



2026:DHC:153-DB



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

%

Judgment reserved on: 08.01.2026

Judgment delivered on: 09.01.2026

+ **LPA 1199/2024 & CM APPL. 72630/2024**

VIVEK RAHEJA

.....Appellant

versus

**INSOLVENCY AND BANKRUPTCY BOARD
OF INDIA**

.....Respondent

Advocates who appeared in this case

For the Appellant : Mr. Ashish Dholakia, Senior Advocate with Mr. Srikant Mishra, Mr. Karan Sharma, Ms. Annanya Tyagi and Ms. Deeksha Khurana, Advocates.

For the Respondent : Mr. Sahil Monga and Mr. Shasharah Sharma, Advocates.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJAS KARIA**

JUDGMENT

TEJAS KARIA, J

1. The present Appeal challenges the judgment dated 07.08.2024 passed in W.P.(C) 2894/2024 (“**Writ Petition**”) and order dated 07.10.2024 passed in Review Petition No. 370/2024 (“**Review Petition**”) (collectively “**Impugned Judgment**”).



2. The Writ Petition was filed by the Appellant for quashing and setting aside the order dated 12.01.2024 (“**Order**”) passed by the Respondent, whereby the Appellant’s registration to practice as Insolvency Professional has been suspended for a period of two years effective 12.02.2024.

3. *Vide* the Impugned Judgment, the Writ Petition was dismissed by the learned Single Judge by upholding the Order on the ground that the determination made by the Respondent that the Appellant had contravened the provisions of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) and its Regulations, and observing that as the Order was passed after due consideration of all the relevant material placed before the Respondent, no interference was required under the writ jurisdiction of Article 226 of the Constitution of India, 1950.

4. Being aggrieved by the Impugned Judgment, the Appellant has filed the present Appeal.

FACTUAL MATRIX

5. The Appellant was appointed by the National Company Law Tribunal, New Delhi (“**NCLT**”) to act as the Resolution Professional of Trading Engineers (International) Limited (“**Corporate Debtor**”) on 04.07.2019. On 15.02.2021, the Resolution Plan *vis-à-vis* the Corporate Debtor was approved by the Committee of Creditors (“**CoC**”). The Respondent had issued a show cause notice to the Appellant on 21.10.2022 (“**First SCN**”), which was adjudicated by the Respondent *vide* order dated 17.02.2023 closing the First SCN by not issuing any directions to the Appellant.



6. On 20.07.2023, the Respondent issued another show cause notice (“**Second SCN**”), which was adjudicated by the Respondent *vide* the Order, wherein it was found that the Appellant had contravened the provisions of the Code and the Regulations made thereunder, because of the following violations:

- i. Ineligibility of Mr. Sushant Chhabra as a Joint Resolution Applicant along with M/s Conquerent Control Systems Pvt. Limited (“**Conquerent**”);
- ii. Suppression of relevant facts from the CoC;
- iii. Discrepancy in examining financial capability of Mr. Sushant Chhabra;
- iv. Disposal of the assets of the Corporate Debtor without the approval of the CoC; and
- v. Executing Lease Agreement with the Prospective Resolution Applicants with respect to assets of the Corporate Debtor without the approval of the CoC.

7. In view of the above, in exercise of powers conferred under Section 220(2) of the Code and the Regulations made thereunder, the registration of the Appellant as Insolvency Professional was suspended for a period of two years with effect from 12.02.2024.

SUBMISSIONS ON BEHALF OF THE APPELLANT

8. Mr. Ashish Dholakia, learned Senior Counsel for the Appellant submitted that:

- 8.1. The Order passed by the Respondent has found that the Appellant has committed five violations of the Code and the



Regulations made thereunder, however, the Impugned Judgment does not appreciate that the Appellant had provided valid justifications for each of the violations alleged by the Respondent, which have not been considered in the Order passed by the Respondent.

1st Allegation:

8.2. As regards the first allegation of ineligibility of Mr. Sushant Chhabra as a Joint Resolution Applicant along with Conquerent, it was submitted that as per Section 29A(g) of the Code, the promoter of the Corporate Debtor was not eligible to be a Resolution Applicant. However, as per Section 240A of the Code, the prohibition under Section 29A of the Code will not be applicable to the Micro, Small and Medium Enterprises (“MSME”). Mr. Sushant Chhabra had submitted a registration certificate dated 31.10.2017 for registration of the Corporate Debtor as MSME since 26.11.2007, which was relied upon by the Appellant for permitting Mr. Sushant Chhabra to be a Joint Resolution Applicant along with Conquerent.

