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

% Judgment reserved on : 24.11.2023
Judgment Pronounced on: 18.12.2023

\+ W.P.(CRL) 544/2020 & CRL.M.A. 4088/2020

DR. ARUN MOHAN ..... Petitioner

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Arshdeep Singh Khurana and Ms. Tannavi Sharma, Advocates.

For the Respondent : Mr. Prasanta Varma, SPP for CBI with Ms. Pragrya Verma and Mr. Pankaj Kumar, Advocates.

Mr. Ram Niwas Buri and Mr. Rishabh Sharma, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. The present petition is filed on behalf of the petitioner under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") seeking writ of Mandamus or any other appropriate writ, order or direction to quash case FIR bearing No. RC-DAI-2020-A-0001 dated 11.01.2020 under Sections 7 and 7A of the Prevention of Corruption Act, 1988, as

amended in 2018 (in short "PC Act") read with Section 120-B of Indian Penal Code, 1860 (in short "IPC") registered at P.S. CBI, ACB, New Delhi and presently pending before learned Special Judge (PC) Act, New Delhi and all proceedings emanating therefrom. The petitioner also seeks quashing of the impugned order dated 14.01.2020 passed by the learned Special Judge (PC) Act, CBI-13, New Delhi directing 2 months' judicial remand of the petitioner.

HISTORY OF THE PRESENT PETITION:-

2. This Court had earlier *vide* Order dated 24.02.2020 issued notice on the present petition. Subsequently, upon an application bearing Crl.M.A. 4761/2020, filed by the petitioner for modification of order dated 24.02.2020, this Court *vide* Order dated 03.03.2020, had passed the following order:-

> "*Crl. M. A. No.4761/2020*
>
> *1. The learned counsel appearing for the petitioner has filed the present application, inter alia, pointing out that there is an inadvertent error that has crept in Paragraph no. 4 of the order dated 24.02.2020, inasmuch as, the petitioner was appointed as a Resolution Professional by the Committee of Creditors (CoC) and not an Interim Resolution Professional. Paragraph no. 4 of the said order dated 24.02.2020, is accordingly rectified to read as under:*
>
> > "*4. The petitioner is a Resolution Professional appointed by the Committee of Creditors (CoC). It is contended that a CoC is neither a public authority nor a court of justice.*"
>
> *2. The petitioner also states that this Court had ordered that no coercive steps be taken till the next date of hearing. However, that sentence has somehow not been typed in the said order.*
>
> *3. Accordingly, it is also directed that no coercive steps shall be taken till the next date of hearing.*
>
> *4. The application is disposed of.*
>
> *5. Order be given dasti under signatures of the Court Master.*"

3. Thereafter *vide* Order dated 12.02.2021, this Court had formulated and considered the examination of the question arising out of the present petition which is as under:-

> *"The issue involved in the present petition is whether the petitioner who is a 'Resolution Professional' is a public servant or not and thus, would be liable for the offence punishable under Prevention of Corruption Act."*

4. Also, *vide* Order dated 13.09.2022, notice was issued on an intervention/impleadment application moved by Insolvency & Bankruptcy Board of India (in short "IBBI"), while considering the role played by the IBBI in giving recognition to the Insolvency Resolution Professionals, assuming the roles of Interim Resolution Professional/ Resolution Professional (in short "IRP / RP") under the Insolvency and Bankruptcy Code, 2016 (in short "IBC"), which even finds mention in the impugned order dated 14.01.2020. That *vide* Order dated 27.07.2023, the impleadment application on behalf of IBBI was allowed only to the extent of assisting the Court on the legal issue which arises in the present petition.

FACTS OF THE PRESENT PETITION:-

5. The brief facts as culled out from the list of dates as provided in the petition are as follows:-

5.1 The petitioner was approached by Mr. Karan Lalwani, Financial Creditor of FR Tech Innovations Private Limited (CD) for proposing the name of the petitioner as IRP in the company petition to be filed by the Financial Creditor under Section 7 of IBC, 2016 in the NCLT, Mumbai Bench by the FR Tech Innovations Private Limited. The petitioner consented to act as an

IRP of CD as proposed by Financial Creditor on *inter se* negotiated terms and conditions in a specified format Form 2.

5.2 The petitioner received an intimation from Financial Creditor through e-mail along with a copy of the order dated 14.11.2019 passed by the NCLT, Mumbai Bench in C.P. No. 2891/1-BP/2019 in the matter titled *Mr. Karan Lalwani v/s FR Tech Innovations Pvt. Ltd.* whereby the petitioner was appointed as IRP. The appointment and tenure of the petitioner as IRP was in accordance with the provisions of Section 16 of IBC, 2016. The tenure of IRP was till the date of appointment of RP by the Committee of Creditors (in short "CoC").

5.3 The petitioner as an IRP *inter-alia* issued public announcement and invited claims from the Claimants/Creditors along with the documentary evidence in support thereof. The petitioner received eight claims in total for an amount of Rs. 2,12,08,445/- from the claimants/creditors under various categories till 13.12.2019 being last date for submission of claims.

5.4 The petitioner in his capacity as IRP collated and verified the claims received by him from Creditors/Claimants under various categories including the claim of Mrs. Namrata Bugalia, wife of the complainant in the above said RC case. Mrs. Namrata Bugalia, wife of the complainant, allegedly submitted the forged and fabricated documents in support of her claim including a copy of the unstamped acknowledgement and inventions agreement dated 06.03.2017 shown to have been executed on 03.03.2017, which according to petitioner seems to be a forged and fabricated

document. Since, the aforementioned observations raised several questions in regard to the work executed by the Complainant's wife and the said e-mail did not disclose material details regarding the same, the petitioner herein promptly replied to Mrs. Bugalia seeking additional details in support of her claims, a part of the verification process of the claims in accordance with the provisions of IBC, 2016.

5.5 The petitioner sent reminder e-mails to all the Claimants/Creditors including Mrs. Namrata Bugalia, wife of the complainant, requiring them to further submit the requisite documents and information as desired by the petitioner through e-mail dated 14.12.2019 in order to enable the petitioner as IRP to finalize the list of creditors/claimants within the stipulated period as provided under the IBC.

5.6 After collation of all the claims received, the petitioner constituted the CoC of the Corporate Debtors. The CoC was constituted only with one Financial Creditor, Mr. Karan Lalwani with 100% voting rights.

5.7 The petitioner circulated the notice and agenda of the first CoC meeting to the members of CoC, through e-mail by giving 5 days' notice and the first CoC meeting was scheduled to be held on 28.12.2019.

5.8 The first meeting of the CoC was held in the office of petitioner at Noida. That in the first meeting, the CoC resolved *inter alia* to appoint the petitioner as RP of the CD with effect from 28.12.2019. The IRP had consented to act as RP as per Section

22(3)(a) of IBC, 2016. Consequently, upon appointment of the petitioner as RP by the CoC on 28.12.2019, the term/tenure of the petitioner as IRP pursuant to the provisions of Section 16(5) of IBC, 2016 was completed on the same day.

5.9 The minutes of the CoC meeting were recorded and circulated within 48 hours amongst the members of CoC through e-mail.

5.10 The minutes of the CoC meeting, appointing the petitioner as RP were approved. The petitioner as RP was to conduct the CIRP of CD in terms of Section 23 of IBC, 2016. The petitioner as RP was to discharge his duties under the supervision of the CoC. The petitioner was required to perform his duties in accordance with the provisions of Sections 25 and 28 of IBC, 2016. It was also mandated under Section 5(2)(b) of IBC, 2016 for the petitioner to represent and act on behalf of CD with third parties, and exercise rights for the benefit of the CD.

5.11 That during discussion on telephone on 30.12.2019, the petitioner conveyed the complainant that he had been appointed as RP by CoC in its first meeting held on 28.12.2019. The petitioner also informed the complainant that the CoC had decided to recover Rs.15.20 Lacs from the wife of the complainant along with interest as she had received these amounts on the basis of forged and fabricated documents.

5.12 That the petitioner had scheduled a meeting in Hyderabad with Claimants/ Creditors based in Hyderabad who had unlawfully and illegally retained the assets and business records of the CD. On 07.01.2020, pursuant to the authority of the CoC, the petitioner

issued/sent Demand Notices through e-mail and also through post to all the Claimants/Creditors including to the wife of the complainant.

5.13 That instead of responding to the Demand Notice dated 07.01.2020 and to pre-empt any legal action against his wife, the complainant filed a false and fabricated complaint against the petitioner with SP, CBI, Delhi under PC Act. The complainant is stated to have concealed the receipt of Demand Notice from the petitioner on 07.01.2020 as also his conduct of misappropriation of Rs 15.20 Lacs from the CD, on the basis of forged and fabricated documents. The respondent No.1 registered the FIR vide RC-DAI-2020-A-001 under Section 7 and 7A of the PC Act, read with Section 120B of IPC against the petitioner and Sh. Paresh Kumar. The respondent unlawfully and illegally assumed jurisdiction to investigate the matter under the PC Act despite the fact that neither the petitioner nor Paresh Kumar are public servants.

5.14 The respondent No.1 arrested Sh. Paresh Kumar claiming that he had received a sum of Rs 3.5 Lacs from the complainant. The petitioner was separately arrested from CBI office. During the alleged verification conducted between the lodging of the complaint and registering the FIR, the respondent No.1 did not inquire into the alleged claims raised by the complainant from the Corporate Debtor. In the verification reports dated 10.01.2020 and 11.01.2020, the role of the petitioner was not verified.

