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Madras High Court Rules in Favour of IBBI Circular Permitting Creditor Recommendations for Resolution Professionals

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In a significant ruling, the Madras High Court has dismissed two writ petitions challenging a circular issued by the Insolvency and Bankruptcy Board of India (IBBI). The case, W.P.Nos. 14792 and 36480 of 2024, involved petitioners Ashwani Kumar Bhatia and Rajesh Bhatia, who contended that the circular was ultra vires and violated specific provisions of the Insolvency and Bankruptcy Code, 2016 (IBC). The court, however, held that the circular was within the bounds of the law and aimed at enhancing the efficiency of the insolvency resolution process.

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Background of the Case

The petitioners, Ashwani Kumar Bhatia and Rajesh Bhatia, filed writ petitions under Article 226 of the Constitution of India, seeking a declaration that the impugned circular, dated 21.12.2023, was ultra vires and violative of Sections 97(3), 97(4), and 97(5) of the IBC. The circular in question pertained to the submission of particulars and declarations by Insolvency Professionals (IPs) in applications filed by creditors under the IBC. The petitioners argued that the circular allowed creditors to recommend the name of the IP to be appointed as the Resolution Professional (RP), which they claimed was contrary to the provisions of the IBC.

Petitioners' Arguments

The petitioners contended that the circular violated the provisions of the IBC by allowing creditors to recommend IPs. They argued that this delegation of power to creditors introduced bias and compromised the fairness of the insolvency resolution process. The petitioners relied on several legal precedents, including the judgment in Amit Gupta Vs. Insolvency and Bankruptcy Board of India and Anr., which held that IBBI circulars cannot introduce new standards not contained in the IBC. They also cited Rajinder Singh Vs. The State of Punjab and Ors. and Kerala Financial Corporation Vs. Commissioner of Income Tax, which emphasized that circulars cannot override statutory rules framed by law.

Respondents' Arguments

The respondents, represented by the IBBI and Canara Bank, argued that the circular was issued under Section 196 of the IBC, which empowers the IBBI to issue necessary guidelines for implementing the provisions of the IBC. They contended that the circular did not override the statutory provisions but merely clarified the process. The respondents asserted that the circular allowed creditors to recommend IPs, but the final decision rested with the Adjudicating Authority. They argued that this recommendation did not introduce bias and was aimed at enhancing the efficiency of the process. The respondents relied on judgments such as Innovative Industries Limited Vs. ICICI Bank and Anr. and State of Maharashtra and Ors. Vs. Prabhu, which supported the issuance of circulars to clarify operational processes without altering statutory provisions.

Court's Analysis

The Madras High Court, presided over by Justice D. Bharatha Chakravarthy, carefully examined the arguments presented by both parties. The court referred to the judgment in Dilip B. Jiwrajka vs. Union of India and Ors., which highlighted that the role of the Resolution Professional is facilitative and not adjudicatory. The report submitted by the RP is recommendatory in nature and does not bind the Adjudicating Authority. The court noted that allowing creditors to recommend IPs at the outset could save time and increase efficiency. The IBBI scrutinizes and empanels IPs, and the creditor's recommendation does not override the IBBI's authority to nominate. The court emphasized that the Adjudicating Authority has the final power to appoint the RP under Section 97(5) of the IBC. If the debtor has objections, these can be considered by the authority, and an alternative IP can be appointed.

Conclusion

The Madras High Court held that the impugned circular dated 21.12.2023 was neither ultra vires nor violative of the provisions of the IBC. The court dismissed the writ petitions, finding no merit in the petitioners' arguments. The court concluded that the circular was a pragmatic tool aimed at fulfilling the purposes of the IBC, saving time, and increasing efficiency without causing prejudice to the petitioners or personal guarantors. The judgment shows the need for balancing procedural efficiency with the principles of fairness and transparency in the insolvency resolution process.

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