



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 16317 OF 2023

Kairav Anil Trivedi

.. Petitioner

Versus

Union of India and Ors.

.. Respondents

Mr.Nirman Sharma , Parag Sawant, Akshay Doctor, Ansh Karnawat and Manali Sawant i/b P.S. Chambers, Advocates for the Petitioner.

Ms. Savita Ganoo a/w Mr. Abhishek Bhadang for Respondent No. 1.

Mr. Pankaj Vijayan a/w P.N. Lakshmi Sagar i/b Intra legal , Advocates for IBBI.

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

DATE : JUNE 20, 2023

P. C.

1. The above Writ Petition is filed challenging the order dated 23/05/2023 passed by the Disciplinary Committee, constituted by the Insolvency and Bankruptcy Board of India (for short "IBBI") under Section 220 of the Insolvency and Bankruptcy Code, 2016 (for short "IBC,2016").

2. The learned Counsel appearing on behalf of the Petitioner, apart from attacking the impugned order on merits, took strong

objection to the jurisdiction of the authority passing the impugned order. He submitted that under the provisions of Section 220 of the IBC, 2016, it is the IBBI which constitutes a Disciplinary Committee to consider the reports of the investigating authority submitted under sub-section (6) of Section 218. It is submitted that the proviso to 220(1) of the IBC, 2016 makes it clear that the members of the disciplinary committee shall consist of Whole Time Members of the IBBI only. He even brought to our attention the definition of words “Disciplinary Committee” defined in the *Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017*, which stipulates that a *Disciplinary Committee* means a Committee of Whole Time Members constituted by the Board under Section 220(1) of the IBC, 2016. The learned Counsel submitted that the order passed on 23.05.2023, and which is impugned in the present Petition, is not passed by the Whole Time Members but in fact by the Chairperson of IBBI. In support of this argument, the learned Counsel brought to our attention the Website of IBBI in which it is clearly stated that Shri. Ravi Mital is the Chairperson of IBBI and Shri. Sudhaker Shukla and Shri Jayanti Prasad are its Whole Time Members. The learned Counsel submitted that the impugned order in the present case is passed by Mr. Ravi Mital who is the Chairperson

and not a Whole Time Member. He therefore submitted that the order impugned in the present Petition is thus without jurisdiction.

3. The learned counsel appearing on behalf of the IBBI sought two weeks time to take instructions and file an Affidavit-in-Reply to the above Petition.

4. On the limited issue of Interim relief we have heard the learned counsel for Petitioner. From perusal of Section 220 of the IBC, 2016 read with definition of the words “Disciplinary Committee” in the *Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017*, prima facie we are of the opinion that the Disciplinary Committee can consist only of Whole Time Member(s), who can then pass orders. In the present case, the impugned order dated 23.05.2023 is passed by Mr. Ravi Mital, who, at least on the Website of the IBBI, is shown as the Chairperson of the IBBI and not its Whole Time Member.

5. In these circumstances, we find that until IBBI files a reply in answer to the above Petition, there will be ad-interim relief in terms of prayer clause (c) which reads thus:-

“c. Pending the hearing and final disposal of this Writ Petition, this Hon’ble Court be pleased to issue an order of injunction thereby restraining and injuncting the Respondents from in any manner acting upon or giving effect to or implementing the impugned order dated 23.05.2023 and the Show Cause Notice dated 21.03.2023 and stay the operation, effect and implementation thereof.”

6. Place the above Writ Petition on board for admission on 4th July 2023.

7. All concerned to act on an authenticated copy of this order duly authenticated by the Associate.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]