5.15 The petitioner was produced before the learned Duty Judge and

his 14 days' Judicial Remand was sought. The petitioner questioned the jurisdiction of the respondent on the ground that he is not a Public Servant as defined under PC Act and the CBI does not have jurisdiction to investigate the case and any action by them is *void ab initio* and that he has been illegally detained at the instance of the complainant. The learned Duty Judge, Special Judge PC Act, CBI-15 was pleased to remand the petitioner to 1 day Judicial Custody with the direction to produce him before the concerned court on 13.01.2020 on the ground that the issue needs to be heard and considered in detail.

5.16 That the petitioner was produced before the concerned court of special Judge, CBI-13, New Delhi, on question of whether the petitioner was a public servant under the PC Act.

5.17 On 14.01.2020, the impugned order of judicial remand for 2 weeks was passed by learned Special Judge PC Act on the conclusion that petitioner is a Public Servant as per Section 2(c) of the PC Act, 1988.

5.18 That on 25.01.2020, the petitioner was released on bail by the learned Special Judge, New Delhi.

Thus, the present petition arises from the registration of impugned FIR in question against the petitioner consequent upon which the impugned remand order has been passed.

CONTENTIONS OF THE PETITIONER

6. Mr. Arshdeep Singh Khurana, learned counsel appearing on behalf of petitioner contends that the basic premise on which the alleged

prosecution is raised against the petitioner, is without any legal basis and legs to stand on and is, therefore, liable to be quashed outright. Learned counsel further submits that the petitioner also suffers from the observations made against the petitioner by learned Special Judge, passed in the impugned order without any legal basis and wholly based upon the surmises and conjectures of the learned Special Judge while interpreting the provisions of the IBC alongwith PC Act.

7. The petitioner is enrolled as an Insolvency Professional (in short "IP") under Section 207 of IBC, 2016 with an Insolvency Professional Agency (ICSI Institute of Insolvency Professionals) as its member and registered under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and IBBI has granted certificate of registration under IP Regulations, 2016.

8. The arguments raised by the Mr. Khurana, learned counsel for the petitioner were primarily, two folds:-

> I. Insolvency Professional/ Resolution Professional appointed under the provisions of IBC are not *"public servants"* for the purposes of PC Act.
>
> II. Consequentially, the registration of FIR in question on the basis of the factual matrix of the case, in view of the petitioner not falling within the ambit of "*public servant*", is *void ab initio*.

9. Through his first fold of arguments, Mr. Khurana, emphasized upon the appointment, fees, tenure, duties and responsibilities of the IRP/RP under the IBC and tried to demonstrate how the IRP/RP does not fall under the category of *"Public Servant",* as envisaged under the law and thus, the non-applicability of PC Act over such IRP/RPs.

9.1 Mr. Khurana, learned counsel commenced his arguments

by referring to the definition of *"Public Servant"* as provided in Section 2 of the PC Act.

9.2 Continuing further, Mr. Khurana, learned counsel takes this Court to each and every relevant provision, rule and regulation provided under the IBC, governing the entire realm of existence, subsistence, and functions of an IRP/RP for the purposes of the insolvency resolution process to be undertaken for the Corporate Debtor (for short referred to as "CD").

9.3 Mr. Khurana, learned counsel for the petitioner, refers to Sections 2(19) and 5(27), Chapter II - Corporate Insolvency Resolution Process of the IBC alongwith the regulations governing the said aspect, to submit that:-

a. The Insolvency and Bankruptcy Code is a special legislation and a complete code in itself to deal with matters of insolvency and bankruptcy in India.

b. The National Company Law Tribunal/Adjudicating Authority (NCLT) has no power to reject the nominated IRP unless there are disciplinary proceedings against the IRP.

c. The duties of the IRP are limited to those enumerated under the IBC. They are only required to follow the directions of Committee of Creditors and have no powers to take any decisions without the approval of the CoC. These duties only deal with the management of the insolvency of the corporate debtor and not with any issue of administration of justice.

d. While relying upon ***ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta and Ors.*** reported in **(2019) 2 SCC 1 ; *Swiss Ribbons Pvt. Ltd. v. Union of India*** reported in **(2019) 4 SCC 17**, learned counsel submits that IRP/RP does not render any adjudication or determination over any point and only act as an Administrator or Facilitator to sub-serve the interests of the CoC.

9.4 Mr. Khurana further explains the interplay between the provisions of PC Act and IBC and submits that PC Act, 1988 provides an exclusive definition of public servant under Section 2(c). As criminal statutes must be read strictly and all ambiguities must be resolved in favour of the accused, there is no possibility of the inclusion of any person not listed under Section 2(c) being included as a public servant.

9.5 Section 2 of the PC Act does not include the terms 'Insolvency Professional', 'Interim Resolution Professional' or 'Resolution Professional'. This is despite the fact that Parliament chose to amend certain provisions of PC Act in 2018, 2 years after the introduction of the IBC in 2016.

9.6 Notably, the Fourth definition of public servant under Section 21 of IPC is nearly identical to Section 2(c)(v) of PC Act and the Sixth definition under Section 21 of IPC is identical to Section 2(c)(vi) of PC Act. Therefore, if an IRP is not a public servant within the meaning of Section 21 (Fourth and Sixth), an IRP cannot therefore be a public servant under Section 2(c)(v) and Section 2(c)(vi) of the PC Act.

9.7 Mr. Khurana further contends that, while explaining the applicability of the definition clauses as enshrined under the PC Act, even otherwise an IRP or RP would not fall within the definition of the term 'public servant' under Section 2 of the PC Act on the basis of the following arguments:-

a. The Committee of Creditors (CoC) has complete discretion and control over the appointment of the RP. The NCLT or

NCLAT also has no power to interfere in the appointment or removal or replacement of the IRP or the RP by the CoC. Similarly, the power of removal of an RP vests solely with the CoC. Therefore, it is apparent that none of the criteria under Section 2(c)(vi) are fulfilled in the instant case.

b. Therefore, it cannot be said that the IRP or the RP are authorised by a *"Court of Justice"*. Even assuming an IRP or RP are authorised by a *"Court of Justice",* the IRP or an RP is not performing any duty in *"connection with the administration of justice"*. Section 2(c)(v) also does not include all persons appointed to perform any duty by a Court of Justice. It only includes those persons who are appointed to perform any duty, in connection with the administration of justice.

c. *"Public Duty"* as defined under Section 2(b) of the PC Act means a duty in the discharge of which the State, the public or the community at large has an interest.

d. In the instant case, the IRP or the RP only has a duty towards the Committee of Creditors and the Corporate Debtor under management and not to any other person or the public at large, while reading the provisions under Section 18 and 25 of IBC.

e. Therefore, it is evident that the IRP or RP is not covered in any of the foregoing sections of the PC Act. Consequently, the classification of the Petitioner as being a public servant is incorrect and his prosecution under the PC Act is illegal and void and ought to be quashed.

9.8 Mr. Khurana, learned counsel next contended that the Insolvency and Bankruptcy Code is a special legislation and a complete code in itself and contains a legal fiction under Section 232 of IBC deeming certain persons as "*Public Servants*". However, an IRP or an RP is not deemed to be a public servant under the said section. Taking this argument further, learned

counsel submits that the Parliament considered the question of corruption in the context of the IBC, leading to the introduction of Section 232 IBC. Notably, the IRP or RP is not included in Section 232 IBC. However, in the very next section i.e. Section 233 IBC, the actions taken in good faith by an IRP or an RP are protected.

9.9 Learned counsel further contends that it is settled law that what is expressly mentioned in one place but not in another must be taken to have been deliberately omitted. He submits that this is in line with the settled rule of statutory interpretation, viz. *"expressio unius est exclusio alterius"* and thus, by resorting to Section 232, it is clear that Parliament did not consider any person under the IBC as a public servant but has created a legal fiction that persons under Section 232 would be public servants, which fiction does not include an RP or an IRP, while relying upon the judgement of ***Manish Tiwari v. State of Rajasthan*** reported in **(2014) 14 SCC 420**.

9.10 According to Mr. Khurana, it is trite that the IBC is a subsequent and a special legislation when it comes to the IP and the responsibilities and the duties ascribed to such individual and would override the provisions of PC Act, which is a general act, by relying upon the judgement of ***Jeevan Kumar Rout v. Central Bureau of Investigation*** reported in **(2009) 7 SCC 526.** He further contends that Section 238 stipulates that the provisions of the IBC shall have effect notwithstanding anything inconsistent therewith contained in any other law. Consequently, the deeming

provision of public servants under the IBC would override the PC Act.

9.11 Alternatively, he contends that even if it is assumed that IBC and PC Act are both special legislations, the IBC was intended to be a complete code with regards to all matters relating to insolvency. This would also include the creation of the position of IRP and RP as well as the regulations of those persons. The IBC has also been conscious of the public nature of some persons under the IBC and deemed them to be public servants under the IPC. Therefore, the provisions of the IBC ought to override the PC Act. He argues that Hon'ble Supreme Court has also time and again reaffirmed the principle of *leges posteriors priores conterarias abrogant* (a latter law will prevail over an earlier law). The only exception to this rule is that a later general law would not automatically override an earlier special law. However, in this case, the IBC is the special legislation. Reliance was placed on ***Bharat Petroleum Corporation Ltd. v. P. Kesavan and Anr.*** reported in **(2004) 9 SCC 772**.

