



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

WRIT PETITION (LODGING) NO.5978 OF 2024

Naren Sheth, an Insolvency Professional,]
Having address at Opera House, Mumbai] .. **Petitioner**

Versus

1. The Union of India,]
Through Ministry of Corporate Affairs, New Delhi]
2. The Insolvency and Bankruptcy Board of India,]
New Delhi]
3. The Disciplinary Committee,]
The Insolvency and Bankruptcy Board of India,]
New Delhi] .. **Respondents**

Mr. Shyam Kapadia with Mr. Abdullah Qureshi and Ms. Shraddha Patil,
Advocates, i/by Indialaw LLP, for the Petitioner.

Mr. M.S. Bhardwaj, Advocate for Respondent No.1.

Mr. Pankaj Vijayan with Ms. Sushmita Chauhan and Ms. Sejal Kanase,
Advocates for Respondent No.2.

CORAM : A.S. CHANDURKAR & RAJESH S. PATIL, JJ

The date on which the arguments were heard : 08TH OCTOBER 2024

The date on which the Judgment is pronounced : 25TH OCTOBER 2024

JUDGMENT : { Per A.S. Chandurkar, J. }

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties.

2. The challenge raised in this writ petition is to the order dated 30th January 2024 passed by the Disciplinary Committee, Insolvency and

Bankruptcy Board of India by which the petitioner's registration as an Insolvency Professional has been suspended for a period of two years.

3. The facts in brief giving rise to the present proceedings are that the petitioner came to be appointed as Resolution Professional – “RP” in proceedings that had been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 – “Code of 2016” by Vijisan Exports Pvt. Ltd. - “VEPL” seeking to initiate Corporate Insolvency Resolution Process – “CIRP” of Ciemme Jewels Ltd. - “CJL”. The National Company Law Tribunal – NCLT on 25th March 2019 passed an order for liquidation of CJL and therefore appointed the petitioner as Liquidator in the said matter. An another application under Section 9 of the Code of 2016 was filed by M/s. Central Investigation and Security Services Ltd. seeking initiation of CIRP of M/s. Dhanlaxmi Electricals Pvt. Ltd. - “DEPL”. The NCLT by the order dated 6th September 2021 appointed the petitioner as Interim Resolution Professional – “IRP”.

4. The Insolvency and Bankruptcy Board of India – “IBBI” in exercise of powers under Section 218 of the Code of 2016 appointed an Investigating Authority to conduct an investigation into the liquidation proceedings of CJL as well as an investigation in the CIRP proceedings of DEPL. A notice of investigation was sent to the petitioner on 22nd June 2022 and 22nd July 2022. The petitioner replied to the same on 23rd June

2022 and 27th July 2022. The Investigating Authority submitted its report to the IBBI on 15th July 2022 as regards the petitioner's role as Liquidator in CJL and on 3rd August 2022 with respect to his role as IRP in the CIRP of DEPL. On the basis of the findings recorded, a show cause notice dated 14th February 2023 came to be issued by the IBBI to the petitioner. An opportunity of personal hearing was availed by the petitioner virtually on 6th September 2023 after which the Disciplinary Committee consisting of one Whole Time Member of IBBI passed an order suspending the registration of the petitioner for a period of two years on 30th January 2024. The said order was to come into effect on expiry of thirty days from the date of its issuance. Being aggrieved by the aforesaid order, the petitioner has challenged the same in the present writ petition. By an ad-interim order dated 28th February 2024, the effect and operation of the impugned order has been stayed.

5. Mr. Shyam Kapadia, the learned counsel appearing for the petitioner after referring to the factual aspects leading to the passing of the impugned order submitted that the Disciplinary Committee was not justified in suspending the registration of the petitioner for a period of two years. Referring to the order passed by the NCLT dated 2nd March 2023 which were proceedings seeking to raise a challenge to the notice dated 2nd April 2022 for the sale of assets of the Corporate Debtor - "CD", it was

