

W.P.No.18536 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

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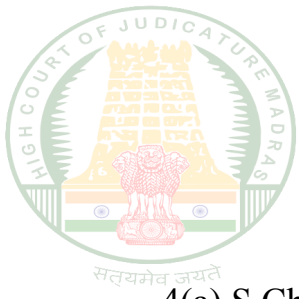
RESERVED ON : 17.04.2025
PRONOUNCED ON : 29.05.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 18536 of 2021

1. T.Sivasankar
S/o. Thukalakkanam,
No.3/11, Mariamman Koil Street,
Pallianeelianoor & Pos,
Villupuram District.
2. Krishnamoorthy,
S/o. Kannan,
No.15, Mangulam Street,
Andiyarpalayam,
Gengampalayam Post,
Puducherry,
3. G.Srinivasan,
S/o. Gobal,
No.2, Mangalvinayagar Koil Street,
Kavanipakkam,
Thirupachanur PoStreet,
Villupuram District.



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4(a) S.Chellasamy (dead)

S/o. Sinnavellai

4(b) T.Stella

W/o. Chellasamy

No.8 /162, middle Street,

Veeranapuram, Kalingappati,

Tirunelveli, Tamilnadu.

Note: (suo motu impleaded by the court
vide order dated 17.4.2025)

5. E.Lakshminarayanan,

S/o.Elumalai,

No.95, Perumal Koil Street,

Rajbhavan, Pondicherry.

.... petitioners

Vs.

1.The Managing Director,

M/s. Associated Cylinders & Accessories

Private Limited,

Thirubhuvanai

Puducherry – 605 107.

2. CS.Satyadevi Alamuri,

Liquidator of Associated Cylinders & Accessories

Private Limited,

23, Lake Area, 3rd Cross Street,

Nungambakkam, Chennai – 600034.

...respondents



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Prayer in W.P.

To issue an order, direction, writ more particularly a writ in the nature of Writ of Certiorarified Mandamus, call for the records pertains to the impugned order of the 2nd respondent dated 20.01.2021, and quash the same, consequently direct the respondents to settle the petitioner due in terms of the order of the NCLT, (National Company Law Tribunal), single Bench, Chennai made in CP/607/(IB)/CB/2017, and pass such other as this Honourable court may be deem fit and proper.

Appearance of Parties:

For petitioners: M/s.P.R.Thiruneelankandan and M.Rajalakshmi, Advocates

For respondents: Mr.P.Raghunathan, Advocate

For M/s.T.S.Gopalan & Co.

JUDGMENT

Heard.

2.Since the filing of the writ petition, the 4th petitioner, Chellasamy, passed away on 27.12.2023, as evidenced by the death certificate produced



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before this Court. The said certificate also records that he is survived by his wife, T. Stella. In the tripartite agreement dated 28.05.2024, signed by all five petitioners, the deceased Chellasamy was represented by his wife, T. Stella, who signed the agreement as his legal heir. In view of the above, this Court, by order dated 17.04.2025, suo motu impleaded T. Stella as Petitioner No. 4(b) in the writ petition, dispensing with the necessity for filing a formal application for substitution.

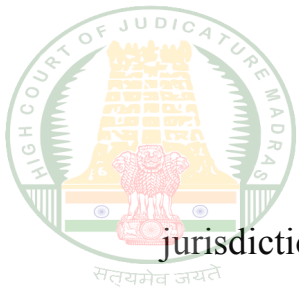
3.The petitioners have filed the present writ petition challenging the communication issued by the second respondent in response to their letter dated 22.12.2020, wherein it was informed that the National Company Law Tribunal, Chennai, had ordered the liquidation of M/s. Associated Cylinders & Accessories Private Limited by order dated 16.07.2018. It was further stated that, in terms of Section 53 of the Insolvency and Bankruptcy Code, 2016, the distribution of assets was to be effected upon commencement of the liquidation process. The company had treated the petitioners as falling within the definition of “workers” under Section 53(1)(b)(i) and, with the consent of the secured creditor, had disbursed the first tranche of payment to all employees. They were also informed that the 1st and 3rd petitioners had resigned from the company in



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the year 2014. It was further clarified that both the first and second tranches of distribution had been made strictly in accordance with the provisions of the IBC, 2016, and as such, the request for further distribution from the liquidation account could not be acceded to. Aggrieved by the said communication, the petitioners seek a direction to the respondents to settle their dues in accordance with the orders passed by the National Company Law Tribunal.

