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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 16th December, 2024

+ W.P.(C) 14950/2022 & CM APPLs. 46094/2022, 46365/2022,
46426/2022

CHANDRA PRAKASH

.....Petitioner

Through: Mr. Ramesh Singh, Sr. Advocate with
Mr. Chandra Bhushan Prasad, Mr.
Kripa Shankar Prasad, Mr. Bikas Kar
Gupta, Advocates
Mr. Manish K. Bishnoi, Mr. Khubaib
Shakeel, Advocates

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

.....Respondent

Through: Ms. Madhavi Divan, Senior Advocate
with Mr. Sahil Monga, Ms. Alekhya
Sattigeri, Advocates for IBBI

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioner, through the instant petition, *inter-alia* seeks setting aside of the order dated 11th October, 2022,¹ whereby the Disciplinary Committee of the Respondent, Insolvency and Bankruptcy Board of India,² has suspended the Petitioner's registration as an Insolvency Professional for

¹ "Impugned Order"



a period of one year.

2. At the outset, it must be noted that the aforementioned period of suspension has lapsed. Mr. Ramesh Singh, Senior Counsel for the Petitioner, submits that while the suspension period has already run its course, the Petitioner seeks to have the Impugned Order set aside, as it leaves a permanent blemish on his professional record.

Brief Background

3. The NCLT, Principal Bench, New Delhi *vide* order dated 10th January, 2019 admitted the application under section 7 of the Insolvency and Bankruptcy Code, 2016³ for initiating Corporate Insolvency Resolution Process⁴ of Granite Gate Properties Private Limited (Corporate Debtor). On 27th November, 2019, the NCLT, appointed Mr. Chandra Prakash, the Petitioner herein, as Resolution Professional replacing Mr. Prabhjot Singh Soni. Subsequently, on 20th May, 2021, a complaint by Shomit Finance Limited prompted IBBI to initiate an inspection under the IBBI (Inspection and Investigation) Regulations, 2017. After receiving all the information and documents required, the Respondent circulated Draft Inspection Report *vide* e-mail dated 27th July, 2021, wherein several allegations were raised against the Petitioner. In response to the draft Inspection Report, on 12th August, 2021, the Petitioner submitted a detailed written rebuttal, contesting and refuting each of the allegations set forth therein. Subsequently, Show Cause Notice dated 25th July, 2022⁵ was issued against the Petitioner. Thereafter, on 30th August, 2022, the Petitioner submitted a detailed response to the

² “IBBI”

³ “IBC, 2016”

⁴ “CIRP”⁵

⁵ “Impugned SCN”



Impugned Show Cause Notice and, on 7th September, 2022, appeared before the Respondent's Chairperson for a personal hearing. Subsequently, on 11th October, 2022, the Respondent issued the Impugned order, suspending the Petitioner's registration as an Insolvency Professional for one year on three specified grounds. These three counts of alleged misconduct are: first, the Petitioner's engagement of M/s Ibay Capital, a firm owned by his brother, without proper disclosure of appointment to the Committee of Creditors⁶ or the relationship to the Insolvency Professional Agency⁷; second, his submission of a valuation report prepared by M/s iVAS Partners, whose appointment and fee had not been approved or ratified by the CoC; and third, his purported failure to take timely and appropriate action against Gravity Facility Management Solutions Pvt. Ltd⁸ for non-payment of water charges. The operative portion of the said order reads as follows:

"8. Order

8.1 On the basis of aforesaid analysis, it is found that Mr. Prakash had neither disclosed the appointment of his brother through M/s Ibay Capital before the CoC nor made relationship disclosure of engagement of M/s Ibay Capital on the website of the IPA. Further, the valuation report was submitted by M/s iVas Partners whose appointment or fee was not approved/ratified by the CoC. Mr. Parkash has also failed to take appropriate action against the Gravity for its inaction in terms of payment of dues of water charges.

8.2 In view of the above, the DC, in exercise of the powers conferred under section 220 (2) of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Mr. Chandra Prakash having Registration No. IBBI/IPA-002/IP-N00660/2018-19/12023 for a period of one year.

8.3 This Order shall come into force on expiry of 30 days from the date of its issue.

⁶ "CoC"

⁷ "IPA"

⁸ "Gravity"



8.4 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Chandra Prakash is providing his services, if any. The CoC may decide whether to continue his services or not. In case, CoC decide to discontinue his services, CoC may file an appropriate application before AA.

8.5 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where he is enrolled as a member.

8.6 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, for information.

