



WEB COPY



Review Application No.35 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON: 13.02.2024

ORDERS PRONOUNCED ON : 20.02.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Review Application No.35 of 2024
and W.M.P.No.3627 of 2024

V.Venkata Sivakumar

... Applicant

versus

1.Insolvency and Bankruptcy Board of India (IBBI)
Represented by Deputy General Manager
7th Floor, Mayur Bhawan, Shankar Market
Connaught Circus, New Delhi – 110 001.

2.Indian Institute of Insolvency Professionals of ICAI
Represented by Mr.Rahul Madan, MD
ICAI Bhawan, 8th Floor, Hostel Block
A-29, Sector – 62, Noida, UP – 201 309.

3.ICSI Institute of Insolvency Professionals
Represented by Dr.Binoy J.Kattadiyil (MD)
3rd Floor, ICSI House,
22, Institutional Area
Lodi Colony, New Delhi – 110 003.



Review Application No.35 of 2024

4. Insolvency Professional Agency of Institute of Cost
Accountants of India
Represented by Dr.S.K.Gupta (CEO)
4th Floor, CMA Bhawan
3 Institutional Area, Lodhi Road
New Delhi – 110 003.

5. Dr. MS. Sahoo
Insolvency and Bankruptcy Code of India
7th Floor, Mayur Bhawan, Shankar Market
Connaught Circus, New Delhi – 110 001.

6. The Union of India
Secretary to Government of India
Ministry of Corporate Affairs (MCA)
Garage No.14, “A” Wing
Shastri Bhawan, Rajendra Prasad Road
New Delhi – 110 001.

...Respondents

Prayer: Review Application is filed under Order XLVII Rule 1 r/w
Section.114 of CPC to review the common impugned order passed in the
W.P.No.16650 of 2020 and W.M.P.No.24548 of 2020 by this Court dated
22.01.2024.

For the Review Applicant : Mr.V.Venkata Sivakumar



WEB COPY



Review Application No.35 of 2024

ORDER

(Made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

This Review Application is filed, seeking review of the common order dated 22.01.2024 made in W.P.Nos.16650 of 2020 and 14448 of 2021.

2.By the said order, the aforesaid Writ Petitions were dismissed by this Court. In W.P.No.16650 of 2020, the petitioner prayed for a Writ of Declaration that the provisions of Chapter III of the Insolvency and Bankruptcy Code, 2016, more particularly, Section 204 (a) (b) (c) (d) and (e) of the Act, as *ultra vires*, the provisions of Article 14, 19 (1) (g) and 21 of the Constitution, manifestly arbitrary, substantively unreasonable, excessive legislation and repugnant to the objectives of Insolvency and Bankruptcy Code, 2016.

2.1. In W.P.No.14448 of 2021, the petitioner prayed for a Writ of Declaration that the impugned Regulation 23A of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of



Review Application No.35 of 2024

Insolvency Professional Agencies) Regulations, 2016, which was subsequently amended by the 2nd respondent vide Notification No.IBBI/2016-17/GN/REG0001 dated 23.07.2019 as *ultra vires* the Constitution and consequentially direct the 1st and 2nd respondents to pay the compensation for the financial loss and mental agony suffered by the petitioner

3. After considering the case of the petitioner, this Court framed the following three questions in paragraph No.5.1 of the common order dated 22.01.2024 and answered all the three questions against the petitioner and also dismissed the Writ Petitions:

“(i) Whether Regulation 23 A is liable to be struck down as (a) manifestly arbitrary; (b) conferring unbridled, excessive power on IPAs and (c) for violation of principles of natural justice ?

(ii) Whether Section 204 of IBC is: (a) violative of Article 20(2) of the Constitution of India, in as much as it provides for disciplinary proceedings by two agencies; (b) is manifestly arbitrary and prevents access to justice and (c) is illegal for confirming unbridled and excessive powers to the agencies ?

(iii) Whether the present Writ Petitions are maintainable in law ?”

Feeling aggrieved, the present Review Application is filed.