8.3. Reliance was placed upon *Hari Babu Thota v. Pritha Srikumar Iyer*, 2023 INSC 1056, which holds that:

“16. Under the heading “exemption of Micro, Small and Medium Enterprises from Section 29-A” the discussion begins. It is referred to the ILC report of March, 2018 and its finding that Micro, Small and Medium Enterprises form the foundation of the economy and are key drivers of employment, production, economic growth, entrepreneurship and financial inclusion. The ILC report 2018 exempted these industries from Section 29-A (c) and (h) and the rationale for



the same was contained in para 27.4 of the report which reads as under:

“27.4 Regarding the first issue, the Code is clear that default of INR one lakh or above triggers the right of a financial creditor or an operational creditor to file for insolvency. Thus, the financial creditor or operational creditors of MSMEs may take it to insolvency under the Code. However, given that MSMEs are the bedrock of the Indian economy, and the intent is not to push them into liquidation and affect the livelihood of employees and workers of MSMEs, the Committee sought it fit to explicitly grant exemptions to corporate debtors which are MSMEs by permitting a promoter who is not a wilful defaulter, to bid for the MSME in insolvency. The rationale for this relaxation is that a business of an MSME attracts interest primarily from a promoter of an MSME and may not be of interest to other resolution applicants.”

17. The aforesaid thus, makes it clear as opined in the said judgments also, that excluding such industries from disqualification under 29A (c) and (h) is because qua such industries other resolution applicants may not be forthcoming which thus would inevitably lead not to resolution but to liquidation.”

8.4. The Appellant had also relied upon an affidavit dated 21.08.2020 submitted by Mr. Sushant Chhabra under Section 29A of the Code, wherein it was deposed that Sections 29A(c) and (h) were not applicable to him inasmuch as the Corporate Debtor was an MSME. The Appellant had also appointed a Process Advisor, Mr. Anil Kohli, who had during the 13th Meeting of CoC, confirmed that the Corporate Debtor was MSME.



- 8.5. Pursuant to notification dated 26.06.2020 issued by the Ministry of MSME, the Appellant had obtained a fresh MSME registration for the Corporate Debtor on 18.10.2020.
- 8.6. In view of the above, there was no occasion for the Appellant to suspect that Mr. Sushant Chhabra was not eligible to become a Joint Resolution Applicant along with Conquerent, as there was no publicly available information indicating that the registration of Corporate Debtor as an MSME had been cancelled. It was only when the Respondent sent an e-mail on 31.05.2023 to the Ministry of MSME to ascertain the veracity of the MSME certificate issued to the Corporate Debtor, in response dated 16.06.2023 it was stated that the registration of the Corporate Debtor as MSME was cancelled / marked as Z category on 22.12.2017.
- 8.7. Therefore, the Appellant had exercised reasonable due diligence by relying upon the Registration Certificate of MSME submitted by Mr. Sushant Chhabra, which was confirmed by Mr. Anil Kohli, the Process Advisor during the 13th Meeting of CoC as well as undertaking given by way of Affidavit by Mr. Sushant Chhabra. The Resolution Professional is not an adjudicator and only a facilitator, who is not required to do the fact-finding exercise and check the veracity of the documents submitted. In *Arcelormittal India Private Limited v. Satish Kumar Gupta and Ors.*, (2019) 2 SCC 1, it is held that:



“80. However, it must not be forgotten that a Resolution Professional is only to “examine” and “confirm” that each resolution plan conforms to what is provided by Section 30(2). Under Section 25(2)(i), the Resolution Professional shall undertake to present all resolution plans at the meetings of the Committee of Creditors. This is followed by Section 30(3), which states that the Resolution Professional shall present to the Committee of Creditors, for its approval, such resolution plans which confirm the conditions referred to in sub-section (2). This provision has to be read in conjunction with Section 25(2)(i), and with the second proviso to Section 30(4), which provides that where a resolution applicant is found to be ineligible under Section 29-A(c), the resolution applicant shall be allowed by the Committee of Creditors such period, not exceeding 30 days, to make payment of overdue amounts in accordance with the proviso to Section 29-A(c). A conspectus of all these provisions would show that the Resolution Professional is required to examine that the resolution plan submitted by various applicants is complete in all respects, before submitting it to the Committee of Creditors. The Resolution Professional is not required to take any decision, but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before the Committee of Creditors, who may or may not approve it. The fact that the Resolution Professional is also to confirm that a resolution plan does not contravene any of the provisions of law for the time being in force, including Section 29-A of the Code, only means that his prima facie opinion is to be given to the Committee of Creditors that a law has or has not been contravened. Section 30(2)(e) does not empower the Resolution Professional to “decide” whether the resolution plan does or does not contravene the provisions of law. Regulation 36-A of the CIRP Regulations specifically provides as follows:

“36-A. (8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective



resolution applicant complies with—

(a) the provisions of clause (h) of sub-section (2) of Section 25;

(b) the applicable provisions of Section 29-A, and
(c) other requirements, as specified in the invitation for expression of interest.

(9) The resolution professional may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence under sub-regulation (8).

(10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.

(11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list.

(12) On considering the objections received under sub-regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.”

8.8. Accordingly, there was nothing in public domain, which could have suggested that the Corporate Debtor did not enjoy the status of MSME. It is only because the Respondent enquired from the Ministry of MSME, it was informed that there was cancellation / marking as Z category of the MSME Registration obtained by the Corporate Debtor. Even the Appellant could get the re-



registration of the Corporate Debtor as MSME on 18.10.2020, which shows that the earlier registration was not cancelled or marked as Z category. Hence, there was no reason to believe that Mr. Sushant Chhabra was not eligible to become the Joint Resolution Applicant along with Conquerent.

8.9. Further, on 21.08.2023, the Appellant had written a letter to the Office of General Manager, District Industries Centre, Haridwar (“DIC”) to get a clarification on the issue of validity of the MSME certificate issued to the Corporate Debtor. In the response dated 25.08.2023, it was confirmed by the DIC that the Corporate Debtor was registered as MSME from 26.11.2007 and as per the on-site inspection carried out on 14.02.2023 by the DIC, the unit of the Corporate Debtor was found working / in production. This shows that the allegation that the registration of the Corporate Debtor as MSME was cancelled or put in Z category, does not appear to be correct.

8.10. In view of the above, the allegation that the Appellant permitted Mr. Sushant Chhabra to be a Joint Resolution Applicant along with Conquerent despite the cancellation of the registration of the Corporate Debtor as MSME is not correct and cannot be relied upon for passing the Order by the Respondent.

2nd Allegation:

8.11. As regards the second allegation of suppression of relevant facts from the CoC, there was no suppression of any fact as alleged. The Appellant was the Resolution Professional for another



corporate debtor, viz., Unitech Machines Limited of which, Mr. Sushant Chhabra was also the promoter. The Appellant had filed an Avoidance Application against Mr. Sushant Chhabra before the NCLT in the CIRP proceedings of Unitech Machines Limited during the same time when the Resolution Plan submitted jointly by Mr. Sushant Chhabra and Conquerent was under consideration before the CoC of the Corporate Debtor. However, the adjudication of the Avoidance Application was pending before the NCLT, and the Appellant was not under any obligation to disclose mere filing of the Avoidance Application in the CIRP proceedings of Unitech Machines Limited to the CoC of the Corporate Debtor as no order was passed by the NCLT relating to the same.

8.12. In any event, one of the members of CoC, viz., State Bank of India, was also the creditor of Unitech Machines Limited and was aware about the Avoidance Application filed by the Applicant before the NCLT in relation to the CIRP proceedings of Unitech Machines Limited.

8.13. Hence, there was no suppression of any fact from the CoC of the Corporate Debtor. Further, the fact that the Appellant had filed an Avoidance Application against Mr. Sushant Chhabra shows that there was no collusion between the Appellant and Mr. Sushant Chhabra. Accordingly, there was no question of suppressing any fact from the CoC of the Corporate Debtor as alleged in the Order passed by the Respondent.



