

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 316 of 2024

Arising out of Order dated 25.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-IV) C.P. (IB) 282/ND/2023)

IN THE MATTER OF:

Mr. CL Sharma
Having Resident address at,
House No. C-187, Surya Nagar,
Ghaziabad, 201011
Email id- shankarimishra2511@gmail.com ... Appellant

Vs

1. Bank of Maharashtra
Having Address at,
Stressed Assets Management Branch,
B-29, 2nd Floor, Maharashtra Bank Building,
Connaught Place, New Delhi- 110002
Email- bom1456@mahabank.co.in
2. Mr. Anil Kumar,
Interim Resolution Professional.
Having Office Address At,
C-10, Lajpat Nagar III,
New Delhi- 110024
Email id- anil2566@gmail.com ... Respondents

Present:

For Appellant: Mr. Abhjjeet Sinha, Sr. Advocate with Mr. Akash Chatterjee, Ms. Priyadarshini Dewan, Ms. Shankari Mishra, Advocates.

For Respondents: Mr. Namit Suri, Advocate with Mr. Ravi, CS for R1.

Mr. Raman Tomar, Mr. Aman Varma, Ms. Riya Wasade, Advocates.

With

Company Appeal (AT) (Insolvency) No.317 of 2024

Arising out of Order dated 25.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-IV) C.P. (IB) 285/ND/2023)

IN THE MATTER OF:

Mr. Deepak Sharma,
Having Resident address at,
House No. C-187, Surya Nagar,
Ghaziabad, 201011

Email id- shankarimishra2511@gmail.com

... Appellant

Vs

1. Bank of Maharashtra
Having Address at,
Stressed Assets Management Branch,
B-29, 2nd Floor, Maharashtra Bank Building,
Connaught Place, New Delhi- 110002
Email- bom1456@mahabank.co.in

2. Mr. Anil Kumar,
Interim Resolution Professional.
Having Office Address At,
C-10, Lajpat Nagar III,
New Delhi- 110024
Email id- anil2566@gmail.com

... Respondents

Present:

**For Appellant: Mr. Abhishek Anand, Ms. Shankari Mishra,
Advocates.**

**For Respondents: Mr. Namit Suri, Advocate with Mr. Ravi, CS for
R1.**

Mr. Raman Tomar, Advocate

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeals have been filed by the Personal Guarantors of Corporate Debtor challenging order dated 25.01.2024 passed by National Company Law Tribunal, New Delhi Bench, Court – IV in an Application filed by the Bank of Maharashtra under Section 95, sub-section (1) of the

Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”) appointing Resolution Professional (“**RP**”) in CP (IB) No. 282/ND/2023 and CP (IB) No.285/ND/2023. Both the Appeals raising common questions of law and facts have been heard together and are decided by this common judgment.

2. Brief facts of the case necessary to be noticed for deciding the Appeal(s) are:

- (i) Bank of Maharashtra (Respondent No.1) granted loan in favour of Modern Instruments Private Limited in the year 2013. The debt was classified as a Non-Performing Asset (“**NPS**”) on 27.07.2016. Both the Appellant(s), Shri CL Sharma and Shri Deepak Sharma were Personal Guarantors to the loan.
- (ii) On 26.07.2022, the Bank of Maharashtra issued recall notice and invocation of guarantee addressing to both the Appellant(s) as Guarantors. Bank of Maharashtra thereafter issued a Notice under Rule 7 of the Insolvency and Bankruptcy (Application to Guarantors to Corporate Debtor) (“**Personal Guarantors Rules**”) and thereafter filed Applications under Section 95, sub-section (1), which were registered as CP (IB) No. 282/ND/2023 and CP (IB) No.285/ND/2023 against the Appellant(s) respectively in March 2023.
- (iii) On the Application filed by the Bank of Maharashtra, the Adjudicating Authority by the impugned order appointed a RP and directed the RP to submit a Report and the matter was

directed to be listed on 23.02.2024. Aggrieved by which order, these two Appeal(s) have been filed by the Appellant(s).