4. When the writ petition was taken up for hearing on 06.09.2021, notice was ordered to the respondents. The first respondent, which is under liquidation, entered appearance through the second respondent—the Official Liquidator—who filed a counter affidavit dated 13.04.2025. In the said counter, it was submitted that, under Section 40 of the Insolvency and Bankruptcy Code, 2016, the Liquidator is empowered, upon verification of claims under Section 39, to either admit or reject such claims. In the event of rejection, the aggrieved creditor is entitled, under Section 42 of the Code, to prefer an appeal before the Adjudicating Authority within a period of 14 days. Alternatively, the petitioners also have a remedy under Section 60(5) of the Code to approach the National Company Law Tribunal if they are aggrieved by the non-admissibility of their claims. It was therefore contended that the invocation of writ

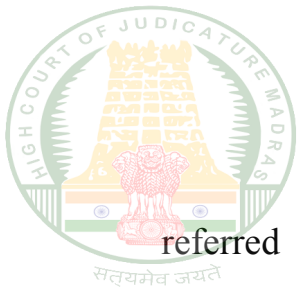


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jurisdiction under Article 226 of the Constitution is not tenable in the absence of any extraordinary or exceptional circumstances.

5.The Liquidator further stated that petitioners 1 to 3, along with other employees, had earlier filed a petition under Section 9 of the IBC, 2016 on 25.08.2017, seeking initiation of corporate insolvency resolution process (CIRP) against the first respondent company, treating themselves as operational creditors. The said petition was admitted by the NCLT, Chennai, on 10.01.2018. Initially, an Interim Resolution Professional was appointed. Subsequently, the Committee of Creditors resolved to appoint the deponent of the counter affidavit as the Resolution Professional, and the NCLT, Chennai, accordingly appointed him. However, since no resolution plan was received within the prescribed time, the Committee of Creditors resolved to liquidate the first respondent company, and a liquidation order was accordingly passed by the NCLT on 16.07.2018.

6.It was further pointed out that, after initiation of the CIRP, petitioners 4 and 5, who are members of the ACYL Workers Union, raised an industrial dispute in I.D(T). No. 12 of 2018 through their union. The said dispute was



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referred by the Government to the Industrial Tribunal and Labour Court,

WEB COPY Puducherry, vide G.O.Rt. No. 48/AIL/LAB/J/2018 dated 03.04.2018. In that proceeding, neither the Resolution Professional nor the Liquidator was impleaded as a party. An ex parte award was passed on 05.04.2019. Subsequently, Execution Petition No. 399 of 2019 was filed, and again, the pendency of CIRP or liquidation proceedings was not disclosed to the executing court. An ex parte order was passed therein on 09.04.2021. Challenging these ex parte orders, the Liquidator has filed W.P. Nos. 2396 of 2022 and 22096 of 2024, which are pending consideration.

7.The Liquidator also brought to the notice of this Court that, along with two trade unions, the petitioners entered into a tripartite settlement with the Liquidator on 28.05.2024. Under the terms of the said agreement, the five petitioners had expressly agreed to withdraw the present writ petition within a fortnight from the date of signing the agreement. However, despite such undertaking, the petitioners failed to do so.

8.The principal questions that arise for consideration in this writ petition are whether the relief sought by the petitioners—predicated on the order of



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admission passed by the National Company Law Tribunal in C.P./607/(IB)/CB/2017—is legally tenable, and whether the present writ petition is maintainable in the face of an alternative and efficacious statutory remedy available under the Insolvency and Bankruptcy Code, 2016.

9.The relief sought in the present writ petition is for quashing the order dated 20.01.2021 passed by the second respondent—Liquidator, rejecting the petitioners’ claim, and for a consequential direction to the Liquidator to settle the petitioners’ dues in terms of the order passed by the National Company Law Tribunal, Chennai Bench, in C.P./607/(IB)/CB/2017. A perusal of the prayer reveals that the petition has been filed without fully appreciating the nature and effect of the order passed by the NCLT in the said proceedings.

10.The first three petitioners, along with 28 others—making a total of 31 persons—had filed a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016, on 25.08.2017, treating themselves as operational creditors of the 1st respondent company. The said petition was taken on file and numbered as C.P./607/(IB)/CB/2017. By order dated 10.01.2018, the NCLT admitted the petition and initiated Corporate Insolvency Resolution Process (CIRP) against



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the first respondent company, appointing an Interim Resolution Professional.

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This is the order referred by the petitioners in the writ prayer. In the said order the NCLT considered the existence of operational debt, default and threshold amount and admitted the petition.

11.The petitioners contend that since the National Company Law Tribunal, while admitting C.P./607/(IB)/CB/2017 under Section 9 of the IBC, had accepted the existence of their debt and the default committed by the 1st respondent, the 2nd respondent–Liquidator lacks the authority to subsequently reject their claims. This contention is legally untenable and proceeds on a fundamental misunderstanding of the scheme of the Insolvency and Bankruptcy Code, 2016.

