IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2817 OF 2025

Jitender Kumar Jain ... Petitioner
Versus
Union of India & Ors. ... Respondents

WITH

WRIT PETITION (L) NO. 5263 OF 2025

Edelweiss Asset Reconstruction Company Limited (acting in Capacity as Trustee of EARC Trust SC 233) ... Petitioner
Versus
Insolvency and Bankruptcy Board of India & Ors. ... Respondents

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Mr. Rahul Dev a/w Mr. Arjun Amin and Mr. Pranav Shetty i/by Argus Partners for Petitioner in WPL/2817/2025 and for Respondent No.2 in WPL/5263/2025.
Mr. Bhalchandra Palav a/w Mr. Aniket Dighe and Ms. Pinky Pawar i/by M/s. Bhal and Co. for Petitioner in WPL/5263/2025.
Mr. Vinit Jain a/w Shazia Ansari and Mr. Gaurav Mehta for Respondent No.1-UOI in WPL/2817/2025.
Mr. Pankaj Vijayan a/w Mr. Utsav Mishra for Respondent No.2 in WPL/2817/2025 and for Respondent No.1 in WPL/5263/2025.
Ms. Apeksha Sharma i/by NDB Law for Respondent No.4-Bank of Baroda in WPL/5263/2025.

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CORAM : MANISH PITALE AND SHREERAM V. SHIRSAT, JJ.

RESERVED ON : 7th JULY 2026
PRONOUNCED ON : 25th AUGUST 2026

Judgment (Per Manish Pitale, J.) :

. Both these petitions have been filed to challenge order dated

18th December 2024 passed by the Disciplinary Committee of the respondent No.2-Insolvency and Bankruptcy Board of India (hereinafter referred to as 'Board'), whereby the petitioner-Jitender Kumar Jain (petitioner in Writ Petition (Lodging) No. 2817 of 2025) was suspended for a period of three months from performing the role of insolvency professional/liquidator under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) and the Regulations framed thereunder. Additionally, the aforesaid petitioner in Writ Petition (Lodging) No. 2817 of 2025 also challenged the show cause notice dated 9th July 2024, which led to the said impugned order dated 18th December 2024. The petitioner in Writ Petition (Lodging) No. 5263 of 2025 i.e. Edelweiss Asset Reconstruction Company Limited (hereinafter referred to as 'Edelweiss') was one of the secured financial creditor of the corporate debtor in the context of which the petitioner-Jitender Kumar Jain was appointed as liquidator.

2. The corporate debtor i.e. 'Aaj Ka Anand Papers Limited' had availed loan facility and in the light of defaults in repayment thereof, the account of the corporate debtor was declared as a Non-Performing Asset (NPA). The respondent-State Bank of India (SBI) filed a petition under Section 7 of the IBC, which led to initiation of Corporate Insolvency Resolution Process (CIRP). The petition was admitted on 31st March 2022.

3. But, the process of CIRP failed and thereupon, the corporate

debtor was admitted into liquidation by an order dated 12th April 2023 passed by the National Company Law Tribunal (NCLT). The petitioner-Jitender Kumar Jain was appointed as liquidator and he constituted Stakeholders' Consultation Committee (SCC). The SCC included respondent-SBI and other secured creditors i.e. Bank of Baroda and the petitioner-Edelweiss.

4. It is the case of the petitioner-Jitender Kumar Jain that the promoters/ex-directors of the corporate debtor had adopted an obstructionist attitude all through the proceedings of liquidation. According to the said petitioner, they left no stone unturned in derailing the process and also in making false and frivolous allegations against the said petitioner. In the process, the promoters filed applications before NCLT to further delay and derail the process. One such application was dismissed with heavy cost of Rs. 1 lakh. According to the petitioner-Jitender Kumar Jain, despite the said approach of the promoters, he navigated the process of liquidation to the best of his ability and to the satisfaction of the members of the SCC. It is further stated by the petitioner-Jitender Kumar Jain that he was harassed by false and bogus police complaints filed by the promoters of the corporate debtor to such an extent that, at a point in time in August 1993, he had even offered to resign as the liquidator. But, the lenders, including the members of the SCC, unanimously requested him to continue and to fight against such bogus complaints. The aforesaid situation was brought to the notice of this Court in writ petitions

that were filed and pending.

5. In this backdrop, when one such Writ Petition bearing No. 10244 of 2023 was taken up for hearing before this Court on 12th October 2023, it was orally submitted that the promoters of the corporate debtor had preferred a complaint against the petitioner-Jitender Kumar Jain. It came to light that such a complaint was submitted on 3rd July 2023, by a promoter / ex-director of the corporate debtor, wherein general allegations were made against the petitioner-Jitender Kumar Jain, as regards violation of provisions of the IBC and Regulations framed thereunder. It was alleged that he was acting *malafide* with ulterior motive and for unethical gains, thereby causing mental and monetary suffering to the said complainant. It was also alleged that the said petitioner had damaged the reputation and credibility of the complainant and his family members, further alleging that he was acting along with the other stakeholders to intentionally cause suffering to the complainant. It was claimed that the cause of action being continuous, the complaint was within limitation.

6. Thereafter, the complainant submitted a further set of grievances in writing. While the first complaint was as per the requisite form under Regulation 3(3) of the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 (hereinafter referred to as 'Grievance Regulations 2017'), the second set of grievances submitted in writing on 10th August 2023 were not in the said

form. It appears that respondent No.2-Board proceeded to treat the second set of grievances submitted in writing on 10th August 2023 also as a complaint and on the basis of the two complaints, reached a conclusion that a *prima facie* case was made out against the petitioner-Jitender Kumar Jain and on that basis, ordered an investigation under Regulation 7(7) of the Grievance Regulations 2017. The investigation was directed to be conducted through respondent No.5 i.e. the Executive Director of the Board, who in turn appointed respondent No.6 i.e. Deputy General Manager of the Board as an Investigating Authority, to investigate into the allegations.

