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

Date of decision: 12th September, 2019

\+ W.P.(C) 7651/2018

REKHA SHARMA ..... Petitioner
Through: Appearance not given.

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA AND ANR. ..... Respondents
Through: Ms. Bindu K. Nair, Adv. for R-1.
Mr. Atanu Mukherjee, Adv. for R2.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

A very short issue comes up for consideration before this court. The petitioner has filed the present writ petition seeking to declare the amendment introduced to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 (IBBI Regulations, 2016) notified on 27.03.2018 as unconstitutional to the extent that the amendment incorporates a criterion that the Limited Insolvency Examination is required to be cleared within the last 12 months before the application for enrolment is made with the Insolvency Professional Agency, as was communicated to

the petitioner vide letter dated 12.06.2018 received from the Insolvency and Professional Agency of Institute of Cost Accountants of India/respondent No.2. The amendment to the regulations has come into force w.e.f. 01.04.2018.

2. Learned counsel for the petitioner submits however that the petitioner had made an application for registration as an insolvency professional on 29.03.2018 i.e. prior to the amendment having come into force. The application was sent by courier which was received by respondent No. 2 on 31.03.2018. The application was also submitted online on 30.03.2018.

3. In the counter-affidavit filed by respondent No. 1, paragraphs 14 and 15 narrate that respondent No. 1 did not receive the application of the petitioner. Counsel for respondent No. 2 however explains that though the application was received but the same could not be processed since 30.03.2018 and 31.03.2018 were holidays and the amendment came into force on 01.04.2018, which was also a holiday, being Sunday.

4. Counsel for respondent No. 1 therefore fairly submits that the applicant could not be enrolled prior to 31.03.2018 only on account of holidays. He submits that except for this reason, there was no bar for enrolment of the applicant. He further submits that on 16.04.2018, respondent No. 1 advised Insolvency Professional Agencies to forward applications of all persons who had enrolled with the IPA as on 31.03.2018. Paras 14 and 15 of the counter-affidavit read as under:

> *"14. That in the instant case, on April 10, 2018, the Respondent No. 1 had received an e-mail from the CEO of Indian Institute of Insolvency Professionals of ICAI (IIIP-ICAI) on behalf of all three IPAs [viz. ICAI (IIIP-ICAI), ICSI Institute of Insolvency*

Professionals (ICSI-IIP) and Respondent No. 2] along with the applications of the individuals received by IPAs by 31st March, 2018, but were not forwarded to the Board before 31.03.2018 as the period during 29th March 2018 to 1st April 2018 were holidays on account of Mahavir Jayanthi, Good Friday, Saturday and Sunday. Therefore, vide their representation, the IPAs had requested the Respondent No.1, to consider bona fide applicants (for grant of registration) whose applications could not be processed and forwarded by IPA to the Respondent No.1 before 31st March, 2018 on accounts of the aforesaid reason. Accordingly, on April 16, 2018, Respondent No. 1 advised IPAs to forward all applications of all the Applicants who had enrolled with the IPAs as on 31st March 2018 i.e. prior to the effective date of aforesaid amended regulation.

15. That in response thereof, Respondent No1 received 42 applications from all 3 IPAs which were inclusive of (a) 34 applications from IIP-ICAI; (B) 6 applications from ICSI-IIP; and (c) 2 applications from Respondent No. 2. Post scrutiny of the above applications, Respondent No. 1 granted registrations to all the aforesaid 42 Applicants on consideration of natural justice. It may also be noted that while Respondent No. 1 has cleared both the applications received from Respondent No. 2, it has not received any application pertaining to the Petitioner till date. In that view of the matter, the consideration of the Petitioner's application or grant of registration by the Respondent No. 1, to the Petitioner did not arise.

The allegations to the contrary, made against the Respondent No. 1 are incorrect, unsustainable and deserve to be rejected. The Writ Petition, as against the Respondent No. 1 is not sustainable and liable to be dismissed."

5. Having regard to the fact that the applicant made the application on 29.03.2018 which was received by respondent No. 2 prior to the last date before the amendment came into effect, but the applicant could not be enrolled only for the reason that 30th & 31st March were holidays, respondent No. 2 is directed to enrol the applicant as an insolvency professional on requisite fees being deposited within 3 days from today.

6. The application would be forwarded to respondent No. 2 who would consider the same as having been received prior to the cut-off date.

7. Counsel for respondent No. 1 submits that this court should clarify that this order be not treated as a precedent, having been passed considering the peculiar facts of the case, keeping in mind 30.03.2018 and 31.03.2018 were holidays and the applicant could not be enrolled only for this reason.

8. Accordingly, we make it clear that this order shall not be treated as a precedent, having been passed in the peculiar facts of the present case.

9. With these directions, the writ petition is disposed of.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

SEPTEMBER 12, 2019/*uj*