8.7 Accordingly, the show cause notice is disposed of.”

4. Aggrieved by the same, the Petitioner has filed the instant petition, seeking setting aside of the Impugned order as well as the Impugned SCN.

Analysis and Findings

5. The Court has heard Mr. Ramesh Singh, Senior counsel for the Petitioner as well as Ms. Madhavi Divan, Senior counsel for the Respondent.

6. Contravention I: Non-disclosure of Related Party Transaction pertaining to M/s Ibay Capital.

6.1. The Respondent alleges that the appointment of M/s Ibay Capital, a firm owned by Petitioner’s brother, to provide professional support services, is in contravention of section 23B of the Code of Conduct specified in the first schedule of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.⁹ Section 23B of the Code of Conduct prohibits the Insolvency Professional¹⁰ from engaging or appointing any of their relatives in connection with their assignment. Furthermore, the

⁹ “Code of Conduct”

¹⁰ “IP”



Petitioner failed to disclose his relationship with M/s Ibay Capital before the CoC. He has also failed to disclose his relationship with M/s Ibay Capital before the Insolvency Professional Agency which is contrary to circular dated 16th January, 2018 issued by the IBBI which provides that an IP shall disclose his relationship, if any, with other professional(s) engaged by him to the IPA. Furthermore, the Board circular no. IBBI/IP/013/2018 dated 12th June, 2018, requires the IP to ensure that not only the fee payable to IP is reasonable but also other expenses incurred by him are reasonable. Thus, the Petitioner has flouted clauses 1,2,5,9,12,13,14, 23B of the Code of Conduct as well as the circulars dated 16th January, 2018 and 12th June, 2018.

6.2. The Petitioner argues that since M/s Ibay Capital only offered back-office support, not “professional services” per se, no disclosure was mandated. He asserts that Section 28(1)(f) of the IBC, 2016 permits the Resolution Professional to engage in related party transactions with prior approval from the CoC. In this case, the Petitioner appointed M/s Ibay Capital, to provide back-office support services, with prior approval from the CoC in its 13th meeting held on 26th December, 2019. This resolution was approved with 83.62% of the votes. The Petitioner further submits that Section 25 (1) and 28(1)(h) of the IBC, 2016 permits the RP to undertake any related party transaction and delegate its authority to any other person except the duty to preserve the assets of the Corporate Debtor. Regarding compliance with the circular dated 16th January, 2018, the Petitioner contends that there was no obligation to disclose their relationship with M/s Ibay Capital to the IPA, as M/s Ibay was providing back-office support, not a ‘professional service.’ While the IBC, 2016 does not define ‘professional,’ the Petitioner refers to Section 44AA of the Income Tax Act, 1961 to



support his argument. Additionally, the Petitioner relies on the order passed by the IBBI in the disciplinary case of Mr. Anil Goel on 1st January 2021, where he was exonerated of similar charges for engaging a related party in the Corporate Insolvency Resolution Process without CoC approval and failing to disclose the same to the IPA. The IBBI ruled that disclosure under paragraph 3 of the circular dated 16th January, 2018 was not required, as the services provided did not fall within the category of “professionals.” The Petitioner thus submits that para 3 of the circular dated 16th January, 2018 requires the Resolution Professional to disclose his relationship with “professionals” and not with back office support. The Petitioner, while invoking the Doctrine of Equality and fair play, contends that in Mr. Anil Goel’s case, the IBBI exonerated him for not disclosing the related party to the IPA stating that the circular did not apply in this context, yet the IBBI seems to have interpreted the circular differently in the Petitioner’s case.

6.3. The Court has considered the aforementioned contentions. While Section 28 (1) (f) of the IBC Code, relied upon by the Petitioner, permits the Resolution Professional to undertake Related Party Transaction, the same must be done with the prior approval of the CoC. In the present case, while the CoC approved the appointment of M/s Ibay Capital in its 13th Meeting, the CoC was not made aware of the fact that M/s Ibay Capital was a related party of the Petitioner. Thus, prior approval required under Section 28 (1) (f) of the IBC Code has not been complied with. As regards, compliance with para 3 of the Circular dated 16th January, 2018, the Court has perused the nature of services for which M/s Ibay Capital was hired, as detailed in minutes of the 13th CoC meeting. These services fall within the definition of “professional” rather than mere clerical or logistical support. The



Petitioner's interpretation that no disclosure was necessary is thus off the mark. Thus, in the opinion of the Court, the Petitioner has violated clauses 1,2,5,9,12,13, 14 and 23B of the Code of Conduct, Section 28 (1) (f) of the IBC Code and Circular dated 16th January, 2018. While the Petitioner has relied on the case of Mr. Anil Goel to claim parity it must be noted each case has to be decided on its own merit. Moreover, the said decision is not binding precedent on this Court. Regarding the alleged violation of the circular dated 12th June 2018, it is important to note that the Impugned Order does not specify which expenses incurred by the Petitioner in relation to M/s Ibay Capital were deemed unreasonable. In fact, the fee paid to M/s Ibay Capital was approved by the CoC in its 13th meeting. Consequently, the Court finds that the Petitioner has not violated the circular dated 12th June 2018.