7. Thereafter, on 2nd February 2024, the respondent No.6 served a notice of investigation upon the petitioner-Jitender Kumar Jain under Regulation 8 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (hereinafter referred to as 'Investigation Regulations 2017'). In response, the said petitioner submitted detailed reply on 30th April 2024 refuting all the allegations made in the complaints. On 10th May 2024, the respondent No.6 submitted investigation report to the respondent-Board through its Executive Director i.e. respondent No.5. Thereupon, the respondent-Board through respondent No.8 i.e. another Deputy General Manager of the Board, issued the impugned show cause notice dated 9th July 2024 under Regulations 11 and 12 of the Investigation Regulations 2017 to the petitioner-Jitender Kumar Jain, specifying five aspects

concerning the manner in which the said petitioner had performed his assignment as liquidator of the corporate debtor.

8. There is no dispute about the fact that the five issues raised in the said show cause notice were not concerned with the grievances raised in the complaints, which led to the investigation being conducted. On 30th August 2024, the petitioner-Jitender Kumar Jain submitted a detailed reply to the show cause notice, responding to each of the five issues raised therein. Additionally, the said petitioner referred to the manner in which the promoters of the corporate debtor were obstructing the process of liquidation and the manner in which bogus police complaints were filed against the said petitioner and the proceedings that had to be initiated before this Court on various issues. The petitioner-Jitender Kumar Jain refuted the allegations made in the show cause notice in the context of the five specific issues raised therein.

9. Thereafter, hearing was conducted and the said petitioner further placed written submissions dated 10th October 2024 before the Disciplinary Committee of the respondent-Board. In the said written submissions, the said petitioner further elaborated his stand and also referred to case law in support of his submissions. Thereafter, on 18th December 2024, the Disciplinary Committee of the respondent-Board through respondent No.4 i.e. its whole time member passed the impugned order, inflicting the penalty of suspension of the authorisation for assignment of the said petitioner for a period of three months. Aggrieved by the same,

the petitioner-Jitender Kumar Jain filed Writ Petition (Lodging) No. 2817 of 2025 and petitioner-Edelweiss filed Writ Petition (Lodging) No. 5263 of 2025. Notices were issued in the writ petitions.

10. It is to be noted that in the light of the impugned order, suspending the petitioner-Jitender Kumar Jain for a period of three months, he resigned from the role of liquidator of the corporate debtor, but the members of the SCC resolved that the petitioner be requested to withdraw his resignation and accordingly, he withdrew his resignation on 10th January 2025 and he was permitted to continue as liquidator of the corporate debtor. The pleadings in the writ petitions were completed and although, the petitioner-Jitender Kumar Jain appears to have suffered the suspension period, he is keenly pursuing this writ petition in order to clear his name and to demonstrate that the impugned order, rendering findings against him, is unsustainable. Edelweiss, as one of the secured financial creditor and member of the SCC, in its petition has also supported the petitioner-Jitender Kumar Jain and it has highlighted the manner in which the promoters of the corporate debtor had harassed the said petitioner, while he was performing the role of liquidator. The writ petition was contested by respondent No.2-Board through its Counsel, when the petitions were taken up for hearing.

11. Mr. Rahul Dev, learned counsel appearing for the petitioner-Jitender Kumar Jain in Writ Petition (Lodging) No. 2817 of 2025

submitted that in the present case, at the outset, this Court may note that although the impugned order inflicted penalty of suspension of registration for a period of three months, by operation of Clause 23A of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (hereinafter referred to as 'Model Bye-Laws'), the authorisation for assignment of petitioner-Jitender Kumar Jain stood suspended immediately upon initiation of disciplinary proceedings by the Board. As a consequence, the said petitioner suffered suspension not only for the three months period, but also for the period starting from issuance of show cause notice dated 9th July 2024.

12. It was submitted that in the present case, the principles of natural justice were violated with impunity and on that ground alone, the impugned show cause notice as well as the impugned order deserve to be set aside. It was submitted that the documents on record clearly demonstrate that the complaint dated 3rd July 2023 submitted in specific form by one of the promoters of the corporate debtor, was barred by limitation. It was absolutely vague and general allegations were levelled against the petitioner-Jitender Kumar Jain. The second set of grievances raised on 10th August 2023, were not even in the form prescribed under the Grievance Regulations 2017 and yet, it was treated as the second complaint, thereby demonstrating procedural irregularity. It was emphasized that although investigation into the said complaints

was initiated and after delay of eight months, a notice of investigation dated 2nd April 2024 was served upon the petitioner-Jitender Kumar Jain, in the light of the response given by the said petitioner, no substance was found in the allegations levelled in the said complaints. The petitioner-Jitender Kumar Jain asserts the aforesaid fact on the ground that the show cause notice dated 9th July 2024 raised five issues that had nothing to do with the grievances raised in the aforesaid two complaints. It was submitted that on this ground alone, the show cause notice was rendered without jurisdiction and bad in law.