3. We have heard Shri Abhijeet Sinha, learned Senior Counsel and Shri Abhishek Anand, learned Counsel appearing for the Appellant(s) in these Appeal(s); Shri Namit Suri, learned Counsel has appeared for Bank of Maharashtra.

4. The learned Counsel for the Appellant(s), challenging the impugned order contend that Applications filed under Section 95 sub-section (1) was *ex-facie* barred by limitation. The account having declared NPA on 27.07.2016 and the Applications having been filed only on 16.03.2023, the Applications being barred by time, ought not to have been entertained and the Adjudicating Authority committed error in appointing a RP in the said Applications. It is submitted that Adjudicating Authority cannot be used as a Forum to recover a time barred debt. The Adjudicating Authority has also failed to take into consideration the requirement for appointment of RP under Section 95 of the Code. Due to non-filing of Authorization for Assignment (“**AFA**”) by the RP, the RP cannot be appointed. The learned Counsel for the Appellant(s) further submit that the Report, which is to be submitted by RP under Section 99 is a Report confining to procedural requirements on an Application filed under Section 95. The RP is not supposed to submit any Report regarding the question of limitation, since Report under Section 99 confines to examination as to whether Application fulfils requirement of Sections 94 and 95 and that the Applicant has

provided the information and given the explanation sought by the RP under sub-section (4) of Section 94.

5. The learned Counsel for the Respondent Bank refuting the submissions of learned Counsel for the Appellant(s) submits that there is no error in order of the Adjudicating Authority appointing the RP by the impugned order. At the stage of appointment of RP, the Adjudicating Authority is not required to examine any issue or adjudicate on the Applications filed under Section 95 by the Bank. The stage for adjudication of the issues arises only after the Report is submitted under Section 99 of the IBC and only thereafter the Adjudicating Authority may take a decision as to whether the Applications are to be admitted or rejected under Section 100. It is submitted that there is no error in the appointment of RP. The learned Counsel for the Bank submits that at the stage of appointment of RP, the Adjudicating Authority has not to adjudicate any issue including issue pertaining to maintainability of the Applications and the Appellant(s) cannot raise the issue regarding maintainability of the Applications at the stage of appointment of RP. It is submitted that all issues, which are sought to be raised by the Appellant(s) in the present Appeal(s), have been decided by the Hon'ble Supreme Court in **Writ Petition (Civil) No. 1281 of 2021** in **Diliip B Jiwrjka vs. Union of India & Ors.** decided on 09.11.2023, where Hon'ble Supreme Court has considered the entire scheme pertaining to application against the Personal Guarantor and has categorically held that stage for consideration of all issues is at the time when Application under Section 100 is considered by the Adjudicating

Authority for admission or rejection. The learned Counsel for the Bank submits that it is always open for the Appellant(s) to file objections to the Report and raise all issues, which are sought to be raised, including jurisdiction issue.

6. We have considered the submissions of learned Counsel for the parties and have perused the record.

7. The Applications by the Bank of Maharashtra have been filed under Section 95, sub-section (1) of the IBC against the Appellant(s), who were the Personal Guarantors. Section 95 of the IBC provides as follows:

“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.”

8. Section 96 provides that interim-moratorium shall commence on the date of the application in relation to all the debt. Section 97 deals with ‘Appointment of resolution professional’. Section 98 provides for ‘Replacement of resolution professional’. Section 99 deals with ‘Submission of report by the resolution professional’. Section 99 of the IBC is as follows:

“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 section 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.”

9. Section 100 provides for ‘Admission or rejection of application’. The scheme under the IBC pertaining to Personal Guarantor was elaborately examined by the Hon’ble Supreme Court in ***Diliip B Jiwrjka vs. Union of India & Ors.*** The Hon’ble Supreme Court in paragraph 74 to 78 laid down following:

“**74.** 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 time lines which have been laid down by Parliament. The entire process of implementing these time lines 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.

