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Crl.O.P.No.16812 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 23.07.2025

Orders pronounced on : **04.08.2025**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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Anil Kumar Ojha

.. Petitioner

Versus

1. The State Rep by
Inspector of Police,
CBI ACB,
Chennai.

2. The Insolvency and Bankruptcy Board of India,
rep. by its Deputy General Manager,
7th Floor, Mayur Bhavan,
Connaught Place, New Delhi - 110 001.

3. Chandramouli Ramasubramaniam,
Resolution Professional of SLO Industries Limited,
Raji, 3-B-1, III Floor, Gaiety Palace,
No.1-L, Balckers Road, Mount Road,
Chennai - 600 002.

.. Respondents



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(2nd respondent impleaded as per order, dated 16.06.2025
made in Crl.O.P.No.16812 of 2025)

(R3 suo moto impleaded as per order, dated 14.07.2025
in Crl.O.P.No.16812 of 2025)

Prayer : Criminal Original Petition filed under Section 528 of BNSS, 2023, to direct the respondent to investigate according to the complaint given by the petitioner and to file the charge sheet in F.I.R.No.RC0322023A0020 of 2023 on the file of the respondent within the time stipulated by this Court.

For Petitioner : Mr.S.Veeraraghavan

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor for CBI Cases,
for R1

: Mr.S.Sathiyarayanan, for R2

: Mr.S.M.Vivekanandh,
for R3

ORDER

This Criminal Original Petition is filed with a prayer to direct the respondents to investigate the petitioner's complaint and to submit a chargesheet in F.I.R. No. RC0322023A0020/2023.



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2. A review of the material records and hearing the learned Counsel for the petitioner reveal that the petitioner previously approached this Court by way of Crl.O.P.No.3432 of 2022, for a direction to the first respondent to register a First Information Report based on his complaint dated 13.08.2021, in accordance with the law.

3. The gist of the complaint is that the petitioner is the former Managing Director of a company named M/s.S.L.O. Industries Limited. While so, upon a petition filed under Section 7 of the Insolvency and Bankruptcy Code, the National Company Law Tribunal, by order dated 14.11.2019, entrusted the management and affairs of the company to an Interim Resolution Professional. Thereafter, the company went into liquidation and was taken over by the liquidator appointed by the Tribunal on 21.01.2022. The liquidator, upon assuming charge, found that the accounts listed in the inventory at the time of taking over by the Resolution



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Professional and its stock position on the date of handing over documents and stock were vastly depleted, and an alarming figure of closing stock of about Rs.840 crores could not be reconciled. After considering this, the National Company Law Tribunal also passed an order on 12.05.2023 stating that there is a difference of Rs.625.25 crores in the inventory. Considering the nature of the allegations and the liquidator's report, this Court on 13.08.2021 directed the first respondent to conduct a preliminary inquiry and to consider the communication dated 19.01.2021, including the liquidator's communication dated 01.03.2022. If cognizable offences are made out, the first respondent was directed to register a complaint and proceed accordingly. Even though a case was registered by the first respondent in RC0322023A0020/2023, till date the final report has not yet been filed. Hence, this Criminal Original Petition is filed.

4. When the matter was taken up for hearing, the learned Special Public Prosecutor (CBI cases) for the first respondent submitted that the



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investigation in this case is complete, and the matter is pending before the Insolvency and Bankruptcy Board of India(the second respondent) for the grant of sanction. It is further stated that the Delhi High Court, by the judgment dated 18.12.2023 in ***Dr.Arun Mohan Vs. Central Bureau of Investigation*** in W.P.(Crl).No.544 of 2020, held that Resolution Professionals are not public servants within the meaning of the Prevention of Corruption Act, 1988, and the matter has been carried to the Hon'ble Supreme Court of India and is pending. Since the matter is still pending, the Insolvency and Bankruptcy Board of India has withheld the file and not granted the sanction.

5. In view of the said argument, the Insolvency and Bankruptcy Board of India was impleaded as the second respondent by this Court. Upon notice, *Mr.S.Sathiyanaarayanan*, the learned Counsel, appeared for the second respondent. He accepted the position that since the Delhi High Court has decided in the above judgment in W.P.(Crl).No.544 of 2020 and since the



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matter is pending before the Hon'ble Supreme Court of India awaiting its decision, the request for sanction is not being considered.

