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W.P.No.21186 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.10.2023

Pronounced on : 22.12.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.21186 of 2023
and WMP.No.20596 of 2023

Ad.(CA) V.Venkata Siva Kumar ... Petitioner

Vs.

1.Insolveny and Bankruptcy Board of India (IBBI)

Represented by Mr.Rajesh Kumar

General Manager

7th Floor, Mayur Bhawan, Shankar Market

Connaught Circus, New Delhi - 110 001.

2.IIIPA / ICAI

Rep. by Mr.Rahul Madan

Managing Director

ICAI Bhawan, 3rd Floor, Hostel Block

A-29, Sector-62, Noida

Uttar Pradesh - 201 309.

3.Anil Kumar B

Member Technical (Retd)

Hindustan Newsprint Ltd.,

Newsprint Nagar PO

Kottayam, Kerala Dist. - 686 001.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the decision of the first respondent in the impugned order File No.COMP-11015/8/2023-IBBI/766/783 dated 03.07.2023 and quash the same as being arbitrary, illegal and violative of Art.14, 19, 2o(2), and 21 and pass a consequential order awarding exemplary damages to be paid to the legal aid.

For Petitioner : Mr.V.Venkata Sivakumar
Petitioner-in-Person

For Respondents : Mr.AR.L.Sundaresan
Additional Solicitor General
Assisted by Mr.C.V.Ramachandramurthy
for R1

ORDER

The petitioner herein is a Resolution Professional, and the Insolvency and Bankruptcy Board of India (in short IBBI) vide its proceedings dated 03.07.2023 issued a show-cause notice on him under Section 219 of the Insolvency and Bankruptcy Code, 2016 (in short IBC), r/w Regulations 11 and 12 of IBBI (Inspection and Investigation) Regulations, 2017. By virtue of this show-cause notice, the Authorization For Assignment (AFA) of the Resolution Professional concerned will stand automatically suspended under Regulation 23A of the Model Bye-Laws and Governing Board of Insolvency Professional Agencies Regulations, 2016



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1.2. The pointed allegation made against the petitioner in the show cause notice is that the petitioner was appointed as the liquidator for M/s.Jeypore Sugar Limited (under liquidation), and while discharging his responsibilities under Sec.230 of the Companies Act, he shared the details of the valuation report of the assets of the company with all the scheme proponents, as a result of which all of them quoted the same price.

1.3.The petitioner has given his reply to the show-cause notice and it is under enquiry. In this petition, the petitioner challenges the show-cause notice.

2.1 The case of the petitioner is that:

- a) On 25.02.2019, a Corporate Insolvency Resolution Process (CIRP) of Jeypore Sugar Company Ltd. commenced, and the petitioner was appointed as the Resolution Professional by the Adjudicating Authority, which by definition is the NCLT.
- b) On 29.05.2020, the Adjudicating Authority decided that CIRP has failed, and initiated the liquidation process of the corporate-debtor, and the petitioner was appointed as the liquidator.
- c) Subsequently, IDBI bank, one of the financial creditors of the



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corporate debtor, had moved IA 815/IB/2020 in CP 1307/IB/2018 before the Adjudicating Authority, seeking the replacement of the petitioner as the liquidator on the ground that the petitioner has acted against the interest of the corporate debtor (CD) by sharing the valuation report with the prospective scheme proponents. While contesting the said application, the petitioner did admit that he had shared the valuation report of the corporate debtor with the prospective scheme proponents. On 01.07.2022, the Adjudicating Authority condemned the said act of the petitioner and proceeded to pass an Order and removed the petitioner as the liquidator.

- d) Subsequently, on 01.09.2022, one Mr. Anil Kumar, a Technical Member of the NCLT (3rd respondent herein), had filed two complaints, one with the Indian Institute of Insolvency professionals of the Institute of Chartered Accountants of India(IIP/ICAI), and the other with the IBBI. In his complaint, the 3rd respondent had alleged that the petitioner, after he was removed as the liquidator of the corporate debtor, was defiling the former's reputation in the profession by concocting stories of corruption. The 3rd Respondent had also alleged that the Petitioner had violated Clause 21 of the Code of



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Conduct specified in the First Schedule to the IBBI (Insolvency Professionals) Regulations, 2016, which mandates the Insolvency Professional to ensure confidentiality of the information relating to the liquidation process.

