

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH
Company Appeal (AT) (CH) (Ins.) No. 269/2022
&
I.A. Nos. 571, 572 & 623/2022

[Arising out of Order dated 01.07.2022 passed by the Adjudicating Authority/National Company Law Tribunal, Chennai Bench (Court – II) in IA/815/IB/2020 in CP/1307/IB/2018]

IN THE MATTER OF:

CA V. Venkata Sivakumar

No. 10/11, Dr. Subbarayan Nagar Main
Road,
Kodambakkam, Chennai – 600024.
Email – jsclliquidation@gmail.com

...Appellant

Versus

1. IDBI Bank Limited

Represented by Mrs. K. Bhoomalakshmi
General Manager, NPA Management Group
Branch office
115 Anna Salai, Saidapet
Chennai – 600015.
Email : k_bhoomalakshmi@idbi.co.in

...Respondent No.1

2. Insolvency Bankruptcy Board of India (IBBI)

Represented by Deputy General Manager
7th Floor, Mayur Bhawan, Shankar Market,
Connaught Circus,
New Delhi – 110001
Email : chairperson@ibbi.gov.in

...Respondent No. 2

3. Indian Institute of Insolvency Professionals of ICAI (IIPI)

Represented by Managing Director
ICAI Bhawan, 3rd Floor, Hostel Block, A-29,
Sector – 62, Noida,
Uttar Pradesh – 201309
Email : md.iiipi@icai.in

...Respondent No. 3

Present:

For Appellant : Mr. V. Venkata Sivakumar, erstwhile Liquidator.

For Respondent No. 1/ Caveator : Mr. Arun Kathpalia, Senior Advocate.
For Mr. Varun Srinivasan, Advocate.

For H1 Successful Bidder : Mr. P. Wilson, Senior Advocate.
For Ms. N. Kalaivani, Advocate.

For New Liquidator Mr. J. Manivannan, Advocate.

J U D G M E N T
(Virtual Mode)
(20.12.2022)

NARESH SALECHA, MEMBER (TECHNICAL)

The present `Appeal`, is filed against the `impugned order` dated 01.07.2022, passed in IA/815/IB/2020 in CP/1307/IB/2018, by the `Adjudicating Authority`, [National Company Law Tribunal, Chennai Bench (Court – II)], whereby, the `Adjudicating Authority`, dismissed the `Petition`, filed under the `Insolvency & Bankruptcy Code, 2016` (**in short `I & B Code`, 2016**).

Brief Facts:

2. Mr. V. Venkata Sivakumar is the `Appellant- in-person` herein and is an `Insolvency Professional` who was the `Liquidator` of `The Jeypore Sugar Company Ltd.` (“Corporate Debtor”) and was subsequently replaced by the `Adjudicating Authority` on the application of the 1st Respondent vide `impugned order` dated 01.07.2022 in IA/815/IB/2020 in CP/1307/IB/2018.

`IDBI Bank Limited` is the 1st Respondent herein and is a `Secured Financial Creditor` of the `Corporate Debtor` having a stake of 43.57% of the `Liquidation Process`.

‘Insolvency Bankruptcy Board of India’ (“IBBI”) is the 2nd Respondent and is the ‘Regulator’, under I & B Code, 2016.

Indian Institute of Insolvency Professionals of ICAI (IIPI) is the 3rd Respondent herein which is a professional body authorised to issue ‘Authorisation for Assignment’ (in short ‘**AFA**’).

3. ‘The Jeypore Sugar Company Ltd.’ (“Corporate Debtor”) was incorporated in 1936 and was engaged in manufacturing of sugar and allied products having factories located in Andhra Pradesh and Orissa. On failure to make repayments of various loans taken from the financial creditors including from the 1st Respondent herein, an Application under Section 7 of the I & B Code, 2016 was admitted by the ‘Adjudicating Authority’ on 25.02.2019 and the ‘Appellant’ herein was appointed as ‘Interim Resolution Professional’ and subsequently confirmed the ‘Appellant’ as a ‘Resolution Professional’. After the expiry of 330 days of the ‘Corporate Insolvency Resolution Process’, the ‘Adjudicating Authority’ ordered for liquidation of the ‘Corporate Debtor’ on 29.05.2020 and appointed the ‘Appellant’ as ‘Liquidator’.

4. It is the case of the 1st Respondent that during annual performance review of all ‘Insolvency Professionals’ empanelled with the bank, declarations were called for verification and review to decide on continuation of the services of ‘Insolvency Professionals’ and as part of this exercise an e-mail was sent to the ‘Appellant’ on 21.07.2020 asking him to submit the required documents and a self- declaration was received from the ‘Appellant’

through e-mail on the same day i.e. 21.07.2020 confirming that all the information/ undertakings/ affirmations/ documents submitted by the 'Appellant' at the time of empanelment continued to be valid, effective and in force and further confirmed that the 'Appellant' shall be bound by the terms and conditions contained in the original letter of empanelment dated 06.10.2018 issued by the 1st Respondent. It has been further brought out the notice of this 'Appellate Tribunal' by the 1st Respondent that Serial No. 8 of the 'Terms & Conditions' of the letter 'Empanelment', the "Insolvency Professionals" shall comply to requirements of the Code, the Rules, Regulations and Guidelines framed thereunder, the Model bye-laws of IPA with which he is enrolled and the resolutions passed and directives given by the IBBI.

5. Regulation 7A of "IBBI" 'Insolvency Regulation 2017' mandates the 'Insolvency Professionals' to have the 'AFA' in order to take assignments and without which they cannot be engaged in any capacity under the Provision of I & B Code, 2016. The 1st Respondent has claimed that an e-mail was sent on 06.08.2020 requesting the 'Appellant' to furnish a copy of 'AFA' issued by the 3rd Respondent and on the same date the 'Appellant' informed that he is not interested in getting empanelled with the 1st Respondent due to several assignment with the 'Appellant'. The 1st Respondent again sent an email on 06.08.2020 to the 'Appellant' to furnish the copy of 'AFA' since he has been continuing on the panel of the bank. However, the 1st Respondent did not get any response from the 'Appellant'. It is case of the

1st Respondent that he approached the 3rd Respondent and checked IDBI website and came to know that the 'Appellant' did not have valid 'AFA'.

6. On coming to the knowledge that the 'Appellant' did not have 'AFA' on the relevant date and has suppressed the facts, the 1st Respondent moved an application to the 'Adjudicating Authority' for 'Appellant's' removal in IA/815/IB/2020 in CP/1307/IB/2018 and the 'Adjudicating Authority' vide 'impugned order' dated 01.07.2020 replaced the 'Appellant' by new liquidator Mr. S. Hari Karthik under provision of Section 33 & 34 of I & B Code, 2016 r/w Section 16 of 'General Clauses Act, 1897' r/w Section 276 of the 'Companies Act, 2013'.

7. Aggrieved by the 'impugned order', the 'Appellant' has preferred the present appeal before this 'Appellate Tribunal'.

Appellant's Submissions:-

8. The 'Appellant' as 'Party -in- person' pleaded his own case in the present appeal. He gave the overall background of the case including the history of the 'Corporate Debtor' along with his appointment as 'Interim Resolution Professional', 'Resolution Professional' and 'Liquidator' by the 'Adjudicating Authority'. He also gave narrations of the circumstances in which the 'Respondents' in collusion sought to remove the 'Appellant' and illegality in the 'impugned order' ordering for 'Appellant' replacement as 'Liquidator' of the 'Corporate Debtor'.

