IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.07.2020

Delivered on : .07.2020

C O R A M

The Hon'ble **Mr. A.P.SAHI, THE CHIEF JUSTICE**
and
The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

W.P.No.9132 of 2020
and
W.M.P.No.11134 of 2020

CA.Venkata Siva Kumar ... Petitioner

..vs..

1.Insolvency and Bankruptcy Board of India(IBBI)
Rep. by its Deputy General Manager,
7th Floor, Mayur Bhawan, Shankar Market,
Connaught Cirucs, New Delhi – 110 001.

2.IPA/ICAI (The Institute of Chartered Accountants of India)
Insolvency Professional Agency,
Rep. by Mr.Sunil Pant(CEO)
ICAI Bhawan, 3rd Floor, Hotel Block,
A-29, Sector – 62, Noida,
Uttar Pradesh 201 309.

3.The Union of India
Secretary to the Government of India,
Ministry of Corporate Affairs(MCA)
Garage No.14, "A" Wing,
Shastri Bhavan, Rajendra Prasad Road,
New Delhi – 110 001.

4.The Union of India
Secretary to the Government of India,
Ministry of Finance (MOF)
Rajpath Marg, E Block,
Central Secretariat,
New Delhi – 110011. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of declaration declaring the circular No.IBBI/IP/020/2019 dated 12.04.2019 r/w Reg. 7(2)(ca) and 13(2)(ca) of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Reg 2016 r/w Section 196(1)(c) of I and B Code 2016, issued by the first Respondent as improper exercise of discretion, patently unrelated to or inconsistent with the purpose or policy of the statute, acting unreasonably and arbitrarily violating Article 14, 19 and 21 of Constitution.

For Petitioner : Mr.V. Venkata Sivakumar
Party-in-person

For Respondents : Mr.R.Sankaranarayanan
Additional Solicitor General of India
Assisted by Mr.K.Jaiganesh
for R1, 3 and 4

O R D E R

SENTHILKUMAR RAMAMOORTHY J.,

The Petitioner is a chartered accountant and has registered himself as an insolvency professional (IP) with the Insolvency and

Bankruptcy Board of India (the IBBI). The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (the IP Regulations), were framed by the IBBI under Sections 196, 207 and 208 read with Section 240 of the Insolvency and Bankruptcy Code, 2016 (the IBC). Regulation 7 of the IP Regulations provides that the registration of the IP with the IBBI is subject to the conditions stipulated therein. Regulation 7(2)(ca) thereof stipulates the requirement that the IP should pay a fee calculated at 0.25% of the professional fee earned for services rendered as an IP in the preceding financial year to the IBBI. Regulation 12 of the IP Regulations provides for the recognition of a company, registered partnership firm or a limited liability partnership as an insolvency professional entity (IPE) subject to the conditions set out therein. Regulation 13(2)(ca) stipulates payment of a fee at 0.25% of the turnover of the IPE in the preceding financial year to the IBBI. Both Regulation 7(2)(ca) and 13(2)(ca) are under challenge in this writ petition whereby the Petitioner seeks a declaration that the said IP Regulations violate Articles 14, 19 and 21 of the Constitution and are, therefore, liable to be struck down.

2. The power to levy fees on IPs is conferred on the IBBI under Section 196 and 207 of the IBC. In Section 196, Sub-section (1)(a), (aa) and (c) are relevant and are set out below:

> "(1) The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions, namely:-
>
> (a) register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations;
>
> (aa) promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of this Code;
>
> (c) levy fee or other charges for carrying out the purposes of this Code, including fee for registration and renewal of insolvency professional agencies, insolvency professionals and information utilities."

Section 207 of the IBC deals with the registration of IPs and for the payment of fees in respect thereof. The said provision is as under:

> **"207. Registration of insolvency professionals**
>
> (1) Every insolvency professional shall, after obtaining the membership of any insolvency professional agency, register himself with the Board within such time, in such manner and on payment of such fee, as may be specified by regulations.
>
> (2) The Board may specify the categories of professionals or persons possessing such qualifications and experience in the field of finance, law, management, insolvency or such other field, as it deems fit."