3rd Allegation:

8.14.As regards the third allegation of discrepancy in examining financial capability of Mr. Sushant Chhabra, the Appellant had examined the net worth certificate of INR 9.09 crores submitted by Mr. Sushant Chhabra along with the Resolution Plan, as against the minimum net worth requirement of INR 1 crore. Accordingly, Mr. Sushant Chhabra had met the criteria as per Form G approved by the CoC to be eligible for submitting the Resolution Plan. Therefore, there was no occasion for verifying the financial capability of Mr. Sushant Chhabra. Mr. Sushant Chhabra along with Conquerent had a combined net worth of INR 12.97 crores and Conquerent had a turnover of INR 50.84 crores, as against the requirement of INR 10 crores. Accordingly, both Mr. Sushant Chhabra and Conquerent were eligible to be the Joint Resolution Applicants in view of the net worth and turnover as approved by the CoC at the time of passing the Resolution Plan.

8.15.Hence, the finding in the Order passed by the Respondent that the Appellant accepted the net worth certificate issued by a Chartered Accountant in a mechanical way, without application of mind and without proper due diligence, was incorrect.

8.16.In view of the above there was no violation of any of the provisions of the Code or the Regulations as alleged in the Order passed by the Respondent.



4th Allegation:

8.17.As regards the fourth allegation of disposal of the assets of the Corporate Debtor without the approval of the CoC, the Appellant had sold certain items of scrap and DG sets to realise the cash for the benefit of the Corporate Debtor, as the value of such assets were declining and it was in the best interest of the Corporate Debtor to dispose of the said assets and convert the same into cash. There was no allegation that such sale was undervalued, and the amount of the said sale was received by the Corporate Debtor and used towards its day-to-day expenses to meet the statutory obligations. Out of INR 55.10 lakhs received, INR 8.9 lakhs were utilized towards payment of salaries, INR 33.08 lakhs were utilized for payment of statutory dues and the balance amount was utilized for payment of legal fees, rent, plant expenses, insurance, electricity etc.

8.18.During the 18th Meeting of CoC held on 06.04.2023, the approval of CoC was sought *vis-à-vis* the sale of old stock of Kirloskar Gensets lying at Bhagwanpur Unit of the Corporate Debtor. At the said Meeting, the Appellant had placed an Action Taken Report, which specifically apprised the CoC about the sale of the scrap and DG sets. Such sale was in the ordinary course of business and, therefore, no approval was required from the CoC prior to such sale and it was duly informed to the CoC during the 18th Meeting of the CoC. As regards the Kirloskar Gensets lying at Bhagwanpur Unit of the Corporate Debtor, the permission of



CoC was obtained.

8.19.Hence, there was no violation of any provisions of the Code or the Regulations made thereunder by the Appellant by selling the assets of the Corporate Debtor. In any event, the sale of scrap and DG sets had taken place prior to the amendment in Regulation 18 of the CIRP Regulations, 2016. Prior to the said amendment, the CoC was discharged post-approval of the Resolution Plan and had no role in the CIRP process. Therefore, when the sale of scrap and DG sets was undertaken, there was no CoC in existence and no approval of CoC could have been obtained. The sale was done in good faith and in the best interest of the Corporate Debtor. Further, no benefit was received by the Appellant personally.

5th Allegation:

8.20.As regards the fifth allegation of executing Lease Agreement with the Prospective Resolution Applicants with respect to assets of the Corporate Debtor without the approval of the CoC, the two Leave and License Agreements dated 09.03.2021 and 18.11.2021 were respectively entered into between the Corporate Debtor and Conquerent as a Prospective Resolution Applicant. The Order did not appreciate that the Leave and License Agreements were not Lease Agreements and, therefore, there was no violation of Section 28(1)(k) of the Code, as the Leave and License Agreements granted temporary occupation rights to a property without transferring the ownership rights.



8.21. Further, no physical possession pursuant to the Leave and License Agreements was ever transferred to the Prospective Resolution Applicants. Hence, no prejudice was caused to the Corporate Debtor because of the Appellant entering into the Leave and License Agreements with the Prospective Resolution Applicants.

