

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V
(Division Bench)

Item No.-507

IB-404/ND/2022

New IA/3502/2024, IA/1627/2024

IN THE MATTER OF:

Asset Reconstruction Company (India) Ltd.

.....Applicant

Vs.

Abhishek Gupta

.....Respondent

SECTION

U/s 95(1) IBC

Order delivered on 12.07.2024

CORAM:

**SHRI MAHENDRA KHANDELWAL,
HON'BLE MEMBER (JUDICIAL)**

**Dr. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

HYBRID HEARING (PHYSICAL & VC)

PRESENT:

For the Applicant : Mr. Dinkar Singh, Mr. Rohit Singh, Advs.
For the Respondent : Ms. Garima Sharma, Mr. Avinash Pandey, Advs.
For the RP : Mr. Abhishek Anand, Mr. Karan Kohli, Mr. Sameer
Sethi, Advs.

ORDER

New IA/3502/2024:-

This is an application filed by the Personal Guarantor under Section 98 of the IBC, 2016, seeking replacement of the IRP appointed by this Adjudicating Authority vide order dated 12.03.2024. Heard the submissions made by the Ld. Counsel on behalf of the Applicant. The IRP was appointed by this Adjudicating Authority on an application filed under Section 95 of the IBC by the Financial Creditor against the Personal Guarantor. In terms of the provisions contained in the Code, the name of the IRP was proposed by the Petitioner of Section 95 IBC. Ld. Counsel on behalf of the Applicant submitted

that the IRP while preparing and submitting report under Section 99 has not followed due procedure as prescribed in the IBC and as laid down by the Hon'ble Supreme Court in the matter of Dilip B Jiwrajka vs. Union of India & Ors. and has filed Section 99 report without following the procedure under the law. Ld. Counsel also submitted that the Resolution Professional has given wrong statement in their Section 99 report. The report filed by the Resolution Professional under Section 99 is pending for adjudication. Ld. Counsel on behalf of the Applicant admitted that they have filed their objections to the report filed by the Resolution Professional under Section 99. Since the report of Section 99 is pending, the submissions made by the Ld. Counsel on behalf of the Applicant about the non following the procedure by the Resolution Professional will be considered at the stage of hearing of Section 99 report. As laid down by the Hon'ble Supreme Court, report of the Resolution Professional is merely a recommendatory in nature and is not binding upon this Adjudicating Authority. Needless to say that when we will examine the report filed under Section 99 and at the time of passing order under Section 100, it is obligatory on the part of the Adjudicating Authority to see whether the procedure prescribed under the code and under the law has been followed by the Resolution Professional or not. Since the issues raised by the Applicant in the present application are to be considered while hearing of Section 99 report, no purpose would be served in keeping the present application pending. It is made it clear that the issues raised by the Applicant in this application about the procedure followed by the Resolution Professional shall be considered while considering the report of Resolution Professional under Section 99. With these observations, the present application i.e. New IA/3502/2024 is **disposed of**.

IA/1627/2024:-

This is a report under Section 99 of IBC. Ld. Counsel on behalf of the Resolution Professional is present. Ld. Counsel on behalf of the Personal Guarantor is present and submitted that they have filed their reply. However, the same is not reflected on the e-portal. Ld. Counsel is directed to approach

the Registry and cure the defects, so that the same is reflected on the e-portal. Ld. Counsel on behalf of Financial Creditor is also present and sought time to file their response. Time prayed for is granted. List this application on **09.08.2024.**

Sd/-
(Dr. SANJEEV RANJAN)
MEMBER (T)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)