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

Date of Decision: 7th August, 2024.

+ W.P.(C) 2894/2024 & CM APPL. 41888/2024

VIVEK RAHEJA

.....Petitioner

Through: Mr. Sanjeev Sehgal, Mr. Anshu Kumar Mishra, Mr. Harshit Sharma and Ms. Sunita Chaubey, Advocates.

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA.

.....Respondent

Through: Ms. Madhavi Diwan, Senior Advocate with Mr. Sahil Monga and Ms. Alekhya Sattigeri, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioner's grievance arises from order dated 12th January, 2024,¹ passed by the Respondent/ Insolvency and Bankruptcy Board of India² in relation to the Corporate Insolvency Resolution Process³ of Trading Engineers (International) Limited.⁴

BRIEF FACTS

2. The background leading to the filing of the present petition is as

¹ "Impugned Order"

² "IBBI"

³ "CIRP"

⁴ "Corporate Debtor"



follows:

2.1. The Petitioner is an Insolvency Professional registered with IBBI. He is a chartered accountant and cost and management accountant with over two decades of experience in Auditing Finance Taxation Account. Petitioner has been handling several assignments of CIRP as delineated in the petition.

2.2. Through order dated 04th July, 2019, National Company Law Tribunal⁵ appointed Petitioner as an Interim Resolution Professional and his appointment was later confirmed as the Resolution Professional by the Committee of Creditors⁶ in the CIRP of the Corporate Debtor. The CoC, consisting of State Bank of India and Bank of Baroda, approved the Resolution Plan on 15th February, 2021 which is pending approval before the NCLT.

2.3. Upon complaints of ex-employees of the Corporate Debtor, on 21st October, 2022, IBBI issued a Show Cause Notice ⁷ against the Petitioner and after considering his reply, the Disciplinary Committee of IBBI ⁸ passed an order dated 17th February, 2023, closing the proceedings by not issuing any directions to the Petitioner.

2.4. The ex-employees of the Corporate Debtor raised concerns regarding the Disciplinary Committee's decision, alleging collusion between the Resolution Professional and the Disciplinary Committee. In view of these allegations, IBBI conducted fresh investigation against the Petitioner and issued another SCN dated 20th July, 2023.⁹ This SCN was adjudicated

⁵ "NCLT"

⁶ "CoC"

⁷ "the First SCN"

⁸ "the Disciplinary Committee"

⁹ "the Second SCN"



through the Impugned Order dated 12th January, 2024, finding the Petitioner to be in contravention of the provisions of the Insolvency and Bankruptcy Code, 2016,¹⁰ and Regulations made thereunder. The findings of the Disciplinary Committee in the Second SCN are with respect to: (i) suppression of relevant facts from the CoC, (ii) discrepancy in examining financial capability and eligibility of a Joint Resolution Applicant,¹¹ Mr. Sushant Chhabra, who is a former director of the Corporate Debtor and also a director in Unitech Machines Limited, a company undergoing CIRP proceedings, (iii) disposal of the assets of Corporate Debtor without the approval of CoC, and (iv) executing lease agreement with the Prospective Resolution Applicants with respect to assets of Corporate Debtor without the approval of CoC. As a consequence, Petitioner's registration has been suspended for a period of two years. Hence, the present petition.

PETITIONER'S ARGUMENTS

3. In the above background, Mr. Sanjeev Sehgal, counsel for Petitioner, makes following submissions:

3.1. The Impugned Order makes scathing remarks against Petitioner without considering the submissions advanced by him which has serious civil consequences for Petitioner and violates the principles of natural justice.

3.2. The Disciplinary Committee cannot sit in appeal against its own order and review its own order. Nonetheless, despite the decision of the Disciplinary Committee pursuant to the First SCN whereby Petitioner was exonerated and no adverse finding was rendered against him, Respondent

¹⁰ "the Code"



has, on identical grounds and factual background, issued the Second SCN. While deciding the Second SCN, the Disciplinary Committee has failed to consider its earlier decision which was decided in favour of Petitioner. The said decision has been rendered under pressure of multiple complaints making allegations against the Disciplinary Committee itself.