13. In this context, it was submitted that although Section 219 of the IBC as it then stood, stipulated that the respondent-Board could issue show cause notice to a service provider like the said petitioner, upon completion of inspection and investigation under Section 218 thereof, in the present case, the show cause notice was evidently not issued on the basis of the investigation report and it was issued on the basis of material that purportedly came on record. In other words, while the petitioner-Jitender Kumar Jain was issued notice in the context of the investigation, he was never made aware about the 'material' on the basis of which the impugned show cause notice dated 9th April 2024 was issued. This according to the learned counsel for the said petitioner, violated principles of natural justice and therefore, the show cause notice itself stood vitiated. It was also submitted that the copy of the investigation report was not made available to the petitioner-

Jitender Kumar Jain and this also violated the principles of natural justice.

14. In respect of the impugned order dated 18th December 2024, it was submitted that the petitioner-Jitender Kumar Jain was found guilty of having contravened the provisions of the IBC and the Regulations framed thereunder, on the issues of irregular constitution of the SCC, failure to present liquidation costs in SCC meeting and delay in issuance of the first and second auction notices. Upon rendering the said findings, the Disciplinary Committee of the respondent-Board inflicted the penalty of suspension of authorisation for assignment of the petitioner-Jitender Kumar Jain for a period of three months. In this context, it was submitted that even if the findings in the impugned order were to be taken into consideration, it could not be said that the petitioner-Jitender Kumar Jain had indulged in any misconduct. At worst, it could be said to be a situation of negligence or oversight, which would not qualify as misconduct. It was emphasized that none of the members of the SCC or any of the lenders had raised any grievance with regard to the said five issues, on which the said petitioner was found to have contravened the provisions of the IBC and the Regulations framed thereunder.

15. It was further submitted that the said issues concerned interpretation of the relevant Regulations and since more than one interpretation was possible, it could not be said that the said petitioner had indulged in misconduct, only because his

interpretation did not find favour with the disciplinary committee of the respondent-Board. On this basis, it was submitted that the impugned order deserved to be set aside. In this context, reliance was placed on judgment of the Supreme Court in the case of *Inspector Prem Chand vs. Government of NCT of Delhi & Ors.,* **(2007) 4 SCC 566** and judgment of this Court in the case of *Abdul Rauf Mohammed Khaja vs. State of Maharashtra, through the Secretary, Revenue Department & Ors.,* **2022 SCC OnLine Bom 3794**.

16. It was further submitted that Regulation 11 of the Investigation Regulations 2017 mandatorily requires the Board to consider the inspection report and after consideration thereof, if it forms a *prima facie* opinion that sufficient cause exists to take action under Section 220(2) of the IBC, only then show cause notice can be issued. It was submitted that the expression 'consider' has to be given its logical meaning. In this context, reliance was placed on the judgment of the Supreme Court in the case of *Chairman, Life Insurance Corporation of India & Ors. vs. A. Masilamani,* **(2013) 6 SCC 530**, to emphasize that the word 'consider' would mean 'to think over', 'to regard as' or 'deem to be'. An attempt was also made on behalf of the petitioner-Jitender Kumar Jain to claim that the entire proceeding was vitiated by bias, as the respondent No.5 i.e. the Executive Director of the respondent-Board was performing multiple functions in the proceeding. It was submitted that in such a situation, the entire

proceeding stood vitiated and hence, the impugned order deserved to be set aside.

17. Mr. Palav, learned counsel appearing for the petitioner-Edelweiss in Writ Petition (Lodging) No. 5263 of 2025, supported the contentions raised on behalf of the petitioner-Jitender Kumar Jain in Writ Petition (Lodging) No. 2817 of 2025. It was submitted that the petitioner-Edelweiss being a member of the SCC had raised no grievance, at any point in time, with regard to the functioning of the petitioner-Jitender Kumar Jain, as the liquidator. It was submitted that all the necessary steps under the provisions of the IBC and the Regulations framed thereunder were properly followed by the petitioner-Jitender Kumar Jain and as a matter of fact, the promoters of the corporate debtor were obstructing the entire process. We had put a question to the learned counsel appearing for the petitioner-Edelweiss, as to how could it be a party aggrieved in the context of the impugned order which imposes penalty on the petitioner-Jitender Kumar Jain, who was functioning as a liquidator, but the learned counsel for the petitioner-Edelweiss was unable to give a satisfactory response. It was indicated that since the petitioner-Edelweiss, as member of the SCC, was interested in proper and efficient completion of the process of the liquidation, it was entitled to approach this Court for challenging the impugned order.

18. On the other hand, Mr. Vijayan, learned counsel appearing for the respondent-Board submitted that this Court, while

exercising writ jurisdiction to consider challenge to the impugned order, necessarily exercises jurisdiction in a very narrow compass. It was submitted that only aspects pertaining to the procedure followed in the present case could be examined and that this Court would not be able to test the merits of the findings rendered in the impugned order.

19. On the question of the show cause notice being issued on aspects that were not directly raised in the complaints filed by the promoters of the corporate debtor, it was submitted that the filing of a complaint opens the doors for investigation under Chapter VI of the IBC, consisting of Sections 217 to 220 thereof. It was submitted that once the doors of investigation stood opened, all the material that came on record by way of such investigation could be taken into consideration for issuing show cause notice to the service provider like the petitioner-Jitender Kumar Jain, as per Section 219 of the IBC. It was submitted that the words used in Section 219 of the IBC as they stood at the relevant time before the latest amendment, cannot be read in such a manner that would denude the respondent-Board from exercising power to even *suo motu* issue show cause notice. It was emphasized that the Board as a regulator is a watchdog and one of its crucial functions is to ensure that the service providers perform their duties in an appropriate manner, maintaining the integrity of the process and in line with the object of enactment of the IBC. On this basis, it was submitted that the ground raised on behalf of the petitioner-

Jitender Kumar Jain, to the effect that the show cause notice was issued without jurisdiction, deserves to be rejected.