submitted that while setting aside the e-auction dated 8th April 2022 that was conducted by the petitioner as Liquidator, directions were issued to conduct a fresh auction and the petitioner was directed to bear all the expenses incurred for the said auction. The appeal preferred by the petitioner challenging the aforesaid order was dismissed by the National Company Law Appellate Tribunal – NCLAT on 4th July 2023. The fresh auction was accordingly conducted and the petitioner complied with the directions issued by the NCLAT by bearing all expenses for the auction. Since the petitioner had been directed to bear the cost of the auction, no further action in the form of suspension of his registration was called upon. The learned counsel placed reliance on the decisions in (i) *Noratanmal Chouraria Vs. M.R. Murli and Anr.*, (2004) 5 SCC 689, (ii) *Laxmibai Vs. Collector, Nanded and Ors.*, (2020) 12 SCC 186, (iii) *DKT India Vs. State of Maharashtra and Anr.* (Civil Writ Petition No.2419 of 2023, decided on 3rd April 2023, (iv) *Savan Godiawala Vs. Insolvency and Bankruptcy Board of India* (Writ Petition (C) No.13317/2022 & CM APPLs. 40416/2022, 22945/2023, decided on 11th January 2024), and (v) *Amit Gupta Vs. Insolvency and Bankruptcy Board of India and Anr.* (OOCJ Writ Petition (Lodging) No.34701 of 2023, decided on 4th April 2024). It was also urged that the DC comprised of only one Whole-Time member and not two Whole-Time members as required by the Code.

The action of suspending the petitioner's registration in these facts

would amount to double jeopardy since the petitioner had borne the expenses for the auction as directed. It was thus submitted that taking an overall view of the matter, the penalty of suspension as imposed was liable to be set aside. In any event, the said penalty was excessive in nature without indicating the requirement of suspending the petitioner for a period of two years. It was thus prayed that the reliefs prayed for in the writ petition be granted.

6. Mr. Pankaj Vijayan, learned counsel for the IBBI opposed the writ petition and supported the order passed by the DC. He submitted that the report of the Investigating Authority was duly served on the petitioner and reference to the same could be found in the show cause notice dated 14th February 2023. Referring to the reply filed by the petitioner to the show cause notice, it was pointed out that no protest whatsoever was raised by the petitioner in that regard. After complying with the principles of natural justice and granting due opportunity to the petitioner, the DC had imposed an appropriate penalty. In absence of there being any perversity in the impugned order, the scope for challenging the same was narrow. Coming to the conduct of the petitioner, it was submitted that despite an e-mail being sent by the State Bank of India on 8th April 2022, necessary corrections in the auction notice were not undertaken immediately. The corrections made were only on the website and not through any paper publication. This was done after the conduct of the auction. The

observations of the NCLT, as confirmed by the NCLAT, clearly indicated the undue haste of the petitioner in conducting auction. As regards the show cause notice issued with regard to the petitioner's role as IRP in the CIRP of DEPL, it was submitted that the petitioner failed to indicate lack of due knowledge of the aforesaid proceedings. The material in question in the form of the order dated 6th September 2021 passed by the NCLT admitting the CD into CIRP was available on the website and therefore the stand taken by the petitioner was rightly disbelieved by the DC. Referring to the Regulations framed under the Code of 2016 it was submitted that after noticing the conduct of the petitioner as Liquidator in the matter of CJL and as IRP in the proceedings pertaining to DEPL, appropriate action was taken by the IBBI. The learned counsel placed reliance on the decisions in (i) *State Bank of Patiala and Ors. Vs. S.K. Sharma*, 1996 AIR(SC) 1669, (ii) *B.C. Chaturvedi : Union of India Vs. Union of India : B.C. Chaturvedi*, 1996 AIR(SC) 484, and (iii) *Union of India and Ors. Vs. P. Gunasekaran*, 2015 AIR(SC) 545. As regards the contention that there was only one whole time member at the DC, it was submitted that this issue stood concluded by the judgment of this Court in *Rohit J. Vora Vs. Insolvency & Bankruptcy Board of India, New Delhi (OOCJ Writ Petition (Lodging) No.20352 of 2023, decided on 4th September 2024)*. It was thus urged that there was no case made out to interfere in exercise of writ jurisdiction.