9.12 Lastly, Mr. Khurana, while concluding his first fold of arguments, reiterates that the IBC creates a deeming fiction to include certain officers (excluding IRP or RP) within the meaning of Section 21, IPC. This necessarily implies that but for the deeming fiction under Section 232 IBC, these persons would not be public servants under the meaning of Section 21, IPC and therefore, it is clear that an IRP/RP would not be a *"public servant"* within the meaning of Section 21, IPC or under the PC

Act.

10. The second limb of argument of Mr. Khurana, learned counsel for the petitioner is the non-maintainability of the FIR against the petitioner/accused on the basis of apparent *mala fide* on behalf of the Respondent No.2/complainant, and imminent and patently erroneous investigation carried out by the Respondent/CBI.

11. To substantiate his aforesaid contention, Mr. Khurana, raises the following arguments:-

a) There is no material to suggest that any demand for a bribe was made by the Petitioner apart from the bald assertion of the Complainant and it is evident that this FIR has been filed by the Complainant simply to avoid the consequences of defrauding the Corporate Debtor, especially the complaint that the Petitioner was authorised to file *vide* the meeting dated 28.11.2020, and legal notice pertaining to the same was sent to the complainant *via* e-mail dated 07.01.2020, subsequent to which the present complaint has been filed with the Respondent/CBI.

b) The CBI also failed to appropriately verify the claim of the Complainant despite an explicit mandate to conduct a complete verification in line with Chapter 8 of the CBI Manual. The verification which was conducted on 10.01.2020, failed to disclose the role of the Petitioner. The CBI has also failed to consider that the Petitioner had placed all the information relevant to the Complainant's case to the Committee of Creditors. The CBI has failed to consider that the conduct of the Complainant smacks of *mala fides* insofar as the Complainant has submitted fake invoices and fake service agreements to the Petitioner. The Complainant failed to bring to the notice of the CBI, the demand notice dated 07.01.2020 sent by the Petitioner.

c) The Respondent/CBI admits that a further verification into the role of the Petitioner was required. In the verification on 11.01.2020, even as per the CBI, no further material against the Petitioner was recovered. Therefore, the role of the Petitioner was admittedly not

verified, and the said FIR ought not to have been registered on the basis of such incomplete verification.

12. Apart from this, Mr. Khurana, learned counsel also questions the very registration of the complaint, on the basis of which the Respondent/CBI had started the entire verification/investigation process, which itself suffers from great level of disregard and non-compliance of the provisions of the CBI Manual, which specifically requires the diarization of the complaint received by the CBI, specific marking of the same to the concerned official and proper follow up of the complaint on the basis of the particular diary number allotted to such complaint.

13. Mr. Khurana points out the inherent defects with which the CBI has proceeded with the investigation of the complaint in question, and has thus, argued that being suffering from such incurable procedural defects, the very veracity of the complaint is in question and thus, indicates the questionable truthfulness and *mala fide*, and thus, such investigation cannot stand the scrutiny of law.

14. Mr. Khurana, learned counsel lastly argued that, therefore, the Respondent/Complainant has filed the impugned FIR purely to harass and persecute the Petitioner and conceal his own *mala fides* and submits that the quashing of this FIR is, therefore, necessary to ensure that the process of the Court is not abused and that the ends of justice are secured while relying upon the judgment of ***State of Haryana v. Bhajan Lal*** reported in **1992 Supp (1) SCC 335**.

CONTENTIONS OF THE RESPONDENT/CBI:-

15. Mr. Prashanta Verma, learned SPP appearing on behalf of Respondent/CBI, had sought to argue the present matter directly and

submits that all the relevant documents have already been placed on record by the petitioner, and the question before this Court is a pure question of law.

16. Mr. Verma starts his arguments by drawing distinction from the complete sketch of the IRP presented by the Mr. Khurana, learned counsel for the petitioner, to the extent of pointing that the duties of an IRP as enshrined under the IBC, are necessarily to be read as *"Public Duties"* of an encompassing *"Public Character"*, in consonance with the definition of *"Public Servant"* as provided under the PC Act.

17. Mr. Verma, learned SPP submits that the IBC is a new law and a new concept duly enacted for the issues regarding insolvency and bankruptcy of the corporate persons. He further submits that the PC was amended and Section 2(c) of the PC Act has a very wide amplitude, encompassing the duties performed by the individuals to be termed as a *"Public Servant"*, though had not specifically provided the word IRP/RP in its definition.

18. Mr. Verma further contends that the IRP/RP is a person who is duly appointed by the NCLT, even if same is proposed by the creditor/corporate debtor/applicant, and by the plain reading of the duties which the IRP/RP are required to perform, it clearly shows that the same are *"Public Duty"* having a *"Public Character"*. Learned SPP further took this argument basing upon the Section 15 of IBC, which refers to *"Public Announcement"* being made by an IRP duly appointed for a corporate debtor, for giving a notice to the public at large, of the status of the corporate debtor, and inviting claims of the creditors in public at large against the corporate debtor, in pursuance of the

Corporate Insolvency Resolution Process, which is the statutory method as per the IBC.

19. Mr. Verma, learned SPP further contends that the IRP/RP is required to look after the management and affairs of the corporate debtor for which he is appointed and is also required to make sure that everything with the corporate debtor should go smoothly and lawfully.

20. Mr. Verma further argues that the duties and responsibilities bestowed upon the IRP/RP reflects that he is a part of judicial delivery system, working in furtherance of the judicial dispensation, and thus is squarely covered under the definition of *"Public Servant"* under the IPC and PC Act.

21. So far as the factual matrix of the case is concerned, Mr. Verma, learned SPP contends that on mere examination of the complaint received by the CBI against the IRP/RP, it was *prima facie* apparent that the person against whom the allegations are made is a person who is appointed during the process of judicial delivery system. Further, that the said person is actually performing the duties of reporting on the subject matter to a *"Court"* which had appointed him, and allegations of demanding money and of having recorded certain phone calls gave sufficient cause for the CBI to initiate the present criminal proceedings against the said person.

22. On that basis, learned SPP argues that whether the act of demanding bribe was actually done in pursuance of the public duty or not is a matter of trial, and thus, the same cannot be agitated here, since the case is at its very nascent stage.

23. Mr. Verma, learned SPP heavily relied upon the judgement of the

learned Single Judge of High Court of Jharkhand at Ranchi in *Cr.M.P.1048 of 2021* titled as ***Sanjay Kumar Aggarwal v. Central Bureau of Investigation*** reported in **2023 SCC OnLine Jhar 394**, to submit that the said judgement unequivocally held that the Resolution Professionals are *"Public Servant"* falling under the definition of the Section 2(c) of the PC Act.

CONTENTIONS OF R-2/COMPLAINANT

24. Mr. Ram Niwas Buri, learned counsel for the R-2/Complainant, entered appearance and sought permission to argue the matter which was duly granted and in pursuance thereof, had filed written submissions on behalf of the R-2/Complainant, raising strong objections to the present petition, legally and factually.

25. Mr. Buri, learned counsel for the complainant starts his contentions by taking this Court again through the relevant provisions of IBC alongwith the regulations framed thereunder, governing the entire realm of the IRP/RPs. The summation of his legal arguments are as follows:-

a) In view of judicially attributed meaning, the word *"office"* is wide enough to cover each and every capacity or position held by a person in discharge of public duties entrusted in trust and good faith under statutory provisions. Learned counsel argues that Petitioner in the capacity or position as IRP or RP is discharging statutory duties under IBC, 2016 and IBC Regulations, 2016, of public character in public interest, as such, he was holding a public office of IRP or RP in the public interest on the day of crime i.e., 11.01.2020.

b) Learned counsel further argues that in view of the above meaning and definition of "*office"*, "*public duty"* and "*public servant"* under PC Act, 1988 and judicial interpretation thereof, it is manifestly clear that the IRP or RP under IBC,

2016 falls under the ambit of public servant by virtue of holding an office of IRP or RP in order to discharge public duties entrusted in trust and good faith under statutory provisions of IBC, 2016 and IBC Regulations, 2016.

c) Moreover, in the light of Explanation-1 to Section 2(c) of PC Act, 1988 "*whether appointed by government, or not*", it would be wrong and erroneous to assume that merely on the basis of appointment of RP by CoC under Section 22, IBC Code, 2016, the Petitioner is not covered under the definition of public servant under PC Act, 1988. The plain reading and understanding of the words "*appointed by government or not*" makes it explicitly clear that the person appointed by other than the government is also covered in the ambit of public servant, as such, the petitioner appointed by CoC is a public servant as per Explanation-1 to Section 2(c) of PC Act, 1988.

d) The CoC with majority vote can only propose and recommend for replacement of IRP or RP to the Adjudicating Authority (NCLT) and it is only the NCLT which appoints or replace the IRP or RP after seeking report regarding pendency of any disciplinary proceedings from IBBI, therefore, the office of IRP or RP is statutorily perpetual in nature and attached to the public authority i.e., NCLT and IBBI. An IRP or RP held/holds substantive position to discharge public duty in public interest of community at large under provisions of IBC, 2016 and IBC Regulations, 2016.