20. It was further submitted that while exercising writ jurisdiction, this Court cannot review the findings rendered in the impugned order on merits, to arrive at independent findings on the basis of the material on record. It was submitted that this Court can also not go ino the question of proportionality of the penalty imposed on the petitioner-Jitender Kumar Jain. Even where the penalty is found to be shockingly disproportionate to the nature of the misconduct, after setting aside the order of penalty, as per settled law, the matter is to be left to the disciplinary authority to take a decision afresh in the matter. In this context, reliance was placed on judgments of the Supreme Court in the cases of *Union of India & Ors. vs. P. Gunasekaran*, **(2015) 2 SCC 610** and *Lucknow K. Gramin Bank & Anr. vs. Rajendra Singh*, **(2013) 12 SCC 372**.

21. It was further submitted that although the petitioner-Jitender Kumar Jain raised various grounds to claim that principles of natural justice were violated in the present case, he failed to demonstrate any prejudice caused to him to justify inteference by this Court exercising writ jurisdiction. It was submitted that the petitioner-Jitender Kumar Jain ought to have demonstrated that the alleged violation of the principles of natural justice in the facts of the present case caused any prejudice to him. Since he failed to do so, the said ground of challenge raised on his behalf also

deserves to be rejected. In support of the said proposition, reliance was placed on the judgment of the Supreme Court in the case of *Chief Commercial Manager, South Central Railway, Secunderabad & Ors. vs. G. Ratnam & Ors.*, **(2007) 8 SCC 212**. Reliance was also placed on judgment and order dated 25th October 2024 passed by this Court in **Writ Petition (Lodging) No. 5978 of 2024** (*Naren Sheth vs. Union of India & Ors.*), wherein this Court dismissed a petition filed by a similarly placed insolvency professional. On this basis, it was submitted that the writ petition deserved to be dismissed.

22. Having heard the learned counsel for the rival parties, considering the challenge raised to the impugned show cause notice and the consequential impugned order, the scope of jurisdiction of this Court, while exercising writ jurisdiction, has to be kept in mind. There can be no quarrel with the contention raised on behalf of the respondent-Board that this Court in writ jurisdiction would not sit in appeal over the findings rendered by the Disciplinary Committee of the respondent-Board in the impugned order dated 18th December 2024. The examination to be conducted by this Court would necessarily be limited to the aspects concerning procedure followed by the respondent-Board while passing the impugned order and as to whether the principles of natural justice were properly followed while proceeding against the petitioner-Jitender Kumar Jain. Although the rival parties have relied upon judgements, concerning the nature of jurisdiction

exercised by the Writ Court in the context of service matters, this Court finds that the present case cannot be equated to an *employer - employee relationship* between the respondent-Board and the petitioner-Jitender Kumar Jain i.e. the insolvency professional. But, the role of the respondent-Board as the regulator under the provisions of the IBC and the Regulations framed thereunder needs to be emphasized. There can be no doubt that the respondent-Board, as the regulator, would be well within its powers to ensure that service providers like the petitioner-Jitender Kumar Jain perform their duties in line with the provisions of the IBC and the Regulations framed thereunder. It is in this backdrop that the rival contentions are being analyzed and considered.

23. The action against the petitioner-Jitender Kumar Jain stood triggered on the basis of complaints submitted by the promoter of the corporate debtor. While the first complaint dated 3rd July 2023 was in the form prescribed in the Regulation, the further written document dated 10th August 2023 submitted by the promoter was not in the said form and yet it was treated as a complaint. On the basis of the said complaints, respondent No.5 i.e. the Executive Director of the respondent-Board appointed respondent No.6 i.e. the one of the Deputy General Managers, as an investigating authority, to investigate into the allegations. The process is governed by the Investigation Regulations 2017, particularly Regulations 8 to 10 thereof. The aforesaid process undertaken as

per the Investigation Regulations has to be read with Chapter VI of the IBC. As per Section 219 of the IBC read with Regulation 11 of the Investigation Regulations 2017, the Board is to consider the investigation report and upon forming a *prima facie* opinion that sufficient cause exists to take action under Section 220 of the IBC through the Disciplinary Committee, it can issue show cause notice in the matter.

24. It is crucial to note that Section 219 of the IBC, as it stood at the relevant point in time, prior to the latest amendment, was as follows:-

> **"*219. Show cause notice to insolvency professional agency or its member or information utility***
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> *The Board may, upon completion of an inspection or investigation under section 218, issue a show cause notice to such insolvency professional agency or insolvency professional or information utility, and carry out inspection of such insolvency professional agency or insolvency professional or information utility in such manner, giving such time for giving reply, as may be specified by regulations.*"

25. It is also crucial to note that subsequently by recent amendment dated 6th April 2026, the words 'or on the basis of material available on record' have been added to Section 219. Thus, prior to the amendment, Section 219 empowered the Board to issue show cause notice under Section 219 of the IBC upon completion of the investigation under Section 218 thereof and under Regulation 11 of the Investigation Regulations 2017, after consideration of such report if the Board formed the *prima facie*

opinion that sufficient cause existed, show cause notice could be issued. This aspect is crucial in the facts of the present case.

