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

% Judgment reserved on: 21.03.2025
Judgment delivered on: 03.04.2025

\+ LPA 1054/2024, CM APPL. 61894/2024 & CM APPL.1284/2025

SANDEEP KUMAR BHATT ...Appellant

versus

INSOLVENCY & BANKRUPTCY BOARD OF INDIA & ORS ....Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Mohit Nandwani, Advocate with CMA Kamal Deep Tyagi.

For the Respondents : Ms. Amrita Singh and Mr. Ankit Gupta, Advocates for R-1.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present letters patent appeal has been filed assailing the judgement dated 27.08.2024 passed by the learned Single in W.P.(C) 15588/2023 titled *Sandeep Kumar Bhatt vs. Insolvency and Bankruptcy Board of India & Ors.*, whereby the learned Single Judge dismissed the writ petition by holding that the Insolvency and Bankruptcy Board of India had duly adhered to the procedure before passing the order of suspension against the appellant.

FACTS OF THE CASE:-

2. It is the case of the appellant that the appellant got registered with the respondent no.1/Insolvency and Bankruptcy Board of India (hereinafter referred to as *"IBBI"*) as the Insolvency Professional on 02.06.2017. On 03.08.2017, the National Company Law Tribunal (hereinafter referred to as *"NCLT/Adjudicating Authority"*) admitted an application under section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as *"IBC"*) filed by PR International initiating Corporate Insolvency Resolution Process (hereinafter referred to as *"CIRP"*) against GTHS Retails Pvt. Ltd (Corporate Debtor).

3. It is further stated that the appellant was appointed as an Interim Resolution Professional (hereinafter referred to as *"IRP"*) and *vide* order dated 20.12.2017, the Adjudicating Authority confirmed and appointed the appellant as the Resolution Professional (hereinafter referred to as *"RP"*). *Vide* order dated 04.07.2019, the Adjudicating Authority took note of the fact as informed by the appellant that the period of 270 days within which CIRP needs to be completed had come to an end and also the Resolution Applicant had withdrawn his offer and therefore the only option left was to proceed towards liquidation. So, the liquidation process against the Corporate Debtor (hereinafter referred to as *"CD"*) was initiated. On 16.10.2019, Mr. Ramit Rastogi was appointed as the liquidator and the appellant was discharged from his case.

4. It is the further case of the appellant that IA No.2276/2021 was filed by the liquidator for dissolution of the assets of the CD. The NCLT in IA 2276/2021 *vide order* dated 19.04.2022, directed the liquidator to place on record the Valuation Report. The said report shows the value of assets to be

Rs.4.29 crores out of which Rs.2.89 crores comprised of debtors and work-in-progress (hereinafter referred as *"WIP*") whereas the value of fixed assets was stated as Rs.12.14 lakhs. After going through the Valuation Report, the Adjudicating Authority passed an order dated 15.07.2022, directing the appellant and the liquidator to explain the efforts made for realisation of value of the aforementioned assets and as to why they did not file any application for realisation of the assets/debt of the CD. In compliance with the aforesaid order, the appellant filed its reply dated 29.10.2022 to the queries sought for by the Adjudicating Authority. The Adjudicating Authority *vide* order dated 17.01.2023 also sought a report from the IBBI regarding the doubts as raised in the order dated 15.07.2022.

5. Thereafter, on 25.04.2023, a notice of investigation under Regulation 8(1) of the Insolvency & Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (hereinafter referred to as *"Inspection Regulations"*) was issued to the appellant. In the said notice, the appellant was asked to reply/clarify on the doubts raised by the Adjudicating Authority in order dated 15.07.2022 with supportive documents within 10 days.

6. *Vide* e-mail dated 25.04.2023, the appellant replied to the investigation notice stating that it was the liquidator who had reported the wrong liquidation value by filing the application for dissolution and the appellant has already furnished a detailed reply to the Adjudicating Authority in compliance of the order dated 15.07.2022. The appellant through various e-emails replied to the said investigation notice and in one of the e-mails i.e., e-mail dated 04.07.2023, he stated that it was the duty of the liquidator to retrieve all the documents from the company's premises as

was required by him in terms of the liquidation process regulations.

7. It is further stated that when the liquidator was given complete possession of the CD on 12.09.2019, the CD was a going concern and all the records/documents were at the premises only. It is also stated that complete set of all the documents were handed over to the liquidator by 07.11.2019 and the liquidator had himself acknowledged the receipt of all the documents *vide* e-mail dated 20.09.2020.

