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

+ **W.P.(C) 13317/2022 & CM APPLs. 40416/2022, 22945/2023**

SAVAN GODIAWALA

..... Petitioner

Through: Mr. Sandeep Saithi, Sr. Advocate
with Mr. Nalin Kohli, Mr. Manmeet
Singh, Mr. Yashvardhan Bandi, Mr.
Samarth Sansar, Mr. Anshul Malik
and Ms. Riya Kumar, Advocates.

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

..... Respondent

Through: Ms. Madhavi Divan, Sr. Advocate
with Mr. Sahil Monga and Mr.
Shubham Saigal, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

11.01.2024

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1. Petitioner has approached this Court challenging the Order dated 18.08.2022, passed by the Disciplinary Committee of the Insolvency And Bankruptcy Board of India, i.e. Respondent No.1 herein (*hereinafter referred to as "the Board"*).

2. Material on record discloses that Corporate Insolvency Process in respect of Lanco Infra Tech Limited (*hereinafter referred to as "the Lanco"*) was commenced on 07.08.2017 pursuant to the Orders passed by the National Company Law Tribunal, Hyderabad admitting the application filed on behalf of IDBI Bank under Section 7 of the Insolvency and



Bankruptcy Code, 2016 (*hereinafter referred to as “the IBC”*) and the Petitioner herein was appointed as the Interim Resolution Professional (IRP) of Lanco. A resolution Plan was submitted by Thriveni Earthmovers Private Limited was placed before the Committee of Creditors (“CoC”) of Lanco for approval, however, the same was not approved by the CoC. Accordingly, the CoC passed a resolution seeking the liquidation of Lanco, which was approved by NCLT, Hyderabad vide order dated 27.08.2018 and the Petitioner, who was appointed as IRP of Lanco, was appointed as the Liquidator of Lanco. The Petitioner was also appointed as the IRP of Shirpur Power Private Limited on 04.03.2020. Alleging that the Petitioner has contravened various provisions of the IBC and the Regulations framed thereunder, disciplinary proceedings under IBC read with Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (*hereinafter referred to as “the 2017 Regulations”*) were initiated against the Petitioner by the Board. The Inspecting Authority was directed to conduct an inspection and a draft inspection report dated 11.11.2021 was prepared and was supplied to the Petitioner. The Petitioner sent his reply on 24.12.2021 and after hearing the Petitioner, the comments of the Board were taken and the Inspecting Authority prepared a final report and submitted the same to the Board on 07.04.2022. A Show Cause Notice dated 13.06.2022 was issued to the Petitioner which was replied by the Petitioner and ultimately, the impugned Order was passed by the Board.

3. At this juncture, it is pertinent to reproduce Regulation 12 of the 2017 Regulations which reads as under:

“12. Show-cause notice.



(1) The show-cause notice shall be in writing and shall state-

(a) the provisions of the Code under which it has been issued;

(b) the details of the alleged facts;

(c) the details of the evidence in support of the alleged facts;

(d) the provisions of the Code, rules, regulations and guidelines thereunder allegedly violated, or the manner in which the public interest is allegedly affected;]

(e) the actions or directions that the Board proposes to take or issue, if the allegations are established;

(f) the time within which the noticee may make written submission.

(g) the manner in which service provider is required to respond to the show cause notice; and

(h) consequences of failure to respond to the show-cause notice.]

(2) For the purposes of clause (e) of sub-regulation (1), the Board shall take into account, but not limited to, the following factors: -

(a) the nature and seriousness of the alleged contraventions, including whether it was deliberate, reckless or negligent on the part of the noticee;

(b) the consequences and impact of the alleged



contravention, including –

(i) unfair advantage gained by the noticee as a result of the alleged contravention;

(ii) loss caused, or likely to be caused, to [stakeholders] or any other person as a result of the alleged contravention; and

(iii) the conduct of the noticee after the occurrence of the alleged contravention, and prior to the alleged contraventions.

(3) The show-cause notice shall provide 15[fifteen] days to the noticee to make a written submission.

(4) The show-cause notice shall state, if a noticee fails to respond under sub-regulation (3) within the given time, it shall be disposed of based on the material available on record.

(5) The show-cause notice shall enclose copies of relevant documents and extracts of relevant portions from the report of investigation or inspection, or other records.

(6) A show-cause notice shall be served on the service provider in electronic form at the email address provided by the service provider to the Board and a copy shall also be sent by registered post.]

(7) The Board shall refer the show-cause notice to the Disciplinary Committee alongwith all the relevant records including the written submissions, if any, made by the noticee in the matter.” (emphasis supplied)

4. The short submission made by the Petitioner is that Regulation 12(5) of the 2017 Regulations mandates that the show-cause notice shall enclose



copies of relevant documents and extracts of relevant portions from the report of investigation or inspection, or other records. A perusal of the material before this Court shows that the Show Cause Notice does not contain the extracts of relevant portions from the report of investigation and admittedly, the report of inspection was also not given to the Petitioner.

5. Without going into the question as to whether Regulation 12(5) is directory or mandatory in the facts of the present case, this Court is of the opinion that the matter should be remanded back to the Board with a direction to the Board to supply a copy of the Final Inspection Report to the Petitioner within one week from today. The Petitioner is permitted to file a further or substituted reply to the show cause notice within two weeks thereafter and the Board is directed to decide the matter within four weeks thereafter in accordance with the Regulations. The impugned order is, therefore, set aside

6. It is made clear that this Court has not made any observations as to whether Regulation 12(5) of the 2017 Regulations is directory or mandatory and the said question is left open to be decided later in an appropriate case and all contentions are left open.

7. With these observations and directions, the Writ Petition is disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

JANUARY 11, 2024

Rahul