

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.291/2025
(IA Nos.834, 837, 835, 836 & 838/2025)

In the matter of:

Ajay Agarwal

No. 145, Devdharshan Apartments,

1 Barnaby Road,

Kilpauk, Chennai-600010

... Appellant

Versus

1. State Bank of India

SAM Branch

No. 32, Second Floor,

Red Cross Building

Montieth Road,

Egmore, Chennai-600 008

...Respondent No. 1

2. T.R. Ravichandran

Interim Resolution Professional

G3, Block 2, Shivani Apts,

40, East Coast Road,

Thiruvannamiyur,

Chennai-600041

...Respondent No. 2

Present :

For Appellant : Mr. P.S. Raman, Senior Advocate

For Mr. Rajesh Bohra, Advocate

WITH

Company Appeal (AT) (CH) (Ins) No.292/2025
(IA Nos.843, 844, 845, 846 & 847/2025)

Ashok Agarwal

No. 145, Devdharshan Apartments,

1 Barnaby Road,

Kilpauk, Chennai-600010

... Appellant

Versus

1. State Bank of India

SAM Branch

No. 32, Second Floor,

**Red Cross Building
Montieth Road,
Egmore, Chennai-600 008
2. T.R. Ravichandran
Interim Resolution Professional
G3, Block 2, Shivani Apts,
40, East Coast Road,
Thiruvannamiyur,
Chennai-600041**

...Respondent No. 1

...Respondent No. 2

For Appellant : Mr. P.S. Raman, Senior Advocate
For Mr. Rajesh Bohra, Advocate

WITH

Company Appeal (AT) (CH) (Ins) No.293/2025
(IA Nos.850, 854, 851, 852 & 853/2025)

In the matter of:

**Ankit Agarwal
No. 145, Devdharshan Apartments,
1 Barnaby Road,
Kilpauk, Chennai-600010**

... Appellant

Versus

**1. State Bank of India
SAM Branch
No. 32, Second Floor,
Red Cross Building
Montieth Road,
Egmore, Chennai-600 008
2. T.R. Ravichandran
Interim Resolution Professional
G3, Block 2, Shivani Apts,
40, East Coast Road,
Thiruvannamiyur,
Chennai-600041**

...Respondent No. 1

...Respondent No. 2

Present :

For Appellant : Mr. P.S. Raman, Senior Advocate
For Mr. Rajesh Bohra, Advocate

WITH
Company Appeal (AT) (CH) (Ins) No.294/2025
(IA Nos.857, 859, 858, 860, 861/2025)

In the matter of:

Anitha Agarwal

No. 145, Devdharshan Apartments,

1 Barnaby Road,

Kilpauk, Chennai-600010

... Appellant

Versus

1. State Bank of India

SAM Branch

No. 32, Second Floor,

Red Cross Building

Montieth Road,

Egmore, Chennai-600 008

...Respondent No. 1

2. T.R. Ravichandran

Interim Resolution Professional

G3, Block 2, Shivani Apts,

40, East Coast Road,

Thiruvannamiyur,

Chennai-600041

...Respondent No. 2

Present :

For Appellant : Mr. P.S. Raman, Senior Advocate

For Mr. Rajesh Bohra, Advocate

JUDGEMENT

(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma;(Member Judicial)]

1. These are the set of four Company Appeals, emanating from different Company Petitions, which were instituted before the Learned Adjudicating Authority, that is, the Learned NCLT, Division Bench-I, Chennai.

These Company Appeals are accompanied by Applications to Condone Delay in filing and re-filing the Appeals. The details given below:-

A. CA (AT) (CH) (Ins) No. 291/2025, is accompanied with two Interlocutory Applications:

a. A Delay Condonation Application in re-filing the Appeal, where the Appellant has sought a condonation of 1 day of delay, which has chanced in re-filing of the Company Appeal, before Registry of this Tribunal.

b. A Condone Delay Application being IA No. 836/2025, where the Appellant has sought a condonation of 14 days of delay, that has chanced in filing the Appeal.

B. CA (AT) (CH) (Ins) No. 292/2025, is too accompanied with two Interlocutory Applications:

a. A Condone Delay Application in re-filing the Appeal being IA No. 847/2025, wherein the Appellant has sought a condonation of 1 day of delay which has chanced in re-filing filing of the Company Appeal, before Registry of this Tribunal.

b. A Condone Delay Application being IA No. 843/2025, where the Appellant has sought a condonation of 14 days of delay that has chanced in re-filing the Appeal.

