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

+ W.P.(C) 3692/2020

MOHAN LAL JAIN

..... Petitioner

Through

Mr. Sumesh Dhawan, Advocate with
Mr. Vatsala Kak and Ms. Ankita
Bajpai, Advocates.

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
AND ANR

..... Respondents

Through

Mr. Vikas Mehta and Mr. Kushal
Sarkar, Advocates for R-1 with
Mr. Saji Kumar, Executive Director,
Mr. Umesh Kr. Singh, Chief General
Manager, Insolvency and Bankruptcy
Board of India.
Mr. Rahul Malhotra and Mr. Varun
Garg, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

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29.06.2020

(Video Conference Hearing)

CM APPL. 13211/2020 (Exemption)

It is an application seeking exemption from filing typed copies of documents annexures, affixing the court fee and also from filing duly attested affidavit. Taking note of the prevailing conditions on account of Covid-19 pandemic, application is allowed with the stipulation that the requisite court fee and attested affidavit shall be filed within 7 days of the resumption of the regular functioning of the Court. Application stands disposed of accordingly.

CM APPL. 13212/2020 (Exemption)

It is an application seeking exemption from filing certified/typed copies of the documents. Allowed, subject to just exceptions.

W.P.(C) 3692/2020 & CM APPL. 13210/2020 (for stay)

The petitioner was appointed Insolvency Professional (IP) of Mack Soft Tech Private Limited - against which the Corporate Insolvency Resolution Process (CIRP) was initiated on 11.08.2017 and an Insolvency Resolution Professional (IRP) appointed. As for the petitioner, he is said to have taken over as the IP only on 31.01.2018. The petitioner is alleged to have violated the terms of moratorium inasmuch as he is stated to have allowed some amounts to flow out to a debtor i.e. the respondent no.2 in violation of the provisions of IBC.

According to the petitioner, there was no violation of any term of Moratorium inasmuch as the monies were remitted from the escrow account maintained by HDFC Bank and that, the monies lying in the escrow account could not be under the control of the IP. In addition thereto, it is the plea of the petitioner that he did not take any decision of his own but only followed the past decisions taken by the previous IP and CoC.

During the course of hearing, Mr. Dhawan, ld. counsel for the petitioner has also adverted to three of the orders passed by the same Authority- which passed the impugned order and which form part of the compilation filed, to show that in quite similar circumstances of misunderstanding of the provisions of the IBC Code, the Insolvency Professionals (IPs) were let off with warnings but the petitioner has come to

be imposed disproportionate penalty in the face of the given facts and circumstances.

Issue notice. Mr. Mehta, ld. counsel appearing on behalf of respondent no.1 and Mr. Malhotra, ld. counsel appearing on behalf of respondent no.2 accept notice. Respective counter-affidavits/replies be filed within four weeks. Rejoinders thereto, if any, may be filed a week before the adjourned date.

List on 04.09.2020. Till then, taking into account the totality of the facts and the circumstances, the operation of the impugned order is stayed subject to the petitioner depositing within 10 days from today a sum of Rs.25 lacs with the respondent no.1 – Insolvency and Bankruptcy Board of India. The amount so deposited by the petitioner shall be kept in fixed deposit with a nationalized bank earning maximum interest for an initial period of one year. Such deposit would be disbursable subject to any further orders that may be passed by the Court.

A. K. CHAWLA, J

JUNE 29, 2020

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