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W.P.Nos.4458 & 4463 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.06.2024

PRONOUNCED ON : 20.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.4458 & 4463 of 2021 and
W.M.P.Nos.5086 & 5088 of 2021

CA V.Venkata Siva Kumar

... Petitioner in
both W.Ps.

-Vs-

1. Disciplinary Committee
Insolvency and Bankruptcy Board of India,
7th Floor, Mayur Bhawan,
Shankar Market, Connaught Circus,
New Delhi – 110 001.

2. IIPA/ICAI
Rep. by Managing Director,
ICAI Bhawan, 3rd Floor,
Hostel Block,
A-29, Sector-62, Noida,
Uttar Pradesh – 201 309.

3. IDBI Bank Ltd.,
Rep. by N.Venkateswaran,
Deputy General Manager,
No.115, Anna Salai,
Saidapet, Chennai – 600 015.

...Respondents in
both W.Ps.



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Prayer in W.P.No.4458 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the decisions of the first respondent in the impugned order No.IBBI/DC/61/2020 dated 17th December, 2020 and in the consequential impugned order of the second respondent in DC.No.IIPI/DC/29/2020-21 dated 01.12.2020 and quash the same as being arbitrary, illegal and violative of Articles 14, 19, 20(2) and 21.

Prayer in W.P.No.4463 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the second and third respondents to pay compensation of Rupees one crore towards legal costs and financial loss on account of wrongful rejection and abuse of process of law exposing the petitioner to heavy litigation, financial loss, mental agony and ridicule suffered among the professional fraternity and fifty percent of it be deposited for the benefit of free legal aid or other noble public causes.

In both W.Ps.

For Petitioner	: Mr.CA V.Venkata Siva Kumar Party-in-person
For Respondents	
For R1	: Mr.K.S.Jeyaganeshan Special Panel Counsel Government of India
For R2	: No appearance
For R3	: Mr.Varun Srinivasan For M/s.NVS Associates



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COMMON ORDER

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The writ petition in W.P.No.4458 of 2021 has been filed challenging the order dated 17.12.2020, passed by the first respondent, thereby confirming the order dated 01.12.2020, passed by the second respondent, thereby found the petitioner guilty and imposed fine of Rs.10,000/-. The writ petition in W.P.No.4463 of 2021 has been filed for direction directing the respondents to pay compensation of Rupees one crore to the petitioner.

2. The petitioner was appointed as Liquidator of the corporate debtor namely Jeypore Sugar Company Limited on 29.05.2020. Therefore, the petitioner submitted written consent in Form AA, as per the requirements of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 (hereinafter referred to as “IBBI Regulations”) before the National Company Law Tribunal, Bench-II, Chennai, thus he was legally qualified to be an Liquidator. However, on the date of appointment, the petitioner did not possess valid Authorization for Assignment as per the Regulation 7A of the IBBI Regulations, which is a mandatory qualifications as per law, in order to



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act as a Liquidator of the corporate debtor. The petitioner had filed an application for the authorization for assignment on 31.12.2019 and the same was rejected by the Insolvency Bankruptcy Board of India (hereinafter referred to as “IBBI”) on 14.01.2020, as per Regulation 12 A of the IBBI Regulations.

3. Therefore, the third respondent made enquiries into the qualifications of the petitioner to act as Liquidator from the Indian Institute of Insolvency Professional of Institute Chartered Accountants of India. By the communication dated 20.08.2020, it was informed to the third respondent that the current status of the petitioner having registration No.IBBI/IPA-001/IP-P00184/2017-18/10852 is nil. Thus it is clear that on the date of appointment of the petitioner as Liquidator, he did not possess the necessary qualifications for being a Liquidator. After giving sufficient opportunity of hearing to the petitioner, the Indian Institute of Insolvency Professionals of Institute Chartered Accountants of India's disciplinary committee by an order dated 01.12.2020, found the petitioner guilty of professional misconduct and thereby imposed a penalty of Rs.10,000/-, and the same was also confirmed by the first



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respondent by an order dated 17.12.2020. Aggrieved by the same and also for seeking compensation, the petitioner filed the present writ petitions.

4. Heard the learned counsel appearing on either side and perused the material placed before this Court.

5. On perusal of records revealed that, the third respondent filed application before the Tribunal seeking removal of the petitioner as Liquidator on account of his incomplete qualifications. On hearing both sides, the petitioner was removed as Liquidator by an order dated 01.07.2022, as per Section 16 of the General Clauses Act, 1897 with aid from Section 276 of the Companies Act, 2013. Aggrieved by the order passed by the Tribunal, the petitioner also filed an appeal before the Appellate Tribunal in Company Appeal No.269 of 2022 and the same was also dismissed by an order dated 20.12.2022, thereby confirmed the removal of the petitioner as Liquidator on the ground of not having valid authorization.



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6. Section 199 to 205 of the Insolvency and Bankruptcy Code, 2016 provides for insolvency professional agencies. As per Section 206 of the Insolvency and Bankruptcy Code, a person can render his service as an insolvency professional only after being enrolled as a member of an insolvency professional agencies and registered with the first respondent as an insolvency professional under Section 207 of the Insolvency and Bankruptcy Code subject to other conditions.

7. In fact, the petitioner filed writ petition before this Court in W.P.No.13229 of 2020 with regard to the issuance of authorization for assignment under Regulation 7A of the IBBI Regulations r/w Clause 14A of the IBBI (Model Bye Laws and Governing Board of Insolvency Professional Agencies) Regulation, 2016. It was disposed and the issue raised in this writ petition settled by an order dated 03.11.2020. The relevant portion of the said order is extracted hereunder :-

“.....the existence of more than one authority with regulatory or disciplinary control over a professional is per se not a ground to hold that the impugned regulations are unconstitutional. In the specific context of IPs, the registration of an enrolled professional member as an IP and the cancellation of such registration



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are within the domain of the IBBI, whereas the grant of or cancellation of membership and the issuance, renewal and cancellation of an AFA are within the domain of the IPA, which functions under the supervisory control of the IBBI. Indeed, we note that paragraph 4.4.3 of the BLRC Report recommended such a two-tiered regulatory structure. Hence, we conclude that the challenge on this basis is untenable.”

8. In view of the above, this Court finds no infirmity or illegality in the orders passed by the respondents 1 & 2 and the prayer sought for in the writ petition in W.P.No.4458 of 2021 is devoid of merit and liable to be dismissed. In view of the above order, another writ petition in W.P.No.4463 of 2021 sought for compensation is also liable to be dismissed. Accordingly, both the Writ Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

20.06.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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G.K.ILANTHIRAIYAN. J.

rts

To

1. Disciplinary Committee,
Insolvency and Bankruptcy Board of India,
7th Floor, Mayur Bhawan,
Shankar Market, Connaught Circus,
New Delhi – 110 001.
2. Managing Director,
IIPA/ICAI
ICAI Bhawan, 3rd Floor,
Hostel Block,
A-29, Sector-62, Noida,
Uttar Pradesh – 201 309.
3. The Deputy General Manager,
IDBI Bank Ltd.,
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