

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

Date of decision: 27th MAY, 2024

IN THE MATTER OF:

+ **W.P.(C) 14389/2022**

SUNDARESH BHAT Petitioner

Through: Mr. Ramji Srinivasan, Sr. Advocate,
Mr. Milanka Chaudhary, Ms. Ashly
Cherian and Ms. Swet Shikha,
Advocates.

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

. Respondent

Through: Mr. Vikas Mehta, Ms. Rashi Rampal,
Mr. Apoorv Khaton and Mr. Ankit
Vashisht, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging an Order dated 28.09.2022, issued by the Disciplinary Committee of the Insolvency and Bankruptcy Board of India (*hereinafter referred to as 'the IBBI'*) in case bearing No. IBBI/DC/131/2022, suspending the registration of the Petitioner herein for a period of two years.
2. The facts, in brief, leading to the present Writ Petition are as under:
 - a. ABG Shipyard Limited (*hereinafter referred to as 'the Corporate Debtor'*) was in the business of shipbuilding. Pursuant to an application filed by the ICICI Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as 'the IBC'*), the National Company

Law Tribunal (NCLT), Ahmedabad passed an order admitting the application filed by the ICICI Bank commencing the Corporate Insolvency Resolution Process (*hereinafter referred to as 'the CIRP'*) of the Corporate Debtor.

- b. The Petitioner was appointed as the Interim Resolution Professional of the Corporate Debtor. Vide Order dated 25.04.2019, the NCLT Ahmedabad directed that the Corporate Debtor shall undergo liquidation under Section 33(2) of the IBC and the Petitioner was to act as a Liquidator to discharge duties under Section 35 of the IBC.
- c. On 02.06.2021, the Petitioner received a Notice of Inspection of the liquidation assignment of Corporate Debtor which was being handled by the Petitioner.
- d. On 04.04.2022, the Petitioner received a draft inspection report under Regulation 6(1) & (2) of the IBBI Inspection and Investigation Regulations, 2017 (*hereinafter referred to as 'the Inspection Regulations'*).
- e. On the basis of the draft inspection report, a Show Cause Notice dated 26.07.2022 was issued to the Petitioner by the IBBI asking the Petitioner to show cause as to why disciplinary action should not be taken against the Petitioner for the following charges:
 - i. Influencing Registered Valuer to change valuation of assets.
 - ii. Prescribing non-refundable participation fee.
 - iii. Appointment of unregistered valuers to conduct

- valuation in the process of liquidation.
- iv. Paying excess fee to a support service called – BDO Restructuring Advisory LLP (*hereinafter referred to as 'BRAL'*), in which the Petitioner himself was a partner.
- f. Reply was filed by the Petitioner. Hearing was given to the Petitioner and the impugned Order was passed by the IBBI on 28.09.2022.
- g. In the impugned Order, the IBBI has held as under:
- i. As far as the first contravention regarding influencing registered valuers to change the value of the assets is concerned, the IBBI took a lenient view and did not proceed further with the contravention and closed the charge against the Petitioner with a word of caution.
- ii. As regards the second contravention of prescribing non-refundable participation fee of Rs. 5,00,000/-, Rs. 10,00,000/-, Rs. 10,00,000/- and Rs.50,000/- vide public announcements made on 17.09.2019, 27.09.2019, 21.10.2019, and 11.11.2019 respectively on prospective bidders for participating in the auction process at the time of submission of Expression of Interests is concerned, the IBBI held that seeking non-refundable participation fees from prospective bidders defeats the spirit of the IBC, one of the objectives of which is maximization of value of assets of the Corporate Debtor. The IBBI held that such unreasonable conditions have the effect of dissuading the prospective bidders from participating in

the bidding process. The Board, therefore, held that the Petitioner has acted in contravention of regulation 36A(4)(d) and regulation 36B (4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (*hereinafter referred to as 'the CIRP Regulations'*) and also in contravention of clauses 13 and 14 of the Code of Conduct for Insolvency Professionals Regulations.