9. The 'Appellant' further submitted that after introduction of Regulation 7A of "IBBI" 'Insolvency Regulation 2017', he applied for 'AFA' on 31.12.2019

for the first time which was rejected and was informed only on 16.07.2020 by the 3rd Respondent on telephone.

The 'Appellant' again applied for 'AFA' for second time on 01.08.2020 which was again rejected on 25.08.2020 citing violation of Regulation 7A and disciplinary proceedings were initiated by 2nd and 3rd Respondent. The 'Appellant' gave further details of 'Show Cause Notice', disciplinary proceedings and the fact that the 3rd Respondent imposed a fine of Rs.10,000/- on 01.12.2020 which was paid under protest

10. The 'Appellant' submitted that aggrieved from wrong action by the 'Respondents', he moved Writ Petition under Article 226 of the 'Indian Constitution' of the High Court Judicature in Madras in Writ Petition No. 4458 of 2020 & 4463 of 2021 and WMP No. 5086 & 5088 of 2021. The 'Appellant' stated that Hon'ble Madras High Court was pleased to grant an interim injunction and inspite of clear order of Hon'ble Madras High Court, the 1st Respondent persisted with petition IA/ 815/ 2020 before the 'Adjudicating Authority' without making 2nd and 3rd Respondents as necessary parties.

11. The 'Appellant' also mentioned that in the meanwhile he received fresh 'AFA' on 30.12.2020. The 'Appellant' further mentioned that he had brought to the notice of the 'Adjudicating Authority' of these new developments of getting fresh 'AFA' issued to him and interim stay by the Hon'ble Madras High Court vide order dated 26.02.2021. The 'Appellant' stated that the 'Adjudicating Authority' in open court acknowledged and stated as follows –

“As the Hon’ble Madras High Court has granted Interim Stay and since the matter is solved by issuing fresh AFA, this petition becomes infructuous” and reserved the matters for orders.

The ‘Appellant’ stated that to his dismay, the ‘Adjudicating Authority’ pronounced judgment removing him from the ‘Liquidator’ of the ‘Corporate Debtor’ contrary to oral orders made in the open court. The ‘Appellant’ stated that this is clearly a case of judicial misconduct.

12. The ‘Appellant’ mentioned that his whole intention was to get best value of the assets of the ‘Corporate Debtor’ and attempted to pay 100% of the claims of stakeholders and this fact was appreciated in 1st, 7th & 9th meeting of ‘Stakeholder Consultation Committee’ (“SCC”). The ‘Appellant’ stated that despite his best efforts, due to complications in the process, the ‘Appellant’ had to file SR/217/2020 seeking extension of ‘Corporate Insolvency Resolution Process’ period which was dismissed by the ‘Adjudicating Authority’ and pronounced for liquidation by appointing the ‘Appellant’ as the ‘Liquidator’. The ‘Appellant’ further submitted that thereafter the 1st Respondent (“IDBI Bank”) started complete non-cooperation and filed several petitions for the removal of the ‘Appellant’.

13. The ‘Appellant’ submitted that the 1st Respondent with *mala-fide* intentions sought to remove the ‘Appellant’ as ‘Liquidator’ despite knowing that since then the ‘Appellant’ had got proper ‘AFA’ and also Hon’ble Madras High Court had given Interim Stay. The ‘Appellant’ further submitted that the 2nd and 3rd Respondent condoned the lapse of the ‘Appellant’ for taking

assignment in the present case without having 'AFA' by imposing fine of Rs. 10,000/-.

14. The 'Appellant' assailed the conduct of the Technical (Member) of the 'Adjudicating Authority' and accused him for bias against the 'Appellant'. The 'Appellant' submitted that very fact of pronouncing the 'impugned order' on the very last day of his tenure on 01.07.2022, despite many orders were not pronounced establishes that the Technical Member's bias towards the 'Appellant'. The 'Appellant' mentioned that although the 'impugned order' of the 'Adjudicating Authority' was written by the 'Judicial Member' of the 'Adjudicating Authority' but the 'Member Technical' of the 'Adjudicating Authority' was in fact the defacto author of the 'impugned order'. The 'Appellant' also stated that the 'impugned order' was incorrect and he could not have been removed as 'Liquidator' as per law. The 'Appellant' also raised the issue of judicial impropriety and issue of non est since the 'Adjudicating Authority' relying on issues raised in IA/255/2021 as passed the order which was already decided and stayed by this 'Appellate Tribunal'.

15. The 'Appellant' further assailed the 'impugned order' being in disregard to stay order of Hon'ble Madras High Court, ignoring decision of this 'Appellate Tribunal' in case of '**Dhinal Shah Vs Bharathi Defence**', also ignoring this 'Appellate Tribunal' specific directions in CA (AT) (Ins.) No. 236 of 2022, relying on false evidence and removing 'Liquidator' who has been doing good job for past four years with exceptional dedication and rather appointed an inexperienced liquidator. The 'Appellant' submitted that the 'impugned order' has been issued with *mala-fide* intentions exercising

arbitrary powers, total abuse of judicial process resulting into gross violation of principles of natural justice and miscarriage of justice.

16. The 'Appellant' brought to the notice that the 1st Respondent was against him because of his refusal to accept 'Resolution Plan' submitted by 'Benamies' and 'Ex-Promoters' since they were hit by Section 29(A) of the I & B Code, 2016.

17. The 'Appellant' submitted that Regulation 7A of "IBBI" 'Insolvency Regulation 2017' came into effect from 31.12.2019 and his application for granting 'AFA' filed with 3rd Respondent on 31.12.2019 and in terms of Clause 12(A) (5) 'Insolvency and Bankruptcy Board of India (Model Bye -Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 Vide Notification No. IBBI/2016-17/GN/REG001, dated 21st November, 2016 the 'AFA' was deemed to have been received by him since he did not receive any intimation from 3rd Respondent by 14.01.2020.

18. The 'Appellant' also pointed out that the Ex- Promoters filed IA No.579 of 2022 on 31.05.2022 making serious allegations against the 'Appellant' which was heard and order was reserved by the 'Adjudicating Authority' without giving opportunity to the 'Appellant' of being heard and granted interim stay in disregard to Hon'ble Orissa High Court. The 'Appellant' further stated that he had challenged the order vide CA(AT) (Ins.) No. 236 of 2022 before this 'Appellate Tribunal' and the order was passed by the 'Adjudicating Authority' was quashed with a specific direction on the compliance of principle of natural justice.

19. The 'Appellant' stated that the 1st Respondent has moved the application to the 'Adjudicating Authority' for his removal primarily on five grounds i.e.

(a) Violation of Regulation of 7A of "IBBI" 'Insolvency Regulation 2017'.

(b) Removal of the 'Appellant' as the 'Liquidator' under Section 16 of 'General Clauses Act, 1897' r/w Section 276 of the 'Companies Act, 2013'.

