



7<sup>th</sup> Floor, Mayur Bhawan, Connaught Place, New Delhi – 110 001

23<sup>th</sup> January, 2024

***Subject: Order<sup>1</sup> dated 22<sup>nd</sup> Jan 2024 of Hon'ble Madras High Court CA V.Venkata Sivakumar Vs. IBBI & Ors. [Writ Petition Nos.16650 of 2020 and 14448 of 2021 & W.M.P.No.24548 of 2020]***

***Brief Facts:***

Two WPs were filed before Madras HC by CA V.Venkata Sivakumar (RP). In one of WP RP challenged validity of section 204 the Code as being *ultra vires* to Article 14, 19 (1) (g) and 21 of the Constitution, manifestly arbitrary, substantively unreasonable, excessive legislation and repugnant to the objectives of the Insolvency and Bankruptcy Code (Code). In another WP the said RP challenged regulation 23A of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (Model Bye-Laws Regulation) which was subsequently amended by notification dated 23.07.2019 as *ultra vires* of the Constitution. As the WPs were filed by the same petitioner, the HC clubbed both WPs for disposal by a common order.

***Issues Before Hon'ble High Court:***

1. Whether regulation 23A of Model Bye-Laws Regulations is liable to be struck down as manifestly arbitrary, conferring unbridled, excessive power on IPAs and for violation of principles of natural justice?
2. Whether Section 204 of Code is violative of Article 20(2) of the Constitution of India, in as much as it provides for disciplinary proceedings by two agencies and provides for unbridled and excessive powers to the agencies?

***Findings & Observations of Hon'ble High Court:***

- Hon'ble HC while dismissing the WPs, had upheld the constitutional validity of section 204 of the Code and regulation 23A of the Model Bye-Laws Regulations.
- HC while upholding the validity of regulation 23A of the Model Bye-Laws Regulations, held that IPAs do not exercise discretion as the suspension is automatic once the disciplinary proceedings are initiated. The power of suspension is not a punishment and is an ad-interim measure. The purpose of suspension is immediately to keep the erring RP away from the office so that relevant material and evidences on record can properly be collected for an impartial and fair enquiry. It observed that any suspension, if prolonged without timely inquiry, would cause stigma. It noted that “*But the larger public interest and the laudable purpose behind the rule of suspension and the relative hardship had to be balanced. Only to avoid hardships, normally swift and prompt completion of the process of disciplinary proceedings is insisted upon. Therefore, the petitioner or any other aggrieved professional can only insist upon prompt completion of the proceedings and the hardship cannot be a ground for challenging the very regulation itself.*” HC further clarified that petitioner had previously also filed WP challenging the other provisions of the same regulations and filing of the repeated WP would be barred by the principles of constructive res judicata.

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- HC after referring to BLRC Report, held that section 204 has been incorporated after due deliberations and RPs have been subjected under two-tier monitoring and control system. The legislature must be given a free play in the joints and there must be room for experimentation and correction also. Therefore, with the proper application of mind, the provision has been incorporated in the Code for subjecting the RP to be under monitoring and control of the two-tier system, the same by itself cannot be termed as arbitrary. It held that authority conferred on IBBI and IPAs for supervision control and disciplinary proceeding cannot be held to be unbridled power. The regulations and Bye-Laws framed under section 204 of the Code provide for checks and balances and that section 204 is only an enabling provision and there is no constitutional infirmity in these provisions.

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