

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF APRIL 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR.JUSTICE S. VISHWAJITH SHETTY

W.P. No.21626 OF 2021 (GM-RES)

BETWEEN:

1. SRI. BABU A. DHAMMANAGI
S/O LATE ADIVEPPA DHAMMANAGI
AGED ABOUT 67 YEARS.
2. SMT. MANGALA B. DHAMMANAGI
W/O BABU A. DHAMMANAGI
AGED ABOUT 60 YEARS.

BOTH ARE R/AT 137
RAILWAY ROAD
KUMARA PARK WEST
BENGALURU 560 020.

... PETITIONERS

(BY MR. SHASHANK KUMAR, ADV.,)

AND:

1. UNION OF INDIA
MINISTRY OF FINANCE
BY ITS UNDER SECRETARY
JEEVAN DEEP BUILDING
SANSAD MARG
NEW DELHI 110 001.

2. M/S. PIRAMAL CAPITAL AND HOUSING FINANCE LIMITED
REP. BY MANAGING DIRECTOR
4TH FLOOR, PIRMAL TOWER
PENINSULA CORPORATE PARK
GANPATRAO KADAM MARG
LOWER PAREL, MUMBAI 400 013.
3. MR. JAYESH NATVARALAL SANGHRAJKA
MAJOR, AT NO.405 - 407
HIND RAJASHTANA BUILDING
D S PHALKE ROAD
DADAR EAST, MUMBAI 400 014.

... RESPONDENTS

(BY MR. M.N. KUMAR, CGC FOR R1
MR. ANGAD VERMA, ADV., FOR
MR. GEORGE JOSEPH, ADV., FOR R2
MS/MRS. MALARIKA PRASAD, ADV., FOR
MR. A.S. VISHWAJITH, ADV., FOR R3)

THIS W.P. IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE SECTION 95 (1) OF INSOLVENCY AND BANKRUPTCY CODE, 2016 AS UNCONSTITUTIONAL TO THE EXTENT PERMITTING FILING OF APPLICATION THROUGH THE RESOLUTION PROFESSIONAL RESPONDENT NO.3. DECLARE THE ENTIRE SECTION 99 AND 100 OF INSOLVENCY AND BANKRUPTCY CODE, 2016 AS UNCONSTITUTIONAL BEING VIOLATIVE ARTICLE 14 OF THE CONSTITUTION. QUASH THE ENTIRE PROCEEDING IN CP (IB) NO.58/BB/2021 AND CP (IB) NO.59/BB/2021 PENDING BEFORE THE NCLT.

THIS W.P. COMING ON FOR PRELIMINARY HEARING, THIS DAY, **ALOK ARADHE J.**, MADE THE FOLLOWING:

ORDER

In this writ petition, the petitioner inter alia has assailed the validity of Section 95(1), 99 and 100 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred

to as 'the Code' for short) as unconstitutional being violative of Article 14 of the Constitution of India.

2. Facts giving rise to filing of this petition briefly stated are that an inter corporate deposit agreement was executed between the Corporate debtor and the Perimal Enterprise viz., respondent No.2 on 27.05.2016. The aforesaid intra corporate deposit agreement was assigned to respondent No.2 on 22.09.2016. The respondent No.2 filed two separate applications under Section 95(1) of the Code read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 with a prayer to initiate corporate insolvency resolution process. The National Company Law Tribunal, Bangalore passed an interim moratorium order dated 11.11.2021 against the petitioners and also appointed respondent No.3 as a resolution professional under Section 97 of the Code. The respondent No.3 issued notices to the petitioners on 18.11.2021 and the petitioners responded to the aforesaid notice by an email dated 25.11.2021. The

petitioners also requested for an early hearing. Thereafter a virtual meeting of respondent No.3 and the petitioner's counsel was held on 29.11.2021. The respondent No.3 submitted its report to National Company Law Tribunal, Bangalore on 01.12.2021 under Section 99(1) of the Code recommending the acceptance of the application filed by respondent No.2. The petitioners in the aforesaid factual background have challenged the validity of the aforesaid provisions.

3. Learned counsel for the petitioner submitted that the impugned provisions are in violation of principles of natural justice as no opportunity of hearing is envisaged in the proceedings. It is further submitted that the resolution professional is appointed by the creditor and no person can be a judge in on own case. In support of aforesaid submissions, reliance has been placed on **'UMA NATH PANDEY AND OTHERS VS. STATE OF UP AND ANOTHER', AIR 2009 SC 2375, 'JUSTICE P.D.DINAKARAN VS. HON'BLE JUDGES INQUIRY COMMITTEE AND OTHERS', AIR 2011 SC 3711.**

4. We have considered the submission made by learned counsel for the petitioner. From perusal of the report of resolution professional, it is evident that the insolvency proceedings initiated against the personal guarantor under the Code is a time bound process. The aforesaid procedure contains filing of application under Section 95 of the Code for appointment of resolution professional by the Adjudicating Authority under Section 99 of the Code, submission of the report by the resolution professional under Section 99 of the Code recording reasons for recommending the request for acceptance or rejection of the application and finally the admission or rejection of the application by the Adjudicating Authority. The resolution professional is required to give reasons in support of its recommendation. The Adjudicating Authority is the body, which takes the final decision on the recommendation submitted by the resolution professional. The Adjudicating Authority is not bound by the recommendation made by the resolution professional. There is no element of adjudication on the part of the resolution professional. Therefore, the contention raised by the

petitioner that the impugned provisions are arbitrary as no person can be allowed to be a judge in his own case is misconceived. The Supreme Court in **GUJARAT URJA VIKAS NIGAM LTD. VS AMIT GUPTA (2021) 7 SCC 209** has negated the contention of the petitioner and has held that the role of Adjudicating Authority is that of a rubber stamp in the context of Section 95, 97, 99 and 100 of the Code. It has further been held by the Supreme Court that Section 95, 97, 99 and 100 of the Code do not suffer from any illegality or any unconstitutionality. As per the procedure prescribed under Section 95 to 100 of the Code, the role of resolution professional is limited to make the appropriate recommendation to the Adjudicating Authority and the final decision of the admission or rejection of the application referred to under Section 95 solely lies with the Adjudicating Authority. It is also pertinent to note that Section 5(27) of the Code read with the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 defines the expression 'resolution professional'. The aforesaid rule lays down the guidelines for appointment of insolvency professionals including their eligibility criteria and a code of

conduct to be followed by insolvency professional. Second application has been made through the resolution professional. It is pertinent to note here that he does not have any personal interest in the application. Therefore, the contention of the petitioner that subsequent appointment of the same resolution professional is arbitrary cannot be accepted. The procedure prescribed under the provisions is fair, rational and reasonable and same cannot be termed to be violative of Article 14.

For the aforementioned reasons, the challenge made to the validity of the provisions as contained in Section 95 to 100 of the Code is hereby repelled. For the aforementioned reasons, we do not find any merit in this writ petition. The same fails and is hereby dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**