

W.P.Nos.14792 and 36480 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Orders reserved on : 20.02.2025

Orders pronounced on : **08.04.2025**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.14792 and 36480 of 2024
and W.M.P.Nos.16028, 39332 and 39333 of 2024

In W.P.No.14792 of 2024:-

Ashwani Kumar Bhatia

.. Petitioner

Versus

1. The Union of India,
Represented by Ministry of Corporate Affairs,
Garage No.14, 'A' Wing,
Shastri Bhawan, Rajendra Prasad Road,
New Delhi - 110 001.
2. Insolvency and Bankruptcy Board of India (IBBI),
7th Floor, Mayur Bhawan Shankar Market,
Connaught Circus, New Delhi - 110 001.
3. Canara Bank,
Asset Recovery Management,
524, 8th Floor Circle Building,



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.. Respondents

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In W.P.No.36480 of 2024:-

Rajesh Bhatia

.. Petitioner

Versus

1. The Union of India,
Represented by Ministry of Corporate Affairs,
Garage No.14, 'A' Wing,
Shastri Bhawan, Rajendra Prasad Road,
New Delhi - 110 001.
2. Insolvency and Bankruptcy Board of India (IBBI),
7th Floor, Mayur Bhawan Shankar Market,
Connaught Circus, New Delhi - 110 001.
3. Canara Bank,
Asset Recovery Management,
524, 8th Floor Circle Building,
Anna Salai, Chennai - 600 018.
4. Ramachandran Subramanian

.. Respondents

Prayer in W.P.No.14792 of 2024 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Declaration declaring the impugned Circular No.IBBI/II/62/2023, dated 21.12.2023 issued by the 2nd respondent as being ultra-vires and violative of the Provisions of the IBC, more particularly the provisions of Section 97(3), 97(4) and 97(5) of the



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IBC.
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Prayer in W.P.No.36480 of 2024 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Declaration declaring the impugned Circular No.IBBI/II/62/2023, dated 21.12.2023 issued by the 2nd respondent as being ultra-vires and violative of the Provisions of the IBC, more particularly the provisions of Section 97(3), 97(4) and 97(5) of the IBC.

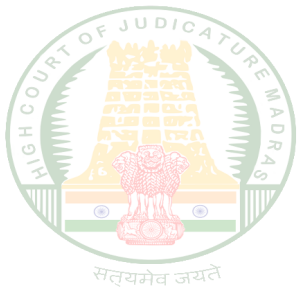
For Petitioner : Mr.Srinath Sridevan,
(in both W.Ps) Senior Counsel,
Asstd. by Mr.P.S.Suman

For Respondent : Mr.Rabu Manohar,
Senior Central Government Standing
Counsel, for R1 in W.P.No.14792 of 2024

: Mr.K.Srinivasa Murthy,
Senior Central Government Standing
Counsel, for R1 in W.P.No.36480 of 2024

: Mr.S.M.Vivekanandh, for R2 in both W.Ps

: Mr.M.S.Viswanathan, for R3 in both W.Ps



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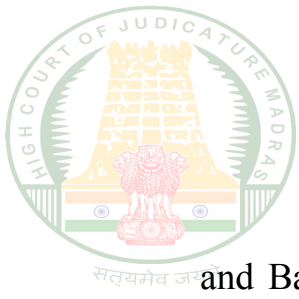
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: R4-Resolution Professional (Proforma party). Hence, notice not served
W.P.No.36480 of 2024

COMMON ORDER

These Writ Petitions are filed seeking a Writ of Declaration to annul the impugned circular, dated 21.12.2023, issued by the Insolvency and Bankruptcy Board of India (IBBI), the second respondent herein, on the grounds that it is ultra vires and violative of the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC), particularly Sections 97(3), 97(4), and 97(5) of the IBC.

2. IBBI issued the circular, dated 21.12.2023 in exercise of its powers under Section 196 of the IBC to all registered Insolvency Professionals, recognized Insolvency Professional entities, and registered Insolvency Professional Agencies. The impugned circular aimed to clarify the submission of particulars and declarations by the Insolvency Professional in the application filed by the creditors in Part-IV in Form-C of the Insolvency



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**and Bankruptcy (Application to the Adjudicating Authority for Insolvency
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Resolution Process for Personal Guarantors to Corporate Debtors) Rules,
2019 (the Personal Guarantors Rules).**

3. The grievance of the petitioners is that paragraph No.3 of the mentioned circular pertains to cases in which a creditor files an application. It states that the creditor may recommend the name of the Insolvency Professional proposed for appointment in the case. Furthermore, it clarifies that in such instances, the proposed Insolvency Professional, to be appointed as the Resolution Professional, must also provide the details of the declaration in Part-IV of Form-C of the Personal Guarantors Rules for the consideration of the Adjudication Authority. Aggrieved by this, the present Writ Petitions are filed.

