

BHUPESH GUPTA V/S INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
AND ORS.

Present: Dr. Rajansh Thukral, Advocate with
Dr. Surekha Thukral, Advocate and
Mr. Subham Gupta, Advocate for the petitioner.

Mr. Satya Pal Jain, Addl. Solicitor General of India
with Mr. Arun Gosain, Advocate for the respondents.

Notice of motion for 04.08.2022.

Mr. Arun Gosain, Advocate accepts notice on behalf of the respondents, and seeks time to file reply. May do so, on or before the next date of hearing with a copy in advance to the counsel opposite.

It is the contention of counsel for the petitioner that the impugned order dt. 10.05.2022 has been passed by the Chairperson of respondent No.1 (respondent No.2) purporting to act as a Disciplinary Committee under Section 220 (2) of the IBC; that under proviso to sub-section (1) of Section 220 of IBC, the members of Disciplinary Committee shall consist of whole time members of respondent No.1 only; that the Chairperson of respondent No.1 cannot therefore be the Disciplinary Committee; and in the respondent No.1-Board, apart from Chairperson, there are three whole time members and others as specified in Section 189 of the IBC. He contends that there is inherent lack of jurisdiction for the Chairperson of respondent No.1 to act as a Disciplinary Committee, and therefore the impugned order warrants interference.

Mr. Satya Pal Jain, Addl. Solicitor General of India contends that no objection of this nature was raised before respondent No.2 during the course of hearing before him, and the petitioner therefore cannot be permitted to raise that objection because the order passed is adverse to him. He further contends that the Chairperson has supervisory jurisdiction, and it cannot be said that he was not competent to act as a Disciplinary Committee under Section 191 of IBC.

Prima facie, the exercise of disciplinary jurisdiction by the respondent No.2 appears to be prohibited under proviso to sub-section 1 of Section 220 of IBC which enables only whole time members of respondent No.1 to be the members of the Disciplinary Committee. It is settled law even consent does not confer jurisdiction in such cases and so there cannot be a waiver on the aspect of jurisdiction in such circumstances.

Since, there is inherent lack of jurisdiction for respondent No.2 to conduct disciplinary proceedings, prima facie, his order is vitiated.

Therefore, there shall be interim suspension of the order dt. 10.05.2022 passed by respondent No.2/Chairperson of respondent No.1 until further orders.

(M.S. RAMACHANDRA RAO)
JUDGE

(H.S. MADAAN)
JUDGE

02.06.2022
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