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

+ **W.P.(C) 11483/2024**

**RAKESH KUMAR GUPTA**

.....Petitioner

Through: Mr. Dayan Krishnan, Senior Advocate with Mr. Aditya Madaan, Mr. Aishwarya Adlakha and Mr. Sanjeevi Seshadri, Advocates.

versus

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

.....Respondents

Through: Mr. Vikas Mehta, Ms. Nitika Grover and Mr. Kartik Pandey, Advocates for R-1.

Advocate for Complainant  
(Appearance not given).

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**

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**22.08.2024**

**CM APPL. 47678/2024** *(seeking exemption from filing certified copies and annexures with proper margins/ or typed/ clear copies of dim illegible annexures)*

1. Exemption is granted, subject to all just exceptions.
2. The Petitioner 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.

**CM APPL. 47679/2024** *(seeking exemption from exceeding the specified page limit in filing the list of dates and synopsis)*

4. Exemption is granted. Subject to all just exceptions.

W.P.(C) 11483/2024

Page 1 of 11



5. The application stands disposed of.

**CM APPL. 47677 (seeking stay of the impugned order dated 30<sup>th</sup> July, 2024)**

6. Mr. Dayan Krishnan, Senior Counsel for Petitioner, presses for stay of the impugned order dated 30<sup>th</sup> July, 2024 passed in Complaint No. COMP-11011/43/2023/IBBI, whereby the Disciplinary Committee of Insolvency and Bankruptcy Board of India<sup>1</sup>, while exercising powers under Section 220(2) of the Insolvency and Bankruptcy Code, 2016<sup>2</sup> read with Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016<sup>3</sup>, have suspended the registration of the Petitioner as an insolvency professional for the period of one year.

**FACTS AND CONTENTIONS OF THE PETITIONER:**

7. Mr. Krishnan has raised three primary jurisdictional objections in support of his request for grant of interim relief. He puts forth the following facts and contentions:

7.1. The impugned order fails to adequately consider the preliminary objections raised by the Petitioner concerning the maintainability of the Show Cause Notice<sup>4</sup> dated 2<sup>nd</sup> April, 2024. These objections were summarily dismissed without a substantive examination of the merits of the case. Such omission reflects a failure to engage with the foundational jurisdictional challenge, which is crucial to determining the validity of the proceedings initiated by the Disciplinary Committee.

7.2. The impugned action comes as IBBI acted on a complaint filed by

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<sup>1</sup> “IBBI”

<sup>2</sup> “IBC”

<sup>3</sup> “IBBI IP Regulations”



CBM Constructions LLP, after an inordinate delay of three years from the date of approval of the resolution Plan by the Committee of Creditors<sup>5</sup>. The Petitioner was served with a notice of investigation regarding the aforementioned complaint *via* email dated 1<sup>st</sup> January 2024, in which the Investigation Authority requested the Petitioner to provide his response to the allegations.

7.3. In compliance thereof, on 20<sup>th</sup> January, 2024, the Petitioner provided a detailed reply, denying all allegations and challenging the initiation of proceedings against him, on the grounds that they were barred by limitation. It was highlighted that, according to Regulation 3(4) of the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017, a complaint must be filed within forty-five days of the occurrence of the cause of action. The proviso to this Regulation allows for an extension of further thirty days, provided sufficient cause is demonstrated for the delay. In this case, not only did the complainant - CBM Constructions LLP, fail to file the complaint within the prescribed seventy-five day period, but pertinently, the complainant itself came into existence ten months after the approval of the Resolution Plan by the CoC, on 16<sup>th</sup> January 2021. Therefore, the complaint is hopelessly time-barred and should not have been acted upon by the IBBI.

7.4. It is impossible for the complainant to allege any cause of action or assert any grievance as an “aggrieved” party. They were incorporated ten months after the approval of the resolution plan by the CoC. This scenario presents a significant paradox: how can an entity which did not exist during

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<sup>4</sup> “SCN”

<sup>5</sup> “CoC”



the entire Corporate Insolvency Resolution Process<sup>6</sup>, now claim to be an “aggrieved” party? It is inconceivable that a non-existent entity could have suffered prejudice from alleged actions taken during a CIRP that concluded prior to its incorporation. Moreover, they did not have any locus to file the complaint as it does not fall within the criteria of aggrieved or stakeholder as defined under the Regulations.

7.5. The complainant has fundamentally failed on two critical fronts: firstly, it has not established any cause of action within the prescribed timeframe, and secondly, they have been unable to pinpoint a precise date of the purported cause of action from which the limitation period could be accurately calculated. This dual failure renders the complaint fatally flawed from a procedural standpoint.

7.6. This objection was specifically raised in the reply; however, the impugned order reflects no application of mind on the same and the said objection has been rejected summarily without giving any reasoning.