4. The petitioners contend that the aforementioned circular contradicts the provisions of the Act and the well-established position of law. The



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creditor does not possess the right to make a recommendation. Only the IBBI is authorized to nominate the Resolution Professional. Therefore, the impugned circular overrides the law. Such a nomination by the creditor is inherently biased, compromising the fairness of the procedure.

5. IBBI is resisting the Writ Petitions by filing a counter-affidavit. It states that Section 196 of the IBC grants IBBI the authority to issue the clarifications and guidelines necessary for implementing the provisions of the IBC. The impugned circular does not contravene; instead, it clarifies the position. The circular only allows the creditor to recommend a Resolution Professional for appointment, while the decision to appoint rests solely with the Adjudicating Authority. There is no bar in the IBC preventing the creditor from recommending insolvency professionals. The circular does not override IBBI's power to nominate, and the decision is made exclusively by the Adjudicating Authority. The circular aligns with the IBC and supports the administrative process. It specifies the qualifications required

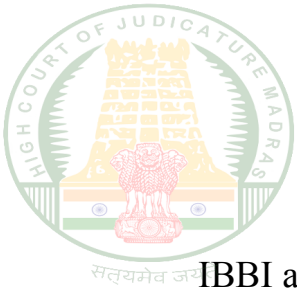


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of the Insolvency Professional and requires their consent at the time of
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recommendation. The circular aims to enhance the time-bound process, prevent delays, and contribute to the goal of effective resolution.

6. The third respondent has also filed a counter-affidavit resisting the Writ Petitions. It is stated that the petitioners acted as Personal Guarantors for the Corporate Debtor, M/s.ARS Energy Private Limited, and as of 31.08.2023, the outstanding debt was Rs.110,57,11,831.97 ps. Therefore, a demand notice in Form-B was issued on 30.11.2023 in accordance with Rule 7(1) of the Rules. No reply or payment has been received. Consequently, an application under Section 95 of the IBC was filed as CP(IB)/57/2024 before the National Company Law Tribunal, Chennai Bench. *Mr.Ramachandran Subramanian* was appointed as the Resolution Professional according to the Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2023, dated 08.12.2023, which confers powers on

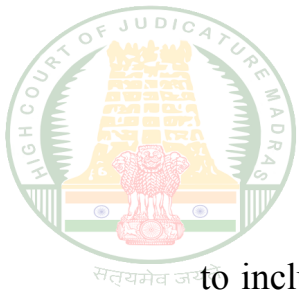


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IBBI as per Rule 8(2) of the Rules in conjunction with the impugned circular dated 21.12.2023. IBBI is required to maintain a panel, and according to the guidelines, this panel must be shared in advance with the Adjudicating Authority to prevent administrative delays. The circular aims to avoid delay and is not illegal.

7. *Mr.Srinath Sridevan*, the learned Senior Counsel for the petitioner, will first guide this Court through the scheme of the IBC. Part-I of the IBC contains the preliminary provisions. Part-II addresses Insolvency Resolution and Liquidation of Corporate Persons. Part-III concerns Insolvency Resolution and Bankruptcy for individuals and partnership firms. Chapter-III of Part-II focuses on the Insolvency Resolution Process. Under this process, creditors are entitled to initiate proceedings as per Section 95. According to Section 95(1), a creditor may apply to the Adjudicating Authority by submitting an application either personally or through a Resolution Professional. Section 95(4) of the IBC requires the application



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to include details and documents relating to the debts owed by the personal guarantor to the creditor, evidence of the failure to pay the debt within 14 days from the service of the notice of demand, and relevant proof of default or non-payment of the debt. The form is also prescribed in Section 95(5).