26. It is an admitted position that in the present case, in pursuance of the aforesaid two complaints lodged by the promoter of the corporate debtor, investigation was initiated culminating in the investigation report. We find substance in the contention raised on behalf of the petitioner that the grievances raised in the two complaints by the promoter of the corporate debtor were vague, general and without specifications. It is to be appreciated that the said complaints were lodged in the backdrop of the said promoter and other promoters / ex-directors of the corporate debtor taking a series of obstructionists steps during the process of CIRP and liquidation, as also lodging a series of police complaints against the petitioner-Jitender Kumar Jain i.e. the liquidator. In respect of some of such steps taken by the promoters / ex-directors of the corporate debtor in writ petitions filed before this Court, certain observations have been made against such tactics adopted by the promoters / ex-directors. Even the NCLT had dismissed one such frivolous application filed by the promoter of the corporate debtor with cost of Rs.1 lakh, wherein not only the petitioner-Jitender Kumar Jain but the members of the SCC had highlighted such conduct of the promoters / ex-directors.

27. It is also an admitted position on facts that the respondent-Board did not find any substance in the allegations made in the

complaint lodged by the promoter of the corporate debtor. Thus, applying Section 219 of the IBC, as it then stood, read with Regulation 11 of the Investigation Regulations 2017, upon consideration of the investigation report, the respondent Board did not find any material against the petitioner. Hence, the impugned show cause notice dated 09.07.2024 was not at all based on the investigation report as the findings therein were admittedly not adverse to the petitioner. It is to be noted that after the investigation was initiated, it took a long period of almost 8 months for the respondent No.6 to serve notice dated 2nd April 2024 on the petitioner-Jitender Kumar Jain under Regulation 8 of the Investigation Regulations 2017 to respond to the allegations. The petitioner submitted his detailed reply / response and thereupon, the investigation report did not find any substance in the allegations levelled by the promoter of the corporate debtor. In such a situation, we find substance in the contention of the petitioner that the impugned show cause notice dated 9th July 2024 was based on material extraneous to the investigation report. It is crucial to note that the respondent No.6 - Deputy General Manager of the respondent Board categorically recorded in the investigation report dated 10th May 2024 that there was no actionable material found against the petitioner-Jitender Kumar Jain.

28. In this backdrop, when the impugned show cause notice dated 9th July 2024 is perused, it refers to the investigation report

dated 10th May 2024 and annexes a copy thereof. Thereupon, even though the investigation report categorically recorded that no actionable material was found against the petitioner, the respondent No.8, another Deputy General Manager of the respondent Board, who signed the show cause notice, stated that certain aspects in respect of the assignment of the petitioner-Jitender Kumar Jain as liquidator were observed. Then the show cause notice proceeded to highlight five issues to reach a conclusion that *prima facie* certain contraventions of the provisions of the IBC and its Regulations were found. The petitioner-Jitender Kumar Jain was then called upon to respond to the five issues.

29. We find substance in the contention raised on behalf of the petitioner that the show cause notice was based on material extraneous to the investigation report. The petitioner-Jitender Kumar Jain had specifically responded to the notice dated 2nd April 2024 issued during the course of investigation and he had given his detailed response to allegations made against him. The investigating officer was satisfied with the responses and no actionable material was found against the said petitioner. Yet, the impugned show cause notice was issued on aspects completely foreign to the complaints and the allegations that triggered the investigation. This is found to be a procedural irregularity committed by the respondent-Board and its officials while proceeding against the said petitioner as a service provider. Once

the statutory provisions under the IBC and the Regulations framed thereunder prescribe a particular procedure, it ought to be followed.

30. In this context, it becomes crucial that Section 219, as it then stood, did not use the words ‘or on the basis of material available on record’, which have been added by way of amendment dated 6th April 2026. In other words, the procedure, as it then stood, provided for complaints to be lodged by any aggrieved person against the service providers like the petitioner under Section 217 of the IBC, which could lead to an investigation under Section 218 thereof and if the Board was satisfied upon completion of the investigation under Section 218 that *prima facie* sufficient cause existed to take action, a show cause notice could be issued.

31. In the present case, the impugned show cause notice dated 9th July 2024 has not been issued in pursuance of the said procedure. It has been issued on material extraneous to the investigation. In order to respond to the said contention raised on behalf of the said petitioner, the respondent-Board contended that it always has *suo motu* power, as a regulator, to issue such show cause notice on any material that comes to its notice and which in its opinion, warrants action against the service provider like the said petitioner. If the role of the Board as the regulator under the IBC and the Regulations framed thereunder is appreciated in the correct perspective, there can be no doubt that the Board would

be well within its powers to take action against the service providers when it is warranted. But, before exercising such inherent power, the Board would certainly be required to allude to the material that led to its *prima facie* conclusion about necessity to take action against the service provider.

32. In the present case, the material that came to the fore in the form of the investigation report was admittedly in favour of the said petitioner as a service provider and yet, the Board chose to issue show cause notice purportedly under Section 219 of the IBC as it then stood. We are of the opinion that the said procedure adopted by the respondent Board was procedurally irregular and to that extent, the show cause notice stood vitiated. The said petitioner was at least entitled to being provided the material on the basis of which the show cause notice was issued.

32. Since this Court, while exercising writ jurisdiction, has the power to interfere with the impugned order dated 18th December 2024 in a narrow compass, being conscious of the said position, the impugned order is being examined.

33. A perusal of the impugned order shows that although the aforementioned issues were raised against the petitioner-Jitender Kumar Jain for having contravened the provisions of the IBC and the Regulations framed thereunder, he was found guilty of only three contraventions. Firstly, it was found that the said petitioner, as the liquidator and the service provider, had irregularly

constituted the SCC. Secondly, it was found that the said petitioner had failed to present liquidation costs before the SCC in the 4th, 5th and 6th meetings; and thirdly, that the said petitioner had caused delay in issuing notices for conducting the first and second auctions.

