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

Date of decision: 27th AUGUST, 2024

IN THE MATTER OF:

\+ **W.P.(C) 15588/2023 & CM APPLs. 62380/2023, 65667/2023**

SANDEEP KUMAR BHATT ..... Petitioner

Through: Mr. Arvind Shukla, Mr. Mohit Nandwani, Advocates and Mr. Kamal Deep Tyagi, CMA.

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA & ORS. ..... Respondents

Through: Ms. Amrita Singh and Mr. Ankit Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging an Order dated 01.11.2023 passed by the Disciplinary Committee of the Insolvency and Bankruptcy Board of India (*hereinafter referred to as 'the IBBI'*) in case bearing No. IBBI/DC/194/2023 suspending the registration of the Petitioner as an Insolvency Professional for a period of two years.

2. The facts in brief leading to the present petition are as under:

a) The Petitioner got registered with IBBI as an Insolvency Professional on 02.06.2017. On 03.08.2017, the National Company Law Tribunal (*in short* 'NCLT/Adjudicating Authority'), admitted an application under Section 9 of the Insolvency & Bankruptcy Code, 2016 (*hereinafter referred to as 'IBC'*) filed by PR International initiating Corporate Insolvency Resolution Process (CIRP) against GTHS Retails Pvt. Limited (Corporate

Debtor).

b) The Petitioner was appointed as an Interim Resolution Professional (IRP) and *vide* Order dated 20.12.2017, the Adjudicating Authority confirmed and appointed the Petitioner as the Resolution Professional.

c) Vide Order dated 04.07.2019, the Adjudicating Authority took note of the fact as informed by the Petitioner that the period of 270 days within which CIRP needs to be completed has come to an end and also the Resolution Applicant has withdrawn his offer and therefore the only option left was to proceed towards Liquidation. The Liquidation process against the Corporate Debtor was initiated.

d) On 16.10.2019, Mr. Ramit Rastogi was appointed as the Liquidator and the Petitioner herein was discharged from this case.

e) The Liquidator filed an application being IA/3719/2020 before the Adjudicating Authority seeking directions to the suspended ex-Directors of the Corporate Debtor to furnish the information and documents as prayed by him in the application. However, the said application was withdrawn by the Liquidator *vide* Order dated 01.10.2021 stating that the suspended ex-Directors of the Corporate Debtor have furnished the information as required by him and have been cooperating in the process.

f) IA No. 2276/2021 was filed by the Liquidator for dissolution of the assets of the Corporate Debtor. The NCLT in IA-2276/2021 *vide* Order dated 19.04.2022 passed the following directions:-

" Ld. *Counsel for the Applicant presents his case*

and as per the Form H, liquidation value of the Corporate Debtor indicated at serial no. 22 on page no. 88 of the application is Rs.4,28,98,000/. Whereas as per the final report submitted by the Liquidator, only an amount of Rs. 13,32,042/- has been realized from disposal of the assets of the Corporate Debtor. Ld. Counsel for the Applicant is directed to explain the difference between the liquidation value and the amount realized during the process of liquidation. Also, he is directed to indicate the status of the land, building or any other assets in possession of the Corporate Debtor when it was a going concern. Ld. Counsel for the Liquidator is directed to furnish the list of the assets as well as place the Valuation Report on record by filling an additional affidavit within ten days. List on 11.05.2029…"

g) In compliance of the abovementioned order, the Liquidator placed on record the Valuation Report. The said Report shows the value of assets to be Rs. 4.29 crores out of which Rs. 2.89 crores comprises of Debtors and Work-in-Progress (WIP) whereas the value of fixed assets was stated as Rs. 12.14 lakhs.

h) After going through the Valuation Report, the Adjudicating Authority passed an Order dated 15.07.2022 raising some serious doubts upon the entire CIR/Liquidation proceedings and held as under:-

" Apparently, the realised value is Rs.13.32 lakh only against the Rs.04.29 crores worth of assets. It is also admitted by the Ld. Counsel for the Liquidator that during the course of the entire CIR/Liquidation proceedings, no application for realisation of the book debts have been made, which creates serious doubt about the conduct of

the CIRP/liquidation proceedings. It is also not clear whether the security deposits for rented premises is received back ? Accordingly, let the RP and the Liquidator be called upon to explain the efforts made for realisation of value of the abovementioned assets and why didn't they file any application for realisation of the assets/debt of the Corporate Debtor. Let notice be issued to the IRP/RP as well as the Liquidator to remain personally present before this Tribunal on the next date of hearing.

