



**NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT – II  
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL  
COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 02.03.2026 AT  
10.30 A.M. THROUGH VIDEO CONFERENCING:**

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**PRESENT: SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)  
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)**  
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**APPLICATION NUMBER : IA(IBC)/1050(CHE)2025**  
**PETITION NUMBER : CP(IB)/298(CHE)2021**  
**NAME OF THE APPLICANT : Ketan Chottalal Bagadia**  
**NAME OF THE RESPONDENT(S) : Cholamandalam Investment And Finance  
Company**  
**UNDER SECTION : Sec 60(5) of IBC, 2016 r/w Sec 25(1) of IBC,  
2016**  
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**ORDER**

Present: Ld. Counsel Mr. Sashi Kumar for Ld. Counsel Mr. M.L.Ganesh for the  
Applicant.

Vide separate order pronounced in open court, **CP(IB)/298(CHE)2021**  
is allowed and **IA(IBC)/1050(CHE)2025** is disposed with direction.

**-SD-**  
**RAVICHANDRAN RAMASAMY**  
**Member (Technical)**

**-SD-**  
**JYOTI KUMAR TRIPATHI**  
**Member (Judicial)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI  
IA(IBC)1050/(CHE)2025**

**In  
CP (IB) 298/ (CHE)/ 2021**

*(Filed under Section 60950 r/w sections 96 of the Insolvency and Bankruptcy Code,  
2016 r/w Rule 11 of the National Company Law Tribunal)*

*In the Matter of Ketan Chottalal Bagadia*

**KETAN CHOTTALAL BAGADIA**

S/o. Chhotalal A. Bagadia

"AMRUT VILLA", 28, Ritherdon Road, Vepery,

Opposite Indian Petrol Bunk, Chennai – 600 007.

*... Applicant*

*Versus*

**CHOLAMANDALAM INVESTMENT AND FINANCE  
COMPANY LIMITED**

Represented by its Authorized Officer

K. Thiyagarajan

Dare House, 2, N.S.C. Bose Road,

Parrys, Chennai – 600 001.

*... Respondent*

*Order pronounced on 02.03.2026*

**CORAM**

**SHRI JYOTI KUMAR TRIPATI, MEMBER (J)**

**SHRI RAVICHANDRAN RAMASAMY, MEMBER (T)**

*Present*

*For Financial creditor: M. L. Ganesh & Mr. Mohamed Hussain H, Advocates*

*For Personal Guarantor/ Respondent: Raghav Rajeev Menon, Advocate*

*For Resolution Professional: Althaf M. Hussain, Advocate*

**ORDER**

*(Hearing through hybrid mode)*

This application has been filed under Section 60(5) read with  
Section 96 of the Insolvency and Bankruptcy Code ('Code'/ 'IBC'), 2016,  
Rule 11 of the NCLT Rules, by the **Ketan C Bagadia** (Applicant), seeking



appropriate directions against **Cholamandalam Investment and Finance Company Limited** (Respondent), invoking the residuary jurisdiction of this Hon'ble Tribunal, seeking the following reliefs:

*"In light of the aforesaid facts and circumstances, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:*

- i. Direct the Respondent to permit the Petitioner to take re-possession of the schedule/handover the possession of property located at Old No. 16/202, New No. 4/7, 2nd Floor, Block - C, Apartment Complex called as 'Shivalaya', and thus Render justice.*
- ii. Pass such other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*

## **2. SUBMISSIONS OF THE APPLICANT:**

2.1. It is submitted that pursuant to the admission of the application under Section 95 of the Code, an interim moratorium under Section 96 of the Code came into operation, and the Applicant is entitled to protection of its rights and interests during the pendency of the insolvency resolution process.

2.2. It is submitted that despite the commencement of insolvency proceedings, the Respondent/ Personal Guarantor has been attempting to act in a manner prejudicial to the interests of the Applicant and the creditors, necessitating intervention by this Hon'ble Tribunal.



2.3. It is submitted that the Applicant has a legally enforceable claim arising out of credit facilities availed by the Corporate Debtor, which were secured by personal guarantees executed by the Respondent, and that such liability stands crystallised and admitted by this Hon'ble Tribunal while admitting the Section 95 application.