8. The investigation report dated 08.08.2023 was filed by the Investigating Authority with the IBBI wherein it was stated that AGM(MM) was directed to conduct investigation in the matter of GTHS Retails Pvt Ltd. Accordingly a notice under section 8(1) of the Inspection Regulations was issued to the appellant as well as to the liquidator. The Investigating Authority after going through the reply, submissions and documents as produced, held that the appellant is in violation of section 25(1), 25(2)(a), 25(2)(b), 208(2)(e) of the IBC and the IP Regulations read with clause 24 of the code of conduct and the circular dated 14.08.2019 issued by the IBBI.

9. Thereafter, a show cause notice (hereinafter referred to as *"SCN"*) dated 25.08.2023 was issued to the appellant by IBBI under section 2(1)(a) of the IBC read with Regulations 11 & 12 of the Inspection Regulations. The IBBI after considering the observations of the Investigating Authority took a *prima facie* view that the appellant by his conduct and actions as stated in the investigation report has contravened section 25(1), 25(2)(a), 25(2)(b), 208(2)(e) of the IBC, Regulation 40B of the CIRP Regulations, Regulations 7(2)(a) & (h) of the IP Regulations read with clauses 1, 2, 14 and 19 of the code of conduct specified thereunder read with circular dated

14.08.2019. Appellant was also directed to show cause as to why actions as permissible under section 220(2) of the IBC including cancellation of his registration be not taken against him. He was directed to submit his reply alongwtih supporting material latest by 08.09.2023.

10. The appellant *vide* letter dated 13.09.2023 replied to the SCN stating that appellant has always worked in compliance with the provisions of the IBC and has taken precautions to preserve and protect the assets and continue the business operations of the CD. The appellant also stated that he had represented and acted on behalf of the CD in exercising rights of the CD in judicial, quasi judicial and arbitration proceedings and hence was in compliance with section 25(2)(b) of IBC.

11. After due consideration of the investigation report and the reply to the SCN, the Disciplinary Committee (hereinafter referred to as "*the DC*") of the IBBI *vide* order dated 01.11.2023, in exercise of the powers conferred under section 220 IBC read with Regulation 13 of the Investigation Regulations passed an order suspending the registration of the appellant for a period of two years.

12. Aggrieved by the order of the IBBI, the appellant filed the underlying writ petition challenging the aforesaid order passed by the DC of IBBI, suspending the registration of the appellant as an Insolvency Professional for a period of two years. *Vide* order dated 27.08.2024, learned Single Judge dismissed the writ petition.

13. It is this order which has been challenged by the appellant in the present appeal.

CONTENTIONS OF THE APPELLANT:-

14. Mr. Mohit Nandwani, learned counsel for the appellant at the outset

submits that the impugned order passed by the learned Single Judge only considered as to whether a Court under Article 226 of the Constitution is restricted in examining the decision making process and not the decision itself rendered by an authority in exercise of its administrative jurisdiction, while ignoring the basic errors committed by the said authority in reaching the said conclusion.

15. Learned counsel submits that the issue was initiated pursuant to an order dated 17.01.2023 rendered by the NCLT in the matter of ***M/s. PR International vs. M/s. GTHS Retails Pvt. Ltd.*** wherein, according to learned counsel, the NCLT erroneously noted the book value of assets as on 2017 at Rs.4.28 Crores as if the same was liquidation value. Apprehending something amiss, the NCLT called upon IBBI to seek details and file a report. Simultaneously the liquidator was also directed to provide a copy of the compliance report. He further submits that *vide* the notice dated 25.04.2023, the IBBI relying upon the order dated 15.07.2022 of the NCLT put the petitioner to notice in respect of investigation in the context mentioned in the order of NCLT.

16. Consequent upon the reply and responses given by the petitioner, the IBBI issued SCN dated 25.08.2023 under Section 219 of IBC read with Regulations 11 and 12 of the IBBI Inspection Regulation. Following charges were levelled against the petitioner:-

Contravention - I

(a) Recovery of Security Deposits

(b) Recovery of Work-in-Progress

(c) Failure to take control and custody of Bank Account of CD

Contravention - II

Delay in filing the CIRP forms with the board.