6. *Mr.S.M.Vivekanandh*, learned Counsel for the third respondent Resolution Professional would place reliance on the judgment of the Hon'ble Supreme Court of India in ***Babita Lila and Anr. Vs. Union of India*** (Crl.A.No.824 of 2016), more specifically, on paragraph Nos.61 and 62 to contend that while construing the meaning of the public servants in penal laws, there cannot be any expansive meaning attributed to the definition and the provision should be read as such. Those categories, which do not fall expressly within the definition, cannot be brought in by way of interpretation. A reading of Sections 232 and 233 of the Insolvency and Bankruptcy Code, it would be very clear that while the Insolvency and Bankruptcy Board of India and its officials cannot be made as public servants, the legislation has consciously omitted to make Resolution Professionals as a public servants. Further, the Code also protects the



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actions of the Resolution Professional taken in good faith. It is in this context, the judgment of the Delhi High Court takes a correct view.

7. The learned Counsel, in order to highlight the role played by the Resolution Professional, would rely upon the judgment of the Hon'ble Supreme Court of India in ***Swiss Ribbons Private Ltd. Vs. Union of India***¹ which clarified that the role of the Resolution Professional is administrative and is distinct from a public function. He would further rely upon the judgment of the Hon'ble Supreme Court of India in ***Arcelor Mittal India Private Ltd. Vs. Satish Kumar Gupta and Ors.***² to contend that the entire process of the Insolvency and Bankruptcy Code is to serve private interests and absolutely, no public duty is involved in the exercise. The learned Counsel would then rely upon the judgment of the Hon'ble Supreme Court of India in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Ors.***³ to bring home the point that what is in focus in the

¹ (2019) 4 SCC 17

² (2019) 2 SCC 1

³ (2019) 2 SCC 1



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Insolvency and Bankruptcy Code framework is only commercial reorganisation and at every stage, the Resolution Professional is being supervised and guided by the commercial wisdom of the Committee of Creditors. Therefore, there is absolutely no scope for holding a Resolution Professional as a public servant. The learned Counsel would also draw the attention of this Court to the definition of the term 'Insolvency Professional' contained in Section 319 to contend that except for being enrolled in the panel, there is absolutely nothing else that is to be maintained by the Resolution Professionals. Therefore, when they are rendering professional service pursuant to the enrollment, they cannot be termed as public servants.

8. I have considered the said submissions made and perused the material records of the case.

9. The second respondent is solely relying on the judgment of the Delhi High Court cited supra. The Jharkhand High Court had also examined



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the same issue, and in the judgment in *Sanjay Kumar Agarwal Vs. Union of India, the Enforcement Directorate*⁴ had held that the Resolution Professionals would be considered public servants under the Prevention of Corruption Act, 1988. It can be seen that, as against the judgments of the Delhi High Court and Jharkhand High Court, S.L.P.No.9212 of 2024 and S.L.P.No.7029 of 2023, respectively, are pending, and both are clubbed together, and the Hon'ble Supreme Court of India has not granted any interim order in both matters. In matters of investigation and criminal prosecution, the second respondent authority should have recognised that when there is no interim order of prohibition to issue sanctions in all cases, the mere fact that the matter is pending for the authoritative ruling of the Hon'ble Supreme Court of India does not justify leaving the matter unresolved. The golden time for investigation and prosecution cannot be lost, and therefore, I deem it fit to decide the question so that final report can be laid without further loss of time in the present case.

⁴ 2025 SCC OnLine Jhar 1081



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10. Section 2(c) of the Prevention of Corruption Act defines the term

'public servant'. Sections 2(c)(v), (vi), and (viii) are extracted below:-

"2. Definitions.—In this Act, unless the context otherwise requires,—

(c) “public servant” means—

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(v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

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.

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;"

11. On the face of it, it is very clear that the Resolution Professional is a person authorized by a Court of Justice to perform duties related to the administration of justice. The Delhi High Court, in paragraph No.55 of its judgment in **Dr. Arun Mohan's** case (stated *supra*), held as follows:-



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"55. Regarding sub-section (v), in the first blush, there appears to be some weightage in the arguments of learned SPP and learned Counsel for the respondent no.2/complainant urged since the IP as an Interim Resolution Professional and Liquidator, is appointed by the NCLT. However, on a closer scrutiny and on the application of the doctrine of "ejusdem generis", it is apparent that individuals such as liquidator, receiver or commissioner, who have been conferred with the power to take decisions in respect of properties and other assets and dispose of the same entailing decisions effecting certain claims etc, could be the ones who are within the ambit of sub-section (v) and since no such role or responsibility is conferred upon the Resolution Professional, therefore, he cannot be stated to fall within the ambit of sub-section (v)."