(c) Personal attack on 'Appellant's' character for continuing as a liquidator.

(d) Wrongful sharing of valuation report by the 'Appellant'.

(e) Depicting the 'Appellant' as delinquent person.

20. The 'Appellant' stated that as regard the first ground i.e. Violation of Regulation of 7A of "IBBI" 'Insolvency Regulation 2017' is not maintainable. Regulation 12(5) of 'Insolvency and Bankruptcy Board of India (Model Bye - Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 Vide Notification No. IBBI/2016-17/GN/REG001, dated 21st November, 2016 mentions that if the 'AFA' is not issued, renewed or rejected by the Agency within fifteen days of the date of receipt of application, the authorisation shall be deemed to have been issued or renewed, as the case may be, by the Agency. The 'Appellant' pointed out that he had applied for 'AFA' way back on 31.12.2019 and since he did not receive any reply from

the 3rd Respondent within 15 days, the 'AFA' was deemed to have been issued.

The 'Appellant' stated that decision by 3rd Respondent should have been taken by 14.01.2020 but was communicated only on 16.07.2020 on telephone.

The 'Appellant' stated that in any case he was subsequently issued fresh 'AFA' on and since he had the valid 'AFA' there was no question for his removal.

The 'Appellant' further stated that the Hon'ble Madras High Court had already given an Interim Stay to the 'Respondents' in W.M.P. No. 5088 of 2021 in W.P. No. 4458 of 2021 and therefore it was incorrect on part of 1st Respondent to seek his removal on this ground and the 'Adjudicating Authority' erred in issuing the 'impugned order' without considering above valid reasons.

21. The 'Appellant' stated that as regard the second ground i.e. his removal as 'Liquidator' taking shelter of Section 16 of 'General Clauses Act, 1897' r/w Section 276 of the 'Companies Act, 2013', it need to be noted that I & B Code, 2016 is a complete Code and its Regulation 3 of 'Liquidation Process Regulations' clearly specifies ground for the removal of 'Liquidator'. In such circumstances applying Section 16 of 'General Clauses Act, 1897' r/w Section 276 of the 'Companies Act, 2013' is bad in law. The 'Appellant' further submitted that this 'Appellate Tribunal' has gave the ruling in the judgement of this 'Appellate Tribunal' in "**Kiran Shah Vs. Punjab National**

Bank” CA (AT)(Ins.) No. 102 of 2020 where it has been held that there is no provision in the code for removal of liquidator based on the complaint of a financial creditor who is only a claimant in liquidation. The ‘Appellant’ further accused that CMD and General Manager of the 2nd Respondent i.e. IDBI Bank Ltd. were against the ‘Appellant’ since he did not approve the ‘Resolution Plan’ from ineligible applicants and also accused that both CMDs and General Manager of 1st Respondent were acting against the economic interest of the country and the Financial Interest of the IDBI Bank Ltd. itself.

22. The ‘Appellant’ stated that as regard the third ground i.e Personal attack on ‘Appellant’s’ character for continuing as a liquidator especially in view of para 17 of the ‘impugned order’. The ‘Appellant’ accused the ‘Adjudicating Authority’ (Technical Member) for giving selective references of proceedings in IA/255/ 2021 of July 2021 but have not referred to the Interim Stay granted by the Hon’ble Madras High Court in W.M.P. No. 5088 of 2021 in W.P. No. 4458 of 2021. The ‘Appellant’ denied all allegations regarding his personal misconduct and stated that he has been doing very good work which was appreciated earlier by stakeholders committee and was strictly doing work in interest of company and the nation.

23. The ‘Appellant’ stated that as regard the forth ground i.e Issue concerning sharing of valuation report, the ‘Adjudicating Authority’ included this ground which was not pleaded in the petition and is a subject matter of CA (AT) (Ins.) No. 302 of 2021 and CA (AT) (Ins.) No. 08 of 2022 being heard by this ‘Appellate Tribunal’ having different Respondents. The ‘Appellant’ stated that the ‘Appellant’ has not done anything in violation of the

Regulations and the same will be defended at the time of hearing the petition on 23.11.2022.

24. The 'Appellant' stated that as regard the fifth ground i.e Depicting the 'Appellant' as delinquent person, the 'Respondents' have been giving wrong facts like referring to 'Contempt Petition' in Madras High Court, Transfer Petition No. TP/14/2022 before NCLT President and wrong interviews by the 'Appellant' in tarnishing images of the 'Adjudicating Authority' etc. The 'Appellant' alleged that all these are misleading and far from truth. The 'Appellant' alleged that he was given merely five minutes to present his case before the 'Adjudicating Authority' in contrast to 95 minutes to the 'Respondents'.

25. The 'Appellant' again submitted that after closer of disciplinary committee proceedings by the 3rd Respondent, who issued fresh 'AFA' to approximately 300 Insolvency Professionals including the 'Appellant', the petition IA/815/2020 became infructuous and the 'Adjudicating Authority' should have taken dealt IA/815/2020 accordingly rather than pronouncing illegal 'impugned order'.

26. The 'Appellant' also stated that the he had moved a Writ Petition No. 13229 of 2020 before the Hon'ble Madras High Court and the Hon'ble Madras High Court have gave the following remarks in para 4 of the 'impugned order'

"The Appellant on coming to know about the rejection filed an Appeal before the 2nd Respondent and also moved Hon'ble Madras High Court vide W.P.13229 of 2020 and in Para 3 of the Impugned Order:

"As stated earlier, the aforesaid Regulation 7A of the IP Regulations and Regulation 12A of the Model Bye-Laws IPA Regulations are under challenge in this writ petition. the Petitioner states that he applied for an, AFA 2 14 in terms of Regulation 7A of the IP Regulations on 31-12-2019 and his application was rejected on 14-01-2020, inter alia, on the ground that he had not paid the requisite fee as per Regulation 7(2)(ca). In spite of providing proof of payment and the acknowledgment dated 28- 04-2019, in that connection, his application Was rejected."

The Petitioner further states that the rejection of the application for AFA was communicated to him on 16.07.2020 when the third Respondent informed the Registry of the National Company Law Tribunal at Chennai that the Petitioner was not authorized to act as an IP."

27. The 'Appellant' resubmitted that 2nd and 3rd Respondent issued show cause notice for violation of Regulation of 7A of "IBBI" 'Insolvency Regulation 2017', however it has been disposed of the same, by imposing the fine of Rs. 10,000/- vide order DC. No. IIIPI/DC/29/2020-21 and dated 01.12.2020 granted the AFA mentioning in Para 8 as follows:-

"Taking an overall view of the aforesaid, the DC is of the opinion that Respondent is guilty of Professional Misconduct. At the same time, the DC also took note of the fact that the Regulation was newly introduced and thus, inclined to take a lenient view." The 'Appellant' stated that in view of this, the issue of 'AFA' becomes irrelevant and should have been taken care in the 'impugned order' accordingly."