8. Rule 7(2) of the Rules mandates that the application under Section 95 shall be submitted in Form-C along with the particulars. It can be seen from the Form that Part-IV of the Form, with reference to particulars and declaration by the Insolvency Professional, must be filled only if the application is submitted through an Insolvency Resolution Professional. In this regard, the distinction between the application made by the creditor that was made against personal guarantors of corporate debtors filed under Section 95(1) versus those under Sections 7, 9, and 10 of the IBC, must be noted. Section 7 addresses when a financial creditor files an application against the corporate debtor. Sub-section (b) mandates that the name of the proposed Resolution Professional to act as an Interim Professional be

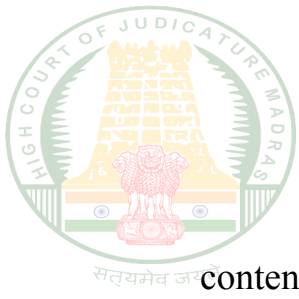


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included in the application itself. However, when an operational creditor files an application against the corporate debtor, that creditor has the discretion to propose a Resolution Professional to act as an Interim Resolution Professional. Furthermore, if a petition is filed by a corporate applicant under Section 10(3)(b), information regarding the Resolution Professional proposed to be appointed as an Interim Resolution Professional must be provided. Thus, the IBC, being a self-contained framework, mandates requirements where necessary and leaves discretion to the parties where appropriate; however, as far as the application under Section 95 is concerned, there is no such provision. A combined reading of Sections 97(3), 97(4), and 97(5) shows that the legislature did not grant the creditor the right to propose a Resolution Professional. Therefore, the circular violates the provisions of the IBC and contradicts the very scheme of the IBC.

9. *Mr.Srinath Sridevan*, learned Senior Counsel, would further



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contend that when Section 97(3) mandates the IBBI to nominate the Resolution Professional within 7 days from the filing of the application, this statutory duty cannot be delegated by the IBBI to the petitioning creditors. The above provision must be read in conjunction with Section 97(5), which mandates the adjudicating authority to appoint the Resolution Professional nominated by the IBBI, and Section 97(4), where the IBBI is required to share a panel of Insolvency Professionals with the adjudicating authority. Thus, the impugned circular effectively varies and amends the very provisions of the IBC.

10. *Mr.Srinath Sridevan*, learned Senior Counsel, would further contend that the impugned circular was issued under Section 196 of the IBC. Section 196 deals with the powers and functions of the IBBI. Section 196(p) provides that the IBBI, subject to the general direction of the Central Government, issues necessary guidelines to the insolvency professional agencies, Insolvency Professionals, and information utilities. Section 196(t)



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of the IBC stipulates that the IBBI, subject to the general direction of the
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Central Government, can make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under the IBC. However, this does not grant the IBBI the power to override the very provisions of the IBC. The IBBI cannot delegate its power to the creditor while exercising the authority under Section 196.

11. *Mr.Srinath Sridevan*, learned Senior Counsel, would further contend that if the Resolution Professional is nominated by the creditor, then this would attach an inherent bias to the actions of the Resolution Professional and render the entire action meaningless and susceptible to attack. In support of his submissions, the learned Senior Counsel would rely upon the judgment of the Division Bench of the Bombay High Court in *Amit Gupta Vs. Insolvency and Bankruptcy Board of India and Anr.*¹, where the IBBI circular introduced a new standard of liquidator fees, which was held to be illegal as it introduced a new position not contained in the

¹ 2024 SCC OnLine Bom 989



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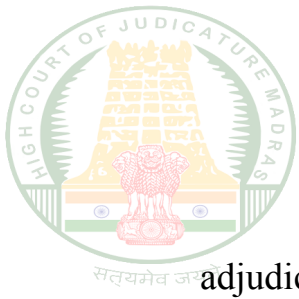
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IBC. The learned Senior Counsel would also rely upon the judgment of the Hon'ble Supreme Court of India in ***Rajinder Singh Vs. The State of Punjab and Ors.***² for the proposition that no Government Order, notification, or circular can be a substitute for the statutory rules framed with the authority of law. The Hon'ble Supreme Court of India, in ***Kerala Financial Corporation Vs. Commissioner of Income Tax***³, held that circulars cannot override or detract from the provisions of the Act.

12. *Mr.S.M.Vivekanandh*, learned Counsel for the second respondent/IBBI, submits that the IBBI is endowed with the authority under Section 196 of the IBC to issue the clarifications and guidelines necessary for implementing the provisions of the IBC. The circular does not override or alter any of the statutory requirements contained in Sections 97(3), 97(4), and 97(5). It merely enables the creditor, while filing an application, to recommend the appointment of an Insolvency Professional. The

² AIR 2001 SC 1769

³ MANU/SC/0499/1994



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adjudicating authority is at liberty to appoint or decline to appoint the recommended name. Obviously, if the personal guarantors have any objections, these will be duly considered by the authority. The learned Counsel relies upon the judgments in **Kerala Financial Corporation's** case and **Rajinder Singh's** case (cited *supra*) for the proposition that statutory bodies can issue circulars to clarify operational processes without altering the statutory provisions.