12.An order of admission under Section 9 of the IBC is not a final adjudication of the claim or its quantum. At the stage of admission, the Adjudicating Authority merely records a *prima facie* satisfaction as to the existence of an operational debt, a default thereon, and compliance with the threshold monetary limit. It does not result in a conclusive determination of the validity, extent, or admissibility of individual claims.



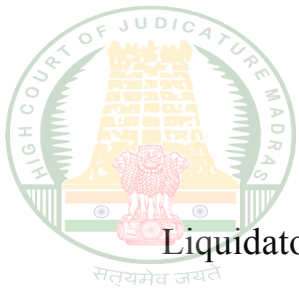
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13.The Code entrusts the Interim Resolution Professional under Section 18, the Resolution Professional under Section 25, and the Liquidator under Section 35, with the statutory obligation to receive, collate, and verify all claims independently and in accordance with the law. The Supreme Court, in **Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17**, has categorically held that the determination of default at the stage of admission is only for triggering the insolvency process; it is not a final adjudication of claims.

14.As affirmed by the Hon'ble Supreme Court in **M/s. B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates, (2019) 11 SCC 633**, the purpose of admission under the Insolvency and Bankruptcy Code, 2016 is not to adjudicate the precise quantum of the claim, but to determine whether a debt exceeding the prescribed threshold exists and whether there has been a default in its payment.

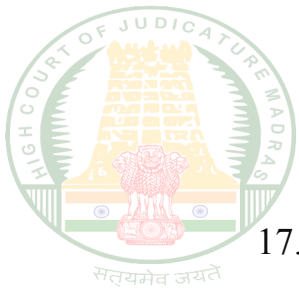
15.Thus, it is well settled that the Resolution Professional or the



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Liquidator is vested with the authority to independently verify, and if necessary, reject claims, notwithstanding the admission of the Corporate Insolvency Resolution Process by the NCLT. Further, in **Jignesh Shah v. Union of India, (2019) 10 SCC 750**, the Hon'ble Supreme Court held that, admission under Section 9 does not preclude the RP or Liquidator from ejecting fraudulent or unsubstantiated claims.

16.The order of admission passed by the NCLT under Section 9 of the Insolvency and Bankruptcy Code, 2016 is based solely on the prima facie satisfaction regarding the existence of a debt and default at the threshold stage. Such an order does not preclude the Resolution Professional or the Liquidator from subsequently rejecting an individual worker's claim if it is found to be unsupported by adequate documentary evidence or otherwise inadmissible under the law. Thus, NCLT Admission Order does Not Bind RP/Liquidator as to Claim Validity. In this view of the matter, the relief sought in the writ petition, which is premised on the assumption that the NCLT's order of admission conclusively establishes the petitioners' entitlement, is legally misconceived.

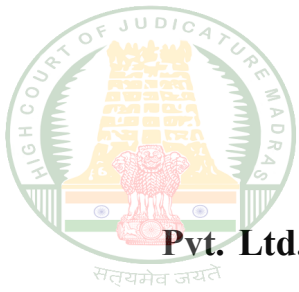


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17. On the question of maintainability, the respondents have raised a preliminary objection, contending that the present writ petition—filed against the rejection of claim by the Liquidator—is not maintainable in view of the specific statutory remedy available under the Insolvency and Bankruptcy Code, 2016. In response, the petitioners have argued that, notwithstanding the availability of an alternative remedy, the writ petition is maintainable under Article 226 of the Constitution.

18. It must be noted that Section 42 of the IBC, 2016 provides a specific statutory mechanism for appeal against an order passed by the Liquidator, which must be preferred before the Adjudicating Authority within a period of fourteen days. In the present case, the impugned order of the Liquidator is dated 20.01.2021, whereas the writ petition has been filed only on 23.03.2021, beyond the prescribed period of limitation. The petitioners, having failed to avail the remedy under Section 42, cannot now invoke the writ jurisdiction of this Court, particularly when an efficacious and statutorily prescribed remedy was available.

19. The Hon'ble Supreme Court, in **Embassy Property Developments**



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Pvt. Ltd. v. State of Karnataka, (2020) 13 SCC 308, has categorically held

that matters falling within the exclusive domain of the NCLT/NCLAT are not amenable to writ jurisdiction, except in exceptional circumstances, namely:

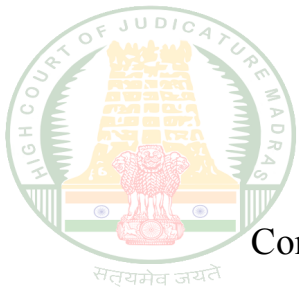
- (i) where the Liquidator has acted wholly without jurisdiction;
- (ii) where there is a blatant violation of the principles of natural justice; or
- (iii) where the action is manifestly arbitrary or actuated by mala fides.

