IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 27091 of 2025

Sanjay Jhunjhunwala & Ors.

Versus

Piramal Finance Limited & Ors.

Mr. Gopal Jain, Sr. Adv.
Mr. Ratnanko Banerjee, Sr. Adv.
Mr. Sankarsan Sarkar
Mr. Aditya Kanodia
Ms. Suparna Sardar

.....For the petitioners.

Mr. Tilak Kumar Bose, Sr. Adv.
Mr. Krishnaraj Thaker, Sr. Adv.
Mr. Somdutta Bhattacharyya
Ms. Kiran Sharma
Mr. Sagnik Aditya

.....For the respondents no. 1 & 2.

Hearing Concluded On : 01.12.2025

Judgment on : 03.12.2025

Krishna Rao, J.:

1. The petitioners are guarantors who have provided personal guarantees securing the Credit Facilities availed by the respondent no.3. The respondent no.1 is a non-banking financial company engaged in the businesses of lending monies to individuals, micro entrepreneurs and business across India. The respondent no.2 is the Security Trustee appointed by the respondent no.1 to hold security documents on behalf of the respondent no.1.

2. The grievances of the petitioners in the writ petition arises from the invocation of the jurisdiction of the Learned National Company Law Tribunal under Section 95 of the Insolvency and Bankruptcy Code, 2016 by the respondent no.2 despite the principal borrower having cleared the entire outstanding amounts due and payable along with penal interest.

3. Mr. Gopal Jain, Learned Senior Advocate representing the petitioners submits that the RBI Master Circular provides that a loan shall become NPA only if the interest is not paid for a consecutive period of 90 days. As per the Master Circular, there is no default committed by the borrower till the loan amount becomes NPA. In case there is any delay in payment of the outstanding amount, the same can be compensated by way of penal interest on the outstanding amount.

4. Mr. Jain submits that the respondent no. 3 has not only cleared the entire outstanding amounts due and payable along with the penal

interest but has even made payment for the future quarterly installments under the Credit Facilities. He submits that as on the date of filing of the present petition, the majority of the Credit Facilities stands repaid and a meagre amount of Rs. 27.71 crores out of Rs. 102 crores remain outstanding (but not due and payable). He submits that the petitioners are the guarantors who have provided the personal guarantees securing the Credit Facilities availed by the respondent no. 3. It is the contention of the petitioners that once the debt due and payable to the Corporate Debtor has been paid by the principal borrower, no claim remains alive against the guarantors (Petitioners herein), no proceedings under the IBC can be instituted against the petitioners.

5. Mr. Jain submits that the Personal Insolvency Petitions initiated against the petitioners only with the *mala fide* intention to harass the petitioners. Mr. Jain relied upon the judgment in the case of ***Swiss Ribbons Private Limited & Anr. Vs. Union of India & Ors.*** reported in ***(2019) 4 SCC 17*** and submits that from the Circular, it is clear that the accounts are declared NPA only if defaults made by a Corporate Debtor are not resolved. A person is a defaulter when an installment or interest on the principal remains overdue more than three months after which the accounts are declared NPA.

6. Mr. Tilak Kumar Bose, Leaned Senior Advocate representing the respondent no. 1 submits that there are two sets of proceedings pending before the Learned Adjudicating Authority i.e. the first set of

proceeding is under Section 7 of the Insolvency and Bankruptcy Code, 2016 instituted by the respondent no. 1 against the respondent no. 3 who is a borrower and a second set of the proceeding is under Section 95 of the Insolvency and Bankruptcy Code, 2016, instituted by the respondent no. 3 against the petitioners who are the guarantors.

7. Mr. Bose submits that Clause 17.1.6 of the Loan Agreement permits the Trustee i.e. the respondent no. 2 to institute proceedings against the guarantors and accordingly the respondent no. 2 initiated the proceedings against the petitioners. He submits that whether or not the invocation of IBC is contrary to RBI Circulars is an issue which has to be determined by the Learned National Company Law Tribunal who is the adjudicating authority under the IBC.

