

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

[Through Physical hearing/VC Mode (Hybrid)]

**ITEM No.12
IA 287/2024
IA(IBC) 211/2026
CP(IB) No. 23/BB/2023**

IN THE MATTER OF:

Karnataka State Co Operative Apex Bank Ltd ... Petitioner

Vs

Mr. Shankar V Povade ... Respondent

Petition under Sec 95(1) of I&B Code, 2016

Order delivered on: 22.06.2026

CORAM:

**SHRI. SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)**

**SHRI. RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Respondent : Shri. Adith Jahgirdar

ORDER

IA (IBC) 211/2026

The application has been **allowed** vide separate order and new RP from the panel of Insolvency professional forwarded by IBBI has been appointed. The report submitted by previous RP **IA 287/2024** get eclipsed thereby it is disposed of.

List on **10.08.2026** for considering RP Report.

**-Sd-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)**

Jones

**-Sd-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

*(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)*

I.A. No. 211/2026

in

C.P. (IB) No. 23/BB/2023

U/s. 95(1) of the IBC, 2016 read with Rule 7(2) of the I&B (Application to Adjudicating
Authority for IRP for Personal Guarantors to Corporate Debtors) Rules, 2019

IN THE MATTER OF:

SHANKAR POWADE

Residing at 602/A, Benadi,
Belgaum, Chikodi,
Karnataka 591215

... Applicant/ Personal Guarantor

VERSUS

KARNATAKA STATE CO-OPERATIVE APEX BANK LIMITED

Registered office at: UTHUNGA,
No. 1, Pampa Mahakavi Road, Chamarajpet,
Bangalore - 560018.

...Respondent No. 1 / Financial Creditor

RATNAKAR SHETTY

Resolution Professional, Having Office at:
#16, Level 3, 7th Cross, Sampige Road,
Opposite YES Bank,
Malleshwaram, Bangalore – 560003

...Respondent No. 2 / Resolution Professional

AND IN THE MAIN MATTER OF:

KARNATAKA STATE CO-OPERATIVE APEX BANK LIMITED

...Financial Creditor

AND

SHANKAR POWADE

...Personal Guarantor

Order delivered on: 22.06.2026

Coram:

Shri Sunil Kumar Aggarwal, Hon'ble Member (Judicial)
Shri Radhakrishna Sreepada, Hon'ble Member (Technical)

O R D E R

1. The present Application has been filed by Applicant/Personal Gurantor of Corporate Debtor - *Soubhagya Laxmi Sugar Ltd.* under Section 60(5) read with Sections 97(3) and 97(5) of the Insolvency and Bankruptcy Code, 2016 (“Code”), seeking recall of the order dated 19.12.2023 passed in Company Petition whereby Respondent No. 2 - Shri Ratnakar Shetty was appointed as the Resolution Professional and for appointment of a Resolution Professional in accordance with the procedure prescribed under Section 97 of the Code.
2. The Submissions made by the Applicant are as follows:
 - a. The proceedings under Section 95 of the Code were initiated by Karnataka State Co-operative Apex Bank Limited, the lead member of a consortium of co-operative banks, against the Applicant herein in his capacity as Personal Guarantor to M/s. Soubhagya Laxmi Sugars Limited (“Corporate Debtor”). The Corporate Debtor was admitted into Corporate Insolvency Resolution Process vide order dated 07.04.2022 passed in *C.P. (IB) No. 36/BB/2022*.
 - b. The Corporate Debtor had availed various credit facilities from the consortium of banks between the years 2013 and 2017. In consideration thereof, the Applicant along with other guarantors had executed personal guarantees securing the repayment obligations of the Corporate Debtor.
 - c. Upon occurrence of defaults, the Financial Creditor has invoked the personal guarantees and issued demand notice dated 30.06.2022 to the Applicant for making payment of Rs. 382,83,73,000/- (Rupees Three Hundred and Eighty-Two Crores Eighty-Three Lakh Seventy three Thousand only). Subsequently, a statutory demand notice dated 22.07.2022 under Section 95(4)(b) of the Code was also issued calling upon the Applicant to discharge the outstanding liability.
 - d. The Financial Creditor then filed the Petition under Section 95 of the Code wherein vide order dated 19.12.2023, Respondent No. 2 was appointed as the

Resolution Professional by observing that the Financial Creditor had proposed his name in Part IV of Form-C.

