

110 CWP-8750-2023
Sarish Mittal & another Vs.
Insolvency & Bankruptcy Board of India & others

Present:- Mr.Sandeep Suri, Advocate for the petitioner (s).
Mr.Harsh Garg, Advocate, for respondent No.2.
Mr.Arun Gosain, Advocate, for respondent No.5.

Counsel for the petitioners has pointed out that the appointment of respondent No.2 was not as per the statutory provisions in as much as he only secured 65.89% of votes while referring to E-voting result dated 18.01.2020 (Annexure P-5) and he wrongly submitted that item No.13 was “carried” whereas the requisite condition was 66% of the votes as per the provisions of Section 22 of the Insolvency & Bankruptcy Code, 2016 (for short, the ‘Code’). It is submitted that at a subsequent point of time, he had approached the creditors i.e. Punjab National Bank and got a post-facto approval. IA No.111 & 112 (Annexure P-12) had been filed under Section 60(5) read with Section 22(2) of the Code which was dismissed as withdrawn on 27.02.2020 (Annexure P-13) and therefore, it is contended that on 04.03.2020 (Annexure P-11) when the third meeting was held of COC these facts were also noticed (page 239 of the paperbook).

It is also further brought to our notice that the said issue was always being canvassed before the NCLAT in IAs-266, 462 & 466 of 2020 and hearing was deferred on 27.07.2021 on them while rejecting the claim regarding the ineligibility of respondent No.2 which is subject matter of challenge in CWP-19562-2022. It is also further submitted that the counsel now representing the said respondent, Shri Harsh Garg had also, at one point of time, appeared for the Bank (Annexure P-1) and thereafter also, appeared for the Resolution Professional by filing applications (Annexure P-12) which were eventually dismissed and there is a clash of interests which is not permissible.

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It is submitted that vide order dated 22.08.2022 (Annexure P-15), which is subject matter of challenge, the Insolvency & Bankruptcy Board of India (Disciplinary Committee) had also adversely commented upon the said respondent by issuing a warning to be more cautious in handling assignments under the Code. It is thus submitted that his appointment per-se was not as per the statutory provisions and would go to the root of the matter. It is also brought to our notice that after the filing of the present writ petition, further orders had also been passed by the NCLAT while deciding IAs-266, 462 & 466 of 2020 again and rejecting the objections wherein reliance has been placed upon the report of IBBI.

Counsel prays for time to place on record the said orders by filing appropriate application(s). It is also the contention that the proceedings were decided by the IBBI by a single Member and not by a Committee.

Notice of motion.

Mr.Garg and Mr.Gosain accept notice on behalf of respondent Nos.2 & 5, respectively.

Service upon the rest of the respondents is dispensed with.

Counsel for the petitioners does not press for interim relief in view of the fact that CM-7375-CWP-2023 in CWP-19562-2022 has been allowed today and the stay has been extended.

To be heard along with CWP-19522-2022 on 24.08.2023.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

April 29, 2023
Sailesh