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

\+ W.P.(C) 17603/2024

DHARMENDER VERMA, ALLOTTEE IN PREMIA PROJECTS PVT. LTD. (UNDER CIRP) .....Petitioner

Through: Mr. Pulkit Deora, Mr. Harsh Gurbani, Advocates

versus

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

Through: Ms. Amrita Singh, Advocate for R-1
Mr. Ankit Jain, Senior Advocate with Mr. Rajat Chaudhary, Advocate for R-2
Mr. Palash S. Singhai, Mr. Harshal Sareen, Advocates for the authorised representative

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **20.12.2024**

CM APPL. 74892/2024 (*Exemption*)

1. Exemption is granted, subject to all just exceptions.

2. The Applicant shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.

3. Accordingly, the application stands disposed of.

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4. Mr. Dharmender Verma, the Petitioner has approached this Court asserting that he is an allottee in the real estate project of Premia Projects

Limited[1], which is a company undergoing Corporate Insolvency Resolution Process[2] before the National Company Law Tribunal, New Delhi Bench[3], under the provision of Insolvency and Bankruptcy Code, 2016[4]. As such, the Petitioner is a financial creditor of the Corporate Debtor.

5. The factual background leading up to the filing of the present writ petition is as follows:

5.1 On 30th May, 2018, CIRP was initiated against the Corporate Debtor - Premia Projects Limited by NCLT, New Delhi Bench.

5.2 On 26th March, 2019, in the first meeting of the Committee of Creditors[5], Respondent No. 2 - Mr. Jitender Arora was appointed as Resolution Professional[6], which appointment was confirmed subsequently through NCLT order dated 26th March, 2019.

5.3 Petitioner contends that from 2019 to 2020 several requests were made by the allottees of the Corporate Debtor to replace the RP. However, the RP refused to table a resolution to this effect or even raise the said agenda in the CoC meetings citing frivolous reasons. For this reason, the Petitioner was constrained to prefer an Interlocutory Application bearing No. 419 of 2021 in CP No. 104 (PB) of 2018, before the NLCT, which was subsequently dismissed on the grounds of lack of representation through the authorised representative. The said dismissal was successfully challenged in appeal by the Petitioner before the NCLAT, which then ordered the authorized representative to put the resolution for replacement of the RP

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[1] "Corporate Debtor"
[2] "CIRP"
[3] "NCLT"
[4] "IBC"
[5] "CoC"
[6] "RP"

before the CoC. Despite these directions, the authorised representative failed to place such a resolution before the CoC, constraining the Petitioner to file a contempt case against them for the wilful disobedience of the order of the NCLAT. Thereafter, under further directions of the tribunal, the authorised representative took vote of the allottees who wished to move an agenda for the replacement of the RP, which the Petitioner urges was in their favour. However, once again, in the next meeting of the CoC, the RP refused to table the resolution for his replacement.

5.4 Aggrieved by such actions of the RP, the Petitioner not only filed a contempt case before the NCLAT in July 2023, but simultaneously also filed complaints before Respondent No. 1 herein – Insolvency and Bankruptcy Board of India[7] against the conduct of the RP and the authorised representative in August 2023. On this complaint, a show cause notice dated 18th January, 2024 was issued to the RP calling upon him to put forth his stand. On the basis of the reply received, the Disciplinary Committee of IBBI, through order dated 12th November, 2024 issued following directions:

> *"3. Order*
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> *3.1 In view of the forgoing discussion, SCN, reply to the SCN, oral and written submission made by Mr. Jitender Arora, the DC finds that Mr. Jitender Arora had contravened Section 24(8) of the Code, Regulation 18 of the CIRP Regulations as it stood before 09.02.2022 Regulation 18(3) of the CIRP Regulations as substituted on 09.02.2022 read with Clause 14 of the Code of Conduct as specified in the First Schedule of IP Regulations.*
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> *3.2 The DC, in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby suspends the registration of Mr. Jitender Arora for a period of one year.*

[7] "IBBI"

3.3 This Order shall come into force after 30 days from the date of issuance of this order.

3.4 A copy of this order shall be sent to the CoC/Stake Holders Consultation Committee (SCC) of all the corporate debtors in which Mr. Jitender Arora is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Jitender Arora.

3.5 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Jitender Arora is enrolled as a member.

3.6 A copy of this Order shall also be forwarded to the Registrar of the Mumbai Bench of the National Company Law Tribunal.