8. Mr. Bose submits that prior to filing of the present writ petition, the respondent no. 3 has initiated a commercial suit being C.S. (Com) No. 93 of 2025 against the respondent nos. 1 and 2 and the said suit is still pending for adjudication. He submits that initially in the said suit, an interim order was passed restraining the respondent nos. 1 and 2 from giving any effect or further effect to the recalling notices wherein the entirety of the loan was recalled. The Appellate Court has modified the interim order on 3rd November, 2025 and the legality, validity and sufficiency of recall notice and follow up notices have been left to be decided by the Learned National Company Law Tribunal. Before the Appellate Court Learned Counsel appearing for the petitioner no. 1 submitted that his client does not object to Learned National Company

Law Tribunal deciding upon the application under Section 7 of the IBC in accordance with law.

9. Mr. Bose submits that on 15th July, 2025 and on 16th July, 2025, proceedings under Section 95 of the IBC was filed. The nature of proceedings under Section 95 of the IBC has now received judicial interpretation. The proceedings under Section 7 are instituted against the Corporate Debtor, which falls under Part-II of the IBC. The proceedings against the guarantors who are individuals can only be filed under Section 95 of the IBC, which falls under Part-III.

10. Mr. Bose submits that it is well settled that unlike proceeding under Section 7, in case of proceedings under Section 95, a Resolution Professional is appointed for the purpose of facilitation. There is a sharp distinction between the manner a Resolution Professional is appointed under Part-II pursuant to proceedings under Section 7 of the IBC and the Resolution professional appointed under Part-III pursuant to an application under Section 95 of the IBC. In support of his submissions, he has relied upon the judgment in the case of ***Bank of Baroda vs. Farooq Ali Khan*** reported in ***2025 SCC OnLine SC 374*** which follows the judgment of ***Dilip B. Jiwrajka vs. Union of India & Ors.*** reported in **(2024) 5 SCC 435**.

11. Mr. Thaker, Learned Senior Advocate representing the respondent no. 2 submits that the respondent nos. 1 and 2 are the private companies and the respondent no. 4 is the Reserve Bank India (RBI). He has

referred the prayer of the writ petition and submits that the petitioners have challenged the proceeding initiated under the IBC which is pending before the National Company Law Tribunal and thus the writ petition is not maintainable. He further submits that though the petitioners have made the RBI as the respondent no. 4 and also prayed for relief being prayer (a) of the writ petition but the petitioners have not made any representation to the RBI with respect to their claim before filing the present writ petition. The petitioners have not challenged any virus of the IBC. He submits that the writ petition is filed by the petitioners is an abuse of the process of law.

12. In support of his submission, he has relied upon the judgment in the case of ***K.K. Banijya Pvt. Ltd. vs. Union of India & Ors.*** reported in ***2023 SCC OnLine Cal 1964*** and submits that the Coordinate Bench of this Court has held that the respondents being the private authority, the writ petition is not maintainable. He further relied upon the judgment in the case of ***S. Shobha vs. Muthoot Finance Ltd.*** reported in ***2025 SCC OnLine SC 177*** and submits that the respondent nos. 1, 2 and 3 are the companies registered under the Companies Act, it does not come under the purview of "State" within the meaning of Article 12 of the Constitution of India. He further relied upon the judgment in the case of ***Archana Wani vs. Indian Bank*** reported in ***2025 SCC OnLine Bom 4069*** and submits that the prayer made by the petitioners in the present writ petition will effects the proceedings pending before the

Learned Tribunal and no order can be passed in the present writ petition.