- e) This complaint however, was rejected by the IIIP on the ground that it does not fall within the purview of the IBC. But not the IBBI. On 03.07.2023, the IBBI issued a show cause notice to the petitioner alleging that he had violated Regulations 34(2) and 34(5) of the Liquidation Regulations, which mandate that the asset memorandum must be kept confidential during the process of liquidation, that by leaking the same to the prospective scheme proponents had resulted in all the prospective scheme proponents quoting identical price along the valuation report. The IBBI asked the Petitioner to show cause as to why disciplinary action should not be taken for violating Secs. 35(1)(d), 208(2)(a), 208(2)(e) of the Code, Regulation 34(5) of the Liquidation Regulations, Regulations 7(2)(a) and 7(2)(h) of the IP Regulations r/w. Clauses 1,2,12, and 14 of the Code of Conduct specified therein. On the same date (03.07.2023), the Authorization for Assignment (AFA) of the petitioner was also suspended.



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2.2 Alleging that the show cause notice was issued with malafides, the petitioner challenges it broadly on the following grounds:

- a) That at the time when the show cause notice was issued on him, the petitioner was functioning only as a liquidator appointed by the NCLT, and that he was under a direction from the NCLT to explore the possibility of a compromise under Sec.230 of the Companies Act, 2013. When the petitioner was functioning as the liquidator under the Companies Act, IBBI cannot invoke the provisions of the IBC to examine the conduct of the petitioner. In other words, the IBBI is incompetent to invoke IBC against liquidator appointed by the NCLT and not in its authority as the Adjudicating Authority under the IBC.
- b) Even if it is presumed that IBBI can invoke IBC, still the show cause notice cannot be sustained on the ground that the petitioner had shared the information regarding the value of the company under liquidation, since a liquidator is expected to share vital information with the stake holders, more so, when he is discharging his responsibility under Sec.230 of the Companies Act, 2013.

3. This plea was resisted by by the first respondent through its counter,



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where it alleged:

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- a) The IBBI is empowered under Section 218 of the IBC to initiate an action based on any information it may receive from other sources.
- b) The stay granted by the NCLAT in CA(AT)(Ins) 302/201 relates to the “stay of the impugned order 17.11.2021 in IA No. 641/2021”. The order passed on 17.11.2021 relates to the inclusion of Rayagada assets in the valuation of the assets of the CD and to file a fresh asset memo. However, SCN dated 03.07.2023 refers to the remarks made by NCLT, Chennai in IA/815/IB/2020 order dated 01.07.2022 wherein the Petitioner was replaced as the liquidator on the ground of failure to exercise due care and diligence in discharging his functions as the liquidator. Hence, there is no disregard of orders of the Tribunal.
- c) Merely because the ICAI, being an independent body, found no merit in the complaint it does not *ipso facto* take away the authority of the Board under Section 217 and 218 of the Code.
- d) Concerning the suspension of the AFA upon the issuance of the SCN, the IBBI is empowered to do so under Regulation 23A of the Model Bye-Laws and Governing Board of Insolvency Professional Agencies



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Regulations, 2016. The suspension of the AFA does not prohibit the Petitioner from completing the assignments that he has taken up. Further, the suspension does not prohibit the Petitioner from practising as an advocate and a CA.

- e) The defense raised by the Petitioner can be agitated before the Board, and the merit of the controversy cannot be raised before this Court. The Petitioner is engaged in forum swapping by filing a contempt petition before the NCLAT and a writ petition before the High Court for the same prayer.

Arguments:

4. The petitioner, who appeared in person argued:

- a) The 3rd respondent is not a stakeholder. Therefore, the complaint given by him does not hold good in law under Sec. 217 of the IBC.
- b) It is the case of the Petitioner that complaint of the 3rd respondent was dismissed by the 2nd respondent while acting under Section 204(e). Therefore, the 1st Respondent cannot take cognizance of the complaint under Secs. 217 and 218.
- c) The subject matter of the SCN is being heard by the NCLAT in CA(AT)(Ins) 302/201 and there is an interim stay preventing any



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other action on the subject matter of the proceeding. The IBBI has disregarded this order of the Tribunal.

d) The 1st Respondent has authorised the investigating authority to investigate into the complaint preferred by the 3rd respondent. But it failed to note that the allegation relates to a matter pending before the NCLT, and hence IBC will not apply. That precisely was the reason why the second respondent chose to dismiss the complaint preferred by the 3rd respondent.

➤ The very allegation is that the petitioner has shared the valuation report with his prospective resolution applicants / stakeholders. This allegation however, is contrary to the authority of the Hon'ble Supreme Court in ***Vijay Kumar Vs Standard Chartered Bank*** [Order dated 31.01.2019 in W.P.(C) No.1266 of 2018] and also the Bankruptcy Law Committee Report dated November, 2015, and the IBBI's own guidelines.

e) The AFA of the Petitioner was suspended without giving an opportunity of hearing to the Petitioner.