12. However, a perusal of the section makes it clear that the phrase 'any duty in connection with the administration of justice' is used, and I am unable to agree with the view that it should mean only a power to sell properties like that of a liquidator. Firstly, the Commissioners are not appointed on all occasions only with powers of selling or otherwise dealing with the properties. The context and the language do not necessitate applying the principle of *ejusdem generis*. The section does not simply state "any person authorised by a Court of Justice, including a liquidator, receiver



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or commissioner appointed by such Court". Therefore, the principle of *ejusdem generis* will not apply. Further, the clause is inclusive in nature and, as a result, it will have a broad meaning to denote any duty in connection with the administration of justice. Hence, I have no other option than to respectfully disagree with the view taken by the Hon'ble Delhi High Court.

13. Furthermore, under Section 2(c)(vi), the Company Law Tribunal or a Court considers and relies on the report of the Resolution Professional. Although matters are not left for the decision of the Resolution Professional, their report is sought. Therefore, on the face of it, Resolution Professionals will also be regarded as public servants under Section 2(c)(vi).

14. The Hon'ble Supreme Court of India examined the duties of the Resolution Professional in ***Dilip B. Jiwrajka Vs. Union of India and Ors.***⁵. The entire role of the Resolution Professional is discussed by the Hon'ble

⁵ (2024) 5 SCC 435



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Supreme Court of India in paragraphs 46 to 56. The primary duty of the interim Resolution Professional, as specified in Section 18, was considered by the Hon'ble Supreme Court of India in paragraph 48, and it is reproduced below:-

"48. The duties of the interim resolution professional are specified in Section 18. "18. Duties of interim resolution professional.—The interim resolution professional shall perform the following duties, namely—
(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—(i) business operations for the previous two years;(ii) financial and operational payments for the previous two years;(iii) list of assets and liabilities as on the initiation date; and(iv) such other matters as may be specified;(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under Sections 13 and 15;(c) constitute a committee of creditors;(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;(e) file information collected with the information utility, if necessary; and(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;(ii) assets that may or may not be in possession of the corporate debtor;(iii) tangible



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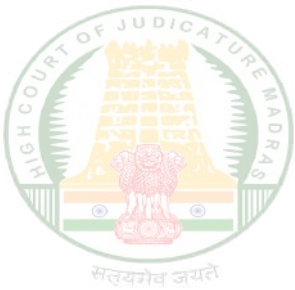
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assets, whether movable or immovable;(iv) intangible assets including intellectual property;(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;(vi) assets subject to the determination of ownership by a court or authority;(g) to perform such other duties as may be specified by the Board. Explanation.—For the purposes of this 11a[section], the term “assets” shall not include the following, namely:(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;(b) assets of any Indian or foreign subsidiary of the corporate debtor; and(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.”] [Subs. for sub-section by Act 26 of 2018, S. 14 (w.r.e.f. 6-6-2018)] The interim resolution professional under Section 20, has a mandate to make every endeavour to “protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern”."

Thus, it can be seen that third parties and consequently the Society at large, will be affected.

15. The duties of the Resolution Professional, as per Section 99, are further explained in paragraph No. 51, which is excerpted below:-

"51. The duties of a resolution professional in a process under Chapter III of Part III are contained in Section 99. The resolution professional is required, firstly, to examine the application within ten days of appointment.



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Secondly, they may require the debtor to prove that the repayment of the debt which is claimed to be unpaid by the creditor has taken place. The debtor may do so by evidencing an electronic transfer of the unpaid amount from a bank account of the debtor or produce evidence of the encashment of a cheque issued by a debtor or a signed acknowledgment by the creditor of the receipt of the dues."

16. The fact that the Resolution Professional is empowered under sub-section (4) of 99 to seek further information or an explanation from the debtor, creditor, or any other person who, in the opinion of the Resolution Professional, may provide relevant information is considered in paragraph No.52, and the same is extracted herein below.

"52. We will deal with the impact of sub-section (3) of Section 99 subsequently. Evidently, the provisions of sub-section (3), operate on the resolution professional alone and cannot be construed to be a bar qua the adjudicatory function of the adjudicating authority under Section 100. The resolution professional is empowered by sub-section (4) of Section 99 to seek further information or an explanation in connection with the application from the debtor, creditor or any other person who in the opinion of the resolution professional may provide information. The information which the resolution professional is empowered to seek is in aid to his duty to examine the application and submit a report either recommending the approval or the rejection of the application. In other words, the information which the resolution professional is



permitted to seek is channelised for the purpose of the functions of the resolution professional in terms of sub-section (1) of Section 99."