e) It transpires from the scheme of IBC, 2016 that an IRP or RP is mandatorily bound to report his actions and decisions to the CoC and the NCLT for its approval besides IBBI. In case of any dispute in the resolution process, RP is also bound to get orders from the NCLT regarding his proposed action.

f) Moreover, RP is issued a Certificate of Registration in terms of Regulation 7 of IBC Regulations, 2016 with conditions and is subjected to disciplinary proceedings under Regulation 11. The IBBI may take action or punish an IRP or RP as provided u/s 220 IBC, 2016 in pursuance of recommendation of the Disciplinary Committee or otherwise. Thus, it is manifest that RP holds an office and discharge his duties in aid and

assistance to the NCLT, under adjudicating control of the NCLT. RP is mandated to comply and follow the provisions of IBC, 2016, IBBI Regulations, 2016, Guidelines issued by IBBI and any other order or circular issued by IBBI from time to time. Therefore, duties, functions, actions, steps and decisions of RP during CIRP are regulated and controlled under the provisions of IBC, 2016 and IBC Regulations, 2016, as such, the same are public in nature.

g) Any act or commission done or intended to be done by an Insolvency Professional or Liquidator which is not covered under the IBC, 2016 or rules or regulations made thereunder tantamount to, by its nature, a crime punishable under PC Act or IPC, as an IRP or RP or Liquidator or Bankruptcy Trustee is not protected u/s 233, IBC, 2016.

h) So far as an Insolvency Professional or Liquidator not referred in Section 232, IBC, 2016 is concerned, it appears to be an unintended omission of the legislature but the implication by nature of duties, responsibilities, accountability and office of an Insolvency Professional (IRP or RP) or Liquidator under IBC, 2016, *ex-facie* shows and proves that an Insolvency Professional (IRP or RP) or Liquidator under IBC, 2016 is a public servant.

i) Learned counsel submits that this Hon'ble Court is empowered to fill the gap in section 232, IBC, 2016 by deeming fiction; firstly, in view of protection granted to an Insolvency Professional (IRP or RP) or Liquidator under section 233, IBC, 2016; secondly, in the light of the fact that there is no specific statutory provision in the PC Act, 1988 or IBC, 2016 which prescribe that an Insolvency Professional (IRP or RP) or Liquidator under IBC, 2016 is not a "*public servant*" and thirdly, the act and commission of extortion of money during CIRP under threat, duress and coercion by taking undue advantage of office of IRP or RP, is beyond the ambit of provisions of IBC, 2016 and falls under PC Act, 1988 and IPC.

26. So far as factual contentions raised in the present petition, the submissions on behalf of the R-2/Complainant are as follows:-

a) R-2/Complainant is M. Tech from IIT, Delhi and his wife is also MCA with experience in DRDO, as such, both R-2 and his wife have good knowledge and experience for the purpose of required work of CD, therefore, they were appointed as consultant by the CD in March, 2017. R-2 and his wife worked for the CD from March, 2017 to November, 2017 and received payment of Rs. 15.20 Lakhs for their work/services. As against claim of Rs.18 Lakhs, a sum Rs.2.8 lakhs including TDS was owed by the CD.

b) The CD was proceeded for Corporate Insolvency Resolution Process (CIRP) in the NCLT, Mumbai by one Financial Creditor (FC) and Petitioner was appointed Interim Resolution Professional (IRP) vide order dated 14.11.2019 of the NCLT, Mumbai in CP No.2891/I&BC/2019.

c) Petitioner is an Advocate possessing Ph.D. in law besides other professional degrees and is registered with IBBI in terms of Section 207 of IBC and Regulation 7 of IBC (Insolvency Professionals) Regulations, 2016.

d) Petitioner took over the charge of CD and *vide* e-mail dated 14.12.2019 and 16.12.2019, asked for information and documents in support of the claim of R-2's wife which were provided to the Petitioner despite the Petitioner being already in possession of the same from the CD. Petitioner found an irregularity/inconsistency in recording the date in the Confidentiality Agreement and for the said sole reason termed the Confidentiality Agreement and entire work/services of R-2 and his wife as fraudulent and threatened to initiate criminal proceedings against R-2's wife.

e) Petitioner in connivance with co-accused Paresh Kumar hatched conspiracy to extort money from R-2 and demanded a sum of Rs.5 lakhs to hush up the case. Petitioner and co-accused Paresh Kumar in joint meeting with R-2 in the office of Paresh Kumar, demanded sum of Rs.5 lakhs expressly and explicitly under threat, duress and coercion of criminal action against R-2's wife and recovery of Rs.15.20 lakhs with

interest, in case the bribe of Rs.5 lakhs is not paid. Petitioner and co-accused Paresh Kumar assured R-2 that on payment of Rs.5 lakhs, no criminal action shall be initiated against R-2's wife as the Petitioner would continue to manage entire case till the end. This entire conversation of all the three as well as conversations between Petitioner and co-accused is part of the prosecution case.

f) Co-accused Paresh Kumar was caught red handed while accepting bribe of Rs.3.5 lakhs from the R-2/complainant.

27. On the basis of above submissions, Mr. Buri, learned counsel for the R-2/Complainant lastly contends that, co-accused Paresh Kumar accepted the bribe amount at the instance of the petitioner. Mr. Buri further submits that the acts and commissions of taking undue advantage of his office while discharging public duty as an IRP/ RP and extorting money under duress, coercion and threat of initiating criminal proceedings are *ex-facie* acts and commissions outside the purview of IBC, 2016 and exclusively falls in the ambit of PC Act, 1988 and IPC.

REBUTTAL ON BEHALF OF PETITIONER

28. Mr. Khurana in rebuttal submits that *"Insolvency Professional"* does not find any mention in Section 232 IBC, however, in the Section immediately following Section 232, i.e., Section 233 IBC, *"Insolvency Professional"* has been mentioned. This makes it evident that the Legislature, in its wisdom, has intentionally not included Insolvency Professionals in Section 232 IBC. Further, by virtue of Section 238 IBC, the provisions of IBC would prevail over any other law.

29. He further submits that the Parliament chose to amend the provisions of PC Act in 2018, 2 years after the introduction of the IBC in 2016, yet no amendment was made to include an Interim Resolution

Professional or a Resolution Professional or any other persons/ authorities under the IBC as Public Servants under the PC Act.

30. He also submits that a Resolution Professional is not a public servant which is evident from the fact that where the RP is to be treated as a public servant, the Legislature has expressly provided for the same. Reliance is placed upon ***Securities and Exchange Board of India (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018***. He relies upon sub-regulations (1) and (5) of Regulation 5 which is reproduced below:

> "*5. (1) The Administrator shall be a person registered with the Insolvency and Bankruptcy Board of India as an Insolvency Resolution Professional and empanelled by the Board from time to time.*
>
> *(5) For the purposes of these regulations, the Administrator shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860) and sections 22 and 23 of the Act shall accordingly apply to him.*"

Therefore, as Section 232, IBC does not include an Insolvency Professional, it is evident that the Legislature never intended making an Insolvency Professional a *"public servant"*.

31. In support of his contentions he also relied upon the judgement of the Hon'ble Supreme Court in ***Central Bureau of Investigation vs. Ramesh Gelli and Ors.,*** reported in **(2016) 3 SCC 788.**

32. He submits that the reasoning rendered in Para 27 of ***Sanjay Kumar Aggarwal (supra)*** by the learned Single Judge of the High Court of Jharkhand at Ranchi, that Section 232 is only in respect of IPC and not PC Act and therefore, an IP would fall within the ambit of the scope

of section 2 (c) of the PC Act, cannot be considered as the correct interpretation of law keeping in view the ratio in ***Ramesh Gelli (supra).***

SUBMISSIONS OF IBBI

33. Mr. Neeraj Malhotra, learned senior counsel appears on behalf of IBBI and submits that the Board initially had some reservations against the contentions raised on behalf of the petitioner. However, since the passing of the judgement in ***Sanjay Kumar Aggarwal's case (supra)*** in the interregnum, enunciating the legal position on the identical legal issue before this Court, now submits that the Board will abide by the law as it stands today.

ANALYSIS AND CONCLUSIONS:

34. This Court has heard the argument of Mr. Khurana, learned counsel for the petitioner, Mr. Prasanta Varma, learned SPP for the CBI and Mr. Ram Niwas Buri, learned counsel for R-2/ complainant as well as Mr. Neeraj Malhotra, learned Senior Counsel for the IBBI. With their able assistance, this Court has also perused the documents on record as also the various provisions of different enactments which arose for consideration in the present petition.

35. *Vide* order dated 12.02.2021, this Court had formulated the question, which needed to be considered which is as under :-

> *"The issue involved in the present petition is whether the petitioner who is a 'Resolution Professional' is a public servant or not and thus, would be liable for the offence punishable under Prevention of Corruption Act."*

Upon hearing and considering the various legal aspects arising in the present petition, this Court is of the considered opinion that the aforesaid question ought to be looked into keeping in view the

Insolvency Professional as a *genus* and not IRP, RP and Liquidator as separate entities.

