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

+ W.P.(C) 3936/2020

DUFF & PHELPS INDIA PRIVATE LIMITED..... Petitioner

Through Mr. Rajiv Nayyar, Sr. Adv. With
Mr.Arjun Pant and Mr. Kartik Nayyar, Advs.
versus

INSOLVENCY & BENKRUPTCY

BOARD OF INDIA & ANR.

..... Respondents

Through Ms.Madhavi Divan, ASG with
Mr.Vikas Mehta, Mr. Apoorv Khator, Mr. Kushal
Sark and Mr. Apoorv Khattar, Advs. for IBBI
with Mr. Saji Kumar, Executive Director and
Mr.Animesh Khandelwal, IBBI.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **14.07.2020**

This hearing is conducted through Video-Conferencing.

CM No. 14092/2020 (stay)

1. This order is passed in continuation of the earlier order dated 07.07.2020.
2. At the outset, learned ASG has informed the court that respondent No. 1 has received a representation from the petitioner and would be carrying out the necessary directions of this court dated 07.07.2020 shortly.
3. Learned senior counsel appearing for the petitioner has further strongly urged that this court may grant interim orders in the present application. He has made the following submissions:-
 - (i) Reliance has been placed on the written submissions filed by the

petitioner to point out that non-IPE firms have been involved in some of the biggest IBC cases in the country. Reliance is placed on a chart given in para 16 of the written submissions to point out the names of various non-IPE concerns who have been engaged for carrying out the resolution process forward including companies by the name of Pricewater Coopers Pvt. Ltd., Deloitte Touche Tohmatsu India LLP, etc.

(ii) It is further stressed that the petitioner is also a regulated entity being regulated by SEBI. Hence, it cannot be stated that the petitioner is not subject to any regulation.

(iii) It has further been pleaded that the Committee of Creditors (hereinafter referred to as 'COC') is the dominant party in making decision. Reliance is placed on the judgment of the Supreme Court in the case of ***K. Sashidhar vs. Indian Overseas Bank, (2019) 12 SCC 150*** to plead that the Supreme Court has observed therein that the commercial wisdom of the COC has been given paramount status without any judicial intervention for ensuring completion of the stated process within the time line prescribed by the IBC Code. He reiterates that in the present case, the COC in its meeting on 01.11.2018 in the case of Gitanjali Gems Ltd. had approved the appointment of the petitioner and the terms and conditions of appointment. Similarly, on 06.03.2019, the COC of Nakshatra World Ltd. and Nakshatra Brands Ltd. had also approved the appointment of the petitioner and the terms and conditions on which it had been appointed. Hence, it is pleaded that the RP acted only on the instructions of the COC and no fault could be found with the appointment of the petitioner by the RP.

(iv) It has further been pointed out that the RP had filled appropriate statutory forms with respondent No. 1 and in September 2019, the RP duly

informed respondent No. 1 about the appointment of the petitioner. Hence, it has been pleaded that there was no suppression of facts by the RP to that effect.

(v) It has further been pointed out that the petitioner apprehends that the assignments which it is currently handling on behalf of other RPs may get jeopardised.

4. Having heard learned senior counsel for the petitioner, it was put to the learned ASG that this court may pass appropriate directions that any of the RPs may not discontinue any assignments given to the petitioner based on the observations in the impugned order.

5. Learned ASG has opposed the aforesaid suggestion stating as follows:-

(i) She relies upon Section 206 of the IBC to contend that under the said provision, no person can render services as an insolvency professional without being enrolled as a member of an insolvency professional agency and registered with respondent No. 1 Board.

(ii) Reliance is also sought to be placed on a judgment of the Division Bench of this Court in the case of ***Cushman and Wakefield India Pvt. Ltd. vs. Union of India & Ors., (2019) SCC OnLine (Delhi) 6863*** to state that insistence on RP's engaging professionals/IPE is valid.

(iii) It is further pleaded that this court may not endorse the wrong that any of the RPs may have committed in making appointment of entities who are neither IPE or not in any manner subject to any regulation. It has further been pleaded that the terms and conditions of appointment of the petitioner by other RP and the other factual background of such appointment are not before this court and hence, this court may not pass any such interim order at

this stage.

6. In my opinion, prima facie it appears that in the present case, the petitioner was appointed with the consent of the COC. The terms and conditions of the remuneration were also approved by the COC. In these circumstances, it would be appropriate that the petitioner till the next date of hearing be permitted to continue such assignments in which the petitioner is presently engaged by other RPs. Such assignments shall not be terminated based on the observations made in the impugned order. It is clarified that this order is passed without prejudice to the rights and contentions of the parties without commenting on the merits or de-merits of the submissions which have been made in court today.

7. Issue notice. Learned counsel for respondent No. 1 accepts notice. Reply, if any, be filed before the next date of hearing.

8. List on 30.07.2020.

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Issue notice. Learned counsel for respondent No. 1 accepts notice. Counter-affidavit, if any, be filed before the next date of hearing.

Respondent No. 2 has been impleaded as a performa respondent. For the time being, notice need not be issued to respondent No. 2.

List on 30.07.2020.

In the meantime, in case the speaking order is passed as directed by this court on the last date of hearing i.e. 07.07.2020, respondent No. 1 may place the said order on record.

JULY 14, 2020/rb

JAYANT NATH, J