2023:DHC:8021

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

Date of decision: 03rd NOVEMBER, 2023

IN THE MATTER OF:

\+ **W.P.(C) 8856/2020 & CM APPL. 28479/2020**

ABBA CONSULTANTS PRIVATE LIMITED ..... Petitioner

Through: Mr. Shubham Gupta and Mr. Mahesh Kumar, Advocates

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA & ORS.

..... Respondents

Through: Mr. Jagjit Singh, Mr. Preet Singh and Ms. Kalyani Arora, Advocates for R-1
Mr. Abhishek Anand, Ms. Mohak Sharma, Mr. Sahil Chopra, Advocates for Respondent No.3

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court seeking a writ of mandamus directing the Respondent No.1 herein (*hereinafter referred to as 'the Board'*) to take action against Respondent No.3 (now Respondent No.2) for misconduct in his performance as an Insolvency Resolution Professional in the matter of M/s Sandhya Prakash Limited (*hereinafter referred to as the Corporate Debtor*). The Petitioner has also prayed for an appropriate writ/order/direction restraining Respondent No.3 (now Respondent No.2) from functioning as a Liquidator of the Corporate Debtor during the pendency of this Writ Petition.

2. It is pertinent to mention here that though initially Union of India was arrayed as Respondent No.2 and the Resolution Professional, against whom the present proceedings have been initiated, was arrayed as Respondent No.3, later on Union of India was dropped from the array of parties and the Resolution Professional has now been arrayed as Respondent No.2.

3. The facts, in brief, leading to the present Writ Petition are as under:

a. It is stated that the National Company Law Tribunal (*hereinafter referred to as 'the NCLT')* at Ahmadabad initiated Corporate Insolvency Resolution Process (*hereinafter referred to as 'the CIRP')* against the Corporate Debtor.

b. It is stated that right from the beginning Respondent No.2, who had been appointed as the Insolvency Resolution Professional had not been performing its duty diligently and in accordance with the Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as 'the IBC')*.

c. It is stated that as mandated by Regulations 6(1) and (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (*hereinafter referred to as 'the CIRP Regulations'*), the Respondent No.2 failed to publish the public announcement in two widely circulated newspapers within three days of his appointment. It is stated that the Respondent No.2 was appointed as an Interim Resolution Professional on 14.09.2017 and the public announcement was published only on 19.09.2017 in an English online newspaper called Free Press Journal and on

20.09.2017 in a Hindi evening newspaper called Yash Bharat, which both have very less circulation in the concerned area.

d. It is stated that the Petitioner herein, who was the Operational Creditor of the Corporate Debtor, filed its claim on 27.09.2017 before the Respondent No.2. It is stated that the Respondent No.2, in contravention of the provisions of the IBC uploaded the incomplete Information Memorandum (IM) of the Corporate Debtor on its website thereby making it a public document.

e. It is stated that a complaint was filed by the Petitioner herein against Respondent No.2 with the Respondent No.1/Board on 18.03.2019 highlighting the irregularities committed by the Respondent No.2 during the CIRP process of the Corporate Debtor. It is stated that in response to the complaint filed by the Petitioner herein, Respondent No.1 replied stating that prima facie there seems to be some merit in the allegations of the Petitioner herein. However, no action was taken by the Respondent No.1 against Respondent No.2.

f. It is stated that on 05.09.2019 the Petitioner filed an addendum to the complaint already filed by him before the Board.

g. It is stated that since the CIRP process failed, the NCLT passed an order for liquidation of the Corporate Debtor. Thereafter, the Petitioner filed an application under the Right to Information Act, 2005 enquiring about the status of his complaint pending before the Board.

h. It is stated that in response to the RTI Application dated 29.04.2020 filed by the Petitioner, it was informed that the complaint was pending.

i. It is stated that the Petitioner, thereafter, filed the second RTI application on 26.09.2020 inquiring about the status of the complaint. Vide letter dated 16.10.2020, the Petitioner herein was informed that complaint of the Petitioner has been disposed of.

j. The Petitioner has, thereafter, approached this Court with the following prayers:

> "*(a) issue a writ of mandamus or an appropriate writ directing Respondent No.1 to issue a show cause notice against the Respondent No. 3 and take appropriate action against him;*
>
> *(b) Issue a writ of mandamus or a writ of any other nature or any other direction / order restraining the Respondent No. 3 from functioning as the Liquidator of the Corporate Debtor during the pendency of these Writ Proceedings and staying the proceedings before the Hon'ble NCLAT during the pendency of the present Writ Proceedings;*
>
> *(c) Issue a writ of mandamus or a writ of any other nature or any other direction / order staying the proceedings before the Hon'ble NCLAT during the pendency of the present Writ Proceedings;*
>
> *(d) Issue a writ of mandamus or a writ of any other nature or any other direction/order directing the Respondent No. 1 to remove the*

Respondent No. 3 from the Liquidation proceedings of the Corporate Debtor; "

4. Notice was issued on 09.11.2020. Replies have been filed by Respondents No.1 & 2.

5. Learned Counsel for the Petitioner vehemently contends that Respondent No.2 has not performed his functions as a Resolution Professional. Learned Counsel for the Petitioner also highlights the in-action on the part of the Respondent No.2 in not bringing out the publications as mandated under the CIRP Regulations within the stipulated time. He further points out that the newspapers in which the claims were published did not have wide circulation in the area. He further points out that the list of creditors has not been properly prepared which had its deleterious impact on the resolution process of the Corporate Debtor. He further contends that Respondent No.2 also uploaded incomplete IM. Learned Counsel for the Petitioner also contends that Board has been extremely secretive about the nature and manner in which investigation has been conducted by it on the complaint made by the Petitioner against Respondent No.2. He further states that the Board has not been transparent in respect of the investigation done by it and the result of the investigation.

6. *Per contra*, learned Counsel for Respondent No.1 draws the attention of this Court to the various provisions of the CIRP Regulations and the Insolvency And Bankruptcy Board Of India (Grievance And Complaint Handling Procedure) Regulations, 2017 (*hereinafter referred to as 'the 2017 Regulations'*) which have been framed for disposal of grievances and complaints against service providers including Resolution Professionals. He contends that under Regulation 7 of the 2017 Regulations, upon receiving a

complaint from any person regarding the nature and manner of performance of a service provider, including a Resolution Professionals, information is sought from both, the complainant and the service provider. The Board investigates into the matter and forms its opinion. If the Board finds that there is no merit in the complaint then the same is closed. However, if the Board is of the opinion that there exists a prima facie case, it may issue a show cause notice under Regulation 11 of the 2017 Regulations or order an investigation under Chapter III of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017. He states that in the present case though a preliminary report did find certain irregularities in the manner in which Respondent No.2 has proceeded with the CIRP procedure, however, in the final report barring two issues nothing adverse has been found against Respondent No.2 and the Board has come to the conclusion that no purpose would be achieved in proceeding ahead with the complaint of the Petitioner herein and the complaint was closed.

7. Heard the Counsels for the parties and perused the material on record.

8. In exercise of the powers conferred under sections 196, 217, read with section 240 of the Insolvency and Bankruptcy Code, 2016, the IBBI has brought out the 2017 Regulations. Regulation 7 of the said Regulations deals with disposal of a complaint and the same reads as under:

> "*7. Disposal of complaint.*
>
> *(1) The Board may seek additional information and records from the complainant and information and records from the concerned service provider to form a prima facie view whether the contravention alleged in the complaint is correct.*

(2) The complainant and the service provider shall submit the information and records sought under sub-regulation (1) within [seven] days thereof. [Provided that an additional time, not exceeding seven days, may be granted by the Board on request of the service provider.]

(3) [The Board shall investigate the information and records and form an opinion whether there exists a prima facie case within thirty days of the receipt of the complaint .].

(4) The Board shall close the complaint where it is of the opinion under subregulation (3) that there does not exist a prima facie case and communicate the same to the complainant.

(5) If the complainant is not satisfied with the decision of the Board under subregulation (4), he may request a review of such decision [within thirty days].

(6) The Board shall dispose of the review under sub-regulation (5) within thirty days of the receipt of the request for review by an order with an opinion whether there exists a prima facie case.