Simultaneously, RoC is also directed to file a detailed report in the matter. Copy of the Compliance report and the valuation report filed before this Tribunal be sent to the RoC by the Applicant as well as by the Registry.

The matter be adjourned for the report of RoC as well as explanation of the IRP/ RP and Liquidator. Ld. Counsel for the Liquidator is directed inform all of them. List on 05.09.2022."

i) In compliance with the aforesaid order, the Petitioner filed his reply dated 29.10.2022 to the queries sought for by the Adjudicating Authority. The Adjudicating Authority Vide Order dated 17.01.2023 also sought a report from the IBBI regarding the doubts as raised in the order dated 15.07.2022.

j) Thereafter, on 25.04.2023, a notice of investigation under Regulation 8(1) of the Insolvency & Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (*hereinafter referred to as the* 'Inspection Regulations') was issued to the Petitioner. In the said notice, the Petitioner was asked to reply/clarify on the doubts raised by the Adjudicating Authority in

Order dated 15.07.2022 with supportive documents within 10 days.

k) Vide e-mail dated 25.04.2023, the Petitioner replied to the investigation notice stating that it was the Liquidator who had reported the wrong Liquidation Value by filing the application for dissolution and the Petitioner has already furnished a detailed reply to the Adjudicating Authority in compliance of the Order dated 15.07.2022.

l) The Petitioner, through another e-mail dated 25.04.2023, replying to the same investigation notice cited an order of National Company Law Appellate Tribunal (NCLAT) in Shri Ramachandra D. Choudhary, Resolution Professional of M/s Oasis Tradelink Ltd. v. Bansal Trading Company, wherein it was held that remedy for recovery of debts, disputed or not, cannot be determined in summary proceedings and the Insolvency & Bankruptcy Code does not contemplate adjudication of any such nature. It was further stated that the Committee of Creditors (CoC) never resolved to initiate any reasoned proceedings in the name or on behalf of the Corporate Debtor and it was the Petitioner who took all the necessary actions. It is also stated that there was no need to file an application before the Adjudicating Authority for recovery from book debtors as the Corporate Debtor was a going concern and most of the debtors were part of the books for a very long time. The Petitioner also attached the reply to the queries of the Adjudicating Authority dated 29.10.2022. However, the same is not on record.

m) The Petitioner then sent yet another e-mail dated 04.07.2023

replying to the same notice of investigation and stated that the copy of affidavit along with the reply filed to the Adjudicating Authority is attached which is self explanatory and also contains all the mail trails between the Liquidator and the Petitioner. However, the same has not been placed on record. It is also stated that the application for furnishing documents from the suspended ex-Directors which was filed by the Liquidator was only filed against the suspended ex-Directors of the Corporate Debtor and the Petitioner was not a party in the same.

n) The Petitioner in the aforesaid e-mail dated 04.07.2023, further stated that it was the duty of the Liquidator to retrieve all the documents from the company's premises as was required by him in terms of the Liquidation Process Regulations.

o) It is further stated that when the Liquidator was given complete possession of the Corporate Debtor on 12.09.2019, the Corporate Debtor was a going concern and all the records/documents were at the premises only. It is also stated that complete set of all the documents were handed over to the Liquidator by 07.11.2019 and the Liquidator had himself acknowledged the receipt of all the documents *vide* e-mail dated 20.09.2020.

