

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 213
(IB)-395/ND/2021

IN THE MATTER OF:

PNB Housing Finance Ltd.

... **Applicant/Petitioner**

Under Section: 95(1) of IBC, 2016

Order delivered on 18.04.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)

PRESENT:

For the Applicant :

For the Respondent : Adv. Chirag Sharma, Adv. Saksha Jha

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

There is no appearance on behalf of the Applicant i.e. PNB Housing Finance Ltd. as also on behalf of the RP. The Ld. Counsel for the Personal Guarantor submitted that the Hon'ble NCLAT passed an interim order dated 20.10.2022 directing that the RP shall continue to collate and verify the claims however no further steps would be taken in pursuance of the impugned order. The order passed by Hon'ble NCLAT reads thus:

20.10.2022: Learned Counsel for the Appellant submits that against the order dated 29.09.2021 initiating Section 95 proceedings against the Appellant, Company Appeal (AT) (Ins.) No. 851 of 2021 has already been filed which is coming on 10.11.2022 in Court No.III. He submits that the Application filed by the Respondent- 'PNB Housing Finance Limited' was later in point of time than the matter which was filed by IFCI. Submissions need scrutiny.

2. Issue Notice. Learned Counsel accepts notice on behalf of Respondent Nos. 1 and 2. No further notice need be issued. Let Reply be filed within two weeks. Rejoinder, if any, may be filed within two weeks thereafter.

3. Learned Counsel for the Resolution Professional submits that he is proceeding to verify the claims and make public announcement.

4. List the Appeal on 10.11.2022 along with Company Appeal (AT) (Ins.) No. 851 of 2021 in Court No.III.

In the meantime, Resolution Professional shall continue to collate and verify the claims. However, no further steps shall be taken in pursuance of the impugned order.

2. According to him, the interim order (ibid) could also continue till 04.04.2024 and thereafter, now when the hearing is deferred to 14.05.2024, the interim order is still continuing.

3. We are conscious that the vires of Section 95 of IBC, 2016 was under challenge before the Hon'ble Supreme Court, but on 09.11.2023, the Hon'ble Supreme Court upheld the vires and ruled that no opportunity of hearing is required to be given to the Personal Guarantor before appointment of RP, in terms of the provisions of Section 97 of IBC, 2016. The relevant excerpt of the Judgment passed by Hon'ble Supreme Court in Writ Petition (Civil) No. 1281 of 2021 titled "**Dilip B Jiwrajka vs. Union of India**" reads thus:

“(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;”

4. Nevertheless, in the absence of the Applicant as also RP, it is not clear to us that in what backdrop Hon'ble NCLAT has passed the interim order.

There had been no appearance on behalf of the Creditor since 09.12.2022.

5. Issue notice to both G.M. PNB Housing Finance Ltd. and Chairman PNB Housing Finance Ltd., to explain their stand in the matter. Let a copy of this order be also sent to the Chairman IBBI for intimation.

List on 16.05.2024.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)