

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/285/2025

25 April 2025

ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI/C/2023/001005/912/993 dated 05.12.2024, issued to Mr. Kushvinder Singhal, an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-002/IP-N00888/2019-2020/12833, who is a Professional Member of the Insolvency Professional Agency of ICSI Institute of Insolvency Professionals.

1. Background

- 1.1** The National Company Law Tribunal, New Delhi Bench (AA) vide its order dated 20.03.2023, admitted the application filed under Section 7 of the Code by Advani Private Limited (FC) for initiating Corporate Insolvency Resolution Process (CIRP) of M/s. Startlit Powers Systems Limited (Corporate Debtor / CD). Mr. Khushvinder Singhal was appointed as the IRP vide the same order. The AA vide order dated 26.07.2023 appointed Ms. Reshma Mittal as the RP of the CD.
- 1.2** The Board vide email dated 31.03.2024 sought Mr. Khushvinder Singhal's comments/reply on the issue of entering into a lease agreement in respect of a factory of the CD without the approval of the committee of creditors (CoC). Mr. Khushvinder Singhal submitted his reply vide email dated 07.09.2024. The Board examined Mr. Khushvinder Singhal's reply vis-a-vis the allegation against him.
- 1.3** Based on the examination and material available on record, the Board formed a prima facie opinion that Mr. Khushvinder Singhal contravened the provisions of the Code and Regulations made thereunder and issued the SCN to Mr. Khushvinder Singhal on 05.12.2024 alleging contraventions of the provisions of the Code and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations). Mr. Khushvinder Singhal submitted his reply to the SCN on 18.12.2024.
- 1.4** The SCN and the response of Mr. Khushvinder Singhal to the SCN were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Khushvinder Singhal availed an opportunity of personal hearing before DC on 26.03.2025 through virtual mode wherein he appeared with advocate Mr. Sajeve Deora. Pursuant to the personal hearing, Mr. Khushvinder Singhal submitted additional written submissions.

2. Alleged contravention, submissions of Mr. Khushvinder Singhal and findings of the DC.

The contravention alleged in the SCN, submissions by Mr. Khushvinder Singhal and findings of the DC are summarized as follows:

2.1 Modification of the terms of lease without approval of the CoC.

- 2.1.1 Section 28(1)(k) of the Code provides that notwithstanding anything contained in any other law for the time being in force, the Resolution Professional, during the CIRP shall not transfer rights or financial debt or operational debts under material contracts otherwise than in the ordinary course of business without prior approval of the Committee of Creditors ('CoC').
- 2.1.2 From the minutes of the second meeting of the CoC held on 11.05.2023, it is noted that Mr. Khushvinder Singhal informed the members of the CoC about the ongoing negotiation with one M/s Future Energy (hereinafter referred to as "lessee") regarding the rental value of property of CD leased to it. In the said meeting Mr. Khushvinder Singhal also submitted before the CoC that the rental agreement will be redrafted and the same will be placed before the CoC for its approval. Subsequently in the 4th meeting of the CoC held on 12.06.2023, Mr. Khushvinder Singhal updated the members of the CoC that the lessee is agreeable to an increase in the rent to Rs.3,50,000 from 01.05.2023 with a condition that lease period be extended to 6 months from date of approval of resolution plan by the AA. The minutes of the 4th CoC further records that one of CoC members, namely Punjab National Bank (PNB), requested Mr. Khushvinder Singhal to negotiate with the lessee to restrict the lease period to a period of 2 months from date of approval of resolution plan by the AA.
- 2.1.3 Thereafter, an addendum agreement dated 07.07.2023 to the lease deed dated 22.11.2021 was executed by Mr. Khushvinder Singhal without the approval of the CoC, whereby lease amount for the leased property was revised to Rs.3,50,000/- per month with effect from 01.05.2023 and the lease period was for a period till expiry of period of 3 months after the date of approval of the Resolution Plan by the AA. Subsequently, in the 5th CoC meeting held on 18.07.2023, it is noted from the minutes of said meeting that Mr. Khushvinder Singhal merely informed the CoC about execution of the afore stated addendum agreement. Further, a member of the CoC objected and inquired about the specific approval of the CoC for execution of said addendum agreement.
- 2.1.4 Further, Mr. Khushvinder Singhal in reply dated 18.10.2024 to the Board, have termed the aforesaid discussion held in the 4th CoC meeting as approval of the CoC to the addendum agreement executed by Mr. Khushvinder Singhal, and also justified his action by stating that the same was done to

prevent delay and for the benefit of all the stakeholders. However, the discussion as seen to be held cannot be termed as approval of CoC as the same requires voting on specific resolution on the proposal. Moreover, Mr. Khushvinder Singhal himself informed the members of the CoC in its second meeting that the redrafted agreement would be placed before CoC for its express approval. Despite Mr. Khushvinder Singhal's own submission in the second meeting of the CoC, Mr. Khushvinder Singhal executed the addendum without the approval of the CoC. Mr. Khushvinder Singhal merely informed the CoC about the execution of the addendum agreement in the 5th CoC held on 18.07.2023, wherein a member of the CoC objected and inquired about the specific approval of the CoC for execution of said addendum agreement.