3.3. The proceedings initiated through the Second SCN are against the principles of *res judicata* as provided under Section 11 of the Code of Civil Procedure, 1908, which prescribes that no suit which is directly or indirectly tried in a former suit can be tried again. Since identical grounds which form the basis of Second SCN resulting in the Impugned Order were considered in the first round pursuant to First SCN, the Impugned Order is *ex-facie* misconceived and arbitrary. Reliance is placed on the judgment of Supreme Court in ***Dr. Chetkar Jha v. Viswanath Prasad Verma & Ors.***¹² and ***Hari Vishnu Kamath v. Syed Ahmad Ishaque and Others.***¹³

3.4. As regards eligibility of Mr. Sushant Chabbra as a Joint Resolution Applicant, Petitioner has conducted due diligence within the confines of his duties and has not violated any provisions of the Code. This is evident from the First SCN, where Disciplinary Committee gave no directions regarding the issue of the introduction of Mr. Sushant Chabbra as a Joint Resolution Applicant.

3.5. The Impugned Order erroneously held that Petitioner has concealed facts from CoC, which is entirely misconceived and untenable. All the facts pertaining to Corporate Debtor were discussed during the CoC meeting

¹¹ “PRA”

¹² 1970 AIR 1832.

¹³ 1955 AIR 233.



which have also been recorded and circulated amongst the members of CoC.

RESPONDENT'S ARGUMENTS

4. *Per Contra*, Ms. Madhavi Diwan, Senior Counsel for Respondent presents the following facts and contentions:

4.1. Although the contraventions invoked in the First SCN would overlap with Second SCN, however, the issue in the Second SCN is entirely distinct and separate from the First SCN.

4.2. Respondent after duly considering the Petitioner's contentions found Petitioner to be in contravention of the Code and Regulations made thereunder. It was Petitioner's statutory duty to examine the Resolution Plan in compliance of Section 30 of the Code. Petitioner mechanically accepted Mr. Sushant Chabbra as a Joint Resolution Applicant, which is impermissible in law.

4.3. Before the Disciplinary Committee, Petitioner presented that the Corporate Debtor was registered as a Micro, Small and Medium Enterprise¹⁴ on 31st October, 2017 and, therefore, the ineligibility prescribed under Section 29A of the Code would not be applicable. Hence, it was contended that Mr. Sushant Chabbra was eligible to submit the Resolution Plan. On this premise, no order was made against Petitioner in the proceedings under the First SCN. However, in the Second SCN, it was clearly spelt out that the Corporate Debtor's registration as MSME has been cancelled. This fact was not clarified by Petitioner, as a result, Mr. Sushant Chabbra, could not have been a part of Resolution Process. On account of such breaches, highlighted in the Second SCN, the Impugned Order has no infirmity.

¹⁴ "MSME"



4.4. The Petitioner suppressed that he had filed an Avoidance Application against Mr. Sushant Chhabra before NCLT in the CIRP proceedings of Unitech Machines Limited during the same time when the Resolution Plan submitted jointly by Mr. Chhabra and Conquerent Control Systems Private Limited was under consideration before the CoC of the Corporate Debtor.

ANALYSIS AND FINDINGS

5. Heard.

6. As regards the First SCN, IBBI dealt with three contraventions wherein the contravention-III dealt with inclusion of Mr. Sushant Chhabra, a suspended director of the Corporate Debtor, as a Joint Resolution Applicant. The violations highlighted in the First SCN pertaining to Mr. Sushant Chhabra are as follows:

“III. Last minute inclusion of member of suspended management as joint resolution applicant