C. CA (AT) (CH) (Ins) No. 293/2025, is accompanied with two Interlocutory Applications:

a. A Condone Delay Application in re-filing the Appeal being, IA No. 851/2025, where the Appellant has sought a condonation of 1 day of delay which has chanced in re-filing filing of the Company Appeal, before Registry of this Tribunal.

b. A Condone Delay Application being IA No. 852/2025, where the Appellant has sought a condonation of 14 days of delay that has chanced in filing of the Appeal.

D. CA (AT) (CH) (Ins) No. 294/2025, is accompanied with two Interlocutory Applications:

a. A Condone Delay Application in re-filing the Appeal being, IA No. 858/2025, where the Appellant has sought a condonation of 1 day of delay which has chanced in re-filing of the Appeal.

b. A Condone Delay Application being IA No. 861/2025, where the Appellant has sought a condonation of 14 days of delay that has chanced in preferring the Appeal.

2. Heard Learned Counsels for the parties on the aforesaid Interlocutory Applications before venturing to decide the Appeals on merits. As in all these respective Interlocutory Applications preferred, for seeking condonation of delay, the ground agitated by the Appellants are similar, hence, they are being decided by a common order. Invariably, in all the applications that has been preferred by the Appellants, seeking condonation of delay in refiling of the Appeal, the Appellants

have contended in its Para-5, that if the date on which the letter from the Registry pointing out the defects was received, is to be excluded in calculation of number of days of delay, then there is no delay as the Appeals have been filed on the 7th day and that, even if that is not permitted, the delay is of one day only which is marginal, and is neither deliberate nor intentional and as such the same deserves to be condoned. Apart from looking to the number of days of delay, which has chanced in re-filing the Company Appeals, there would be yet another aspect requiring consideration, it is that since the re-filing of the Company Appeal, is an issue between the Appellant and the Tribunal, in the wider interest of justice, the application preferred for condonation of delay in re-filing of the Appeal, as respectively detailed above would stand allowed. The delay of one day which has chanced in preferring the Appeal would hereby stand condoned.

3. Each of these Company Appeals as detailed above, are also accompanied with an application seeking condonation of 14 days of delay, which has chanced in preferring the Appeal. The records reveal that the impugned order was rendered on 30.01.2025, the same was uploaded on the website of NCLT only on 31.01.2025 but however, the copy of the impugned order was shown to have been made available, upon on its uploading on 31.01.2025 and hence, the delay has to be determined from the date of uploading, if that is taken into consideration since, the Appeal itself was e-filed on 15.03.2025. In the eventuality, the delay has to be determined from the date of uploading. Hence, the delay which has chanced in

preferring the Company Appeals would be 14 days in each of these Company Appeals.

4. While explaining the delay, Learned Senior Counsel for Appellant has contended in the respective applications filed in support thereto, particularly, the grounds that had been taken by him as contained in its Para-4&5, wherein he has submitted that the delay in filing the Appeal has chanced owing to the personal difficulty of the legal advisor because of which consultations took time and consequently the decision to file the Appeals could be taken at a belated stage, that, the delay is of 14 days which falls within the condonable period and hence, the delay deserves to be condoned. Based on the reasons, which have been given in the application seeking condonation of delay and being conscious of the fact that, then number of days of delay, which has been sought to be condoned, falls within the upper limit of 45 days as prescribed under proviso to Section 61(2) of I & B Code. The delay would stand condoned, in the interests of justice.

5. In respect of the interim stay applications being, IA No. 838/2025, IA No. 844/2025, IA No. 853/2025, IA No. 860/2025, this Appellant Tribunal is not inclined to pass any orders on the same for the reason being that, this Tribunal is proceeding to decide the Appeal itself on its merits. Hence, there is no reason for us to consider the aspect and the necessity pertaining to the grant of Interim Order because the Appeals are being adjudicated finally.

6. The Appellants challenge the Impugned Orders of 30.01.2025, of Learned Adjudicating Authority passed in the respective Company Petitions. The effect of the Impugned Orders primarily would be that owing to the observations which have been made by the Learned Tribunal in Para-44, which has been extracted hereunder: -

“44. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 who after examining, may recommend for the acceptance / rejection of the application as provided under Section 97(6) of IBC, 2016, within a period of 10 days as contemplated under Section 99(1) of IBC, 2016.”