2.4. It is contended that certain actions undertaken by the Respondent after initiation of proceedings are in violation of the scheme and objectives of the Code, and unless restrained, would defeat the insolvency resolution process.

2.5. It is further submitted that Section 60(5) confers wide powers on this Hon'ble Tribunal to pass such orders and directions as may be necessary to meet the ends of justice, including issuance of protective and preventive directions during the insolvency process.

2.6. It is submitted that the present IA is maintainable, as the reliefs sought are ancillary and incidental to the insolvency proceedings and fall squarely within the jurisdiction of this Hon'ble Tribunal.

2.7. It is submitted that no prejudice would be caused to the Respondent if the reliefs sought are granted, whereas grave and



irreparable loss would be caused to the Applicant and other creditors if the application is not allowed.

2.8. It is finally submitted that the application has been filed bona fide, in the interest of justice, and to ensure effective implementation of the insolvency framework under the Code.

### **3. SUBMISSIONS OF THE RESPONDENT**

3.1. The Respondent has raised preliminary objections as to the maintainability of the application, contending that pursuant to the order dated 13.02.2024 in CP(IB)/298(CHE)/2021, an Interim Resolution Professional had already been appointed, and therefore, the Applicant in his individual capacity lacks locus standi to maintain the present application. It is submitted that on this ground alone, the application is liable to be dismissed.

3.2. It is stated that by order dated 06.11.2024 in S.A. No. 231/2024, the Debts Recovery Tribunal-II, Chennai, categorically held that repossession cannot be ordered in favour of the Applicant, as the Resolution Professional had stepped into the shoes of the Applicant. The said order has attained finality, as it was not challenged by the Applicant.



Hence, the present application is barred by the principles of res judicata and constitutes an abuse of process of law.

3.3. It is further contended that the Applicant, having voluntarily approached the Debts Recovery Tribunal and invited an order, cannot now re-agitate the very same issue before this Adjudicating Authority, and the conduct amounts to forum shopping.

3.4. It is stated that though the IBC overrides the SARFAESI Act, the Adjudicating Authority does not have jurisdiction to order repossession of physical possession of the secured asset, particularly when the Debts Recovery Tribunal has already declined such relief. It is also pointed out that the writ petition filed by the Applicant before the Hon'ble High Court was dismissed as withdrawn on 16.04.2025, without any finding that this Adjudicating Authority is the appropriate forum to grant the relief sought.

3.5. Without prejudice to the preliminary objections, the Respondent sets out the factual background and submits that the Applicant availed a loan of Rs.1.23 Crores from the Respondent and created a mortgage over the schedule property as collateral security by way of a registered Mortgage Deed.



3.6. It is stated that due to default in payment of EMIs, the loan account was classified as Non-Performing Asset on 24.03.2021, in accordance with RBI guidelines. Thereafter, a Demand Notice dated 08.06.2021 under Section 13(2) of the SARFAESI Act was issued demanding a sum of Rs. 1,29,27,773.71/-, which was duly received by the Applicant, who did not raise any objection either to the measures or to the quantum claimed.

3.7. It is further stated that upon failure to repay, the Respondent issued a Possession Notice dated 16.08.2021 under Section 13(4) of the SARFAESI Act, followed by sale notices. As no bidders came forward, the Respondent approached the Chief Metropolitan Magistrate, Chennai under Section 14, who allowed the application and issued warrants for taking physical possession.

3.8. It is stated that physical possession of the secured property was taken on 28.02.2024 pursuant to fresh warrants issued by the CMM, Chennai.

3.9. It is stated that only after physical possession was taken, the Applicant filed S.A. No.231 of 2024 before DRT-II, Chennai, wherein for the first time he disclosed the pendency of personal insolvency



proceedings. Prior thereto, the Respondent had no knowledge of any such insolvency proceedings.

3.10. It is further stated that S.A. No.231 of 2024 was dismissed on 06.11.2024, and the said order has attained finality, the Applicant having failed to challenge it.