(7) Where the Board is of the opinion that there exists a prima facie case, it may issue a show cause notice under regulation 11 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 or order an investigation under Chapter III of Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017].

(8) Where the Board is of the opinion that the complaint is not frivolous, it shall refund the fee of two thousand five hundred rupees received under sub-regulation (3) of regulation 3"

9. This Court *vide* Order dated 03.02.2023 had directed the Respondent No.1 to file the Interim Report dated 13.01.2020 and the Final Report dated 29.05.2020 to satisfy itself about the nature and manner of investigation carried out by the Board against Respondent No.2. The said reports have been filed.

10. This Court has perused the Draft Inspection Report and the Final Inspection Report. A perusal of the Final Inspection Report shows that the Investigating Agency has thoroughly examined the complaint by recording the factual position on each aspect, the legal provisions applicable, the observations made in the Draft Inspection Report, the submissions made by the Insolvency Professional and the final observations, the summary of observations on all the aspects of allegations raised by Petitioner has been tabulated as under:

S. NO.	ALLEGATIONS NOTED BY THE IA	OBSERVATIONS OF THE IA	SUBMISSIONS OF THE IP	FINAL OBSERVATIONS OF THE IA
1	**Violation of Section 29 read with Regulation 36(4) of the IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 ('CIRP REGULATIONS 2016')** It has come to the notice of IA that Information Memorandum (IM) was published on the website of CD by IP on 9th December 2017.	The fact that IM got published by mistake by IP is not denied and accordingly, there is violation of Regulation 36 (4) of the CIRP Regulations.	IP has submitted that IM got erroneously published on the website. However, once the mistake was noticed, IM was removed from the website. IP has further submitted that IM contained majority of the information which is otherwise available in the public domain. Moreover, it also included List of Creditors which is otherwise required to be published on the website of CD as per IBC provisions.	The fact that IM got published by mistake and was thereafter removed does not absolve the IP from the act of omission and violation done by him. Accordingly, **the IA notes that there is violation of section 29 of the Code read with of regulation 36(4) of CIRP Regulations.** Also, **IP has violated clause 21 (Confidentiality) of Code of Conduct specified in First Schedule to IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) which requires that an IP must ensure that confidentiality of the information relating to processes is maintained at all times.**

2	**Violation of Regulation 13(2)(c) and 13 (2)(d) of the CIRP Regulations** The IA observed that list of creditors is not available on the website of the CD. Also, no proof has been submitted by IP to prove that creditors were made aware of the amount claimed, amount admitted, amount of interest, etc. by the IP.	IP has neither denied the fact nor has provided any evidence to the IA to show that the status of claims of creditors was timely communicated to the creditors either over e-mail or through any other mode. Also, the list of creditors was never published on the website of the CD. Moreover, the list of creditors filed with the AA only reflects Financial Creditors and no other creditor. Due to this, the IA is of the opinion that certain creditors may not be aware about the amount admitted by the IP along with the interest. Accordingly, there is violation of Regulation 13(2)(c) and 13 (2)(d) of the CIRP Regulations.	IP has submitted that list of creditors was included in the IM itself. However, when IM was removed from the website, the list of creditors also got removed. IP has further submitted the following: a) he has otherwise prepared and maintained register of all creditors/claims with full particulars and it was continuously updated. b) Though the list was not available on website, however, he has not left any single communication from any creditor un-replied. Accordingly, he had no intention to hide the details of any claims.	IPs act of removal of list of creditors from the website in order to rectify another violation of making available the IM on the website reflects his lack of understanding of the Code and regulations and thus, **violation of clause 10 of Code of Conduct specified in First Schedule to IP Regulations.** Further, IP has also failed to establish how the inclusion of all claims has been ensured by him by furnishing any documentary evidence towards timely communications having been made with the creditors. **Accordingly, IA notes that IP has violated regulation 13 of CIRP Regulations which, inter alia, requires that the list of creditors shall be displayed on the website, if any, of CD and filed with AA.**
3	**Issue pertaining to alleged violation of Regulation 36(1) of the CIRP Regulations** The Information Memorandum ('IM') is dated December 1, 2017. The RP was confirmed on 13th October 2017. It is noted by the IA that the IM does not contain certain information as listed in Regulation 36(2) of the CIRP Regulations.	The IA noted that there is timely delay in publication of IM as per Regulation 36(1) of the CIRP Regulations. However, the IA is of the opinion that IP has made its best efforts in obtaining information for preparation of IM and also mentioned the fact in the application filed under Section 19 of the Code Taking the aforesaid into consideration, IA noted that it cannot be concluded that IP intentionally delayed the process of publication of IM or failed to provide particulars as mentioned in Regulation 36(2) of the CIRP Regulations.	IP has submitted that IA's observations are self-explanatory and he has put in lot of efforts for getting information from suspended promoters. Further, IP has also filed application under section 19 of the Code to seeking necessary directions from AA.	IA notes the IP's submission with respect to difficulty in collation of information and in getting cooperation from the directors. IA further notes that application under Section 19 of the Code was filed to seek directions in this regard. **IA has no observation in this regard.**
4	**Issue pertaining to Non-verification of claims of Mr. Anil Kumar Tandon** As per the Pointwise reply to Complainant in the matter of Sandhya Prakash Limited numbered as File No. IBBI/CIRP/4038 dated 11th April 2019, the IP has submitted that *'on 26.09.2017 Anil Kumar Tandon*	The IA noted that , it cannot be concluded that IP failed to receive, collate or verify the claim of Mr. Tandon as the IP has through his conduct reflected his good faith in accepting and verifying claims. As there was	IP has submitted that IA's observations are self-explanatory.	**IA has no observation in this regard.**

