

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 24566 of 2022**

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SUNILKUMAR AGARWAL S/O. KISHAN LAL AGARWAL
Versus
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

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Appearance:

MR. PERCY C. KAVINA, SENIOR COUNSEL WITH MR.VISHAL J
DAVE(6515) for the Petitioner(s) No. 1
NIPUN SINGHVI(9653) for the Petitioner(s) No. 1
for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 02/12/2022
ORAL ORDER

1 Heard Mr.Percy Kavina, learned Senior Counsel with Mr.Vishal Dave, learned advocate with Mr.Nipun Singhvi, learned counsel for the petitioner.

2 Challenge in this petition is to the order dated 21.11.2022 passed by the Insolvency & Bankruptcy Board of India (Disciplinary Committee). The petitioner, in his capacity as an Interim Resolution Professional, in the process of corporate insolvency resolution on Brain Master's Classes Private Limited and Eagle Corporation Private Limited was issued certain show cause notices for

failing to discharge his duties. The Disciplinary Committee has found the petitioner of having committed a lapse in the conduct of C.I.R.P in the matter of Brain Master's Classes Private Limited. According to the Board, it was incumbent upon the petitioner to have filed a necessary application either for approving the resolution plan or the liquidation of the corporate letter to Brain Master's Classes Private Limited. In the opinion of the Board, in accordance with Sec.12 of the I.B.C, the CIRP has to be completed within a period of 180 days from the date of admission of the application to initiate such process. Since the period for the process in the case of Brain Master's Classes Private Limited expired on 10.03.2020, in the opinion of the Board, the petitioner should have filed a necessary application for extension of approving the resolution or liquidation which he did not.

2.1 Mr.Kavina, learned Senior Counsel, would draw the Court's attention to sub-section 2 of Sec.12 of the I.B.C Code which provides that a resolution professional shall file an application to the adjudicating authority to extend

the period of corporate insolvency resolution process beyond 180 days, if instructed to do so by a resolution passed by a meeting of the Committee of Creditors (C.O.C) by a vote of 66% of the voting shares.

2.2 According to Mr.Kavina, learned Senior Counsel, therefore, the primary responsibility of calling for a meeting of the C.O.C's would not be that of the petitioner for making an application for extension unless they are authorized by the C.O.C through a meeting in accordance with the provisions of Sub-section 2 of Section 12.

3 Reading the relevant portions of the order indicates that after recording the submissions of the petitioner which indicate that though he had all the intentions to conduct the C.O.C Meeting and had prepared the draft agendas, even after having initially made request on 31.01.2020 i.e. before the period expired on 10.03.2020, it is evident from the E-mail communications between the team members that a meeting of the C.O.C members could not be held due to lockdown. Finally, when the

meeting was conducted on 10.09.2020, it was categorically observed in the order that such meetings were being conducted and there was no allegation on the present petitioner who was the then Resolution Professional who was replaced by one Ms.Bhavi Shah. In fact, as is evident from reading para 3.2.6 of the order, which quotes the observations of the adjudicating authority, it was C.O.C which has not taken efficient measures to complete the C.I.R.P of the Corporate Debtor Company. Even in the summary findings where the order of the adjudicating authority is quoted, it is made out that it was not the case that the C.O.C had raised any dissatisfaction with regard to the conduct of the petitioner or that there had been a lapse on his part.

4 Despite these findings, the order impugned herein which only implicates the petitioner in context of contravention (I) in the case of Brain Master's Classes Private Limited to issue directions imposing the penalty of Rs.2 lakhs on the petitioner and in addition thereto held that the petitioner will work as a probationer for four

months with other experienced I.P.

5 Prima facie, having read the provisions of Sec.12 (2) of the I.B.C and the contents of the order under challenge which extensively quoted the observations of the adjudicating authority, it is evident that there cannot be any negligence attributed to the petitioner who was to follow the provisions of Sub-sec.2 of Sec.12 of I.B.C.

6 On this count, on a condition that the petitioner deposits Rs.2 lakhs as envisaged under the order by way of a penalty in the registry, on or before 09.12.2022, issue notice to the respondents, returnable on 17.01.2023. There shall be ad-interim relief in terms of para 49(c), till then. Direct service is permitted.

BIMAL

(BIREN VAISHNAV, J)