17. Learned counsel submits that ignoring and overlooking the detailed response filed by the appellant alongwith all relevant documents including the Auditor's Report dated 14.09.2023, the DC passed the order dated 01.11.2023 impugned in the underlying writ petition. He states that the DC had committed glaring errors and mistakes apparent on the face of the record while concluding that the aforesaid charges have been proved and the penalty was imposed suspending the petitioner for two years from taking any assignment as an IRP. The contention of the learned counsel stems from the grievance that the learned Single Judge did not take into consideration glaring errors committed by the DC which led it to reach a wrong conclusion and passing of an unsustainable suspension order against the appellant

18. Dilating on each charge levelled against the appellant the learned counsel in respect of charge (a) argued that the figures mentioned in the SCN were considered by the investigating officers who in their investigation report concurred with the figures arrived at by the appellant. In other words, learned counsel forcefully contended that so far as this charge is concerned, the figures considered by the DC were alien to those arrived at in the investigation report which led to not only an erroneous finding of facts but also a disproportionate imposition of penalty. According to him, the auditor's report placed before the DC clearly indicated and vindicated the figures arrived at by the appellant as also the investigating officer which was simply ignored and overlooked by the DC. He states that this error and erroneous finding of fact would amount to perversity and it was incumbent upon the learned Single Judge to have

judicially examined and determined the correctness of such finding. Moreso, since the learned Single Judge himself proceeded on the incorrect figures on which the DC itself proceeded. In the absence whereof, according to learned counsel not only the impugned judgment needs to be reconsidered but the order of the DC dated 01.11.2023 needs to be set aside.

19. So far as the charge (b) regarding recovery of WIP is concerned, learned counsel submits that the DC committed an error in applying or requiring Valuation Report since at the time when the appellant was executing his assignment as IRP there were no Valuation Rules in force, and Rules were brought into force only in the year 2019. That apart, he contends that so far as the realizable value of assets of the CD *qua* the job workers are concerned, it was to the extent of Rs.79 Lacs as on the date when the appellant was appointed as the IRP. It is the assertion of learned counsel that during his tenure as IRP, the appellant was able to recover/realize a sum of over Rs.86 Lacs from such job workers. He states that in support of such contention, the appellant had placed before the DC, the Auditor's Report dated 14.09.2023. According to learned counsel the Auditor's Report/certificate clearly indicated the factum of the appellant having realized Rs.86 Lacs where only Rs.79 Lacs were noted to be realized from the job workers. He claims that firstly the DC and secondly the learned Single Judge simply brushed aside the findings and the contents of the Auditor's Report on the premise that the same is an afterthought. He also vociferously contends that the said Auditor's Report was based on the statement of account of the bank of the CD and ought to have been cross checked by the DC before arriving at such erroneous and biased

conclusions. He thus states that having regard to the fact that no loss, rather, profit in the context of WIP was posted by the appellant, the charges under Charge (b) ought to have been withdrawn or revoked. Additionally, learned counsel submits that not only were the sums realized but the Auditor's Report also vindicates the stand that the sums were credited to the account of the CD. In view of such overwhelming documentary evidence, the findings reached by the DC and not considered by the learned Single Judge caused grave and irreparable prejudice to the appellant since he has been suspended for a period of two years of which, one year and four months have already elapsed.

20. So far as charge (c) regarding failure to take control of the Bank Accounts of the CD is concerned, he forcefully states that each and every action taken by the appellant as IRP were within the framework of IBC as also after necessary resolutions were passed by the Committee of Creditors (hereinafter referred to *"CoC"*) from time to time. By referring to various documents on record, particularly the letter dated 05.09.2017 issued by the appellant to various banks comprising the CoC as also the Minutes of the Meeting of the CoC dated 15.01.2018 and 11.03.2019 etc., learned counsel states that the resolution for appointment of Mr. Harish Manchanda (the erstwhile Director of the CD) as the Chief Executive Officer (hereinafter referred to as "*CEO*") of the CD on a reduced remuneration of Rs.90,000/- per month w.e.f. September, 2017 and previous payments were passed by the CoC in those meetings. He emphasizes that under the scheme of IBC during the CIRP, the CoC is undoubtedly the supreme decision making authority. He lays great emphasis on the fact that in the present case, the CoC comprised of creditors which were mostly banks of repute. That apart,

he also vehemently contends that in most of the CoC meetings, the resolutions were passed by the CoC at 86% or above, whereas the minimum requirement as per the IBC is 66%. In other words, learned counsel seeks to impress upon this Court that all the material which has been used against the appellant to form the substratum of the charge (c), was with the proper approval of the CoC. He also points out to the fact that though at one instance CoC had approved payment of salary to the extent of Rs.90,000/- to the CEO, subsequently, in the 7th CoC meeting dated 11.03.2019 it was also resolved that the suspended Director now working as CEO would not be paid as on that date and would be considered by the CoC subsequently. It is on these instances that the learned counsel seeks to predicate his argument that there has been a gross irregularity, illegality and error committed by the DC in considering the well documented and reasoned reply of the appellant Equally, in his submission, the learned Single Judge too, did not appreciate the facts as submitted in the aforesaid context.