- iii. As regards the third charge against the Petitioner, i.e. appointment of unregistered valuers is concerned, the allegation against the Petitioner is that the Petitioner appointed two registered valuers, namely, Manish Kaneria and Rakesh Narula, however, the bills were being made in the name of RBSA Valuation Advisors LLP which was not a registered valuer at that point of time to conduct the valuation of the assets of the Corporate Debtor. It is further alleged that the valuation report dated 15.07.2019 and corrigendum dated 19.11.2019, submitted by RBSA Valuation Advisors LLP were signed by Mr. Manish Kaneria as one of the partners of RBSA and not in his individual capacity, and the valuation report dated 13.07.2019, was signed by Rakesh Narula as partner of Rakesh Narula & Co. The Board, therefore, held that the Petitioner has acted in contravention of IBBI Circular No. IBBI/RV/019/2018 dated 17.10.2018 which mandates the liquidator to



appoint only registered valuers to conduct valuation under the IBC and Regulations made thereunder. It was also found that the valuers appointed by the Petitioner namely Manish Kaneria engaged one Mr. Rajeev Shah to obtain a valuation of another asset class of Securities and Financial assets, and Rakesh Narula engaged Mr. Tejas Dave for the valuation of Land and building asset class and Chander Sawhney for the valuation of another Securities and Financial Assets class. The IBBI has held that rule 8(2) of Companies (Registered Valuers and Valuation Rules), 2017 provides for obtaining inputs for the valuation report or get a separate valuation for an asset class conducted from another registered valuer whereas Regulation 35(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (*hereinafter referred to as 'the Liquidation Regulations'*) provides for appointment of two registered valuers for each class of asset by the liquidator and Rule 8(2) cannot be interpreted to hold outsourcing (of responsibility) with obtaining inputs and, therefore, the conduct of the Petitioner in outsourcing the appointment of valuers to third person, is in contravention of Regulation 7(1) read with Regulation 35(2) of Liquidation Regulations and Clause 14 of the Code of Conduct under IP Regulations.

iv. As regards the last contravention against the Petitioner,

Pleadings are complete.

4. Heard the Learned Counsels for the parties and perused the material on record.

5. It is stated by the learned Senior Counsel appearing for the Petitioner that no action has been taken against the Petitioner with regard to the first charge which was contravention regarding influencing registered valuers to change the value of the assets and likewise, the Petitioner could not have been held guilty for other charges as well.

6. With regard to the charge of prescribing non-refundable participation fee on prospective bidders for participating in the auction process at the time of submission of Expression of Interests is concerned, learned Counsel for the Petitioner states that though the Show Cause Notice indicates that Regulation 36A(4)(d) and 36B(4) of the CIRP Regulations have been violated by the Petitioner, the Board itself has, in the impugned Order, accepted the contention of the Petitioner that Regulation 36A(4)(d) and 36B(4) of the CIRP Regulations do not apply to the infraction in the present case. He further draws the attention of this Court to a notification bearing IBBI/2021-22/GN/REG079 dated 30.09.2021 by which a proviso has been inserted in Schedule I-(1)-(3) of the Liquidation Regulations prohibiting payment of non-refundable deposit or fee for participation in the auction process. Learned Counsel for the Petitioner states that when the auction process advertisements were issued on 17.09.2019, 27.09.2019, 22.10.2019 and 11.11.2019, proviso to Schedule I-(1) (3) of the Liquidation Regulations was not in force as it was issued after nearly two years in 2021 and, therefore, there was no embargo in the Liquidation Regulations against prescribing non-refundable participation fee in the auction process for sale of

assets under liquidation. He states that prescribing non-refundable participation fee on prospective bidders for participating in the auction process at the time of submission of Expression of Interests was done to deter non-serious participants from participating in the auction process for sale of assets. He, therefore, states that the Petitioner ought not to have been held guilty for prescribing participation fee as the same was not in contravention to any Regulations or Clauses.

7. *Per contra*, Learned Counsel for the Respondent states that prescription of non-refundable fee on prospective bidders for participating in the auction process at the time of submission of Expression of Interests is against the freedom available to the market participants and basic principles of the code and, therefore, even though there is no express violation of any Regulations by the Petitioner, in the interest of the Corporate Debtor and in order to maximize the participation in the auction process, the Petitioner ought not to have imposed any fee on prospective bidders.

8. With regard to the abovementioned charge of prescribing non-refundable participation fee on prospective bidders for participating in the auction process at the time of submission of Expression of Interests is concerned, this Court is inclined to accept the contention of the learned Counsel for the Petitioner inasmuch as the Petitioner has not acted in violation of any express contravention of any Regulations or Clauses.

Material on record indicates that proviso to Schedule I (1) (3) of the Regulations was not in force when the auction took place and the proviso to Schedule I (1)-(3) was issued in the year 2021 which is two years after the auction. Since the proviso prohibiting payment of fee for participation in the auction process was brought out only on 30.09.2021, the Petitioner cannot

be found guilty of imposing non-refundable participation fee on prospective bidders more so when the reserve price of the assets which were to be sold was much more higher than the participation fee imposed on the prospective bidders for participating in the auction process. In view of the above, this Court is not inclined to accept the view taken by the Board that the Petitioner has violated any Code of Conduct under IP regulations.

