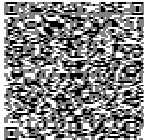


CWP No. 19562 of 2022

2024:PHHC:108273-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CWP No. 19562 of 2022
Date of decision : August 22, 2024

Sarish Mittal and anotherPetitioners

Versus

National Company Law Tribunal and another ...Respondents

2. CWP No. 8750 of 2023

Sarish Mittal and anotherPetitioner

Versus

Insolvency and Bankruptcy Board of India and others ...Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HOB'BLE MRS. JUSTICE AMARJOT BHATTI

Present: Mr. Sandeep Suri, Advocate
for the petitioner(s) in both writ petitions.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Himanshu Gupta & Mr. Ritvik Garg, Advocates
for respondent no.2 in CWP-19562-2022 & CWP-8750-2023.

Mr. Arun Gosain, Advocate with
Ms. Swati Arora, Advocate
for respondent no.1 in CWP-8750-2023.

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LISA GILL, J.

1. CWP Nos. 19562 of 2022 and 8750 of 2023 filed by the same petitioners were taken up together for hearing and adjudication at request and with consent of learned counsel for parties.

2. Prayer in CWP-19562 of 2022 reads as under:-

“ Civil Writ Petition seeking directions that the respondent No. 1 (NCLT), prior to considering/deciding the IA No. 914 of 2020 i.e. application filed for approving the Resolution Plan filed by the respondent No. 2 and pending before the Respondent No. 1 for 02.09.2022, take up and decide:

i. IA Nos. 266/2020, 462/2020 & 466/2020, (Annexure P-4,5,6 filed in July, 2020) seeking removal of the Respondent No. 2 as a Resolution professional, for which liberty was granted to the petitioner to take appropriate steps, once the IBBI decides his complaint made against the respondent-RP in terms of the order dated 27.07.2021 is Annexure P-7.

ii. And IA 892/2022 (Annexure P-18) seeking decision of IA Nos. 266/2020, 462/2020 & 466/2020, (and consequently the said IAs also) disposed of in terms of the order dated 27.07.2021 (Annexure P- 7), filed by the petitioner and pending before the Respondent No. 1 for 2.9.22.

iii. And IA 890/2-22 (Annexure P-20) to provide documents and other information to enable the applicant to file objections to the Resolution plan so submitted by the Respondent No.2 and pending adjudication for 02.09.2022.

iv. And MA 4/ 2022 in IA 914 of 2020 (Annexure P-21), seeking disqualification of the proposed Resolution applicant, filed by the petitioner and pending before the Respondent No. 1 for 2.9.22.

v. And IA 366/2020 titled Nipan Bansal v. Vipin Kumar (u/s 66,67 of the IBC) (Annexure P-22) seeking action against the petitioner for alleged fraudulent transactions, filed by the respondent No. 2 and pending before the Respondent No. 1 for

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2.9.22, to avoid fraud/ Income Leakage of Rs.7.94 crore to public money/ secured lenders/ public sector banks.”

3. Both writ petitions have been filed by the suspended Director of M/s KSM Yarns Limited, a Company which was admittedly in the midst of Corporate Insolvency Resolution Process (for short – ‘CIRP’) under provisions of the Insolvency and Bankruptcy Code, 2016 (for short – ‘IBC’). It is pleaded that abovesaid Company which was under financial distress was admitted to CIRP in terms of order dated 17.12.2019 passed by learned National Company Law Tribunal, Chandigarh (for short – ‘NCLT’). Respondent No. 2 namely Nipan Bansal took over as Interim Resolution Professional/Resolution Professional (for short - ‘IRP/RP’) on 20.12.2019. Various averments/allegations of malafides, misrepresentations and fraud are raised in the writ petition in respect to conduct of RP. It is stated that respondent No. 2 was never validly appointed as RP because he could not secure the requisite 66% votes. Various applications, as are detailed in the foregoing paras, were filed by petitioners which were initially disposed of by learned NCLT on 27.07.2021 while observing that Resolution Plan stood approved by the Committee of Creditors (for short – ‘CoC’) and application under Section 30(6) read with Section 31 of IBC, 2016 which stood filed was pending before the adjudicating authority, therefore, role of RP had almost come to an end with no further action required to be taken by him except in the event of rejection of Resolution Plan by the adjudicating authority. It is further observed that allegations of malafide etc. were yet to be adjudicated by IBBI and as the matter was still pending before IBBI, it was not inclined to adjudicate or render any findings on the applications. Applications were, accordingly, disposed of with liberty to present petitioners to

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take appropriate steps once IBBI decided the complaint filed by suspended Director against the RP.