8.22. The Impugned Judgment failed to appreciate that none of the allegations found in the Order passed by the Respondent had any merit and, therefore, the Order was liable to be quashed and set aside. The Impugned Judgment did not consider the justification given by the Appellant for non-violation of any of the provisions of the Code or the Regulations made thereunder.

8.23. The suspension of the practicing certificate of the Appellant for a period of two years has caused immense prejudice to the Appellant because of stigma on his professional career. In the facts of the present case, no case is made out for such a harsh punishment as there has been no infraction of any of the provisions of the Code or the Regulations made thereunder.

8.24. Hence, the present Appeal deserves to be allowed.

SUBMISSIONS ON BEHALF OF RESPONDENT

9. Mr. Sahil Monga, the learned Counsel for the Respondent submitted that:

9.1. The submissions made on behalf of the Appellant on the factual aspect of the matter were not made before the learned Single Judge during the hearing of the Writ Petition and the Appellant is



not entitled to make these submissions for the first time in the Appeal. The memo of the Writ Petition only raises an issue regarding the disposal of the First SCN in favour of the Appellant acting as a *res judicata* for issuance of the Second SCN against the Appellant.

- 9.2. The Order passed by the Respondent is assailed in the Writ Petition only on this limited ground of jurisdictional error, which the learned Single Judge has considered and decided against the Appellant. Therefore, the Appellant is not entitled to raise the factual arguments on merits in the Appeal for the first time.
- 9.3. In any event, the Court in exercise of powers under the writ jurisdiction under Article 226 of the Constitution of India does not sit in appeal over the decision taken by an administrative authority unless there is an arbitrariness or perversity.
- 9.4. The Impugned Judgment has rightly held that the Order was passed by the Respondent after examining all the aspects before it and, therefore, no interference was required in the Writ Petition. The Writ Petition is not in the nature of first appeal, where the fact finding exercise can be undertaken by this Court. The scope of Article 226 of the Constitution of India is very limited and can be exercised only if there is a perversity or jurisdictional error in passing the Order.
- 9.5. In ***Sandeep Kumar Bhatt v. Insolvency and Bankruptcy Board of India & Ors.***, Neutral Citation: 2024:DHC:6868, this Court has held that:



“14. At the outset it is pertinent to mention that this Court while exercising its jurisdiction under Article 226 of the Constitution of India does not sit as an Appellate Authority. A writ court exercising its jurisdiction under Article 226 of the Constitution of India does not substitute its own conclusion to the one arrived at by any authority unless the decision is so perverse that no authority can come to such a conclusion or that the order is completely in contravention of any provision of any law be it an Act or the Regulation framed under the Act.

15. The Apex Court in Central Council for Research in Ayurvedic Sciences & Anr. v. Bikartan Das & Ors., 2023 SCC OnLine SC 996, has held as under:

“50. Before we close this matter, we would like to observe something important in the aforesaid context: Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

52. The second cardinal principle of exercise



of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to its logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

53. *The essential features of a writ of certiorari, including a brief history, have been very exhaustively explained by B.K. Mukherjea, J. in T.C. Basappa v. T. Nagappa, AIR 1954 SC 440. The Court held that a writ in the nature of certiorari could be issued in 'all appropriate cases and in appropriate manner' so long as the broad and fundamental principles were kept in mind. Those principles were delineated as follows:*

"7. ... In granting a writ of 'certiorari', the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal



purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous, but does not substitute its own views for those of the inferior tribunal

8. The supervision of the superior court exercised through writs of certiorari goes on two points, as has been expressed by Lord Sumner in King v. Nat Bell Liquors Limited [[1922] 2 A.C. 128, 156]. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise, the other is the observance of law in the course of its exercise. ...

9. Certiorari may lie and is generally granted when a court has acted without or in excess of its jurisdiction.”

54. Relying on T.C. Basappa (supra), the Constitution Bench of this Court in the case of Hari Vishnu Kamath (supra), laid down the following propositions as was established:

“(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review



findings of fact reached by the inferior court or tribunal, even if they be erroneous.”

55. This Court explained that a court which has jurisdiction over a subject matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior court were to rehear the case on the evidence and substitute its own finding in certiorari.