p) The investigation report was filed by the Investigating Authority to the IBBI wherein it was stated that AGM(MM) was directed to conduct investigation in the matter of GTHS Retails Pvt. Limited and accordingly a notice under Section 8(1) of the Inspection Regulations was issued to the Petitioner as well as the Liquidator. The Investigating Authority after considering the submissions made by the Petitioner observed as under:-

*"**iii) IA's Observation***

It has been observed that as per balance sheet for the year 2017-2018, security deposits as on 31.03.2018 amounted to Rs.53,43,668. However, the same reduced to Rs.15,000/- as per the balance sheet of 31.03.2019. This security deposit stemmed from the business model of the CD wherein the CD did interiors on the rented premises of franchise and paid security for taking the premises on rent. Details of same is as under:-

Particulars	***31/03/17***	***31/03/18***	***31/03/19***	***16/10/19***
Security deposits	*1,77,01,489*	*53,43,668*	*15,000*	*-*
Trade receivables	*7,44,99,123*	*2,17,56,189*	*1,67,99,372*	*1,32,268*

*Supporting documents for the same are annexed hereto as **Annexure VII.***

Further, the book value of the CD as on ICD was as under:-

S. No.	*Particulars*	*Book Value (Rs in Lakhs)*
1	*Next Fixed Assets*	*12.14*
2.	*Net Intangible Assets*	*6.83*
3.	*Security deposit for rented premises*	*57.02*
4.	*Balance with Govt. Authority*	*32.56*
5.	*WIP*	*79.54*
6.	*Finished Goods*	*6.25*
7.	*Book debts exceeding 6 months*	*55.08*
8.	*Book debts below 6 months*	*154.32*
9.	*FDR with Reliance Capital*	*6.21*
10.	*Balance with Bank in Margin Account*	*8.40*
11.	*Interest accrued on FDR*	*5.86*
13.	*Cash & Bank Balance*	*4.77*
	TOTAL	*428.98*

RP stated that CD was in the business of manufacturing and trading of lady's garments and was operating through different stores in the country, wherein CD purchased raw material from different vendors and after getting it processed in his factory/job work was supplying the same to the different franchises. As a part of the business model CD had entered different into sets of agreement(s) with the different franchise(s) with different terms wherein franchise shall sell the goods on MRP and shall remit full funds to the account of the CD. The CD shall remit 45% of the receipts back to the franchise being their commission. The business of CD was continuing and in maximum cases, the CD failed to honour its part of commitment and stopped supplying fresh material post April 2016. The old stocks could not be sold being out of fashion by the stores and to meet their expenses, they started selling material of other brands. RP replied that the security given was adjusted against rent which was to be paid by the CD. However, IP failed to provide any details regarding the same, wherein said security deposits were adjusted against the unpaid rent.

It has been observed that RP failed to take any step to realise the said security deposit advanced to various franchises. A copy of the reply of RP has been annexed hereto as Annexure VIII. RP further failed to realise the WIP amounting to Rs.79.54 lakhs lying with various petty job workers as shown in the books of the CD as on 03.08.2017 i.e., the Insolvency Commencement Date (ICD). Section 25(2)(b) of the Insolvency and Bankruptcy Code (hereinafter referred to as 'the Code') states that the RP has the duty to represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial,

quasi-judicial or arbitration proceedings. RP was under the duty to approach the AA with regards to any directions relating to the realization of security deposits advanced to various franchise and the WIP lying with various petty workers. However, RP failed to take any steps towards realization of the said security deposits paid to various franchise.

Further, Mr. Ramit Rastogi was appointed as liquidator vide order dated 16.10.2019. In the preliminary report filed with AA and the 3rd progress report was well as in his reply liquidator mentioned that Mr. Harsh Manchanda (suspended ex director) transferred amounts of Rs.50,480 and Rs. 61,104 aggregating to Rs.1.11 lacs to his personal SBI account from the CD's account. A copy of the bank statement for the transactions has been annexed hereto as Annexure IX. Copy of the preliminary report and the progress report annexed hereto as Annexure X. Liquidator mentioned that he also filed a non-cooperation application before the AA against the ex-directors/promoters to provide the requisite documents/information/records since he did not obtain the full documents from RP. Further, AA vide order dated 12.10.2020, directed the ex-director to provide all documents and date along with return of monies within a period of 10 days. Copy of the Hon'ble NCLT order dated 12.10.2020 has been annexed hereto as Annexure XI.

