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

\+ W.P.(C) 2972/2025 & CM APPL. 14085/2025

PRAVEEN KUMAR AGRAWAL .....Petitioner

Through: Mr. Manish Paliwal, Ms. Trupti Das, Mr. Praveen Kumar Aggarwal, Advocates.

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA & ANR. .....Respondents

Through: Mr. Nishant Awana, Ms. Rini Badoni and Ms. Parul Yadav, Advocates for R1.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

O R D E R

% **10.03.2025**

CM APPL. 14083/2025 - Exemption
CM APPL. 14084/2025 - Exemption

1. Allowed, subject to all just exceptions.

2. Applications stand disposed of.

W.P.(C) 2972/2025

3. The present petition assails the impugned order dated 22.11.2024 (hereinafter '*the impugned order*') passed by the Disciplinary Committee of the Insolvency and Bankruptcy Board of India (IBBI / respondent no.1) under Section 220 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016. By virtue of the impugned order, the registration of the petitioner as an insolvency professional under IBBI has been suspended for a period of one

year. Para 3.1 of the impugned ordered reads as under –

"3.1 In view of the foregoing discussion, the DC is of the view that Mr. Praveen Kumar Agrawal failed to cast vote in accordance with Section 25A(3A) of the Code to protect the interest of creditors in a class. The DC in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby suspends the registration of Mr. Praveen Kumar Agrawal having Registration No. IBBI/IPA-002/IP-N00700/2018-2019/12348 for a period of one year."

4. The petitioner is an insolvency professional having Registration No. IBBI/IPA-002/IP-N00700/2018-2019/12348. *Vide* order dated 01.07.2022 passed by the National Company Law Tribunal (NCLT) Principal Bench, New Delhi, the petitioner came to be appointed as the Authorised Representative (AR) of the homebuyers (financial creditors), replacing the erstwhile AR, in the corporate insolvency resolution process (CIRP) of one M/s. Premia Projects Ltd.

5. Learned counsel for the petitioner submits that the impugned order in para 2.1.27 erroneously finds the petitioner to have violated Section 25A(3A) IBC, 2016 inasmuch as the said provision is not applicable in the present case. The observations made in paragraph 2.1.27 are as under:-

"2.1.27 *Thus, Section 25A(3A) of the Code clearly provides that whatever voting is done by more than fifty percent of the creditors in a class, the AR will vote in favour/against of the resolution, for which more than fifty percent of the creditors in a class have voted. There is no scope for any other interpretation of Section 25A(3A), On the contrary, Mr. Praveen Kumar Agrawal casted vote against the resolution for the replacement of the RP inspite of the fact that more than 50% of votes casted by homebuyers were in favor of the replacement of the RP,"*

He submits that Section 27 IBC, 2016, which is the applicable provision in the present case, specifically contemplates a higher threshold of 66% of the voting shares in the CoC for replacing a resolution professional. Section 27 IBC, 2016 reads as under –

> *"**27. Replacement of resolution professional by committee of creditors**.—*
> *(1) Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under Section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.*
> ***<u>(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under Section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.</u>***
> *(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.*
> *(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in Section 16.*
> *(5) Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under Section 22 shall continue till the appointment of another resolution professional under this section."*

6. Learned counsel for the petitioner submits that pursuant to Section 25A(3A) IBC, 2016, an AR is required to cast his vote for a proposal in the CoC as per the decision taken by more than 50% of the voting shares of the financial creditors he represents. However, a proposal such as 'replacement of a resolution professional' which requires a higher voting threshold in terms of Section 27 IBC, 2016, cannot be approved on the basis of only a 59.60% of the voting shares of the homebuyers, which is the only class of creditors comprising of the CoC, in the CIRP of M/s. Premia Projects Ltd. Reliance in this regard is placed on a judgment of the NCLAT in ***Vijay Saini vs. Devender Singh & Ors. (2024) SCC OnLine NCLAT 219*** wherein it

was held as under –

> "***28.*** *We are of the view that the interpretation put by the Adjudicating Authority on provision of 12A is not in accord with the statutory scheme. This can be demonstrated by taking a simple example; in a case where homebuyers i.e., creditor in class have 100% vote share in the CoC. Whether if majority of homebuyers i.e.,50% of the homebuyers take a decision to approve 12A proposal, can it be held that the proposal of 12A stand approved. Answer is a clear no. Since statute provides a rigorous threshold i.e., 90% of vote share, hence, when 90% vote share of the creditor of class approves the application under Section 12A only then CIRP can be withdrawn. The rigorous vote share has been provided with an object and purpose*."

7. In this light, he submits, that since the vote of the homebuyers/financial creditors in favour of approving the proposal to replace the resolution professional was only 59.60% of the voting shares of the homebuyers/CoC, the same cannot be construed to have met the higher threshold contemplated under Section 27 IBC, 2016.

8. Moreover, learned counsel for the petitioner submits that applying the lower voting threshold in terms of Section 25A(3A) to replace a resolution professional would render Section 27 IBC, 2016 nugatory inasmuch as Section 27 IBC, 2016 specifically contemplates a higher threshold of 66% of the voting shares in the CoC for replacing a resolution professional.

9. In the above conspectus, the matter requires consideration.

10. Issue notice.

11. Learned counsel, as aforesaid, accepts notice on behalf of the respondent no.1.

12. Issue notice to the respondent no.2, on necessary steps being taken by the petitioner, through all permissible modes including electronically, returnable for the next date of hearing.

13. Let reply be filed by the respondent/s within a period of two weeks from today. Rejoinder thereto, if any, be filed within a period of one week thereafter.

14. In the meantime, considering the aforesaid aspects, till the next date of hearing, there shall be a stay of the suspension of the petitioner, as directed vide Para 3.1 of the impugned order.

15. List on 08.04.2025.

SACHIN DATTA, J

MARCH 10, 2025/dn