2.1.5 In view of the above, it is observed that Mr. Khushvinder Singhal had failed to obtain approval of the CoC prior to execution of the addendum dated 07.07.2023 to the lease agreement dated 22.11.2021 and thereby unauthorisedly agreed to extend right on the property of CD in favour of the lessee from 01.05.2023 to a period of 3 months from the date of approval of resolution plan by the AA. Therefore, Mr. Khushvinder Singhal had prima facie contravened provisions contained in Section 28(1)(k) of the Code read with clauses 12 and 14 of the Code of Conduct contained in Schedule I of the IBBI (Insolvency Professionals) Regulations 2016 ("Code of Conduct").

Submissions by Mr. Khushvinder Singhal.

2.1.6 Mr. Khushvinder Singhal submitted that the CD's only source of income since 22.11.2021 (prior to commencement of CIRP) has been lease rental from its factory property situated at Sohana, Haryana, and nothing else and the monthly lease rental of Rs.1,50,000 (GST extra), and an increase in rent of 10% after the first year and thereafter 5% every year term of the lease fixed for the period up to 30.09.2026, was renegotiated during CIRP in the interest of maximising the stakeholders value. The renegotiated amount was settled at Rs.3,50,000 pm (GST extra) in place of ₹1,65,000 pm, plus GST, and additionally, it was agreed that the lessee will vacate the premises within three (3) months of approval of resolution plan in the case of the CD by the Hon'ble AA instead of 30.09.2026.

2.1.7 Mr. Khushvinder Singhal submitted that the amount received by the CD towards lease rent earned by the CD since 22.11.2021 was deposited directly in Bank Account of the CD with PNB/FC and PNB/FC was regularly adjusting the receipt towards amount then outstanding and overdue in the loan and interest account of the CD towards PNB/FC. Mr. Khushvinder Singhal also submitted that PNB was setting off the amount deposited in the bank account of the CD, including the lease rent,

against the outstanding loan even after commencement of CIRP and the same was objected and duly recorded in the minutes of fifth (5th) adjourned meeting as item no. 5.7. Mr. Khushvinder Singhal had also sent the letter dated 08.06.2023, 11.07.2023 and 12.07.2023 to the PNB, requesting them to deposit back the amount withdrawn by the PNB in view of the moratorium imposed under Section 14 of the Code, 2016.

- 2.1.8 Mr. Khushvinder Singhal further submitted that the given increase had the natural effect of increasing the valuation of the CD by at least 133% over the value based on lease rent being received by the CD earlier. The above act of renegotiated lease rent benefited the CD, both with higher cash flow being available during CIRP and a significantly increased enterprise valuation of the CD. The renegotiation also included termination of the lease by a notice of three (3) months, which diluted the fixed term condition of lease in favour of the CD and aligned the lease deed with the circumstances of the CD as may come particularly with the approval of Resolution Plan. The renegotiated condition of the lease deed resulted in dilution of restriction of continued and firm possession of the property of the CD in the hands of the lessee up to 22.11.2026, and it thus enabled the CD to take the possession of the property on approval of Resolution Plan instead to wait for the expiry of lease period on 22.11.2026.
- 2.1.9 Mr. Khushvinder Singhal further submitted that being the IRP of CD, he had acted at all times with complete knowledge of CoC and was disclosing every step of discussions with the lessee to CoC from time to time, which then culminated into execution of an addendum to lease deed on 07.07.2023. Mr. Khushvinder Singhal further submitted that he took measures during the CIRP of the CD and in the ordinary course of business of the CD to improve the earnings of the CD during CIRP, which had the effect of increase of lease rental from an amount of Rs. 1,50,000/- per month to Rs. 3,50,000/- per month (GST extra) which resulted in maximising the value of the CD as it would form the basis of inviting offers for resolution of debt and default of the CD.
- 2.1.10 Mr. Khushvinder Singhal submitted that he had not taken any step or action to transfer any rights of the CD over its assets and in favour of any person since, the factory premises of the CD was already in possession of the lessee under a lease deed executed about 16 months prior to commencement of CIRP. Mr. Khushvinder Singhal further submitted that the action to modify the lease deed was also in line with provisions of Section 20(2)(b) of the Code, which empower the IRP to amend or modify the contracts entered into by a CD before the commencement of the CIRP. This authority vested in IRP is aimed at protecting and preserving the value of the corporate debtor's property and managing its operations as a going concern. The provision of Section 28(1)(k) of the

Code requires the approval of CoC to actions for transfer of rights or financial/operational debts under material contracts, except when such actions are carried out in the ordinary course of business. In the present case, since there is no transfer of rights involved, and the IRP being duly authorized to amend or modify the lease deed entered into by the CD, 16 months prior to the initiation of the CIRP, acted in the interests of the CD and its stakeholders also providing a significant enhancement in value to the assets of the CD. Accordingly, it cannot therefore, be said that Mr. Khushvinder Singhal committed any violation of section 28 (1) (k) of the Code.