It has been observed that RP failed to preserve and protect the assets of the CD. Further, he failed to handover the complete records of the CD to the incoming liquidator. RP himself has mentioned in his affidavit dated 20.10.2020 before the Ho'ble NCLT in para 9 that liquidator was not handed over certain records of the CD as he was not in possession of the same. The relevant extract is as follows:-
"the records of the company viz.-Cash book, ledger

Bills, vouchers, assets, accounting records always remain with the company and there is no obligation on the RP to keep all records in his possession when he left the office as RP…"

Further, RP not only failed to take the control and custody of the CD during his tenure, but also allowed suspended ex director to transfer money from the CD's account to the suspended director's account to the tune of Rs.1.11 lakhs. It was the duty of the RP to take the control and custody of the assets of the CD and its business records. Accordingly, the said conduct of RP is in violation of S. 25(1) which states that it is duty of RP to preserve and protect the assets of the CD read with S. 25(2)(a) which imposes duty on the RP to take immediate control and custody of the assets of the CD and the business records.

IP further failed to submit the CIRP forms within the time prescribed under the circular issued by the IBBI on 14th August 2019. There was a delay of 414 days from the due date of submission of CIRP Form 1, a delay of 11 days from the due date of submission of CIRP Form 3 and a delay of 11 days from the due date of submission of CIRP Form 5. Supporting documents for the same are collectively annexed hereto as Annexure XII.

Form	***Due Date***	***Date of Submission***	***Delay (in days)***
CIRP Form 1	*30/09/2019**	*17/11/2020*	*414*
CIRP Form 3	*30/09/2019**	*17/10/2019*	*11*
CIRP Form 5	*30/09/2019**	*11/10/2019*	*11*

** In the IBBI circular dated 14th August 2019, it is mentioned that all Forms which became due on or before 15th September had to be submitted by 30th September 2019. The relevant extract is as follows*

"It is directed that an IP shall file electronically- a. the Forms along with relevant information and records, which have become due on or before 15th September, 2019 in respect of all CIRPs, both closed and ongoing, conducted by him, by 30th September, 2019: and b. the Forms along with relevant information and records, which will become due on or after 16th September, 2019 in respect of CIRPs conducted by him, by the timelines as specified in the Table under Para 7 above.

iv) In view of the above, Mr. Sandeep Kumar Bhatt, RP violated Section 25(1), 25(2)(a), 25(2)(b), 208(2)(a), 208(2)(e) of the Code, Reg. 7(2)(h) of the IP Regulations read with Clause 14 of the Code of Conduct and the circular issued by the IBBI on 14th August 2019."

q) The Investigating Authority after going through the reply, submissions and the documents as produced by the Petitioner observed that-

i. As per the balance sheet of 2017-18, the security deposits as on 31.03.2018 amounted to Rs.53,43,668/- and the same was reduced to Rs.15,000/- as per the balance sheet of 31.03.2019.

ii. The Petitioner failed to realize the WIP amounting to Rs.79.54 lakhs lying with petty job workers as mentioned in the books of the Corporate Debtor as on 03.08.2017 (insolvency commencement date) and failed to perform his duties as per Section 25(2)(b) of the IBC.

iii. The Petitioner failed to preserve and protect the assets of the Corporate Debtor and also failed to handover certain records of the Corporate Debtor to the Liquidator.

iv. The Petitioner failed to take control and custody of the Corporate Debtor and also allowed the suspended ex-director to transfer money from the account of the Corporate Debtor to the account of the suspended ex-director to the tune of Rs.1.11 lakhs. Therefore, the Petitioner is in violation of Section 25(1) read with 25(2)(a) of the IBC.