3.7 Accordingly, the show cause notice is disposed of."

5.5 Thereafter, on 05th December, 2024, the Petitioner submitted an application to the IBBI seeking review/clarification of the said order. However, since the aforenoted request was not responded to by IBBI, the Petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking the following prayers:

"I. Issue writ, directions, or orders in the nature of Mandamus to Respondent No. 1 directing them to respond to application cum representation dated 05.12.2024 of Petitioner seeking clarification of Order dated 12.11.2024 passed by DC of Respondent No. 1.

II. Direct that the subject directions passed in DC Order dated 12.11.2024 and consequential voting conducted by Respondent No. 2, shall not be considered by Hon'ble NCLT while deciding IA No. 4928 of 2023, since the same are passed by DC in ignorance of Order dated 07.11.2024 by Hon'ble NCLAT."

6. At the outset, Mr. Pulkit Deora, counsel for the Petitioner, states on instructions, that he is not pressing Prayer II sought in the writ petition and confines the relief sought to Prayer I only. He urges that the order dated 12th November, 2024, passed by the Disciplinary Committee of IBBI is patently ambiguous, particularly since they appear to hold the RP in contravention

regarding the Corporate Debtor's CIRP but then also issue a broad directive allowing any CoC or Stakeholders' Consultation Committee (SCC) in other engagements of the RP to decide on retaining him. The Petitioner believes that, as far as Premia Projects Ltd. is concerned, there was already a CoC vote for replacement.

7. Mr. Deora further argues that the directions issued by DC have been misinterpreted by Respondent No. 2 who has conducted a fresh voting on his replacement/continuation despite the previous vote already being conclusively determined. Thus, the Petitioner urges Respondent No. 1 to clarify whether the directions in Paragraph 3.4 of the impugned order dated 12th November, 2024 are also intended to apply to the Corporate Debtor - Premia Projects Ltd., or not.

8. He further submits that the directions issued in impugned order are unjust, because it allows the RP to get the benefits for his own wrongdoing by rejecting a duly approved resolution formed by the allottees with the requisite votes, which interpretation is completely irrational and arbitrary. Moreover, it is pointed out that NCLT, in its order dated 07th November, 2024, has already clarified that there is no need to seek fresh consents or voting from allottees on replacement of RP, since the same has already voted upon by CoC in 15th CoC Meeting on 28th August, 2023.

9. On the other hand, Mr. Ankit Jain, Senior Counsel for Respondent No. 2, strongly opposes the present writ petition. He points out that the Petitioner has already initiated parallel proceedings before the NCLT by filing an application seeking removal of the RP, which is pending final adjudication and therefore, the instant writ petition ought not to be entertained by this Court.

10. Ms. Amrita Singh, counsel representing for the Board, submits that an application seeking review/clarification has been submitted by the Petitioner to the IBBI whereas, the impugned order dated 12th November, 2024 was passed by the Disciplinary Committee of IBBI. Nevertheless, the application shall be forwarded to the Disciplinary Committee. However, she categorically states on instructions, that under the regulatory mechanism, the Disciplinary Committee of the IBBI does not have the power of review.

11. The Court has heard the counsel for the parties and notes that the Petitioner has indeed filed an application bearing no. I.A No. 4928/2023 under Section 27 read with Section 25A (3A) of IBC before the NCLT. Through the aforesaid application, the Petitioner is seeking directions for replacement of RP in terms of the resolution tabled at 15th CoC Meeting and approved through e-voting held on 27th August, 2023 to 28th August, 2023 by the Members of the CoC. Although, this application predates the impugned order, nonetheless, it is noted that the issues urged in the present writ petition, in particular the directions issued by the Disciplinary Committee of the IBBI for conduct/removal of the RP in question, are intimately tied to the Petitioner's existing prayers before the NCLT. Since the NCLT is well-suited to resolve any uncertainties about the RP's continuing role, the contentions urged herein can, and should be urged before the NCLT at the time of final decision in the pending application. It is directed accordingly.

12. In case, NCLT would consider appropriate to seek any clarifications from the Disciplinary Committee of IBBI, they shall be free to issue a direction in this regard.

13. With the above directions, the present writ petition is disposed of. All

rights and contentions of the parties are left open. The Court has not made a comment on the merits of the case.

SANJEEV NARULA, J

DECEMBER 20, 2024/ab