	along with two others submitted their claim (Form C) and IRP reviewed their claim included Respondents claim in list of other/operational creditors as per nature of their transaction…… *The RP submits that Anil Kumar Tandon along with two others filed an IA 187 of 2018 in CP(IB) no. 113 of 2017 before the NCLT Ahmedabad Bench seeking directions from Adjudicating Authority to accept their claim as financial creditor after filing of Liquidation application, Mr. Tandon never approached and communicated to RP for his claim as financial creditor in entire CIRP period of 180 days except one personal meeting to ascertain his claim. Adjudicating Authority on 05.06.2018 directed COC to relook the grievances of the respondents and to consider it as per its merits and in accordance with the law…* *Because of the difference in opinion, RP filed application bearing IA No. 375 of 2018 before Hon'ble Adjudicating Authority, Ahmedabad bench seeking adjudication on whether Anil Kumar Tandon and two others can be considered as financial creditors…… Anil Kumar*	uncertainty with respect to category of claim of Mr. Anil Kumar Tandon, the IP has even sought clarification from NCLT, which has categorically held that the applicants (i.e. Mr. Anil Kumar Tandon) cannot be considered as financial creditors (order dated 18th September 2019 in IA No. 327 of 2018 in CP(IB) No. 113/NCLT/AHM/2017). In this regard, the IA is of the view that the conduct of IP is in good faith and do not attract violation of any provision pertaining to collecting, collating or verification of claims under the Code or CIRP Regulations.		
	Tandon along with two others also filed an application before Hon'ble Adjudicating Authority bearing I.A. No. 327 of 2018 to consider them as financial creditors. ***Hon'ble Adjudicating Authority heard both the matters and reserved it for orders on 29.11.2018 and both the applications are pending before Adjudicating Authority.*** *Therefore, such allegations that RP did not considered the claim of Anil Kumar Tandon and two others as Financial Creditors is baseless because only after 06.06.2018 amendment 'allottee' as per RERA come under the purview of financial creditors and RP reconsider their after amendment but because Anil Kumar Tandon and two others did not provide necessary documents RP did not get clarity and subsequently file application before Hon'ble Adjudicating Authority to adjudicate the claim of Financial Creditor because RP cannot adjudicate any claim. Hence, RP did his duty as per the provisions of the law and in absence of necessary documents left it on Hon'ble Adjudicating Authority to decide.'*			