4. Pursuant to complaint filed by suspended Director under Section 217 of IBC, show cause notice was issued to the RP by IBBI alleging contravention of Section 22(2), Section 208 (2)(a), 208 (2) (e) IBC, Regulation 7(2)(h) of IP Regulations read with Clause 3A, 5, 9, 12 and 13 of the Code of Conduct specified therein. Reply was filed by respondent No. 2. Disciplinary Committee was constituted as per Section 220(1) IBC by the Board to consider the report of Inspecting Authority under Section 218 IBC. The matter was finally decided by IBBI (Disciplinary Committee) vide order dated 22.08.2022. The deficiencies, as noticed and conceded by RP, were found to be technical in nature, therefore, IBBI while taking a lenient view cautioned RP to be more careful in future while handling the process under the Code. Regarding delay in filing relationship disclosure with IBA pertaining to legal counsel appointed by RP, it was observed that there was laxity in obtaining undertaking from the Advocate and filing disclosure. However, as the delay had not caused any prejudice or loss to any stakeholder or the Corporate Debtor (CD), a lenient view was taken and RP was asked to be cautious in handling assignments. In respect to allegations regarding improper procedure for appointment of IRP as RP, it was observed by IBBI (DC) that no objection had been raised in 3rd CoC meeting by any of its members and infact no objection at any point of time had been raised and no prejudice had been caused to any of the stakeholders. It is further observed in order dated 22.08.2022 that in case any such repetitive instance is noticed in future, the matter would be treated as wilful negligence and action would be taken accordingly.

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5. Present petitioners filed IA-892-2022 before learned NCLT, Chandigarh with contentions that IBBI vide order dated 22.08.2022 had found RP guilty of misconduct, therefore, he should be removed and they sought revival of IA Nos. 265, 266, 462 and 466 of 2020 which had earlier been disposed of vide order dated 27.07.2021. Learned NCLT revived all the said applications. CWP-19562 of 2022 was filed by petitioners seeking a direction to learned NCLT to decide all the above said applications prior to adjudication IA No. 914 of 2020, which is the application filed for approval of the Resolution Plan.

6. Notice of motion was issued in this writ petition on 01.09.2022 by Co-ordinate Bench and it was directed that proceedings in IA-914-2020 would remain stayed till the next date of hearing. The interim order continued to remain in currency.

7. During pendency of the said writ petition, learned NCLT vide order dated 25.04.2023 dismissed all the applications which had been revived.

8. Allegations as raised in the applications were encapsulated in para 15 and 16 of order dated 25.04.2023 passed by learned NCLT as under:-

“ 15. In his consolidated written arguments filed by diary No. 01810/6 dated 21.04.2023 in IA Nos. 265/2020, 266/2020, 462/2020, 466/2020 and IA No. 890/2022 and 892/2022, the learned counsel has raised nineteen allegations, out of which the following allegations are directly relatable to the charges investigated by the IBBI.

- i. Counsel for the stakeholder/CBI, Financial creditor who filed the petition in the present CIRP is the counsel (Harsh Garg) for the ITP/RP.
- ii. IRP/RP was automatically disqualified
- iii. Failure in filing relationship disclosure.

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- iv. Order of IBBI dated 22.08.2022, (Ann R-2 of reply of IA 892/2022 page 22-29) the IRP/RP has been held guilty.
- v. Violation of S. 22(2) of IBC.
- vi. Improper Procedure for Appointment of IRP as RP
- vii. Efforts were made by Nipan Bansal to affect the voting by trying to influence the members of the CoC by sending e-mail.
- viii. Fraud and manipulation of CIRP records.

16. The other allegations include alleged instances of violation of an order of admission, non-sharing of photographs in respect of all such portions of the factory, wherein the stocks, finished goods, and goods in production were stored, the doctrine of video recording of the plant and machinery, non-maintenance list of stocks and assets and the difference between valuations conducted on 19.03.2020 and on 18.03.2023, vehicles missing in valuation reports and non-availability of original bills of CIRP expenses.”

9. Learned NCLT observed that role of suspended Director under IBC is to assist CoC in determining whether the Resolution Plan addresses the cause of default by the Company which is a mandatory requirement for the Resolution Plan. Thus, suspended Directors have a right to participate in the meetings of CoC and give suggestions. It was found that right of participation was not denied and in the scheme of Code, power to take decisions is of CoC. The lapses, if any, at worst it is observed were merely technical, therefore, there was no call to re-examine the allegations. Some of the other allegations raised were found to be in the nature of nitpicking, which did not affect the genuineness of Resolution Plan, proposed by RP under supervision of CoC. Learned NCLT did not deem it appropriate to delve into the issues as raised again with order dated 22.08.2022

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passed by IBBI being a detailed and comprehensive one dealing with the relevant allegations.