28. The 'Appellant' concluding his arguments sought the reliefs including setting aside the 'impugned order'.

Respondent's Submissions:-

29. The Learned Counsel for the Respondents opposed the admission of the appeal, which according to them devoid of any merits and need to be dismissed with costs. The Learned Counsel for the Respondents stated that contents of the appeal are denied in toto. The Learned Counsel for the Respondents submitted that the 'impugned order' has been passed after factoring into account all the facts and relevant laws on the subject. The Learned Counsel for the Respondents also pointed out that while approving the replacement of the liquidator, all applicable regulations and procedures were fully met with.

30. The Learned Counsel for the Respondents gave the background of the case and circumstances and reasons for moving IA/815/2020 for removal of the 'Appellant' from the 'Liquidator' of the 'Corporate Debtor'. The Learned Counsel for the Respondents further stated that the 1st Respondent is a 'Secured Financial Creditor' having stake of 43.57% in the liquidation process moved an IA/815/2020 against the 'Appellant' herein on several grounds including non holding of valid 'AFA' on the date of his appointment as liquidator vide order of the 'Adjudicating Authority' on 29.05.2020. The Learned Counsel for the Respondents submitted that in the same order the 'Adjudicating Authority' recorded as under :-

"It is observed that while ordering liquidation, the Hon'ble Adjudicating Authority, Chennai Bench had at Paragraph 13 of the said Order dated 29.05.2020 stated as follows:

The Resolution Professional expressed his willingness to continue as the liquidator and has also filed his Written consent, which is placed along with the typed set to the application and a perusal of the same discloses the fact that the Resolution Professional is willing to act as the Liquidator of the Corporate Debtor, if appointed by this Tribunal. In the circumstances, V. Venkata Sivakumar, having Reg.No.IBBI/IPA-0001/IP-PO0184/2017-18/1 0852 is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions.

a) The Liquidator shall strictly act in accordance with the provisions of IBC 2016 and the attendant Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon him.”

31. The Learned Counsel for the Respondents stated that an annual review for the performance of Insolvency professional empanelled with it was done and in the process the ‘Appellant’ was asked to provide self declaration that all the documents and information submitted by the ‘Appellant’ to the ‘Respondents’ as per law are valid, effective and in full force vide the Appellant’s letter dated 21.07.2020 to the 1st Respondent. However, during the course of this exercise, it came to the notice that the ‘Appellant’ did not have a valid ‘AFA’ as mandatory requirement as per Regulation of 7A of “IBBI” ‘Insolvency Regulation 2017’, the same fact was also corroborated from the website of IBBI.

32. The Learned Counsel for the Respondents submitted that an e-mail was sent to the ‘Appellant’ asking for all information on 21.07.2020 however

the 'Appellant' replied back on the same day stating that since the 'Appellant' has got number of assignments the 'Appellant' has no interest in the assignment of the 1st Respondent. The Learned Counsel for the Respondents further submitted that since the 'Appellant' had already been appointed as 'Liquidator' he was again asked to submit the details. On not getting any reply from the 'Appellant', the 1st Respondent had to write letter to the 3rd Respondent on 10.08.2020 seeking information on status of the 'AFA' of the 'Appellant' and the 3rd Respondent replied that on 20.08.2020 advising that as per their record, the current status of the 'AFA' of the 'Appellant' is 'NIL'. The Learned Counsel for the Respondents pointed out that as per I & B Code, 2016 it is mandatory requirement for valid 'AFA' for giving any assignment and therefore, the 1st Respondent moved to the 'Adjudicating Authority' seeking the 'Appellant' removal as the 'Liquidator'.

33. The Learned Counsel for the Respondents emphasised that their was no infirmity in the 'impugned order' dated 01.07.2022 and further stated that it is very unfortunate that the 'Appellant' is making baseless, malicious, wrongful and motivated statements castigating the Technical (Member) of the 'Adjudicating Authority'. The Learned Counsel for the Respondents submitted that the 'Appellant' removal was on several grounds including non possession of the 'AFA', illegal sharing of valuation report of the 'Corporate Debtor' with prospective 'Resolution Applicants' etc.

34. The Learned Counsel for the Respondents submitted that the 'Appellant' argued that he can only be removed only on the grounds of corruption is a moonshine argument. The Learned Counsel for the

Respondents stated that the authority who appointed the 'Liquidator' has adequate powers to remove also. The Learned Counsel for the Respondents further submitted that these powers are inherent in terms of Section 16 of 'General Clauses Act, 1879' r/w Section 276 of the 'Companies Act, 2013' r/w Section 33 & 34 of the I & B Code, 2016 r/w Rule 11 of the NCLT Rules, 2016.

This fact was also confirmed by this 'Appellate Tribunal' in CA (AT) (Ins.) No. 754 of 2020 vide order dated 07.09.2020 where the 'Adjudicating Authority' gave the ruling that the *"If there is any irregularity, as contended by the learned counsel for the Appellant, he shall be at liberty to bring it to the notice of the Adjudicating Authority who may have a re-look at the appointment of 'Liquidator' so far as the authorisation of Respondent No. 1 is concerned and pass appropriate order"*.

35. The Learned Counsel for the Respondents refuted the issue raised by the 'Appellant' regarding non application of Section 7A of IBBI (Insolvency Professional) Regulation 2016 and stated that it is mandatory for 'Insolvency Professional' to hold a valid 'AFA' on the date of acceptance or commencement of assignment after 31.12.2019. The Learned Counsel for the Respondents further stated that it is admitted fact that the 'Appellant' did not have valid 'AFA' on the date of acceptance of the assignment. The order of the 'Adjudicating Authority' was very clear that the 'Liquidator' shall strictly act in accordance with the provisions of the I & B Code, 2016 and Rules & Regulations as amended up to date enjoined upon him and the 'Appellant' gave wrong written submissions and declarations and

purposefully concealed the vital information. The Learned Counsel for the Respondents stated that the 'Liquidator' acts as quasi-judicial authority and should act with very high standards and not in the manner he conducted himself.

36. The Learned Counsel for the Respondents brought to the notice that the 3rd Respondent issued a show cause notice to the 'Appellant' on 31.08.2020 for taking up assignment of the 'Corporate Debtor' as 'Liquidator' without proper 'AFA' and after following due process the disciplinary committee of the 3rd Respondent imposed penalty of Rs. 10,000/-. The Learned Counsel for the Respondents pointed out that it is relevant to note the remarks of the 3rd Respondent which are as under :-

"7.0 In view of the foregoing, the DC noted that since the change of role of an IP from IRP to RP and subsequently to Liquidator are stand-alone assignments and the assignment as Liquidator to which the respondent got confirmed on 29.05.2020, is beyond the prescribed threshold dated i.e. 31.12.2019. Therefore, this tantamount to the non-compliance of the regulatory provisions.

8.0 Taking an overall view of the aforesaid, the DC is of the opinion that Respondent is guilty of Professional Misconduct. At the same time, the DC also took note of the fact that the regulation was newly introduced and thus, inclined to take a lenient law."

37. The Learned Counsel for the Respondents stated that the order of the Interim Stay of the Hon'ble Madras High Court in WMP 5088 of 2021 in WP 4458 of 2021 has no relevance in the present case. The Learned Counsel for the Respondents further stated that reading of Appellant's writ petition it is

clear that the 'Appellant' sought relief against the order passed by 3rd Respondent (disciplinary committee)', order issued vide DCNo. IIIPI/DC/29/2020-21 on 01.12.2020 which is valid only for initiating disciplinary proceedings against the 'Appellant'. The Learned Counsel for the Respondents took pains to explain that this relief has got nothing to do with issue of stay on removal of the 'Appellant' as the 'Liquidator' by the 'Adjudicating Authority'.