20.The case on hand does not fall within any of the aforesaid exceptions.

A Division Bench of this Court, in **W.P. No. 712 of 2024 dated 23.01.2025 (Dharamshi K. Patel and another v. Kamala D. Patel and others)**, while considering a writ petition filed against the order of admission passed by the NCLT, Chennai Bench, initiating the corporate insolvency resolution process against a corporate debtor, made the following observation:

(23)Both sides relied upon a few judgments on the maintainability of the writ petition under Article 226 of the Constitution of India in view of the alternative remedy available. This Court in exceptional cases can entertain a writ petition under Article 226, as there are several exceptions carved out by this Court and Hon'ble Supreme Court to entertain a writ petition under Article 226 despite there is an alternative remedy. However, we find no extraordinary situation or circumstance warranting this Court to entertain a writ petition when there is an effective alternative remedy. Therefore, this Court finds no merit in this writ petition.

(24)Accordingly, this writ petition stands dismissed.



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Consequently, connected miscellaneous petitions are closed.

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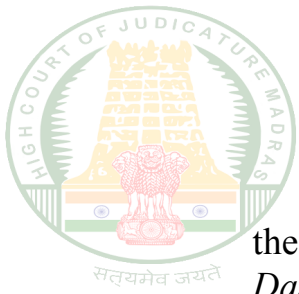
21. The Apex Court, while examining the maintainability of writ petitions filed before the High Court against orders passed by the Debt Recovery Tribunal (DRT), in the context of availability of a statutory alternative remedy, in **Phr Invent Educational Society vs Uco Bank on 10 April, 2024 reported in 2024 INSC 297** observed as follows:

“29. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:

- (i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;
- (ii) it has acted in defiance of the fundamental principles of judicial procedure;
- (iii) it has resorted to invoke the provisions which are repealed; and
- (iv) when an order has been passed in total violation of the principles of natural justice.

30. It has however been clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.

31. Undisputedly, the present case would not come under any of



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the exceptions as carved out by this Court in the case of *Chhabil Dass Agarwal* (supra).

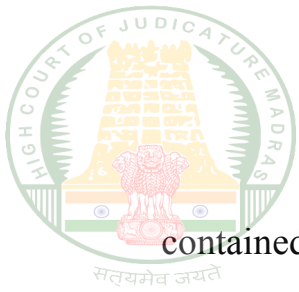
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32. We are therefore of the considered view that the High Court has grossly erred in entertaining and allowing the petition under Article 226 of the Constitution.

33. While dismissing the writ petition, we will have to remind the High Courts of the following words of this Court in the case of *Satyawati Tondon* (supra) since we have come across various matters wherein the High Courts have been entertaining petitions arising out of the DRT Act and the SARFAESI Act in spite of availability of an effective alternative remedy:

“55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

22. Just as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are recognised as complete and self-



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contained codes, the Insolvency and Bankruptcy Code, 2016 is also a

comprehensive and exhaustive piece of legislation. The Supreme Court, in

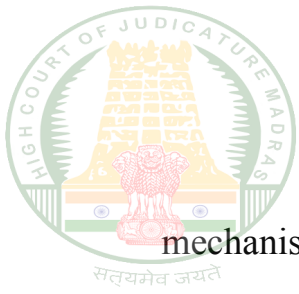
Embassy Property Developments Pvt. Ltd. v. State of Karnataka, (2020) 13

SCC 308, made the following observations with regard to the nature and scope

of the Code:

“11. It is beyond any pale of doubt that IBC, 2016 is a complete Code in itself. As observed by this Court in M/s [Innoventive Industries Limited vs. ICICI Bank](#), it is an exhaustive code on the subject matter of insolvency in relation to corporate entities and others. It is also true that IBC, 2016 is a single Unified Umbrella Code, covering the entire gamut of the law relating to insolvency resolution of corporate persons and others in a time bound manner. The code provides a three-tier mechanism namely (i) the NCLT, which is the Adjudicating Authority (ii) the NCLAT which is the appellate authority and (iii) this court as the final authority, for dealing with all issues that may arise in relation to the reorganisation and insolvency resolution of corporate persons. In so far as insolvency resolution of corporate debtors and personal 3 AIR 2017 SC 4084 guarantors are concerned, any order passed by the NCLT is appealable to NCLAT under Section 61 of the IBC, 2016 and the orders of the NCLAT are amenable to the appellate jurisdiction of this court under Section 62. It is in this context that the action of the State of Karnataka in bypassing the remedy of appeal to NCLAT and the act of the High Court in entertaining the writ petition against the order of the NCLT are being questioned.”