13. The petitioners have filed the present writ petition praying for the following reliefs:

> *"(a) Issue a writ of and/or in the nature of mandamus do issue commanding the Respondent No.4 and each of them to pass necessary and appropriate directions to Respondent Nos.1 and 2 for dealing with the Personal Guarantees of the Petitioners in accordance with the RBI Master Circular and Fair Lending Practices issued by Respondent No.4, from time to time;*
>
> *(b) Issue a writ of and/or in the nature of Mandamus to the Learned NCLT commanding it to dismiss the Personal Insolvency Petitions filed by Respondent No.2;*
>
> *(c) Issue a writ of and/or in the nature of Certiorari do issue commanding the Respondent Nos. 1 and 2 and each of them to certify and produce all necessary records before this Hon'ble Court so that complete justice may be done upon perusal thereof;*
>
> *(d) Issue a writ of and/or in the nature of prohibition to the Hon'ble NCLT commanding it to abstain from entertaining and/or proceeding with the Personal Insolvency Petitions filed by Respondent No. 2;*
>
> *(e) Pass an Order quashing and setting aside the Personal Insolvency Petitions filed by Respondent no. 2 against the Petitioners before the Hon'ble NCLT.*
>
> *(f) Rule NISI in terms of the prayers above*
>
> *(g) Interim order be passed directing stay on further proceedings in the Personal Insolvency Petitions filed by Respondent No. 2 before the Hon'ble NCLT.*
>
> *(h) Ad interim order(s) in terms of interim prayers above;*

(i) pass such further order and/or direction as this Hon'ble Court may deem fit and proper."

14. The petitioners are the guarantors who have provided personal guarantees securing the Credit Facilities availed by the respondent no.3. The main contention of the petitioners is that the respondent no.3 not only cleared the entire outstanding amount due and payable along with penal interest but has even made payment of the future quarterly instalments under the Credit Facilities. As on date of filing of the present writ petition, the majority of the Credit Facilities stand repaid and a meagre amount of Rs. 27.71 crores out of Rs. 102 crores remain outstanding and ready to pay the balance amount of Rs. 27.71 Crores by January, 2026.

15. The respondent no.1 by a notice dated 13th June, 2025, recalled the loan of the total amount of Rs. 92,83,54,040/- which was due and payable. The respondent no.2 is the Security Trustee who is empowered under the Loan Agreement and other facility documents to institute proceedings against the guarantors. There is no dispute that two sets of proceedings i.e. proceeding under Section 7 and under Section 95 of the IBC, are pending before the Learned National Company Law Tribunal. The respondent no.1 has initiated proceeding under Section 7 of the IBC against the respondent no.3 i.e. the borrower and the respondent no. 2 i.e. the lender initiated proceeding against the petitioners i.e. guarantors under Section 95 of the IBC. Clause 17.1.6 of the Loan Agreement reads as follows:

> ***"17.1.6.*** *In case of trigger of any of the provisions of Insolvency and Bankruptcy Code, 2016 ("IBC") against the Borrower, or Obligors or any other security provider under these Terms and Conditions, the Lender is entitled to appoint an Insolvency Professional (as defined under IBC) and in any such case, the claim of the Lender against the security provided to them will be exclusive and independent of any other lenders or credit providers. Any amount realized from the enforcement, sale, transfer, auction of the secured assets underlying the Security to the Lender, will be credited to the Lender exclusively and will not form part of any pool of receivables under such proceedings under IBC whether initiated or due to be initiated. No clause in these Terms and Conditions should be treated as consent of the Lender to form part of such proceedings unless such consent is expressly provided by the Lender in writing."*

16. After issuance of demand notice in Form-B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. On 25th June, 2025, the respondent no. 2 has filed an application under Section 95(1) of the Insolvency and Bankruptcy Code, 2016, read with Rule 7(2) of the Rules, 2019, initiated personal insolvency proceedings against the petitioners.

17. Before filing of the present writ petition, the respondent no.3 had filed a Commercial Suit being C.S. (Com) No. 93 of 2025 against the respondent nos.1 and 2 wherein the petitioners were impleaded as respondent nos. 3 to 6. In the said suit, an interim order was passed on 19th August, 2025, restraining the respondent nos. 1 and 2 from giving effect to recalling the notices wherein the entire loan was recalled. In an

appeal, the Hon'ble Division Bench of this Court on 3rd November, 2025, passed the following order:

