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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5711/2020**

VACHASPATI & ORS.

..... Petitioners

Through

Mr.Siddharth Sharma and Ms.Charu
Tyagi, Advs.

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA & ORS.

..... Respondents

Through

Mr.Jagjit Singh, SPC for R-1.
Mr.Abhishek Anand, Mr.Viren
Sharma, Advs.for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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10.09.2020

1. This hearing has been held by video conferencing.
2. This petition has been filed by the petitioners praying for the following reliefs:

“a. Issue a Writ of Mandamus or any other Writ, Order or direction of similar nature directing the Respondent No.1 to initiate disciplinary proceedings thereby furnishing show cause notice to the Respondent No.2 under Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 read with Regulation 12 of the IBBI (Inspection and Investigation Regulation), 2017;

b. Issue a Writ of Mandamus or any other Writ, Order or direction of similar nature directing the Respondent No.1 to provide the copy of the show cause notice to the Petitioners, thereby, allowing the Petitioners to participate in the disciplinary proceedings against the Respondent No.2;

c. Issue a Writ of Mandamus or any other Writ, Order or

directions of similar nature directing the Respondent No.1 to dispose off the complaint/representation filed by the Petitioners against the Respondent No.2.”

3. The petitioners were primarily aggrieved of the communication dated 13.08.2020 from the respondent no.1, which reads as under:

“This is in reference to the Form-A complaint dated 25.06.2020 filed by you against Mr.Anil Kohli, IP, in the subject matter under IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017.

2. The allegations made in the complaint have been duly examined by the Board and the appropriate action is being initiated in the matter.”

4. Relying upon Regulation 7(3) of the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 (hereinafter referred to as the ‘Regulations’), the petitioner submits that the respondent no.1 has to form *prima facie* opinion on whether the complaint makes out a case within 45 days of the receipt of the complaint. The petitioners asserted that the Impugned Communication does not reflect whether the respondent no.1 found any *prima facie* case to have being made out against the respondent no.2.

5. The respondent no.1 has filed a short affidavit wherein it has been asserted that a *prima facie* case has been found to be made out against the respondent no.2 and the complaint is now pending with the respondent no.1 for consideration of orders under Regulation 7(7) of the said Regulations.

6. I have considered the submissions made by the learned counsels.

7. In various cases before this Court, it is found that the complainant is

being informed about the status of the complaint by way of a cryptic order like in the present case reproduced hereinabove. In my opinion, this is not in compliance with the Regulations. Regulation 7 of the Regulations is reproduced hereinbelow:

“7. Disposal of complaint.

(1) The Board may seek additional information and records from the complainant and information and records from the concerned service provider to form a prima facie view whether the contravention alleged in the complaint is correct.

(2) The complainant and the service provider shall submit the information and records sought under sub-regulation (1) within fifteen days thereof.

(3) The Board shall form an opinion whether there exists a prima facie case within forty-five days of the receipt of the complaint.

(4) The Board shall close the complaint where it is of the opinion under sub-regulation (3) that there does not exist a prima facie case and communicate the same to the complainant.

(5) If the complainant is not satisfied with the decision of the Board under sub-regulation (4), he may request a review of such decision.

(6) The Board shall dispose of the review under sub-regulation (5) within thirty days of the receipt of the request for review by an order with an opinion whether there exists a prima facie case.

(7) Where the Board is of the opinion under this regulation that there exists a prima facie case, it may order an

inspection under sub-regulation (3) of regulation 3, order an investigation undersub-regulation (2) of regulation 7 or issue a show cause notice under sub-regulation (2) of regulation 11 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017, as may be warranted.

(8) Where the Board is of the opinion that the complaint is not frivolous, it shall refund the fee of two thousand five hundred rupees received under sub-regulation (3) of regulation 3.”

(Emphasis supplied)

8. A reading of the above would clearly show that the complainant has to be informed as to whether the respondent no.1 has formed a *prima facie* opinion in favour of the complainant or against it. In case the opinion is against the complainant, the complainant has a right under the Sub-Regulation 5 of Regulation 7 to seek a review on the said decision. Merely informing the petitioner as has been done in the present case that appropriate action is being initiated in the matter, would not, therefore, satisfy the requirements of Regulation 7. The complainant was never informed whether respondent no.1 has formed an opinion in favour of the complainant or against him, on such complaint.

9. The respondent no.1 should therefore, in future keep the mandate of Regulation 7 in mind while sending such communications to the complainants.

10. As far as the present case is concerned, the respondent no.1 has already formed a *prima facie* opinion in favour of the complainant and further action thereon in terms of Regulation 7 (7) is under its consideration. The respondent no. 1 is directed to expedite the decision under Regulation

7(7) of the Regulations and communicate such decision to the petitioner as well.

11. Another issue raised by the learned counsel for the petitioners relates to the right of the complainant to participate in the proceedings that may be initiated by the respondent no.1 on such complaint.

12. List for hearing on the above issue on 01st December, 2020.

13. The petitioners shall file a brief synopsis of its arguments alongwith supporting Regulations and judgments within a period of four weeks from today. Similar exercise shall be done by the respondents within four weeks thereafter.

NAVIN CHAWLA, J

SEPTEMBER 10, 2020/Arya