

W.P.No.22949 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2025

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CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.22949 of 2025
and W.M.P.Nos.25783 and 25784 of 2025

K.J.Vinod (Insolvency Professional)
S/o.Mr.Reghunath Madathil Shankaran
IP Regn. No.IBBI/IPA-003/1CA1-N00291/2020-2021/13451
B-602, Santha Towers
Paruthipattu, Avadi,
Chennai – 600 071.

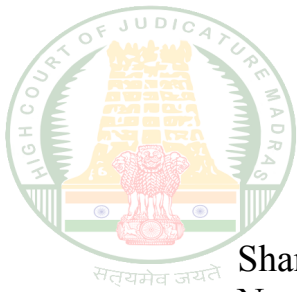
.. Petitioner

VS

1.The Registrar of the National Company Law
Tribunal – Chennai Bench,
Corporate Bhawan II Floor, Beach Road
Mannady, George Town, Chennai-600 001.

2.Annie Traders Private Limited,
Rep. by its Director
Having its Registered Office at
3rd Floor, Capital Building,
No.554/555, Anna Salai, Teynampet,
Chennai-600 018.

3.Insolvency and Bankruptcy Board of India,
Rep. by its Deputy General Manager
7th Floor, Mayur Bhawan,



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Shankar Market, Connaught Circus,
New Delhi – 110 001.

.. Respondents

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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Order dated 04.06.2025 passed by the National Company Law Tribunal Bench-II Chennai in CP(IB)/35(CHE)/2022 and to partially quash the impugned Order dated 04.06.2025 to the limited extent of having appointed Mr.Thangamuthu Viswanathan instead of the Petitioner as the Interim Resolution Professional of the Respondent No.2, as being arbitrary, sans authority and in excess of the jurisdiction as vested under the Insolvency and Bankruptcy Code, 2016 and violative of Section 16(2) of the Insolvency and Bankruptcy Code, 2016 and as also being against the principles of natural justice and thereby appoint the Petitioner as the Interim Resolution Professional of the Respondent No.2.

For Petitioner : Mr.Varun Srinivasan

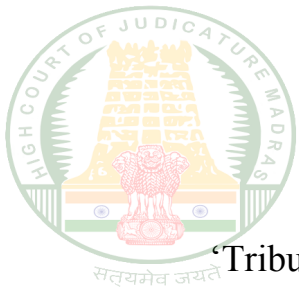
For Respondents : Ms.Indumathi Ravi, (for R1)

Mr.Guru Dhananjay, (for R2)
for Mr.S.A.Vivekananda

ORDER

(Made by Dr. ANITA SUMANTH.,J)

The petitioner is an Insolvency Professional and is aggrieved by an order passed by the National Company Law Tribunal ('NCLT' /



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‘Tribunal’) / R1 on 04.06.2025 as under that order, the NCLT has proceeded to appoint one Mr.Thangamuthu Viswanathan as the Interim Resolution Professional (IRP) of R2 instead of the petitioner.

2. Mr.Varun Srinivasan, who appears for the petitioner states that the petitioner was enrolled as a member of the Insolvency Professional Agency of Institute of Cost Accountants of India (‘Agency’). He is also registered as a Resolution Professional (RP) with the Insolvency and Bankruptcy Board of India (‘IBBI’ / ‘Board’) / R3 and has a valid Authorization for Assignment (AFA) issued by the Agency valid till 30.06.2026.

3. An application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (‘IB Code’) had been referred by R2 seeking initiation of Corporate Insolvency Resolution Process (CIRP). In that application, R2 had recommended that the petitioner acts as IRP. The recommendation was as per Section 10(3)(b) of the IB Code.

4. When the matter had come up for admission, the NCLT had gone ahead to appoint another RP in preference to the petitioner with which appointment the petitioner is aggrieved as being in contravention of the statutory provisions, particularly Section 16(2) of the IB Code.



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5. According to the petitioner, it is mandatory for the NCLT to appoint the IRP as recommended by the Financial Creditor (FC) under Section 7 of the IB Code or the Corporate Debtor (CD) as per Section 10 of the IB Code. It is only when an Operational Creditor (OC) prefers an application under Section 9 of the Code that the NCLT may have some leeway to deviate from the proposal of the OC qua the proposed RP.

