

\$~28

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 23rd December, 2022

+ W.P.(C) 17680/2022& CM APPL. 56503/2022

DHANKALASH DISTRIBUTORS PRIVATE

LIMITED

..... Petitioner

Through: Mr. Aditya Dewan and Ms. Nadeem
Khan, Advocates, (M-8527611077).

versus

UNION OF INDIA THROUGH THE MINISTRY OF CORPORATE
AFFAIRS & ORS. Respondents

Through: Mr. Asheesh Jain, CGSC with Mr.
Keshav Mann, Mr. Gaurav Kumar &
Mr. Vishal Kumar, Advocates & Ms.
Archana Surve, Govt. Pleader for
R1-2,(M-9811125100),
(e-mail-asheeshjain.cgsc@gmail.com)
Mr. Rajiv Nayar, Sr. Advocate, Mr.
Anirudh Bhahrv, Mr. Manmeet Singh,
Mr. A. Robin Frey and Mr. Kamendra
P. Singh, Advocates for R-3,
(M-8839680052).
Mr. Manik Dogra and Mr. Kanav
Madnani, Advocates for R-4,
(M-9811439334).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner- Dhankalash Distributors Pvt. Ltd. has filed the present petition seeking early disposal of the complaints made by it against

Respondent Nos. 3 and 4 on 14th January, 2022 and 17th January, 2022 to Respondent No.2- Insolvency and Bankruptcy Board of India (IBBI). The case of the Petitioner is that it is one of the financial creditors of M/s Piyush IT Solutions Pvt. Ltd. and Respondent No.3 is the Resolution Professional (*hereinafter 'RP'*) appointed by the NCLT *qua* the said company and Corporate Insolvency Resolution Process is underway.

3. It is the case of the Petitioner that there are several irregularities committed by Respondent Nos.3 & 4 *qua* whom two complaints have been preferred by the Petitioner dated 14th January, 2022 and 17th January, 2022 to the IBBI which is the sector regulator. Id. Counsel submits that such a complaint has been filed invoking the jurisdiction of the IBBI under the ***Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017*** (*hereinafter 'Regulations'*). It is, further, submitted by the Id. Counsel, relying upon Regulation 7 dealing with disposal of complaints, that the complaints when received ought to be disposed of within the time limits as specified in the Regulations. However, in the present case, despite almost a year having been passed since the filing of the complaints, no decision has been taken by the IBBI.

4. Mr. Asheesh Jain, Id. Counsel appearing for the IBBI submits that he wishes to seek instructions in the matter and in any case IBBI would consider the matter and pass a decision in accordance with law.

5. On behalf of Respondent No.3 and 4 it is highlighted by Id. Sr. counsel that an application has already been preferred by this very Petitioner before the NCLT raising similar grievances against the RP and Respondent No.4.

6. The matter has been heard. The primary grievance in this petition is in respect of non-adjudication of complaints dated 14th January, 2022 and 17th

January, 2022 filed by the Petitioner. It is noticed by the Court that under Regulation 7 specific time periods have been fixed for disposal of complaints. Regulation 7 reads as under:

“7. Disposal of complaint.

(1) The Board may seek additional information and records from the complainant and information and records from the concerned service provider to form a prima facie view whether the contravention alleged in the complaint is correct.

(2) The complainant and the service provider shall submit the information and records sought under sub-regulation (1) within fifteen days thereof.

(3) The Board shall form an opinion whether there exists a prima facie case within forty-five days of the receipt of the complaint.

(4) The Board shall close the complaint where it is of the opinion under sub-regulation (3) that there does not exist a prima facie case and communicate the same to the complainant.

(5) If the complainant is not satisfied with the decision of the Board under sub-regulation (4), he may request a review of such decision.

(6) The Board shall dispose of the review under sub-regulation (5) within thirty days of the receipt of the request for review by an order with an opinion whether there exists a prima facie case.

(7) Where the Board is of the opinion under this regulation that there exists a prima facie case, it may order an inspection under sub-regulation (3) of regulation 3, order an investigation under sub-regulation (2) of regulation 7 or issue a show cause notice under sub-regulation (2) of regulation 11 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017, as may be warranted.

(8) Where the Board is of the opinion that the complaint is not frivolous, it shall refund the fee of

two thousand five hundred rupees received under sub-regulation (3) of regulation 3.”

7. Since the complaints are approximately 10 to 11 months old, the IBBI shall now take a decision on the same and communicate the same to the Petitioner within a period of one month from today.

8. In the application filed by the Petitioner before the NCLT raising objection in respect of the resolution plan approved by the Committee of Creditors, the following averments have been made against Respondent No.3 & 4:

“8. It is further pertinent to mention that the Applicant has also filed a complaint against the present RP before the Insolvency and Bankruptcy Board of India ("IBBI") on 14.01.2022 based on various illegalities committed by him during the CIRP. The Applicant, in the capacity of Financial Creditor, was constrained to approach the IBBI as the actions of the RP have been contrary to the ethics of the profession, objectivity integrity, independence and impartiality expected from him. The RP also failed to ensure meticulous compliances regarding timeliness and other regulatory provisions of IBC. It is humbly submitted that the RP has acted in contravention to the "Code of Conduct for the Insolvency Professionals", and as a matter of abundant caution and as a duty towards full disclosure, the Applicant has thought it essential to apprise this Hon 'ble Tribunal of the said pending Complaint before the IBBI. A copy of the complaint submitted to IBBI by the Applicant and a screenshot of the website of IBBI showing pendency of the complaint is annexed herewith as Annexure A-4 (Colly).”

9. Considering the fact that the said application is also pending before the NCLT, the IBBI shall place its decision before the NCLT as well, for

consideration.

10. It is made clear that this Court has not examined the merits of the allegations made in the complaints.

11. Needless to add, in terms of Regulation 7, any remedies which the Petitioner may have in respect of the decision of the IBBI, are left open to be availed of, in accordance with law.

12. With these observations, the present petition, along with all pending applications, is disposed of.

PRATHIBA M. SINGH, J

DECEMBER 23, 2022

dj/sk