Section 208 deals with the broad functions and obligations of IPs and stipulates that an IP shall undertake such actions as may be necessary in respect of the different forms of insolvency resolution processes, bankruptcies and liquidation. Section 240 contains the general power to make regulations and reads, *inter alia*, as under:

> **"240. Power to make regulations**
>
> (1) The Board may, by notification, make regulations consistent with this Code and the rules

made thereunder, to carry out the provisions of this Code."

The IP Regulations were framed in the year 2016 and were amended subsequently with regard to the conditions for registration of an IP and IPE, respectively, by inserting clause (ca) in regulations 7(2) and 13(2). This amendment was made by Notification No.IBBI/2018-19/GN/REG036 dated 11.10.2018 with effect from even date and the provisos thereto were inserted by a subsequent amendment with effect from 28.03.2020. Regulation 7(2) (ca) is as under:

"7(2) the registration shall be subject to the conditions that the insolvency professionals shall-

(ca) pay to the Board, a fee calculated at the rate of 0.25 percent of the professional fee earned for the service rendered by him as an insolvency professional in the preceding financial year, on or before the 30th April every year, along with a statement in Form E of the Second Schedule.

Provided that for the financial year 2019-2020, an insolvency professional shall pay the fee under this clause on or before the 30th June, 2020."

Regulation 13(2) (ca) is as under:

"Recognition shall be subject to the conditions that the insolvency professional entity shall-

(ca) pay to the Board, a fee calculated at the rate of 0.25 percent of the turnover from the services rendered by it in the preceding financial year, on or before the 30th of April every year, along with a statement in Form G of the Second Schedule.

Provided that for the financial year 2019-2020, an insolvency professional entity shall pay the fee under this clause on or before the 30th June, 2020."

3. By circular dated 12.04.2019, all registered IPs and all recognized IPEs were informed about the necessity to comply with the requirement of paying a fee calculated at the rate of 0.25 percent of the professional fees/annual turnover of the IP or IPE, as the case may be, for services rendered in the preceding financial year. Such fee is required to be paid on or before 30th April of every year, other than financial year 2019-2020, by filing Form E, as regards IPs, and Form G and H as regards IPEs. The Petitioner obtained a certificate of registration as an IP from the IBBI on 07.08.2017 and has been appointed as a resolution professional thereafter by the National Company Law Tribunal(NCLT). An IP who is appointed to conduct the corporate insolvency resolution process is defined

as a resolution professional (RP) as per Section 5(27) of the IBC. Upon the entry into force of the amendment and even prior to the circular dated 12.04.2019, by communication dated 13.10.2018 to the Chairperson of the IBBI, the Petitioner stated that the charging of fees based on a percentage of the RP's earnings is in violation of the principles of natural justice. He called upon the IBBI to withdraw the notification levying fees on the remuneration received by the IP/RP in the preceding financial year. He also made a request under the Right to Information Act, 2005 (the RTI Act) to the Central Public Information Officer, IBBI, on 13.01.2020, asking for information as to the basis for charging the fee of 0.25 percent of the remuneration received by the IP and as to the manner in which such monies were utilized during the year 2018-2019. In response, a reply dated 25.02.2020 was received. On account of being dissatisfied with the response, the Petitioner filed the present writ petition.

4. We heard the Petitioner as a party-in-person and the learned Additional Solicitor General of India (ASGI), Mr.R.Sankaranarayanan, for the Respondents 1, 3 and 4.

5. The Petitioner raised the following contentions. His first contention was that the impugned regulations are *ultra vires* Section 196 of the IBC. According to him, Section 196 does not empower the IBBI to levy fees on the basis of the annual remuneration or the annual turnover of the IP or IPE, as the case may be, and that a registration fee of Rs.10000 is charged every five years after the certificate of registration is granted. His second contention, in this regard, was that there is excessive delegation and, therefore, the regulation is liable to be struck down. In support of this contention, he relied upon the judgments of the Hon'ble Supreme Court in the **State of Tamil Nadu v. K. Shyam Sunder, AIR 2011 SC 3471 (Shyam Sunder),** and **Avinder Singh v. State of Punjab, AIR 1979 SC 321 (Avinder Singh),** wherein it was held that conferring unfettered powers on the delegate would be an abdication of legislative responsibility, and that essential legislative functions cannot be delegated. His third contention was that the IBBI has not provided services to IPs and, therefore, there is no *quid pro quo* to justify the charging of fees as a percentage of the annual remuneration/turnover. In support of this submission, he referred to the request for information under the RTI Act. In specific, he pointed out that in response to the question as to the information/documents/legal opinion, if

any, on the basis of which the decision was taken to charge a fee of 0.25 percent of the remuneration received by the IP, the reply was as under:

> "Please refer to the information available on the meetings of Governing Board of IBBI held on 15.03.2018, 26.06.2018 and 28.09.2018 as available on IBBI website"

Similarly, in response to the question as to the purposes for which the fee would be utilized, the response was as follows:

> "Please refer to the information available on the meetings of Governing Board of IBBI held on 15.03.2018, 26.06.2018 and 28.09.2018 as available on IBBI website"

In response to a question as to how the amounts that were received towards fees were utilized during the year 2018 – 2019, the reply was as follows:

> "The Board treats the amount as revenue income and uses it accordingly."

According to the Petitioner, these responses are evasive and clearly indicate the complete absence of *quid pro quo*.

6. Consequently, the Petitioner contended that his rights under Articles 14, 19 and 21 of the Constitution are violated. He concluded his submissions by pointing out that IPs were functioning under extremely difficult conditions and that the impugned regulations are causing immense financial hardship to IPs.

7. In response, the learned ASGI submitted that Section 196 of the IBC expressly empowers the IBBI to levy fees or other charges for registration and renewal of registration of insolvency professional agencies, insolvency professionals and information utilities and that the only fetter is that such fee should be for carrying out the purposes of the Code. In addition, he pointed out that Section 207 provides for the registration of IPs with the IBBI and for the payment of fees, in connection therewith, as specified by regulations. Therefore, he submitted that the power to levy the fee is beyond question and that there are sufficient safeguards in the IBC. With regard to *quid pro quo*, he submitted that it is not necessary that there should be a direct correlation between the fee received and the services provided. Indeed, it is not even necessary that the Petitioner and other IPs

should be direct beneficiaries of the services provided by the IBBI. As a matter of fact, he pointed out that the IBBI is entrusted with several functions under the IBC *qua* insolvency resolution, in general, and IPs in particular. By way of illustration, he referred to Section 16(3) and (4) of the IBC whereby the IBBI is empowered to recommend an IP in case no proposal is made by the operational creditor concerned.

8. He invited the attention of the Court to the Report of the Financial Sector Legislative Reforms Commission (the FSLRC Report), Volume – I dated 22.03.2013 and, in particular, to the fact that the FSLRC recommended that the regulator should be self-sufficient and funded through the collection of fees levied. For this purpose, he referred to page 26 of the said Report. He pointed out that the recommendations in the FSLRC Report, *inter alia*, formed the basis for providing for a regulator under the IBC, i.e. the IBBI, which is self sufficient at least with regard to operational expenses. He also referred to the Report in November 2015 of the Bankruptcy Law Reforms Committee (the BLRC Report). In particular, he pointed out that paragraph 4.1.13 of this Report provides as follows:

> "Insolvency and bankruptcy regulation, especially for individuals, is likely to be a resource

> intensive function. The Board should be equipped with the capability and the resources required to perform a wide range of function and is responsible for building and maintaining the credibility of the bankruptcy and insolvency resolution process. There is need for financial independence which allows the Board to have the required flexibility and human resources that are more difficult to achieve within a traditional Government setup."

The draft insolvency and bankruptcy bill was drafted by the aforesaid BLRC and the IBBI was therefore designed to be self-sufficient. The learned ASGI submitted that the fixation of fees as a percentage of the annual remuneration/turnover should be viewed against this backdrop. The question as to whether a fee could be charged as a percentage of the turnover is no longer *res integra* and is settled by the judgment of the Hon'ble Supreme Court in **BSE Brokers' Forum, Bombay v. Securities and Exchange Board of India(SEBI) (2001) 3 SCC 482 (the BSE Brokers' Forum)**. The Hon'ble Supreme Court was dealing with the levy of fees by the SEBI under the SEBI (Stockbrokers and Sub brokers) Regulations, 1992. In that context, the Hon'ble Supreme Court concluded that *quid pro quo* is not a condition precedent for the levy of regulatory

