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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 & BANKRUPTCY BOARD OF INDIA & ANR. ..... Respondent
Through Ms. Madhavi Divan, ASG with Mr. Vikas Mehta, Mr. Apoorv Khator, Mr. Kushal Sarkar and Mr.Apoorv Khattar, Advs. with Mr.Saji Kumar, Executive Director and Mr.Animesh Khandelwal for IBBI.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

% 07.07.2020

This hearing is conducted through Video Conferencing.

CM No. 14093/2020 and CM Nos. 14095-96/2020 (exemption)

The applications are allowed subject to all just exceptions.

CM No. 14094/2020 (seeking leave to file lengthy list of dates and synopsis)

The application is allowed.

W.P.(C) 3936/2020 and CM No. 14092/2020 (stay)

1. This writ petition is filed by the petitioner seeking an appropriate order or direction to set aside the impugned order dated 08.06.2020 passed by respondent No.1-Insolvency and Bankruptcy Board of India and to expunge the observations and findings pertaining to the petitioner in the impugned order dated 08.06.2020.

2. The case of the petitioner is that ICICI Bank Ltd. had filed a company petition before the NCLT for initiating CIRP i.e. Corporate Insolvency Resolution Process proceedings against the Companies in question i.e. Gitanjali Gems Ltd, Nakshatra World Ltd. and Nakshatra Brands Ltd. On 08.10.2018, Mr. Vijay Kumar Garg was appointed as an Interim Resolution Professional and a moratorium was imposed under Section 14 of the Insolvency Code. It is stated that on 06.03.2019, the members of the Committee of Creditors of M/s. Nakshatra World Ltd. (NWL) and M/s. Nakshatra Brands Ltd. (NBL) had approved the appointment of the petitioner for providing infrastructure, personnel and back office services to the Resolution Professional to assist him in discharging his duties. On 14.05.2019, the NCLT passed an order and prima facie, formed an opinion that request by the RP for withdrawal of an amount of Rs.3,54,08,983/- towards CIRP costs is an exorbitant claim.

3. In the meantime, respondent No. 1 issued a show cause notice on 11.12.2019 to the RP asking him to show cause why suitable action should not be taken against him for contravention of various provisions of the Insolvency Code. Pursuant to a personal hearing, the impugned order dated 08.06.2020 has been passed and certain directions have been issued against the RP.

4. The grievance of the petitioner is that though, it was not a party to the said proceedings, serious observations have been made against the petitioner in the impugned order which will have a ramification on the reputation and business of the petitioner. It is pleaded that the petitioner is a reputed international Company having a large practice. It is further stated that the observations against the petitioner should not have been made without

giving an appropriate opportunity to the petitioner to respond to the same.

5. Learned senior counsel for the petitioner has broadly further submitted as follows:-

(i) He has pointed out that the impugned order wrongly concludes that the engagement of the petitioner is a mischief.

(ii) He secondly submits that the allegations of siphoning of funds have been made against the petitioner which cause grave damage to the reputation of the petitioner. It is pleaded that the Committee of Creditors in its meeting held on 01.11.2018 had approved the appointment of the petitioner and that the petitioner has so far not received a single penny for the services rendered.

Hence, it is pleaded that the observations against the petitioner in the impugned order are illegal and passed contrary to the Principles of Natural Justice and the same are liable to be quashed.

6. Learned Additional Solicitor General appearing for respondent No. 1 has broadly pleaded as follows:-

(i) It is pleaded that there are no civil consequences of the observations made in the impugned order against the petitioner. The petitioner cannot be aggrieved by the same.

(ii) It has further been pointed out that respondent No. 1 is not a regulator of the conduct of the petitioner and hence, has no role to play. Hence, there were no reasons to allow the petitioner to participate in the proceedings.

(iii) It has further been pointed out that there are grave errors and lapses on the part of the RP/respondent No. 2 on account of which action had to be taken by respondent No. 1.

(iv) Factually, it is pointed out that the proceedings were commenced on account of the order of the NCLT dated 14.05.2019 where a direction was passed referring to the problem of fixation of CIRP cost to respondent No. 1. In these circumstances, the show cause notice was issued to the Resolution Professional.

(v) It is pointed out that the agreement with the petitioner dated 08.10.2018 seeks to spell out the scope of the work of the petitioner. The duties entrusted to the petitioner essentially tentamount to the RP contracting out his duties and liabilities under the IBC to the petitioner. The scope of the services to be provided by the petitioner is essentially an act of taking over the entire functions of the RP.

(vi) Further, it is pointed out that the petitioner is not an Insolvency Professional Entity (IPE) under Regulation 12 of the Insolvency Bankruptcy Board of India (Insolvency Professionals) Regulation 2016 and could not have been appointed by the RP for providing assistance to him

7. I cannot help noticing that the nature of allegations made against the manner of functioning of respondent No. 2 as an RP are grave. Prima facie, at this stage, it may not be appropriate to stay the operation of the impugned order.

8. However, a perusal of the impugned order dated 08.06.2020 shows that there are some strong observations made against the petitioner. The order notes that the petitioner is not an IPE within Regulation 12 of the Insolvency Bankruptcy Code of India (Insolvency Professionals) Regulation 2016 and hence, it cannot be engaged by resolution professionals. It also observes that the RP and the petitioner did not have a professional relationship and the engagement is a façade to siphon off the funds of the ailing companies. It is also stated that the fee agreed to be paid to the

petitioner is more than 19 times to the fee payable to the RP and cannot be termed to be reasonable by any standard.

9. Given the nature of the observations which have been made against the petitioner in the impugned order, in my opinion, prima facie there is merit in the plea of the petitioner that this would cause grave prejudice to the petitioner. The order is likely to be communicated to various functionaries and clients of the petitioner and may cause prejudice to the petitioner. Such observations should ordinarily be made after issue of a show cause to the concerned party.

10. In these circumstances, let the petitioner give a representation to respondent No. 1 within three days. Respondent No. 1 may thereafter give a hearing to the petitioner through video conferencing and pass a reasoned order uninfluenced by the observations made against the petitioner in the impugned order. Respondent No. 1 is free to modify the impugned order accordingly as per law. Needful may be done preferably within two weeks from today.

11. Learned senior counsel for the petitioner however submits that he would like to make further submissions as this court should stay the operation of the impugned order vis-à-vis the petitioner.

12. For further arguments, list on 14.07.2020.

13. Parties may file short written submissions of three pages before the next date of hearing.

JAYANT NATH, J

JULY 07, 2020/rb