34. A perusal of the impugned order shows that, while arriving at findings with regard to the aforementioned three issues, the Disciplinary Committee of the respondent-Board stated the issues in brief, then the response of the said petitioner and eventually the analysis and findings thereon. At first blush, it does appear that the respondent-Board, through its Disciplinary Committee, while passing the impugned order, considered the material on record while reaching its findings. But, a closer analysis shows that while the said petitioner in his reply to the show cause notice and also in his written submissions tendered after personal hearing, had raised a number of concerns and issues, the respondent-Board does not appear to have considered the same in the proper perspective. In this regard, it would be appropriate to refer to the detailed reply to the show cause notice submitted by the said petitioner. A perusal of the same shows the manner in which the said petitioner stated the chronology of events from the point in time when liquidation was initiated in respect of the corporate debtor. The conduct of the promoters / ex-directors including the promoter, who had submitted the said complaints, was highlighted and in that context, reference was made to their fraudulent conduct. The

obstructionist attitude of the promoters / ex-directors of the corporate debtor was also placed on record, due to which a number of applications had to be filed before the adjudicatory authority i.e. the NCLT and even writ petitions had to be filed before this Court.

35. One such Writ Petition No.10244 of 2023 had to be filed by the said petitioner seeking directions to the police to provide assistance to clear the illegal occupation by the said promoters / ex-directors and third parties in the premises owned by the corporate debtor. This Court, in its order passed in the said writ petition, recorded that the liquidator i.e. the petitioner-Jitender Kumar Jain was being browbeaten and threatened by the promoters and ex-directors of the corporate debtor in a most illegal manner and that, bogus and frivolous complaints were also being lodged against him. The said petitioner brought on record material as to the manner in which the promoters / ex-directors were causing news-items to be published in the print media, levelling wild and baseless allegations against the said petitioner. It is to be noted that the corporate debtor, itself, was a newspaper house run by the said promoters / ex-directors.

36. Thereupon, the said petitioner responded to each of the issues flagged by the Board in the said show cause notice. We are of the opinion that the entire background placed by the said petitioner before the respondent Board in response to the show cause notice with supporting material ought to have been taken

into consideration while analyzing the response to individual issues raised in the show cause notice and that the analysis thereof could not have been dehors such background and material. We find that the impugned order is bereft of any such examination and analysis. In other words, we find that relevant material placed on record by the said petitioner was ignored by the respondent-Board while passing the impugned order. This amounts to violation of the principles of natural justice and a serious procedural infirmity that goes to the root of the matter.

37. We also find substance in the contention raised on behalf of the petitioner that the defences raised on his behalf, *inter alia*, concerned interpretation of the relevant Regulations framed under the IBC, particularly the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 (hereinafter referred to as 'Liquidation Regulations 2016'). We are of the opinion that if more than one interpretation of the relevant regulations was reasonably possible and the petitioner, as the liquidator, had adopted one such interpretation, it could not be said that there was serious contravention or infarction of the provisions of the IBC and the Regulations framed thereunder. In this context, it would be appropriate to consider the findings rendered by the respondent-Board in the impugned order.

38. The first issue on which the respondent-Board found against the petitioner in the impugned order pertained to alleged irregular constitution of the SCC. Regulation 31A(1) of the Liquidation

Regulations 2016 pertains to the SCC and it requires the regulator to constitute the committee within 60 days of the liquidation commencement date. Clause (3) of the aforesaid Regulation 31A stipulates that the liquidator may facilitate the stakeholders of each class i.e. the classes of financial creditors, workmen, employees etc. to nominate their representatives for participation in the consultation committee. The allegation against the said petitioner is that, he treated only SBI as the sole representative of the financial creditors in the SCC while there were other financial creditors also. The said petitioner explained that as per his interpretation of Regulation 31A(3) of the Liquidation Regulations 2016, since SBI and the other two financial creditors i.e. Bank of Baroda and the petitioner-Edelweiss belonged to one class of financial creditors i.e. secured creditors having relinquished their security interest, he treated all three as a class with SBI representing the said class. In his reply, the said petitioner had enumerated the various classes of creditors that he took into consideration such as secured financial creditors, unsecured financial creditors, operational creditors (workmen), operational creditors (government dues) etc. We find that the interpretation placed by the said petitioner on Regulation 31A(3) of the Liquidation Regulations 2016 is certainly an interpretation, which qualifies to be a possible interpretation. This aspect was completely ignored by the respondent-Board in the impugned order while holding against the said petitioner on the first issue.

39. Another relevant aspect concerning the first issue is that when the said petitioner as the liquidator considered SBI as the representative of all financial creditors, no other financial creditor ever raised any grievance in that regard. The documents and material pertaining to meetings of the SCC show that while SBI was treated as the representative of all financial creditors, the other two financial creditors in the same class i.e. secured creditors having relinquished their security interest, being Bank of Baroda and the petitioner-Edelweisse also attended all meetings of the SCC. This is a relevant circumstance ignored by the Disciplinary Committee of the respondent-Board while passing the impugned order and holding against the petitioner on the said issue. In other words, on the said issue, relevant considerations were ignored and this amounts to procedural irregularity resulting in violation of principles of natural justice.