56. In Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477, P.B. Gajendragadkar, C.J., speaking for the Constitution Bench, placed the matter beyond any position of doubt by holding that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. The observations of this Court in para 7 are worth taking note of:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no



doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised....”



57. In Surya Dev Rai v. Ram Chandra Rai, (2003) 6 SCC 675, a Bench of two Judges held that the certiorari jurisdiction though available, should not be exercised as a matter of course. The High Court would be justified in refusing the writ of certiorari if no failure of justice had been occasioned. In exercising the certiorari jurisdiction, the procedure ordinarily followed by the High Court is to command the inferior court or tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to determine, whether on the face of the record the inferior court has committed any of the errors as explained by this Court in Hari Vishnu Kamath v. Ahmad Ishaque, AIR 1955 SC 233 occasioning failure of justice.”

- 9.6. Even on merits, all the five allegations against the Appellant are serious in nature as the Appellant has failed to perform the obligations as a Resolution Professional of the Corporate Debtor in terms of the provisions of the Code and the Regulations made thereunder. The findings of permitting the Joint Resolution Applicants even though the MSME registration of the Corporate Debtor having been cancelled, suppressing material facts within the knowledge of the Appellant from the CoC having adverse impact on the Corporate Debtor, selling off the assets of the Corporate Debtor without the permission of the CoC and execution of the Lease Deeds without the sanction of the NCLT, are clearly in violation of the provisions of the Code and the Regulations made thereunder, and the same justified the suspension of the registration of the Appellant as the Insolvency Professional.



9.7. The Impugned Judgment does not require any interference in the Appeal, which is required to be dismissed.

ANALYSIS AND FINDINGS

10. It is trite law that the scope of interference in the writ jurisdiction of Article 226 of the Constitution of India is extremely narrow and does not justify the exercise of the power to sit in appeal over the decision being challenged. The High Court does not review or reweigh the evidence upon which the determination is based in the order under challenge. In ***Syed Yakub v. K.S. Radhakrishnan & Ors.***, AIR 1964 SC 477, it is held that the writ jurisdiction of the High Court under Article 226 of the Constitution of India is supervisory rather than appellate and the finding of fact reached as a result of appreciation of evidence cannot be reopened or questioned in writ proceedings. While the High Court may correct an error of law apparent on the face of record, it cannot correct the errors of facts, however grave. It cannot also review the adequacy or sufficiency of the evidence led on a point as these are matters within the exclusive jurisdiction of the administrative authority.

11. In ***Afcons Infrastructure Limited v. Nagpur Metro Rail Corpn. Ltd.***, (2016) 16 SCC 818, it is held that:

“13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision.”



12. In view of the above, it is clear that the scope of interference by way of a judicial review is limited under Article 226 of the Constitution of India and can only be exercised if it is found that the decision by the administrative authority was unreasonable, irrational, arbitrary or perverse.

13. The Supreme Court in ***W.B. Central School Service Commission v. Abdul Halim & Ors.***, (2019) 18 SCC 39, held that:

“27. It is well settled that the High Court in exercise of jurisdiction under Article 226 of the Constitution of India does not sit in appeal over an administrative decision. The Court might only examine the decision making process to ascertain whether there was such infirmity in the decision making process, which vitiates the decision and calls for intervention under Article 226 of the Constitution of India.”

14. The learned Single Judge in the Impugned Judgment has examined the argument made on behalf of the Appellant with regard to the decision in respect of the First SCN being *res judicata* for issuance of the Second SCN and came to the conclusion that the foundation of the Second SCN was based on a different issue altogether and, therefore, the principles of *res judicata* would not apply. It was found that the Second SCN was not issued on the same cause of action as the First SCN.

15. As regards the cancellation of the MSME certificate of the Corporate Debtor, the argument of the Appellant before the learned Single Judge that the Appellant was not aware of such cancellation was not accepted in the Impugned Judgment on the ground that the Appellant cannot be exonerated of his statutory obligation under Section 30(2) of the Code read with the Regulations made thereunder and the Code of Conduct for the Insolvency Professionals.



16. Section 30(2) of the Code provides as under:

“30. Submission of resolution plan

(1)

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [payment] of other debts of the corporate debtor;

[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1 : For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2 : For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any



court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

[Explanation : For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”

17. Further, the Code of Conduct for the Insolvency Professionals provides that:

“1. An insolvency professional must maintain integrity by being honest, straightforward, and forthright in all professional relationships.

