



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

Date of decision: 28th MAY, 2024

IN THE MATTER OF:

+ **W.P.(C) 16612/2023**

**RK INDUSTRIES UNIT II LLP THROUGH ITS AUTHORISED
SIGNATORY SHRI JINAY BATUKBHAI PATEL Petitioner**

Through: Mr. Rakesh Kumar, Ms. Preeti
Kashyap, Mr. Ankit Sharma, Mr.
Varun Pandit and Mr. Yash Dhawan,
Advocates.

versus

**UNION OF INDIA THROUGH MINISTRY OF CORPORATE
AFFAIRS & ORS. Respondents**

Through: Mr. Rakesh Kumar, CGSC for UoI.
Mr. Vikas Mehta, Ms. Rashi Rampal,
Mr. Apoorv Khaton and Mr. Ankit
Vashisht, Advocates.
Mr. Apoorv Khator, Advocate for
IBBI.
Mr. Milanka Chaudhury, Ms. Ashly
Cherian and Ms. Swet Shikha,
Advocates for R-4.
Mr. Aman Raj Gandhi, Mr.
Parthasarathy Bose and Ms. Panchi
Agarwal, Advocates for R-5.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court seeking a direction to the Respondent No.2, i.e. the Insolvency and Bankruptcy Board of India (*hereinafter referred to as 'the IBBI'*) to take appropriate steps against the Liquidator - Mr. Sundaresh Bhat (Respondent No.4 herein), who has been suspended by the Disciplinary Committee of the IBBI vide Order dated



28.09.2022, and to come up with appropriate guidelines and due process for dealing with the actions of the Insolvency professionals who are suspended by the Disciplinary Committee of the IBBI.

2. The facts, in brief, leading to the present Writ Petition are as under:

- a. ABG Shipyard Limited (*hereinafter referred to as 'the Corporate Debtor'*) was in the business of shipbuilding. Pursuant to an application filed by the ICICI Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as 'the IBC'*), the National Company Law Tribunal (NCLT), Ahmedabad passed an order admitting the application filed by the ICICI Bank commencing the Corporate Insolvency Resolution Process (*hereinafter referred to as 'the CIRP'*) of the Corporate Debtor.
- b. The Respondent No.4 was appointed as the Interim Resolution Professional of the Corporate Debtor. *Vide* Order dated 25.04.2019, the NCLT Ahmedabad directed that the Corporate Debtor shall undergo liquidation under Section 33(2) of the IBC and the Respondent No.4 was to act as a Liquidator to discharge duties under Section 35 of the IBC.
- c. It is stated that four public auction processes to dispose of the assets of the Corporate Debtor were conducted by the Respondent No.4 but all failed. Thereafter the Respondent No.4 filed an application bearing I.A No. 698/2020 before the NCLT, Ahmedabad seeking permission to dispose of the assets of the Corporate Debtor by way of private sale in terms of Regulation 33(2)(b) of the Insolvency and Bankruptcy Board of



India (Liquidation Process) Regulations, 2016 (*hereinafter referred to as 'the Liquidation Regulations'*). The NCLT, Ahmadabad, vide its Order dated 02.12.2020 allowed the Respondent No.4 to proceed with the private sale of the assets of the Corporate Debtor by way of Swiss Challenge Process. The Swiss Challenge Method is a form of public procurement/sale by way of a bidding process wherein a bidder makes a bid to an auctioneer. Once the bid is approved, the auctioneer then seeks counter proposals against the original bid, wherein the original bidder is often granted the right of first refusal. If the original bidder matches the offer to the challenging proposal, the bid is awarded to him, else it is awarded to the challenging bidder. In this method there is no right vested with the bidders beyond the express terms as listed in the document, as the liquidator may elect to go for a private sale in the interest of time and maximization of sale proceeds.

- d. It is stated that the first Swiss Challenge Process failed. In the Second Swiss Challenge Process, the Petitioner herein along with two other companies placed their bid for the Dahej material land scrap ("Dahej Materials"). On 24.03.2021, the Petitioner herein was declared as the anchor bidder for the Second Swiss Challenge Process. It is pertinent to mention that the Petitioner herein had made a bid of Rs.431 Crores.
- e. It is stated that after declaring the Petitioner herein as the Anchor Bidder, the Respondent No.4 published advertisement inviting participation of other bidders for the Swiss Challenge



Process to submit a bid against the Anchor Bid of the Petitioner herein.

- f. It is stated that Respondent No.4 received an offer from Respondent No.5 for the purchase of the assets of the Corporate Debtor and the land, including the civil structures and buildings for a sum of Rs.627.5 crores and sought permission to inspect the assets of the Corporate Debtor.
- g. Respondent No.5 filed an application being IA No.445/2021 before the NCLT seeking directions to the Respondent No.4 to consider and accept its offer for the consolidated assets of the Corporate Debtor. Vide Order dated 05.07.2021, the NCLT allowed Respondent No.5 to inspect the assets of the Corporate Debtor. It is stated that pursuant to the site visit, the Respondent No.5 increased its offer to Rs.675 crores for the consolidated assets of the Corporate Debtor.
- h. Respondent No.4 apprised the Stakeholders and the NCLT about the bid received from the Respondent No.5 for the Consolidated Assets of Corporate Debtor. The NCLT Vide Order dated 16.08.2021 allowed the Respondent No.4 to cancel the Second Swiss Challenge Process.
- i. Petitioner herein filed an appeal, being CA (AT)(INS) 690/2021, before the NCLAT challenging the Order dated 16.08.2021, passed by the NCLT. The NCLAT vide Order dated 02.09.2021 stayed the operation of the Order dated 16.08.2021.
- j. Respondent No.5 filed an appeal being Civil Appeal



No.5855/2021 before the Apex Court challenging the Order dated 02.09.2021, passed by the NCLAT. The Apex Court disposed of the said appeal without expressing its opinion on merits and directed the NCLAT to decide the appeal filed by the Petitioner expeditiously.

- k. Vide Order dated 10.12.2021, the NCLAT dismissed the appeal filed by the Petitioner.
 - l. Order dated 10.12.2021 was challenged by the Petitioner by filing an appeal, being Civil Appeal No.7722/2021, before the Apex Court. However, the appeal was dismissed by the Apex Court vide Order dated 26.08.2022.
 - m. Vide Order dated 28.09.2022, IBBI suspended Respondent No.4 for the contraventions and misconduct of the Respondent No.4 in the process of liquidation of the Corporate Debtor.
 - n. The present Writ Petition has been filed by the Petitioner seeking a direction to the IBBI to take appropriate steps against the Liquidator - Mr. Sundaresh Bhat and to come up with appropriate guidelines and due process for dealing with the actions of the Insolvency professionals who are suspended by the Disciplinary Committee of the IBBI.
3. Heard the Learned Counsels for the parties and perused the material on record.
 4. As far as charge of contravention of prescribing non-refundable participation fee of Rs.5,00,000/-, Rs.10,00,000/-, Rs.10,00,000/- and Rs.50,000/- *vide* public announcements made on 17.09.2019, 27.09.2019, 21.10.2019 and 11.11.2019 is concerned, this Court *vide* Judgment dated



27.05.2024 has exonerated Mr. Sundaresh Bhat of the said charges. However, Mr. Sundaresh Bhat has been found guilty only of charge of paying excess fee to a support service called BDO Restructuring Advisory LLP. This Court has not interfered with the findings of the IBBI on this charge but has modified the order of suspension to the period undergone.

5. In view of the above, the Writ Petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MAY 28, 2024

Rahul