2.1.11 Mr. Khushvinder Singhal further submitted that no specific resolution was required for the execution of the addendum agreement for the increase in lease rent, as consent was provided by the CoC during its 4th CoC meeting held on 12.06.2023. Mr. Khushvinder Singhal further submitted that the 4th CoC meeting was attended by Mr. Ajay Kumar, the representative of PNB, the sole member of the CoC, in place of Mr. Arun Kumar, who had attended the other four (4) CoC meetings. Consequently, during the 5th CoC meeting, Mr. Arun Kumar inquired, *‘whether the decision for execution of addendum agreement, which was placed before the meeting for approval, was made after taking consent of the CoC and what was the agenda item where the consent was taken’*. To this query, Mr. Khushvinder Singhal duly replied and recorded in the minutes that: *“The agenda was placed in 4th meeting. Mr. Ajay Kumar did not object to the rental amount and directed to convince the lessee to agree on 2 months’ notice period. However, after lot of negotiation and persuasion, the IRP could make the tenant agree on 3 months’ time period post approval of Resolution Plan by AA. Also, the PRA’s were also asking w.r.t the lease agreement in order to submit the resolution plan. Therefore, the IRP signed the addendum to the agreement so that the rental value can be increased from 01.05.2023. However, in case the PNB has any objection for the action taken for the benefit of CoC members only, the IRP may proceed to cancel the addendum and lower the rent to Rs.1,65,000/-. Mr. Arun Kumar, authorised representative replied that he will himself check upon the same and then revert.”* No response was received on this from PNB.

2.1.12 During the 5th adjourned CoC meeting dated 18.07.2023, the agenda concerning the Lease Agreement dated 23.11.2022 was incorporated in the minutes as Annexure 5.08. This inclusion ensured full disclosure of all clauses and amendments to the agreement, providing the CoC with comprehensive clarity. In this meeting, Mr. Arun objected, questioning the absence of a specific agenda item if the decision had already been made with CoC consent. Mr. Khushvinder Singhal clarified that the approval had been sought and accorded during the fourth meeting under Agenda Item 4.10. The agenda explicitly stated that if any CoC member objected to the execution of the

addendum, the addendum may be cancelled and lower rent of ₹1,65,000/- per month would then prevail. However, no such objection was raised. Instead, Mr. Arun Kumar responded that he would verify the matter and revert, but no further communication was received from his end.

2.1.13 Mr. Khushvinder Singhal submitted that the actions fall within his authority under Section 20(2)(b) of the IBC, which allows modification of pre-existing contracts to preserve the value of the CD. It is emphasized that the modification of the lease did not amount to a transfer of rights but rather an enhancement of the CD's earnings and valuation. Further, all the steps were taken in good faith, with due diligence, and without any intent to defraud creditors.

Analysis and findings of the DC.

2.1.14 Section 28(1)(k) of the Code is reproduced below:-

“28. Approval of committee of creditors for certain actions. –

(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely: -

(k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business.”

2.1.15 Section 20(2)(b) of the Code is reproduced below:-

“20. Management of operations of corporate debtor as going concern. –

*(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority-
(b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;.”*

2.1.16 The DC notes that Section 28(1)(k) of the Code requires the Resolution Professional to obtain prior approval from the CoC before transferring rights under material contracts outside the ordinary course of business. Section 20(2)(b) of the Code grants the IRP the authority to amend or modify contracts entered into before the commencement of the Corporate Insolvency Resolution Process.

2.1.17 The DC notes that Mr. Khushvinder Singhal's submission that execution of the addendum dated 07.07.2023 to the lease agreement originally executed on 22.11.2022 falls within his authority under Section 20(2)(b) of the Code. The DC notes that this argument holds some merit, as the said lease agreement was entered originally on 22.11.2022 approximately 16 months prior to the

commencement of CIRP, and it constitutes the only source of income for the CD. Thus, the addendum may be considered part of the ordinary course of business, executed with the intent to preserve and enhance the value of the CD and ensure business continuity.

2.1.18 The DC further notes the sequence of events leading to the execution of the addendum dated 07.07.2023 to the lease agreement originally executed on 22.11.2022. In the 2nd CoC meeting dated 11.05.2023, under Agenda Item No. 2.07, Mr. Khushvinder Singhal explicitly informed the CoC that he was in the process of negotiating with the lessee to maximize the rental value. In response to a specific query raised by Mr. Arun Kumar, representative of Punjab National Bank (PNB), regarding whether the lease agreement would be placed before the CoC, Mr. Khushvinder Singhal clarified that the agreement would be redrafted and placed before the CoC for its approval.