v. The Petitioner failed to submit the CIRP Forms within the time prescribed under the circular issued by the IBBI dated 14.08.2019. There was a delay of 414 days from the due date for submission of CIRP Form 1, delay of 11 days in submission of CIRP Form 3 and a delay of 11 days in the submission of CIRP Form 5.

vi. It was held that the Petitioner is in violation of Section 25(1), 25(2)(a), 25(2)(b), 208(2)(e) of the IBC and the IP Regulations read with Clause 14 of the Code of Conduct and the Circular dated 14.08.2019 issued by the IBBI.

r) Thereafter, a Show Cause Notice was issued to the Petitioner by IBBI under Section 2(1)(a) of the IBC read with Regulation 11 & 12 of the Inspection Regulations. The IBBI after considering the observations of the Investigating Authority took a *prima facie* view that the Petitioner by his conduct and actions as stated in the investigation report has contravened Section 25(1), 25(2)(a), 25(2)(b), 208(2)(a), 208(2)(e) of the IBC, Regulation 40B of the CIRP Regulations, Regulations 7(2)(a) & (h) of the IP Regulations read with Clauses 1, 2, 14, and 19 of the Code of Conduct specified thereunder read with Circular No. IBBI/CIRP/023/2019

dated 14th August, 2019. Petitioner was also directed to show cause as to why actions as permissible under Section 220(2) of the IBC including cancellation of his registration shall not be taken against him. He was directed to submit his reply along with supporting material latest by 08.09.2023.

s) The Petitioner vide letter dated 13.09.2023 replied to the Show Cause Notice stating that Petitioner has always worked in compliance of the provisions of the IBC and has taken precautions to preserve and protect the assets and continue the business operations of the corporate debtor. The Petitioner also stated that he had represented and acted on behalf of the corporate debtor in exercising rights of the corporate debtor in judicial, quasi judicial and arbitration proceedings and hence was in compliance of Section 25(2)(b) of IBC. Petitioner also accepted the fact that he has filed the CIRP Forms 3 & 5 with delay of 11 days and prayed for condonation of such delay as it was the early era of IBC and there were several doubts about the procedure. The Petitioner also stated in his reply that he has maintained the integrity of his position by being honest, straight forward and forthright in his work and he is not involved in any action that would bring disrepute to the profession. The Petitioner also filed a written submission with additional documents before the Board further clarifying his points as mentioned in the initial reply to the Show Cause Notice.

t) After due consideration of the investigation report and the reply to the show cause notice, the Disciplinary Committee of the IBBI vide Order dated 01.11.2023, in exercise of the powers conferred

under Section 220 IBC read with Regulation 13 of the Investigation Regulations passed an Order suspending the registration of the Petitioner for a period of two years. Relevant portion of the said Order reads as under:

> *"4.1. In view of the submission made by Mr. Sandeep Bhatt, and materials available on record, DC notes that Mr. Sandeep Bhatt has contravened the provisions of the Code and Regulations made thereunder, specially, sections 25(1), 25(2)(a), 25(2)(b), 208 (2)(a) and (e) of the Code, regulation 40B ofthe CIRP Regulations and regulation 7(2)(a) & (h) of the IP Regulations read with clauses 1, 2, 14 and 19 of the Code of Conduct.*
>
> *4.2. Charges of operating the bank account of the CD, which was under liquidation estate, by the RP is of grave nature. Keeping in view the facts recorded in the summary findings, the Disciplinary Committee, in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the Investigation Regulations hereby hereby, suspends the registration of Mr. Sandeep Bhatt for two years.*
>
> *4.3. This Order shall come into force after expiry of30 days from the date of this order.*
>
> *4.4. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Sandeep Bhatt is enrolled as a member.*
>
> *4.5. A copy of this order shall be sent to the CoC/Stake Holders Consultation Committee (SCC) of all the Co~porate Debtors in which Mr. Sandeep Bhatt is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Sandeep Bhatt.*
>
> *4.6. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company*

Law Tribunal, New Delhi, for information.