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Arguments of the Respondent:

5.1 Mr. A.R.L. Sundaresan, the learned Additional Solicitor General essentially contended that the this petition should not be entertained as it is premature. He would submit:

- a) The IBBI is empowered under Sec. 218 to initiate an action based on any information it may receive from other sources.
- b) The defence raised by the petitioner are only those which may be raised before the Board. This is to say that the Petitioner is contesting the merits of the matter dealt under the SCN without challenging the jurisdiction of the IBBI to issue the said SCN.

5.2 Developing his argument further, the learned Additional Solicitor General submitted:

- (a) What is under challenge in this case is the show cause notice, and unless it is established that there is no jurisdiction vested in the IBBI to issue the show cause notice, the petition cannot be maintained. Here the petitioner has relied on Sec. 217 of the IBC, and he makes a statement that inasmuch as the complaint was preferred by a certain Anil Kumar, the technical member of NCLT, he cannot be considered



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as a person aggrieved within the meaning of Section 217. However, under Sec. 218, the IBBI can initiate action based on any information that it may receive from any sources, and it is not confined to the complaints under Sec.217 of IBC.

(b) According to the petitioner, he has been exonerated by the Indian Institute of Insolvency Professionals of ICAI on an identical complaint it had received from Anilkumar. This proceeding however, was within Sec. 204(e) of IBC. But Sec. 218 is broadly worded and it operates independent of Sec. 204. And, ICAI is an independent body, and merely because this IIIP had considered that there was no merit in the complaint, it does not *ipso facto* take away the authority of the IBBI to proceed under Sec. 218 of the Code. There is nothing in Section 218 to indicate that the Board is bound by anything decided under Section 204.

(c) By invoking the jurisdiction under Article 226 of the Constitution, in essence, requires the Court to examine his defence to the show cause notice, which this Court may not do. At the end of the day, all the materials and the defence raised by the petitioner can be and will be considered only by the Board.



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6.1 The petitioner would now contend that:

- The IBC has a set of statutory provisions, one in Sec. 204, and the others under Sec. 217 and 218, and when one body has exonerated (IIIP), the other body (IBBI) cannot continue to believe that there is merit in the complaint. The Board under Sec. 208 does not sit in appeal over Sections 204, 217 or 218. At any rate, the Board cannot ignore the proceedings under Sec. 204.
- Secondly, if the Board has to ignore the decision under Sec. 204, then it ought to record the reasons, and this was not done.

The Discussion:

7. The narration of the petitioner's case and arguments above, in essence is a filtered version of his allegations directed against the 3rd respondent. There appears to be a certain animosity which both the petitioner and the 3rd petitioner appear to have shared, but this Court is least inclined to probe into, what it considers as non-issues, and chooses to stick to the basics. It revolves around testing the merit of the petitioner's case on a legal plane.



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8. The issue which triggered the controversy is the decision of the petitioner, while functioning as the liquidator of the corporate debtor to share the valuation of the company under liquidation with the potential purchasers, as a result of which they all quoted the identical value. The petitioner does not deny that he shared the valuation report, but defends it on the ground that he was under an order of the NCLT to try for a compromise under Sec.230 of the Companies Act and backs it up with the ratio of the Hon'ble Supreme Court in *Vijay Kumar Vs Standard Chartered Bank* [Order dated 31.01.2019 in W.P.(C) No.1266 of 2018] and that of the NCLT (Allahabad Bench) in *Hemant Shantilal Shah & another Vs Care Office Lt.*, [I.A. 434 of 2020 in CP(IB) 602 of 2018]. He then offered a second line of defence with his reliance on the decision of the IIP/ICAI to drop the same complaint.

9.1 The stated position of the petitioner can be divided into two parts: Whether, the allegation viz-a-viz the sharing of the valuation of the CD should invite a disciplinary action. This is a matter for the IBBI to decide, if at all it is required to be decided, and this precisely is the second part –



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should the IBBI decide the issue? To state it differently, whether the show cause notice which the IBBI has served on the petitioner is legally sustainable. What follows is the question, whether this petition is entertainable when only a show cause notice of a statutory body is in challenge.

9.2 Let the facts be restated briefly: The petitioner has a double qualification - he was a member of the Institute of Chartered Accountants of India, and is also a member of Bar Council of Tamil Nadu. He enrolled himself as an insolvency professional with the IIIP of ICAI. While so, in a corporate insolvency proceedings, he was appointed as the Resolution Professional by the NCLT. However, his attempt at resolution defied a solution, and this resulted in the NCLT ordering liquidation of the CD. NCLT now appointed the petitioner as a liquidator. The petitioner admits that while he was a liquidator, he shared the valuation of the CD with the prospective scheme proponents.