5	**Issue pertaining to admission of exorbitant claim of JM Financial Asset Reconstruction Company Limited** The IA was provided with the Restructuring Agreement dated 18th April 2013 between CD, Mr. Bharat Patel, Mrs. Bharati Patel, Mrs. Smita Patel/s Surya Offset Printers (India) Private Limited on one side and M/s JM Financial Asset Reconstruction Company Private Limited on the other. The IA noted that the IP has admitted the interest @ 25% and additional 6% as per the term mentioned above. However, IA also notes that as per the document titled as '**Position of outstanding dues of financial creditors as on 14th September 2017**' – as per Section 21 of the Code for continuation of committee of creditors of Corporate Debtor, the % Voting share in the CoC has been assigned on the basis of the '***total amount of claim including interest***'. This can also be confirmed from the document titled '***List of Creditors of Sandhya Prakash Limited – Summary of status of claims received from creditors during CIRP period***' provided by the IP to the IA. Hence, on the basis of these, it is	The IA is of the opinion that IP has a duty to collect, collate and verify the claims received from the creditors. The verification can be from the documents of the Corporate Debtor or from the proof submitted by the creditor with its claim. It is submitted that the claim of JM Financial Asset Reconstruction Company Limited is on the basis of the Restructuring Agreement dated 18th April 2013 and the IP has verified the claim against this Restructuring Agreement. Accordingly, in view of the IA, it cannot be said that the IP failed in its duties by admitting the claim of M/s JM Financial Asset Reconstruction Company Limited.	IP has submitted that IA's observations are self-explanatory.	Decision of IP was based on terms of restructuring agreement entered by the CD and JM Financial Asset Reconstruction Company Limited and therefore, no irregularity was noticed. **IA has no observation in this regard.**
	concluded that the amount admitted of all the creditors (i.e. Financial Creditors, Operational Creditors and other creditors) is inclusive of interest. The IA further noted that it is because of the inclusion of interest amount in the total claim of Creditors that the share of JM Financial is **67.86% and the total claim is that of Rs. 136,98,90,117**/-. If the interest component is removed then the total claim of JM Financial as per the Restructuring Agreement dated 18th April 2013 between CD, Mr. Bharat Patel, Mrs. Bharati Patel, Mrs. Smita Patel, M/s Surya Offset Printers (India) Private Limited on one side and M/s JM Financial Asset Reconstruction Company Private Limited is **Rs. 28,93,60,709**/- (Rs. 21,34,44,661/- of HUDCO plus Rs. 7,59,16,048/- of Dena Bank). As per the Pointwise reply to Complainant in the matter of Sandhya Prakash Limited numbered as File No. IBBI/CIRP/4038 dated 11th April 2019, the IP has submitted that '*the claim has been taken into account on the basis of information/documents which have been provided by JM Financial and the relevant documents are*			

	duly stamped and executed financial contracts between the corporate debtor…'.			
6	**Issue pertaining to the Extra Expenses being incurred by the IP** The IA observed that except the 1st Meeting of CoC which was held in a 5* star in Bhopal, all other CoC meetings have been held in Mumbai at the office of CoC member or the office of RP. It is also been noted that the RP has been travelling in economy class for the meetings and visits to offices of CD in Bhopal. When asked about the 1st Meeting in a 5* star hotel during the on-site inspection by IA, the IP has stated that it was (i) due to security concerns and (ii) for getting all CoC members at comfort at the start of CIRP. Also, as per the 1st Minutes of the meeting it is observed that the fee payable to the RP is fixed at Rs. 1,50,000/- per month by the CoC and this fee is payable out of the running cash flow from the Mall of the Corporate Debtor.	IA noted that it cannot be said that IP is charging exorbitant fees or is incurring exorbitant expenses for the conduct of CIRP. Hence, there is no violation of CIRP Regulations in relation to exorbitant expenditure or fee by IP.	IP has submitted that IA's observations are self-explanatory.	An IP is obliged under Section 208(2)(a) of the Code to take reasonable care and diligence while performing his duties, including incurring expenses. Clause 27 of Code of Conduct specified in First Schedule to IP Regulations, inter alia, requires that an IP shall disclose all costs towards the insolvency resolution process costs, liquidations costs, or costs of the bankruptcy process, as applicable, to all relevant stakeholders, and must endeavour to ensure that such costs are not reasonable. IBBI Circular No. IBBI/IP/013/2018 dated 12th June 2018 has also issued clarifications regarding fee and other expenses incurred for CIRP. However, it is clarified that reasonableness is not amenable to any precise definition and is context specific. In the instant matter, based on the documents made available to the IA, no noticeable departure have been observed with respect to unreasonableness of expenses incurred by the IP. **Accordingly, IA has no observation in this regard.**
7	**Issue pertaining to absence of IP from the court proceedings** An allegation has been made stating that the IP did not appear in the proceedings before the Patiala House Courts, New Delhi and that in the said case, non-bailable warrants have been issued against the officers of the Corporate Debtor. When the IP was confronted on the matter he submitted (also confirmed vide Pointwise reply to Complainant in the	In view of the submissions of the IP and the fact that no document/notice has been received by the IP requiring presence of the IP in these matters, it cannot be said that the IP is willingly not attending these court proceedings. Accordingly, in view of the IA, the said allegation cannot be accepted in light of the limited facts in hand.	IP has submitted that IA's observations are self-explanatory.	**IA has no observation in this regard.**

