

W.P.Nos.1691, 1698 & 1708 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2025

CORAM :

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

**W.P.Nos.1691, 1698 & 1708 of 2025
and W.M.P.Nos.1940, 1951 & 1958 of 2025**

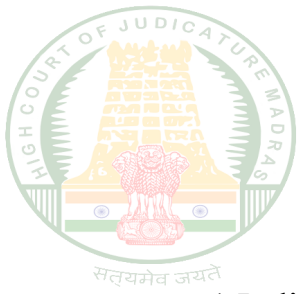
S.P.Bhooma .. Petitioner in W.P.No.1691 of 2025
S.Swaminathan .. Petitioner in W.P.No.1698 of 2025
T R Viswanathan .. Petitioner in W.P.No.1708 of 2025

VS

1.Indian Bank,
Stressed Asset Management Branch,
Zonal Office Building,
No.55, 2nd Floor, Ethiraj Salai,
Egmore, Chennai 600 008.
Represented by its authorised signatory.

2.Mr.Madhu Desikan
(IBBI/IPA001/IPP00579/2017-2018/11021)
Resolution Professional,
New No.5, 1st Floor,
92nd Street, 18th Avenue,
Ashok Nagar,
Near Vadapalani Metro Station,
Chennai 600083.

.. Respondents in W.P.Nos.1691
& 1698 of 2025



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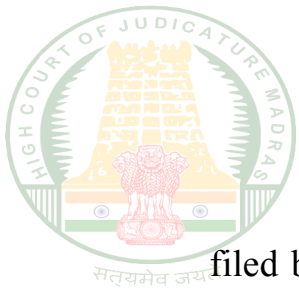
1. Indian Bank,
Stressed Asset Management Branch,
Zonal Office Building,
No.55, 2nd Floor, Ethiraj Salai,
Egmore, Chennai 600 008.
Represented by its authorised signatory.

2. Mr. Ganesan V.,
(IBBI/IPA-003/N-00330/2021-2018/13537)
Resolution Professional,
Having address at 14/D6,
Thiruvalluvar Street,
Maniyakaranpalayam Ganapathy,
Coimbatore,
Tamil Nadu 641 006.

.. Respondents in W.P.No.1708 of 2025

Prayer in W.P.No.1691 of 2025: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records in Company Petition No.(IB)No.219/(CHE)/2024 filed by the 1st Respondent before the National Company Law Tribunal, Division Bench (Bench – I) Chennai, under Section 95 of the Insolvency and Bankruptcy Code, 2016 and quash the order dated 18.10.2024 and all further proceedings in Company Petition No.(IB)No.219/(CHE)/2024 pending before the National Company Law Tribunal, Division Bench (Bench – I) Chennai.

Prayer in W.P.No.1698 of 2025: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records in Company Petition No.(IB)No.179/(CHE)/2024



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Prayer in W.P.No.1708 of 2025: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records in Company Petition No.(IB)No.188/(CHE)/2024 filed by the 1st Respondent before the National Company Law Tribunal, Division Bench (Bench – II) Chennai, under Section 95 of the Insolvency and Bankruptcy Code, 2016 and quash the order dated 05.11.2024 and all further proceedings in Company Petition No.(IB)No.188/(CHE)/2024 pending before the National Company Law Tribunal, Division Bench (Bench – II) Chennai.

In all Writ Petitions:

For Petitioners : Mr.Bharadwajaramasubramaniam R
For Respondents : Mr.D.Sairamkumar for R1
: No appearance for R2



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COMMON ORDER

(Order of the Court was made by Dr.ANITA SUMANTH..J)

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These writ petitions are filed by guarantors who seek a writ of certiorari calling for and quashing Company Petition Nos.(IB)No.219/(CHE)/2024, (IB)No.179/(CHE)/2024 and (IB)No.188/(CHE)/2024, respectively filed by the Indian Bank, Stressed Asset Management Branch/R1 before the National Company Law Tribunal, Division Bench (Bench – I), Chennai in respect of Company Petition Nos.(IB)No.219/(CHE)/2024 and (IB)No.179/(CHE)/2024 and the National Company Law Tribunal, Division Bench (Bench – II), Chennai, in respect of Company Petition No.(IB)No.188/(CHE)/2024, under Section 95 of the Insolvency and Bankruptcy Code, 2016 (IB Code).

2. Inter alia, the petitioners also challenge the orders of the National Company Law Tribunal (NCLT/Tribunal), dated 18.10.2024, 25.09.2024 and 05.11.2024 respectively, appointing a Resolution Professional for commencement of insolvency resolution process in respect of personal guarantors. R2 arrayed in these writ petitions are the Resolution Professionals who have been appointed.

3. Various grounds have been raised by the petitioners as to why the petitions under Section 95 of the IB Code are misconceived.



