

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, COURT-II

KOLKATA

I.A. (IB) No. 1085/KB/2025

IN

C.P.(IB) No. 295/(KB)/2024

An application under Section 98(1) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

HDFC Bank Limited

... Financial Creditor

Versus

Vishal Kejriwal

... Personal Guarantor

And

IN THE MATTER OF:

HDFC Bank Limited

... Applicant

Versus

Swapnil Jain, Resolution Professional of Vishal Kejriwal

... Respondent

Coram:

Shri Labh Singh : **Member (Judicial)**

Ms. Rekha Kantilal Shah : **Member (Technical)**

Appearances (via physical mode/virtual mode)-:

For the Financial Creditor

- i. Ms.Tannya Baranwal,Adv.
- ii. Ms.Vanshika Khaitan,Adv.

For the Resolution Professional

- i. Mr.Riyanshu Agarwal,Adv.
- ii. Mr.Swapnil Jain, RP in person

Date of Pronouncement- 22.05.2026

ORDER

Per: Rekha Kantilal Shah, Member (Technical)

1. The instant application has been preferred by the Financial Creditor praying for the following reliefs:-
 - (a) *To pass an order appointing Mr. Nitin Daga as Resolution Professional in place of Mr. Swapnil Jain in the above-captioned matter;*
 - (b) *Ad-interim orders be made in terms of the prayers above;*
 - (c) *Such other/further order or orders to be passed and/or direction be given as to this Hon'ble Tribunal may deem fit and proper in facts and circumstances of this case.*
2. It has been stated that the Applicant Bank was approached by K.B. Sponge Iron Limited, the Corporate Debtor, acting through its Director(s), for the purpose of availing various credit facilities

from the Applicant Bank. Pursuant to such request, the Applicant Bank, vide Sanction Letter bearing No. 86027035 dated 11th January, 2022, sanctioned various credit facilities aggregating to a sum of Rs. 16,31,84,572/- (Rupees Sixteen Crore Thirty-One Lakh Eighty-Four Thousand Five Hundred Seventy-Two only) in favour of the Corporate Debtor. In consideration of the said financial assistance, Vishal Kejriwal, along with other persons, executed deeds of personal guarantee securing due repayment of the financial facilities availed by the Corporate Debtor.

3. The debt owed by the Corporate Debtor to the Applicant Bank became due and payable in November, 2023. However, the Corporate Debtor failed to honour its financial commitments and defaulted in repayment of its outstanding liabilities on 04th February, 2024.
4. The Applicant Bank instituted the captioned Company Petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 against the said Personal Guarantor to the Corporate Debtor, namely K.B. Sponge Iron Limited, pursuant to the issuance of a Demand Notice dated 20th June 2024 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to Vishal Kejriwal, amongst other personal guarantors
5. This Tribunal, vide order dated 10th September, 2024, appointed Swapnil Jain as the Resolution Professional in the captioned proceedings pursuant to petition filed under Section 95 of the IBC, 2016.
6. Upon his appointment, Swapnil Jain submitted his Report dated 07th October, 2024 under Section 99 of the IBC, 2016 recommending admission of the Company Petition. It has been submitted that, during the interregnum, various disputes and differences arose

between the Resolution Professional and the Applicant Bank, primarily concerning the fees and expenses claimed by the Resolution Professional.

7. It has been submitted that the Applicant Bank has already paid a sum of Rs. 75,000/- to the Resolution Professional on 02nd January, 2025. It has been submitted by the Applicant Bank that no further incidental expenses are liable to be borne by the Applicant Bank, particularly in view of the fact that this Tribunal had fixed the remuneration and expenses of the Resolution Professional at Rs. 75,000/- for the assignment in question. The Applicant Bank has further filed a Supplementary Affidavit bringing on record transaction details evidencing the fees paid to the Resolution Professional.
8. It has been submitted that when the captioned matter was taken up for hearing by this Tribunal on 21st January, 2025, it was alleged on behalf of the Resolution Professional that although the Report under Section 99 of the IBC, 2016 had been filed, the Applicant Bank had failed to make payment of the fees payable to the Resolution Professional.
9. It has been submitted that the continuance of the present Resolution Professional, namely Swapnil Jain, would not be in the best interests of the Applicant Bank or the insolvency resolution process. It has been submitted that the Applicant Bank apprehends that the continuance of the present Resolution Professional may prejudice the interests of the Applicant Bank and adversely affect the conduct of the proceedings before this Tribunal.
10. We have considered the submissions advanced by the Learned Counsel appearing for the Applicant.

11. Section 98 of the IBC, 2016 provides for replacement of Resolution Professional. It reads thus-

“98. Replacement of resolution professional. -

(1) Where the debtor or the creditor is of the opinion that the resolution professional appointed under section 97 is required to be replaced, he may apply to the Adjudicating Authority for the replacement of the such resolution professional.

(2) The Adjudicating Authority shall, within seven days of the receipt of the application under sub-section (1) make a reference to the Board for replacement of the resolution professional.

(3) The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (2), recommend the name of the resolution professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

(4) Without prejudice to the provisions contained in sub-section (1), the creditors may apply to the Adjudicating Authority for replacement of the resolution professional where it has been decided in the meeting of the creditors, to replace the resolution professional with a new resolution professional for implementation of the repayment plan.