	matter of Sandhya Prakash Limited numbered as File No. IBBI/CIRP/4038 dated 11th April 2019) that '*... the fact of the matter has been described by the complainant ACPL in the IA 186/2018 wherein he had asked for confirmation of amount due to ACPL for proceedings under Section 138 of the Negotiable Instruments Act, 1881 in Patiala Court.* ***It is submitted that these proceedings have been initiated by the complainant and no notice/warrant has been issued to me. Further, the criminal proceedings if any are personal in nature and might have been done against the promoters as mentioned in the complaint itself.*** *Further, insolvency proceedings are going on and this is very much in the knowledge of the suspended board and the complainant. Neither the court notice nor any warrant which usually happens in criminal case has been issued against me.*'			
8	**Delay in following CIRP process** Delays are noted in compliance with regulation 6(1), 17(1), 35(A), 36(1) and 36A of CIRP Regulations.	The IA notes that the model timeline was not present at the time of initiation of CIRP in this case. Even then, the IP has been able to meet most of the timelines. Except minor delays, there is no evidence to show that the IP intentionally did not meet timelines prescribed under the Code/Regulations or did not make its best efforts in meeting the said timelines. The major timeline of 180 days along with the extension of 90 days (i.e. T+270 days which comes to 10th September 2018 in the instant case) has been broadly met by the IP with filing of Liquidation Application on 25th September 2018. Accordingly, in view of the IA, these timeline violations may be dropped.	IP has submitted that most of the timelines have been followed by him, except a few with minor delays. Moreover, such minor delays could have also been avoided, had he received timely information /cooperation from the suspended promoters.	Model timelines were prescribed on 3rd July 2018 i.e, subsequent to initiation of CIRP. Considerable delay was observed with regard to appointment of Forensic Auditor (30th July 2018 i.e, after 320 days of ICD) and filing application to seek relief from AA (22nd January 2019 i.e, after 495 days of ICD). These delays are beyond the resolution time of 180 days envisaged under the Code. However, IP's submission on account of delay in receipt of information from suspended promoter and his application filed under section 19 of the Code in this regard, has also been considered by the IA. **Accordingly, IA has no observation in this regard.**

11. It is settled law that a High Court, while exercising its jurisdiction under Article 226 of the Constitution of India, only looks into the decision making process and unless it is found that the decision has been arrived at by adopting a process which is contrary to law or by adopting a procedure tailor made to help a particular party, Courts do not normally interfere. No material has been furnished by the Petitioner to substantiate that the Board

has acted in a manner to favour Respondent No.2 or to shield the mis-deeds of Respondent No.2, who is Insolvency Resolution Professional. In fact the final report records certain irregularities committed by Respondent No.2 which, this Court is sure, will be taken care of by the Board before appointing Respondent No.2 in further cases as Insolvency Resolution Professional.