36. The controversy involved in the present case is a pure question of law and requires this Court to interpret Sections 232 and 233, IBC, in conjunction with other provisions relatable to the role and responsibility of the IP as ascribed under various provisions of the IBC, 2016. It would be apposite to extract Section 232 and Section 233 IBC hereunder :

> *"**232. Members, officers and employees of Board to the public servants.—**The Chairperson, Members, officers and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Code, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).*
>
> ***233. Protection of action taken in good faith.—**No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government, or the Chairperson, Member, officer or other employee of the Board or an insolvency professional or liquidator for anything which is in done or intended to be done in good faith under this Code or the rules or regulations made thereunder."*

It is well settled that the golden rule of interpretation of statutes is to read the particular provision in its plain and simple language and unless there is any ambiguity or lack of clarity, the exercise of taking aid of either the internal or external methods should not be resorted to ordinarily.

37. Before this Court delves into the aspect of whether the IP is a "*public servant*" within the meaning ascribed in Section 2(c) of the PC Act, 1988, it would be appropriate to consider as to for what reason and the aims and objects necessitating the consolidation of various Insolvency Acts like the Presidency Towns Insolvency Act, 1909, the Provincial Insolvency Act, 1920, the Sick Industrial Companies (Special

Provisions) Act, 1985 (SICA), the Recovery of Debt Due to Banks and Financial Institutions Act, 1993 and the Securitization and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), into the Insolvency and Bankruptcy Code, 2016 was felt by the Legislature. The introduction as well as the statements of objects and reasons requiring codification of the aforesaid laws stated in the IBC 2016 is extracted hereunder :-

> *"The existing framework for insolvency and bankruptcy resolution is inadequate, ineffective and results in undue delays.*
>
> *There have been several committees and commissions recommending consolidation of insolvency and bankruptcy laws. In November, 2015, the Bankruptcy Law Reforms committee recommended the Insolvency and Bankruptcy Code. It was introduced in the Parliament in December, 2015.*
>
> *The objective of the Code is to consolidate and amend the laws relating to insolvency and bankruptcy. The Code repeals two insolvency Acts of 1909 and 1920 and amends several Acts.*
>
> *The Code aims at promoting investments as well as resolution of insolvency of corporate persons, firms and individuals in a time bound manner. It provides for designating the NCLT and DRT as the Adjudicating Authorities. The Code separates commercial aspects of insolvency and bankruptcy proceedings from judicial aspects. It also provides for establishment of the Insolvency and Bankruptcy Board of India (Board) for regulation of insolvency professionals, insolvency professional agencies and information utilities.*
>
> ***STATEMENT OF OBJECTS AND REASONS***
>
> *There is no single law in India that deals with insolvency and bankruptcy. Provisions relating to insolvency and bankruptcy for companies can be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debt Due to Banks and Financial Institution Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. These statutes provide for creation of multiple fora such as Board of Industrial and Financial Reconstruction (BIFR), Debt Recovery Tribunal (DRT) and National*

Company Law Tribunal (NCLT) and their respective Appellate Tribunals. Liquidation of companies is handled by the High Courts. Individual bankruptcy and insolvency is dealt with under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920 and is dealt with by the Courts. The existing framework for insolvency and bankruptcy is inadequate, ineffective and results in undue delays in resolution, therefore, the proposed legislation.

2. The objective of the Insolvency and Bankruptcy, 2015 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such person, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.

3. The Code seeks to provide for designating the NCLT and DRI as the Adjudicating Authorities for corporate persons and firms and individuals, respectively, for resolution of insolvency, liquidation and bankruptcy. The Code separates commercial aspects of insolvency and bankruptcy proceedings from judicial aspects. The Code also seeks to provide for establishment of the Insolvency and Bankruptcy Board of India (Board) for regulation of insolvency professionals, insolvency professional agencies and information utilities. Till the Board is established, the Central Government shall exercise all powers of the Board or designate any financial sector regulator to exercise the powers and functions of the Board. Insolvency professionals will assist in completion of insolvency resolution, liquidation and bankruptcy proceedings envisaged in the Code. Information Utilities would collect, collate, authenticate and disseminate financial information to facilitate such proceedings. The Code also proposes to establish a fund to be called the Insolvency and Bankruptcy Fund of India for the purposes specified in the Code.

4. The Code seeks to provide for amendments in the Indian Partnership Act, 1932, the Central Excise Act, 1944, Customs Act, 1962, Income-Tax Act, 1961, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Finance Act, 1994, the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002, the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the Payment and Settlement Systems Act, 2007, the Limited Liability Partnership Act, 2008, and the Companies Act, 2013.

5. The Code seeks to achieve the above objectives.

ACT 31 OF 2016

The Insolvency and Bankruptcy Code Bill having been passed by both the Houses of Parliament received the assent of the President on 28th May, 2016. It came on the Statute Book as THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (31 of 2016)."

It would also be relevant to keep in mind the Preamble to the IBC, which is hereunder :-

"An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto."

It is manifest that the codification of the previous laws on the said subject was necessitated due to delays and protracted trials in Insolvency laws, recovery of debts due to the Financial institutions, matters relating to revival or liquidation of sick industries or companies.

38. It would also be relevant to examine, in brief, various provisions of IBC relating to the IP before embarking upon the interpretation of Section 232 IBC and as to whether the IP could be a *"public servant"*. On a general perusal of the IBC, it appears that the IP has been given various roles, responsibilities and duties which would aid and assist the NCLT to either revive a Corporate Debtor by approving a resolution plan or to liquidate it as a last resort. Sections 18, 20 and 25 of the IBC

refer to the various duties and functions of the IP which would extend to preserving the CD by stepping into the shoes of the management, appointing agencies if so required for the purposes of proper management of the CD, and managing its affairs. Sections 20 and 25 confer authority to the IP to enter into contracts on behalf of the CD or amend or modify the pending contracts; raise interim finance subject to Section 28 of the Code; issue appropriate instruction as may be necessary to keep the CD as a *"going concern"* apart from appointing accountants, legal or other professionals as may be necessary. It is also a responsibility of the IP under the IBC to preserve and protect the assets of the CD including the continued business operations of the CD. What is relevant to be also considered at this point is that the IBC has amended Section 429 (1) of the Companies Act, 2013 empowering the NCLT to pass instructions to executory authorities for taking control and custody of assets, in case the IP is facing difficulties in doing so. Section 28 is a relevant provision which restricts, prohibits and curtails certain rights and duties of the IP as enumerated above, subject to the approval of the Committee of Creditors (CoC).

39. Section 21 of the IBC mandates formation of CoC by the IP, which decides on the ultimate fate of the CD *viz.,* whether to resolve the insolvency or to liquidate the CD. According to Section 23, the IP shall conduct the Corporate Insolvency Resolution Process during the interregnum till a final decision is reached insofar as the fate of the CD is concerned.

ISSUE REGARDING "PUBLIC DUTY", "PUBLIC CHARACTER"AND "PUBLIC SERVANT".

40. Much was argued, both by the learned SPP as also by the learned counsel for the respondent No.2/ complainant that the duties and responsibilities as conferred by the IBC and vested upon the IP, are "*public duties*" in the nature of "*public character*" entailing the character of the IP as that of a "*public servant*".

41. However, before this Court ventures into considering these arguments, it would be appropriate to consider the law laid down by the Hon'ble Supreme Court in ***Swiss Ribbons Private limited And Anr. vs. Union of India And Ors.*** reported in ***(2019) 4 SCC 17*** and ***ArcelorMittal India Private Limited vs. Satish Kumar Gupta And Ors.*** reported in ***(2019) 2 SCC 1***, whereby, after having examined in detail various provisions conferring duties and responsibilities upon the RP by the IBC, it was categorically held that the RP is merely a "*facilitator*". The relevant paragraphs of the aforesaid judgments are as under :-

> "(1) ***Swiss Ribbons*** *:-*
>
> *89. Under the CIRP Regulations, the resolution professional has to vet and verify claims made, and ultimately, determine the amount of each claim as follows:*
>
> > *"10.* ***Substantiation of claims****.—The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.*
> >
> > * * * *
> >
> > *12.* ***Submission of proof of claims.—****(1) Subject to sub-regulation (2), a creditor shall submit claim with proof on or before the last date mentioned in the public announcement.*
> >
> > *(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.*

(3) Where the creditor in sub-regulation (2) is a financial creditor under Regulation 8, it shall be included in the committee from the date of admission of such claim:

Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.

*13. **Verification of claims.—**(I) The interim resolution professional or the resolution professional, as the case may be, shall verity every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.*

(2) The list of creditors shall be—

(a) available for inspection by the persons who submitted proofs of claim;

(b) available for inspection by members, partners. Directors and guarantors of the corporate debtor;

(c) displayed on the website, il any, ol the corporate debtor;

(d) filed with the adjudicating authority; and

(e) presented at the first meeting of the committee.

*14. **Determination of amount of claim**.—(1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.*

(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision."

It is clear from a reading of these Regulations that the resolution professional is given administrative as opposed to quasi-judicial powers. In fact, even when the resolution

professional is to make a "determination under Regulation .35-A, he is only to apply to the adjudicating authority for appropriate relief based on the determination made as follows:

*"35-A. **Preferential and other transactions.**—(1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether tlie corporate debtor has been subjected to any transaction covered under Sections 43, 43, 30 or 66.*

(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under Sections 43,43,30 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board.

(3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the adjudicating authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date."