4.7. Accordingly, the show cause notice is disposed of."

u) It is this Order which has been challenged by the Petitioner in the present Petition.

3. Learned Counsel for the Petitioner states that the impugned Order dated 01.11.2023, passed by the Respondents, is illegal, devoid of merits, and passed without considering the facts and evidence placed by the Petitioner. It is also stated that the principle of natural justice on which our judicial system is based upon was not at all followed as the Petitioner was not informed about any incriminating documents relied upon by the Disciplinary Committee while passing the impugned Order. It is further stated that the Disciplinary Committee which heard the case of the Petitioner and even requested the Petitioner to file certain documents was not the Disciplinary Committee that passed the impugned Order.

4. It is further contended by the learned Counsel for the Petitioner that the Respondents have failed to show whether the investigation report prepared by the Investigating Authority was accepted by the Disciplinary Committee and whether the Investigating Authority was duly appointed to conduct an investigation on the Petitioner. It is also stated that only one-member Disciplinary Committee passed the impugned Order against the Petitioner and a perusal of Section 220(1) of the IBC shows that the Disciplinary Committee shall comprise of at least two members and one of such members must be a whole time member. Hence it is a cardinal principle of having at least two members in a coram because a single member may be biased or incompetent to hear and adjudicate upon the issues in front of him.

5. *Per contra*, Learned Counsel for the Respondents states that the scope of judicial review in matters of disciplinary proceedings is very limited and it is a settled law that judicial review under Article 226 of the Constitution of India is confined to the decision making process and is not analogous to the adjudication of the case on merits. It is stated that in the present case, the investigation and the Disciplinary proceedings were conducted as per the procedure and there is no perversity or arbitrariness in the impugned Order. It is further stated that the averment made by the Petitioner that the physical hearing was in front of another Disciplinary Committee whereas the impugned Order was passed by another Disciplinary Committee is completely false. She states that the physical hearing was held before Mr. Sudhaker Shukla and it was him who passed the impugned Order. She also states that it was only after the impugned Order was passed against the Petitioner that objections regarding the constitution of the Disciplinary Committee were raised which clearly shows that this was an afterthought and such objections should not be permitted to be raised at a belated stage. She further states that there is no provision in the Code which mandates that the Disciplinary Committee should comprise of two or more members. The only requirement under Section 220 is that the Disciplinary Committee shall comprise of whole time members and such requirement has been duly met. She further states that the Disciplinary Committee followed the applicable procedure and principles of natural justice while passing the impugned Order which is well reasoned and does not require any interference from this Court in Writ Jurisdiction.

6. Heard the Counsels for the parties and perused the material on record.

7. The contention of the Petitioner that the Oder of the IBBI suffers from corum non-judice inasmuch as it was only a single member committee

which passed the impugned Order, is not tenable in law. At this juncture, it is imperative to reproduce Section 220 of the IBC and the same reads as under:

> "*220. (1) The Board shall constitute a disciplinary committee to consider the reports of the investigating Authority submitted under sub-section (6) of section 218:*
>
> *Provided that the members of the disciplinary committee shall consist of whole-time members of the Board only.*
>
> *(2) On the examination of the report of the Investigating Authority, if the disciplinary committee is satisfied that sufficient cause exists, it may impose penalty[1] as specified in sub-section (3) or suspend or cancel the registration of the insolvency professional or, suspend or cancel the registration of insolvency professional agency or information utility as the case may be.*
>
> *(3) Where any insolvency professional agency or insolvency professional or an information utility has contravened any provision of this Code or rules or regulations made thereunder, the disciplinary committee may impose penalty which shall be—*
>
> *(i) three times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention; or*
>
> *(ii) three times the amount of the unlawful gain made on account of such contravention,*
>
> *whichever is higher:*

Provided that where such loss or unlawful gain is not quantifiable, the total amount of the penalty imposed shall not exceed more than one crore rupees.