7.7. The Disciplinary Committee comprising of only one member Mr. Sudhaker Shukla, Whole Time Member, IBBI does not have the jurisdiction to pass the impugned order. Section 220(1) of the IBC explicitly stipulates that the Disciplinary Committee shall consist of “whole time members” (plural). Thus, undeniably the legislative intent of the IBC contemplates that the Disciplinary Committee should comprise of at least two whole-time members.

#### **ANALYSIS AND FINDINGS:**

8. The Court has carefully considered the contentions presented by the parties. It is important to note that the amended writ petition is exhaustive

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<sup>6</sup> “CIRP”



and voluminous, raising numerous grounds of challenge. Given the breadth and complexity of these issues, it is neither practical nor appropriate to adjudicate them fully at this interim stage. It is also pertinent to observe that Mr. Krishnan, Senior Counsel for the Petitioner, appropriately chose not to delve deeply into the merits of the grounds for suspension. Instead, his arguments primarily focused on the jurisdictional issues noted above, which forms the core of the challenge against the impugned order.

9. Thus, it should be made clear that a detailed examination of the substantive grounds on merits is not being undertaken, since at this interim stage, the assessment of contentions particularly in terms of the merits of the case must necessarily be only on a *prima facie* basis. Nonetheless, Mr. Vikas Mehta, counsel for Respondent No. 1, has pointed out that there were serious and substantial violations of the IBBI IP Regulations on the part of the Petitioner, which could not have been overlooked. He emphasized that this is not an isolated incident involving the Petitioner, as there have been multiple other instances where the Petitioner was found to have violated the Regulations. Additionally, counsel who appeared and stated that he represents the complainant - CBM Constructions LLP, at whose instance the impugned order was passed, indicated his intention to seek intervention in the present writ petition.

10. As regards the plea of limitation, it is pertinent to consider Regulation 3(4) of the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017, which reads as follows:

*“(4) A grievance or a complaint, as the case may be shall be filed within forty-five days of the occurrence of the cause of action for the grievance or the complaint;*

*Provided that a grievance or a complaint may be filed after the aforesaid*



*period, if there are sufficient reasons justifying the delay, but such period shall not exceed 30 days.”*

11. The above Regulation clearly stipulates that a complaint must be filed within forty-five days of the occurrence of the cause of action. A complaint filed after the aforesaid period can be entertained only if there are sufficient reasons justifying the delay, but such period shall not exceed 30 days. Thus, the proviso to Regulation 3(4) indeed sets a strict time limit for filing a complaint, hence, the critical issue here is determining when the cause of action for the grievance or complaint actually arose. In this regard, Mr. Krishnan has argued that the cause of action against the Petitioner as an insolvency professional could not extend beyond the date of approval of the Resolution Plan on 16<sup>th</sup> January 2021. However, the Court is not convinced by this argument.

12. It has been pointed out that the first alleged contravention against the Petitioner pertains to the *malafide* constitution of the CoC. This raises a significant question regarding the timeline of the cause of action; whether it is tied solely to the date of the Resolution Plan’s approval, or whether subsequent events or discoveries could have given rise to a new cause of action. The resolution of this issue is crucial, as it impacts the applicability of the limitation period under Regulation 3(4).

13. In the instant case, the allegations against the Petitioner in the Show Cause Notice dated 2<sup>nd</sup> April, 2024 are serious and revolve around the improper constitution and functioning of the CoC. Specifically, it is alleged that Axis Bank, a Financial Creditor of the corporate debtor, had not filed its claim at the time, yet the Petitioner proceeded to form a CoC comprising only the sole operational creditor. Furthermore, it is urged that during the



very first meeting of the CoC, major decisions were taken including the appointment of the Petitioner from Interim Resolution Professional<sup>7</sup> to Resolution Professional<sup>8</sup>, the ratification of the IRP's costs, and the determination of expenses to be incurred by the RP. In the second CoC meeting held on 17<sup>th</sup> March 2020, additional critical decisions were made, such as the ratification of expenses incurred by the RP, the appointment of registered valuers, and the approval of fees and other expenses for professionals engaged by the RP, including the issuance of invitations for Expressions of Interest<sup>9</sup>. Additionally, there is an allegation that Axis Bank – which is a secured financial creditor, eventually submitted its claim on 5<sup>th</sup> August 2020, as reflected in the list of creditors dated 9<sup>th</sup> December 2020, available on the IBBI website. However, the Petitioner took no action to notify Axis Bank about the initiation of the CIRP. This raises serious concerns about the Petitioner's conduct in ensuring that all relevant creditors were duly informed and included in the CoC, as required under the IBC. These allegations, if substantiated, point to significant procedural irregularities and potential breaches of duty on the part of the Petitioner.