3. A right of representation has been provided under Section 99(2)

75. On behalf of the petitioners, it has been submitted that the resolution professional has been empowered to make wide ranging enquiries for the purpose of eliciting information under sub-section (4) of Section 99. In our view, it is necessary to clarify the ambit of sub-section (4) of Section 99. Sub-section (4) is prefaced by the words “for the purposes of examining an application”. In other

words, the information which the resolution professional is empowered to seek or the explanation which the resolution professional can require to be furnished is for that purpose. That apart, sub-section (4) also goes on to specify that the information or explanation may be sought in connection with the application. In other words, the nature of the information or the explanation which is sought must have a nexus with the application. Therefore, properly read, the power to seek information or, for that matter, to seek an explanation is related to the nature of the application which has been submitted under Section 94 or Section 95. We are of the view that the right to file such representation is sufficient compliance of audi alterum partem requirements.

76. Hence, the petitioners' assertion that the statutory framework, as interpreted and applied by the adjudicating authority, results in a violation of natural justice lacks merit. The reliance on **State Bank of India v Rajesh Agarwal** does not help the case of the petitioners, as the court in that case established that exceptions to natural justice must be confined to the 'narrowest possible limits.' The court underscored that the waiver of prior hearing is permissible only in situations where its inclusion would obstruct the entire process. In that case, the court specifically addressed the duties of banking authorities, emphasizing the obligation to adopt fair procedures and afford borrowers a hearing before classifying their accounts as fraud accounts, given the serious penal and civil consequences. The court further held that reasoned orders must be passed when categorizing an account as a fraud account. It then clarified that no hearing is required before lodging an FIR. In other words, it held that the principles of audi alteram partem must be read into the Circular issued by the Reserve Bank of India on the classification of bank accounts as fraud accounts. However, a crucial distinction is made here, signifying that the circumstances of this case are distinct from those considered in **Rajesh Agarwal (supra)**. The classification of the borrowers account as fraud without giving any opportunity of being heard entailed significant material consequences, including the disability on accessing institutional finance. That may be contra-distinguished with the procedure under Section 95 to Section 99. In this, a person is not deemed a debtor but a resolution professional is appointed to ascertain whether the facts substantiate the application for an IRP. An interim-moratorium is placed on legal proceedings concerning the debt to safeguard the debtor from further legal action. However, the interim-moratorium does not act to freeze the assets and legal rights and title of the debtor. Once a recommendation is made, it is not binding on the adjudicating authority. The authority would only decide after looking at the recommendation of the resolution professional and affording full opportunity of hearing to the debtor or the personal guarantor, as the case may be. Consequently, the petitioners' argument lacks merit when assessed against these established legal principles.

77. Rules have been framed in 2019 in pursuance of the provisions of Section 239(2). The Rules, inter alia, provide for the Form (Form

A) in which an application under Section 94 has to be submitted; the Form (Form B) in which a demand notice has to be served under Section 95(4) on the guarantor demanding payments; and the Form (Form C) in which an application has to be submitted under Section 95(1). Form A is the statutory Form in which an application is submitted by the debtor. Form C, on the other hand, is the statutory Form in which an application is submitted by a creditor. Form C is required to be filled in by the creditor who institutes an application for the initiation of the insolvency resolution process. This includes particulars of the applicant, particulars of the guarantor, particulars of the debt and particulars of the insolvency professional. The creditor who fills up Form C would have to furnish such information as lies within the knowledge of the creditor who is the applicant under Section 95(4). When the resolution professional is empowered to seek information or an explanation in connection with the application, such information or explanation must be relevant to and bearing a connection with the nature of the application itself.

78. Even when the resolution professional seeks information from a third party, the information cannot be of a roving nature, but must be relatable to the application which has been filed under Section 94(1) or, as the case may be, Section 95. Sub-section (3) of Section 99 provides that where a debt for which an application has been filed by the creditor is registered with an information utility, the debtor shall not be entitled to dispute the validity of the debt. This provision in subsection (3) operates only in relation to the recommendatory function of the resolution professional. That provision cannot operate to bind the adjudicatory function of the adjudicating authority when it exercises its jurisdiction under Section 100.”