9. With regard to the charge against the Petitioner for appointing unregistered valuers, it is stated by the learned Counsel for the Petitioner that the fact that the valuation report has been given in the name of firm does not mean that the valuation was not done by the registered valuers. He states that at best the incident can be termed as irregularity and the valuation report is valid as it has been done by a registered valuer. He further states that the fact that bills have been raised in the name of the firm is also immaterial as long as the valuation report cannot be found fault with. He states that the engagement letters were issued in the name of Mr. Manish Kaneria and Mr. Rakesh Narula, in their individual capacity, and the fact that while drafting the minutes for the meeting of the Stakeholders Consultation Committee on 19.06.2019, names of partnership firms of Mr. Kaneria and Mr. Narula have been used instead of their actual names does not change the fact that Mr. Manish Kaneria and Mr. Rakesh Narula were appointed as registered valuers in their individual capacity and not their firms and the same is fully substantiated by the appointment letters. He further states that the fact that while signing the valuation report, if the registered valuer used his title as partner of the firm then the Petitioner cannot be held responsible for that and it does not retract the correctness or otherwise of the valuation report.

10. *Per contra*, learned Counsel for the Respondent states that once Mr.

Manish Kaneria and Mr. Rakesh Narula have been appointed as registered valuers in their individual capacity they could not have acted as partners of the firm which itself are not registered. He states that appointment of unregistered firms as valuers is in violation of Clause 35(2) of the Liquidation Regulations. He further states that Mr. Manish Kaneria and Mr. Rakesh Narula have further outsourced their work to other registered valuers for the purpose of valuing the assets and the same is violative of Circular bearing No. No. IP/002/2018 dated 03.01.2018 issued by the IBBI.

11. This Court is of the opinion that though what the Petitioner has done is not in strict confirmation of the regulations, but this Court finds that the two persons, i.e. Mr. Manish Kaneria and Mr. Rakesh Narula, are registered valuers in their individual capacity. Though the valuation report has been given in the name of their partner firms, the valuation reports have been signed by the abovementioned persons. It is not the case of the Respondents that the valuation report given Mr. Manish Kaneria and Mr. Rakesh Narula in the name of their firm has not been accepted or that it has been questioned anywhere. It is also not the case that the valuers to whom Mr. Manish Kaneria and Mr. Rakesh Narula have further outsourced the work, are not registered valuers. No extra fees in the name of outsourcing the work and hiring additional valuers has been paid by the Board. The total fees which have been paid to the registered valuers includes all the work done for valuing the assets of the Corporate Debtor. This Court, therefore, does not find any serious infirmity in the decision taken by the Petitioner which would amount to gross misconduct on the part of the Petitioner.

12. With regard to the last charge against the Petitioner for appointing BDO Restructuring Advisory LLP, in which the Petitioner himself is a

partner, and paying more fees to it than what was paid to the Petitioner himself as the Liquidator of the Corporate Debtor, learned Counsel for the Petitioner contends that even though fee has been claimed by the BRAL, the same has yet not been paid by the Board. Learned Counsel for the Petitioner draws the attention of this Court the remunerations paid to BRAL to contend that only 50% of the claimed amount has been paid and the remaining 50% is yet to be paid. He, therefore, contends that the Petitioner has not violated any provisions of the Regulations of the IBBI. He contends that BRAL was appointed for providing support services to the Liquidator after taking the consent of the Committee of Creditors and, therefore, nothing has been done by the Petitioner without disclosing it to the Committee of Creditors. He further states that Petitioner has not violated Regulation 7(2) of the Liquidation Regulations which prohibits the liquidator from appointing a professional who is his relative, is a related party of the Corporate Debtor or who has served as an auditor to the Corporate Debtor in five years preceding the date of commencement of liquidation process. He states that since the Petitioner is neither a relative, nor a related party in terms of Section 5(24) of the IBC and, therefore, the fact that the Petitioner is a partner in BRAL does not make him a related party. He further states that the Petitioner has also not violated Clause 25A of the Code of Conduct under IP regulations because other than saying that the fee bill raised by the BRAL is higher than the fee bill raised by the Petitioner, there is nothing to substantiate that the fees bill is unreasonable. He states that merely raising bills cannot be termed as misconduct until and unless the bills are cleared and the payments are made.