38. The Learned Counsel for the Respondents submitted that the 'Appellant' has filed another Writ Petition No. 13229 of 2020 before Hon'ble Madras High Court challenging constitutional validity of Regulation 7A of IBBI 'Insolvency Professional' Regulation 2016 r/w bye laws 12A 'Insolvency and Bankruptcy Board of India (Model Bye -Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, claiming that Article 14, 19 & 21 of the 'Constitution' are violated by the Regulations. The Learned Counsel for the Respondents submitted that after detailed examinations including going through the legality and citing several judgements, the Hon'ble Madras High Court dismissed Writ Petition of the 'Appellant'. The Learned Counsel for the Respondents further submitted that it is therefore, clear that all actions taken by the 'Respondents' is strictly in accordance with the law and therefore the arguments raised by the 'Appellant' are only to derail the process of liquidation.

39. The Learned Counsel for the Respondents pointed out that the 'Appellant' himself has admitted in IA/815/2020 before the 'Adjudicating Authority' that his 'AFA' was issued by 3rd Respondent only on 30.12.2020,

whereas he has taken the assignment on 29.05.2020 i.e. much prior to the date of 'AFA' in his favour. The Learned Counsel for the Respondents repeated that after 31.12.2019, it is mandatory for all 'Insolvency Professionals' to accept any assignment under I & B Code, 2016 only if he has got valid 'AFA'. The Learned Counsel for the Respondents emphasised that the 1st Respondent has taken all the action as per law and false accusations of the 'Appellant' against the top management of the 1st Respondent is with *mala-fide* intention only for continuation as the 'Liquidator' for ulterior motives.

40. The Learned Counsel for the Respondents assailed the conduct of the 'Appellant' who has made accusations against the Technical (Member) of the 'NCLT' and has also written against the Judicial (Member) of 'NCLT' vide letter dated 03.10.2021. The Learned Counsel for the Respondents further assailed the conduct of the 'Appellant' where he has filed several writ petitions before different High Courts including Hon'ble Madras High Court and Hon'ble Orissa High court and filed several Interlocutory Applications before the 'Adjudicating Authority' and this 'Appellate Tribunal' against the 1st Respondent (IDBI/ 'Financial Creditor'), the 2nd Respondent (IBBI/ 'Regulator') and 3rd Respondent (IIPI/ 'A professional body created by the Institute of Chartered Accountant of India') which itself is creation of the statute. The Learned Counsel for the Respondents further stated that the 'Appellant' has filed the Writ Petition before Hon'ble Madras High Court and making the 'NCLT', 'NCLAT' and even 'Ministry of Corporate Affairs' as the 'Respondents' challenging the same 'impugned order' dated 01.07.2022

passed in IA/815/2020 in CP/1307/IB/2018 which is being heard by this 'Appellate Tribunal'. The Learned Counsel for the Respondents stated that the 'Appellant' is in habit of forum shopping as well as labelling malicious allegations against concerned authorities as an intimating strategy and therefore urged this 'Appellate Tribunal' to take a serious view.

41. The Learned Counsel for the Respondents pointed out that there is no retrospective applicability of the 'AFA' and therefore, all action taken by the 'Appellant' prior to 30.12.2020 are null & void and bad in law. The Learned Counsel for the Respondents emphasised that all the lenders of the 'Corporate Debtor' with 100% majority has sought for the removal of the 'Appellant' as per minutes of the 'Joint Lender Meeting' held on 06.07.2022 and all lenders appreciated long awaited order of the 'Adjudicating Authority' removing the 'Appellant' from liquidator and authorised the 1st Respondent to defend for appeal by the 'Appellant' on their behalf and agreed to share legal expenses including advocate and senior counsel's fee as per lenders share in liquidation claim. The Learned Counsel for the Respondents stated that this clearly shows the deep sentiments of the lenders who have absolutely no trust in the 'Appellant'. The Learned Counsel for the Respondents also submitted that there can not and should not be any vested interest of the 'Liquidator' to continue if he breaches the provisions of the I & B Code, 2016 and lost the faith and confidence of the lenders.

42. The Learned Counsel for the Respondents submitted that the 'Appellant' has unsuccessfully challenged before the Hon'ble Madras High Court the validity of Regulation 7A of IBBI (Insolvency Professional)

Regulation 2016 as well as Regulation 12A of 'Insolvency and Bankruptcy Board of India (Model Bye -Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 Vide Notification No. IBBI/2016-17/GN/REG001, dated 21.11.2016 and failed miserably and writ petition was dismissed.

43. The Learned Counsel for the Respondents submitted that the 'Appellant' has illegally shared the valuation report of the 'Corporate Debtor' to the 'Resolution Applicant' which was viewed seriously by the 'Adjudicating Authority'. The Learned Counsel for the Respondents further submitted that as per Insolvency Bankruptcy Board of India (Insolvency Professionals) Regulation 2016, Clause 21, "An insolvency professional must ensure that confidentiality of the information relating to the insolvency resolution process, liquidation or bankruptcy process, as the case may be, is maintained at all times. However, this shall not prevent him from disclosing any information with the consent of the relevant parties or required by law.", regarding confidentiality for 'Insolvency Professional' is to be maintained at all time and as per Insolvency Bankruptcy Board of India (Liquidation Process) Regulation 2016, Clause 34 **"Asset Memorandum"** Sub Clause (5) "the asset memorandum shall not be accessible to any person during the course of liquidation, unless permitted by the Adjudicating Authority." It is only 'Assets Memorandum' which is to be prepared and this 'Assets Memorandum' cannot be allowed to be accessed to any person during course of liquidation unless permitted by the 'Adjudicating Authority'. The Learned Counsel for the Respondents submitted that it is therefore very clear that there is legal

bar on the 'Liquidator' to share valuation report with prospective 'Resolution Applicant.' The Learned Counsel for the Respondents pointed out that if shared with the Applicant, the likely bids from a 'Resolution Applicant' may tend to be near such valuation report. As such, there is confidential clause and a sacrosanct procedure laid down and the 'Liquidator' deliberately breached the same and the 'Appellant' is still justifying his illegal actions.

44. The Learned Counsel for the Respondents concluded his arguments taking strong objection to the content of the 'Appeal' especially bald and wild allegations against the Hon'ble Members of the 'NCLT' and urged for dismissal of the 'Appeal'.

Findings

45. Heard Learned Counsel for the Appellant and the Respondents and also perused record made available to us. Several issues have been raised in the Appeal which are required to be deliberated upon before coming to final conclusion.

(I) (a) Whether the 'Appellant' had valid Authorisations for Assignment ("AFA") on the date of his appointment as the 'Liquidator' of the 'Corporate Debtor'?

(b) Whether, the 'AFA' was deemed to have been issued in terms of Regulation 12A of the 'Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 Vide Notification No. IBBI/2016-17/GN/REG001, dated 21st November, 2016.