13. If any grounds or biases are established, the adjudicating authority remains free to appoint an alternative Insolvency Professional. The circular does not grant any authority to the creditor but only facilitates the administrative process. The Hon'ble Supreme Court of India, in **Innovative Industries Limited Vs. ICICI Bank and Anr.**⁴, recognized that efficiency and expediency are essential for the successful implementation of the IBC. The circular is issued in furtherance of this principle. There is nothing for this Court to interfere with within the limited scope of judicial review under

⁴ (2018) 1 SCC 407



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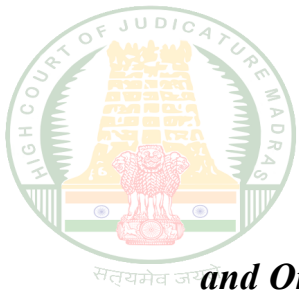
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Article 226 of the Constitution of India. The judgment of the Hon'ble Supreme Court of India in *State of Maharashtra and Ors. Vs. Prabhu*⁵ is referenced. The judgment of the Hon'ble Supreme Court of India in *Swiss Ribbons Private Limited and Anr. Vs. Union of India and Ors.*⁶ is cited to argue that the circular merely elaborates on procedural aspects recognized in that judgment. The learned Counsel contends that there is nothing arbitrary in the circular.

14. *Mr.M.S.Viswanathan*, learned Counsel for the third respondent, Canara Bank, would submit that only after due verification of the IBBI portal and credentials, *Mr.Ramachandran Subramanian* recommended for appointment by the third respondent bank. After considering the issue, the adjudicating authority appointed him as the Resolution Professional. His name appears on the panel. The learned Counsel would rely on the judgment of the Hon'ble Supreme Court of India in *Kailash Vs. Nanhku*

⁵ (1994) 2 SCC 481

⁶ (2019) 4 SCC 17



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and Ors.⁷, specifically paragraph No.8 of the said judgment, contending that
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the rules or procedures are crafted to uphold justice and that the circular is issued solely to enhance the effective implementation of the provisions of the IBC. In ***Sandeep Kumar Gupta Resolution Professional Vs. Stewarts and Lloyds of India Limited and Anr.***, in Company Appeal (AT) (Insolvency) No.263 of 2017, dated 28.02.2018, the National Company Law Appellate Tribunal held that once the Resolution Professional is made available by the IBBI and if appointed from the panel, it should be treated as an appointment based on the recommendation of the IBBI.

15. The learned Counsel relies on the judgment of the Hon'ble Supreme Court of India in ***Dilip B. Jiwrajka vs. Union of India and Ors.*** in W.P.(Civil) No.1281 of 2021, specifically paragraph No.86, which highlights the role of the Resolution Professional. Therefore, the learned Counsel contends that there is no adjudication by the Resolution Professional, who merely facilitates the resolution. Mentioning the name at

⁷ (2005) 4 SCC 480



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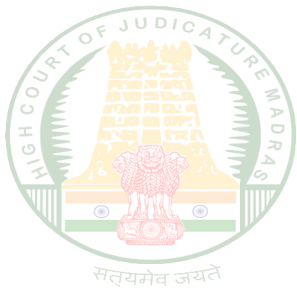
the outset only enhances the efficiency of the system, ensuring the timely disposal of the assets of the corporate debtor or the debtor, as the case may be. Thus, he submits that the circular is not ultra vires.

16. I have considered the rival submissions from both sides and examined the relevant records of the case.

17. It is essential to extract the complete impugned circular, which reads as follows:

"Section 95 of the Insolvency and Bankruptcy Code (Code) read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (IRP PGCD Rules) allows the creditor to file an application for initiation of insolvency resolution process of personal guarantors to corporate debtors. The creditor may file the application either himself or jointly with other creditors or through a resolution professional (RP) in Form C of the IRP PGCD Rules.

2. Where the application is filed through an RP, the particulars and declaration by such RP are provided in Part IV of the Form C of the IRP PGCD Rules. In such cases, the Adjudicating Authority (AA) after confirming that there is no pendency in respect of disciplinary proceedings



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against the RP from the database shared by the Insolvency and Bankruptcy Board of India, appoints the proposed RP by an Order under sub-section (5) of section 97 of the Code.