WEB COPY

4. *Mr.Venkata Sivakumar*, Petitioner-in-Person would submit that the Order under review suffers from error on the face of the record. His first contention is that when he has raised specific issue by relying upon the Judgment of the Hon'ble Supreme Court in ***L.K.Rathna Vs. ICAI***¹ that by placing a person under suspension, his professional reputation will be impeded and will have far reaching consequence, the same is not considered in proper perspective by this Court. He would further submit that these are sick companies, which are now in the hands of the resolution/insolvency professionals and therefore, the reasoning made in paragraph No.6.2 that the purpose of suspension is to keep the erring person away from the office has no relevance at all. He would also submit that any hearing in the disciplinary enquiry would only amount to post facto hearing and as such this Court ought to have considered the arguments relating to principles of natural justice in a proper perspective. Therefore, the answer in respect of the first question is erroneous in law.

¹ AIR 1987 SC 71



WEB COPY

5. Moving on to the second question, while this Court relied upon the BLRC report and the twin tire architecture, his submission whether the same would be relevant to the instant profession and that whether it would be any benefit to the resolution/insolvency professionals who are already renowned Chartered Accountants was not considered by this Court. Similarly, the earlier Judgment, in the case filed by the petitioner, the co-ordinate Bench of this Court also did not properly consider the import of the Judgment in ***Sampath Ganesh Vs. Union of India***². The said earlier Judgment is also *per incuriam* in as much as it considered the matters which were not at all directly in issue before that Court and therefore, placing reliance in the earlier Division Bench order has also lead to error in the Judgment. Similarly by relying ***Swiss Ribbons (P) Ltd., Vs. Union of India***³, the question No.3 is answered. This Court again committed an error in as much as experiment in the field of new economic legislation is only with regard to the creditors taking over and as far as the provisions regarding the appointment of Resolution Professionals, their qualifications etc., were not

2 (2020) SCC Online Bom 782

3 (2019) 4 SCC 17



Review Application No.35 of 2024

at all the subject matter of arguments before the Hon'ble Supreme Court of India in *Swiss Ribbon's case* and therefore, answering question No.3 by placing reliance on the said Judgment also lead to error.

6. Finally, pointing out to paragraph No.2 of the order, he would submit that the recording of the fact as if by an order dated 14.01.2020, the application was rejected by the Indian Institute of Insolvency Professional of ICAI (in short 'IIPI') was erroneous. As a matter of fact, the order was communicated to him belatedly only on 16.07.2020 which would be clear even from the counter affidavit filed in C.A.No.1614 of 2023.

7. We have considered the submissions made by the petitioner and perused the material records of the case.

8. At the outset, the alleged error pointed out in paragraph No.12 is nothing but recording the case of the petitioner that by an order dated 14.01.2020 the application was rejected. Assuming that the petitioner is correct in stating that as per the counter affidavit the same was



Review Application No.35 of 2024

communicated on 16.07.2020, even then, the same has no bearing whatsoever to the ultimate findings and conclusions arrived at.

9. Secondly, we have already extracted the submissions made by the petitioner – in – person, so as to review the order of this Court. Even though the petitioner would term the grounds raised in the review application as ‘error apparent on the face of the record’, it could be seen that all his pleadings and arguments are nothing but pointing out that the conclusions reached by this Court are erroneous. The petitioner is virtually assailing correctness of the findings before the self same Court and pleading for re-consideration of the issue, which is nothing but an appeal in disguise, which cannot be entertained by this Court. No grounds on any materials which were not there for consideration is pleaded. The conclusions are not on the basis of any error apparent on the face of the record. No other sufficient cause which would be within the contours of review as contemplated under Order XXVII Rule 1 of CPC is made out. Therefore, we find no merits in the review application.



Review Application No.35 of 2024

WEB COPY

10. Accordingly, the same is dismissed. However, there shall be no order as to costs. Consequently W.M.P.No.3627 of 2024 stands closed.

(S.V.G., CJ.)

(D.B.C., J.)

20.02.2024

Jer

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes

To

1.The Deputy General Manager
Insolvency and Bankruptcy Board of India (IBBI)
7th Floor, Mayur Bhawan, Shankar Market
Connaught Circus, New Delhi – 110 001.

2.The Secretary to Government of India
Union of India
Ministry of Corporate Affairs (MCA)
Garage No.14, “A” Wing
Shastri Bhawan, Rajendra Prasad Road
New Delhi – 110 001.



WEB COPY



Review Application No.35 of 2024

THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

Jer

Rev. Aplw. No.35 of 2024

20.02.2024