

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12320 OF 2024

Vijendra Kumar Jain,]
The erstwhile Resolution Professional of]
M/s. Transparent Energy System Pvt. Ltd.,]
Bandra (East), Mumbai – 400 051.] **.. Petitioner**

Versus

1. The Insolvency & Bankruptcy Board of India,]
Through Deputy General Manager,]
Mayur Bhavan, Connaught Circus, New Delhi]
2. The Union of India,]
Ministry of Corporate Affairs (MCA),]
Shastri Bhavan, New Delhi – 110 001.] **.. Respondents**

Mr. Gaurav Joshi, Senior Advocate, with Mr. Chaitanya Nikte, Ms. Esha Malik and Mr. Swapnil Sangle, Advocates for the Petitioner.

Mr. Pankaj Vijayan with Ms. Sushmita Chauhan, Advocates for Respondent No.1-IBBI.

Mr. Vinit Jain with Mr. Ashutosh Mishra, Advocates for Respondent No.2-UOI.

CORAM : A.S. CHANDURKAR & RAJESH S. PATIL, JJ

The date on which the arguments were heard : 10TH SEPTEMBER, 2024.

The date on which the Judgment is pronounced : 16TH OCTOBER, 2024.

JUDGMENT : [Per A.S. Chandurkar, J.]

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties.

2. Pursuant to initiation of Corporate Insolvency Resolution Process –
“CIRP” of M/s. Transparent Energy System Private Limited – Corporate

Debtor – “CD”, the petitioner came to be appointed as Resolution Professional – “RP” by the National Company Law Tribunal - “NCLT” by its order dated 21st February 2020. The Insolvency and Bankruptcy Board of India – “IBBI”, in exercise of powers conferred under Section 218 of the Insolvency and Bankruptcy Code, 2016 - “the Code”, appointed an Investigating Authority - “IA” to conduct investigation in the matter of the CD. After receipt of the Investigation Report, the IBBI on 11th July 2023 issued a show cause notice to the petitioner raising two grounds, namely, lack of due diligence while verifying the Resolution Plan of the CD and non-intimation of the claim of Kanoria Chemicals & Industries Limited – “KCIL” despite being aware of the partial admission of its claim. It was stated in the show cause notice that the IA had issued a notice of investigation to the petitioner on 29th April 2023 seeking his response. The petitioner through his written submissions dated 11th May 2023 and 19th May 2023 replied to the same. The IA submitted its investigation report to the IBBI and on that basis, the aforesaid show cause notice was issued alleging contravention of the provisions of Section 30(2)(b) and (e), 208(2)(a) and (e) of the Code as well as the Regulations framed in that regard.

3. The petitioner on 24th July 2023 submitted his reply to the show cause notice and denied the assertions made therein. Virtual hearing took

place on 31st January 2024 and thereafter the Disciplinary Committee of the IBBI through two Whole Time Members on 12th August 2024 passed an order stating therein that as the petitioner had failed to perform his duties under the Code read with the relevant Regulations made thereunder, the petitioner's registration as RP was suspended for a period of one year. The said order was to come in effect after expiry of thirty days from the date of its issue. Being aggrieved by the order of suspension, the petitioner has filed this writ petition raising a challenge to the same.

4. Mr. Gaurav Joshi, the learned Senior Advocate for the petitioner submitted that there was no basis whatsoever for the Disciplinary Committee of the IBBI to have suspended the petitioner's registration as IP for a period of one year. Referring to the order passed by the National Company Law Appellate Tribunal – “NCLAT” dated 11th April 2023 in the proceedings initiated by KCIL, it was submitted that the petitioner was merely reprimanded on account of lack of showing due diligence. It observed that the petitioner should have been more dutiful and alert in responding to the e-mails sent by KCIL. These observations made by NCLAT could not have been the basis for the Disciplinary Committee to hold that the petitioner had failed to perform his duties under the Code and the Regulations made thereunder. Referring to the Regulations of 2017 and especially Clause 13(3)(b), it was submitted that the suspension

of the registration for a duration of one year was disproportionate to the conduct of the petitioner. The petitioner in reply to the show cause notice had explained in clear terms the steps taken by him during the course of the proceedings. The fact that there was some delay in responding to the e-mails sent by KCIL on account of outbreak of Covid-19 was acknowledged by the Disciplinary Committee. Despite aforesaid, the petitioner was faulted for the failure in updating the status of KCIL's claim. Reference was made to the provisions of Section 30 of the Code to urge that it was not necessary for a Resolution Professional to comment on each and every aspect of the Resolution Plan. There was no finding recorded that any loss was suffered by any person so as to require action being taken against the petitioner. It was thus submitted that the entire basis or premise on which the Disciplinary Committee proceeded to take action against the petitioner was without legal basis and thus was liable to be set aside.