17. The fact that the Resolution Professional is required to examine the application and to ascertain that the application satisfies the requirements of Section 94 and Section 95, and that the applicant has provided and furnished the information sought under sub-section 4, then, the submission of the report and that the report must record reasons are elicited in paragraph No.53, which is extracted hereunder:-

"53. The resolution professional is required to examine the application and to ascertain two things : firstly, that the application satisfies the requirement of Section 94 or Section 95 and, secondly, that the applicant has provided the information and furnished the explanation which is sought under sub-section (4). Having carried out the process of examination and ascertainment as specified in sub-section (6), the resolution professional may either recommend the acceptance or the rejection of the application by submitting a report. The report has to record reasons and a copy of the report has to be furnished to the debtor or the creditor, as the case may be. The role of the resolution professional prior to the adjudication process by the adjudicating authority comes to a conclusion with the submission of a report. Upon the submission of the report, the matter then lies within the jurisdiction of the adjudicating authority. This is evident



from the fact that Section 100(1) stipulates that the adjudicating authority has to pass an order either admitting or rejecting the application within fourteen days from the date of the submission of the report under Section 99."

18. Thereafter, in paragraph No.54, the Hon'ble Supreme Court of India analyzed the functions as not adjudicatory in nature but rather administrative in nature. The said paragraph is also extracted hereunder:-

"54. The salient aspect which emerges from the above analysis is that the resolution professional does not possess an adjudicatory function in terms of the provisions of Section 99. In Chapter III of Part III, the legislature has dealt with the resolution of individual or partnership insolvencies and bankruptcies. Therefore, the legislature considered it appropriate to interpose the resolution professional before the adjudicatory function of the adjudicating authority commences under Section 100. The resolution professional does not have the kind of power which their counterpart has in Part II. No provision has been made in Part III empowering the resolution professional to take over the assets or the business which is being carried on by the individual or the partnership. The role under Section 99 which is ascribed to the resolution professional is that of a facilitator and is to gather relevant information on the basis of the application which has been submitted under Section 94 or Section 95 and after carrying out the process which is referred to in sub-section (2), sub-section (4) and sub-section (6) of Section 99, to submit a report recommending the acceptance or rejection of the application. Significantly, the statute has used the expression "examine the



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application”, “ascertain” and “satisfies the requirements” and “recommend” the acceptance or rejection of the application. The use of these expressions leaves no manner of doubt that the resolution professional is not intended to perform an adjudicatory function or to arrive at binding conclusions on facts. The role of the resolution professional is purely recommendatory in nature and cannot bind the creditor, the debtor or, the adjudicating authority."

Thus, the judgment leaves one with no doubt whatsoever that the Resolution Professional performs duties in connection with the administration of justice being authorised by a Court of Justice. Secondly, he is a person from whom a report is called for by a Court of Justice / a competent public authority; and thirdly, he performs a public duty. Therefore, Resolution Professional will be a public servant within the meaning of the definition contained in Section 2(c)(v),(vi)and (viii) of the Prevention of Corruption Act, 1988. In view thereof, the second respondent is liable to be directed to consider the file submitted by the first respondent for the grant of sanction on its own merits and in accordance with law.

19. The contention of the learned Counsel for the third respondent that



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the work is not adjudicatory, but, is only administrative in nature, cannot be disputed and further that the Committee of Creditors exercises supervision and its commercial wisdom, cannot also be disputed. Merely because the work is administrative in nature or that it is subject to supervision and with only less powers, is not the criteria. The criteria is that the position/duties should fall within the definition as contained under the Prevention of Corruption Act, 1988. The duties of the Resolution Professional are administrative in nature and has only less powers and the person acts mostly on the directions of the Committee of the Creditors, even then, the work is done in the course of the administration of justice and as such, the arguments of the learned Counsel for the third respondent, is liable to be rejected. Further, as far as the judgments referred to by the learned Counsel are all considered in the later judgment in **Dilip B. Jiwarajka's** case (cited *supra*) which considered the role of the Resolution Professional in detail and thus, even on a consideration of the same, I have no hesitation in holding that the Resolution Professional will be a public servant as defined under the



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Prevention of Corruption Act, 1988.

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20. In the result, this Criminal Original Petition is disposed of by directing the second respondent to consider the file submitted by the first respondent for grant of sanction as per the provisions of the Prevention of Corruption Act, 1988 in accordance with law, consider it on its own merits and communicate the decision to the first respondent within four weeks from the date of receipt of a copy of this order and within a further period of four weeks therefrom, the Final Report shall be filed by the first respondent in accordance with law.

04.08.2025

Neutral Citation : yes
grs

To

1. The Inspector of Police,
CBI ACB,
Chennai.

20/22



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2. The Deputy General Manager,
The Insolvency and Bankruptcy Board of India,
7th Floor, Mayur Bhavan,
Connaught Place, New Delhi - 110 001.

3. The Public Prosecutor,
High Court of Madras.

D.BHARATHA CHAKRAVARTHY, J.

grs

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