6. Emphasis is laid on the fact that a RP has to undergo rigorous training in order to obtain the necessary professional qualifications. The IBBI is the governing statutory body, which regulates the appointments of IRPs, stipulate the requisite eligibility criteria and issues certificates recognizing them as Insolvency Professionals.

7. Thus, the competence and eligibility of the professional is beyond question, and where the recommendation of an IRP has been made by the applicant under Sections 7 and 10 of the Code, there is no provision that enables the NCLT to deviate from such recommendation. The legal issue that arises is thus whether the NCLT is vested with the requisite discretion to override the recommendation of the applicant under Section 7 and 9 in appointing an RP of its choice.

8. We had requested Ms.Indumathi Ravi, who accepted notice



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for the NCLT, to obtain instructions in regard to the legal issue as framed above.

9. After hearing the parties, an order had come to be passed on 07.07.2025 expressing our prima facie view in the following terms:-

“The petitioner relies on Sections 10(3)(b) and 16(2) of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') reading thus:

Section 10. Initiation of corporate insolvency resolution process by corporate applicant.

.....

(3) The corporate applicant shall, along with the application furnish the information relating to--

(a)

(b) the resolution professional proposed to be appointed as an interim resolution professional.

.....

Section 16 Appointment and tenure of interim resolution professional.

.....

(2) Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional,



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as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

(3) Where the application for corporate insolvency resolution process is made by an operational creditor and--

(a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;

(b) a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

.....

2. A combined reading of Sections 10(3)(b) and 16(2) of the Code indicate that in case of applications filed by Financial Creditor (FC) or Corporate Debtor (CD) seeking ownership, it is incumbent on the National Company Law Tribunal (in short 'Tribunal') to appoint an Interim Resolution Professional (IRP) as suggested by the FC or CD as the case may be.

3. To be noted that even Section 16(3) which grants some leeway for the Tribunal to appoint RP as per its discretion, would stand triggered only in the event that the Operational Creditor (OC) does not



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give a proposal for appointment of a specific IRP. Therefore, it appears prima facie that in all the three cases (FC, OC and CD), suggestions for appointment of IRP by the applicants, are liable to be accepted.

4. As in the present case, the NCLT has proceeded to appoint an IRP different from that suggested by the CD, Ms.Indumathi Ravi, learned counsel who appears on behalf of R1/National Company Law Tribunal (NCLT) will obtain instructions on these aspects of the matter and file a detailed counter. She will also point to those instances where the NCLT has proceeded to appoint an IRP not as suggested by the applicants, either under Section 7, 9 or 10.

5. To add, a reading of Sections 22 and 27 of the Code indicates that the Committee of Creditors (CoC) has the discretion to substitute an IRP. The Scheme of the Act thus, prima facie appears to be that the Board is mandated to accept the recommendation of the applicant, be it, FC, OC or CD, and it is only the CoC in charge of management of the company, that has the discretion to change the IRP.

6. List on 22.07.2025. Final opportunity is granted to the respondents to file counters by then with a copy served in advance upon the other side.”

10. Thereafter, a report has been filed by R1 on 18.07.2025. At

paragraph 2 of the report, the Registrar of the NCLT has given eight instances, where the Bench has proceeded to deviate from the recommendations in applications filed under Section 7 of the IB Code,



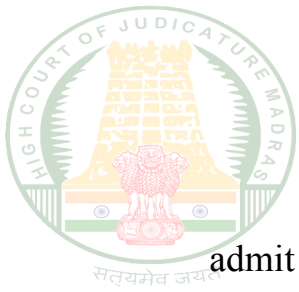
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12 instances filed under Section 9 of the IB Code and 7 instances in applications filed under Section 10 of the IB Code.

11. The justification of R1 for not accepting the recommendation of the Petitioner as IRP is that R2 had changed the recommendation of the IRP multiple times. Hence the NCLT thought it fit to itself appoint an IRP from the IBBI recommended list in the larger interests of the stakeholders. One thing is clear, apart from the aforesaid justification, there is no other statutory backing in the NCLT rejecting the recommendation of R2.

12. The statutory scheme in this regard appears clear enough. Section 7 deals with initiation of CIRP by a financial creditor and Section 7(3)(b) states that the financial creditor *shall*, along with application furnish '*... the name of the resolution professional proposed to act as interim resolution professional...*'. Thus, it is mandatory for the FC to recommend the name of a RP.

