

LEGAL UPDATES

DELHI NCLAT: NCLAT CLARIFIES PROVISIONS OF Sec. 97 OF IBC, 2016

The Resolution Professional filed an appeal against the three appellants in accordance with Sec. 95 of the IBC, 2016, on their behalf. The order in issue, which the Adjudicating Authority had issued in response to a request made via the Resolution Professional, instructed the Resolution Professional to use the authority granted to her by Sec. 99 of the IBC and to present her suggestions for acceptance or rejection of the request in writing, along with the justifications necessary, within the time frame specified by Sec. 99. Justice Ashok Bhushan (Chairperson) and Justice Jarat Kumar Jain, Judicial Member, and Dr Alok Srivastava, Technical Member, heard the case. The appellant argued that, in accordance with Sec. 97 of the I&B Code, even though the Resolution Professional had submitted the application, the Adjudicating Authority was required to obtain Board approval before recording any findings of default. At this point, the appellant argued, the Resolution Professional had not yet submitted a report, so there was no reason to do so. The Resolution Professional will be unable to provide any negative reports as a result of the unjustified nature of the default finding, the Appellant claimed. Respondents argued that it was not the Appellant's position that disciplinary action was being taken against the Resolution Professional at the time of the Resolution Professional's appointment. As a result, the submission is solely technical. The argument is made that the Adjudicating Authority possesses a list of the Resolution Professionals against whom disciplinary actions are underway and that there are none pending for the Resolution Professional. As a result, the appointment has been approved by the adjudicating authority, and no mistakes can be found. It was further argued that the Resolution Professional's ability to make the recommendation required by Sec. 99 may not be impacted by the Adjudicating Authority's views on default. The Tribunal explained the provisions of Sec. 97 of the IBC. The NCLAT clarified that there can be no confusion with the set of regulations laid forward in Sec. 97, which states that when a Resolution Professional files an application under Sec. 95, the Adjudicating Authority must inform the Board to give a written confirmation within seven days, about whether any disciplinary proceedings are still

unsettled against the Resolution Professional and also regarding accepting or rejecting a Resolution Professional's appointment and nominating a new RP if required. The Tribunal also noted that in the case between Kanchan Nanubhai Desai Personal Guarantor and Finquest Financial Solutions Pvt. Ltd. & Anr., the Adjudicating Authority had not ordered the Board to confirm the appointment of the RP as stated in Sec. 97(1). However, after analysing the facts of the case, the Tribunal noted that there were no disciplinary proceedings against the RP who filed the Application. Thereby, the Tribunal concluded that there was no necessity to once again order the Adjudicating Authority to forward the suggestion to the Board for validation since the order was given more than 3 months before the one that was passed. Lastly, Appeals were only partially allowed.