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2022 SCeJ 1092 (Bom.)

Bombay High Court

(MADHAV J. JAMDAR, J.) (S.V. GANGAPURWALA, J.)

PARTHA SARATHY SARKAR v. [insolvency](#) AND BANKRUPTCY BOARD OF INDIA (IBBI) AND ANR,

WPL/23436/2022

28.09.2022

Insolvency and [banking](#) Code - Registration of Insolvency Professional suspended by the Insolvency And Bankruptcy Board Of India (IBBI) - Pursuant to the order of suspension, the Petitioner would not be in a position to work as a Resolution Professional with the assignments on hand in the State of Maharashtra - Petitioner is already having assignments in the State of Maharashtra as a Resolution Professional - As the effect of the impugned order [will](#) be felt by the Petitioner in the State of Maharashtra, it can safely be concluded that part of cause of action has arisen with the territorial [jurisdiction](#) of this court

JUDGEMENT

(PER : S.V.GANGAPURWALA, J.)

1 The Petitioner assails the order of suspension of registration of the Petitioner dated 24.06.2022.

2 The Petitioner is an Insolvency Professional. He is a professional member of ICSI Institute of Insolvency Professionals (ICSI and IIP) and an Insolvency Professional (IP) registered with Insolvency and Bankruptcy Board of India.

3 The Registration of Petitioner as Insolvency Professional is suspended for a period of three years under the impugned order dated 24.06.2022. The same is assailed in the present [writ](#) Petition. The learned counsel for the Respondents raised a preliminary objection of the territorial jurisdiction to entertain the Writ Petition of this court. In light of that, the learned counsel advanced arguments on the issue of territorial jurisdiction on 30.08.2022. The issue of territorial jurisdiction is decided under the present order.

4 Mr.Vijayan the learned counsel for the Respondent strenuously contends that the order of suspension is passed by the authority at Delhi. The Petitioner has already filed an application before the NCLT Delhi seeking inter alia, a direction to hold a show cause notice issued by the Respondent to be an attempt to interfere in the course of proceedings qua the said application and issue appropriate directions in terms of section 425 of the Companies Act. The said application is pending adjudication before NCLT, Delhi. This fact has been materially suppressed. The learned counsel submits that the Petitioner has availed alternate remedy to challenge the show cause notice by approaching the NCLT and as such again approached this court challenging the final order pursuant to the said show cause notice.

5 The Respondent no.2 is a whole time member of the board and as such disciplinary committee has been duly constituted under the provisions of section 222 of the Insolvency and Bankruptcy, 2022. Respondent no.3 is the General Manager of the Board. He has no personal obligation towards the Petitioner. Respondent no.1 is a statutory body constituted under the provisions of section 233 of the Code and is not necessary party to the petition.

6 The learned counsel for the Respondent further submits that entire cause of action has arisen at Delhi and no part of cause of action has arisen within the territorial jurisdiction of this court. As such, this court may not entertain the Writ Petition.

7 It is further submitted that the Petitioner was appointed as a Resolution Professional pursuant to the order dated 21.08.2019 passed by NCLT Delhi with respect to the Corporate Office registered at Delhi.

Petitioner has taken charge of the Corporate data registered at Delhi. Respondent conducted inspection / investigation in respect of the [conduct](#) of the Petitioner as a Resolution Professional at Delhi. Show cause notice was issued by the Respondent at Delhi. The final suspension order was also passed in Delhi and as such no part of cause of action has arisen within the territorial jurisdiction of this court.

8 The learned counsel relies on the [judgment](#) of the Apex Court in the case of Oil and Natural Gas Commission vs. Utpal Kumar Basu and Others, (1994)4 SCC 711 dated 23.06.1994 to contend that the question of territorial jurisdiction to entertain the Writ Petition must be based on averments made in the petition.

9 The learned counsel submits that even if small part of the cause of action arisen within territorial jurisdiction of this court, the same by itself cannot be considered to be determinative factor compelling the high court to decide the matter on merits. The court shall invoke the doctrine of forum conveniens and in the present case Petitioner ought to approach the High Court of Delhi.

10 The learned counsel relies on the judgment of the Apex court in the case of Kusum Ingots & Alloys Ltd. vs. Union of India and Another (2004)6 SCC 254. The learned counsel also relies upon the judgment of the learned single Judge of Patna High Court in the case of Ashutosh Ranjan vs. Union of India and Others, dated 27.04.2022 and another judgment of the Gujarat High Court in the case of Bhavendra Hasmukhlal Patadia vs. Union of India and submits that the place of residence of the Petitioner would not give rise to the cause of action.

11 Per contra Mr. Kurle the learned counsel for the Petitioner submits that the Petitioner's area of operation is also at Bombay. Petitioner has assignments at Bombay. The order of suspension has the effect at Bombay. As such the part of cause of action has arisen within the territorial jurisdiction of this court. Only because the office of Respondent no.3 is at Delhi, that cannot be the sole ground to hold that this court would not exercise its jurisdiction.