- i. *It is observed from the minutes of the 10th CoC meeting held on 04-08-2020, that presentations were made by two Prospective Resolution Applicants i.e., Suncare Formulations Pvt Ltd. and Conquerent Control Systems Pvt Ltd (Conquerent) on their respective resolution plan. Association of Mr. Sushant Chhabra with resolution applicant Conquerent was nowhere found mentioned therein though Mr. Chhabra was present in the meeting in his capacity as member of suspended management of the CD. A copy of the minutes of 10th CoC meeting is annexed as Annexure-E.*
- ii. *It is, however, observed from the minutes of the 12th CoC meeting held on 10-09-2020, that Mr. Sushant Chhabra was also one of the partners in the resolution plan submitted by Conquerent.*
- iii. *The minutes of the 10th and 11th meetings of CoC reflects that Mr. Sushant Chhabra was present in all these meeting as a suspended Director of the Board and was privy to presentations and discussions on the Resolution Plan of the competing Prospective Resolution Applicant Suncare Formulations Pvt Ltd. Despite you being aware that Mr. Sushant Chhabra was privy to the presentations and discussions of the rival resolution plan, no objection was raised towards his becoming joint resolution*



applicant at the advance stage of resolution process. His association with the Conquerent at that stage of resolution vitiates the entire process as it puts the other resolution applicant in disadvantageous position. You in your reply to DIR had attempted to explain that Mr. Sushant Chhabra was not part of the final list of Prospective Resolution Applicants and that his inclusion as a joint applicant happened later. A copy of the minutes of the 12th meeting of CoC is annexed as Annexure-F.

- iv. *It is further noted on perusal of the minutes of the 9th CoC meeting held on 16-07-2020, that part of the land on which TEIL DG Factory (Unit 2) is built, belongs to its group company UM Auto Pvt Ltd. and since it has funding from Edelweiss it would have been mortgaged in favour of Edelweiss. It is further noted that Mr. Sushant Chhabra assured that they are ready to maintain dialogue with Edelweiss so that Edelweiss may allow Prospective Resolution Applicant to use land either by way of long-term lease or by sale of land. From the above it is evident that onboarding the Mr. Sushant Chhabra enables addressing the land issue in favour of Conquerent. This discussion in the 9th CoC meeting also signifies the importance of Mr. Chhabra's association with any resolution applicant. His position with regard to his unique position by being Director of group company on which land TEIL DG Factory of CD is situated coupled with him being privy to details of resolution plans of rival PRA by virtue of his presence during discussions on resolution plans puts him in advantageous position. Allowing his inclusion as joint applicant at advance stage of resolution process prevents level playing field for other resolution applicants. A copy of the minutes of the 9th and 11th meetings of CoC are annexed as Annexure-G and Annexure-H, respectively.*
- v. *In view of the above, the Board is of the prima facie view that you have inter alia violated Sections 208(2)(a) and 208(2)(e), read with Clauses 1, 2, 3, 5, 9 and 14 of the Code of Conduct.*

7. In contrast, in the Second SCN, the violations against eligibility of Mr. Sushant Chhabra are as follows:

“Issue related to eligibility of Shri Sushant Chhabra, as a joint resolution applicant:

i. In the present matter, CIRP of the CD was irritated under Section 9 of the Code vide order dated 04th July 2019 of the Adjudicating Authority (AA), and you were appointed as an IRP. Later, you were confirmed as RP.



ii. *Committee of Creditors (CoC) in its 17th meeting held on 15th February 2021 approved the resolution plan submitted by M/s Conquerent Control System Pvt Ltd (Conquerent) jointly with Mr. Sushant Chhabra. It is observed that Mr. Sushant Chhabra, who is a joint Successful Resolution Applicant (SRA) is a suspended director of CD. You in your reply to IA have stated that the CD has been registered as a micro, small and medium enterprises (MSME) since 2007 and in support thereof, you have attached Udyog Aadhar Registration Certificate dated 31.10.2017. It is your contention that since CD has been a MSME, certain ineligibilities under section 29A of the Code were not applicable to Mr. Sushant Chhabra in becoming resolution applicant in terms of Section 240A of the Code. which provides as under:*

“240A. Application of this Code to micro, small and medium enterprises.

1. Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 294 shall not apply to the resolution applicant in respect of corporate insolvency resolution process [or pre-packaged insolvency resolution process] of any micro, small and medium enterprises.”

iii. *It is further noted that in response to IA's e-mail dated 31st May 2023 seeking to ascertain the veracity of the MSME certificate of CD and its status on the commencement of CIRP, Deputy Director, Office of DC-MSME, Ministry of MSME, Government of India vide email dated 16th June 2023, informed the TA as under:*

a. *M/s TEIL Earlier Registered with UAM No UK06B0002251 dated 31/10/2017 and further Cancelled/Marked as Z category by respective GMDIC on dated 22/12/2017 (Attached as Annexure L)*

b. *M/s TEIL Registered with UDYAM No. UDYAM-DL-08-0004435 Dated 18/10/2020. Classification has been done by the ITR Detail fetched from: CBDT. e*

A copy of email dated 16th June 2023 is attached as Annexure B.

iv. *It is, thus, evident that the MSME certificate dated 31st October 2017 which was considered by you as the basis for allowing exemption from clause (c) and (h) of Section 29 A, stood cancelled on 22nd December 2017. Thus, CD was not an MSME on the date of commencement of CIRP i.e., 04 July 2019.*

v. *Further, as the CIRP of the CD commenced on 4th July 2019, the*



criteria for classification of MSME will be in accordance with the provisions of Ministry of MSME Office Memorandum (OM) F. No. 12(4)/2017-SME dated 8th March 2017, as per which gross block for investment in plant and machinery as shown in the audit accounts could be taken into account for classification of an enterprise as MSME. The Investment in Plant and Machinery of the CD for the past 3 years prior to CIRP were as follows:

Particulars	31.03.2017 (Audited Balance sheet)	31.03.2018 (Audited Balance sheet)	31.03.2019 (Audited Balance sheet)
Gross block of Investment in plant and machinery (Rs in Crs)	16.78	16.86	16.86

It can be seen that that Investment in Plant and Machinery in the three-preceding year prior to commencement of CIRP was more than 10 crores. Therefore, in terms of Ministry of MSME OM dated 8th March 2017, CD was not a MSME based on above criteria.

vi. Section 30 of the Code provides as under:

30. Submission of resolution plan. –

(1) A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 294 to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan —

(e) does not contravene any of the provisions of the law for the time being in force.

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2)

vii. As per section 30 (2) of the Code, it was your duty to examine each resolution plan and confirm that the plan does not contravene any of the provisions of the law for the time being in force. It is, however, observed that despite CD not being a MSME at the time of commencement of CIRP of the CD, you allowed submission of the resolution plan by ex-director of the CD as one of joint resolution applicants on the premise that CD is a MSME.

viii. It has further come to notice that you were RP in another Corporate Debtor i.e., Unitech Machines Limited also, and Mr. Sushant Chhabra happened to be an ex-director in that Corporate Debtor also. In the said Corporate Debtor, you had filed an application for avoidance



transactions in 2020 during the same time when resolution plan of Conquerent and Mr. Sushant Chabbra was under consideration in CoC of the CD. In the said avoidance application, you had made Mr. Sushant Chabbra as a respondent. However, the said fact was not discussed with CoC while discussing the eligibility of Mr. Sushant Chabbra as a co-resolution applicant for CD.

vii. In view of the above, the Board is of the prima facie view that you have contravened section 30(2), 30(3), 208(2)(a) & (e) of the Code, regulation 39(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clauses 1, 2, 12 and 14 of the Code of Conduct."

8. In the first round, when the Petitioner was confronted with Mr. Sushant Chabbra's suspension, he responded by saying that since Corporate Debtor was registered under the Micro, Small and Medium Enterprises Development Act, 2006, in 2007, the ineligibilities under Clause (c) and (h) of Section 29A of the Code were not applicable and, thus, Mr. Sushant Chabbra is eligible to be a Joint Resolution Applicant.

9. Subsequently, it came to light that the MSME certificate furnished by Petitioner stood cancelled on 22nd December, 2017 and, thus, it emerged that Corporate Debtor was not an MSME as on the date of commencement of CIRP, i.e., 04th July, 2019. Considering the date of initiation of the CIRP proceedings of Corporate Debtor, the criteria for classification of an enterprise as MSME would have to be governed by the provisions of Ministry of MSME Office Memorandum (OM) F. No. 12(4)/2017-SME dated 08th March 2017, as per which gross block for investment in plant and machinery as shown in the audit accounts were taken into account. The investment in plant and machinery of Corporate Debtor for the past 3 years prior to CIRP were as follows:



<i>Particulars</i>	<i>31.03.2017(Audited Balance Sheet)</i>	<i>31.03.2018(Audited Balance Sheet)</i>	<i>31.03.2019 (Audited Balance Sheet)</i>
<i>Gross block of Investment in plant and machinery (Rs in Crs)</i>	16.78	16.86	16.86

It can be seen that that investment in plant and machinery in the three years preceding the commencement of CIRP was more than INR 10 crores. Therefore, in terms of Ministry of MSME Office Memorandum dated 08th March, 2017, Corporate Debtor was not an MSME based on above criteria.