> *"Learned senior advocate appearing for the plaintiff submits on instruction, that, the plaintiffs are anxious with regard to the pledge and mortgage. He submits that, the issue of the validity of the pledge and mortgage cannot be decided by the NCLT. He submits on instruction, that, his client does not object to NCLT deciding upon the application under Section 7 of the IBC in accordance with law. He contends that, the entirety of the claim of the appellant was repaid although belatedly. He also points out that, so far as the belated portion is concerned, the same is governed by the terms of the agreement which allows the appellant to levy interest. That interest component was also paid.*
>
> *Contention of the plaintiff that, the entire amount stands repaid is disputed on behalf of the appellant.*
>
> *We find from the records that, an application under Section 7 of the IBC is pending consideration before the NCLT, Kolkata. Such application is prior in point of time.*
>
> *In the suit, the learned Single Judge proceeded to pass an ad interim order restraining the appellant from giving effect or further effect to the notice of recall and the follow up notices.*
>
> *Apparently, a portion of the recall notice as also the follow up notices deal with the pledge and mortgage that the appellant claims were created in favour of the appellant. It is accepted at the Bar that NCLT will not decide on the issue of pledge and mortgage when deciding the issue as to the admissibility of an application under Section 7 of the IBC.*
>
> *In such circumstances, it would be appropriate to modify the order impugned by permitting the appellant to press its application under Section 7 of the IBC before the NCLT. NCLT will note out and decide such application in accordance with law.*

> *All points raised by the parties with regard to the proceedings under Section 7 of the IBC are kept upon to be decided by the NCLT.*
>
> *It is clarified that the legality, validity and sufficiency of the recall notice and the follow up notices may be decided upon by the NCLT, if so raised to the extent of recalling.*
>
> *Accordingly, both the appeals and the connected application are disposed of. Interim order, if any, stands vacated."*

18. Proceeding under Section 7 are initiated against the Corporate Debtor which falls under Part-II of the IBC and the proceedings against guarantors who are individuals can only be filed under Section 95 of the IBC which is provided under Part–III of the Code. A Resolution Professional, who is appointed under Section 95 of the Code, scrutinizes the application and as a matter of course only processes the application. Upon scrutinizing, the Resolution Professional submits a report with reasons to the Adjudicating Authority with copies to the parties. The Adjudicating Authority on the basis of the Resolution Professional's report, either admit or reject the application filed under Section 95 of the Code under Section 100 of the IBC.

19. In the case of ***Dilip B. Jiwrajka Vs. Union of India & Ors.*** reported in ***(2024) 5 SCC 435,*** the Hon'ble Supreme Court held that:

> ***"2.*** *In a batch of three hundred and eighty-four petitions under Article 32 of the Constitution, the petitioners challenge the constitutional validity of Sections 95 to 100 of the Insolvency and Bankruptcy Code, 2016 ("IBC"). The individual facts of each case are not reproduced here as we*

are deciding the constitutionality of the above provisions of IBC.

3. *The principle aims of IBC are to promote investment, and resolution of insolvencies of corporate persons, firms, and individuals in a time-bound manner. IBC consolidated and amended a web of laws which had led to an ineffective and inefficient mechanism for resolution of insolvencies marked with significant delays.*

4. *Part III IBC deals with insolvency resolution and bankruptcy for individuals and partnership firms. Chapter III of Part III which is titled "Insolvency Resolution Process" ("IRP") comprises of Sections 94 to 120. Prior to the introduction of IBC, insolvency in relation to individuals was governed by the provisions of the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, both of which stand repealed.*

6. *By amending Act 26 of 2018, Parliament introduced amendments inter alia, in Section 60 which provides for the jurisdiction of the adjudicating authority, namely, the National Company Law Tribunal ("the Tribunal"). Among other things, the amendments to Section 60 comprehend the jurisdiction of the Tribunal in matters involving the bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of a corporate debtor.*

10. *Chapter III provides for the insolvency resolution process. Under Chapter III, the insolvency resolution process can be initiated by a debtor or a creditor. Section 94(1) enables a debtor who commits a default to apply, either personally or through a resolution professional, to the adjudicating authority for initiating the insolvency resolution process.*

11. *Section 95 enables the creditor to apply for the initiation of the insolvency resolution process either by himself, or jointly with other creditors or through a resolution professional. Under sub-section (2), a creditor may apply under sub-section (1) in relation to any partnership debt*

owed to him for initiating a resolution process against any one or more partners of the firm; or the firm. Section 95(4) stipulates the requirements of an application made by a creditor for the initiation of the insolvency resolution process. The application is governed by the form and manner as prescribed by Rules framed by the Central Government under Section 239. A copy of the application has to be furnished to the debtor. Immediately on the filing of an application under Section 94 or Section 95, an interim moratorium operates by virtue of the statutory provisions of Section 96 and the adjudicating authority is required to appoint a resolution professional.