(4) Notwithstanding anything contained in sub-section (3), the Board may direct any person who has made unlawful gain or averted loss by indulging in any activity in contravention of this Code, or the rules or regulations made thereunder, to disgorge an amount equivalent to such unlawful gain or aversion of loss.

(5) The Board may take such action as may be required to provide restitution to the person who suffered loss on account of any contravention from the amount so disgorged, if the person who suffered such loss is identifiable and the loss so suffered is directly attributable to such person.

(6) The Board may make regulations to specify—

(a) the procedure for claiming restitution under sub-section (5);

(b) the period within which such restitution may be claimed; and

(c) the manner in which restitution of amount may be made."

8. A perusal of Section 220 IBC shows that Section 220 only postulates that the Board shall constitute the Committee and this Committee can be a one member Committee also. The proviso does not indicate that there has to be always more than one member in the Committee. Respondents have relied on Section 13(2) of the General Clauses Act 1987 and the same reads as under:

> *"**Section 13. Gender and number.***
> *In all Central Acts and Regulations, unless there is anything repugnant in the subject or context,*
> *(1) ....*
> *(2) words in the singular shall include the plural, and vice versa."*

9. Applying the said principle to the facts of the present case, in absence of any specific mandate that there has to be more than one Member Committee or that the Board shall always constitute more than one member Committee, the contention of the learned Counsel for the Petitioner is not tenable in law.

10. The contention of the learned Counsel for the Petitioner that the IBBI ought to have awaited the proceedings before the Adjudicating Authority instead of rushing with enquiry awarding punishment, cannot be accepted. Both the proceedings are entirely distinct from each other. IBBI has been constituted to oversee the conduct of the IRPs and the Liquidators and to see as to whether the IRPs and Liquidators are acting in compliance with the mandate of the IBC. The IBBI can proceed ahead to investigate into the conduct of the IRPs and the Liquidators even if on getting information that the IRP has committed a misconduct.

11. It is the responsibility of the Resolution Professional to manage the affairs of the corporate debtor as a going concern during corporate insolvency resolution process and to appoint and convene meetings of the Committee of Creditors, so that they may decide upon resolution plans, and to collect, collate and finally admit claims of all creditors, which must be examined for payment, in full or in part or not at all, by the resolution applicant and be finally negotiated by the Committee of Creditors. The role of the Resolution Professional is not adjudicatory but administrative and a

Resolution Professional should not forget that their office is not an office of comfort but an onerous one for it is on their diligence and integrity, the successful working of the IBC rests.

12. A perusal of the records reveals that the Petitioner adjusted Rs.1,51,64,091/-, Rs. 1,52,20,146/- and Rs. 18,28,668/- as rent payable against the security deposit on 03.08.2017, 31.03.2018 and 31.03.2019 respectively. However, such adjustments were not shown transparently in the yearly financial account.

13. Material on record shows that the Petitioner has failed to preserve the assets of the Corporate Debtor. He has not handed over the complete record of the Corporate Debtor to the Liquidator. The Petitioner has allowed suspended ex-Directors to transfer money from the Corporate Debtor's account to his account and has therefore failed to take control and custody of the Corporate Debtor and business records. Material on record discloses that the Petitioner has violated several provisions of the IBC and the Regulations.

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 the 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 Summer 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 well 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, CJ., 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."*

16. At this juncture, this Court deems it appropriate to delineate the scope of interference by Court exercising its powers of judicial review in respect of a challenge pertaining to a decision taken by the experts of the field. It has been observed consistently by the Supreme Court in a number of judgments that the Court may interfere in an administrative decision, if and only if the same is arbitrary, irrational, unreasonable, *mala fide* or biased. The Hon'ble Supreme Court in Tata Cellular v. Union of India, **(1994) 6 SCC 651,** has stated as follows:

> **"70.** *It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down."*

17. Summing up the principles laid down in Tata Cellular (supra), Jagdish Mandal v. State of Orissa, **(2007) 14 SCC 517**, Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay, **(1989) 3 SCC 293,** and Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), **(2016) 8 SCC 622**, the Hon'ble Supreme Court in Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., **(2016) 16 SCC 818,** stated:

> ***"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.****"*
>
> (emphasis supplied)

18. In Silppi Constructions Contractors v. Union of India **(2020)16 SCC**

489, the Hon'ble Supreme Court has followed the aforesaid judgments and reiterated the principle that Courts should exercise a lot of restraint while exercising powers of judicial review in respect of matters pertaining to technical issues as the Courts lack the expertise to adjudicate upon technical issues. The relevant portion of the Judgment is reproduced as under:

> *"**19.** This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution.* ***The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such***

interference will cause unnecessary loss to the public exchequer*."* (emphasis supplied)

19. From the aforestated judgments, it is clear that the scope of interference by way of judicial review in commercial matters is extremely limited and can only be justified when a case of arbitrariness, unreasonableness, *mala fide*, bias, or irrationality is clearly made out. Further, the Courts lack the requisite expertise to adjudicate upon technical issues which are often involved in commercial matters.

20. Applying the law laid down by the Apex Court to the facts of the present case, this Court is of the opinion that the IBBI has not contravened any of the procedural requirements mandated under the IBC or the Inspection Regulations. Apart from making bald allegations, the Petitioner has not been able to pin point as to which of the regulations have been violated by the Respondents. The contention of the Petitioner has mainly been that the assessment or the conclusion arrived by the Disciplinary Committee is not correct and as stated by the Apex Court, this Court does not sit over the conclusions arrived at by the expert bodies in its jurisdiction under Article 226 of the Constitution of India. This Court only has to see as to whether the decision making process is justified or not and is in accordance with law or not.

21. The role of the Resolution Professional is the very heart of the purpose for which the IBC has been enacted. He is the person who takes complete charge of the company when the company is undergoing through resolution process to see whether the company can be revived or not. The Resolution Professional is, therefore, obliged to maintain highest standard of professional ethics and even a single act of negligence, omission or commission is sufficient for the Board to take action against the Resolution

Professional under Section 217-220 of the IBC after following the due procedure. The contention of the Petitioner that the Board ought to have waited till the conclusion of the proceedings before the Appellate Tribunal does not have any merit. The function of the Board under the IBC are distinctive from the functions of the Appellate Authority which is *in seisin* of appeals from the Orders of the NCLT. The purpose of the IBBI is to look into the conduct of the resolution professional in the nature and manner of the performance of their duty.

22. The conduct of the Petitioner herein has been first scrutinized by the Investigating Authority which has found substantial deficiencies in the performance of the Petitioner inasmuch the Petitioner has failed to protect the assets of the Corporate Debtor and that there is a substantial delay in the submission of the forms by the Petitioner with the Board. Several instances of the failure on the part of the Petitioner have been found in failing to protect the assets of the company which are listed as under:

A. Failure to preserve and protect the assets of the Corporate Debtors
   a) Dip in security Deposit given against rent of shops
   b) Recovery of Work-in-Progress (WIP)
   c) Failure to take control of the bank accounts of their Corporate Debtors

B. Delay in submission of CIRP Forms with the Board

C. Contravention of Sections 25(1), 25(2)(a), 25(2)(b), 208(2)(a) and (e) of IBC, Regulation 40B of the CIRP Regulations and Regulations 7(2)(a) and (h) of the IP Regulations read with Clause 1, 2, 14 and 19 of the Code of Conduct

23. The Order of the Disciplinary Committee shows that the reply given by the Petitioner has been considered and all the aspects have been taken

care of by the Board and the decision has been taken by the Board after following the due procedure. This Court has gone through the Orders of the Board and the material on record and is of the opinion that the procedure has been followed by the Board before passing the Order suspending the Petitioner herein. The attempt of the Petitioner has been to persuade this Court to substitute its conclusion to the one arrived at by the Board, which is outside the scope of Article 226 of the Constitution of India.

24. This Court, therefore, does not find any reason to interfere with the Order passed by the Respondents.

25. Accordingly, the Petition is dismissed, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

AUGUST 27, 2024
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