- e. Pursuant to the said appointment, the Resolution Professional proceeded with the assignment and filed his report under Section 99 of the Code.
- f. Aggrieved by the appointment of the Resolution Professional, the Applicant had approached the Hon'ble High Court of Karnataka in W.P. No. 6131/2026 challenging the order dated 19.12.2023. The Hon'ble High Court permitted him to approach this Adjudicating Authority and directed consideration of the present Application before proceeding further in the main petition.
- g. The principal contention of the Applicant is that the appointment of the Resolution Professional solely on the recommendation of the Financial Creditor is contrary to the procedure contemplated under Sections 97(3), 97(4) and 97(5) of the Code. According to the Applicant, where an application under Section 95 is filed directly by a creditor, the Adjudicating Authority is required to seek nomination of a Resolution Professional from the Insolvency and Bankruptcy Board of India ("IBBI") and appoint the professional so nominated. In support of the said contention, reliance has been placed on the judgment of the Hon'ble Supreme Court in *Dilip B. Jiwrajka v. Union of India & Ors.*, wherein the scheme of appointment of a Resolution Professional under Section 97 of the Code has been discussed. The Applicant has further contended that the subsequent IBBI Circular dated 21.12.2023 permitting recommendation of a Resolution Professional by the Creditor cannot be applied retrospectively to the present proceedings and has also referred to the proceedings in *Ashwani Kumar Bhatia v. Union of India & Ors.* concerning the validity of the said Circular. It is therefore contended that the appointment order dated 19.12.2023 deserves to be recalled and a fresh Resolution Professional be appointed in accordance with law.

3. The Respondents have not filed any formal Objections and the matter was straight away heard on behalf of both the sides on 07.04.2026. During the oral arguments made, the Counsel for the Respondent has referred to few citations.
4. We have heard Ld. Counsels for the parties and carefully perused the record. During the course of arguments, Respondent No. 1 has objected to this application stating that it should be dismissed as not maintainable.

5. **ANALYSIS**

- a. The issue that arises for consideration is whether the appointment of the Resolution Professional vide order dated 19.12.2023 is liable to be recalled on the ground that the procedure contemplated under Sections 97(3), 97(4) and 97(5) of the Code was not followed. The grievance essentially pertains to the appointment of the Resolution Professional on the basis of the name proposed by the Financial Creditor in Part IV of Form-C without a separate nomination being sought from the Insolvency and Bankruptcy Board of India (“IBBI”).
- b. The appointment of a Resolution Professional under Section 97 is not a mere procedural formality as it triggers substantive civil consequences, including the commencement of interim moratorium under Section 96 and empowers the RP to submit a report under Section 99 recommending approval or rejection of the application. The Hon’ble Supreme Court of India in ***Dilip B. Jiwrajka v. Union of India, (2024) SCC 5 SC 435***, held that: -

12. Where the application has been filed through a resolution professional, the adjudicating authority has to direct the Insolvency and Bankruptcy Board of India to confirm within seven days that there are no disciplinary proceedings pending against the resolution professional. Thereafter, the Board has to either confirm the appointment of the resolution professional or to reject it and nominate another resolution professional for conducting the resolution process within seven days. Alternatively, where the application has been filed by the debtor or creditor without a resolution professional, the adjudicating authority has to direct the Board within seven days to nominate a resolution professional to conduct the process. The Board then has a period of ten days to make a nomination. Section 97(5)9 states that “the adjudicating

authority shall by order appoint the resolution professional recommended under sub-section (2) or as nominated by the Board under sub section (4). The resolution professional, upon appointment, is provided a copy of the application for the insolvency resolution process.

- c. The appointment of a Resolution Professional under Section 97 is undoubtedly a significant stage in the insolvency resolution process relating to Personal Guarantors, since such appointment triggers the process contemplated under Sections 96 and 99 of the Code. However, the question that requires consideration is whether non-adherence to the procedure suggested by the Applicant would, by itself, render the appointment without jurisdiction.
- d. In this regard, Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 assumes significance. Rule 8 enables the IBBI to share a database and panel of Insolvency Professionals with the Adjudicating Authority from time to time for the purpose of appointments under Sections 97 and 98 of the Code. Therefore, it is necessary to refer to Rule 8 of the of the I&B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 which is reproduced below:

8. Confirmation or nomination of insolvency professional: —

(1) For the purposes of sub-section (2) of section 97 and sub-section (5) of section 98, the Board may share the database of the insolvency professionals, including information about disciplinary proceedings against them, with the Adjudicating Authority from time to time. (2) For the purposes of sub-section (4) of section 97 and sub-section (3) of section 98, the Board may share a panel of insolvency professionals, who may be appointed as resolution professionals, with the Adjudicating Authority.