13. *Section 98 contains provisions for the replacement of the resolution professional. Section 99 contains provisions for the submission of a report by the resolution professional to the adjudicating authority.*

14. *The scheme of Section 99 is that the resolution professional is required to examine the application which has been preferred by the debtor or the creditor within ten days of appointment and to submit a report to the adjudicating authority "recommending for approval or rejection of the application". In other words, the resolution professional under sub-section (1) of Section 99 performs a three-fold function:*

> *(i) The duty to examine the application submitted by the debtor or the creditor;*
>
> *(ii) The submission of a report; and*
>
> *(iii) The incorporation of recommendations in the report either for the approval or the rejection of the application which has been submitted by the debtor or the creditor.*

15. *Where an application has been filed by the creditor, the resolution professional, as sub-section (2) indicates, "may require the debtor to prove repayment of the debt claimed as unpaid by the creditor". The debtor may be required to furnish:*

> *(i) Evidence of the electronic transfer from the bank account of the debtor repaying the unpaid amount;*

(ii) Evidence of the encashment of a cheque issued by the debtor; or

(iii) An acknowledgment signed by the creditor accepting receipt of dues.

16. *In terms of sub-section (3), the debtor is not entitled to dispute the validity of debts which are registered with the information utility and form the subject-matter of the application for the insolvency resolution process. Section 99(4) enables the resolution professional to seek further information or an explanation "in connection with the application", as may be required from the debtor or the creditor or any other person for the purposes of examining the application. The person from whom such a request is made is under an obligation to supply it within seven days. Sub-section (6) clarifies the limited ambit entrusted to the resolution professional. In terms of the provision, the resolution professional has to examine the application and ascertain that:*

(i) The application satisfies the requirement of Section 94 or Section 95; and

(ii) The applicant has provided information and furnished an explanation which has been sought from him under sub-section (4).

17. *After carrying out this process, the resolution professional may recommend the acceptance or rejection of the application in a reasoned report. A copy of the report is provided to the debtor or creditor, as the case may be, under sub-section (10). The jurisdiction of the adjudicating authority, upon the submission of the report, is stipulated in Section 100.*

19. *The interim moratorium under Section 96 commences from the application filed under Sections 94 or 95, and ceases to have effect on the date of the admission of the application. Consequently, Section 101 contains provisions for a statutory moratorium with effect from the admission of an application under Section 100.*

20. *The moratorium remains in force for a period of 180 days or when an order approving the repayment plan is passed, whichever is earlier. The*

effect of the statutory moratorium is that any pending legal action in respect of the debt is stayed; no new action may be initiated by the creditors in respect of the debt; and the debtor shall not transfer or alienate his assets or legal rights or beneficial interest therein.

50. *Chapter III of Part II deals with a distinct eventuality, namely, the initiation of liquidation broadly in situations where the resolution plan has not been received or the resolution plan is rejected by the adjudicating authority for non-compliance of the requirements specified for approval of the resolution plan in Section 31. These provisions elicit the vital role which is entrusted to the interim resolution professional initially and later to the resolution professional in cases involving corporate insolvencies. This role has to be contra-distinguished from the role which is ascribed to a resolution professional in Part III, who is appointed for the purpose of resolving insolvencies and bankruptcies for individuals and partnership firms. Sections 94 and 95, as we have noticed, provide for applications by the debtor or the creditor for the initiation of the insolvency resolution process in relation to these entities. The appointment of a resolution professional takes place under Section 97. In Part II, as we have noticed earlier, the adjudicating authority is contemplated to have an adjudicatory role right at the threshold. In contrast, in Chapter III of Part III, the appointment of a resolution professional is contemplated by Section 97. Under sub-section (5) of Section 97, the adjudicating authority has to appoint the resolution professional who is either recommended under sub-section (2) or nominated by the Board under sub-section (4).*