fees. The specific question as to whether the fee could be imposed on the basis of the annual turnover of the brokers was considered in this case and the Hon'ble Supreme Court concluded that the annual turnover is not the subject matter of the levy but is only a measure of the levy. Consequently, it does not amount to a turnover tax or a tax on income. The learned ASGI also referred to the judgment of the Hon'ble Supreme Court in **Shri H.H.Sudhindra Thirtha Swamiar v. Commissioner for Hindu Religious and Charitable Endowments, Mysore, AIR 1963 SC 966,** wherein, at paragraph 18, it was held that "it is not necessary that the fee must have direct relation to the actual services rendered by the authority to each individual who obtained the benefit of the service." In addition, he relied upon the judgment of the Hon'ble Supreme Court in **State of Punjab v. Devans Modern Breweries Ltd. (2004) 11 SCC 26,** wherein it was held that the import fee on alcohol was fully authorized by the Punjab Excise Act, 1914, and delegated legislation thereunder and it is clearly *intra vires*.

9. We considered the submissions of the party-in-person and the learned ASGI and examined the records.

10. At the outset, we note that the Petitioner has not pleaded or established that he is a partner or director of an IPE, as defined in Regulation 12 of the IP Regulations. Therefore, he does not have the *locus standi* to challenge Regulation 13(2)(ca). Consequently, we decline to exercise the discretion to examine the constitutional and statutory challenge to Regulation 13(2)(ca) at the instance of the Petitioner. However, as an IP, he has the *locus standi* to challenge Regulation 7(2)(ca) and, therefore, we propose to examine the constitutional and statutory challenge to Regulation 7(2)(ca). Although Regulations 7(2)(ca) and 13(2)(ca) are substantially *in pari materia,* different considerations could arise as regards Regulation 13(2)(ca) and we do not propose to examine the same in this proceeding.

11.The first question to be examined is whether Regulation 7(2)(ca) is *ultra vires* Section 196 and 207 of the IBC. On examining the IBC, we find that Section 196(1)(a) expressly confers power on the IBBI to register insolvency professional agencies and IPs, and to renew, withdraw, suspend and cancel such registration. Section 196(aa) expressly empowers the IBBI to regulate the working of IPs, insolvency professional agencies and information utilities and Section 196(c) thereof expressly empowers the IBBI to levy fees or other charges including for registration of insolvency

professional agencies and IPs and for the renewal of such registration. In addition, we find that Section 207(1) mandates that every IP should register himself with the IBBI within such time, in such manner, and on payment of such fee as may be specified by regulations. Moreover, Section 240 is the general regulation making power of the IBBI and Section 240(1) does not impose any restraints on the powers of the IBBI, except that regulations should be consistent with the IBC and the rules thereunder and should be for the purposes of carrying out the provisions of the IBC. From the above, we find that there can be no question whatsoever with regard to the powers of the IBBI to frame regulations with regard to the fee payable by IPs and insolvency professional agencies. As regards the charging of fees as a percentage of remuneration, we note that the fee making power is not subject to any fetters except that it should be for carrying out the purposes of the IBC. Given this statutory framework, we conclude that the IBBI is duly empowered under Sections 196 and 207 of the IBC to levy a fee on IPs, including as a percentage of the annual remuneration as an IP in the preceding financial year.

11. The next issue to be considered is whether *quid pro quo* is absent in the levy of fees as a percentage of the annual remuneration/turnover and whether Regulation 7(2)(ca) is liable to be set aside for such reason. The law, in this regard, has evolved significantly and the classical clear-cut distinction between a tax and fee no longer holds the field, particularly in the context of a regulatory fee. In **BSE Brokers' Forum**, the Hon'ble Supreme Court held categorically, at paragraph 38, that *quid pro quo* is not a condition precedent for the levy of regulatory fees and that it is sufficient if there is a broad correlation as between services provided and the fee charged. Paragraph 38 is as under :

> **38.** As noticed in the *City Corpn. of Calicut* [(1985) 2 SCC 112 : 1985 SCC (Tax) 211] the traditional concept of quid pro quo in a fee has undergone considerable transformation. From a conspectus of the ratio of the above judgments, we find that so far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive. It is also not necessary that the services to be rendered by the collecting authority should be confined to the contributories alone. As held in *Sirsilk Ltd.* [1989 Supp (1) SCC 168 : 1989 SCC (Tax) 219 : AIR 1989 SC 317] if the levy is for the benefit of the entire industry, there is sufficient quid pro quo between the levy recovered and services rendered to the industry as a whole. If we apply the test as laid down by this Court in the abovesaid judgments to the facts of the case in hand, it can be seen that the statute under Section 11 of the Act requires the Board to undertake various activities to regulate the business of