21. So far as the charge regarding failure to comply with the process of IBC is concerned, learned counsel vehemently disputes that charge on the ground that the same is a bald averment without any substance in it. He states that from the above three charges and the response tendered by the appellant, it is apparent that there were no violations of any process involved in IBC. Even otherwise he claims, though without admitting, that such procedural lapses cannot entail a draconic imposition of penalty of suspension of two years.

22. Apart from the aforesaid, learned counsel for the appellant submits that as per section 217 & 218 of IBC, only upon a complaint or if it has

reasonable grounds to believe, the IBBI by a written order can direct investigation, he submits that no such written order was ever passed by the IBBI to initiate investigation in this case. He then refers to regulation 7(2) of the Inspection Regulations and submits that IBBI is mandated to pass orders containing details of investigation as provided in regulation 7(3) of the Inspection Regulations. Since no such order was provided by IBBI even upon the request of the appellant, the appellant filed an RTI application. As per the RTI reply no such order containing details as per regulations 7(3) has been passed. He further submits that as per regulations 7(5) of Inspection Regulations, scope of investigation cannot be exceeded without written order. However, without passing such a written order, the IBBI has exceeded its scope as is evident from the investigation report and SCN. He submits that regulation 12(2) of the Investigation Regulations provides circumstances to be looked at while deciding punishment, including nature and seriousness of contravention, consequences of such contravention, conduct before and after the contravention etc. He submits that DC disregarded these guidelines and passed an order suspending the appellant for 2 years.

23. Lastly, learned counsel submits that in case this Court is not inclined to interfere with the factual matrix of the case, the plea of the appellant on proportionality of the penalty so imposed may be considered. He further submits that the punishment is grossly disproportionate and that it resulted in blacklisting the appellant. He submits that debarring appellant for 2 years tantamount to civil death and the appellant is commercially ostracized resulting in serious consequences for the appellant. To substantiate his contentions, learned counsel relies on the judgement of the

Supreme Court in ***Blue Dreamz Advertising Pvt Ltd vs. Kolkata Municipal Corporation & Ors.; 2024 SCC OnLine SC 1896***. According to him, the aforesaid narration of the undisputed facts would show or atleast *prima facie* establish that the appellant as an IRP conducted himself with due diligence, sincerity and worked in and for the interest of the ongoing concern, i.e. the CD, and no financial losses were ever recorded during his tenure. Alternatively, without admitting, he states that at worst the only lapse could be those of payments having been released on account of salaries to the employees after the order of liquidation and appointment of liquidator was passed by the NCLT. To that, learned counsel submits that the decision to release payments to the salaries of the CD from the personal account of the then CEO was a conscious decision taken in the interest of the employees but given effect to after the aforesaid order of appointment of liquidator was passed. He states that no prejudice whatsoever was or could have been caused to either the CD or the process itself. According to him, even this lapse too, if at all it could be termed as a lapse, would not entail suspension of the appellant as IRP for a long period of two years. In the same context, learned counsel states that this Court may take a considerate view of the entire gamut of facts and reduce the penalty to the period already undergone.

CONTENTIONS OF THE RESPONDENT:-

24. *Per contra*, Ms. Amrita Singh, learned counsel appearing for the DC of the IBBI vehemently counters the submissions addressed on behalf of the appellant. Learned counsel raises a preliminary objection that the appellant cannot be permitted to argue merits of the findings of fact, that too in an appeal since it is well settled the writ courts only examine the

decision making process and not the decision itself. According to her, the lengthy arguments of the appellant now urged, were never raised in the writ petition and as such he is precluded from raising those before this Court. To substantiate her contentions, learned counsel relies on the judgements of Supreme Court in ***Lucknow Kshetriya Gramin Bank & Anr. vs. Rajendra Singh; (2013) 12 SCC 372*** and ***Charanjit Lamba vs. Army Southern Command; (2010) 11 SCC 314***.

25. Learned counsel invites attention to para 20 of the impugned judgement to submit that no violation of any Section, Rule or Regulation was at all pointed out by the appellant before the learned Single Judge. Having failed to do so, the appellant is precluded from now arguing those aspects.