(c) Whether, the 'AFA' issued subsequent to taking up assignment by the 'Appellant', absolve 'Appellant' of meeting requirement of Regulation 7A of IBBI 'Insolvency Professional' Regulation 2016.

(d) Whether, the Regulation 12A of the 'Insolvency and Bankruptcy Board of India (Model Bye -Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 Vide Notification No. IBBI/2016-17/GN/REG001, dated 21st November, 2016 will prevail over Regulation 7A of IBBI 'Insolvency Professional' Regulation 2016.

(II) Whether the order passed by Hon'ble Madras High Court in W.M.P. No. 5088 of 2021 in W.P. No. 4458 of 2021 WP No. 4458 of 2021 has any bearing on the current case?

(III) Whether the 'Adjudicating Authority' can remove the 'Liquidator' ?

46. Issue (I) (a) Whether the 'Appellant' had valid Authorisations for Assignment ("AFA") on the date of his appointment as the 'Liquidator' of the 'Corporate Debtor'?

(b) Whether, the 'AFA' was deemed to have been issued in terms of Regulation 12A of the 'Insolvency and Bankruptcy Board of India (Model Bye -Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 Vide Notification No. IBBI/2016-17/GN/REG001, dated 21st November, 2016.

(c) Whether, the 'AFA' issued subsequent to taking up assignment by the 'Appellant', absolve 'Appellant' of meeting requirement of Regulation 7A of IBBI 'Insolvency Professional' Regulation 2016.

(d) Whether, the Regulation 12A of the ‘Insolvency and Bankruptcy Board of India (Model Bye -Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 Vide Notification No. IBBI/2016-17/GN/REG001, dated 21st November, 2016 will prevail over Regulation 7A of IBBI ‘Insolvency Professional’ Regulation 2016.

- Before examining these issues, it will be necessary to look into provisions of the I & B Code, 2016, related Regulations and Bye Laws.
- **Sections of IBBI (Insolvency Professional) Regulations, 2016**
- **Definition 2 (1)**

(a) “Assignment” means any assignment of an insolvency professional as interim resolution professional, resolution professional, liquidator, bankruptcy trustee, authorised representative or in any other role under the Code.

(aa) “authorisation for assignment” means an authorisation to undertake an assignment, issued by an insolvency professional agency to an insolvency professional, who is its professional member, in accordance with its bye-laws.

Authorisation for assignment 7A

“An insolvency professional shall not accept or undertake an assignment after 31st December, 2019 unless he holds a valid authorisation for assignment on the date of such acceptance or commencement of such assignment, as the case may be:

Provided that provisions of this regulation shall not apply to an assignment which an insolvency professional is undertaking as on-

- (a) 31st December, 2019; or
(b) the date of expiry of his authorisation for assignment”

[emphasis supplied]

“12A. Authorisation for Assignment.

Regulation 12A of the ‘Insolvency and Bankruptcy Board of India (Model Bye -Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016

(1) The Agency, on an application by its professional member, may issue or renew an authorisation for assignment.

(2) A professional member shall be eligible to obtain an authorisation for assignment, if he-

(a) is registered with the Board as an insolvency professional;

(b) is a fit and proper person in terms of the Explanation to clause (g) of regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016;

(c) is not in employment;

(d) is not debarred by any direction or order of the Agency or the Board;

(e) has not attained the age of seventy years;

(f) has no disciplinary proceeding pending against him before the Agency or the Board;

(g) complies with requirements, as on the date of application, with respect to-

(i) payment of fee to the Agency and the Board;

(ii) filings and disclosures to the Agency and the Board;

(iii) continuous professional education; and

(iv) other requirements, as stipulated under the Code, regulations, circulars, directions or guidelines issued by the Agency and the Board, from time to time.

(3) An application for issue or renewal of an authorisation for assignment, shall be in such form, manner and with such fee, as may be provided by the Agency:

Provided that an application for renewal of an authorisation for assignment shall be made any time before the date of expiry of the authorisation, but not earlier than fortyfive days before the date of expiry of the authorisation.

(4) The Agency shall consider the application in accordance with the bye-laws and either issue or renew, as the case may be, an authorisation for assignment to the professional member in Form B or reject the application with a reasoned order.

(5) If the authorisation for assignment is not issued, renewed or rejected by the Agency within fifteen days of the date of receipt of application, the authorisation shall be deemed to have been issued or renewed, as the case may be, by the Agency.

(6) An authorisation for assignment issued or renewed by the Agency shall be valid for a period of one year from the date of its issuance or renewal, as the case may be, or till the date on which the professional member attains the age of seventy years, whichever is earlier.

(7) An applicant aggrieved of an order of rejection of his application by the Agency may appeal to the Membership Committee within seven days from the date of receipt of the order.

(8) The Membership Committee shall pass an order disposing of the appeal by a reasoned order, within fifteen days of the date of receipt of the appeal.”

[emphasis supplied]

- Reading the Regulation 7A of IBBI (Insolvency Professional) Regulation 2016, it is clear that no Insolvency Professional shall accept or undertake any assignment after 31.12.2019 unless he holds a valid ‘AFA’ on the date of acceptance or commencement of such assignment.
- The ‘Appellant’ was appointed as the ‘Liquidator’ by the order of ‘Adjudicating Authority’ on 29.05.2020. After carefully examining the dates of the letter by the 3rd Respondent and the ‘impugned order’ of ‘Adjudicating Authority’, it is clear that the ‘Appellant’ did not have the valid AFA on date of acceptance of the ‘Liquidator’.
- Further, all the assignments as an ‘Interim Resolution Professional’, ‘Resolution Professional’, ‘Liquidator’ etc. are to be treated as independent assignments and one assignment cannot automatically give extension to next assignment. It is thus, natural that the ‘Appellant’ needs to comply to the requirements of the particular appointment. In this case, the criteria need to be met at the different stages and at the time of liquidation, the ‘Appellant’ is duty bound to comply with the Regulations. It has already been seen that the Regulation 7A of IBBI (Insolvency Professional) Regulation 2016 mandated the ‘Appellant’ to have a valid ‘AFA’.

- It is the case of the 'Appellant' that he need not to comply with Regulation 7A in strict sense since he had applied for AFA well in time on 29.12.2019 much before accepting the assignment of the 'Liquidator'. As per Regulation 12A of the 'Insolvency and Bankruptcy Board of India (Model Bye -Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 Vide Notification No. IBBI/2016-17/GN/REG001, dated 21st November, 2016, the 'AFA' was deemed to have been received on expiry of 15 days from the date of application. The 'Appellant' received the communication of rejection of his application only on 16.07.2020 on telephone, hence the 'Appellant' was under valid assumption of having received deemed approval of the 'AFA' and therefore, did not contravene any laws. The 'Appellant' further submitted that he had wide experience and has been doing insolvency work for many years with excellent track record and his application was rejected on very technical issues like fee etc.
- With reference to conflict between Regulation 7A of the IBBI (Insolvency Professional) Regulation 2016 and Regulation 12A of the 'Insolvency and Bankruptcy Board of India (Model Bye -Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 Vide Notification No. IBBI/2016-17/GN/REG001, dated 21st November, 2016 this 'Appellate Tribunal' has noted from the averments and the records available w.r.t. Writ Petition No. 13229 of 2020 in which the 'Appellant' had challenged the constitutional validity of the very concerned Regulation and Bye Laws before the

Hon'ble Madras High Court. The Hon'ble Madras High Court after examining the issues in great details dismissed the said Writ Petition and this issue was also mentioned in the order disposing this Writ, the relevant portion of which reads as under:-

“13..... In every case, such AFA is required to be obtained from the appropriate IPA in which such IP is enrolled as a professional member.....