10. Petitioner thereafter filed CWP-8750-2023 on 20.04.2023 challenging order dated 22.08.2022 passed by IBBI. Petitioner in CWP-8750-2023 also sought stay of proceedings before the learned NCLT. Notice of motion was issued in CWP-8750-2023 by Co-ordinate Bench with the following observations on 29.04.2023:-

“ Counsel for the petitioners has pointed out that the appointment of respondent No.2 was not as per the statutory provisions in as much as he only secured 65.89% of votes while referring to E-voting result dated 18.01.2020 (Annexure P-5) and he wrongly submitted that item No.13 was “carried” whereas the requisite condition was 66% of the votes as per the provisions of Section 22 of the Insolvency & Bankruptcy Code, 2016 (for short, the ‘Code’). It is submitted that at a subsequent point of time, he had approached the creditors i.e. Punjab National Bank and got a post-facto approval. IA No.111 & 112 (Annexure P-12) had been filed under Section 60(5) read with Section 22(2) of the Code which was dismissed as withdrawn on 27.02.2020 (Annexure P-13) and therefore, it is contended that on 04.03.2020 (Annexure P-11) when the third meeting was held of CoC these facts were also noticed (page 239 of the paperbook).

It is also further brought to our notice that the said issue was always being canvassed before the NCLAT in IAs-266, 462 & 466 of 2020 and hearing was deferred on 27.07.2021 on them while rejecting the claim regarding the ineligibility of respondent No.2 which is subject matter of challenge in CWP-19562-2022. It is also further submitted that the counsel now representing the said respondent, Shri Harsh Garg had also, at one point of time, appeared for the Bank (Annexure P-1) and thereafter also, appeared for the Resolution Professional by filing applications

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(Annexure P-12) which were eventually dismissed and there is a clash of interests which is not permissible.

It is submitted that vide order dated 22.08.2022 (Annexure P-15), which is subject matter of challenge, the Insolvency & Bankruptcy Board of India (Disciplinary Committee) had also adversely commented upon the said respondent by issuing a warning to be more cautious in handling assignments under the Code. It is thus submitted that his appointment per-se was not as per the statutory provisions and would go to the root of the matter. It is also brought to our notice that after the filing of the present writ petition, further orders had also been passed by the NCLAT while deciding IAs-266, 462 & 466 of 2020 again and rejecting the objections wherein reliance has been placed upon the report of IBBI.

Counsel prays for time to place on record the said orders by filing appropriate application(s). It is also the contention that the proceedings were decided by the IBBI by a single Member and not by a Committee.

Notice of motion.

Mr.Garg and Mr.Gosain accept notice on behalf of respondent Nos.2 & 5, respectively.

Service upon the rest of the respondents is dispensed with.

Counsel for the petitioners does not press for interim relief in view of the fact that CM-7375-CWP-2023 in CWP-19562-2022 has been allowed today and the stay has been extended.

To be heard along with CWP-19522-2022 on 24.08.2023.”

11. It appears that it was incorrectly stated before Co-ordinate Bench that orders on various applications mentioned therein were passed by learned NCLAT whereas order dated 05.04.2023 dismissing the said applications was decided by learned NCLT. Be that as it may, it is to be noted that petitioners also filed an appeal before learned NCLAT challenging order dated 25.04.2023 which is pending adjudication.

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12. In the given factual matrix, it is apparent that after passing of order dated 25.04.2023 by learned NCLT, CWP-19562-2022 was rendered infructuous inasmuch as IA Nos. 266, 462, 466 of 2020, IA No. 892, 890 of 2022 stood decided. IA No. 366 of 2020 had been filed not by petitioners but by respondent No. 2 seeking appropriate directions against petitioners for indulging in preferential transactions and fraudulent trading and reference of the matter to IBBI/Central Government under Section 236 IBC. MA No. 4 of 2022 in IA-914-2020 necessarily could not have been decided as proceedings therein were stayed by this High Court on 01.09.2022. Moreover, appeal challenging order dated 25.04.2023 also stood filed by petitioners before learned NCLAT.

13. While not seriously denying in principle that CWP-19562-2022 was indeed rendered infructuous, learned counsel for petitioners vehemently argued that impugned order dated 22.08.2022 passed by IBBI (DC) is absolutely illegal, arbitrary, hence, liable to be set aside. It was contended that as many as seventeen (17) issues were raised in the complaint filed by petitioners but it was only fourteen (14) which were considered with just two of them being decided. It was argued that IBBI has incorrectly taken a lenient view while proper punishment should have been imposed upon RP, who in any case, is not a validly appointed RP in CIRP proceedings. Therefore, all actions taken by him in the capacity of IRP and RP are a nullity and should be so declared. Petitioners, it was stated, were never joined with the proceedings at any stage by IBBI which is a complete denial and violation of principles of natural justice. Learned counsel for petitioners also submitted that impugned order dated 22.08.2022 is liable to be set aside as it has not been passed by a properly constituted Committee in terms of Section 220(1) of IBC inasmuch as a single member could not have

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constituted a Committee. Arguments as raised before us can, thus, be summarised as under:-

1. Appointment of respondent No. 2 as RP was not valid.
2. Inter se relations by the RP with the counsel were not disclosed in terms of statutory provisions.
3. Impugned order was passed by an incorrectly constituted Disciplinary Committee (DC).
4. Petitioners were not joined with the proceedings by IBBI (DC) at any stage, therefore, principles of natural justice were violated with all aspects as raised in the complaint not being adjudicated upon.