10. The conclusion of the above judgment has been recorded in paragraph 86, which is as follows:

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

- (i) No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC;
- (ii) The resolution professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application;
- (iii) The submission that a hearing should be conducted by the adjudicatory authority for the purpose of determining ‘jurisdictional facts’ at the stage when it

appoints a resolution professional under Section 97(5) of the IBC is rejected. No such adjudicatory function is contemplated at that stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;

- (iv) The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;
- (v) There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional;
- (vi) No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100;
- (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;
- (viii) The purpose of the interim-moratorium under Section 96 is to protect the debtor from further legal proceedings; and
- (ix) The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution.”

11. The law declared by the Hon’ble Supreme Court in the above judgment is very clear. The Adjudicating Authority should consider the issue pertaining to jurisdictional fact at the stage of Section 100 and there is no adjudication contemplated at the stage when RP is appointed under Section 97, sub-section (5). The conclusion recorded in paragraph 86 (iii)

clearly lays down the aforesaid. The submission of the Appellant(s) that Applications were barred by time, ought to have been considered at the time when Adjudicating Authority appointed the RP, thus, cannot be accepted.

12. Another submission, which was raised by the Appellant(s) is that the RP while submitting a Report under Section 99, is not supposed to submit any Report as to whether Application is barred by time or not. The submission is that under Section 99, sub-section (6) only examination is as to whether Application satisfies the requirements set out in Section 94 or 95 or not. The scheme as delineated in Section 99 indicates that Report, which is required to be submitted by RP under Section 95, recommending for approval or rejection of the Application also contemplate reasons for recommendation. When RP is recommending for approval or rejection, the Report has to contain reasons for the same. The statute further requires the RP to examine that the Application satisfies the requirements set out in Section 94 or 95. The creditor under sub-section (4) of Section 95 is required to submit documents with regard to debt owed by the debtor to the creditor. Whether the debt owed by the debtor to the creditor, is time barred, is also a related question and the RP while recommending for admission or rejection of the Application, is not in any manner precluded from giving his recommendation on the basis of materials, which are on the record of the Application. We, thus, do not find any substance in the submission of the Appellant(s) that the RP is precluded in any manner from giving any recommendation as to whether debt is time barred or not

or whether any other jurisdictional fact is lacking in the Application or all jurisdictional facts have been fulfilled by the Applicant. The Personal Guarantor has also been given right to file the objection to the Report. When the right has been given to the Personal Guarantor to submit its objection or explanation or information, it is open for the Personal Guarantor to give all necessary information and objection to the Report. The Hon'ble Supreme Court has clearly in the **Dilip B Jiwarka** judgment held that Report has to be submitted after giving opportunity to the Guarantor. In paragraph 66 and 67, the Hon'ble Supreme Court has laid down following:

“66. The resolution professional cannot decide that issue in the absence of an opportunity to the debtor to furnish an explanation and to produce material evidencing the payment of the debt. Likewise, sub-section (4) of Section 99 empowers the resolution professional, in the course of carrying out an examination of an application to seek further information or explanation in connection with the application from the debtor or the creditor. The expression “in connection with the application” indicates that Parliament has not contemplated a roving enquiry by the resolution professional but an enquiry for the purpose of making the ultimate recommendation in the report on the nature of the application itself. The resolution professional, after carrying out the process which is evidenced in sub-sections (2) and (4), in particular, is then required to make an ascertainment in terms of sub-section (6). It is thereafter that the resolution professional would submit a report either recommending the acceptance or rejection of the application together with the reasons in support of the report.

67. The provisions of Section 99 thus leave no manner of doubt that the process which takes place before the resolution professional is not an ex parte process in the absence of a debtor against whom the insolvency resolution process is sought to be initiated. Though, the ultimate report of the resolution professional has only a recommendatory value, the legislature has ensured that the recommendation is made after taking into account the information or, as the case may be, the explanation that is furnished by the debtor. Thus, it cannot be said that there is any element of bias in a report submitted by an RP who is nominated by the creditor. In the decision in **Ravi Ajit Kulkarni v. State Bank of India**, it has been emphasized that under Section 98 of the IBC, the debtor

retains the option to replace the RP appointed under Section 97 by filing an appropriate application with the adjudicating authority.”

13. The Hon’ble Supreme Court has clearly held that role of the RP is only of a facilitator. We, thus, do not accept the submission of the Appellant(s) that RP is precluded in any manner to submit a Report regarding the limitation or on any other jurisdictional fact.