23. Thus, the Insolvency and Bankruptcy Code, 2016, being a complete and self-contained code, provides a well-structured three-tier remedial

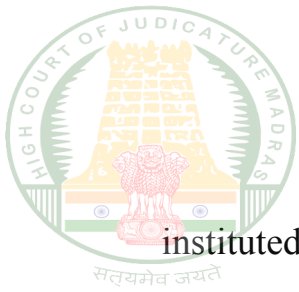


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mechanism. In view of the same, the present writ petition, filed by the petitioners by bypassing the statutory framework under the IBC, 2016, is not maintainable.

24. Another relevant aspect pertains to the pendency of two writ petitions, W.P. No. 2396 of 2022 and W.P. No. 22096 of 2021, filed by the second respondent challenging the *ex parte* award dated 05.04.2019 passed by the Industrial Tribunal in I.D. (T) No. 12 of 2018 and the order dated 09.04.2021 passed in E.P. No. 399 of 2019. It is an admitted position that these orders were passed after the admission of the first respondent company into the Corporate Insolvency Resolution Process (CIRP) by the NCLT on 10.01.2018 and subsequent liquidation order dated 16.07.2018.

25. In terms of Section 14 of the Insolvency and Bankruptcy Code, 2016, once an order of admission is passed initiating CIRP, a moratorium is triggered, which prohibits the institution or continuation of any legal proceedings against the corporate debtor. Furthermore, under Section 33(5) of the Code, upon commencement of liquidation, no suit or other legal proceeding shall be



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instituted or continued against the corporate debtor by any creditor or third party without prior approval of the Adjudicating Authority.

26. In the present case, the *ex parte* orders were obtained without apprising the Industrial Tribunal or the Executing Court of the CIRP and liquidation orders passed by the NCLT against the first respondent. In such circumstances, the proceedings conducted and orders passed in violation of the express prohibitions under Sections 14 and 33(5) of the IBC, 2016, are rendered void and non-est in the eyes of law.

27. In the impugned order, the second respondent rejected the claim of the petitioners on the ground that they do not fall within the definition of “workmen” under the applicable provisions, and further noted that the 1st and 3rd petitioners had resigned from service in the year 2014, nearly four years prior to the initiation of liquidation order. If the petitioners were aggrieved by the said rejection, the appropriate course of action would have been to prefer an appeal under Section 42 of the Insolvency and Bankruptcy Code, 2016. Instead, the petitioners have chosen to file the present writ petition, which is not maintainable in view of the availability of an efficacious statutory remedy.



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28. Moreover, it is also pertinent to note that the petitioners have not adhered to the procedure established under the statute, nor have they honoured the undertaking given in the tripartite agreement dated 28.05.2024, wherein they had categorically agreed to withdraw the present writ petition within fifteen days from the date of execution of the said agreement. Despite such commitment, the petitioners have continued to prosecute the present writ petition in clear breach of the terms of the aforesaid settlement.

29. For the reasons discussed above, the writ petition is liable to be dismissed as not maintainable, in view of the availability of an efficacious alternative remedy under the provisions of the Insolvency and Bankruptcy Code, 2016. The petitioners, by bypassing the statutory mechanism, have misused the process of law and unnecessarily consumed valuable judicial time. It must be borne in mind that the IBC, 2016 is a codified and time-bound legislation enacted to ensure the expeditious resolution or liquidation of corporate debtors, with specific timelines prescribed at each stage. The conduct of the petitioners, in prosecuting this writ petition contrary to the statutory scheme, frustrates the very object and purpose of the Code.



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30. Accordingly, the writ petition is dismissed. Although this Court was initially inclined to impose costs on the petitioners, it is noted upon consideration that the petitioners are employees with limited means and appear to have acted on erroneous legal advice. In view of the same, this Court refrains from imposing costs.

29.05.2025

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NCC : Yes / No

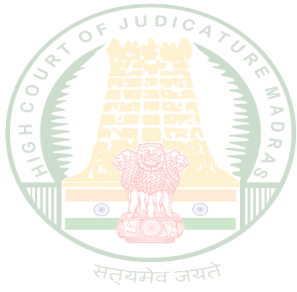
Index : Yes / No

Speaking Order / Non-speaking Order

To

The National Company Law Tribunal,
(Single Bench), Chennai.

20/21



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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
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29.05.2025