14. Learned counsel for petitioners argued that appointment of respondent No. 2 - IRP/RP was not as per statutory provisions inasmuch as he secured 65.89% of votes only. Reference was made to e-voting result dated 18.01.2020. Respondent No. 2, it is stated, wrongly submitted that item No. 13 was carried whereas he had to secure 66% of the votes as per provisions of Section 22 of IBC. It is at subsequent point of time that one of the financial creditors namely Punjab National Bank having a share of 14.72% conveyed its approval of appointment of respondent No. 2 as RP vide mail dated 13.02.2022. Such post facto approval, it was contended, is illegal and impermissible. IA Nos. 111 and 112 of 2020 were filed under Section 60(5) read with Section 22(2) of IBC but were dismissed as withdrawn on 27.02.2020. These facts were noticed on 04.03.2020 when third meeting of CoC was held. Thus, there was intentional fraud, misreporting and cheating by RP. Units of the CD were closed down illegally for more than 4 years and RP in connivance with creditors is trying to get the same sold to a person of his choice for mutual gains. Therefore, it is incorrectly held in the impugned order that no harm has been done to any of the stakeholders. Learned counsel for petitioners also urged that RP was guilty of

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non-disclosure and declaration of relationship of three years prior in case of appointment of legal Professional. Disciplinary Committee failed to refer to its own site (IBBI site) wherein till May, 2023 counsel was shown to be a Director of common IPE with the co-Director who is the IRP. It was, however, reiterated that no action was sought against the counsel. It is to be noted that CM-18752-CWP-2023 in CWP-19562-2022 seeking action under Section 340 Cr.P.C. was withdrawn on 19.12.2023.

15. It was further contended that Disciplinary Committee cannot be comprised of one sole member and that Disciplinary Committee cannot be equated with one whole time member. The functions and area/sphere of working of both are completely different. Reference was made to Clause 12 of Insolvency and Bankruptcy Board of India (Delegation of Powers and Functions) and circular dated 02.07.2020 attached as Annexure P31 with CWP-8750-2023.

16. Learned counsel for petitioners vehemently argued that pendency of appeal challenging order dated 25.04.2023 before learned NCLAT has no bearing on the present proceedings wherein challenge is to order dated 22.08.2022 passed by IBBI (DC). It was strenuously argued that once IBBI (DC) found that RP was guilty of misconduct, there was no scope of taking a lenient view, especially considering the fact that in similar circumstances, it had imposed more stringent punishment. Thus, RP could not have been let off in this manner by taking a lenient view. It was, thus, submitted that this writ petition should be allowed. Order dated 22.08.2022 should be set aside firstly on the ground that it has not been passed by a validly constituted Committee and furthermore, once RP was found to be guilty of misconduct, proper punishment should have been imposed. In the alternate, it was argued that order dated 22.08.2022 be set aside and the matter be remanded to the Disciplinary

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Committee duly constituted as per provisions of law to consider and decide the matter afresh. Learned counsel for petitioners argued that till such proceedings are finalised, CIRP proceedings should be kept in abeyance.

17. Learned counsel for IBBI as well as respondent No.2- RP have opposed both the writ petitions. It was reiterated that CWP-19562-2022 is rendered infructuous in view of order dated 25.04.2023. In so far as CWP-8750-2023 is concerned, it was contended that the only aim and objective of petitioners who are the suspended Director(s) of the corporate debtor is to stall CIRP proceedings by hook or by crook. Learned counsel for respondent No.1 submitted that IBBI is a statutory body established under Section 188 of IBC. It is responsible for implementation of the Code which consolidates and amends laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons for promoting entrepreneurship, availability of credit and to balance interest of all stake holders. IBBI, it was stated, is a unique regulator which regulates profession as well as processes. The IBBI has regulatory oversight over insolvency professionals, insolvency professional agencies and information utilities. It is the duty of IBBI to ensure that CIRP and liquidation proceedings are conducted in a fair and just manner by IRP/RP/Liquidator (IP). By virtue of powers conferred upon IBBI under the Code, Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (for short – ‘IP Regulations’) have been promulgated. The Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 (for short – ‘Complaint Regulations’) promulgated in terms of Section 196(q) of IBC lay down a comprehensive mechanism in consonance with the mandate of IBC for consideration and disposal of

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grievances against insolvency professionals. A complaint once filed passes through several stages in terms of Regulation 7 of Complaint Regulations. It was submitted that Section 218 of IBC and Complaint Regulations do not require a decision by IBBI as a quasi judicial authority. It is not necessary to join the complainant with proceedings wherein the service provider against whom proceedings may be initiated upon forming a prima facie view is entitled to a right of personal hearing. The complaint handling mechanism under the Complaint Regulations is not a dispute resolution mechanism which calls for a hearing to the complainant. All complaints received from several stake holders are examined thoroughly in a non-partisan and professional manner.