(5) Where the Adjudicating Authority admits an application made under sub-section (1) or sub-section (4), it shall direct the Board to confirm that there are no disciplinary proceedings pending against the proposed resolution professional.

(6) The Board shall send a communication within ten days of receipt of the direction under sub-section (5) either- (a) confirming appointment of the nominated resolution

professional; or (b) rejecting appointment of the nominated resolution professional and recommend a new resolution professional.

(7) On the basis of the communication of the Board under sub-section (3) or subsection (6), the Adjudicating Authority shall pass an order appointing a new resolution professional.

(8) The Adjudicating Authority may give directions to the resolution professional replaced under sub-section (7) -

(a) to share all information with the new resolution professional in respect of the insolvency resolution process; and

(b) to co-operate with the new resolution professional in such matters as may be required.”

12. As such, if a Creditor or Debtor requires the RP to be replaced, such creditor or debtor may file an application before the Adjudicating Authority for the replacement of the RP. Upon an application being made, the Adjudicating Authority shall make a reference to the IBBI for replacement of the RP and the Board shall recommend the name of an RP within 10 days of the receipt of a reference. Section 98(5) further provides that in case the Adjudicating Authority admits an application made under sub-section (1) or (4), it shall direct the IBBI to confirm as to whether any disciplinary proceedings are pending against the proposed resolution professional. The Board upon receipt of a direction under Section 98(5) shall either confirm the appointment of the nominated resolution professional or reject the appointment of the nominated resolution professional and recommend a new resolution professional. Thereafter on the basis of the communication of the Board, the Adjudicating Authority shall pass an order appointing a new resolution professional.

13. The Hon'ble NCLAT in *Mr. Vinay Rai v. Technology Development Board and Anr.*, (2024) *ibclaw.in 724 NCLAT*, stated as follows:-

“7. Application - IA No.1904 of 2024 was filed by the Financial Creditor under Section 98 for replacement of the RP. Section 98, sub-section (1) entitles both the debtor or the creditor to apply to the Adjudicating Authority for the replacement of such RP, where the debtor or creditor is of the opinion that RP appointed under Section 97 is required to be replaced. Section 98, sub-section (1) does not contain or enumerate grounds, on which replacement can be asked for. The statutory provision only requires “Where the debtor or the creditor is of the opinion...”. Although, the opinion to be formed under Section 98, sub-section (1) is subjective opinion of the debtor or the creditor, which may entitle them to make an application for replacement of RP, it goes without saying that opinion should be founded on rational basis and objective consideration.

8. In the present case, from the facts which have been brought on the record, it is clear that the RP prior to filing of Section 94 application, has been representing the Corporate Debtor and the Personal Guarantor, before the Delhi High Court as a Counsel for the Corporate Debtor and the Personal Guarantor. Formation of opinion by the Financial Creditor on the ground that RP, who has represented the Corporate Debtor and the Personal Guarantor in the dispute between parties arising out of the same debt, cannot be said to be an irrational ground, to form an opinion under Section 98. Hence, the Financial Creditor filed an application for replacement of the RP. The scheme of Section 98, does not require that a particular ground has to be proved by debtor or creditor seeking replacement of the RP. The submission of the Learned

Counsel for the Appellant that Section 94 gives a vested right to the debtor to initiate insolvency resolution process either personally or through RP, hence, the said vested right cannot be taken away. Section 94, sub-section (1) of the IBC is as follows:

“94. Application by debtor to initiate insolvency resolution process. - (1) A debtor who commits a default may apply, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application.”

14. Thus, for an application under Section 98 to be maintainable, the opinion formed is only required to be founded upon a rational basis and objective consideration. In the present case, the Applicant has preferred the instant application on the ground that several disputes and differences had arisen between the Applicant and the RP with regard to the fees and expenses incurred by the RP. It has further been alleged that, despite payment having been made to the RP by the Applicant, submissions were nevertheless advanced on behalf of the RP stating that no such payment had been received. In our considered view, the aforesaid circumstances constitute a sufficient rational basis for seeking replacement of the RP. Accordingly, we find merit in the present application.
15. The Applicant has proposed the name of Mr. Nitin Daga, bearing registration no. **IBBI/IPA-001/IP-P02213/2020-2021/13405**. The Applicant has further annexed the written consent of Mr. Nitin Daga in Form A to act as the Resolution Professional in respect of Personal Guarantor. The applicant has also annexed the authorisation for assignment of the proposed RP in Form B to the application.

16. Accordingly, in terms of Section 98(5) of the Insolvency and Bankruptcy Code, 2016, we hereby direct the **IBBI** to confirm whether any disciplinary proceedings are pending against the proposed Resolution Professional. Further, in terms of Section 98(6) of the Code, the Board shall, within **ten days** from the receipt of the aforesaid direction, communicate either: (a) confirmation of the appointment of the proposed Resolution Professional; or (b) rejection of the appointment of the proposed Resolution Professional along with a recommendation for appointment of another Resolution Professional.
17. In view of the foregoing, the instant Interlocutory Application, being I.A. (IB) No. **1085/KB/2025**, stands allowed. Let the I.A. (IB) No. **1085/KB/2025** be listed on 19th June, 2026 for further directions.
18. A copy of this Order be communicated forthwith to all parties as well as to the **IBBI** by way of e-mail.
19. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Rekha Kantilal Shah

Labh Singh

Member (Technical)

Member (Judicial)

Order dated the 22nd day of May, 2026.

HT (LRA)