79. *In view of the above analysis, it now becomes necessary to analyse as to whether there is any substance in the challenge to the constitutional validity of the provisions of Sections 95 to 100. We have already indicated that the function of the resolution professional under Section 99 is purely facilitative. The task before the resolution professional is not to adjudicate but to collate and collect information on the application under Section 94 or Section 95 before submitting a*

report to the adjudicating authority. When interpreting Part II IBC, the Courts have inferred the necessity of granting an opportunity to a debtor before initiating the insolvency resolution process against them. This includes the provision of a copy of the application and all relevant documents. Although Section 100 IBC does not explicitly mention a hearing for a debtor, the requirement of a hearing has to be read into Section 100. In legal interpretation, when a statute is silent on a specific aspect, like a hearing, and there is no explicit prohibition, the courts may imply or read in such a requirement. The key point is that the lack of explicit mention of a hearing in a provision does not automatically make it unconstitutional because such a requirement can be read into the statute.

80. *The legislature has evidently made provisions in Section 99, as we have construed earlier, to allow for the engagement of the debtor with the resolution professional before a report is submitted to the adjudicating authority. The process under Section 100 before the adjudicating authority must be compliant with the principles of natural justice. The adjudicating authority is duty-bound to hear the person against whom an application has been filed under Section 94 or Section 95 before it comes to the conclusion as to whether the application should be admitted or rejected. The duty of the adjudicating authority to furnish a hearing attaches to its role and function as an authority which is entrusted to decide questions of law and fact and to arrive at a conclusion on either to admit or reject the application filed by the debtor or the creditor under Chapter III of Part III.*

81. *The resolution professional in exercise of their duty under Section 99 may not embark on a roving enquiry into the affairs of the debtor or personal guarantor, as the case may be. The information sought by the resolution professional from the debtor, the creditor, or third parties must be relevant to the examination of the application of IRP. In this process, the debtor would inevitably be furnished with a fair opportunity by the resolution professional. Further, the aim of vesting such powers in the resolution professional combined*

with his duty to keep such information confidential meets the proportionality test which this Court has devised for privacy under Article 21 of the Constitution. The nature of the resolution professional's role, the powers, and its nexus with the legitimate aim of the legislation also lead us to the conclusion that the impugned provisions are compliant with Article 14 of the Constitution. Therefore, we hold that Sections 95 to 100 IBC are not unconstitutional.

82. *For the reasons which we have already indicated, we have come to the conclusion that an adjudicatory decision-making process of the nature which has been suggested by the petitioners would not be implicated under Section 97(5). To accept the submission of the petitioners would render the provisions of Sections 99 and 100 otiose.*

83. *Before concluding, it would be necessary to deal with two incidental submissions which were heard during the course of the hearing. It is sought to be urged that sub-section (2) of Section 95 indicates that an application under sub-section (1) can be initiated only in respect of a partnership debt which is owed to the creditor. We are of the view that this is not a correct reading of Section 95. Sub-section (1) indicates that a creditor may apply either by themselves or jointly with other creditors or through a resolution professional to the adjudicating authority for initiating an IRP. Sub-section (2) provides that in a situation where a creditor has applied under sub-section (1) in relation to a partnership debt, the application may be filed against (a) any one or more partners of the firm; or (b) the firm. The provisions of sub-section (2), in other words, cannot control the ambit of sub-section (1) of Section 95."*

20. The Hon'ble Supreme Court held that the adjudicatory function of the adjudicating authority commences, under Part-III of the IBC, after the submission of a recommendatory report by the Resolution Professional. The clear differences between CIRP under Part-II and insolvency

resolution process for individuals and partnership under Part-III, the legislature has carefully calibrated : (i) The role of the resolution professional; (ii) The imposition of the moratorium; and (iii) The stage at which the adjudicating authority steps under Part-II on one hand and Part-III on the other hand. It is further held that this is based on an intelligible differentia between the nature of the insolvency resolution process in the case of a Corporate Debtor on one hand, and individual or partnerships, on the other hand.