18. Learned counsel for IBBI apart from referring to Section 13 of the General Clauses Act, 1897 referred to report of the first working group entrusted with the task to 'recommend the design of the IBBI'. The report after referring to Section 221 IBC concluded that the law does not mandate that Disciplinary Committee should constitute more than one member and neither does it prohibit a One Member Disciplinary Committee. Judicial precedents supporting a one person Committee were referred to. Same are attached as Annexure R1 with reply filed on behalf of IBBI in CWP-8750-2023. Learned counsel for IBBI while contending that petitioners had no locus to challenge the quantum of punishment submitted that a lenient view was correctly taken while taking into consideration the fact that CoC at no point of time has raised any objection qua appointment of respondent no.2 as RP. It is the will of CoC which is paramount in such matters. In respect to relationship between respondent no.2 and the counsel is concerned, there was no relationship on 17.12.2019 i.e. the insolvency commencement date. In respect to the information which was reflected on the website of the Board same had been updated in view of submissions made by

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respondent no.2 after due verification. There is no violation of any fundamental or constitutional rights of petitioners which calls for interference by this Court. All allegations as raised in the complaint were subjected to scrutiny by inspecting Authority and necessary action taken by Disciplinary Committee on the relevant aspects.

19. Learned counsel for respondent no.2 while denying all allegations as raised against said respondent reiterated that he was validly appointed as RP with 80% voting share of CoC. It was further submitted that Disciplinary Committee after thorough consideration of the facts and circumstances of the case passed order dated 22.08.2022. It is specifically held therein that the shortcomings are not of such nature which effect rights of any of the parties. Petitioners, it was submitted, on one hand while relying on order dated 22.08.2022 filed application for revival of the applications which were disposed of on 27.07.2021 on the ground that IBBI vide order dated 22.08.2022 had found respondent No.2 guilty while at the same time they are challenging this very order in CWP-8750-2023. After dismissal of their applications on 25.04.2023, appeal with similar grounds as in the present writ petition has been filed and is pending before learned NCLAT. Present writ petition, it was submitted, has been filed in a malafide manner in April, 2023 challenging order dated 22.08.2022 passed by learned IBBI (DC). Present writ petition, it was further submitted is not maintainable or entertainable. Even on merits there is no ground whatsoever to interfere in the matter. It was thus prayed that both writ petitions be dismissed.

20. We heard learned counsel for the parties at length and have carefully scrutinized the file.

21. Initiation of proceedings under Section 7 of IBC against the firm –
M/s KSM Spinning Mills, vide order dated 17.12.2019, passed by learned NCLT

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is a matter of record. The firm was admitted to CIRP and respondent no.2 took over as IRP on 20.12.2019. Petitioner(s) are admittedly the suspended Directors of M/s KSM Spinning Mills. Ltd. Various applications, as have been detailed in the foregoing paras, were filed by petitioners before learned NCLT with the averments that appointment of respondent no.2 as RP itself was illegal and he was not authorized to carry out any acts as RP of the corporate debtor in present proceedings. Therefore, all such acts and proceedings carried out by him subsequent to 17.01.2020 should be declared null, void and nonest. Removal of respondent no.2 as RP was sought while seeking all steps taken by CoC under CIRP after the first CoC Meeting held on 07.01.2020 to be illegal, null and void. Petitioners sought stay of all proceedings before learned NCLT in the wake of allegations as raised. Learned Tribunal vide order dated 27.07.2021 disposed of all these applications with liberty to the applicant to take appropriate steps once IBBI decides its complaint lodged against the RP. It was observed by learned NCLT in order dated 27.02.2021 as under:-

“31. It is to be seen that now the process of CIRP against the corporate debtor has reached its finality since a resolution plan was already approved by the CoC and that an application under Section 30(6) read with Section 31 of IBC 2016 had already been filed and is pending before this Adjudicating Authority. The role of the RP, almost came to an end and that no further action is required to be taken by the RP, unless in the event of rejection of the resolution plan by this Adjudicating Authority. It is also to be seen that when allegations of mala fides or corruption or professional misconduct or any other sort are alleged against a RP, the same are to be adjudicated by the IBBI and basing on the orders passed by the IBBI, appropriate action would be taken by this Adjudicating Authority. Since, admittedly the applicant made

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complaint against the respondent-RP to the IBBI, at this stage, we are not inclined to adjudicate and give any finding on these IAs.

32. Accordingly, IA Nos. 265/2020, 266/2020, 462/2020 & 466/2020 are disposed of with a liberty to the applicant to take appropriate steps, once the IBBI decides his complaint made against the respondent-RP.”