9.3 Here lies, what this Court considers as the spot, where the fallacy in the case of the petitioner is hidden: according to the petitioner, when once he



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was appointed as a liquidator by NCLT, he moves away from the orbit of IBC and ceases to be governed by the IBC, and hence IBBI cannot exercise any jurisdiction to issue the show cause notice which is now under challenge.

10. This now requires a brief understanding of the scheme of the IBC. It is provided as below:

- a) Under the scheme of IBC, when once an insolvency petition is admitted by the Adjudicating Authority, it appoints an Interim Resolution Professional (IRP), and once he completes the job he or she is required to do as an IRP, the matter goes to the next stage where a Resolution Professional takes it over.
- b) The IBC authorises the Resolution Professional to share certain information and these are listed in Regulation 36 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The the objective of the Resolution Professional at this point is to explore the possibility of evolving a resolution-scheme for the CD facing insolvency. It includes sharing *inter alia* information on the assets and liabilities of the CD, financial statements of corporate debtors, but



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it nowhere has included the sharing of the valuation of the CD.

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- c) If however, the resolution plan fails, or does not evolve within the statutory time stipulated for the same, then under Sec.33 of IBC the Adjudicating Authority (NCLT) is required to proceed for liquidation of the CD. In the instant case, a the resolution has failed and the liquidation proceedings of the CD was taken by the NCLT. The NCLT would now appoint a liquidator, and so far as the present case is concerned, it chose to appoint the Resolution Professional himself as the liquidator. It is how, the petitioner appears to have become the liquidator. Therefore, the process and the procedure for liquidation of a CD is not exclusive to the domain of Companies Act, but it is also contemplated within the IBC.
- d) A liquidator so appointed by the Adjudicating Authority in a corporate insolvency proceedings is governed by IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Regulation 34(5) requires the liquidator to prepare an asset memorandum which includes valuing the asset of the corporate debtors and enables sharing this information only with the Board and the Stakeholder's Consultation Committee (a body of corporate creditors constituted



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under Regulation 31A). It however, does not appear to authorise the liquidator to share the asset memorandum the potential purchasers of the corporate assets of the CD.

- e) This therefore, *prima facie*, indicates that the IBC and the Regulations made thereunder are anxious to protect the information leak on the valuation of the corporate assets both by the Resolution Professional or by the liquidator, even though they may have a role at different stages of a corporate insolvency proceeding, with the latter becoming necessary only when the former fails. (Here the two authorities which the petitioner has relied on in *Vijayakumar Jain case* and *Hemant Shantilal case* do not seem to authorise sharing of valuation report to the potential purchasers. Any way this may have to be considered only by the IBBI, but it depends on its jurisdiction to issue the impugned show cause notice, which is dealt with in the next section of this order).

Inasmuch as the petitioner has admitted that he had shared the valuation report of the CD, this Court considers that a *prima facie* ground is available for the IBBI to issue the show cause notice.



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11.1 The next point is whether IBBI has jurisdiction to initiate a disciplinary action under Sec.218 of the IBC? Here, the petitioner contends: (a) that the same complaint was rejected by IIIP of ICAI of which the petitioner is a member; and (b) that he was under a direction by NCLT to explore a compromise under Sec.230 of the Companies Act.

11.2 The second point first. As earlier explained, liquidation of a CD is not alien to the scheme of IBC. And, Regulation 2B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, enables reading Sec.230 of the Companies Act into it. Therefore, merely because the petitioner was directed to perform a role by the NCLT, it does not *prima facie* entertain an idea that he ceases to be governed by the IBC, and the Regulations framed thereunder.

11.3 Turning to the first part, the *prima facie* view of this Court is that when the petitioner ceases to be a Resolution Professional, and starts wearing the cap of a liquidator, the role of IIIP of ICAI vis-a-vis its member ceases. Hence, this Court considers, that at the best the decision of the IIIP of ICAI can be a piece of evidence in the proposed disciplinary proceedings but may



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not be adequate to affect the jurisdiction of the IBBI to initiate a disciplinary action against the petitioner.

12. Turning to suspension of the petitioner is concerned, this is an automatic process on commencement of a disciplinary proceedings under Regulation 23A of the IBBI (Model Bye-laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016. This cannot be interfered with since this Court finds that the IBBI has the jurisdiction to initiate a disciplinary proceedings, and in the instant case it is not established to be a malafide exercise of statutory power.

13. To conclude, this petition is dismissed, and the petitioner will have all the liberty to put forth his entire line of defence disciplinary enquiry, which needless to say includes all that the grounds on the basis of which he has now challenged the show cause notice. No costs. Consequently, connected miscellaneous petition is closed.

22.12.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order
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To:

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N.SESHASAYEE, J.

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Pre-Delivery order in
W.P. No.21186 of 2023

Dated : 22.12.2023