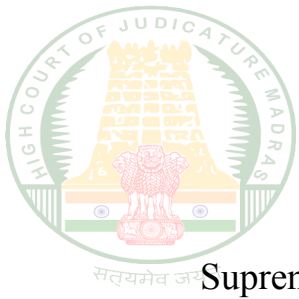
3. In certain cases, the creditor may file the application itself recommending the name of the insolvency professional to be appointed as RP. It is hereby clarified that in such cases, the insolvency professional proposed to be appointed as RP shall also provide the particulars of and declaration in Part IV of Form C of the IRP PGCD Rules to the creditor for the consideration of the AA.

4. This is issued in exercise of the powers under section 196 of the Code."

(Emphasis supplied)

Thus, it is evident that even in cases that are not filed through a Resolution Professional, when a creditor files applications against personal guarantors, the creditor is not given the discretion to recommend the name of the Insolvency Professional to be appointed as the Resolution Professional. When such a recommendation is made, the circular further clarifies that the details of the Resolution Professional and the declaration in Part-IV of Form-C of the Personal Guarantor Rules must also be provided by the creditor for consideration by the adjudicating authority.

18. In this regard, it is essential to refer to the judgment of the Hon'ble



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Supreme Court of India in ***Dilip B Jiwrarka***'s case (cited *above*), and
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paragraph No.86 is extracted below:

"86. We summarise the conclusion of this judgment below:

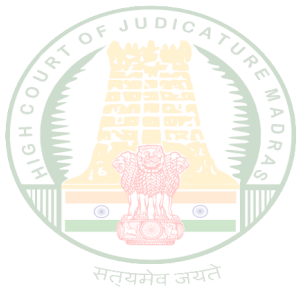
(i) No judicial adjudication Is involved at the stages envisaged in Sections 95 to Section 99 of the IBC;

(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;



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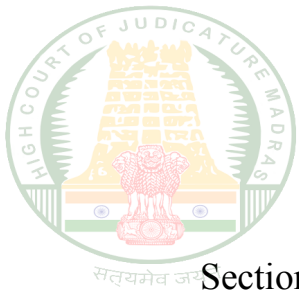
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- (vi) No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind 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."

(Emphasis supplied)

Thus, it is evident that the Resolution Professional assumes a facilitative role in collating facts and submitting a report to the adjudicating authority.

19. The report is again recommendatory in nature. Throughout the entire examination of the application, the debtor is not deprived of an opportunity to participate in the process. It has been held that judicial determination occurs only when the adjudicating authority decides under



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Section 100. Thus, if the role of the Insolvency Professional is merely to evaluate the facts to facilitate resolution and submit a report that is primarily recommendatory, the allegation of any inherent bias cannot be accepted. Simply because the creditor chooses from the IBBI panel at the time of filing an application and recommends a name does not, by itself, prejudice the debtor in any way. The role is not that of a decision-making authority, but rather a facilitator. In that case, it is more appropriate for such a person to be someone who is chosen by the parties.

20. Even if the debtor disagrees with the proposed name, there is still an opportunity for the debtor to bring to the attention of the adjudicating authority any disqualification, conflict of interest, or personal bias that can always be considered by the adjudicating authority. In such cases, another person from the panel will be appointed by the adjudicating authority. Therefore, there is no inherent illegality in the circular that enables the creditor to recommend the name of the Insolvency Professional to act as the



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Resolution Professional.
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21. The next contention is that this alters the position mandated under Section 97. In this regard, it would be beneficial to extract Section 97, which reads as follows:

"97. Appointment of resolution professional.—(1) If the application under section 94 or 95 is filed through a resolution professional, the Adjudicating Authority shall direct the Board within seven days of the date of the application to confirm that there are no disciplinary proceedings pending against resolution professional.

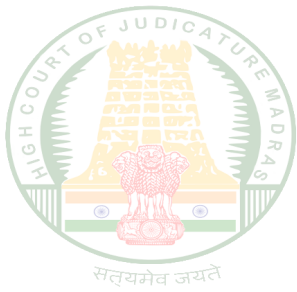
(2) The Board shall within seven days of receipt of directions under sub- section (1) communicate to the Adjudicating Authority in writing either—

(a) confirming the appointment of the resolution professional; or

(b) rejecting the appointment of the resolution professional and nominating another resolution professional for the insolvency resolution process.