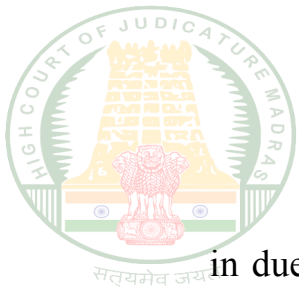
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According to the petitioners, the company, i.e., Indalloys & Extrusions Private Limited (formerly known as M/s.Ind Solders and Alloys Pvt.Ltd.,) had been wound up as early as on 28.11.2012 in Company Petition No.3 of 2010 filed by a creditor.

4. While so, the Indian Bank/R1 has now approached the NCLT by way of an application under Section 95 of the IBC as against the present writ petitioners and the Petitioners have been duly represented by counsel before the Tribunal. The Tribunal has proceeded to appoint an Interim Resolution Professional (IRP) to examine the application and recommend either acceptance/rejection of the application. The IRP has been given 10 days to file a report with his recommendations.

5. Before us, learned Counsel for the Petitioner raises serious objections to the assumption of jurisdiction by the National Company Law Tribunal (NCLT/Tribunal) and emphasises that the question of jurisdiction should be heard as a preliminary question by the NCLT even prior to the appointment of the Resolution Professional.

6. A counter has been filed by R1 objecting to the maintainability of the writ petition. R1 points out that the objections of the petitioner to the s.95 application are before the NCLT that will be heard and decided



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in due course. Hence there is no merit in this writ petition that must be rejected as non-maintainable.

7. We have heard the rival contentions and perused the material papers and are of the considered view that this writ petition is both misconceived, as at this juncture, and pre-mature.

8. Learned Counsel for the petitioner has submitted that the very initiation of proceedings by the NCLT by way of the impugned order is contrary to various provisions of the IB Code. Their attempt is to curtail the proceedings before the NCLT at the very inception, as, according to them the NCLT has no jurisdiction to entertain the application filed by R1 u/s 95 of the IB Code. Per contra, R1 has contested the very maintainability of the writ petition as also the grounds on merits.

9. The Supreme Court, in *Dilip B Jiwrajka Vs. Union of India & Ors* (2023 INSC 1018), considered a challenge to the constitutional validity of Sections 95 to 100 of the IB Code. One of the issues examined was as to whether the parties must be heard at the very inception, even prior to the commencement of enquiry by the Resolution professional.

10. The conclusions of the Bench in that case are as follows:

86. We summarise the conclusion of this judgment below:



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- (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;*
- (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*



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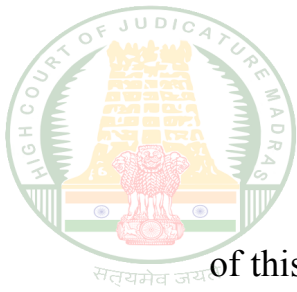
accept or reject the application;

(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.

11. One of the submissions of the Appellants in *Dilip B.Jiwrajka*, apart from the challenge to the vires of the provisions, was that they should be heard even at the stage of appointment of Resolution Professional on the jurisdictional facts that may arise in the matter. This contention was negatived, as the Bench was of the view that there was sufficient mechanism for the debtor/guarantor to be heard after the report of the Resolution Professional was submitted.

12. The nature of enquiry by the Resolution Professional is only facilitative, and intended to collate necessary facts in order to decide whether the application seeking insolvency process may be proceeded with, at which stage the parties will be heard. As the Report of the Resolution Professional is only recommendatory in nature and the guarantor will be heard thereafter, at the stage of adjudication, after a copy of the Report is supplied to them, under Section 99(10) of the IB Code, there is no violation of the principles of natural justice. The ratio



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of this judgement is applicable to the present matter on all fours.

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13. In fact, the NCLT has, in the impugned order, also referred to and quoted the conclusions in *Dilip B.Jiwrajka's* case. The impugned order has been passed on 05.11.2024 and the writ petition has been instituted in early 2025. Notice was issued on 24.01.2025 and no interim orders have been obtained. When the matters are taken up today, we find that, pending these writ petitions, the report of the Resolution Professional has been submitted with a copy to the Petitioners.

14. The Petitioners have also submitted their objections thereto, a copy of which has been supplied to us. A perusal of the objections reveals that the Petitioners have challenged the maintainability of the s.195 applications even before the Tribunal. Thus, it is only appropriate for the Tribunal to consider the same. Even assuming that the decision of the NCLT is adverse to the Petitioners, they have effective remedies including an efficacious alternate statutory remedy against such adjudication.

15. In this view of the matter, we do not advert to the merits of the objections or the defence of R1 and leave it to the parties to pursue the matter before the NCLT. Let the NCLT consider the issue of



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maintainability as a preliminary issue prior to proceeding with the substantial aspects of the matter.

16. In light of the narration as above, we decline interference in both challenges, the s.195 application filed by R1, as also the order of the NCLT dated 18.10.2024, 25.09.2024 and 05.11.2024 respectively, in terms of this order. These writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[A.S.M., J] [N.S., J]
16.06.2025

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Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No

To
Indian Bank,
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No.55, 2nd Floor, Ethiraj Salai,
Egmore, Chennai 600 008.
Represented by its authorised signatory.



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DR. ANITA SUMANTH,J.

and

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