7. We have heard the learned counsel for the parties and with their

assistance, we have perused the documentary material on record. At the outset, it may be noted that there is no serious grievance raised in the challenge to the order passed by the DC on the premise that the principles of natural justice had been breached. After the show cause notice was issued to the petitioner, he was granted due opportunity to reply and after granting him an opportunity of oral hearing which the petitioner availed, the impugned order came to be passed. The investigation reports that were called by the IBBI have been referred to in paragraph 2 of the show cause notice and the said reports were annexed as Annexures “A” and “B” thereto. Once it is found that the impugned action has been taken after duly complying with the principles of natural justice, the limited scope available for examining the impugned order would be on the touchstone of perversity and irrationality. We may also note that insofar as the conduct of the petitioner as Liquidator is concerned, the show cause notice proceeds on the basis of the order passed by the NCLT in Interim Application No.947 of 2022 in C.P.(IB)-297/(MB)/2018 (*Sunrise Industries Vs. Naren Seth in the matter of Vijisan Exports Pvt. Ltd. Vs. Ciemme Jewels Ltd.*), dated 2nd March 2023, which order was subsequently upheld by the NCLAT in Company Appeal (AT) (Insolvency) No.401 of 2023 (*Naren Seth Vs. Sunrise Industries and Ors.*) vide order dated 4th July 2023. It is common ground that these orders have attained finality. Hence, the said adjudication being made the basis for proceeding

against the petitioner cannot be questioned. With the aforesaid factual backdrop in mind, the challenge as raised would require consideration.

8. Perusal of the show cause notice dated 14th February 2023 indicates that in view of the alleged violation in the matter of conduct of auction by the petitioner as a Liquidator, the IBBI was of the prima facie view that the petitioner had violated the provisions of Section 208(2)(a) and (3) of the Code of 2016 read with the relevant provisions of the Liquidation Regulations as well as the Code of Conduct as prescribed. In the matter of DEPL it was observed that there was a delayed issue of public announcement exceeding the normal period of three days and that there were inconsistencies in the public announcements.

9. Since the show cause notice is based principally on the order passed by the NCLT on 2nd March 2023 as upheld by the NCLAT vide order dated 4th July 2023, it would be necessary to refer to the said orders. Before the NCLT, Interim Application No.927 of 2022 came to be filed by a bidder praying that the notice of sale of assets dated 2nd April 2022 be set aside. A grievance was raised that while the notice of sale of assets was dated 2nd April 2022, the e-auction was scheduled on 8th April 2022. In the light of the short time-frame fixed for conducting the e-auction, the bidder challenged the same. The reply filed by the petitioner in his capacity as Liquidator was considered. The NCLT framed the following issue:-

“Whether the Liquidator has committed any illegality or material irregularity in conducting the e-auction? and whether the e-auction dated 08.04.2022 is liable to be set aside?”

While answering this issue, the NCLT noted that the time of thirty days from the date of the paper publication of the auction notice and the date of the e-auction was not maintained. Though the e-auction was scheduled on 8th April 2022, the Liquidator had wrongly mentioned the last date for submission of EOI and EMD as 15th April 2022 and 16th April 2022 respectively. The Corrigendum issued by the petitioner was after completion of the e-auction and hence it was observed that the same did not serve any purpose. Accordingly, the NCLT set aside the e-auction dated 8th April 2022 conducted by the petitioner as Liquidator and directed him to conduct a fresh auction by maintaining thirty days time between the paper publication and the e-auction to enable more bidders to participate in the auction. The petitioner was directed to bear all expenses incurred for the auction.

10. The petitioner filed an appeal before the NCLAT challenging the said order. While dismissing the said appeal, the NCLAT observed that the correct procedure for conducting e-auction had not been followed. The conflicting dates mentioned in the notice were sufficient to cause

confusion and therefore could not be treated as mere typographical errors as claimed by the petitioner. It further held that it was not in a position to appreciate any grounds for such hurry on the part of the Liquidator. The entire liquidation process was sought to be completed within a period of one week. Issuance of the Corrigendum was after the sale having been taken place. It therefore recorded a finding that considering the various material irregularities, there was no error in the order passed by the NCLT and accordingly dismissed the appeal.

The aforesaid adjudication has attained finality. The IBBI therefore was justified in taking cognizance of the aforesaid adjudication and it proceeded against the petitioner in his capacity as Liquidator for taking action against him.

