
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1365 OF 2023

Partha Sarathy Sarkar

.. Petitioner

Versus

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

.. Respondents

***Mr.Pratik Sarkar i/b Vijay Kurle, Advocates for the
Petitioner.***

***Mr.Pankaj Vijayan a/w Mahima Shah & Shyandhar
Upadhyay, Advocates for Respondent No.1.***

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

DATE : JULY 18, 2023

P. C.

1. Rule. With the consent of the parties, Rule made returnable
forthwith & heard finally.

2. The above Petition is filed impugning the order passed by
the Disciplinary Committee appointed by the Insolvency and
Bankruptcy Board of India (**IBBI**) dated 24th June, 2022.

3. Mr. Sarkar, the learned advocate appearing on behalf of the Petitioner took us through the impugned order in great detail. The main grievance against the impugned order was that there was violation of principles of natural justice as well as a complete non application of mind on the part of the Disciplinary Committee in passing the impugned order. The other submission made was that even the punishment awarded under the impugned order was excessive and was not commensurate with the alleged violations committed by the Petitioner.

4. Mr. Sarkar submitted that if one goes through the impugned order all that it does is set out the concerned charge, the submission of the Petitioner, and thereafter, in the summary and findings, the facts are reiterated and in one paragraph the Petitioner is found guilty of the charge. He submitted that this has been done by the Disciplinary Committee in relation to every single alleged contravention/charge. To drive this point home, he submitted that one of the contraventions alleged against the Petitioner is that the Petitioner did not appoint registered valuers and which was in contravention of certain provisions of the Insolvency and Bankruptcy Code, 2016 [for short '**IBC,2016**'] as well as the CIRP Regulations and the Insolvency

Professional Regulations. He submitted that it was the case of the Petitioner that he could not appoint the registered valuers because the assets of the Corporate Debtor were untraceable [as informed by the CoC members themselves], and further, the CoC were not willing to contribute towards the CIRP Costs. He submitted that the Petitioner argued before the Disciplinary Committee that the IBC, 2016 does not conceive of any situation, where the IRP/RP is supposed to bear the CIRP Cost from his own pocket. Mr. Sarkar submitted that this entire argument has been rejected in just one line by saying that "*logic about the non availability of funds being main reason for non appointment of valuers does not appear to be tenable*". He submitted that this is a classic case where there is a complete non-application of mind, and the Disciplinary Committee, without even dealing with the arguments of the Petitioner, has held him guilty.

5. To give another example, Mr. Sarkar also brought to our attention the alleged contravention No.VIII and which is with reference to the control and custody of the assets of the Corporate Debtor. Mr. Sarkar submitted that even as far as this contravention is concerned, it was the specific case of the Petitioner that for him to fulfill his duties as per Section 25 of the IBC, 2016, the CIRP costs have to be paid as per

the mandate of the NCLAT ruling in Sajeve Bhushan Deora V/s Axis Bank Ltd.- Company Appeal (AT) (Ins) No.741 of 2019. He submitted that in the absence of fulfillment of the said mandate, the Petitioner could not be held guilty of any violation of the IBC, 2016. Mr.Sarkar pointed out that though this specific argument was canvassed, the same is not even dealt with in the impugned order. As far as the other violations are concerned, Mr. Sarkar pointed out that the impugned order leaves much to be desired in as much as there is no real reasoning for holding the Petitioner guilty of the contraventions mentioned in the impugned order.

6. We heard Mr. Sarkar at great length and have also perused the impugned order in great detail. After going through the impugned order, we found that there is much substance in the contentions canvassed by Mr. Sarkar. Keeping this in mind, we asked the learned advocate appearing on behalf of the IBBI-Respondent No.1 whether the Disciplinary Committee would give a fresh hearing to the Petitioner and pass a fresh order. The learned advocate appearing for the IBBI, after taking instructions, has stated that the Disciplinary Committee appointed by the IBBI shall give a fresh hearing to the Petitioner after giving him adequate notice and thereafter pass a fresh order.

7. Considering the stand taken by the IBBI, we direct that the impugned order dated 24th June, 2022 is hereby quashed and set aside. The Disciplinary Committee of the IBBI shall give a fresh notice for hearing to the Petitioner. Once the notice is given, the Disciplinary Committee shall hear the Petitioner and thereafter pass an appropriate order.

8. Rule is made absolute in the aforesaid terms.

9. We must clarify that the observations made by us in the present order are only prima facie and the matter shall be decided by the Disciplinary Committee afresh and uninfluenced by any observations made by us herein.

10. The Writ Petition is accordingly disposed. However, there shall be no order as to costs.

11. 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.]