> the securities market which requires constant and continuing supervision including investigation and instituting legal proceedings against the offending traders, wherever necessary. Such activities are clearly regulatory activities and the Board is empowered under Section 11(2)(*k*) to charge the required fee for the said purpose, and once it is held that the fee levied is also regulatory in nature then the requirement of quid pro quo recedes to the background and the same need not be confined to the contributories alone."

By applying the said standard, in the context of the charging of a regulatory fee on stockbrokers as a percentage of annual turnover, the Hon'ble Supreme Court concluded that the amount collected under the impugned levy is being used by the SEBI on various activities relating to the securities market, with which the Petitioners therein were concerned. On that basis, it was held that the levy is valid although the entire benefits of the levy do not accrue to the contributors. More importantly, with regard to the levy of fee on the basis of the annual turnover of the brokers, the Hon'ble Supreme Court concluded that the annual turnover is not the subject matter of the levy but is only a measure of the levy. Therefore, it does not amount to a turnover tax or tax on income. Paragraph 45 is relevant, in this regard, and is as under:

> **"45.** It cannot be disputed that the “annual turnover” of a broker is not the subject-matter of the levy but is only a measure of the levy. In other words, the fee is not being levied on the turnover as such but the fee is being levied on the brokers making their annual turnover as

a measure of the levy which is a fee for regulating the activities of the securities market and for registration of the brokers and other intermediaries in the said market. Therefore, it is futile to contend that such levy would be either a tax or a fee on the turnover. It is a settled principle in law that if the State has the authority to impose a levy then it has a wide discretion in choosing the measure of levy, provided of course, it withstands the test of reasonableness. Many levies may have a similar measure but by such similarity in the measure, the levies do not become the same. Therefore, if the impugned levy adopts a measure which is either similar to the one adopted while levying turnover tax or income tax, the impugned levy ipso facto by adoption of such measure, would not become either an income tax or a turnover tax or even a fee on income or a fee on turnover. This Court in the case of *Goodricke Group Ltd.* v. *State of W.B.* [1995 Supp (1) SCC 707] while upholding a cess on tea estate which is a tax on land by the measure of yield by quantum of tea leaves produced in the tea estate held: (SCC Headnote)

"A tax imposed on land measured with reference to or on the basis of its yield, is certainly a tax directly on the land. Apart from income, yield or produce, there can perhaps be no other basis for levy. 'A tax on land is assessed on the actual or potential productivity of the land sought to be taxed'. Merely because a tax on land or building is imposed with reference to its income or yield, it does not cease to be a tax on land or building. The income or yield of the land/building is taken merely as a measure of the tax; it does not alter the nature or character of the levy. It still remains a tax on land or building. There is no set pattern of levy of tax on lands and buildings — indeed there can be no such standardisation. There cannot be uniform levy unrelated to the quality, character or income/yield of the land. Any such levy has been held to be arbitrary and discriminatory. No one can say that a tax under a particular entry must be levied only in a particular manner, which may have been adopted hitherto. The legislature is free to adopt such method of levy as it chooses and so long as the character of levy remains the same, i.e., within the four corners of the particular entry, no objection can be taken to the

method adopted."

The above judgment was cited and followed subsequently in **State of Tamil Nadu v. Tvl. South Indian Sugar Mills Association (2015) 13 SCC 748**.