14. The learned Senior Counsel, Shri Abhijeet Sinha has relied on the judgment of Hon’ble Supreme Court in **AIR 1965 SC 507 – Shankarlal Aggarwala and Ors. vs. Shankarlal Poddar and Ors.** The Hon’ble Supreme Court in the above case has occasion to consider the distinction between administrative or judicial decision. Following observations were made by the Hon’ble Supreme Court in paragraph-9 :

“9. It is perhaps not possible to formulate a definition which would satisfactorily distinguish, in this context, between an administrative and a judicial order. That the power is entrusted to or wielded by a person who functions as a Court is not decisive of the question whether the act or decision is administrative or judicial. But we conceive that an administrative order would be one which is directed to the regulation or supervision of matters as distinguished from an order which decides the rights of parties or confers or refuses to confer rights to property which are the subject of adjudication before the Court. One of the tests would be whether a matter which involves the exercise of discretion is left for the decision of the authority, particularly if that authority were a Court, and if the discretion has to be exercised on objective, as distinguished from a purely subjective, consideration, it would be a judicial decision. It has sometimes been said that the essence of a judicial proceeding or of a judicial order is that there should be two parties and a lis between them which is the subject of adjudication, as a result of that order or a decision on an issue between a proposal and an opposition. No doubt, it would not be possible to describe an order passed deciding a lis before the authority, that it is not a judicial order but it does not follow that the absence of a lis necessarily negatives the order being judicial. Even viewed from this narrow standpoint it is possible to hold that there was a lis before the Company Judge which he decided by passing the order. On the one hand were the Claims of the highest bidder who

put forward the contention that he had satisfied the requirements laid down for the acceptance of his bid and was consequently entitled to have the sale in his favour confirmed, particularly so as he was supported in this behalf by the official liquidators. On the other hand there was the 1st respondent and not to speak of him, the large body of unsecured creditors whose interests, even if they were not represented by the 1st respondent, the Court was bound to protect. If the sale of which confirmation was sought was characterised by any deviation from the conditions subject to which the sale was directed to be held or even otherwise was for a gross undervalue in the sense that very much more could reasonably be expected to be obtained if the sale were properly held in view of the figure of Rs 3,37,000 which had been bid by Nandlal Agarwalla, it would be the duty of the Court to refuse the confirmation in the interests of the general body of creditors and this was the submission made by the 1st respondent. There were thus two points of view presented to the Court by two contending parties or interests and the Court was called upon to decide between them. And the decision vitally affected the rights of the parties to property. In this view we are clearly of the opinion that the order of the Court was, in the circumstances, a judicial order and not an administrative one and was therefore not inherently incapable of being brought up in appeal.”

15. In view of the judgment of the Hon’ble Supreme Court in ***Diliip B Jiwrjka***, it is settled now that question of adjudication of issues between the parties arises only at the stage of Section 100 and the RP has only role of facilitator. The RP has to submit a Report, after examining the Application under Section 95 and after giving opportunity to Personal Guarantor. The role of RP has been elaborately examined by the Hon’ble Supreme Court in the aforesaid case and it is held that RP does not perform any adjudicatory function, nor even can take an administrative decision. The role of RP has been held to be only facilitator. The judgment relied by learned Senior Counsel for the Appellant in ***Shankarlal Aggarwala*** has no application in the facts of the present case.

16. Insofar as the submission of the Appellant(s) that Adjudicating Authority failed to take into consideration that authorization was not filed

by the RP, it is always open for the Appellant to take such or other pleas as permissible at the time of adjudication of issue, including any defect in the Application under Section 95 and the said question also does not require any consideration at the stage when RP is appointed. Of course, if there is any invalidity or shortcomings while appointing the RP, Section 98 is there for the debtor or creditor, which provides for replacement of the RP.

17. In view of the foregoing discussions, we are of the view that there is no error in the impugned order passed by the Adjudicating Authority appointing the RP. There is no merit in these Appeal(s). The Appeal(s) are dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

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

NEW DELHI

27th February, 2024

Ashwani