12 The learned counsel for the Petitioner relies upon the judgment of the Apex Court in the case of Shanti Devi Alias Shanti Mishra vs. Union of India and Others, (2020)10 SCC 766, to contend that convenience of an employee is to prosecute his case at the place from he belongs to and receive the benefit. In such a case principle of forum conveniens applies.

13 The learned counsel also relies on the judgment of the Apex Court in the case of Oil and Natural Gas Commission (Supra) and submits that notwithstanding that the seat of such authority or the residence of the person against whom direction, order or writ is issued, the matter can be filed before the court wherein the cause of action wholly or in part arises.

14 We have considered the submissions.

15 It does not appear to be a matter of debate that show cause notice was issued to the Petitioner by the Respondent and subsequent thereto the order of suspension in respect of acts of omission and commission in respect of the proceedings against the Innovari Technologies Pvt. Ltd. at Delhi is issued. The Respondents have also not disputed that the Petitioner acts as a Resolution Professional and has work on hand at Mumbai. He is appointed as a Insolvency Professional by the Mumbai Bench of Wholesale Foods P.Ltd and the said proceedings is pending adjudication before the NCLT, Mumbai Bench. The Petitioner is empanelled as Insolvency Professional for financial institutions in Mumbai viz. (1) IDBI Bank (2) Bank of Baroda. The Petitioner is also appointed in voluntary liquidation of Gulf India Ltd. before NCLT Mumbai Bench.

16 The power conferred upon the High Court to issue directions, orders or writs can be exercised by the High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power. The Court exercising power under Article 226 of the Constitution can issue writs detailed under clause 1 to the person or authority situated beyond its territorial jurisdiction provided cause of action wholly or partly arises within the territorial jurisdiction of the court entertaining the Writ Petition.

17 Place of work of the Petitioner and /or Respondent may not be much relevant in deciding the jurisdictional aspect. The place of residence of the Petitioner would not be relevant. However, what is relevant is that the cause of action, wholly or in part arises within the territorial jurisdiction of the Court. The determinative factor is the place of accrual of cause of action or part of cause of action.

18 It does not appear to be a matter of debate that the show cause notice was issued to the Petitioner by the Respondents and subsequent thereto, the order of suspension for the acts of omissions and commissions in respect of the proceedings against Innovari Technologies Pvt. Ltd. at Delhi.

19 Heavy reliance is placed by the learned counsel for the Respondents on the judgment of the Apex Court in case of Kusum Ingots & Alloys Ltd. (Supra) to contend that on the basis of principle of forum conveniens, the Petitioner ought to have filed the Petition before the Delhi High Court. The Petitioner has already filed the proceedings against the show cause notice before NCLT, Delhi. In the case of Kusum Ingots & Alloys Ltd. (Supra), the Apex Court had observed that even if a small part of cause of action arises within the territorial jurisdiction of High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merits. In appropriate cases, the court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

20 In a case of Shanti Devi Alias Shanti Mishra (Supra), the Apex Court has observed that the convenience of an employee is to prosecute his case at the place from where he belongs to and receives the benefit. In such a case also, the principle of forum conveniens applies.

21 The Respondents have not disputed that the Petitioner acts as a Resolution Professional and has work on hand at Mumbai. He is appointed as an Insolvency Professional by the Mumbai Bench for Wholesale Foods P.Ltd. and the said proceeding is pending adjudication before NCLT, Mumbai Bench. The Petitioner is empanelled as Insolvency Professional for financial institution in Mumbai viz. 1) IDBI Bank 2) Bank of Baroda.

22 The Petitioner is also appointed in voluntary liquidation of Gulf India Ltd. before NCLT Mumbai Bench. The effect of the impugned order of suspension will be felt by the Petitioner even in the State of Maharashtra.

23 Pursuant to the order of suspension, the Petitioner would not be in a position to work as a Resolution Professional with the assignments on hand in the State of Maharashtra. As observed, the Petitioner is already having assignments in the State of Maharashtra as a Resolution Professional. As the effect of the impugned order will be felt by the Petitioner in the State of Maharashtra, it can safely be concluded that part of cause of action has arisen with the territorial jurisdiction of this court. Reliance can be placed on the judgment of this court in Damomal Kauromal Raisingani Vs. Union of India, AIR 1967 Bom 355. So also, the judgment of the Supreme Court in the case of Shanti Devi Alias Shanti Mishra (Supra).

24 In view of the above, it cannot be said that only a small part of cause of action as arisen within the territorial jurisdiction of this court, the part of cause of action has arisen within the territorial jurisdiction of this court.

25 In view of that, this court has territorial jurisdiction to entertain the Writ Petition.

26 The matter shall be heard on merits.

Tags: [2022 SCeJ 1092](#), [PARTHA SARATHY SARKAR](#), [PARTHA SARATHY SARKAR v. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA](#)