It was then submitted that the period of suspension of one year was not at all justified in the facts of the case. The Disciplinary Committee failed to consider the reason and need to suspend registration of the petitioner for a period of one year. Referring to the decision in *Ranjit Thakur Vs. Union of India and Ors., (1987) 4 SCC 611*, it was submitted that suspension of the petitioner from functioning as a Resolution

Profession was harsh and disproportionate, thus requiring interference. A reference was also made to the decisions in Writ Petition (Lodging) No.19031 of 2023 (*Vishal Ghisulal Jain Vs. Union of India and Ors.*) decided on 7th August 2023 and Writ Petition (Lodging) No.28206 of 2023 (*Partha Sarathy Sarkar Vs. Insolvency & Bankruptcy Board of India (IBBI) & Ors.*), decided on 17th October 2023. It was thus submitted that taking an overall view of the matter, there was no case made out to suspend the registration of the petitioner as RP. Hence, the order passed by the Disciplinary Committee on 12th August 2024 was liable to be set aside.

5. Mr. Pankaj Vijayan, the learned counsel appearing for the IBBI supported the impugned order. According to him, there was sufficient reason for the Disciplinary Committee to suspend the registration of the petitioner for a period of one year. The observations made by the NCLAT in its order dated 11th April 2023 were against the petitioner. Various shortcomings in the discharge of duties by the petitioner as RP were noted in the said order. The petitioner accepted the said order and did not challenge the same though he was a respondent in the said proceedings. The IBBI first obtained an investigation report and on that basis thereafter issued the show cause notice to the petitioner. The IBBI was justified in acting against the petitioner on finding that he had not acted diligently in responding to the e-mails sent by KCIL. In the facts of the case, it could not

be said that the punishment of suspension for a period of one year was disproportionate to the conduct of the petitioner as RP. He submitted that while examining the challenge raised by the petitioner to the order passed by the Disciplinary Committee, this Court in exercise of jurisdiction under Article 226 of the Constitution of India ought not to sit in appeal and reconsider the entire matter. Since the principles of natural justice as well as the procedure prescribed under the Code had been duly followed prior to placing the petitioner under suspension for a period of one year, no interference with the impugned order was called for. Reference was made to the decision in *Director General of Police, Railway Protection Force and Ors. Vs. Rajendra Kumar Dubey, (2021) 14 SCC 735* in this regard. It was thus submitted that there is no case made out to interfere in exercise of writ jurisdiction and the writ petition was liable to be dismissed.

6. We have heard the learned counsel for the parties at length and with their assistance, we have perused the documents on record. In the proceedings initiated by the CD under the CIRP, an Interim Resolution Professional – “IRP” came to be appointed by the NCLT on 8th March 2019. The petitioner replaced the earlier IRP and was appointed as RP on 21st February 2020. The show cause notice dated 11th July 2023 proceeds on the basis that the petitioner as Resolution Professional showed lack of due diligence in verification of the Resolution Plan inasmuch as despite verifying the claim of the Operational Creditor, KCIL and thereafter

admitting the full claim amount, the petitioner as RP did not raise any objection to zero provisioning of KCIL. The second ground on which the show cause notice was issued was the non-intimation of the claim of KCIL by failing to reply to the specific queries made by it to the RP. Reference was made to the investigation report that was the basis for issuance of the show cause notice. Then the petitioner's response was called for. The petitioner replied to the aforesaid show cause notice on 24th July 2023 denying all the allegations made in the show cause notice. After granting the petitioner an opportunity of hearing, which he availed virtually, the Disciplinary Committee passed its order on 12th August 2024 suspending the petitioner's registration with the IBBI for a period of one year.