21. In the case of ***Bank of Baroda vs. Farooq Ali Khan & Ors. (supra),*** the Hon'ble Supreme Court has dealt with the issue whether the High Court could have justifiably invoked judicial review under Article 226 of the Constitution of India to interdict personal insolvency proceedings initiated against the petitioners under Section 95 of the Insolvency and Bankruptcy Code, 2016. The Hon'ble Supreme Court held that:

> *"**10.** In light of this statutory scheme, which has been followed by the Adjudicating Authority, we are of the view that the High Court incorrectly exercised its writ jurisdiction as : first, it precluded the statutory mechanism and procedure under the Insolvency and Bankruptcy Code, from taking its course, and second, to do so, the High Court arrived at a finding regarding the existence of the debt, which is a mixed question of law and fact that is within the domain of the Adjudicating Authority under section 100 of the Insolvency and Bankruptcy Code, 2016.*
>
> ***11.** It is well-settled that when statutory Tribunals are constituted to adjudicate and determine certain questions of law and fact, the High Courts do not substitute themselves as the decision-making authority while exercising judicial review. In the present case, the proceedings had*

> *not even reached the stage where the Adjudicatory Authority was required to make such determination. Rather, the High Court exercised jurisdiction even prior to the submission of the resolution professional's report, thereby precluding the Adjudicating Authority from performing its adjudicatory function under the Insolvency and Bankruptcy Code, 2016.*
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> ***12.*** *While there is no exclusion of power of judicial review of the High Courts, and the limits and restraint that the constitutional court exercises and must exercise are well articulated, the primary issues involved in the present case, including the factual determination of whether the debt exists, is part of the statutory and regulatory regime of the Insolvency and Bankruptcy Code. In fact, the entire rationale behind appointing a resolution professional under section 97 is to facilitate this determination by the Adjudicating Authority. The High Court ought not to have interdicted the proceedings under the statute and assumed what it did while exercising jurisdiction under article 226 of the Constitution. In this view of the matter, we are of the opinion that the High Court was not justified in allowing respondent No. 1's writ petition. The High Court should have permitted the statutory process through the resolution professional and the Adjudicating Authority to take its course."*

22. In the present case the specific case made out by the petitioners that the principal borrower, the respondent no.3 has paid all the outstanding dues along with penal interest and has also paid the future quarterly instalments under the Credit Facilities but the respondent nos. 1 and 2 have acted in violation of the RBI Master Circular and illegally issued the demand notice. It is also the case of the petitioners that the respondent nos.1 and 2 have illegally instituted personal insolvency proceedings against the petitioners which violates the rights of the petitioners provided under Article 14 and 19(1)(g) and 21 of the

Constitution of India. The petitioners have relied upon the judgment in the case of ***Swiss Ribbons Private Limited & Anr. (supra)*** wherein the Hon'ble Court held that:

> ***"105.*** *What is clear from the aforesaid circular is that accounts are declared NPA only if defaults made by a corporate debtor are not resolved (for example, interest on and/or instalment of the principal remaining overdue for a period of more than 90 days in respect of a term loan). Post declaration of such NPA, what is clear is that a substandard asset would then be NPA which has remained as such for a period of twelve months. In short, a person is a defaulter when an instalment and/or interest on the principal remains overdue for more than three months, after which, its account is declared NPA. During the period of one year thereafter, since it is now classified as a substandard asset, this grace period is given to such person to pay off the debt. During this grace period, it is clear that such person can bid along with other resolution applicants to manage the corporate debtor. What is important to bear in mind is also the fact that, prior to this one-year-three-month period, banks and financial institutions do not declare the accounts of corporate debtors to be NPAs. As a matter of practice, they first try and resolve disputes with the corporate debtor, after which, the corporate debtor's account is declared NPA. As a matter of legislative policy, therefore, quite apart from malfeasance, if a person is unable to repay a loan taken, in whole or in part, within this period of one year and three months (which, in any case, is after an earlier period where the corporate debtor and its financial creditors sit together to resolve defaults that continue), it is stated to be ineligible to become a resolution applicant. The reason is not far to see. A person who cannot service a debt for the aforesaid period is obviously a person who is ailing itself. The saying of Jesus comes to mind — "if the blind lead the blind, both shall fall into the ditch." The legislative policy, therefore, is that a person who is unable to service its own debt beyond the grace period referred to above, is unfit to be eligible to become a resolution applicant. This policy cannot*

