

Court No. - 40

Case :- WRIT - C No. - 33195 of 2024

Petitioner :- Pramod Kumar Sharma

Respondent :- Insolvency And Bankruptcy Board Of India And 2 Others

Counsel for Petitioner :- Devansh Misra, Gaurav Dwivedi, Raghuvansh Misra, Srestha Pandey, Varchasva Dwivedi

Counsel for Respondent :- A.S.G.I.

Hon'ble Shekhar B. Saraf, J.

Hon'ble Vipin Chandra Dixit, J.

1. Heard Sri Amit Saxena, learned Senior Counsel assisted by Sri Devansh Mishra and Sri Varchasva Dwivedi, learned counsel for the petitioner and Sri Rajesh Tripathi, learned counsel for respondent no.3.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by order dated September 20, 2024 whereby the registration of the petitioner as a Resolution Professional under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') has been suspended for a period of three years.

3. Mr. Saxena, learned Senior Counsel appearing on behalf of the petitioner has submitted before this Court that the complaint itself indicates that the same was filed after the limitation period of 45 days. Furthermore, one is unable to ascertain whether the complaint is filed within the additional period of 30 days provided under the Code. He has also relied upon the impugned order to indicate that his preliminary objection with regard to the time barred complaint has been dealt with in a perfunctory manner, and accordingly, the impugned order is completely without jurisdiction as the said complaint could not have been entertained at all.

4. Mr. Saxena further submits that the order of suspension of the petitioner is an order affecting the rights of the petitioner to carry out his vocation / profession / business as enshrined in Article 19(1) of the Constitution of India.

5. Upon a perusal of the complaint and the impugned order, we are of the view that a *prima facie* case is made out in favour of the petitioner as the complaint does not explain the reasons for delay in filing of the same and the regulation clearly provides for a maximum period of 75 days within which the complaint is required to be filed. The lack of reasons for seeking condonation of delay clearly goes to the root of the validity of the complaint.

6. The impugned order also does not in any manner deal with the reasons for condoning the said delay. Accordingly, we are *prima facie* of the view that balance of convenience and inconvenience is in favour of the petitioner and the impugned order cannot be allowed to continue unabated.

7. Accordingly, the impugned order dated September 20, 2024 is stayed till the next date of listing.

9. None appeared on behalf of the Insolvency and Bankruptcy Board of India.

10. Issue notice to the respondent no.2.

11. Office is also directed to provide Dasti notice to the learned counsel appearing on behalf of the petitioner for service of notice upon respondent no.2.

12. List this matter on November 25, 2024.

Order Date :- 16.10.2024

Dev/-

(Vipin Chandra Dixit,J.) (Shekhar B. Saraf,J.)