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

\+ W.P.(C) 16240/2024, CM APPL. 68214/2024 & CM APPL. 68215/2024

INCOME TAX OFFICER WARD-1 (1) NEW DELHI.....Petitioner

Through: Mr. Debesh Panda, Senior Standing Counsel, Ms. Zehra Khan, Mr. Vikramditya Singh, Junior Standing Counsels, Ms. Maanvi Jain and Mr. Ruchir Joshi, Advocates

versus

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

Through: Mr. Apoorv Khator, Advocate for R-1/IBBI.
Ms. Meenakshi Kataria, GP for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

O R D E R

% **22.11.2024**

1. Present petition has been filed challenging Regulations 31(c), 31(d), 31(e), 33 and 34 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on the ground that the same are *ultra vires* the Insolvency and Bankruptcy Code, 2016.

2. Learned Standing Counsel for the Income Tax Department states that the Parliament has clearly formulated a policy in the Insolvency and Bankruptcy Code, 2016 ("IBC") as to what all are the classes of costs that

are capable of being mulcted on the petitioner. He submits that the power under Section 5(13)(e) cannot be exercised by the Insolvency and Bankruptcy Board of India ("IBBI) in a manner as to backdoor a new class of costs that is alien to and inconsistent with the policy discernible from Section 5(13)(a) to 5(13)(d).

3. He submits that the overbroad manner in which Regulation 31(c) read with Regulation 33, Regulation 31(d) read with Regulation 34 and the residual Regulation 31(e) are formulated renders nugatory the policy discernible from Sections 5(13)(a) to 5(13)(d).

4. He further submits that if at all Parliament intended to give a carte blanche to the Committee of Creditors ("CoC") with the jurisdiction to *"ratify"*, *"fix"* and "approve" any kind of insolvency costs that is considered appropriate, it could have plainly said so in so many words without having to go through the trouble of identifying four classes of costs that are laid down in Section 5(13).

5. He contends that the four classes laid down in Section 5(13) of IBC have been practically rendered *otiose*, because a Committee of Creditors can, in the facts and circumstances of every case, categorise all costs incurred under the basket of either Regulation 31(c) or Regulation 31(d) or Regulation 31(e) and there is then, no need to undergo the trouble of identifying four classes of costs under Section 5(13)(a) to Section 5(13)(d) and making them impervious to the outcome of a voting process before the Committee of Creditors.

6. In essence, he submits that the impugned regulations have an inbuilt possibility of abuse and, therefore, this Court must intervene in the present matter.

7. Having heard learned counsel for the petitioner, this Court finds that there are only two operational creditors and no financial creditor. Even out of the two operational creditors, the petitioner Income Tax Department has more than 99% voting rights in the CoC. Consequently, irrespective of the interpretation of the Regulations, no cost can be incurred under the impugned Regulations without the consent of the Income Tax Department. Accordingly, the impugned Regulations cause no prejudice to the petitioner.

8. It is further settled law that there is always a presumption in favour of Constitutionality of an enactment including a Regulation and the burden to show that there has been a clear transgression of constitutional principles is upon the person who attacks such an enactment/regulation. The Court adjudges the Constitutionality of legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. The Supreme Court in ***Sushil Kumar Sharma vs. Union of India and Others*** **(2005) 6 SCC 281** has held as under:-

> *"14. From the decided cases in India as well as in the United States of America, the principle appears to be well settled that if a statutory provision is otherwise intra vires constitutional and valid, mere possibility of abuse of power in a given case would not make it objectionable, ultra vires or unconstitutional. In such cases, "action" and not the "section" may be vulnerable. If it is so, the court by upholding the provision of law, may still set aside the action, order or decision and grant appropriate relief to the person aggrieved."*

9. During the hearing, it also transpires that the RP has moved an application for payment of costs which the NCLT is considering on the judicial side. In the event the Income Tax Department is aggrieved by the order passed by the NCLT, it shall have its remedies in law.

10. Keeping in view the aforesaid discussion, this Court is of the view that there is no merit in the challenge to the Regulations at this stage. Accordingly, the present petition along with applications is dismissed.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

NOVEMBER 22, 2024
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