22. As noted above, complaint had been filed by petitioners in terms of Section 217 IBC against respondent no.2 – RP. IBBI appointed inspecting Authority to conduct inspection of respondent no.2 as per provisions of Section 218 IBC. Show cause notice was issued to respondent no.2 in terms of Section 219 IBC for alleged contravention of various provisions of Insolvency and Bankruptcy Board of India and Insolvency Professionals Regulations, 2016. Reply was filed by RP. On receipt of report of Investigating Authority, Disciplinary Committee was constituted in terms of Section 220(1) IBC to consider the report of inspecting Authority. Impugned order dated 22.08.2022 was passed by the Disciplinary Committee. Petitioners filed IA No.892 of 2022 before NCLT, Chandigarh with the prayer as reproduced hereunder:-

“ Application under Section 60(5) read with Section 22(2) and Section 219 of the Insolvency and Bankruptcy Code, 2016 for staying all further proceedings in CP(IB)250/CHD/PB/2018 as Shri Nipan Bansal the alleged RP was not validly appointed having failed to secure 66% votes as provide in Section 22 and that the said RP. Shri Nipan Bansal, has knowingly made misleading and incorrect statement before the AA in the application for confirmation of IRP as RP in the application dated February 17, 2020, as held by the IBBI in Notice No. IBBI/IP/2020/60/531/3551, dated 18.5.2022.

AND

Hence all acts and proceedings done by and in the name of the RP by Nipan Bansal subsequent to 17.01.2020 are non est.

And List the application IA Nos. 265/2020, 266/2020, 462/2020 and 466/2020, seeking the removal of the present alleged

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Resolution professions Nipan Bansal for hearing in terms of the order dated 27.07.2021

And, Declare that present alleged Resolution Professional, Nipan Bansal was not authorised to act as the RP of the CD in the present proceedings.

And, Declare all acts and proceedings done by and in the name of the RP, by the alleged RP-Nipan Bansal, subsequent to 17.01.2020 as null and void and non est.

And, Declare that steps taken by the CoC under the CIRP after the first COC meeting dated 07.01.2020 and especially after the voting results dated 17.01.2020 are null and void and bad in law and unsustainable.

And forthwith stay all further proceedings in the present CIRP proceedings

And, forthwith restrain RP- Nipan Bansal from acting as an RP for the CD till further orders of this tribunal/the board

And, forthwith stay any consideration on any application including the resolution plan submitted under the signatures of the said RP- Nipan Bansal

And, Pass such other orders as the tribunal may deem fit in the facts and circumstances of the case.”

23. Learned NCLT revived the earlier applications i.e. IA No.265, 266, 462 and 466 of 2020. Statutory appeal challenging order dated 25.04.2023 dismissing the said applications stands filed by petitioners. Present writ petition was filed in April, 2023 challenging order dated 22.08.2022 passed by IBBC.

24. In our considered opinion, scope of judicial review in present proceedings wherein petitioners seek setting aside of order dated 22.08.2022 passed by IBBI, taking a lenient view qua shortcomings on the part of RP besides declaring all CIRP proceedings before learned NCLT to be illegal and non-est, is limited. Primary argument raised before us was that once RP was found guilty of the breach in question there was no occasion for the Board to

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have taken a lenient view especially as the violations go to the root of the matter. It was strenuously argued on behalf of petitioners that RP should have been removed immediately and all proceedings carried out by him till date should be declared illegal and non-est by the Board. It is to be noted at this stage that scope of judicial review in respect to proportionality/quantum of punishment is limited inasmuch as interference can be caused only when the punishment is found to be disproportionate, outrageous, in defiance of logic or is irrational suggesting lack of good faith or shocks the conscience of the Court. Merely because in the opinion of the Court another alternate punishment would be more appropriate, cannot be a ground to interfere with the discretion of Disciplinary Authorities. There should be no reappraisal of the facts of the matter as if sitting in appeal. Gainful reference in this regard can be made to judgment of Hon'ble the Supreme Court of India in **Union of India and others Vs. Ex-Constable Ram Karan, 2022 (1) SCC 373**, which reiterates and elaborates the principle in question which is applicable to the given facts and circumstances as well.

25. In this background, it is to be seen that Disciplinary Committee in respect to failure in filing relationship disclosure observed as under:-

“4.3.1 The circular no. IP/005/2018 dated 16.01.2018 provides as follows while explaining kinds of relationship:

"Where the Insolvency Professional or the Other Professional, as the case may be, is a partner or director of a company, firm or LLP, such as, an Insolvency Professional Entity or Registered Valuer, the relationship of kind A, B or C of every partner or director of such company, firm or LLP with the related party."