11. It was urged on behalf of the petitioner that since the NCLT directed him to bear the entire expenses of the auction that was set aside, which the petitioner had borne, the petitioner's suspension by the IBBI for the same event resulted in double jeopardy. He had been penalised for the same event twice. We do not find that the suspension of the petitioner by the IBBI on account of breach of the Code of Conduct under the Regulations can amount to double jeopardy on the ground that the petitioner had been directed to bear the expenses of the auction. Merely paying the amount of auction expenses would not result in wiping out his

conduct as Liquidator, which was found to be questionable by the NCLT and thereafter by the NCLAT. This contention of the petitioner cannot be accepted.

12. As regards the matter of DEPL, it was stated in the show cause notice that the petitioner in his capacity as IRP delayed the public announcement dated 29th September 2021 by almost twenty-nine days after the order of admission of the proceedings was passed by the NCLT. Such declaration was made on 5th October 2021. According to the petitioner, he had to trace the Operational Creditor and only after getting knowledge of the same, the order was published on 5th October 2021. It is seen that the petitioner was informed of the order dated 29th September 2021 on the same day. He could not come up with any satisfactory explanation as to why he made the public announcement only on 5th October 2021. The DC has noted the absence of any justifiable reason being given by the petitioner for the delay in making the public announcement. It is on that basis that it was found by the DC that there was contravention of Regulation 6(1) of the CIRP Regulations. We do not find any basis to hold that this finding recorded by the DC was either incorrect or that a perverse view of the matter had been taken.

The other inconsistency noted was the discrepancy in the date of submission of the claim which had been shown as 13th October 2021 and

that date was thereafter indicated as 5th December 2021 in column 11 of Form “A”. The DC noted that no specific reply was given by the petitioner to these discrepancies in the public announcement as regards the last date for submission of claims. It was thus concluded by the DC that the petitioner had shown carelessness and negligence in that regard. We again do not find any reason to take a different view from the conclusion recorded by the DC. In absence of any specific reply or explanation by the petitioner for such discrepancy, the finding recorded by the DC would have to be accepted.

It is thus found that in the matter of DEPL, the contraventions at the behest of the petitioner is a reason for taking action against the petitioner. It cannot be said that such action as taken by the DC was on any unfounded basis. The action with regard to CJL was in view of the orders passed by the NCLT and thereafter the NCLAT. The action taken in the matter of DEPL was on the basis of admitted material on record. It is therefore held that the DC was justified in proceeding against the petitioner.

13. On the aspect of proportionality, it was urged on behalf of the petitioner that the suspension of registration for a period of two years was excessive and unwarranted. In our view, it cannot be said that the suspension of the petitioner’s registration for a period of two years in the

facts of the present case is in any manner excessive or disproportionate. The basis on which the action of suspension has been taken being the adjudication undertaken by the NCLT and thereafter the order passed by the NCLAT which has attained finality, the DC was within its jurisdiction in prescribing the requisite penalty. The conduct of the petitioner has been found to be questionable and hence his registration has been suspended.

14. It may be noted that despite such suspension of registration, the petitioner is not completely barred from continuing his ongoing assignments. The DC has left it to the discretion of the Committee of the Creditors / Stake-holders Consultation Committee to take a call as to whether the existing assignments of the petitioner can be continued. This is clear from paragraph 5.4 of the impugned order dated 30th January 2024, which reads as under :-

“5.4 A copy of this order shall be sent to the CoC/State Holders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Naren Sheth is providing his services, if any, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Naren Sheth.”

In these facts, therefore, we do not find that the suspension of the petitioner's registration for a period of two years is disproportionate, warranting interference.

15. Having considered the entire material on record, we do not find any scope whatsoever to interfere with the impugned order dated 30th January 2024 suspending the registration of the petitioner for a period of two years. The impugned order does not suffer from any perversity whatsoever nor is it irrational or disproportionate. The ratio of the decisions relied upon by the learned counsel for the petitioner thus cannot be applied to the facts of the present case.

For aforesaid reasons, we do not find any merit in the challenge as raised to the order dated 30th January 2024 passed by the DC. The writ petition stands dismissed. Rule is discharged with no order as to costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]