40. As regards the second issue pertaining to the failure of the said petitioner acting as the liquidator in presenting liquidation costs in SCC meetings, at the outset, we find that the Disciplinary Committee of the respondent-Board, in the impugned order, wrongly took into consideration the proceedings of the 7th, 8th and 9th meetings of the SCC, because the show cause notice raising the said issue concerned only the 4th, 5th and 6th meetings of the SCC. Thus, the consideration of the said issue was necessarily limited to the 4th, 5th and 6th meetings of the SCC. This is found to be an error in the impugned order.

41. As regards the allegations contained in the said issue, the impugned order analyzes the response of the said petitioner on the touchstone of interpretation of Regulations 5 and 31A of the Liquidation Regulations 2016. It appears that the said petitioner proceeded on the basis that the necessity of the liquidator presenting the liquidation cost to the SCC under Regulation 31A(6B) of the Liquidation Regulations was to be read with Regulation 5(3)(c) thereof. On that basis, the said petitioner, while performing his role as the liquidator, called for submission of confidentiality undertakings. It is also an admitted position that Regulation 31A(6B) was introduced in the Liquidation Regulations 2016 with effect from 12th February 2024. The notice for the 4th meeting of the SCC was already issued on 10th February 2024, for the meeting slated for 15th February 2024. Thus, at the point in time when the notice for the 4th meeting was issued, Regulation 31A(6B) of the Liquidation Regulations 2016 was yet to come into existence.

42. In the face of such facts, we find it surprising that the Disciplinary Committee of the respondent-Board in the impugned order held that the said petitioner while functioning as the liquidator had shown 'contemptuous attitude' towards the involvement of the stakeholders in the liquidation process. It was also recorded in the impugned order that the stand taken by the said petitioner in his defence was based on a misinterpretation of the provisions. We are of the opinion that if it was a case of

interpretation of provisions and the Disciplinary Committee of the respondent-Board was of the opinion that the interpretation applied by the said petitioner was incorrect, it would still lead to a situation of two views with regard to a particular set of provisions. Apart from this, it is an admitted position that none of the stakeholders ever raised any grievance in that regard. We are of the opinion that in such circumstances, the approach adopted by the Disciplinary Committee of the respondent-Board in the impugned order on the said issue was excessively stringent, leading to adverse finding being rendered against the petitioner. It is to be noted that in the operative portion of the impugned order, the respondent-Board itself recorded that there were technical violations of the Liquidation Regulations 2016. This is also a factor to be taken into consideration.

43. As regards the third issue pertaining to delayed issuance of notices for the first and second auction, the material on record, to which the impugned order also briefly refers, shows that the promoters of the corporate debtor had left no stone unturned to obstruct the process from the very beginning. Their misdeeds had created serious issues regarding parking etc. in the immovable properties and all the issues were required to be sorted out before the first notice for auction could be issued. The members of the SCC were throughout aware of the same and in the meetings, there were deliberations regarding the said issues. After a semblance of regularity was brought about by the efforts of the

said petitioner functioning as the liquidator along with the members of the SCC, that the first notice for auction could be issued.

44. Even with regard to the second notice for auction, ample material was placed on record by the said petitioner to explain why the same could not be undertaken within 15 days on the failure of the first auction. Although the Disciplinary Committee of the respondent-Board does refer to such material, the effect of the same has not been taken into consideration. But the most crucial factor is that the said petitioner had placed on record the fact that such delays were all condoned by the adjudicatory authority i.e. the NCLT. The impugned order proceeds on the basis that such condonation of delay by the adjudicating authority, which has an overarching role in such circumstances, was not a relevant factor at all. This is another illustration of a crucial factor being ignored while holding against the said petitioner on the issue pertaining to delays in issuing the auction notices.

45. This brings us back to the fact that in the reply to the show cause notice, the petitioner was at pains to point out the manner in which the promoters and ex-directors of the corporate debtor, at every stage, were adopting malicious and obstructive tactics, judicial notice of which, was taken by the adjudicatory authority i.e. the NCLT and even this Court in writ petitions, which the said petitioner was constrained to file. When the adjudicatory authority and even this Court in writ jurisdiction had to pass orders to assist

the said petitioner, functioning as the liquidator, to ensure that the integrity of the process under the IBC was maintained, it was certainly a relevant factor. But, the same was ignored by the Disciplinary Committee of the respondent-Board while holding against the petitioner on the said issue.

46. In the light of the settled position of law, this Court, while exercising writ jurisdiction in this case, has not analyzed the findings rendered by the Disciplinary Committee of the respondent-Board as if sitting in appeal. Instead, the findings have been scrutinized by considering as to whether relevant material was ignored and irrelevant factors were taken into consideration while passing the impugned order. We are of the opinion that the impugned order is vitiated on the touchstone of the said scrutiny and this indicates procedural irregularity and violation of the principles of natural justice. On these grounds, we are inclined to exercise writ jurisdiction to interfere with the impugned order.

47. The aforesaid petitioner has relied upon judgements in the cases of **Inspector Prem Chand vs. Government of NCT of Delhi & Ors.** *(supra)*, **Abdul Rauf Mohammed Khaja vs. State of Maharashtra, through the Secretary, Revenue Department & Ors.** *(supra)* and *Union of India Vs. K. K. Dhawan*, **1993 (2) SCC 56,** for the proposition that mere negligence or carelessness would not amount to misconduct. We are of the opinion that the said judgements were rendered in the context of service jurisprudence wherein the employer proceeded against the employee on the

ground of misconduct. In the present case, the situation is different, for the reason that the said petitioner, while functioning as a liquidator, is not an employee of the respondent-Board, but, he functions under the supervision of the Board, which is the regulator of the process of insolvency and liquidation under the provisions of the IBC. Therefore, strictly speaking, the said judgements may not apply to the facts of the present case.