As per material available on records, Mr. Nipan Bansal and Mr. Harsh Garg were appointed as director of insolvency professional entity (IPE), viz., Competent Insolvency Professionals Private Limited. Thereafter, Mr. Nipan Bansal on 30.07.2018 provided written communication in Form 2 for his appointment as IRP of CD to the applicant, viz.. Central Bank of India ("CBI"), being represented by Mr. Harsh Garg before AA. Therefore, on the date

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of giving consent to act as the IRP, Mr. Bansal and Mr. Garg both were directors of the same IPE and were related to each other. On 30.09.2019, Mr. Garg resigned from the directorship of the IPE. Hence, on 17.12 2019, ie, ICD, Mr. Bansal and Mr. Garg were not related party from the date of admission of CIRP

4.3.2 Regarding delay in filing relationship disclosure with IPA pertaining to legal counsel appointed by Mr. Bansal, the DC observes that Mr. Bansal admitted delay. There is laxity in approach of Mr. Bansal in obtaining undertaking from Mr Garg and filing disclosure with IPA. However, since such delays did not cause any prejudice or loss to any of the stakeholder of the CD, the DC takes a lenient view and advises Mr. Bansal to be more cautious in handling assignments.”

26. In respect to the findings regarding improper procedure for appointment of IRP as RP, impugned order dated 22.08.2022 reads as under:-

“4.6.1 The DC observes that the agenda for appointment of IRP as RP was first placed for voting before CoC in its 1st meeting dated 07.01.2020. The agenda was not approved as it received only 65.89% votes in its favour which fell short of mandatory 66% required for approval of resolution for appointment of IRP as RP as per section 22(2) of the Code. Later PNB who is one of the FC with voting share of 14.72% sent mail on 13.02.2022 according its approval for appointment of IRP as RP. Consequently, Mr. Bansal filed application before AA dated 17.02.2020 for confirmation of IRP as RP as after the email from PNB, the total voting share, as calculated by Mr. Bansal, in favour of appointment of IRP as RP went to \$0.60%. The DC notes that not putting the agenda again to vote is a technical mistake. Instead of adding up the votes of previous meeting with that of PNB decision as confirmed through e-mail, Mr Bansal should have taken the agenda for voting again.

4.6.2 The DC further observes that as no objection was raised in 3rd CoC meeting by any members of CoC and till date also no objection has been raised on appointment of Mr. Bansal as RP when the resolution plan has also been approved by CoC and pending for approval before AA. In light of the above, the DC takes a lenient view as no objections has been raised, fee of Mr. Bansal has been approved and resolution plan was approved by CoC including Bank of Baroda who once had objected to the appointment of Mr. Bansal as RP, and no harm has been done to any stakeholders.”

27. Respondent no.2 was accordingly cautioned and warned to be more careful in future while handling process under the Code and that in case such repetitive instances are noticed in future, the matter would be treated as willful

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negligence and action would be taken accordingly. Copy of the order was duly forwarded to the Indian Institute of Insolvency Professionals of ICAI where respondent no.2 is enrolled as a member. It is the categorical finding by IBBI that no prejudice or loss has been caused to any of the stakeholders of the CD by non-disclosure of the relationship and moreover CoC (whose decisions in any case have to be afforded precedence) till date had not raised any objection qua appointment of respondent no.2 as RP with the Resolution Plan having been approved by CoC and was pending approval before adjudicating authority, a lenient view was taken. Learned counsel for petitioners was unable to point out anything to the contrary to indicate that a lenient view should not have been taken.

28. Insofar as arguments raised in respect to setting aside of CIRP proceedings as well as all proceedings undertaken by respondent no.2 including submission of Resolution Plan by respondent no.2 is concerned, we deliberately refrain from expressing any opinion thereon, keeping in view the fact that appeal filed by petitioners challenging order dated 25.04.2023 is admittedly pending adjudication before learned NCLAT after issuance of notice. It was directed by learned NCLAT on 09.08.2023 that any order passed by adjudicating authority in CIRP shall abide by result of the said appeal. The matter before learned NCLAT is pending adjudication on 17.09.2024. All allegations and averments as raised in respect to issues as raised in the applications before learned NCLT are very well within the realm of consideration by learned NCLAT. Parallel adjudication on said aspects by this Court is not called for.

29. Another aspect and argument raised by learned counsel for petitioners was that constitution of Disciplinary Committee is not in accordance with the applicable provisions inasmuch as a single member can not constitute a

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‘Committee’. It was argued that an objection in this regard had been raised by respondent No. 2 as well but merely because he thereafter acceded to the jurisdiction of the committee, it proceeded to decide the matter in an illegal and arbitrary manner. It is relevant to note that Disciplinary Committee has not merely proceeded on account of acceptance of its jurisdiction by respondent No. 2 but also considered the matter with reference to the applicable provisions and relevant judgments on the issue, which is apparent from a bare reading of para 3.2 of impugned order dated 22.08.2022. It is pertinent to note that there is no definition of Disciplinary Committee in IBC. Section 220 of IBC, which provides for appointment of Disciplinary Committee reads as under:-

“(1) The Board shall constitute a disciplinary committee to consider the reports of the investigating Authority submitted under sub-section (6) of section 218:

Provided that the members of the disciplinary committee shall consist of whole-time members of the Board only.