....Accordingly, as per Regulation 12A of the Model Bye - Laws IPA Regulations, he is required to apply for and obtain the AFA from the IIIPI.”

[emphasis supplied]

- The 'Appellant' himself admitted that application for 'AFA' was filed on 31.12.2019 and the same was rejected on 14.01.2020 hence this 'Appellate Tribunal' feels that the argument the 'Appellant' that he has deemed to have been received the 'AFA' or renewed within 15 days does not seem to be correct
- Therefore, the appellant cannot claim that there was no requirement of issue of fresh AFA for his assignment as the 'Liquidator'. The assignment as the 'Liquidator' to which the 'Appellant' got confirmed on 29-05-2020, is beyond the prescribed threshold date i.e. 31-12-2019. Therefore, this is non-compliance of the regulatory provisions.
- The 'Appellant' got authorized and valid 'AFA' by the 3rd Respondent only on 30.12.2020 which is way beyond the date of his appointment/assent as liquidator. Therefore, it is clear that as per

Regulation 7A of IBBI (Resolution Professional) Regulation 2016, the 'Appellant' did not hold valid 'AFA' on the date of acceptance of the Assignment and the 'AFA' cannot be ratified retrospectively in the absence of any such provisions in the law.

- In the case of ***Tax Officer, Alleppey vs MC Poonnoose & Ors. (1969) 2 SCC 351*** at paragraph 5, it was held that in absence of any Rule/Regulation, there can be no retrospective application for a statute, wherein it has been as follows:

"5..... The courts will not, therefore, ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the Courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect..."

- In view of the above detailed examination this 'Appellate Tribunal' considers that the 'Appellant' did not possess the legally required 'AFA' on the date of the acceptance of the assignment and the 'Appellant'

thus fails to meet the legal bar. Therefore, there is no error in the 'impugned order' on these accounts.

47. Issue No. (II) Whether the order passed by Hon'ble Madras High Court in W.M.P. No. 5088 of 2021 in W.P. No. 4458 of 2021 WP No. 4458 of 2021 has any bearing on the current case?

- The 'Appellant' had filed a Writ Petition under Article 226 of the 'Indian Constitution' before the High Court Judicature in Madras / the Madras High Court in Writ Petition No. 4458 of 2020 & 4463 of 2021 and WMP No. 5086 & 5088 of 2021. This 'Appellate Tribunal' notes from the averment of the 'Appellant' that the Hon'ble High Court Judicature in Madras gave the interim stay as requested by the 'Appellant' in W.M.P No. 5088 of 2021 in W.P. No. 4458 of 2021.

Hence, it will be necessary to look into the relevant portion of all these documents.

(a) Impugned Orders passed in DCNo. IIIPI/DC/29/2020-21 dated 01.12.2020.

(b) No. IBBI/DC/61/2020 Dated 17th Dec 2020.

(c) Following is excerpts from the Hon'ble High Court order dated 26.02.2021 in WP No. 4458 & 4463 of 2021 and WMP 5086 & 5088 of 2021

“ Writ petitions under article 226 of the Constitutions of India praying that in these circumstances stated therein and in the respective affidavits filed their with the High Court will pleased to Issue writ of certiorari

(1) WP NO. 4458 of 2021

Calling for the in these records of the decisions of the 1st Respondent in the impugned order No. IBBI/DC/61/2020 Dated 17th Dec 2020 and in the consequential Impugned order of the 2nd Respondent in DCNo. IIIPI/DC/29/2020-21 dated 01.12.2020 and quash the same as being arbitrary, illegal and violative of Art 14, 19, 20(2) and (21) and pass.

(2) WP. NO. 4463 of 2021

Issue a writ of mandamus or any other writ or direction Directing the 2nd and 3rd Respondents to pay compensation of Rupees One Crore towards legal costs and Financial loss on account of wrongful rejection and abuse of process of law exposing the petitioner to heavy litigation, financial loss, mental agony, and ridicule suffered among the professional fraternity and fifty percent of it be deposited for the benefit of free legal aid or other noble public causes and pass.

(3) WMP. NO. 5086 of 2021

To dispense with the Impugned order of 1st Respondent Insolvency and Bankruptcy Board of India in No. BBI/DC/61/2020 Dated 17th Dec 2020 and in the consequential Impugned order of the 2nd Respondent IIPA/ ICAI in DCNo. IIIPI/ DC/ 29/ 2020-21 dated 01.12.2020

(4) WMP No. 5088 of 2021

To issue an order of ad interim injunction restraining all the Respondents, their servants and agents or any other person from taking any coercive action on account of the impugned orders passed in DCNo. IIIPI/DC/29/2020-21

dated 01.12.2020 and No. IBBI/DC/61/2020 Dated 17th Dec 2020 pending disposal of this writ petition.

Order : These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of CA.V. VENKATA SIVA KUMAR Party in person for the petitioner the court made the following order :-

The petitioner is aggrieved by the impugned order dated 01.12.2020, directing him to pay a penalty of Rs. 10,000/- by the first respondent on account of the alleged violation of Regulation 7A in the IP Regulations committed by him, which requires an Insolvency Professional to procure a valid AFA before undertaking any assignment after 31.12.2019....

3. This Court after due consideration to the averments contained in the affidavit and after perusing the documents filed in support of the Writ Petition as well as after hearing the submissions of the Party-in-Person, is of the considered view that a prima facie case has been made out for the grant of interim injunction as prayed for in W.M.P No. 5088 of 2021 in W.P. No. 4458 of 2021. Accordingly, there shall be an order of interim injunction as prayed for in W.M.P. No. 5088 of 2021 in W.P. No. 4458 of 2021.”

[emphasis supplied]

- On face of it, above Interim injunction order passed by the Hon'ble Madras High Court confines only to the order with regard to action arising out of proceedings of the Disciplinary Committee and is silent on the issue of requirement of 'AFA' by the 'Appellant', compulsory

requirement of AFA as per Regulation 7A of IBBI (Insolvency Professional) Regulation 2016 and any stay on removed of the 'Appellant' from 'Liquidator' of the 'Corporate Debtor'.

- This 'Appellate Tribunal' also notes that the 'Appellant' had challenged the validity of Section 7A of IBBI (Insolvency Professional) Regulation 2016 as well as Regulation 12A of 'Insolvency and Bankruptcy Board of India (Model Bye -Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 Vide Notification No. IBBI/2016-17/GN/REG001, dated 21st November, 2016 in Writ Petition No. 13229 of 2020 before the Hon'ble Madras High Court which was dismissed. It is noted that in this writ, the 'Appellant' himself admitted that application for 'AFA' was filed on 31.12.2019 and the same was rejected on 14.01.2020 hence, the arguments of the 'Appellant' that the 'AFA' was deemed to have been received the 'Appellant' or renewed within 15 days is not correct.
- The Hon'ble Madras High Court while dismissing the Writ Petition No. 13229 of 2020 has clearly mentioned which as hereunder :-

“13..... In every case, such AFA is required to be obtained from the appropriate IPA in which such IP in enrolled as a professional member.....