48. We find substance in reliance placed on behalf of the said petitioner on the judgement of the Supreme Court in the case of **Chairman, Life Insurance Corporation of India & Ors. vs. A. Masilamani** *(supra)*, wherein the Supreme Court has given an analysis of the word 'consider'. In the context of Regulation 11 of the Investigation Regulations 2017, the said position of law assumes significance, because the respondent-Board is required to 'consider' the inspection report to reach a *prima facie* opinion that sufficient cause exists to take action under Section 220(2) of the IBC for issuing show cause notice. In the present case, the inspection report categorically concluded that no actionable material was available. As per the said position of law, the respondent-Board was required to 'think over' and form an opinion on the investigation report to reach a *prima facie* opinion that action against the said petitioner was warranted. We find that the impugned show cause notice dated 9th July 2024 refers to the inspection report, but obviously does not consider the findings therein and proceeds to invoke Section 220(2) of the IBC. We

have already noted that this aspect of the matter vitiated the show cause notice itself.

49. There can be no quarrel with the propositions laid down by the Supreme Court in the judgements of **Union of India & Ors. vs. P. Gunasekaran** *(supra)* and **Chief Commercial Manager, South Central Railway, Secunderabad & Ors. vs. G. Ratnam & Ors.** *(supra)* with regard to the limited jurisdiction that can be exercised by the Writ Court while considering the correctness or otherwise of an order in the nature of the order impugned herein. The said judgements were relied upon by the learned counsel appearing for the respondent-Board. We have exercised our jurisdiction in this case within the narrow compass available as per the settled position of law and we have reached the conclusions hereinabove, which indicate that the petitions deserve to be allowed. We also find that reliance placed on behalf of the respondent-Board on judgement of this Court in the case of **Naren Sheth vs. Union of India & Ors.** *(supra)* is misplaced, because in that case, the Court was convinced on facts about the allegations against the service provider.

50. Although the impugned order imposes the penalty of suspending the registration of the petitioner-Jitender Kumar Jain for a period of three months, it cannot be ignored that by operation of clause 23A of the Model Bye-Laws, the moment the show cause notice dated 9th July 2024 was issued, the authorization for assignment of the said petitioner stood

suspended. In effect, the petitioner suffered suspension for a longer period of time. A Division Bench of this Court in the case of *Amit Gupta Vs. Insolvency and Bankruptcy Board of India*, **2024 SCC OnLine Bom. 989** has commented upon such a drastic consequence in the following manner:-

> *"81. Before we part with the matter, we would be remiss if we did not highlight to the IBBI that it must examine the serious effect of the issuance of a show cause notice to any IP. The very issuance of a show cause notice has the effect of stopping the IP from taking up new work by reason of Bye-Law 23A in the Model Bye-Laws that are statutorily specified in the Schedule to the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, which provides as follows:-*
>
> *"The authorisation for assignment shall stand suspended upon initiation of disciplinary proceedings by the Agency or by the Board, as the case may be."*
>
> *82. While the aforesaid provision is not under challenge before us, we take judicial notice of the serious repercussions on insolvency professionals when the Insolvency and Bankruptcy Board of India issues a show cause notice. The moment disciplinary proceedings are initiated, the insolvency professional's authorisation to conduct his assignments stands suspended. Such a position enabled by subordinate law can have serious implications for insolvency professionals. This position may also have the effect making the Insolvency and Bankruptcy Board of India reticent to issue show cause notices, considering the debilitating impact it can have on any insolvency professional. This situation deserves to be reviewed by the Insolvency and Bankruptcy Board of India.*

51. Thus, we find that the respondent-Board needs to be more circumspect while issuing show cause notices to insolvency

professionals like the petitioner herein and in that backdrop, the necessity of proper consideration of the material under Regulation 11 of the Investigation Regulations 2017 assumes even more significance.

52. Although we find that the petitioner-Edelweiss could not have had a grievance to challenge the impugned order, but the very fact that it chose to challenge the impugned order demonstrates that as a member of the SCC, it was more than happy with the manner in which the petitioner-Jitender Kumar Jain was functioning as the liquidator. As a matter of fact, the petitioner-Edelweiss is at pains to point out that the petitioner-Jitender Kumar Jain took all necessary steps to ensure the integrity of the process undertaken as per the provisions of the IBC and the Regulations framed thereunder and the manner in which the promoters and ex-directors were hell bent upon derailing the same and in the process, targeted the liquidator himself. To that extent, the petition filed by the petitioner-Edelweiss deserves consideration.

53. In view of the above, the writ petitions are allowed. The impugned order dated 18th December 2024 passed by the Disciplinary Committee of the respondent-Board is quashed and set aside. As regards prayer of the petitioner-Jitender Kumar Jain for direction to the respondent No.1-Union of India to consider putting in place an appellate body, the recent amendment of the

IBC, adding sub-section (7) to Section 220 sufficiently satisfies the said grievance of the petitioner. By the said amendment, an avenue of appeal is provided to a person aggrieved by an order of the Disciplinary Committee of the respondent-Board by preferring an appeal before the National Company Law Appellate Tribunal.

54. As regards declaration that Regulation 13(3ba) of the Investigation Regulations 2017 is unconstitutional, serious arguments were not advanced by the parties, and therefore, the said question is not dealt with and it is kept open.

55. In view of the above, both the writ petitions are disposed of. Pending applications, if any, also stand disposed of.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**

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