

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

**Company Appeal (AT) (Insolvency) No. 652 of 2024
& I.A. No. 2295, 2337 of 2024**

In the matter of:

Parimal Chandra Dhar

....Appellant

Vs.

Small Industries Development Bank of India

...Respondent

For Appellant

Ms. Priyanka Sethia, Advocate.

For Respondent

**CA Rakesh Jindal, Ms. Bharti Nawlani, Mr.
Narendra Singh, Advocates.**

ORDER

(Hybrid Mode)

05.04.2024: Heard Learned Counsel for the parties.

2. This Appeal has been filed against the order dated 13.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench Court VI, whereby which order Adjudicating Authority appointed Resolution Professional on an Section 95 application filed by the Financial Creditor.

3. Learned Counsel for the Appellant challenging the order submits that the demand notice was not served and OTS proposal has already been submitted by the Appellant which is under consideration. It is submitted that subsequently orders have been reserved by the Adjudicating Authority.

4. Learned Counsel for the Financial Creditor refuted the submission and submits that there are no OTS under consideration.

5. We have considered the submissions of the Counsel for the parties and perused the record. The order under challenge in this Appeal is an order by which Resolution Professional has been appointed. Hon'ble Supreme Court in

“Dilip B Jiwrajka Vs Union of India and Ors.- Writ Petition (Civil) No. 1281 of 2021” decided on 09.11.2023 has already decided all issues pertaining to proceedings under Section 95 and it was held that all issues regarding adjudication has to be taken at the time when application is considered for admission or rejection and at the time of appointment of Resolution Professional, no issue need to be considered. We, thus, are of the view that the Appeal challenging the order dated 13.12.2023 on the ground submitted by the Appellant cannot be entertained.

6. Counsel for the Appellant submits that the order has been reserved in the proceeding. It is always open for the Appellant to challenge the order which is passed by the Adjudicating Authority on the ground as permissible in law. We make it clear that we are not expressing any opinion on any of the issues raised on the merits by the Appellant and that can be taken by the Appellant in appropriate proceeding.

7. With this observations, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Anjali/nn