We may note that there is no challenge raised by the petitioner as regards non-compliance of the principles of natural justice while adjudicating the show cause notice. Due notice along with all relevant material was given to him and after the petitioner submitted his reply, he was heard before the impugned order of suspension was passed. We would therefore proceed on the basis that after due compliance of the principles of natural justice, the impugned order of suspension has been passed by the whole-time Members of the Disciplinary Committee constituted by the IBBI.

7. Before proceeding to consider the challenge to the order of

suspension of the petitioner, it would be necessary to refer to the orders passed by the NCLT and thereafter the NCLAT that led to issuance of show cause notice. The NCLT considered an application filed under Section 30(6) of the Code by the petitioner in his capacity as Resolution Professional seeking approval of the Resolution Plan. It allowed the said application and the Resolution Plan submitted by Mr. Ashok Atre came to be approved. KCIL being aggrieved by the aforesaid order dated 16th April 2021 passed by the NCLT approached the NCLAT by filing an appeal under Section 61 of the Code. The NCLAT framed three issues and issue no.3, which is relevant for the present purpose, reads as under:-

“(iii) Whether R-1 failed his duty to communicate admitted claim amount of the Appellant to him during the CIRP and also in the examination of the submitted resolution plan before its approval by the Adjudicating Authority?”

In that context, the NCLAT noted various facts, namely, that KCIL had submitted its claim in Form-B to the earlier IRP on 3rd June 2019 clearly stating therein that its claim was based on an Arbitration Award dated 19th March 2015. Thereafter, an execution application had been filed by KCIL while the CD had filed proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 for challenging the award. It was noted that there was no stay granted in the said proceedings. About five e-mails were sent on behalf of the KCIL between 17th February 2021 and 15th

April 2021 indicating the concern expressed by KCIL about the precise amount admitted in its claim. The petitioner sent a reply through e-mail dated 15th April 2021 stating therein that the Resolution Plan was under submission and consideration of the Adjudicating Authority. The NCLAT noted that the petitioner did not communicate the precise quantum of the admitted claim of KCIL. Though the claim of KCIL was admitted to the extent of Rs.16,78,510.35/- in the CIRP which was clear from the e-mail sent by the earlier IRP, the petitioner through his e-mail dated 21st May 2020 stated that he could observe that the claim of KCIL had not been admitted. The NCLAT gave the benefit of doubt to the petitioner on the premise that in view of the change in RP, it was likely that all documents and papers were not transferred from the earlier IRP to the petitioner. Despite aforesaid, it noted that the petitioner as RP had failed to take necessary follow-up despite various e-mails received and thus recorded a finding that the petitioner as RP had failed in his duty under the CIRP Regulations.

8. The NCLAT further found that the petitioner as RP had failed in his duty in pointing out objectional comments made by the Successful Resolution Applicant – “SRA” which had proceeded to examine in detail the arbitration proceedings on the basis of which an award was passed in favour of the KCIL. The SRA proceeded to comment on the arbitration

award as being *void ab initio* and the entire process of making the award being defective and unlawful. It was found that the petitioner as RP ought to have taken note of these comments while examining the Resolution Plan. By failing to point out such objections and comments when the Resolution Plan was placed for consideration before the Committee of Creditors and the Adjudicating Authority, the petitioner in his capacity as RP had failed in his duty. Thus after considering the matter in detail, the NCLAT concluded by observing in paragraph (iv) as under :

“(iv) The Resolution Professional Shri Vijendra Kumar Jain should have been more dutiful and alert in responding to various e-mails of the Appellant regarding admitted amount of his claim, and further he should have brought the objectionable comments made by the Successful Resolution Applicant regarding the arbitration award in the arbitration process which was included in the resolution plan to the notice of Committee of Creditors as also the Adjudicating Authority, which he failed to do so, and therefore he is reprimanded regarding this failure in the call of his duty.”