3.11. It is stated that thereafter, the Respondent duly filed its proof of claim before the Resolution Professional and communicated that it stands outside the insolvency process in respect of enforcement of its secured interest, having already invoked SARFAESI measures.

3.12. It is stated that the Applicant subsequently filed a writ petition before the Hon'ble High Court, which was also dismissed as withdrawn on 16.04.2025, and thereafter the present IA has been filed seeking re-possession of the mortgaged property.

3.13. It is also stated that under Section 26E of the SARFAESI Act, the priority of charge vests with the secured creditor, and therefore the Respondent is entitled to enforce and sell the secured asset to recover its dues and deposit any surplus, if any, before the appropriate authority.



3.14. It is further stated that the Applicant has approached this Hon'ble Tribunal with unclean hands, has suppressed material facts, and has been indulging in vexatious litigation only to delay recovery proceedings and unjustly enrich himself.

3.15. It is stated that upon coming to know of the personal insolvency proceedings, the Respondent has not taken any further coercive measures, and therefore there is no violation of law as alleged.

3.16. It is finally stated that the present outstanding amount due and payable under the loan account is Rs.2,51,24,478/-, as evidenced by the statement of account and foreclosure statement filed along with the reply.

#### **4. FINDINGS OF THE TRIBUNAL:**

4.1. We have considered the application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and perused the documents filed by the parties.

4.2. The present Interlocutory Application has been filed seeking various directions in respect of enforcement actions taken by the Respondent under the SARFAESI Act in relation to the secured asset, after initiation of insolvency proceedings against the Personal Guarantor.



4.3. At the outset, it is noted that pursuant to admission of the application under Section 95 of the Code, a Resolution Professional has already been appointed and the insolvency resolution process against the Personal Guarantor is presently underway.

4.4. It is a settled position that upon commencement of insolvency proceedings, the Resolution Professional represents the estate of the debtor, and any application seeking protection, custody or directions relating to assets forming part of the insolvency process is ordinarily required to be moved through the Resolution Professional.

4.5. In the present case, the Interlocutory Application has been filed by the Applicant in his individual capacity, notwithstanding the appointment of the Resolution Professional. In view of the same, the objection raised by the Respondent regarding locus standi merits consideration.

4.6. It is further noted that the Respondent had already invoked measures under the SARFAESI Act and had taken physical possession of the secured asset pursuant to orders passed by the competent authority. The Applicant had challenged the said action before the Debt Recovery



Tribunal, which, by order dated 06.11.2024, declined to grant the reliefs sought.

4.7. The said order of the Debt Recovery Tribunal has admittedly not been challenged and has attained finality. This Tribunal, while exercising jurisdiction under Section 60(5) of the Code, cannot sit in appeal over or reopen a concluded adjudication by the Debt Recovery Tribunal.

4.8. Section 60(5) of the Code confers residuary jurisdiction on this Tribunal to entertain matters arising out of or in relation to insolvency proceedings. However, the said provision cannot be invoked to nullify or undo enforcement actions already completed under the SARFAESI Act, especially when such actions have been examined by the competent forum.

4.9. The reliefs sought in the present Interlocutory Application, in effect, seek re-possession and reversal of enforcement measures already undertaken by the secured creditor, which is beyond the scope of jurisdiction of this Tribunal under Section 60(5) of the Code in the facts of the present case.

4.10. At the same time, this Tribunal is of the view that the dismissal of the present Interlocutory Application shall not preclude the Resolution



Professional from seeking appropriate reliefs or directions in accordance with law, if circumstances so warrant, for the effective conduct of the insolvency resolution process.

4.11. Accordingly, the Interlocutory Application is liable to be disposed of with directions so that without prejudice to the rights of the Resolution Professional, he can take such steps as may be permissible under law and in accordance with the Insolvency and Bankruptcy Code, 2016.

5. Therefore, the application **IA(IBC)1050/(CHE)/2025** in **CP(IBC)298/(CHE)/2021** is **disposed of with directions.**

-Sd/-  
**RAVICHANDRAN RAMASAMY**  
MEMBER (TECHNICAL)

-Sd/-  
**JYOTI KUMAR TRIPATHI**  
MEMBER (JUDICIAL)