6.4. It must also be noted that Ms. Divan, Senior counsel for the Respondent, during submissions, introduced fresh allegations suggesting that the Petitioner perhaps duplicated his fees by delegating his own responsibilities to M/s Ibay Capital. However, as this allegation was neither part of the Impugned SCN nor the Impugned Order, the Court cannot lend any credence to it. In conclusion, while the Court acknowledges that the Impugned order does not indicate any concrete financial irregularity on the Petitioner's part, it nonetheless remains evident that the Petitioner failed to fully adhere to the requirements of disclosure provided under IBC, 2016 and the regulations framed thereunder. Considering the Petitioner's role as an Insolvency Professional, entrusted with fiduciary duties and the responsibility to act in the best interests of the stakeholders, strict compliance with these provisions is non-negotiable. Therefore, Petitioner's



oversights in candidly informing the CoC of a related-party engagement justify regulatory intervention.

7. Contravention II: The valuation report was submitted by M/s iVAS Partners whose appointment or fee was not approved/ ratified by the CoC.

7.1 Respondent Submits that the Petitioner engaged the services of M/s iVAS Partners as valuer for ascertaining fair value and liquidation value of an asset of the Corporate Debtor (iRing Commercial Complex) and paid fees to iVAS, without the approval of the CoC. This amounts to a breach of regulation 34 of the Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 read with clauses 1, 2, 13, 14 of the Code of Conduct. Regulation 34 of the CIRP Regulations reads as follows:

“The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.

[Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.]”

7.2. Contrarily, Petitioner submits that as per Regulation 27 of CIRP Regulations, appointment of professionals, including valuers, is a prerogative of Resolution Professional. Ratification of CoC is required only of the fees to be paid to the professionals appointed by Resolution Professional, as their fees constitutes CIRP Costs and needs approval by CoC under Regulation 31 of CIRP Regulations. Thus, the appointment of M/s iVAS Partners was not required to be ratified by the CoC. As regards the ratification of fees of M/s iVAS Partners, the same had been approved



by the CoC in its 13th meeting. The relevant portion of the meeting reads as follows:

“5. “RESOLVED THAT the Appointment and Fee of CBRE South Asia Pvt. Ltd., as project consultant to determine the cost of completion of the projects is Approved.”

Voting of home buyers : Approved with 93% in favour

Voting of Noida Authority : Abstain

The resolution is therefore approved with 83.62% vote share of the COC.”

To explain how the aforementioned amounts to the approval of the fees of M/s iVAS Partners, counsel for the Petitioner explains the background in which M/s iVAS Partners was appointed. He submits that M/s iVAS Partners was appointed for valuation of a specific portion of a project, namely ‘iRing Commercial Complex,’ for filing of avoidance application amounting to more than 100 crores. CBRE South Asia Pvt. Limited, a real estate consultancy firm, had quoted an amount of Rs. 11.75 lakhs for both cost to complete and valuation of iRing Project. The Petitioner negotiated and brought down the fee for both these activities to Rs. 7 Lacs and Rs. 1.3 Lacs respectively. Petitioner submits that it was the same CBRE South Asia Pvt. Limited which, in turn, suggested and got the valuation done by M/s iVAS Partners. In this background it must be noted that the fees of iVAS Partners was in fact sought in the 13th CoC meeting for Rs.7 lakhs and the same was approved with 83.62% votes for the appointment of CBRE South Asia Pvt. Limited. Furthermore, the Petitioner had disclosed regarding appointment of iVAS Partners in the 17th CoC meeting stating that final valuation report from CBRE of “iRing” Commercial Complex was received. Thus, the Petitioner has taken the approval for the appointment of the iVAS partners from the CoC and the same was ratified by the CoC. Additionally, since M/s



iVAS Partners were engaged by him in ordinary course of business and operation of the Corporate Debtor, the expense incurred by him by virtue of engagement of M/s iVAS Partners does not form part of the resolution professional costs. Thus, there was no requirement to get the same approved by the CoC.