13. Section 7 (5) states that where the adjudicating authority, i.e., the NCLT, is satisfied that (i) a default has occurred (ii) the application filed by the FC is complete and (iii) there is no disciplinary proceeding pending against the proposed resolution professional, it may



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admit such application or if the answers to any one of the aforesaid three points is in the affirmative, it may reject such application. The only circumstance when the recommendation of the FC may be rejected, is if there is a disciplinary proceeding pending as against the proposed RP.

14. Likewise, Section 10 dealing with initiation of CIRP by the corporate applicant provides that the application filed by the corporate applicant *shall* contain the information relating to the RP proposed to be appointed as an IRP. Section 9 which deals with application for initiation of CIRP by an OC, and stipulates under Section 9(4) that an OC *may* propose a RP to act as IRP. Thus, it is only in the context of Section 10 that the NCLT may proceed to appoint an RP.

15. Section 16 dealing with appointment and tenure of IRP reads as follows:-

“16. Appointment and tenure of interim resolution professional.—(1) The Adjudicating Authority shall appoint an interim resolution professional [on the insolvency commencement date].

(2) Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.



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(3) Where the application for corporate insolvency resolution process is made by an operational creditor and—

(a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;

(b) a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

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

(5) The term of the interim resolution professional shall continue till the date of appointment of the resolution professional under section 22.”

16. Hence and in regard to an application under Sections 7 or under 10 of the IB Code, the professional recommended by the applicant must mandatorily be appointed as IRP, the only caveat being that no disciplinary proceedings should be pending as against him. There is no elbowroom available for the NCLT to take a different view in this regard.

17. Our apprehension in regard to the untrammelled power that this would vest in the parties, lack of transparency in appointments and



possible collusion, are assuaged by the availability of robust statutory checks and balances in this regard.

18. Section 22 (2) makes it clear that the Committee of Creditors (CoC) may at the very first meeting, and if they have a majority, either resolve to appoint the IRP as RP or to replace the IRP by another RP.

Section 22 reads thus:

“22. Appointment of resolution professional.—(1)

The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

(2) The committee of creditors, may, in the first meeting, by a majority vote of not less than sixty-six per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

(3) Where the committee of creditors resolves under sub-section (2)—

(a) to continue the interim resolution professional as resolution professional, subject to a written consent from the interim resolution professional in the specified form it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or

(b) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional along with a written consent from the proposed resolution professional in the specified form.



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(4) The Adjudicating Authority shall forward the name of the resolution professional proposed under clause (b) of sub-section (3) to the Board for its confirmation and shall make such appointment after confirmation by the Board.

(5) Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.”

19. In light of the aforesaid, the impugned order of the NCLT substituting the IRP proposed by the applicant with an IRP of its own choice, for reasons of its own, cannot be sustained and is set aside. We may suggest that it is always open to the NCLT to record its reservations in regard to the IRP as proposed by the applicant, such that those observations may be part of its order, for consideration of the CoC under Section 22 of the Code.

20. Let appropriate orders be passed afresh by the NCLT on the application filed by R2, having regard to the observations set out hereinabove, and in line with the statutory scheme and principles of natural justice, within a period of six (6) weeks from date of receipt of a copy of this order.



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21. This writ petition is allowed in terms of this order. No costs.

Connected miscellaneous petitions are closed.

[A.S.M., J] [N.S., J]
13.08.2025

Index: Yes

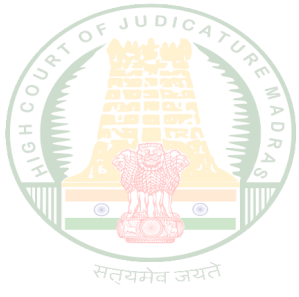
Neutral Citation: Yes

ssm

Note to Registry :Issue Today.

To

1. The Registrar of the National Company Law
Tribunal – Chennai Bench,
Corporate Bhawan II Floor, Beach Road
Mannady, George Town, Chennai-600 001.
2. The Deputy General Manager,
Insolvency and Bankruptcy Board of India,
7th Floor, Mayur Bhawan,
Shankar Market, Connaught Circus,
New Delhi – 110 001.



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DR. ANITA SUMANTH, J.
and
N.SENTHILKUMAR, J.

ssm

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