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

\+ W.P.(C) 15037/2024, CM APPL. 63070/2024

SHILPI ASTHANA .....Petitioner

Through: Mr. Sanjeev Puri, Senior Advocate with Mr. Sunil Singh Bagri, Advocate.

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA & ANR. .....Respondents

Through: Mr. Ashish Dholakia, Senior Advocate with Ms. Mahima Singh, Mr. Karan Vir Khosla, Mr. Srivastava Reddy Beerapalli and Mr, Subhoday Bannerjee, Advocates for R-2.
Mr. Apoorv Khator, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **25.10.2024**

1. Through the present writ petition, the Petitioner assails the order dated 15th April, 2024 passed by Respondent No. 1 - Insolvency and Bankruptcy Board of India[1], whereby the Petitioner's complaint dated 2nd January, 2024 has been disposed of with an observation that the complaint is non-specific and without any substantiation. Further, the Petitioner's review application against the said order, has also been rejected by IBBI *vide* decision dated 1st August, 2023.

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[1] "IBBI"

2. The brief facts of the case are as follows:

2.1. The Petitioner is an Independent Director on the suspended Board of Directors of a SITI Networks Limited[2]. Through order dated 22nd February, 2023, the National Company Law Tribunal, Mumbai Bench[3] admitted SNL into the Corporate Insolvency Resolution Process[4] and Respondent No. 2 – Mr. Rohit Ramesh Mehra, an Insolvency Professional, was appointed as the Interim Resolution Professional.

2.2. In her capacity as an Independent Director, the Petitioner filed Company Appeal (AT) (Insolvency) No. 274 of 2023 against the order of NCLT dated 22nd February, 2023 before the National Company Law Appellate Tribunal, Principal Bench[5], wherein *vide* order dated 7th March, 2023, the CIRP admission of SNL was stayed. However, it is important to note that the said appeal was dismissed by NCLAT *vide* order dated 10th August, 2023.

2.3. The Petitioner contends that, during the pendency of proceedings before the NCLAT, while the CIRP admission of SNL was stayed, the Resolution Professional[6] neglected to follow a formal handover process, which allegedly enabled certain creditors to make unauthorized withdrawals totalling INR 143 Crores from SNL's accounts during the moratorium period. As a result of this, on 2nd January, 2024, the Petitioner file a complaint against the RP under Regulation 3(3) of the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017, detailing the alleged violations of the RP, along with supporting documents. The Petitioner urges

[2] "SNL"
[3] "NCLT"
[4] "CIRP"
[5] "NCLAT"

that despite submitting specific evidence to support these allegations, IBBI closed the complaint *vide* the impugned order dated 15th April, 2024 on the grounds that the complaint lacked basis. Furthermore, the review application filed by the Petitioner was also closed *vide* the decision of IBBI dated 1st August, 2024.

2.4. It is pertinent to note that in the meantime, Intervention Petitions were also filed in the NCLT raising the issue of alleged illegal and unilateral withdrawal of INR 143.74 Crores from the account of the Corporate Debtor. In this regard, the NCLT passed an order dated 1st October, 2024 wherein NCLT took note of the alleged violations by the RP under the Insolvency and Bankruptcy Code, 2016[7], particularly noting that these actions occurred during the period when the CIRP admission order was stayed.

3. In view of the aforementioned facts, Mr. Sanjeev Puri, Senior Counsel for the Petitioner, challenges both the IBBI orders dismissing the Petitioner's complaint against the alleged misconduct of the RP as erroneous and arbitrary. Mr. Puri emphasizes that the initial impugned order dated 15th April, 2024, incorrectly references a complaint dated 9th November, 2023, which is a manifest error as it bears no connection to the Petitioner's complaint filed on 2nd January, 2024. Furthermore, he argues that the grounds raised in the complaint have not been addressed or analysed in either of the orders, rendering the decisions devoid of any reasoning.

4. At this juncture, Mr. Apoorv Khator, counsel for IBBI states that the Respondents are fully cognizant of the NCLT order dated 1st October, 2024, which in Paragraphs No. 77.20 and 78.6 states as under:

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[6] "RP"
[7] "IBC"

"77.20 The above elucidation of BLRC articulates that imposition of moratorium and appointment of IRP are entangled for effective and efficient resolution of the Corporate Debtor. Moreover, it can also be understood that the Code envisages a more creditor-driven resolution of a company with overall benefit to every stakeholder of the Corporate Debtor. When the law is settled that an interim stay cannot be equivalent to quashing of the CIRP order, it becomes certainly clear that any action taken in the meantime in deviation of the salient features of the Code would defeat the very purpose behind its enactment.

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78.6 Thus, in view of the same and also the clear precedence set out in Ashok Kumar Tyagi (supra) which was passed prior to the stay granted in the present matter, the RP ought not to have handed over the management and control of the Corporate Debtor back to the suspended directors without appropriate instructions/ directions from this Tribunal."

5. In view of these observations by the NCLT, Mr. Khator submits that the present writ petition may be disposed of, as the IBBI is prepared to treat this writ petition as a fresh complaint from the Petitioner and will address it in accordance with the law. In response, Mr. Puri states that the Petitioner would is agreeable to the course of action suggested by Respondent No. 1 - IBBI.

6. On the other hand, Mr. Ashish Dholakia, Senior Counsel for Respondent No. 2 – Mr. Rohit Ramesh Mehra, states that the Petitioner has not presented the entire factual background of the case and is suppressing certain facts. Further, Mr. Dholakia argues that the entire foundation of IBBI's decision to re-examine the issues raised by the Petitioner stems from the observations made by the NCLT in the order dated 1st October, 2024 which has been appealed by Axis Bank and other financial lenders before the NCLAT. He submits that the said appeal is now listed for hearing on 28th October, 2024.

7. Having considered the above contentions as well as the stand taken by IBBI and the orders of NCLT, in the opinion of the Court, the present writ petition can be disposed of with the following directions:

7.1. The impugned order passed by Respondent No. 1 – IBBI dated 15th April, 2024 along with the review decision dated 1st August, 2024, closing the complaint of the Petitioner, are set aside.

7.2. Respondent No. 1 – IBBI shall consider the instant writ petition as a representation on behalf of the Petitioner and decide the same afresh in accordance with law.

7.3. It is made clear that in the event NCLAT passes an order reversing the decision of the NCLT dated 1st October, 2024, or makes any observation with respect to the issues urged hereinabove, the same shall be taken into account by IBBI while dealing with the Petitioner's representation.

8. All rights and contentions of the parties are left open. Once the final decision is taken on the Petitioner's complaint, the decision thereon shall be intimated to all the parties.

9. With the above directions, the present writ petition is disposed of along with pending application.

SANJEEV NARULA, J

OCTOBER 25, 2024
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