2. An insolvency professional must not misrepresent any facts or situations and should refrain from being involved in any action that would bring disrepute to the profession.

3. An insolvency professional must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the insolvency proceedings or not.

3A. An insolvency professional must disclose the details of any conflict of interests to the stakeholders, whenever he comes across such conflict of interest during an assignment.”



18. The Impugned Judgment in Paragraph No. 13 observes that:

“13. Under the scheme of the Code, Resolution Professionals play a crucial role which includes conducting CIRP, managing operations of corporate debtors, and preserving and protecting assets for the benefit of all the stakeholders. Thus, the efficient working of the Code, hinges on the functioning of Resolution Professionals. Section 30(2) of the Code places an obligation upon the Resolution Professional to confirm that the Resolution Plan does not contravene any provisions of law and requires the Resolution Professional to examine the mandatory compliances before submitting the Resolution Plan for approval by the CoC. Section 29A aims to prevent those persons from gaining control of the Corporate Debtor from persons who have contributed to the defaults of the Corporate Debtor. Since there is an explicit bar under Section 29A of the Code, prohibiting the suspended board of directors of the Corporate Debtor to submit a Resolution Plan for the Corporate Debtor, Petitioner as a Resolution Professional cannot escape the liability of failure to carry out due diligence. Therefore, Petitioner’s contention before the Disciplinary Committee that due to non-availability of complete data, he was not able to ascertain MSME status of Corporate Debtor, cannot be accepted. Even in absence of such information, knowing the critical consequence of registration status of the Corporate Debtor as an MSME, Petitioner relied on the confirmation from Mr. Sushant Chhabra, who being the suspended director, had conflict of interest in determination of the Corporate Debtor as an MSME. Additionally, Petitioner did not inform the CoC that he had filed an Avoidance Application against Mr. Sushant Chhabra before the NCLT in CIRP of Unitech Machines Limited. In view of the same, Petitioner’s lack of due diligence in exercising its statutory obligations ought to be dealt with in accordance with the framework provided under the law.”

19. In view of the statutory scheme of the Code and the Code of Conduct for Insolvency Professionals, the Appellant was under obligation to ensure the compliance with the provisions of the Code and the Regulations made thereunder, including Section 29A and Section 30(2) of the Code, and the



Code of Conduct as held in the Impugned Judgment in Paragraph No. 13 quoted above.

20. Admittedly, the Appellant did not argue the factual aspects on merits before the learned Single Judge in the Writ Petition, which is sought to be argued for the first time in this Appeal, which is not permissible.

21. The Appellant filed the Review Petition, which was rejected *vide* order dated 07.10.2025, as all grounds raised in the Review Petition were found to be issues that were already considered in the Impugned Judgment or were never raised when the Writ Petition was adjudicated.

22. Therefore, the submissions on the merits that were not even argued before the learned Single Judge in the Writ Petition cannot be examined in this Appeal for the first time.

23. In any event, given the limited scope of power available under Article 226 of the Constitution of India, the learned Single Judge could not have appreciated the finding of facts arrived at in the Order passed by the Respondent as per the settled law discussed above. As the learned Single Judge has found that there was no jurisdictional error or perversity in the finding of the Order passed by the Respondent, the Impugned Judgment does not require any interference as all the legal submissions made by the Appellant before the learned Single Judge have been adequately dealt with in the Impugned Judgement.

24. The Appellant has not assailed the finding in the Impugned Judgment on the aspect of the decision of the First SCN being a *res judicata* for the Second SCN in this Appeal. Instead, the Appellant has sought to challenge the Impugned Judgment on the factual aspects on merits, which were never



2026:DHC:153-DB



argued before the learned Single Judge and being canvassed for the first time in Appeal, which cannot be permitted.

25. In view of the above, the observations and conclusions in the Impugned Judgment are justified and do not require any interference in this Appeal.

26. Accordingly, the present Appeal is dismissed as being devoid of any merit. The pending Application also stands disposed of. No order as to costs.

TEJAS KARIA, J

DEVENDRA KUMAR UPADHYAYA, CJ

JANUARY 09, 2026

ap