90. As opposed to this, the liquidator, in liquidation proceedings tinder the Code, has to consolidate and verify the claims, and either admit or reject such claims under Sections 38 to 40 of the Code. Sections 41 and 42, by way of contrast between the powers of the liquidator and that of the resolution professional, are set out hereinbelow:

*"41. **Determination of valuation of claims**.—The liquidator shall determine the value of claims admitted under Section 40 in such manner as may be specified by the Board.*

*42. **Appeal against the decision of liquidator**.—A creditor may appeal to the adjudicating authority against the decision of the liquidator accepting or rejecting the claims within fourteen days of the receipt of such decision."*

It is clear from these sections that when the liquidator "determines" the value of claims admitted under Section 40, such determination is a "decision", which is quasi-judicial in nature, and which can be appealed against to the adjudicating authority under Section 42 of the Code.

91. Unlike the liquidator, the resolution professional cannot act in a number of matters without the approval of the Committee of Creditors under Section 28 of the Code, which can, by a two-thirds

majority, replace one resolution professional with another, in case they are unhappy with his performance. Thus, the resolution professional is really a facilitator of the resolution process, whose administrative functions are overseen by the Committee of Creditors and by the adjudicating authority.

(emphasis supplied by this Court)

(2) ***Arcelor Mittal*** *:-*

78. What has now to be determined is whether any challenge can be made various stages of the corporate insolvency resolution process. Suppose a resolution plan is turned down at the threshold by a Resolution Professional under Section 30(2). At this stage is it open to the resolution applicant concerned to challenge the Resolution Professional's rejection? It is settled law that a statute is designed to be workable, and the interpretation thereof should be designed to make it so workable. In CIT v. S. Teja Singh, this Court said: (SCR p. 403 : AIR pp. 355-56, para 9)

> *"9. We must now refer to an aspect of the question, which strongly reinforces the conclusion stated above. On the construction contended for by the respondent. Section 18-A(9)(6) would become wholly nugatory, as Sections 22(1) and 22(2) can have no application to advance estimates to be furnished under Section 18-A(3), and if we accede to this contention, we must hold that though the legislature enacted Section 18-A(9)(b) with the very object of bringing the failure to send estimates under Section 18-A(3) within the operation of Section 28, it signally failed to achieve its object. A construction which leads to such a result must, if that is possible, be avoided, on the principle expressed in the maxim, "ut res magis valeat quam pereat". Vide Curtis v. Stovin and in particular the following observations of Fry, L.J., at QBD p. 519:*
>
> > *'The only alternative construction offered to us would lead to this result, that the plain intention of the legislature has entirely failed by reason of a slight inexactitude in the language of the section. If we were to adopt this construction, we should be construing the Act in order to defeat its object rather than with a view to carry its object into effect.'*
>
> *Vide also Craies on Statute Law, p. 90 and Maxwell on the Interpretation of Statutes, Tenth Edn., pp. 236-37. 'A statute is designed', observed Lord Dunedin in Whitney v. IRC, TC at p. 110 (at AC p. 52) '... to be workable, and the*

interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable."

79. Given the timeline referred to above, and given the fact that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the adjudicating authority at this stage. A writ petition under Article 226 tiled before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. This is also made clear by the first proviso to Section 30(4), whereby a Resolution Professional may only invite fresh resolution plans if no other resolution plan has passed muster.

80. However, it must not be forgotten that a Resolution Professional is only to "examine" and "confirm" that each resolution plan conforms to what is provided by Section 30(2). Under Section 25(2)(i), the Resolution Professional shall undertake to present all resolution plans at the meetings of the Committee of Creditors. This is followed by Section 30(3), which states that the Resolution Professional shall present to the Committee of Creditors, for its approval, such resolution plans which confirm the conditions referred to in sub-section (2). *This provision has to be read in conjunction with Section 25(2)(/), and with the second proviso to Section 30(4), which provides that where a resolution applicant is found to be ineligible under Section 29-A(c), the resolution applicant shall be allowed by the Committee of Creditors such period, not exceeding 30 days, to make payment of overdue amounts in accordance with the proviso to Section 29-A(c). A conspectus of all these provisions would show that the Resolution Professional is required to examine that the resolution plan submitted by various applicants is complete in all respects, before submitting it to the Committee of Creditors.* ***The Resolution Professional is not required to take any decision, but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before the Committee of Creditors, who may or may not approve it. The fact that the Resolution Professional is also to confirm that a resolution plan does not contravene any of the provisions of law for the time being in force, including Section 29-A of the Code, only means that his prima facie opinion is to be given to the Committee of Creditors that a law has or has not been contravened. Section 30(2)(e) does not empower the Resolution Professional to "decide" whether the resolution plan does or does not contravene the provisions of law."***

(emphasis supplied by this Court)

Though the aforesaid ratio laid down by the Hon'ble Supreme Court was in context of the provisions of the IBC itself, without having any reference to the provisions of either the Penal Code, 1860 or the Prevention of Corruption Act, 1988, yet what would be relevant for the consideration of this Court is that the nature of the role and responsibility of RP have been examined in great detail and from the aforesaid paragraphs, it does not appear to this Court that any of such role would assume the nature of *"public duties"* of a *"public character"*.

42. The reason which propelled this Court to the aforesaid conclusion is as follows. It is trite that every duty, even if has a colour of *"public duty",* may necessarily not be of a character which is "*public*" in nature. There could be many instances where a role or a responsibility of an individual in a particular statute would assume the nature of *"public duty"* but sans the *"Public Character"*. This view is fortified by the judgment of the Hon'ble Supreme Court in the case of ***Central Bureau of Investigation, Bank Securities and Fraud Cell vs. Ramesh Gelli and Ors.*** reported in **(2016) 3 SCC 788,** wherein Ranjan Gogoi, J. (as His Lordship then was) had in para 36 held as under :-

> *"36. While there can be no manner of doubt that in the Objects and Reasons stated for enactment of the Prevention of Corruption Act, 1988 it has been made more than clear that the Act, inter alia, envisages widening of the scope of the definition of "public servant", nevertheless, the mere performance of public duties by the holder of any office cannot bring the incumbent within the meaning of the expression "public servant" as contained in Section 2(c) of the PC Act. The broad definition of "public duty" contained in Section 2(b) would be capable of encompassing any duty attached to any office inasmuch as in the contemporary scenario there is hardly any office whose duties cannot, in the last resort, be traced to having a bearing*

on public interest or the interest of the community at large. Such a wide understanding of the definition of "public servant" may have the effect of obliterating all distinctions between the holder of a private office or a public office which, in my considered view, ought to be maintained. Therefore, according to me, it would be more reasonable to understand the expression "public servant" by reference to the office and the duties performed in connection therewith to be of a public character."

Thus, it is not necessary that all duties which are broadly defined as *"public duty"* would encompass within itself *"public character"*. Merely because the IP is vested with certain roles, responsibilities and duties which could partake the nature of *"public duties"*, it is not a necessary conclusion or a definite inference that the same are being discharged in the nature of *"public character"*. In the present case, having regard to the law laid down by the Hon'ble Supreme Court in ***Swiss Ribbons (supra)*** and ***ArcelorMittal (supra)*** defining the role of the RP as a mere *"facilitator"*, it appear to this Court that even if the roles and duties ascribed to the IP may be bordering or falling within *"public duties"*, the same would still not assume *"public character"*. With the ever evolving laws and roles and duties cast upon various individuals under such enactments, the responsibilities of individuals and in some cases, institutions may have overlapping character and may be intertwined with *"public duty"* but that by itself would not be a legally determined benchmark to categorise all such individuals or institutions, as the case may be, as "public servants" for the purposes of Section 21 IPC or Section 2(c) PC Act, 1988. That too, when the Legislature appears to have deliberately omitted such individual or institution from such ambit. Thus, in the opinion of this Court, the Constitutional Courts would be loath in reaching such drastic

conclusion, that too by process of judicial interpretation.

CODIFICATION OF IBC: THE NEED AND HISTORICAL PERSPECTIVE:

43. Having said that, it would be now relevant to consider the emergence and development of the IBC itself. The statement of objects and reasons gives a broad background which would also be relevant to consider in the present case. It is clear from the said objects and reasons that various acts like The Presidency Towns Insolvency Act, 1909, Provincial Insolvency Act, 1920, The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), The Recovery of Debt Due to Banks and Financial Institutions Act, 1993 and The Securitization and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) were codified to formulate the IBC. This was necessitated as the legislature found that the existing framework for Insolvency and Bankruptcy was inadequate and would often result in inordinate delays in resolution or redressal of such disputes. The objective of the IBC was to consolidate or re-organize all such laws including to amend, if required, for the purposes enumerated in it. As such, it is clear that while codifying the IBC, the legislature had before it, the aforesaid Acts and all the relevant material to facilitate such codification.

44. In fact, before such codification, the Government of India had constituted the Bankruptcy Law Reforms Committee, 2015 to study the entire gamut of the insolvency and the bankruptcy laws and make appropriate recommendations. The said recommendations were accepted and codified and promulgated as IBC, 2016.