7.3. Even if the approval for appointment of M/s iVAS was not required, their fee would need to be ratified by the CoC as per regulation 34 of the CIRP Regulations. On perusal of the minutes of 13th CoC meeting, it is clear that CBRE South Asia Pvt. Limited was appointed to determine the cost of completion of the projects. Further, in the minutes of 17th CoC meeting, it was recorded that the cost of completion report and final valuation report of 'iRing' commercial complex were submitted by CBRE. However, there is no mention of any discussion with the CoC regarding the engagement of M/s iVAS Partners, nor was any fee related to them approved by the CoC. Even if the valuation of the iRing Complex was delegated to M/s iVAS, by CBRE, the Petitioner has not placed anything on record to show that the fee paid to M/s iVAS was approved by the CoC. Based on the available documents, it can be concluded that neither the appointment of M/s iVAS Partners nor the fees paid to them were approved by the CoC. Further, with regard to submission of the Petitioner that M/s iVAS Partners was engaged by him in ordinary course of business and operation of the Corporate Debtor, for which there is no requirement of CoC approval, it may be noted that Regulation 34 of the CIRP Regulations stipulates that the committee shall determine the expenses to be incurred by the resolution professional, and these expenses will be considered part of the insolvency resolution process costs. Explanation provided under Regulation 34 of the CIRP



Regulations clarifies that “expenses” includes “other expenses to be incurred by the resolution professional.” Thus, it is clear that RP is mandated to take approval of the CoC for the expenditure incurred to run the Corporate Debtor as a going concern. Therefore, the contention of the Petitioner that he, as an RP, is not required to take approval of the CoC for going concern expenses cannot sustain. Hence, the Court finds that the Petitioner violated Regulation 34 of the CIRP Regulations.

8. Contravention III: The Petitioner failed to take appropriate action against the Gravity Facility Management Solutions Pvt. Ltd.

8.1 The Respondent contends that the erstwhile IRP of the Corporate Debtor entered into an agreement with Gravity Facility Management Solutions Pvt. Ltd for maintenance of the entire resident side of the project as well as for payment of electricity and water charges. The residents of Lotus Panche project (corporate Debtor’s project) submitted a grievance before the IBBI that an amount of around Rs 2 Crores out of the money collected by Gravity Facility Management Solutions Pvt. Ltd. for maintenance, electricity and water charges has been invested in some under-construction project. The Petitioner despite being aware of the diversion of money, chose not to take any action such as filing a complaint or proceeding before the appropriate authorities against the defaulter for recovery of the diverted funds.

8.2. In response, Petitioner argues that the complaint of inaction is merely a ‘grievance.’ The applicable Regulation mandates that the concerned Resolution Professional be directed to address the grievance, rather than imposing a severe penalty such as suspension. That apart, the Petitioner has infact initiated action against the concerned entity. The Petitioner had



already taken action against M/s Gravity by way of filing a suit for recovery of Rs.60,06,143/-, which is pending before the Mediator, Surajpur Court, Gautam Budh Nagar, U.P., in terms of Section 12A of the Commercial Courts Act, 2015. He further asserts that the efforts undertaken by the Petitioner in filing the suit against Gravity facility management, resulted in a settlement between the Corporate Debtor and Gravity Facility Management Solutions Pvt. Ltd where the Corporate Debtor received 60 Lakhs.

8.3 The documents placed on record discloses that the Petitioner had infact initiated necessary action against Gravity Facility Management Solutions Pvt. Ltd. A civil suit for recovery of Rs. 64,20,813/- had been initiated by the Petitioner before the Civil Commercial Court, Guatam Budh Nagar, Uttar Pradesh. The Impugned order fails to take note of the same. In light of the aforementioned, it cannot be said that the Petitioner failed to take appropriate action against the Gravity Facility Management Solutions Pvt. Ltd. Accordingly, the contravention, arising from alleged inaction on the part of the Petitioner, is not made out.

Conclusion

9. In light of the above, the Court finds that Mr. Prakash neither disclosed the appointment of his brother through M/s Ibay Capital before the CoC nor made relationship disclosure of such engagement on website of the IPA. Furthermore, the fee of M/s iVAS Partners appointed by the Petitioner was not ratified by the CoC. As regards Gravity Facility Management Solutions Pvt. Ltd, the Court finds that the Petitioner did infact initiate action against them. Therefore, the finding in the Impugned order to that limited extent is erroneous. The one-year suspension, therefore, stands supported by at least two valid grounds, while the third ground is found



lacking. Accordingly, the Petitioner's plea to set aside the suspension order, in its entirety, cannot be granted.

!0. Disposed of along with pending applications.

SANJEEV NARULA, J

DECEMBER 16, 2024

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