10. It also emerges that while the Resolution Plan proposed by Conquerent Control Systems Private Limited and Mr. Sushant Chabbra was pending consideration, in 2020, the Petitioner filed an application for Avoidance Transactions in the CIRP of Unitech Machines Limited, where Mr. Sushant Chabbra was also impleaded as a Respondent. This fact was also not revealed to CoC while discussing the eligibility of Mr. Sushant Chabbra as a Joint Resolution Applicant for Corporate Debtor.

11. In light of the new information received by IBBI, in the opinion of the Court, the foundation of the Second SCN is based on a different issue altogether. Thus, Petitioner's thrust of arguments that SCN is only a mirror copy of the First SCN and the principles of *res judicata* would apply, is not appealing. The concerns with respect to Mr. Chabbra's eligibility as dealt with pursuant to the Second SCN were not raised in the First SCN. One of the main functions of IBBI is to investigate the conduct of its registered Insolvency Professionals. Cancellation of Corporate Debtor's MSME certificate and non-disclosure by Petitioner of Avoidance Application against Mr. Sushant Chabbra comprises of new information that ought to be



dealt with by IBBI *de novo*. Therefore, Petitioner's contention that the Second SCN is passed on the same cause of action as the First SCN, in the opinion of the Court, is devoid of merit.

12. As regards the ground of non-compliance of Section 30(2) of the Code, Mr. Sehgal has argued that the Petitioner was in ignorance of the cancellation of MSME certificate of Corporate Debtor. However, in the opinion of the Court, this contention is not tenable as the Petitioner cannot be exonerated of their statutory obligation under Section 30(2) of the Code read with the Regulations made thereunder and the Code of Conduct for Insolvency Professionals.

13. Under the scheme of the Code, Resolution Professionals play a crucial role which includes conducting CIRP, managing operations of corporate debtors, and preserving and protecting assets for the benefit of all the stakeholders. Thus, the efficient working of the Code, hinges on the functioning of Resolution Professionals. Section 30(2) of the Code places an obligation upon the Resolution Professional to confirm that the Resolution Plan does not contravene any provisions of law and requires the Resolution Professional to examine the mandatory compliances before submitting the Resolution Plan for approval by the CoC. Section 29A aims to prevent those persons from gaining control of the Corporate Debtor from persons who have contributed to the defaults of the Corporate Debtor. Since there is an explicit bar under Section 29A of the Code, prohibiting the suspended board of directors of the Corporate Debtor to submit a Resolution Plan for the Corporate Debtor, Petitioner as a Resolution Professional cannot escape the liability of failure to carry out due diligence. Therefore, Petitioner's



contention before the Disciplinary Committee that due to non-availability of complete data, he was not able to ascertain MSME status of Corporate Debtor, cannot be accepted. Even in absence of such information, knowing the critical consequence of registration status of the Corporate Debtor as an MSME, Petitioner relied on the confirmation from Mr. Sushant Chhabra, who being the suspended director, had conflict of interest in determination of the Corporate Debtor as an MSME. Additionally, Petitioner did not inform the CoC that he had filed an Avoidance Application against Mr. Sushant Chhabra before the NCLT in CIRP of Unitech Machines Limited. In view of the same, Petitioner's lack of due diligence in exercising its statutory obligations ought to be dealt with in accordance with the framework provided under the law.

14. In view of the above, the determination made by Respondent that Petitioner has contravened the provisions of the Code and its Regulations, in the opinion of the Court, is after due consideration of all the relevant material placed before them.

15. The Court finds no ground to interfere in the said decision and accordingly, the present petition is dismissed.

SANJEEV NARULA, J

AUGUST 7, 2024

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