12. Under Article 226 of the Constitution of India, this Court cannot substitute its own conclusion to the one arrived at by experts until and unless there is gross miscarriage of justice which strikes at the root of the case. A team of experts have considered the case and have arrived at a conclusion and this Court cannot hazard a venture into this domain. It is well settled that the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable.

13. Section 196 of the IBC delineates the powers and functions of the Board and the same reads as under:

> *"Section 196. Powers and functions of Board.*
>
> *(1) The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions namely:—*
>
> *(a) register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations;*
>
> *[(aa) promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of this Code;]*
>
> *(b) specify the minimum eligibility requirements for registration of insolvency professional*

agencies, insolvency professionals and information utilities;

(c) levy fee or other charges 2 [for carrying out the purposes of this Code, including fee for registration and renewal] of insolvency professional agencies, insolvency professionals and information utilities;

(d) specify by regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities;

(e) lay down by regulations the minimum curriculum for the examination of the insolvency professionals for their enrolment as members of the insolvency professional agencies;

(f) carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(g) monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(h) call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities;

(i) publish such information, data, research studies and other information as may be specified by regulations;

(j) specify by regulations the manner of collecting and storing data by the information utilities and for providing access to such data;

(k) collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases;

(l) constitute such committees as may be required including in particular the committees laid down in section 197;

(m) promote transparency and best practices in its governance;

(n) maintain websites and such other universally accessible repositories of electronic information as may be necessary;

(o) enter into memorandum of understanding with any other statutory authorities;

(p) issue necessary guidelines to the insolvency professional agencies, insolvency professionals and information utilities;

(q) specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder;

(r) conduct periodic study, research and audit the functioning and performance of to the insolvency professional agencies, insolvency professionals

and information utilities at such intervals as may be specified by the Board;

(s) specify mechanisms for issuing regulations, including the conduct of public consultation processes before notification of any regulations;

(t) make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code, including mechanism for time bound disposal of the assets of the corporate debtor or debtor; and

(u) perform such other functions as may be prescribed.

(2) The Board may make model bye-laws to be to adopted by insolvency professional agencies which may provide for—

(a) the minimum standards of professional competence of the members of insolvency professional agencies;
(b) the standards for professional and ethical conduct of the members of insolvency professional agencies;
(c) requirements for enrolment of persons as members of insolvency professional agencies which shall be non-discriminatory;"

14. Respondent No.1/Board is the authority to regulate the functioning of the Insolvency Professionals and the Board comprises of experts in the field who have been appointed by the Central Government to carry out the functions specified under Part IV of the IBC. It is well settled that Courts do not sit as an Appellate Authority over the decisions taken by the experts.

15. The Apex Court in Mansukhlal Vithaldas Chauhan v. State of Gujarat**, (1997) 7 SCC 622**, has observed as under:

> *"**25**. This principle was reiterated in Tata Cellular v. Union of India [(1994) 6 SCC 651 : AIR 1996 SC 11] in which it was, inter alia, laid down that the Court does not sit as a court of appeal but merely reviews the manner in which the decision was made particularly as the Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision which itself may be fallible. The Court pointed out that the duty of the Court is to confine itself to the question of legality. Its concern should be:*
>
> *1. Whether a decision-making authority exceeded its powers?;*
>
> *2. committed an error of law;*
>
> *3. committed a breach of the rules of natural justice;*
>
> *4. reached a decision which no reasonable tribunal would have reached; or*
>
> *5. abused its powers.*
>
> ***26**. In this case, Lord Denning was quoted as saying: (SCC pp. 681-82, para 83)*
>
> *"Parliament often entrusts the decision of a matter to a specified person or body, without providing for any appeal. It may be a judicial decision, or a quasi-judicial decision, or an administrative decision. Sometimes Parliament says its decision is to be final. At other times it says nothing about it. In all these cases the courts will not themselves take the place of the body to whom Parliament has entrusted the decision. The courts will not themselves embark on a rehearing*

of the matter. See Healey v. Minister of Health [(1955) 1 QB 221 : (1954) 3 All ER 449] ."

