

## INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Mukund Mall

### High Court of Jharkhand:

Resolution Professional has a key role to play in the insolvency resolution process and to protect the assets of the corporate debtors. From his nature of assignment and duty to be performed his office entails performance of functions which are in the nature of public duty and therefore will come within the meaning of public servant both under sections 2 (c) (v) & (viii) of the PC Act.

*Sanjay Kumar Agarwal vs. Central Bureau of Investigation, Anti-Corruption Bureau, Dhanbad, Cr. M.P. No. 1048 of 2021, Dated the 05th April, 2023*

#### Facts of the Case:

1. Petitioner is an 'Insolvency Professional' as defined under Section 3(19) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called 'the I&B Code') enrolled under Section 207 of the I&B Code.
2. NCLT vide its order dated 22.11.2019 and 06.01.2020 appointed this petitioner, as interim Resolution Professional (IRP) for M/s Adi Ispat Private limited and M/s Bir Ispat Pvt. Ltd. in terms of Section 7(3)(b) r/w Section 16 of I&B Code and later as RP by the CoC.
3. Complainant Amit Sarawgi, Director of M/s Adi Ispat (P) Ltd. alleged that petitioner had demanded a bribe of Rs. 2,00,000/- per month for showing leniency in the insolvency resolution process for extending CIRP process from 09 months to 02 years and also demanded Rs. 20,00,000/- for obtaining favourable forensic audit/valuation report from his chosen Forensic Auditor/Valuer and for helping in re-possession of plant/company. The petitioner had offered him that SME, the complainant was entitled to participate in the auction proceeding of the Bank and if he met the demands, he would prepare his report leniently enabling him to re-possess his plant/company.
4. Trap team was constituted, and raid was conducted at Giridih at the Company office, where the petitioner was caught red handed on 11.2.2020 in the presence of independent witnesses accepting the illegal gratification from the complainant.
5. Petitioner has filed the petition for quashing of the F.I.R. is premised mainly on the ground that Section 7 of PC Act will not apply to this petitioner as a 'Resolution Professional' is not a public servant within the Prevention of Corruption Act.

#### Issue before the High Court:

Whether 'Resolution Professional' as defined under Section 22 of the I&B Code will come within the meaning of 'Public Servant' under Section 2 (c) of the PC Act?

#### Arguments from Petitioner's side:

1. It was argued that petitioner is neither public servant nor he is appointed by any Court or is performing any public duty. The appointment process of resolution professional is provided under Section 22 of the Code, 2016 under which he is appointed by the committee of the creditors. The duty which has been detailed in Section 25 are not in the nature of public duty as contemplated under Section 2(c)(viii).
2. Further, I&B Code is a self-contained Code and specific provisions have been provided for redressal of grievance of any party. Under Chapter VI of the Code, Section 217, the complaints against insolvency professional agency or its member or information utility. It is proposed to be made to the Board. There are further provisions regarding the amendment in Finance, Account and Audit which is put down under Chapter VII.

#### Argument from C.B.I's side:

Counsel on behalf of CBI argued that the instant matter involves a case where the petitioner was caught red handed by the trap team constituted by the CBI, while accepting Rs. Two Lakh as illegal gratification in connection with discharge of his duty as Resolution Professional from the complainant.

#### High Court's Decision:

Resolution Professional' as defined under Section 22 of the I&B Code will come within the meaning of 'Public Servant' under Section 2 (c) of the PC Act

**Rationale behind the decision of High Court:**

1. Court noted that On a perusal of Section 2(c) of the PC Act, we may observe that the emphasis is not on the position held by an individual, rather, it is on the public duty performed by him/her. In this regard, the legislative intention was not to provide an exhaustive list of authorities which are covered, rather a general definition of "public servant" is provided thereunder.
2. Hon'ble Court was of the view that resolution professional will come within the meaning of a public servant under Section 2(c) the PC Act for the reason that definition of public servant as given under the PC Act is very wide and expansive. It is not limited to those serving under the Government or its instrumentalities and drawing salary from the public exchequer. Apart from the list of the functionaries given in Section 2(c), the definition also lays down the functional criteria to include within its fold those discharging public duty or any duty authorized by a court of justice, in connection with administration of justice
3. It also held that Functions and obligations of Insolvency Professionals are as set out under Section 208 of I & B Code which are public in nature. These functions intimately relate to matters relating to loans extended by the Banks which is investments from public at large and therefore will come within the meaning of public duty as provided under Section 2-c(viii) of the P.C. Act.