26. Learned counsel refers to the order dated 01.11.2023 passed by the DC to submit that the order of suspension of appellant is justified on the following infractions, inter alia, i) contravention of section 25 of the IBC which bestows a duty on RP to preserve and protect the assets of the CD and ii) delay in submission of CIRP forms with the IBBI. She states that contrary to the above, no violation of any Regulation has been urged by the appellant.

27. She further submits that the CD had taken shops on rent and had furnished security deposits to the shop owners. Taking into consideration the submissions made by the appellant in his reply to SCN, the DC found that the appellant allowed adjustment of Rs.1,51,64,091/-, Rs.1,52,146/- and Rs.18,28,668 as on 03.08.2017, 31.03.2018 and 31.03.2019 respectively, as rent payable from the security deposits, thus leading to severe depletion of assets of the CD. These adjustments were neither

reported to the Adjudicating Authority nor shown transparently in the yearly financial account. Further, though the adjustment was in breach of the moratorium, the appellant failed to bring this to the notice of the Adjudicating Authority and this conduct demonstrates lack of transparency and serious dereliction of duty on the part of the petitioner.

28. Ms. Singh, refers to the order dated 01.11.2023 of the DC to state that the appellant submitted before the DC that the valuers could not find any WIP on site as the appellant recovered the material and sold them. She submits that the aforesaid submission is an erroneous statement as provisions of the IBC mandate valuation is to be done as on Insolvency Commencement of duty and this is a violation of Regulation 27 of IBBI Regulation, 2016. She further submits that in any event, it was evident that no information regarding such pre-valuation sale was given to the valuers, else it would have been mentioned in the Valuation Reports. This was also manifest from the clarificatory statement later solicited by the appellant from the CA Mr. Vinai K Singh which stated that the appellant was running the business so the fact is known only to him. She submits that this demonstrated that the appellant had not shared the complete information with the appointed valuers. Further, failure to take any action to recover the WIP or in the alternative, sale of WIP in a non-transparent manner, without valuation and without providing necessary information regarding sale proceeds etc. to the valuer, both amount to serious dereliction of duty on the part of the appellant.

29. Learned counsel on the argument of proportionality of penalty addressed by the appellant counters the same vehemently by urging that this issue was never raised by the appellant before the learned single Judge

and as such is precluded from raising here. Moreover, she asserts that the reliance of the appellant on purported similar cases is misplaced. According to her, each case was examined on its own merits and penalties imposed by the DC. Thus, keeping in view the gravity, seriousness and the extent of infraction and violation of the Regulations, the DC applied its mind and imposed appropriate penalty upon the appellant and other cases cannot be used for parity. According to her, the penalty imposed is commensurate with the misconduct of the appellant. She states that the IBBI is a statutory Regulatory Body under the IBC and has a crucial role in regulating the conduct of IRP etc. and the Courts may not readily interfere in its exercise of such statutory functions, except where the decision making process is violative of regulations or procedures prescribed. Since no such violation was pointed out before the learned single Judge or before this Court, the penalty imposed may not be interfered with. She relies on the judgement of the Supreme Court in ***U.P. State Road Transport Corporation vs. Hoti Lal; (2003) 3 SCC 605***.

ANALYSIS AND CONCLUSION

30. We have heard learned counsel for the parties at length and examined the documents relied upon.

31. Ordinarily, the writ court would not interfere in matters arising out of disciplinary proceedings or administrative decision, save and except where there is apparent or palpable infraction of a statute, statutory rule or regulation or the proceeding displays violation of the principles of natural justice. It is trite that it is the decision making process and not the decision itself which may be open to judicial review under Article 226 of the

Constitution of India. Yet another facet to consider such category of matters is on the proportionality of the penalty imposed. It is trite that unless the penalty imposed is such which shocks the conscience of the Court, or that which no prudent man would reach, no interference by Courts is warranted, ordinarily. This view of this Court stands fortified from the judgement of the Supreme Court in ***Union of India & Anr. vs. K.G. Soni; (2006) 6 SCC 794***. The relevant paragraphs are extracted hereunder:-

> ***"13.*** *In Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] this Court summed up the position relating to proportionality in para 31, which read as follows : (SCC pp. 478-79)*
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> > *"31. The current position of proportionality in administrative law in England and India can be summarised as follows:*
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> > *(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] test.*
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> > *(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational—in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU [Council for Civil Services Union v. Minister of Civil Service, 1985 AC 374 : (1984) 3 All ER 935 :*

(1984) 3 WLR 1174 (HL)] principles.