- e. The interplay between Section 97 of the Code and Rule 8 of the Personal Guarantor Rules came up for consideration before the Hon'ble NCLAT in **L. Ramalakshamma v. State Bank of India, (2021) ibclaw.in 526** wherein it was observed that once the IBBI has made available a panel of Insolvency

Professionals, the Adjudicating Authority has the discretion to appoint a suitable Resolution Professional from such panel.

- f. Further, the Hon'ble Madras High Court in *Ashwani Kumar Bhatia v. Union of India* examined the validity of the mechanism permitting recommendation of an Insolvency Professional from the panel maintained by the IBBI and observed that where the professional proposed is already drawn from the panel maintained by the Board, such recommendation substantially advances the nomination process contemplated under the statutory framework and avoids administrative delay. Though proceedings arising out of this judgment is stated to be pending consideration of Hon'ble Division Bench yet no order precluding the consideration of principles laid down therein has been brought on record.
- g. It is also relevant to note that the IBBI has framed the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2025, under which panels of Insolvency Professionals are periodically shared with the Adjudicating Authorities. The object behind such mechanism is to facilitate expeditious appointments and avoid procedural/administrative delays in insolvency proceedings.
- h. Viewed in the backdrop of the aforesaid statutory framework and judicial precedents, once the IBBI has shared a panel/database of Insolvency Professionals with the Adjudicating Authority, the requirement of identifying a suitable Resolution Professional stands substantially facilitated. The appointment of a professional from such panel cannot be treated as inherently contrary to the scheme of Section 97 only because the individual's name has not percolated from IBBI.
- i. At the same time, we are conscious that the present Application has been instituted at a stage when the insolvency proceeding against the Personal Guarantor is yet to attain finality. While this Authority finds no legal infirmity

in the appointment already made, continuation of the same Resolution Professional may unnecessarily prolong the controversy and result in avoidable challenges/delay to subsequent proceedings.

- j. Nevertheless, considering the challenge raised to the appointment of the existing Resolution Professional and in order to obviate any apprehension regarding the fairness and independence of process, this Authority deems it appropriate to appoint another Resolution Professional from the current panel furnished by the IBBI for Bengaluru Bench, so that the insolvency process may proceed unhindered and without any further controversy.

6. OPINION

- a. Accordingly, I.A. No. 211/2026 is disposed of in the above terms.
- b. In order to ensure that the insolvency resolution process proceeds expeditiously and without any apprehension regarding impartiality or bias, we consider it appropriate to appoint a Resolution Professional from the current panel furnished by the IBBI for Bengaluru Bench. Accordingly, **Sh. Syam Prabhada TP**, IBBI/IPA-001/IP-P-02628/2021-2022/14039, address: No 19, Green County Enclave, Sangolli Rayanna Road, Kalkere Channasandra, Bangalore, Karnataka, 560043, *Ph. No. 8904666415*, email id: **syamprahada@sphandco.in** is hereby appointed as the Resolution Professional in the present matter. **The RP shall file his consent letter within one week.** The RP fee shall be decided by the parties by interacting with each other in terms of applicable IBBI Rules/ Regulations. In the meanwhile, the Petitioner is directed to initially deposit Rs.35,000/- (Rupees Thirty-Five Thousand only) with the RP to enable him to carry out his duties as per order which shall be adjustable in his remuneration to be decided and the costs incurred in carrying out this order.
- c. It is clarified that during the ongoing Interim Moratorium period: (i) any legal action or proceedings pending in respect of subject debt shall be deemed to

have been stayed: and (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of such debt. As per Section 96(3) of the Code, the provisions of Sub-section 96(1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- d. The Resolution Professional is directed to exercise all the powers as enumerated under Section 99 of the Code read with Rules made thereunder. He is directed to examine this petition and make recommendations with reasons in writing for its acceptance or rejection within the stipulated time as envisaged under Section 99 of the Code. The Resolution Professional shall provide a copy of the report within 10 Days under Section 99(7) to the Financial Creditor as well as to the Personal Guarantor as soon as the same is filed before this Authority.
- e. The Petitioner/ Financial Creditor is directed to serve a copy of this order immediately on the Resolution Professional by all modes. A copy of Company Petition and documents be forwarded to him soon after his consent for assignment is received with copy of his registration Certificate and AFA .

-Sd-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)