(3) Where an application under section 94 or 95 is filed by the debtor or the creditor himself, as the case may be, and not through the resolution professional, the Adjudicating Authority shall direct the Board, within seven days of the filing of such application, to nominate a resolution professional for the insolvency resolution process.

(4) The Board shall nominate a resolution professional within ten days of receiving the direction issued by the Adjudicating Authority under sub- section (3).



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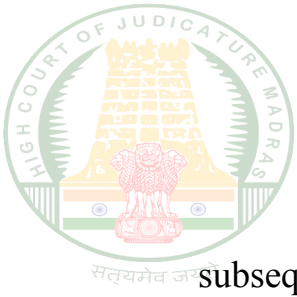
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(5) The Adjudicating Authority shall by order appoint the resolution professional recommended under sub-section (2) or as nominated by the Board under sub-section (4).

(6) A resolution professional appointed by the Adjudicating Authority under sub-section (5) shall be provided a copy of the application for insolvency resolution process."

Thus, it can be seen that when the application is filed through the Resolution Professional, the procedure for the adjudicating authority is to direct the IBBI to confirm that there are no disciplinary proceedings pending against the Resolution Professional. If there are no such proceedings, the appointment must be made. If the adjudicating authority rejects the appointment, the IBBI must nominate another Resolution Professional.

22. When the application is filed by the creditor himself, the adjudicating authority will direct the IBBI to nominate a Resolution Professional within seven days. Within ten days of this request, the board shall make a nomination. The adjudicating authority may then accept the nomination and appoint the individual nominated by the IBBI, who will



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subsequently be provided a copy of the application for the insolvency resolution process.

23. In this regard, if the creditor is allowed to recommend at the outset, the entire episode of the Resolution Professional becoming aware of any conflict of interest, etc., at a later stage, and once again having the process start all over is effectively mitigated as the Resolution Professional provides their consent and the details of the professional are also recorded in Part IV of the Form. Thus, it certainly aids in saving time. The only question is whether, when the statute mandates the adjudicating authority to request the IBBI and the IBBI is empowered to nominate the name, the procedure outlined by the circular contradicts the intent of Section 97, which remains to be determined.

24. In this regard, the IBBI scrutinises the Resolution Professionals and empanels them. Once the Resolution Professionals are empanelled, the



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IBBI will nominate one among them. As the creditor is given an option only to nominate from the panel, it can effectively be seen that the nomination is ultimately only by the IBBI. Therefore, the circular emerges as a practice direction and pragmatic tool for fulfilling the purposes of the IBC, thereby saving time and increasing efficiency. The debtor is always entitled to inform the adjudicating authority of any adverse circumstances, including potential conflicts of interest or any other valid grounds, which may disqualify a person from being a facilitator. The adjudicating authority holds the final power under Section 97(5) of the Act, and the order issued by the adjudicating authority is also subject to appeal. Hence, no prejudice is caused to the petitioners or personal guarantors. Thus, I hold that the impugned circular, dated 21.12.2023, is neither ultra vires nor violative of the provisions of the IBC.

25. Accordingly, finding no merits, this Writ Petition is dismissed.

There will be no order as to costs. Consequently, the connected



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miscellaneous petitions are closed.

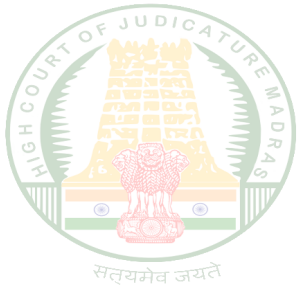
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08.04.2025

Neutral Citation : yes
grs

To

1. The Ministry of Corporate Affairs,
Garage No.14, 'A' Wing,
Shastri Bhawan, Rajendra Prasad Road,
New Delhi - 110 001.
2. Insolvency and Bankruptcy Board of India (IBBI),
7th Floor, Mayur Bhawan Shankar Market,
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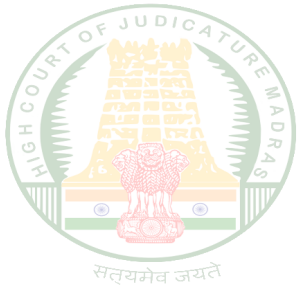
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D.BHARATHA CHAKRAVARTHY, J.

grs

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08.04.2025



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W.P.Nos.14792 and 36480 of 2024