2.1.19 Subsequently, in the 4th CoC meeting dated 12.06.2023, Mr. Khushvinder Singhal updated the CoC that the lessee had agreed to an increased rent of ₹3,50,000 per month along with an extension of the lease period. While a discussion took place on the proposed extension, the minutes of Agenda Item No. 4.10 do not indicate any formal resolution by the CoC approving the execution of the lease addendum. Rather, the CoC members only deliberated on the conditions of the extension, with PNB specifically suggesting that the extension be limited to two months post approval of the resolution plan. The relevant extract of the agenda item no 4.10 of the 4th CoC Meeting is reproduced below:-

"The Chairman apprised the CoC that the "lessee", Future Energy has agreed to increase the rent from 1st May, 2023 to Rs. 3,50,000 per month+ applicable GST, with a condition for allowing them 6 months time period post the approval of the Resolution Plan by the Adjudicating Authority. The IRP stated that initially while negotiating the terms, the RP had proposed a time period of 2 months, post the approval of Resolution Plan by Adjudicating Authority. Accordingly, IRP requested the COC members to decide upon the same to which Mr. Ajay Kumar requested the IRP to keep the time of 2 months only and ask the lessee to agree upon the same."

2.1.20 The DC notes that, Mr. Khushvinder Singhal proceeded to execute the addendum on 07.07.2023 to the lease agreement originally executed on 22.11.2022, finalizing a lease extension of three months, without securing prior approval from the CoC which is in contradiction of what has been informed to CoC in the 2nd CoC Meeting dated 11.05.2023. Mr. Khushvinder Singhal later placed the executed addendum before the CoC in the 5th adjourned CoC meeting dated 18.07.2023 under Agenda Item No. 5.08.

- 2.1.21 The DC notes that Mr. Khushvinder Singhal relied upon Agenda Item No. 4.10 of the 4th CoC meeting dated 12.06.2023 to justify the execution of the addendum dated 07.07.2023 to the lease agreement originally executed on 22.11.2022. However, a perusal of the minutes of the 4th CoC meeting dated 12.06.2023 reveals that this item merely recorded ongoing discussions and did not reflect any specific approval from the CoC for executing the revised lease terms.
- 2.1.22 In view of the above discussion, the DC notes that while Mr. Khushvinder Singhal's argument that his actions fall within the scope of Section 20(2)(b) of the Code is not entirely without merit, and the executed addendum dated 07.07.2023 to the lease agreement originally executed on 22.11.2022 can be seen as being in the ordinary course of business aimed at value maximization and falls under Section 20(2)(b) of the Code. However, the fact remains that Mr. Khushvinder Singhal had earlier assured the CoC that the revised lease would be placed before the CoC for approval. This inconsistency weakens Mr. Khushvinder Singhal's justification for not taking CoC's prior approval for executing the addendum dated 07.07.2023 to the lease agreement originally executed on 22.11.2022 and raises concerns regarding transparency and procedural compliance.
- 2.1.23 The DC further notes that the CoC had been kept apprised of the ongoing negotiations with respect to the lease agreement originally executed on 22.11.2022. Further, the final terms of the addendum were commercially beneficial for the CD, and no formal objection was raised by PNB or any other CoC member post execution of the addendum dated 07.07.2023 to the lease agreement originally executed on 22.11.2022.
- 2.1.24 Accordingly, the DC notes that while there is a lapse on the part of Mr. Khushvinder Singhal in not obtaining the CoC's prior approval as recorded in the 2nd CoC meeting dated 11.05.2023, considering the overall intent and benefit to the CD, and the absence of any recorded objection by CoC members, the DC takes a lenient view. The DC cautions Mr. Khushvinder Singhal to exercise greater diligence in future and to ensure strict adherence to what has been agreed in previous meetings.

3. ORDER

- 3.1. In view of the foregoing, the DC in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the Inspection and Investigation Regulations and Regulation 11 of the IP Regulations hereby warns Mr. Khushvinder Singhal (Registration No. IBBI/IPA-002/IP-N00888/2019-2020/12833) to be extremely careful in all his assignments.

3.2. This order will come into effect immediately in view of para 3.1 of the order.

3.3. A copy of this order shall be forwarded to the Insolvency Professional Agency of Institute of Company Secretaries of India where Mr. Khushvinder Singhal is enrolled as a member.

3.4. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.

3.5. Accordingly, the show cause notice is disposed of.

Dated: 25 April 2025
Place: New Delhi

Sd/-
(Sandip Garg)
Whole Time Member
Insolvency and Bankruptcy Board of India