(3)(a) As per Bugdaycay [Bugdaycay v. Secy. of State for Home Deptt., 1987 AC 514 : (1987) 1 All ER 940 : (1987) 2 WLR 606 (HL)] , Brind [Brind v. Secy. of State for Home Deptt., (1991) 1 AC 696 : (1991) 1 All ER 720 : (1991) 2 WLR 588 (HL)] and Smith [R. v. Ministry of Defence, ex p Smith, (1996) 1 All ER 257 (CA)] as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] and CCSU [Council for Civil Services Union v. Minister of Civil Service, 1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of 'proportionality' and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21, etc. are involved and not for Article 14."

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15. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate

> ***<u>punishment by recording cogent reasons in support thereof.</u>*** *In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."*
>
> (emphasis supplied)

32. In the present case we find that so far as charge (a) is concerned, even the Investigating Authority's Report vindicated the stand taken by the appellant to the extent of the figures furnished by the appellant, whereas, the DC as well as the learned Single Judge proceeded on the figures mentioned in the SCN ignoring the conclusion reached by the Investigating Authority in its Report dated 08.08.2023. In our opinion, the conclusion based on erroneous figures which are contrary to the Report of the Investigating Authority, which is a fact finding authority, had the potential of persuading the DC to impose a higher and stricter penalty.

33. So far as charge (b) regarding WIP is concerned, we find that as on 03.08.2017, a sum of Rs.79.54 lakhs were to be realised from the petty job workers. The appellant was appointed as IRP on 02.06.2017. The appellant vehemently contended that he was successful in realising a sum of Rs.86 lakhs odd amount on account of WIP which was not only realised but also credited to the account of the CD. In support thereof, the appellant furnished the Auditors Report dated 14.09.2023 which according to him was based purely on the statement of account of the bank of the CD. We find that rather than examining the authenticity, veracity and correctness of the Auditor's Report, the DC had trashed it on the flimsy ground of it being *"an after thought"*. The document furnished ought to have been examined for what it may have been worth since the same was asserted to be based on financial statements of the CD. The DC could have asked for clarification

etc., which it apparently did not do. This aspect too propels us to believe that the projected infraction weighed heavily on the mind of the DC to impose strict penalty upon the appellant.

34. Charge (c) levelled against the appellant was regarding failure to take control of the Bank Accounts of the CD. The appellant has urged and demonstrably shown that the IRP from the date of appointment had immediately communicated with the Banks apprising them of his appointment as IRP and as such, now onward in control of the accounts by referring to the communications on record. In regard to the decisions respecting the appointment of the former Director of the CD as CEO of an ongoing concern and matters related to fixation of his salary, it was demonstrated by the minutes of the meeting of the CoC that it was only after proper approvals by 86% stakeholders that such measures were undertaken. Even deferring the decision to release salary to the said CEO also was taken after proper approvals were sanctioned by the CoC. We have seen that the CoC comprised stakeholders of whom, most were reputed banks. In other words, it appears that the CoC members were well versed with the financial impacts of the decisions being taken. It appears, *prima facie*, that the approvals were sanctioned after proper deliberation and understanding the impact.

35. Lastly, in respect of the charge levelled against the appellant for violation of procedures and process of CIRP as envisaged in IBC, this being purely on factual basis, we are refraining from entering into such issue. Though, we are not interfering with the opinion of the DC that the appellant may have infracted certain procedural aspects of the IBC of obtaining Valuation Reports etc., we have considered the issue only with

respect to the proportionality of penalty.

36. The above analysis regarding charges (a), (b) and (c) levelled against the appellant appear to our mind to be aspects which may have inadvertently been overlooked by the DC and it is possible that considered from the above point of view, a penalty, not so severe in nature may perhaps, have been imposed upon the appellant. We are also aware that ordinarily in such cases, the remit to the DC on this aspect, would be the correct course of action, however, having regard to the fact that almost 1 year and 4 months of the penalty imposed have already lapsed i.e. from 01.12.2023 leaving 8 months remaining, we deem it appropriate not to remit the matter for decision of the DC lest it may get further delayed defeating the purpose of such remit. In that view of the matter and in our considered opinion, the penalty imposed of two years suspension from taking any assignment as IRP is reduced to the period already under gone and the suspension of the appellant would be deemed to come to an end from the date of this order.

37. In view of the aforesaid, present appeal is disposed of alongwith the pending applications, in the aforesaid terms.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

APRIL 3, 2025/*aj/rl*