***27**. Lord Denning further observed as under: (p. 682)*

"If the decision-making body is influenced by considerations which ought not to influence it; or fails to take into account matters which it ought to take into account, the court will interfere. See Padfield v. Minister of Agriculture, Fisheries and Food [1968 AC 997 : (1968) 1 All ER 694] ."

(emphasis supplied)

***28**. In Sterling Computers Ltd. v. M&N Publications Ltd. [(1993) 1 SCC 445 : AIR 1996 SC 51 : (1993) 1 SCR 81] it was pointed out that while exercising the power of judicial review, the Court is concerned primarily as to whether there has been any infirmity in the decision-making process? In this case, the following passage from Professor Wade's Administrative Law was relied upon: (SCC p. 457, para 17)*

"The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which legislature is presumed to have intended."

(emphasis supplied)

***29**. It may be pointed out that this principle was also applied by Professor Wade to quasi-judicial bodies and their decisions. Relying upon the decision in R. v. Justices of London [(1895) 1 QB 214] . Professor Wade laid down the principle that where a public authority was given power to determine a matter, mandamus would not lie to compel it to reach some particular decision.*

***30**. A Division Bench of this Court comprising Kuldip Singh and B.P. Jeevan Reddy, JJ. in U.P. Financial Corpn. v. Gem Cap (India) (P) Ltd. [(1993) 2 SCC 299 : AIR 1993 SC 1435 : (1993) 2 SCR 149] observed as under: (SCC pp. 306-07, para 11)*

> *"11. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : AIR 1970 SC 150] . Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi-judicial authorities it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of*

> *discretion available to them. They have 'a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred'. (Lord Diplock in Secy. of State for Education and Science v. Tameside Metropolitan Borough Council [1977 AC 1014 : (1976) 3 All ER 665] AC at p. 1064.) The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene." (emphasis supplied)*

16. Similarly, the Apex Court in State of NCT of Delhi v. Sanjeev**, (2005) 5 SCC 181,** has held as under:

> *"**17.** The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.*
>
> ***18.** The famous case commonly known as "the Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1947) 2 All ER 680 : (1948) 1 KB 223 (CA)] " is treated as the landmark so far as laying down various basic principles relating to judicial review of administrative or statutory direction.*

19. *Before summarising the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.[Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1947) 2 All ER 680 : (1948) 1 KB 223 (CA)] (KB at p. 229 : All ER pp. 682 H-683 A). It reads as follows:*

> *"... It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority. ... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."*
>
> *Lord Greene also observed (KB p. 230 : All ER p. 683 F-G)*
>
> *"... it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not*

> *what the court considers unreasonable. ... The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another."* *(emphasis supplied)*

Therefore, to arrive at a decision on "reasonableness" the court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the court to substitute its view.

20. *The principles of judicial review of administrative action were further summarised in 1985 by Lord Diplock in CCSU case [(1984) 3 All ER 935 : 1985 AC 374 : (1984) 3 WLR 1174 (HL)] as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows : (All ER p. 950h-j)*

> *"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further*

> *development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community;"*
>
> *Lord Diplock explained "irrationality" as follows : (All ER p. 951a-b)*
>
> *"By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."*

> ***21.** In other words, to characterise a decision of the administrator as "irrational" the court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future.*

> ***22.** These principles have been noted in the aforesaid terms in Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] . In essence, the test is to see whether there is any infirmity in the decision-making process and not in the decision itself. (See Indian Rly. Construction Co. Ltd.* v. *Ajay Kumar* [(2003) 4 SCC 579 : 2003 SCC (L&S) 528] .)

17. As stated above, this Court does not find that the decision making process adopted by the Board or the decision based on the final report is

perverse or is contrary to law or against public interest, which would warrant interference from this Court under Article 226 of the Constitution of India. Court while exercising its jurisdiction under Article 226 of the Constitution of India while examining any enquiry report does not go into excruciating detailed facts nor does it substitute its conclusion to the one arrived at by the fact finding body. If the process adopted in the enquiry is fair, reasonable and transparent then the Writ Court does not interfere with the findings to substitute its own conclusion to the one arrived at by the authority simply because another view is possible

18. Accordingly, the writ petition is dismissed along with pending applications, if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 03, 2023
Rahul