(2) On the examination of the report of the Investigating Authority, if the disciplinary committee is satisfied that sufficient cause exists, it may impose penalty as specified in sub-section (3) or suspend or cancel the registration of the insolvency professional or, suspend or cancel the registration of insolvency professional agency or information utility as the case may be.

(3) Where any insolvency professional agency or insolvency professional or an information utility has contravened any provision of this Code or rules or regulations made thereunder, the disciplinary committee may impose penalty which shall be—

- (i) three times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention; or
- (ii) three times the amount of the unlawful gain made on account of such contravention, whichever is higher:

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Provided that where such loss or unlawful gain is not quantifiable, the total amount of the penalty imposed shall not exceed more than one crore rupees.

(4) Notwithstanding anything contained in sub-section (3), the Board may direct any person who has made unlawful gain or averted loss by indulging in any activity in contravention of this Code, or the rules or regulations made thereunder, to disgorge an amount equivalent to such unlawful gain or aversion of loss.”

30. It is succinctly explained in the reply filed on behalf of the Board, that in order to plan effective implementation of provisions of IBC, Ministry of Corporate Affairs constituted four working groups in July 2016. First working group was entrusted with the task to ‘Recommend the design of the IBBI’. As per its recommendation in respect to constitution of the ‘Committee’, it is duly observed that once IBC neither explicitly permits nor prohibits the possibility of one member Disciplinary Committee, the word ‘Committee’ used in Section 220(1) IBC can be interpreted to be inclusive of one member Committee. Reference was made to judgment of the Andhra Pradesh High Court in **Government of Andhra Pradesh versus K. Sethuraman AIR 1986 AP 170**, wherein it was held that a person or persons appointed by the Registrars under the Andhra Pradesh Cooperative Societies, 1964 to manage affairs of the Society would constitute a ‘Committee’. Reference was also made to foreign precedents including **Reynell Vs. Lewis (16 LJ Ex.30)** wherein it was observed that term ‘Committee’ means an individual or body to which others have committed or delegated a particular duty or who have taken on themselves to perform it in the expectation of their act being confirmed by the Body they profess to represent or act for.

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31. In the given facts and circumstances, we do not find any infirmity or irregularity in the constitution of a single member Disciplinary Committee. It is to be noted that no malafide is alleged qua Disciplinary Committee. We also do not find any merit in the argument raised on behalf of petitioners that they should have been afforded an opportunity of personal hearing/hearing by Disciplinary Committee prior to its decision on the complaint filed by it. There is merit in the argument raised on behalf of IBBI that in terms of the provisions of Section 217 and 220 of IBC read with Regulation 30 of IBBI (Inspection and Investigation) Regulations, 2017, the complainant does not become a party to the inquisitorial proceedings. A self-contained and comprehensive mechanism has been put in place for consideration and disposal of grievances against insolvency professionals. Delhi High Court in the case of **Consumer Education and Research Centre and others versus Securities and Exchange Board of India and others**(CWP-1195-1998) decided on 07.09.1999 and in **DLF Limited versus SEBI and others** (LPA-100-2012)decided on 20.11.2012, while dealing with the question of requirement of hearing being given to complainants under the said Act, held that in case a Body like SEBI is directed to give hearing to each and every complainant, then the very purpose for which SEBI has been established i.e. investors protection would be lost. Similar view was taken by the High Court of Bombay in **JK Paper Limited versus SEBI**(Writ petition No. 3341 of 2020) decided on 06.10.2020. We are in agreement with the ratio as culled out in abovesaid decisions which is squarely applicable to the instant matter presenting similar controversy.

32. Learned counsel for petitioners was unable to point out any illegality or irregularity in the procedure followed by respondent – Board in deciding the complaint filed by the petitioners while looking into all material

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aspects as raised by complainant. In effect all aspects as raised were duly decided by IBBI. There is no ground for remanding the matter for a fresh decision by IBBI. In the given factual matrix, in view of discussion in foregoing paras we do not find any merit in the arguments as raised before us on any of the grounds agitated in the writ petition and particularly as culled out in para 13 of this decision.

33. No other argument was addressed.

34. Keeping in view the facts and circumstances as above, CWP-19562-2022 is disposed of as infructuous in view of the subsequent order dated 25.04.2023 passed by learned NCLT. CWP-8750-2023 is dismissed being devoid of any merit. Petitioners are, however, at liberty to pursue their appeal challenging order dated 25.04.2023 admittedly pending adjudication before learned NCLAT. It is further clarified that there is no expression of opinion on the merit of allegations, which form part of the appeal which is pending adjudication before learned NCLAT.

35. Pending application(s), are accordingly, disposed of.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

August 22, 2024
rts

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No