EFFECT OF SECTION 232 AND 233 IBC:

45. With the aforesaid historical, legal and factual background, this Court would now examine the effect of Section 232 read with Section 233 on the present case. A plain reading of Section 232 brings to fore that the Chairperson, Members, Officers and other employees of the Board (IBBI) were deemed, when acting or purporting to act in pursuance of any of the provisions of the IBC, to be public servants within the meaning of Section 21 of the IPC, 1860. Applying the golden rule of interpretation, it is apparent that the IP has been deliberately omitted from the provisions of Section 232. This is so because, the IBC does not define who a public servant is and, therefore, the only persons considered/ deemed to be public servants are those who have specifically been named so in Section 232. It is also relevant to note that Section 233 provides protection of action taken in good faith, in that, no suit, prosecution or other legal proceeding would lie against the Government or any other officer of the Government, or the Chairperson, member, officer or other employee of the Board or ***"an insolvency professional or liquidator"*** for anything done or intended to be done in good faith under the IBC. It is clear that the protection has been conferred upon the IP, particularly in such circumstances where while performing his duties, could run the risk of any false or *mala fide* complaint against his performance. Moreover, the gap between Sections 232 and 233 is so minute that this Court is unable to fathom that the Legislature in its wisdom, while drafting 233 to save the IP from any act done in good faith, had completely overlooked or suffered from temporary amnesia by not inserting the "IP" in section 232, which is the

immediate previous section. While at the same time, in section 232, the Legislature had included other officers of the Board to be deemed *"public servants"* for the purposes of section 21 IPC. Thus, it is clear as crystal that the omission was nothing but willful and deliberate.

46. It is trite that Legislature is deemed to be aware of all the laws while enacting a particular law. In the present case, this gathers a great significance since the legislature had all the relevant laws before it while codifying IBC, 2016. It is also trite that the Courts would lean in favour of Constitutionality of the provisions of any enactment and would be loath in drawing conclusions against it, without any cogent and relevant material. Considering both the aforesaid Sections, it can be safely said that the omission in Section 232 was not inadvertent but a deliberate omission to not include IP within its ambit. It is trite that Courts would not interfere if the omission is deliberate since that would tantamount to legislating and supplying *'casus omissus'* which is prohibited and not within the jurisdiction of the Courts.

47. At this juncture, it would be relevant to consider the report of the Joint Committee on the IBC, 2015 presented before the 16th Lok Sabha. The relevant portion in respect of trial of offences by the Special Court, pre and post deliberation is as under :-

> *"64. Trial of offences by the Special Court – Clause 240 (renumbered as clause 233c)*
>
> *Clause 240 provides as under -*
> *"Notwithstanding anything in the Code of Criminal Procedure, 1973, offences under Part II and offences by any insolvency professional under Part III of this Code shall be tried by the Special Court established under Chapter XXXVIII of the Companies Act, 2013."*
>
> *The Committee decide that words "Part II and offences by any*

insolvency professional under Part III of" as appearing in Clause 240 (1) may be deleted."

The aforesaid provision has been retained as Section 236 of the IBC, 2016 without the deleted portion. The same is reproduced hereunder:

> *"**236. Trial of offences by Special Court.—** (1) Notwithstanding anything in the Code of Criminal Procedure, 1973 (2 of 1974), offences under this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013 (18 of 2013).*
>
> *(2) xxxx*
>
> *(3) xxxx*
>
> *(4) xxxx"*

This would amply fortify the view taken by this Court that the legislature is deemed to have taken into consideration all the relevant Acts and materials before codifying IBC and that the omission was deliberate. Thus, as a consequence, it is manifest, that the IP was not included within the ambit of Section 232 of IBC. As a necessary corollary, it can be safely inferred that the IP, according to the provisions of IBC as it stands today, was not considered to be a "*public servant*" by the legislature.

48. Another relevant aspect considered by this Court while examining the present legal issue is the promulgation of ***Securities and Exchange Board of India (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations***, in the year 2018, whereby the Administrator to be appointed ought to be an IRP registered with IBBI and who according to sub regulation (5) of Regulation 5 of the said

Regulations, is deemed to be a *"Public Servant"* within the meaning of Section 21 of the IPC. If the Legislature had intended, at any point of time, even after IBC was codified in the year 2016 to include IP in Section 232 of IBC, the same could have been engrafted or inserted in Section 232 itself or elsewhere, in or about the time when the aforesaid SEBI Regulations were brought into effect in the year 2018. The same has not been done till now. This itself is a strong indicator and a clear pointer towards the fact that the omission to not include the IP within Section 232 is willful and deliberate and therefore, it cannot be a case of *casus omissus.*

DOCTRINE OF CASUS OMISSUS:

49. The law in respect of the doctrine of *'casus omissus'* is fairly well settled. The jurisdiction and authority conferred upon the Constitutional Courts is to interpret the law and not legislate. It is also fairly well settled that if a provision of law is misused and subjected to abuse of the process of law, it is for the legislature to amend, modify or to repeal it, if deemed necessary. The legislative *'casus omissus'* cannot be supplied by judicial interpretative process. The exception of judicial interpretation coming to the aid of filling up a gap would arise only and only in a case of clear necessity and when the reason for it is found in the four corners of the statute itself. The aforesaid provisions and the analysis do not find favour of the clear necessity so far as the present case is concerned. The Hon'ble Supreme Court in ***Sangeeta Singh vs. Union of India and Ors.*** reported in **(2005) 7 SCC 484** held as under :

> *"6. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. (See Institute of Chartered Accountants of India v. Price Waterhouse). The intention of the*

legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner the courts cannot aid the legislature's defective phrasing of an Act, they cannot add or mend, and by construction make up deficiencies which are left there. (See State of Gujarat v. Dilipbhai Nathjibhai Patel.) It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See Stock v. Frank Jones (Tipton) Ltd.] Rules of interpretation do not permit the courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. The courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn, L.C. in Vickers Sons and Maxim Ltd. v. Evans, quoted in Jumma Masjid v. Kodimaniandra Deviah).

9. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See CST v. Popular Trading Co.) The legislative casus omissus cannot be supplied by judicial interpretative process.

10. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole, appear to be well settled. ***Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature.*** *"An intention to produce an unreasonable result", said Danckwerts, L.J. in Artemiou v. Procopioull (All ER p. 544 I) "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. IRC where at AC p. 577 he also observed: (All ER p. 664 I)*

"This is not a new problem, though our standard of drafting is such that it rarely emerges."]"

(emphasis supplied by this Court)

The learned Division Bench of this Court in ***Indira Uppal vs. Union of India and Anr.*** reported in **(2022) 292 DLT 659 (DB)** quoted with approval the judgment of the Hon'ble Supreme Court in ***Babita Lila vs. Union Of India*** reported in **(2016) 9 SCC 647** in para 12 of its judgment extracted *Babita Lila (supra)* as under :-

"12. The general approach of the Courts is to ensure that they do not stray into usurping the legislative function. A specific instance of this approach is the rule that a casus omissus is not to be created or supplied, so that a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made. The Supreme Court in Babita Lila v. Union of India, (2016) 9 SCC 647 has held as under:-

> *"63. It is a trite law that there is no presumption that a casus omissus exists and a court should avoid creating a casus omissus where there is none. It is a fundamental rule of interpretation that courts would not fill the gaps in statute, their functions being jus discre non facere i.e. to declare or decide the law. In reiteration of this well-settled exposition, this Court in Union of India v. Dharamendra Textile Processors [Union of India v. Dharamendra Textile Processors, (2008) 13 SCC 369 : (2008) 306 ITR 277] had ruled that it is a well-settled principle in law that a court cannot read anything in the statutory provision or a stipulated provision which is plain and unambiguous. It was held that a statute being in edict of the legislature, the language employed therein is determinative of the legislative intent. It recorded with approval the observation in Stock v. Frank Jones (Tipton) Ltd. [Stock v. Frank Jones (Tipton) Ltd., [1978] 1 All ER 948 : [1978] 1 WLR 231 (HL)] that it is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. The observation therein that rules of interpretation do not permit the courts to do so unless the provision as it stands is meaningless or doubtful and that the courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the statute, was underlined. It was proclaimed that a casus omissus cannot be supplied by the*

court except in the case of clear necessity and that reason for, is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose, all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.

64. More recently, this Court amongst others in Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd. [Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd., (2015) 9 SCC 209] had propounded that when the legislative intention is absolutely clear and simple and any omission inter alia either in conferment of power or in the ambit or expanse of any expression used is deliberate and not accidental, filling up of the lacuna as perceived by a judicial interpretative process is impermissible. This was in reiteration of the proposition in Sree Balaji Nagar Residential Assn. v. State of T.N. to the effect that casus omissus cannot be supplied by the court in situations where omissions otherwise noticed in a statute or in a provision thereof had been a conscious legislative intendment."

(emphasis supplied by this Court)

50. On the question of interpretation of statutes, the Hon'ble Supreme Court in ***Commissioner of Sales Tax, UP., Lucknow vs. Parson Tools and Plants, Kanpur*** reported in **(1975) 4 SCC 22** held as under :-

"15. Be that as it may, from the scheme and language of Section 10, the intention of the legislature to exclude the unrestricted application of the principles of Sections 5 and 10 of the Limitation Act is manifestly clear. These provisions of the Limitation Act which the legislature did not, after due application of mind, incorporate in the Sales Tax Act, cannot be imported into it by analogy. An enactment being the will of the legislature, the paramount rule of interpretation, which overrides all others, is that a statute is to be expounded "according to the intent of them that made it". "The will of the legislature is the supreme law of the land and demands perfect obedience". "Judicial power is never exercised", said Marshall, C.J. of the United States, "for the purpose of giving effect to the will of the Judges; always for the purpose of giving effect to the will of the legislature; or in other words, to the will of the law".