....Accordingly, as er Regulation 12A of the Model Bye - Laws IPA Regulations, he is required to apply for and obtain the AFA from the IIIPI.”

- This also establishes that the 'Appellant' was required to have valid 'AFA' before taking any assignment.

- Thus this ‘Appellate Tribunal’ do not find prima-facie any restrain on the ‘Adjudicating Authority’ to adjudicate in this case and no conflict is found.

48. Issue No. (III) Whether the ‘Adjudicating Authority’ can remove the ‘Liquidator’ ?

- To be able to understand Whether the adjudicating authority can remove a Liquidator, we need to understand where resides the power to remove the a Liquidator.
- I & B Code, 2016 does not explicitly state the grounds for removing the liquidator. In the absence of specific provisions, we may resort to Section 33 & 34 of the I & B Code, 2016 and Section 276 of the Companies Act, 2013, which provides for the removal and replacement of liquidators on various grounds.
- Reference can be made to Section 16 of the General Clauses Act, 1897, which states as follows:

“16. Power to appoint to include power to suspend or dismiss. Where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.”

[emphasis supplied]

Section 33 & 34 of the I & B Code, 2016

CHAPTER III

LIQUIDATION PROCESS

“33. Initiation of liquidation.—(1) *Where the Adjudicating Authority,—*

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors 1[approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

34. Appointment of liquidator and fee to be paid.—

(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under 2[Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form,] act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).

(2) On the appointment of a liquidator under this section, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.

(3) The personnel of the corporate debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor and provisions of section 19 shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the interim resolution professional.

(4) The Adjudicating Authority shall by order replace the resolution professional, if—

(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or

(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded 1[in writing; or]

2[(c) the resolution professional fails to submit written consent under sub-section (1).]

(5) For the purposes of 3[clauses (a) and (c)] of sub-section (4), the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator.

(6) The Board shall propose the name of another insolvency professional 2[along with written consent from the insolvency professional in the specified form,] within ten days of the direction issued by the Adjudicating Authority under sub-section (5).

(7) The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.

(8) An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.

(9) The fees for the conduct of the liquidation proceedings under sub-section (8) shall be paid to the liquidator from the proceeds of the liquidation estate under section 53.”

Section 276 of the Companies Act, 2013:

“276. Removal and replacement of liquidator.— (1) The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:—

(a) misconduct;

(b) fraud or misfeasance;

(c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;

(d) inability to act as provisional liquidator or as the case may be, Company Liquidator;

(e) conflict of interest or lack of independence during the term of his appointment that would justify removal.

(2) In the event of death, resignation or removal of the provisional liquidator or as the case may be, Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.

(3) Where the Tribunal is of the opinion that any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance of his or its powers and functions, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit.

(4) The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of being heard to the provisional liquidator or, as the case may be, Company Liquidator.”

- Further, the reference can also be made to the judgment in the case of **State of Tamil Nadu and Ors. vs. M.N. Sundararajan** (1980) 4 SCC 592 wherein it has been stated as under:

"9. The question is, whether the expression "appointments" used in this Government Order, dated June 13, 1973, will include 'termination' of service or 'compulsory retirement' from service, also. It is a fundamental principle of interpretation that unless a contrary intention appears from the context, a power to appoint should include a power to terminate the appointment. including termination of the person appointed by his compulsorily retirement in accordance with the terms and conditions of his service. This fundamental principle underlies Section 16 of the General Clauses Act, In other words, the power to terminate the appointment by compulsory retirement or otherwise is a necessary adjunct of the power of appointment and is exercised as an incident to or consequences of the power" In the case of *Heckett Engineering Co. vs. Their Workmen* (1977) 4 SCC 377 it has been stated

"14. We may also in this connection recall the provisions of Section 16 of the General Clauses Act, 1897, Whether or not the section in terms applies to the aforesaid Standing Orders of the Company which are certified under Section 5(3) of the Industrial Employment Standing Order Act, 1946 may be a moot point but the general doctrine underlying the section can well be made applicable to a case of the present nature for it is now firmly established that the power to terminate service is a necessary adjunct of the power of appointment and is exercised as an incident to or consequence of that power (See *Lekhraj Satramdas Lalvani v Deputy Custodian-cum-Managing Officer and*

Ors. MANU/SC/0010/1965 [1966]1SCR120 and Kutoor Vengayil Rayarappan Nayanar v. Kutoor Vengayil Madhavi Amma and Ors. [1949] F.C.R. 66. In Kutoor Vengayil Rayarappan Nayanar v. Kutoor Vengayil Valia Madhavi Amma and Ors. (supra) Mahajan, J. (as he then was) speaking for the Federal Court approved the statement of Woodroffe On Receivers, Fourth Edition, that the power to terminate flows naturally and as a necessary sequence from the power to create. In other words, it is a necessary adjunct of the power of appointment and is exercised as an incident to, or consequence of that power; the authority to call such officer into being necessarily implies the authority to terminate his functions. "

- This 'Appellate Tribunal' also notes that in recent judgement passed by Principal Bench, NCLAT vide order dated 13.10.2022 in Company Appeal (AT) (Ins.) No. 1234 of 2022 as held :

"The Liquidator does not have any personal right to continue in the Liquidation Process and the reasons which have been noted in the order are sufficient to exercise even the inherent power by NCLT to replace the Liquidator. It is not a fit case to interfere in exercise of our Appellate Jurisdiction."

[emphasis supplied]

This clearly establishes that, no Liquidator, has any 'personal rights', to continue in 'Liquidation' and the 'Adjudicating Authority', can order for 'Replacement' of the 'Liquidator', recording sufficient reasons, as per 'Law'.

- Further, since the 'Adjudicating Authority', is vested with the power, to 'appoint a Liquidator', under Section 33 and 34 of the I & B Code, 2016. It is by the virtue of the Section 16 of the General Clauses Act, 1897, that an 'Adjudicating Authority', who also, has the power, to remove the 'Liquidator'.
- Combined reading of above Case Laws and Provisions along with Section 33 and Section 34 of the I & B Code, 2016, would make it clear that the 'Adjudicating Authority', which had the 'powers', to appoint the 'Liquidator', will also have the powers, to remove the 'Liquidator' for reasons, the 'Adjudicating Authority', may find fit, just, valid and proper.

49. After above detailed qualitative and quantitative analysis of the facts, legal position of various Laws discussed above and 'judgments', this 'Appellate Tribunal', without any 'ambiguity / simmering doubt', finds that there was no error in the 'impugned order'. The 'Appeal', is devoid of merits and stand dismissed. There shall be no order, as to costs. The connected pending I.A. No. 571 of 2022, I.A. No. 572 of 2022 and I.A. No. 623 of 2022 are closed.

[Justice M. Venugopal]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Simran

