



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

WRIT PETITION (L) NO. 19031 OF 2023

Vishal Ghisulal Jain

.. Petitioner

Versus

Union of India and Ors.

.. Respondents

Mr. Sharan Jagtiani, Senior Advocate a/w Nirman Sharma,
Ansh Karnawat and G. Aniruth Purusothaman a/w Parth
Shah i/b Parth Shah, Advocate for the Petitioner.

Ms. Savita Ganoo a/w Abhishek Bhadang, Advocates for
Respondent No.1.

Mr. Pankaj Vijayan a/w Mahima Shah i/b Shyamdhara
Upadhyay, Advocate for Respondent No.2.

Ms. Prajakta Menezes a/w Rakesh Gupta i/b PRM Legal,
Advocate for Respondent No.4.

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

DATE : AUGUST 7, 2023

P. C.

1. The above writ petition is filed challenging the order dated 19.06.2023 passed by the Insolvency and Bankruptcy Board of India [‘Disciplinary Committee’]. By the impugned order, the Petitioner is held guilty of Contravention-II, Contravention-III,

Contravention-VI, Contravention-VII and Contravention-VIII. The charge of Contravention-II is the inclusion of the promoters of Wadhwa Buildcon LLP as financial creditors without proper verification. As far as this charge is concerned, it is the case of the Petitioner that the Petitioner (Resolution Professional), before admitting the Promoters as Financial Creditors, obtained a legal opinion as he wasn't certain as to whether they could be classified as financial creditors or otherwise. The legal opinion given to the Petitioner (Resolution Professional) was that they could be included as financial creditors. It is on that basis he admitted them as financial creditors. It is a different matter that the aforesaid decision of the Petitioner (Resolution Professional) was challenged before the NCLT, and his decision was set aside. The argument of the Petitioner and in which, prima facie, we find merit, is that despite the outcome on the merits of the matter, this could never have been ground for suspending him as he has acted in good faith, and that too after taking a legal opinion.

2. As far as Contravention-III is concerned, it is for the reduction in the notice period for the 8th CoC meeting. As far as this Contravention is concerned, the analysis and the finding of the

Disciplinary Committee appear to be that on perusal of the record, it was noted that Bank of India, being the Applicant of IA No. 1035 of 2021, had shared a copy of the order dated 08.09.2021 with the RP on 14.09.2021 at 11.40 wherein the NCLAT had directed to reconstitute the CoC and convene the meeting within a week from the date of the order. The analysis and the findings are that the RP must have remained present when such directions were issued. Hence, instead of waiting for the order to be communicated by the Bank of India, the Petitioner (RP) should have proceeded to convene the meeting of the CoC by giving minimum time as stipulated in Regulation 19 of the CIRP Regulations. What has been pointed out to us is that in the 8th CoC meeting, the short notice period has, in fact, been ratified in the very same meeting and in the 9th CoC meeting, the Bank of India itself has not objected to 82 Home Buyers being admitted as financial creditors, though, an objection was raised by Bank of India that the person appointed to represent the Home Buyers was not the appropriate person. In any event, even if we assume that there was a short notice period, we, at least *prima facie*, do not think that for this Contravention, the Petitioner ought to have been suspended for a period of two years. In other words, *prima*

facie, we are of the view that, at least for this Contravention, the punishment is not commensurate with the crime.

3. Similar is the case in Contravention-VII, and which is non-verification of the claims of the home buyers. In fact, the charge set out for the Petitioner to meet is that the RP [the Petitioner] has admitted the claims of home buyers without cross verifying that the payments received from them were credited to the escrow account of the Bank of India. In the submissions of the Petitioner before the Disciplinary Committee, it was his specific case that there was no basis for the aforesaid charge. In other words, the Petitioner disputed that he had not verified the claims of the home buyers before admitting them as Financial Creditors. It was the submission of the Petitioner that he is not required to check if the proceeds received from the home buyers are routed through the escrow account. This is to be checked by the Bank of India after disbursing the loan, was the submission. The Bank is the Financial Creditor, and it is for them to cross tally with their escrow account and raise any red flags, which they failed to do, was the submission. In fact, in the analysis and the findings given by the Disciplinary Committee it states that 'it is not a disputed fact' that the claim has not been cross verified by the RP.

We fail to understand how the Disciplinary Committee has come to this finding when in fact, as recorded earlier, the same is expressly disputed. Without any analysis, the Disciplinary Committee renders a finding that this explanation cannot be accepted. Why it is not accepted is completely missing from the impugned order. When we go through the impugned order, we find that apart from Contravention-II, in every other Contravention for which the Petitioner is found guilty, there is literally one paragraph in which the so called analysis is provided. Though the heading says analysis and findings, we find that there is no analysis at all.

4. We, therefore, find that the Petitioner has not only made a case for admission of the Petition but also for the stay of the impugned order.

5. In these circumstances, Rule. Rule made returnable on 12.09.2023. Pending the hearing and final disposal of the above Petition, there shall be interim relief in terms of the prayer clauses (c) and (d), which read thus:

"(c) Pending the hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to issue an order of injunction thereby restraining and injuncting the Respondents from in any manner acting upon or giving effect to or implementing the impugned order

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dated 19.06.2023 and Show Cause Notice dated 26.04.2023 and stay the operation, effect and implementation thereof.

(d) Pending the hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to issue a writ, order or direction staying the suspension of an embargo upon the Petitioner to take up new assignments and continue existing assignments as an Insolvency Professional, including but not be limited to assignment as a Resolution Professional, interim Resolution Professional, Liquidator and Bankruptcy Trustee.”

6. If any party wants to file any affidavit-in-reply, they are free to do so on or before 25.08.2023 and serve a copy of the same on the Advocates for the Petitioner.

7. If the Petitioner wants to file any Affidavit-in-Rejoinder, he may do so on or before 01.09.2023 and serve a copy of the same on the Advocate for the Respondents.

8. Stand over to 12.09.2023 at 2.30 p.m. for hearing and final disposal.

9. We make it clear that this order should not in any way prejudice any proceedings that are pending before the NCLT/NCLAT in respect of the merits of the dispute between the parties.

10. 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.]