> *16.* ***If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so "would be entrenching upon the preserves of legislature", the primary function of a Court of law being jus dicere and not jus dare.***
>
> *23. We have said enough and we may say it again that where the legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law-giver; more so if the statute is a taxing statute. We will close the discussion by recalling what Lord Hailsham has said recently, in regard to importation of the principles of natural justice into a statute which is a clear and complete Code, by itself:*
>
> > *"It is true of course that the courts will lean heavily against any construction of a statute which would be manifestly fair. But they have no power to amend or supplement the language of a statute merely because in one view of the matter a subject feels himself entitled to a larger degree of say in the making of a decision than a statute accords him. Still less is it the functioning of the courts to form first a judgment on the fairness of an Act of Parliament and then to amend or supplement it with new provisions so as to make it conform to that judgment"."*
>
> (emphasis supplied by this Court)

The ratio of the aforesaid judgments endorse the golden rule of interpretation of statutes, in that, the plain and simple language of the statute ought to be taken into consideration unless the same are ambiguous or appear to be repugnant to the aims and objects of the statutes when read as a whole or any absurdity arises while interpreting. In the present case, as could be seen, Section 232 brooks no ambiguity nor is it repugnant to the aims and objects of the IBC.

APPLICABILITY OR OTHERWISE OF SECTION 2 (c) PC ACT, 1988:

51. For consideration of the arguments made on behalf of the learned counsel for the Petitioner on non-applicability of Section 2 of the PC Act, and its vehement counter arguments on behalf of the learned counsel for the respondents, it would be relevant to consider Section 2 of the PC Act, which is as under:-

> *"2. Definitions.—In this Act, unless the context otherwise requires,—*
>
> *(c) "public servant" means—*
>
> *(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;*
>
> *(ii) any person in the service or pay of a local authority;*
>
> *(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);*
>
> *(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;*
>
> ***(v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;***
>
> ***(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;***
>
> *(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;*
>
> ***(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;***
>
> *(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or*

banking, receiving or having received any financial aid from the Central Government or a State Government or from a corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

[(d) "undue advantage" means any gratification whatever, other than legal remuneration. Explanation.—For the purposes of this clause,—

(a) the word "gratification" is not limited to pecuniary gratifications or to gratifications estimable in money;

(b) the expression "legal remuneration" is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive.]

Explanation 1.—Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation."

52. A perusal of the provisions of Section 2 quoted above indicates that the role ascribed to the IP under IBC purportedly could fall within

the ambit of one of the sub-sections like (v), (vi) or (viii). So far as sub-section (v) is concerned, it is clear from a plain reading that an individual ought to have been authorized by a Court of justice to perform any duty connected with administration of justice, including liquidator, receiver or commissioner appointed by such court.

53. So far as sub-section (vi) is concerned, it is clear from a plain reading that the same is in respect of an Arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority.

54. Addressing the impact and effect of sub-section (vi), it is apparent that it is in respect of an individual appointed in the capacity of an Arbitrator who is referred a matter to adjudicate upon rival claims instituted by a litigant, whether appointed by a court of justice or a competent public authority, yet, it does not include any individual who is performing the role of a *"facilitator"*. An Arbitrator adjudicates the claims and delivers an award which can be enforced like a decree in a civil court. Apparently, no such adjudicatory role is played by the IP. By applying the doctrine of *"noscitur a sociis"*, it is apparent that the words *"other person"* stipulated in sub-section (vi) would be an individual who would be performing a role akin to or similar in nature of an Arbitrator.

55. Regarding sub-section (v), in the first blush, there appears to be some weightage in the arguments of learned SPP and learned Counsel for the respondent no.2/complainant urged since the IP as an Interim Resolution Professional and Liquidator, is appointed by the NCLT. However, on a closer scrutiny and on the application of the doctrine of

"ejusdem generis", it is apparent that individuals such as liquidator, receiver or commissioner, who have been conferred with the power to take decisions in respect of properties and other assets and dispose of the same entailing decisions effecting certain claims etc, could be the ones who are within the ambit of sub-section (v) and since no such role or responsibility is conferred upon the Resolution Professional, therefore, he cannot be stated to fall within the ambit of sub-section (v).

56. Now coming to the provisions of sub-section (viii) of Section 2(c) of the PC Act, 1988, it is clear that the same is in respect of an individual who holds an office by virtue of which he is authorized or required to perform any public duty, meaning thereby the nature of duty determines the individuals' inclusion in the said provision. To examine this sub-section, it would be appropriate to consider the role of IP in various stages of the CIRP itself. The IP at the initial stage is appointed by the NCLT as an Interim Resolution Professional to take over the management, take control of the assets and properties, do acts necessary to keep such assets from withering away or being wasted, keep the CD as a "*going concern*" and constitute the CoC under Section 21 IBC. Once the CoC is constituted, it nominates and appoints the Resolution Professional and the role of IRP is over. It is also pertinent to note that the IRP and RP may or may not be the same individual. It is dependent upon the sole discretion of the CoC either to continue with the same IRP or nominate and appoint a new individual as RP. The said RP is chosen and nominated by passing of 66% votes by the duly constituted CoC. The NCLT, upon an application of the CoC requesting the appointment of RP, endorses the same and passes an appropriate order thereon. It is

the RP who takes the CD through the CIRP till either it is resurrected/revived by acceptance of a Resolution Plan or is ultimately liquidated. Both the decisions are taken by the CoC by votes and the RP has no role to play in such decisions. In case the CD is sent up for liquidation, the NCLT would next appoint the liquidator who shall take all necessary steps in accordance with IBC to liquidate the CD.

57. While the individual is performing any of the two roles ascribed above, *viz*., IRP or Liquidator, there could be a possibility of discharge of duties which may have certain duties appearing to be *"public duties"* but whether the role of an individual as RP are in the nature of *"public character"*, is hard to conclude. This view, coupled with the view taken by the Hon'ble Supreme Court in ***Swiss Ribbons (supra)*** and ***ArcelorMittal (supra)*** though in respect of the Resolution Professional, fortifies the opinion of this Court that Insolvency Professional is only a *"facilitator"* and has different roles to play at different stages of CIRP. In fact, the IP metamorphosizes from an IRP to an RP and thereafter as a Liquidator (as the case may be), and due to such metamorphosis, it would be prudent not to characterize the duties, even if assumed to be *"public"*, as in the nature of *"public character"*.

58. In the aforesaid backdrop, it is clear to this Court that despite having all the previous Acts on the instant subject like The Provincial Insolvency Act, 1909, the Insolvency Act, 1920, SICA 1985, RDDBFI Act 1994 and SARFAESI 2002 which were codified to form IBC and despite being aware of the roles and duties ascribed upon the individuals who were appointed by the Courts or Boards contained therein as Liquidators, Receivers and the like, and having all relevant materials

before it, the Legislature, in its wisdom, thought it fit and prudent not to include IP as *"public servant"* and such non inclusion was, thus, a willful and deliberate omission. It is trite that what is not specified may not be readily inferred, particularly if the same would be penal in nature. In other words, any provision of law entailing penal consequences ought to be strictly construed and nothing specified therein should not be read in or filled up readily.

59. After having examined and scrutinized in detail the entire legal conspectus, the legal issue which was raised in the present case for the consideration of this Court, is answered in the negative.

60. So far as the judgement rendered by the learned Single Judge of the High Court of Jharkhand at Ranchi, in ***Sanjay Kumar Aggarwal's case (supra)*** is concerned, this Court respectfully differs with the conclusion arrived at by esteemed learned brother Choudhary, J. for the reasons stated above.

61. Resultantly, the omission to include IP in section 232 IBC is not inadvertent but a thoughtful, willful and deliberate one by the Legislature, and the Courts of law being empowered to interpret the same, ought not to legislate or supply *casus omissus*, which in any case is prohibited.

62. Whether the IP is or is not a *"public servant"* according to IBC or PC Act 1988 or Section 21 IPC, 1860, is purely the domain of the Legislature and if required and necessitated, the legislature may carry out necessary amendments to the legislations.

APPLICABILITY OF LEGAL ANALYSIS ON FACTS ARISING IN THE PRESENT CASE

63. In view of the analysis and the conclusions arrived at by this Court above, the need to make any observations/findings on facts would not arise in as much as the arguments on facts were predicated on the assumption of the Petitioner falling within the ambit and definition of a *"Public Servant",* as stipulated in Section 2(c) of the PC Act, 1988 which has been held in the negative.

64. In view of the above and in the considered opinion of this Court, an Insolvency Professional does not fall within the meaning of *"public servant"* as ascribed in any of the clauses of sub-section (c) of section 2 of the Prevention of Corruption Act, 1988. Resultantly, the FIR bearing No. RC-DAI-2020-A-0001 dated 11.01.2020 registered by the respondent no.1/CBI is quashed and set aside.

65. In view of the above, petition alongwith pending application stands disposed of.

TUSHAR RAO GEDELA, J.

DECEMBER 18, 2023/*nd*