12. In this case, it is evident that Parliament enacted the IBC by drawing on the BLRC Report and the bill prepared by the BLRC. In both the FSLRC and BLRC Reports, it was recommended that the regulator should be self-sufficient at least with regard to operational expenses by collecting fees to finance its activities. When viewed in this context, it is clear that Section 196(1)(c) and 207 of the IBC and the IP Regulations are intended to fulfil the object and purpose of the IBC as regards the functioning of the IBBI. On examining the IBC, it is also clear that the IBBI plays a significant role as the principal regulator as regards insolvency and liquidation. Even with specific reference to IPs, as pointed out by the learned ASGI, under Section 16(3) and (4) of the IBC, the IBBI is entrusted with the responsibility of recommending a RP if the operational creditor concerned fails to do so. In addition, by way of illustration, under Section 22(4) and (5) and Section 27(4) and (5), respectively, the IBBI is required to confirm the proposal of the committee of creditors (the CoC) with regard to the appointment of the RP or the replacement RP, respectively. Under

Section 25(d), (h) and (k), the RP is required, in the discharge of duties, to act in the manner specified by the IBBI. Under Section 28(4) and (5), if the RP acts without seeking the approval of the CoC, the CoC is entitled to report the matter to the IBBI for taking necessary action against the RP. Even with regard to proposing the name of an IP as a liquidator, the IBBI plays a role under Section 34. Furthermore, we find that the IBBI has been tasked with several responsibilities under the IBC as is evident from the fact that the IBC is replete with references to the IBBI. Thus, we conclude that the IBBI does provide significant services, including in relation to IPs and that there is broad correlation between fees and services. Given the fact that direct or arithmetical correlation as between the fee received and service rendered is not necessary especially in the context of regulatory fees, we are of the view that Regulation 7(2)(ca) of the IP Regulations does not suffer from any constitutional infirmity on account of the absence of *quid pro quo*.

13.This leads to the question as to whether Regulation 7(2)(ca) suffers from excessive delegation. Section 241 of the IBC provides for the laying of all rules and regulations made thereunder before each House of Parliament and further provides for either modification or annulment thereof by Parliament. With regard to the utilization of fees and other financial

resources by the IBBI, we find that Section 222 of the IBC mandates that the IBBI shall credit all grants, fees and charges received by it into the fund of the IBBI. The said section 222 reads as follows:

> **"222. Board's Fund**
>
> (1) There shall be constituted a Fund to be called the Fund of the Insolvency and Bankruptcy Board and there shall be credited thereto-
>
> (a) all grants, fees and charges received by the Board under this Code;
>
> (b) all sums received by the Board from such other sources as may be decided upon by thee Central Government;
>
> (c) such other funds as may be specified by the Board or prescribed by the Central Government.
>
> (2) The Fund shall be applied for meeting-
>
> (a) the salaries, allowances and other remuneration of the members, officers and other employees of the Board;
>
> (b) the expenses of the Board in the discharge of its functions under section 196;
>
> (c) the expenses on objects and for purposes authorised by this code;
>
> (d) such other purposes as maybe prescribed."

Moreover, Section 223 provides for the maintenance of accounts by the IBBI and for the audit thereof by the Comptroller and Auditor General of India. Section 223 is as under:

> **"223. Accounts and audit**
>
> (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.
>
> (2) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.
>
> (3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall

have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.

(4) The accounts of the Board as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament."

In light of the above safeguards, we have no hesitation in concluding that the IBC contains adequate safeguards to ensure that the Parliament effectively supervises all rules and regulations with the power to modify or even annul the same. Likewise, adequate safeguards are in place to ensure that the funds of the IBBI are utilized for the purposes of fulfilling the role of the IBBI under the IBC. Thus, the delegate has not been vested with unfettered power and the standard prescribed in **Shyam Sunder** (cited *supra)* is satisfied. Besides, the conferment of the power to charge a fee and the charging of such fee by using the annual remuneration as a measure does not amount to delegation of an essential legislative function as per the ratio in **Avinder Singh (**cited *supra)***.** Therefore, it cannot be said that there is excessive delegation to the IBBI.

14. In fine, the writ petition fails and is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

(A.P.S.,CJ,) **(S.K.R.,J,)**

28 .07.2020

Index :Yes
Internet :Yes
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To

1.The Deputy General Manager,
Insolvency and Bankruptcy Board of India(IBBI)
7th Floor, Mayur Bhawan, Shankar Market,
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2.Mr.Sunil Pant(CEO)
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3.The Secretary to the Government of India,
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4.The Secretary to the Government of India,
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Ministry of Finance (MOF)
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THE CHIEF JUSTICE
and
SENTHILKUMAR RAMAMOORTHY.J.,

rrg

Pre Delivery order in
W.P.No.9132 of 2020

28.07.2020