7. As a matter of fact, if we scrutinise the observations that has been made by the Learned Adjudicating Authority, in the said paragraph, it is limited to the extent of direction, that the Resolution Professional was directed to examine the applications preferred under Section 97(6) of IBC, who after its scrutinization was further directed to recommend for the acceptance or rejection of the application, within the period as it was specified therein. In the light of the provisions contemplated under Section 99(1) of IBC Code, what could be deduced from the observation that has been made in the Impugned Orders, is that there does not appear to be any adjudication of any *lis*, as such because only a direction is being issued to the Resolution Professional to resort to the process under Section 97 for

examining and making the recommendation for the acceptance or rejection of the application as contemplated under 97(6) of I&B Code.

8. Though, the Learned Counsel for the Appellant has attempted to argue that there was certain laxity on the part of the Adjudicating Authority, while passing the Impugned Order, though, it might be confined with the directions contemplated hitherto in compliance of the provisions contained under Section 97(6) of I&B Code, which provides for a supply of the copy of the application for the IRP process. None of the parameters contemplated under Section 97 at all at any stage, deal the aspect of determination of any of the rights of the parties, that is the Appellants herein, which could make the Impugned Order as to be appealable under Section 61 of I&B Code.

9. It is a settled principle that the proceedings, which are being held from the stage of Section 95 till its admission stage under Section 100, during the intervening stage of proceedings, there is no judicial adjudication involved upto the stage as envisaged under Section 99 of I & B Code. This is exactly the conclusion that has been drawn by the Honourable Apex Court in a bunch of Writ Petitions, as it stood adjudicated by the Honourable Apex **Writ 1281/2021 in the matter of Mr. Dilip B Jiwarajka Vs Union of India & Ors.**, where the Honourable Apex Court, vide its judgment as rendered on 09.11.2023, while testing the propriety and the validity of the proceedings under Section 95 to Section 100 of I & B Code in the exercise of its jurisdiction under Article 32, had ultimately come to the

conclusion as it has been referred to in Para-86 of the said judgment, which is extracted hereunder: -

“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.”

10. Thus, Honourable Apex Court has held that since upto to the stage of Section 99, there happens to be no judicial adjudication or determination any of right of any of parties to the proceeds and all the processes contemplated from filing of an application under Section 95 till the stage of Section 99, only pertains to the actions for the purposes of making recommendations by the IRP/RP, after being satisfied with the conditions calling for the admission of the CIRP process under Section 95 of I & B Code, which only attain when the proceeding/process reaches to the stage of Section 100. Hence it was observed by the Honourable Apex court, that the process of examination of the application by the Resolution Professional, does not require any judicial determination, which does not takes place until the Adjudicating Authority decides the application under Section 100, Since, the reports which are submitted by the Resolution Professional, being in the shape of a recommendations, do not bind the Adjudicating Authority or any of the parties to the proceedings to sustain the Appeal.

11. Owing to the observation which was made in the Para-86 of the said judgment, which has been extracted above, in the instant Company Appeals too, if the impugned order is taken into consideration primarily, the effective directions which has been issued by the Tribunal are only directions issued to the Resolution Professional, to resort to the processes contemplated under Section 97 of I & B Code, which will be prior to adjudication by the Learned NCLT and it will not amount to be a determination of any of the rights since, it will only result in

recommendations to be made to justify the proceedings under Section 95 of I & B Code.

12. In view of the above, no Appeal would be maintainable as against the said order. Having said so and owing to the settled principle, as laid on by the Honourable Apex Court in the matter of Dilip B Jiwrajka (Supra), since, apparently the Impugned Order only gives directions to resort to the process at the stage under Section 97 of I & B Code, which is obviously much prior to the stage of the proceedings being taken upto Section 99, no interference is required to be made by this tribunal in the Impugned Order. Hence, the Appeals would be dismissed and it goes without saying that this would be without prejudice to the Appellants, right to contest on merits if permissible under law at the stage when the proceedings reach the stage of Section 100 of the I & B Code. Subject to the above, the Appeals lack merit and the same are accordingly dismissed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

30.06.2025
RO/MS/RS