14. Moreover, the Court has been informed that the CIRP proceedings have not yet been finalized. Thus, the Court finds the argument advanced by the Petitioner — that the cause of action regarding the alleged *malafide* constitution of the CoC was crystallized with the approval of the Resolution Plan by the CoC — is not persuasive to hold that the complaint against the Petitioner was time-barred. Under the framework of the IBC, the integrity of the CIRP is paramount, and any alleged procedural improprieties, such as

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<sup>7</sup> “IRP”

<sup>8</sup> “RP”



the improper constitution of the CoC, are continuous in nature and may give rise to a cause of action until the conclusion of the CIRP. The intention of the IBC is to ensure a fair and transparent process for all stakeholders involved in the insolvency resolution process. Therefore, if a significant procedural irregularity, such as the exclusion of a major financial creditor from the CoC, is alleged, the repercussions of such an act may extend beyond the mere approval of the Resolution Plan. The process is dynamic, and any prejudice suffered due to a flawed CoC could impact the subsequent steps in the CIRP, including the implementation of the Resolution Plan. Hence, the cause of action may indeed arise or continue after the approval of the Resolution Plan by CoC, until the process is fully and finally completed.

15. It must also be noted that the regulation in question, i.e., Regulation 3(4) of the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017, does not refer to the date of approval of the resolution plan by the CoC, but is instead linked to the occurrence of the cause of action, allowing for flexibility regarding determination of the limitation period.

16. Given that the CIRP proceedings are ongoing and the complaint against the Petitioner relates to a fundamental aspect of the process – the constitution of the CoC – the Court is of the view that the complaint cannot be dismissed as time-barred. It would be contrary to the objectives of the IBC to disregard serious allegations of procedural misconduct simply because they were raised after the approval of the Resolution Plan by CoC, especially when the CIRP itself has not yet reached its finality.

17. As regards the Petitioner's contention that the complainant did not

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<sup>9</sup> "EoI"





meet the criteria of an “aggrieved party” or “stakeholder” as defined in the Regulations, the Court, *prima facie*, is not persuaded by this argument. This is because Section 218(1) of the IBC empowers the IBBI to act, not only upon receiving a complaint under Section 217, but also on its own initiative if it has reasonable grounds to believe that an insolvency professional has contravened any provisions of the IBC or the rules, regulations, or directions issued by the IBBI. As the regulatory body, IBBI can act in a manner to uphold the integrity of the insolvency process, regardless of the complainant’s status as an “aggrieved party” or “stakeholder.”

18. The aforementioned provisions grant IBBI broad investigatory powers, enabling it to direct an investigation into potential contraventions at any time, even in the absence of a complaint from a directly affected party. Given the serious violations highlighted in the impugned order, the Court, at this stage, finds no basis to form a *prima facie* view that the impugned order was issued without jurisdiction.

19. As regards the contention urged by Mr. Krishnan relating to the constitution of the Disciplinary Committee of IBBI being contrary to the IBC, it is important to take note of Section 220(1) of the IBC which stipulates the constitution of the Disciplinary Board:

*“(1) The Board shall constitute a disciplinary committee to consider the reports of the investigating Authority submitted under sub-section (6) of section 218:*

***Provided that the members of the disciplinary committee shall consist of whole-time members of the Board only.”***

*[Emphasis added]*

20. The interpretation of statutory provisions often requires a contextual understanding, particularly when it comes to the use of plural and singular terms. A plain reading of the aforementioned section suggests that there is no



specified quorum/constitution of the Disciplinary Committee which is to be set up by the IBBI. The only requirement seems to be that the member(s) of such a Disciplinary Committee must also be whole time member(s) of the IBBI.

21. Under Section 13(2) of the General Clauses Act, 1897, it is provided that in all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words in the singular shall include the plural, and vice versa. This principle of statutory interpretation allows for flexibility and adaptability in the application of the law, ensuring that the legislative intent is not frustrated by a narrow or literal interpretation. Applying this principle to the present case, on a prima facie view of Section 220(1) of the IBC, it is noted that the term “whole-time members” can reasonably be understood to also include a scenario where there is only a singular “member” of the committee. This interpretation is in consonance with the functional necessity of ensuring that the disciplinary committee can be constituted and can operate effectively, even if there is only one whole-time member available.

22. In light of the above, the Court finds no ground to grant any interim stay on the impugned order dated 30<sup>th</sup> July, 2024, at the present stage.

23. Accordingly, the present application is dismissed.

**W.P.(C) 11483/2024**

24. The Petitioner has filed the amended writ petition which is taken on record.

25. Issue notice. Mr. Vikas Mehta, counsel for Respondent No. 1 and counsel for Complainant, accept notice.

26. Counter affidavit be filed within a period of four weeks from today. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.



27. Issue notice to Respondent No. 2, by all permissible modes, upon filing of process fee, returnable on the next date of hearing.
28. Re-notify on 13<sup>th</sup> November, 2024.

**SANJEEV NARULA, J**

**AUGUST 22, 2024**  
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