> *be found fault with. Neither can the period of one year be found fault with, as this is a policy matter decided by RBI and which emerges from its Master Circular, as during this period, an NPA is classified as a substandard asset. The ineligibility attaches only after this one year period is over as the NPA now gets classified as a doubtful asset."*

23. There is no dispute that proceeding under Section 95 is initiated against the petitioners. It is well settled law that when statutory Tribunals are constituted to adjudicate and determine certain questions of law and fact, the High Courts do not substitute themselves as the decision making authority while exercising "judicial review". In the present case, the proceeding has not even reached the stage where the Adjudicatory Authority was required to make such determination. The petitioners have an opportunity to raise all the issues before the Adjudicating Authority. Moreover before the Appellate Court, the Learned Counsel for the respondent no. 3 submits that *"his client does not object to National Company Law Tribunal deciding upon the application under Section 7 of the IBC in accordance with law"*. The Appellate Court in its order dated 3rd November, 2025, clarified that the legality, validity and sufficiency of recall of notice and follow up notices may be decided by the NCLT, if so raised to the extent of recalling.

24. Except the respondent no.4, the respondent nos. 1 to 3 are the companies and are not covered under the definition of "State" within the meaning of Article 12 of the Constitution of India. The respondent no. 4 is the statutory authority. The prayer against the respondent no.4 for a direction upon the respondent nos. 1 and 2 for dealing with the

personal guarantees of the petitioners in accordance with the RBI Master Circular. The respondent nos. 1 and 2 have already initiated proceeding against the petitioners under Section 95 of the IBC. The petitioners are at liberty to raise all issues before the Adjudicating Authority.

25. In the case of ***S. Shobha (supra),*** the Hon'ble Supreme Court held that that:

> ***"8.*** *A body, public or private, should not be categorized as "amenable" or "not amenable" to writ jurisdiction. The most important and vital consideration should be the "function" test as regards the maintainability of a writ application. If a public duty or public function is involved, anybody, public or private, concerned or connection with that duty or function, and limited to that, would be subject to judicial scrutiny under the extraordinary writ jurisdiction of Article 226 of the Constitution of India.*
>
> ***9.*** *We may sum up thus:*
>
> *(1) For issuing writ against a legal entity, it would have to be an instrumentality or agency of a State or should have been entrusted with such functions as are Governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence Governmental.*
>
> *(2) A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government; (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public*

nature; and (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

(3) Although a non-banking finance company like the Muthoot Finance Ltd. with which we are concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company.

(4) A private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.

(5) Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule. In exceptional cases a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

(6) Merely because a statue or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.

(7) If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there must be the public law element in such action.

> *(8) According to Halsbury's Laws of England, 3rd Ed. Vol.30, p.682, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform, and which perform the duties and carries out its transactions for the benefit of the public and not for private profit". There cannot be any general definition of public authority or public action. The facts of each case decide the point."*

26. This Court did not find that any fundamental or legal rights of the petitioners have been violated. In prayer (a), the petitioners have prayed for a direction upon the respondent no.4 to direct the respondent nos. 1 and 2 to deal with the personal guarantees of the petitioners in accordance with RBI Master Circular. It appears that the RBI has been impleaded without any relief being sought against the respondent no.4. In the event if the RBI is not impleaded, there would be no justification to invoke the writ jurisdiction.

27. Considering the above, this Court finds that a proceeding under Section 95 of the IBC is pending before the Adjudicating Authority. The National Company Law Tribunal being the statutory forum under the Insolvency and Bankruptcy Code, 2016, is fully empowered to take all necessary measures within its jurisdiction. If the petitioners are aggrieved by any steps taken therein, the petitioners have an adequate remedy before the National Company Law Appellate Tribunal. The petitioners without taking appropriate steps before the appropriate

forum, have filed the present writ petition which, in my view is not maintainable.

28. In such view of the matter, the reliefs sought for by the petitioners in the present writ petition cannot be granted.

29. Accordingly, **WPA No. 27091 of 2025** is **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)