KCIL was held entitled to litigation cost of Rs.1,00,000/- to be paid by the SRA. It may be stated that Mr. Ashok Atre and another challenged the aforesaid judgment of the NCLAT before the Supreme Court in Civil Appeal (Diary) No.21579/2023 (*Ashok Dattatray Atre & Anr. Vs. Kanoria Chemicals & Industries Ltd. & Anr.*) decided on 9th October 2023 and the Supreme Court did not interfere with the

directions issued in the matter. Pertinently, the petitioner failed to challenge the aforesaid order or the observations made against him by the NCLAT. Thus the findings recorded by the NCLAT against the petitioner in its judgment dated 11th April 2023 have attained finality. Keeping these aspects in mind, the decision of the Disciplinary Committee to suspend the petitioner principally in view of such conduct for a period of one year is required to be examined.

9. It is clear that the factual basis on which the show cause notice came to be issued to the petitioner are the observations made by NCLAT in its judgment dated 11th April 2023. The said findings not having been challenged by the petitioner and the same having attained finality, it would not be open for this Court to go into the correctness or otherwise of the said findings. Suffice it to observe that there was sufficient basis for the IBBI to issue the show cause notice to the petitioner. Its adjudication thereafter by the Disciplinary Committee is principally based on the findings recorded by NCLAT. While adjudicating the show cause notice, the Disciplinary Committee found that there were various lapses on the part of the petitioner as RP by failing to object to the proposal submitted by the SRA on the ground that it included comments as well as legal analysis of the arbitration process wherein an award was passed in favour of KCIL. It

found that it was not open for the SRA to term the award as *void ab initio* or unlawful. In spite of receiving the legal opinion dated 13th July 2020 wherein it was stated that such comments by the SRA ought not to have been made, the petitioner as RP failed to take cognizance of the same. This conduct of the RP has thus been found to be in contravention of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

As regards inaction on the part of the petitioner as RP to indicate the precise amount of claim admitted by him, the observations of the NCLAT in paragraph 20 form the basis for holding that the petitioner failed to act in accordance with Regulation 13(2) (a) and (d) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In our view, the Disciplinary Committee has proceeded to take necessary action based on the observations of the NCLAT, which the petitioner did not challenge. The finding recorded by the NCLAT was that the petitioner had failed in his duty as RP and hence there was substantial material to proceed against the petitioner. The Disciplinary Committee was cognizant of the fact that some time was spent on account of outbreak of Covid-19 but despite that the conduct of the petitioner as RP in discharge of duties was found to be highly

deficient. It is therefore clear that in the light of the material available with the Disciplinary Committee and especially the judgment dated 11th April 2023 passed by the NCLAT, the action of suspending the registration of the petitioner as RP is justified. The exercise undertaken by IBBI is within its jurisdiction and powers conferred by Section 218 of the Code. It has acted on the basis of a judicial order that has attained finality. Considering the totality of the circumstances on record and in the absence of any procedural infirmity, there is no reason to interfere with the action of suspension.

10. According to the learned Senior Advocate for the petitioner, the suspension of the petitioner as RP for a period of one year was excessive and disproportionate. The Disciplinary Committee had failed to indicate the reasons for suspending the petitioner's registration for a period of one year.

In our view, the material on the basis of which the Disciplinary Committee proceeded to suspend the petitioner being unquestionable, the period for which such suspension should operate is a matter within the realm of the Disciplinary Committee. The Disciplinary Committee in the light of the jurisdiction conferred upon it by Section 220 of the Code is empowered to take into consideration all relevant aspects including the conduct of RP. The petitioner's suspension for a

period of one year cannot be said to be highly disproportionate that would shock the conscience of the Court for it to interfere in exercise of writ jurisdiction. Given the deficiencies noted by the Disciplinary Committee, we do not find that there is any case for reducing the period of suspension of the petitioner's registration. The ratio of the decision in *Ranjit Thakur (supra)* on the aspect of proportionality is not attracted to the facts of the present case. The orders passed in *Vishal Ghisulal Jain* and *Partha Sarathy Sarkar (supra)* are interim in nature and do not assist the case of the petitioner.

11. For aforesaid reasons, we do not find any case made out to interfere in exercise of writ jurisdiction. The Writ Petition stands dismissed. Rule is discharged with no order as to costs.

12. At this stage, the learned counsel for the petitioner prays that the interim protection operating be continued for a period of four weeks. This request is opposed by the learned counsel for the respondent no.1. Considering the reasons assigned, we do not find any case to continue the interim relief. The request is therefore rejected.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]