



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CIVIL WRIT PETITION (L) NO.28206 OF 2023

Partha Sarathy Sarkar

.. Petitioner

Versus

Insolvency & Bankruptcy Board of India
(IBBI) & Ors.

.. Respondents

UTKARSH
KAKASAHEB
BHALERAO

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UTKARSH KAKASAHEB
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Date: 2023.10.19
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Mr.Pratik Sarkar i/b Vijay Kurle, Advocates for the
Petitioner.

**Mr.Pankaj Vijayan a/w Hitesh R. Kharat & Shyam
Upadhyay i/b Intra Legal**, Advocates for Respondent-IBBI.

**CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.**

DATE : OCTOBER 17, 2023

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1. The above Writ Petition has been filed to quash and set aside the order of suspension of registration of the Petitioner as per the impugned order dated 13th September, 2023.

2. Apart from merits, the main ground on which the above impugned order is challenged is that before any show cause notice is issued to the Petitioner under Section 219 of the Insolvency and

Bankruptcy Code, 2016 (for short the "**IBC,2016**"), an Investigating Authority has to be appointed by the Insolvency and Bankruptcy Board of India ('**the IBBI**') under Section 218. Once the Investigating Authority is appointed, it has to thereafter file a detailed Report of the inspection or investigation and submit the same to the Board. Once this is done, the Board thereafter considers the report of the Investigating Authority and then, if necessary, appoints a Disciplinary Committee under Section 220 of the IBC, 2016.

3. The argument in the present case is that the Investigating and/or the Inspecting Authority has not been appointed by any person which was duly authorized by the Board for issuing the Inspection Order. In this regard, the learned counsel appearing on behalf of the Petitioner brought to our attention **Exhibit-'E'** to the Petition which is the Insolvency and Bankruptcy Board of India (Delegation of Powers and Functions) Order, 2017 and which has been amended from time to time. He submitted that in this order, any action, inspection or ordering investigation has to be issued by the Executive Director of the IBBI. He submitted that in the facts of the present case, the inspection order (at page 122 of the paper book), and which constitutes the investigating/inspection authority, is issued by the Assistant General

Manager and not the Executive Director. It is submitted that if the constitution of the Investigating Authority is itself defective, then, all proceedings that come thereafter would also be of no consequence. In other words it was the submission that if the foundation falls so does the super structure.

4. We have seen the Inspection Report at page 122 of the paper book. It categorically records that in exercise of powers under Section 218 of the IBC, 2016 read with regulation 3(3) of the IBBI (Inspection and Investigation) Regulations, 2017, the Insolvency and Bankruptcy Board of India hereby directs the Inspecting Authority to conduct an inspection of the insolvency professional, the details of which are given in the Inspection Order. For the sake of convenience the said Inspection Order is reproduced hereunder:-

***"Insolvency and Bankruptcy Board of India
(IP Monitoring Division)***

File No. IBBI/IP/R(INSP)/2021/67

Dated: March 09, 2021

INSPECTION ORDER

Subject: Inspection of the Insolvency Professional, Mr. Partha Sarathy Sarkar (IBBI/IPA-002/IP-N00239/2017-2018/10690)

In exercising of its power under section 218 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 3(3) of the IBBI (Inspection and Investigation) Regulations, 2017, the Insolvency and Bankruptcy Board of India (IBBI), hereby directs the Inspecting Authority to conduct an inspection of the insolvency professional, the details of which are as under:

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<i>S No</i>	<i>Particulars</i>	<i>Details</i>
1	<i>Name of the Insolvency Professional</i>	<i>Mr.Partha Sarathy Sarkar Regd. No:IBBI/IPA-002/IP- N00239/2017-2018/10690</i>
2	<i>Scope of Inspection</i>	<i>CIRP of Innovari Technologies Private Limited</i>
3	<i>Purpose of Inspection</i>	<i>Purpose under 3(4) of the IBBI (Inspection and Investigation) Regulations 2017</i>
4	<i>Composition of Inspecting Authority</i>	<i>1) Mr Debajyoti Ray Chaudhari, CGM 2) Mr.Anshul Agrawal, AM</i>
5	<i>Submission of Draft Inspection Report</i>	<i>By 10th April, 2021</i>
6	<i>Submission of Final Inspection Report</i>	<i>By 30th April, 2021</i>

2. *Inspecting Authority is requested to submit the reports as per the timelines as mentioned above.*

*sd/-
(Mayank Mehta)
Assistant General Manager*

*To:
Mr Debajyoti Ray Chaudhari, CGM
Mr. Anshul Agrawal, AM"*

5. Prima facie, we find that the Inspection Order has not been signed by the Executive Director of IBBI but the Assistant General Manager. In answer to this, the learned counsel appearing on behalf of the IBBI submitted that there is a complete answer to this argument and which would be explained to the Court by filing an affidavit-in-reply on or before 31st October, 2023.

6. Considering these circumstances, we direct that the IBBI shall file their affidavit-in-reply on or before 31st October, 2023 and serve copy of the same on the advocates for the Petitioner. If the Petitioner wants to file any affidavit-in-rejoinder, they may do so, on or before 7th November, 2023 and serve a copy of the same on the advocates for the Respondent.

7. We therefore place the above matter on 8th November, 2023, High On Board.

8. In the meanwhile, and until further orders, the effect, implementation and execution of the impugned order dated 13th September, 2023 (Exhibit-'A' to the Petition) shall remain stayed.

9. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]