be saddled with allegation of not acting *bona fide*. A litigant has right to move the NCLT in accordance with the provisions of Insolvency Code and to be governed by the provisions of the Code cumulatively availing the remedy of filing application under Section 95 could be resorted to as of right by the applicant.

6.1.2 If for the reason of filing Section 95 application, other proceedings initiated by the rival party in relation to the subject matter are slowed down or affected in their progress or stand postponed for some period, then it could not be complained that the invocation of law or remedy in law by other party amounts to abuse of process of law. A litigant is entitled to employ all legal means in pursuit to its right to legal adjudication and availment rights in that regard. This negates

the submission on the part of the respondent-original petitioner that the filing of Section 95 application by the applicant had an effect of protracting and postponing the arbitral proceedings.

### **Prayers Misconceived**

7. It is therefore clear that the stage of filing application under Section 94 or Section 95, is too preliminary a stage to perceive and conceive any adjudicatory attribute at that stage. The Registrar of the NCLT would receive and register the petition. Thereafter, the subsequent provisions from Sections 96 to 100 of the Code would operate. The resolution professional would examine the application as to whether it satisfies the requirements of Section 94 or 95, as the case may be, to recommend the acceptance or rejection of the application by submitting a report. As held in **Dilip B Jiwrajka (supra)**, the stage of discharge of duties by the resolution professional as above is not the adjudicatory process and the functions which the resolution professional performs are not adjudicatory in nature. Therefore, it is impossible to conclude that the Registrar at the stage of receipt of the petition filed under Section 94 or 95 of the Code by the debtor or creditor, which is a stage even prior to Section 97 and 99 of the Code

can decide on the maintainability of the petition by entering into merit and thus the realm of adjudication.

8. The submission of learned advocate for the appellant could not be brushed aside lightly when it was contended that the prayers made in the writ petition were in the nature of anti-suit injunction. The petitioner by seeking declaration as prayed for wanted to thwart at the threshold the presentation of the petition under Section 95 of the Code which was not permissible once it was filed with procedural compliance. It could be contended on the basis of the principles laid down by the Supreme Court in **Modi Entertainment Network and another Vs. W.S.G. Cricket Pte. Ltd, (AIR 2003 SC 1177)** that an injunction in the nature of anti-suit injunction could hardly be granted inasmuch as it has the effect of interfering with the jurisdiction of the Court.

8.1 In the writ petition, Article 226 of the Constitution was invoked to seek a prayer that the petition of the appellant under Section 95 of the Code should not be registered and that the registration was illegal. It is difficult to hold that the prayer of such kind could have been made in the writ jurisdiction, much less could be granted.



9. The various contentions raised by both the sides on merits about the maintainability of the petition under Section 95 and for that purpose, whether the persons could be classified as 'corporate guarantors', etc. are not gone into or dealt with on merits.

9.1 The issue examined is only as to whether at the stage of receipt of the petition under Section 95, the Registrar, NCLT-respondent No.1, has power and jurisdiction to decide on the maintainability of such application and whether by adjudicating merits on that score at that stage, the petition could be rejected by the Registrar.

9.2 All such questions of merits fall within the domain of adjudicating authority-the NCLT to be considered at the appropriate stage when the report of the resolution professional is forwarded to it.

9.3 No opinion is expressed by this Court on the merit part of the rival contentions. This Court has not travelled into that arena.

## **Conclusion**

10. In view of the foregoing discussion and reasons, the following conclusions have to follow,

(i) Respondent No.1-the Registrar, National Company Law Tribunal in receiving the filed or lodged petition under Section 94 or Section 95, respectively by a debtor or creditor, as the case may be, to initiate the insolvency resolution process before the Registrar of the National Company Law Tribunal, performs pure administrative function.

(ii) The act of receiving of the petition initiating the insolvency resolution process is ministerial and procedural in nature. It is an elementary stage which does not have any adjudicatory process.

(iii) This act on the part of the Registrar in receiving the petitions under Sections 94 or 95 of the Code, as the case may be, has no judicial trapping.

(iv) It is not permissible for the Registrar, NCLT, to go into the merits of the petition and/or to decide about maintainability thereof on merits, for, the Registrar does not discharge any adjudicatory or judicial function at this stage.

(v) Once the petition under Sections 94 or 95 of the Code, as the case may be, is filed and registered, it will follow the course contemplated in Sections 96 to 100. The operation of all these provisions is statutory.

(vi) The resolution professional who would be appointed under Section 97, is required to submit report to the adjudicating authority recommending for approval or rejection of the application.

(vii) In view of the decision of the Supreme Court in **Dilip B. Jiwrajka (supra)**, this stage also is not adjudicatory.

(viii) It is the stage of Section 100 of the Insolvency and Bankruptcy Code, 2016, which marks the commencement of adjudicatory process.

(ix) The adjudicating authority within the stipulated time, upon submission of the report under Section 99, shall either admit or reject the application referred to in Sections 94 or 95, as the case may be.

(x) It therefore necessarily follows that the adjudicatory function could not be pinned or performed at the stage of receipt of the petition by the Registrar, who has no legal

sanction to assume the role of adjudicator to decide the maintainability of the petition.

## **Result**

10.1 Resultantly and in view of what is held above, the judgment and order of learned Single Judge dated 6<sup>th</sup> March 2024 passed in writ petition No.26977 of 2023, allowing the petition, is hereby set aside.

10.2 As a consequence of setting aside of impugned judgment and order of learned Single Judge, appellant's petition No.2903111/01786/2023 presented under Section 95 of the Insolvency and Bankruptcy Code, 2016 shall stand restored. It shall be proceeded with to be treated for its further stages as per the provisions of the Insolvency Code, 2016, to be taken to its logical end in accordance with law.

11. The present appeal stands allowed accordingly.

**Sd/-**  
**(N.V. ANJARIA)**  
**CHIEF JUSTICE**

**Sd/-**  
**(K.V. ARAVIND)**  
**JUDGE**