13. *Per contra*, learned Counsel for the Respondent contends that the

terms of payment to BRAL are extremely vague. No fees cap has been given in the terms of payment to BRAL and the Petitioner has tried to circumvent the provision of the payment to the Liquidator which is capped under Regulation 4 of the Liquidation Regulations. Learned Counsel for the Respondent, therefore, states that the Petitioner has engaged a firm in which he is a partner only to circumvent the fee cap given in Regulation 4. Learned Counsel for the Respondent further submits that a firm which has been engaged to assist the Liquidator cannot charge a fee more than that of liquidator.

14. A perusal of the Scheme of the IBC shows that once the attempts to resurrect a company fails, the company goes into liquidation and very often the Resolution Professional, who is resurrecting the company, is appointed as the Liquidator of the company. The purport of the Liquidator is to ensure that maximum value of the assets of the company is released by selling assets of the company so that the debtors, which include the financial institutions; Public Sector Banks; employees; etc, are paid in full. The Liquidator cannot be permitted to dissipate the assets of the company as the same will defeat the entire liquidation process and this would go contrary to the very scheme of the IBC.

15. The role of the liquidator in insolvency proceedings is paramount to the entire process. The liquidation proceedings revolve around the official liquidator and he has to discharge his functions keeping in mind the benefit of the company which is under liquidation. They must adhere to the highest standards of ethical conduct, diligence, and impartiality to uphold the integrity of the process. As fiduciaries, they are entrusted with the responsibility of managing the affairs of insolvent entities and any hint of

impropriety or conflict of interest could undermine the credibility of the entire insolvency process. A liquidator is entrusted with safeguarding the interests of all parties involved, navigating complex legal and financial terrain with complete transparency. With such authority comes a heightened obligation to exercise discretion judiciously and in the best interests of all stakeholders involved. Therefore, while the official liquidator enjoys a significant degree of autonomy, they are bound to wield their power responsibly and ethically within the confines of the IBC framework. Upholding ethical principles and demonstrating unwavering commitment to fairness are paramount for an official liquidator to effectively discharge their duties under the IBC. At the same time, it is imperative that a liquidator is given the autonomy that is required to take decisions that may help in actualizing the real value of the assets or materials that are being liquidated.

16. A perusal of the records reveals that the Petitioner appointed BRAL for providing support services in the liquidation process of the Corporate Debtor. Undisputedly, the Petitioner is a partner in BRAL. The fee payable to the Liquidator is prescribed under Regulation 4 of the Liquidation Regulations. The facts of the case reveal that appointing BRAL, in which the Petitioner is a partner, is a calculated attempt on the part of the Petitioner to get more fees. The finding of the Disciplinary Committee that the Petitioner has not stated any criteria or basis for calculating fees of BRAL cannot be found fault with. The terms of appointment of BRAL are vague and there is no criterion for fixing its fees. The fact that the fees of BRAL, which was appointed by the Petitioner to provide support services to the Liquidator, exceeds the fees of the Liquidator is sufficient to show misconduct on the part of the Petitioner. The act of the Petitioner is not in conformity with the

purport and purpose of the liquidation process. A Liquidator cannot permit a Corporate Debtor, which is in liquidation, to bleed the company which itself is in liquidation. The amount given is meant to clear the debts of the creditors and payments of the employees. The fact that the Petitioner does not strictly falls as a related party within the scope of Section 5(24) of the of the IBC cannot absolve the Petitioner, who has appointed a firm, in which he is a partner, to provide support services and allowing the said firm to raise bills which are higher than the fee of the Petitioner himself. The act of the Petitioner is contrary to the intent of the liquidation process. The facts of the case cries aloud that BRAL has not only been engaged to provide support services. The actual motive of the Petitioner behind appointing BRAL was to increase his own fee by circumventing Regulation 4 of the Liquidation Regulations. The fact that fees bill of BRAL has not been cleared does not absolve the Petitioner of the charge of misconduct and contravention of Liquidation Regulations. In view of the above, this Court is of the opinion that the finding of the Disciplinary Committee of the IBBI with respect to the charge of appointment of BRAL, in which the Petitioner himself is a partner, and paying more fees to it than what was paid to the Petitioner himself as the Liquidator of the Corporate Debtor, does not require interference.

17. In view of the above, this Court is of the opinion that the findings arrived at by the Board that the Petitioner is guilty of the last charge does warrant any interference, and therefore, this Court is not inclined to set aside the Order of suspension of the registration of the Petitioner. However, in view of the fact that out of 24 months of suspension, the Petitioner has already undergone 20 months of suspension, this Court is inclined to modify

the punishment of suspension from a period of two years to the period already undergone.

18. With these observations, the Writ Petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MAY 27, 2024

Rahul

