**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

**(Disciplinary Committee)**

No. IBBI/DC/274/2025 28th February 2025

**ORDER**

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/172/2023-IBBI/42/834 dated 29.01.2024, issued to Mr. Subhash Chand Agrawal, an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-003/IP-N00059/2017-2018/10499, who is a Professional Member of the Insolvency Professional Agency of Institute of Cost Accountants of India.

**1. Background**

1.1. The NCLT, New Delhi Bench (AA) *vide* its order dated 21.11.2017 admitted the application filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating the Corporate Insolvency Resolution Process (CIRP) of Dream Land Realtor Private Limited, Corporate Debtor-1 (CD-1) and appointed Mr. Subhash Chand Agarwal as the Interim Resolution Professional (IRP) who was later confirmed as the Resolution Professional (RP). The Liquidation of the CD-1 was ordered by the AA vide order dated 13.09.2018. The Committee of Creditors (CoC) of CD-1 recommended for appointment of Mr. Subhash Chand Agarwal as the Liquidator, however, Mr. Subhash Chand Agarwal did not agree to continue as the Liquidator. Hence the AA appointed Mr. Rakesh Bhatia as the liquidator *vide* its order dated 10.10.2018.

1.2. The NCLT, New Delhi Bench (AA) *vide* its order dated 21.11.2017 admitted the application under Section 10 of the Code for initiating the CIRP of P K Sales Company Private Limited (CD-2) and appointed Mr. Subhash Chand Agarwal as the IRP who was later confirmed as the RP. The Liquidation of the CD-2 was ordered by the AA *vide* its order dated 13.09.2018. The CoC of CD-2 recommended for appointment of Mr. Subhash Chand Agarwal as the Liquidator, however, Mr. Subhash Chand Agarwal did not agree to continue as the Liquidator. Hence the AA appointed Mr. Rakesh Bhatia as the liquidator vide its order dated 10.10.2018.

1.3. The IBBI in exercise of its powers under Section 218 of the Code read with Regulations 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017, appointed the Investigating Authority (IA) to conduct investigation for the CIRP of the CD-1 and the CD-2 pursuant to the observations of the AA in its order dated 22.03.2023 and 09.10.2023 against Mr. Subhash Chand Agrawal.

1.4. Accordingly, a notice under Regulation 8(1) of the Inspection and Investigation Regulation was issued to Mr. Subhash Chand Agrawal on 30.10.2023 in the matter of CD-1 and on 31.10.2023 in the matter of CD-2 with a request to provide a reply along with relevant documents. Mr. Subhash Chand Agrawal submitted his reply to the investigation notices *vide* email dated 09.1.2023. Thereafter, the IA submitted the Investigation Reports (IR) in respect of Mr. Subhash Chand Agrawal's conduct in respect of CD-1 & CD-2 on 13.01.2024 and 22.01.2024 respectively.

1.5. Based on the findings in the investigation report in respect of role of Mr. Subhash Chand Agrawal as an IRP/RP in the CIRP of CD -1 and CD-2, the IBBI issued the SCN to Mr. Subhash Chand Agrawal on 29.01.2024. Mr. Subhash Chand Agrawal sought extension of 7 days for submission of his reply to the SCN. Mr. Subhash Chand Agrawal submitted his reply to the SCN *vide* email dated 14.02.2024.

1.6. The SCN and the reply of Mr. Subhash Chand Agrawal to the SCN were referred to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Subhash Chand Agrawal availed the opportunity of personal hearing before the DC on 05.12.2024 through virtual mode wherein he appeared with his advocate Ms. Anjali Sharma.

**2. Alleged Contravention, Submissions of Mr. Subhash Chand Agrawal and Findings of the DC**

The contraventions alleged in the SCN, submissions by Mr. Subhash Chand Agrawal and findings of the DC are summarized as follows:

2.1. **<u>Contravention-I:</u>**

2.1.1. The CD-1 and the CD-2 were admitted into the CIRP *vide* the orders of the AA dated 21.11.2017, and Mr. Subhash Chand Agrawal was appointed as the IRP and later was confirmed as the RP. Thereafter, liquidation orders were passed by the AA *vide* its order dated 13.09.2018 in the matter of CD-1 and CD-2 wherein the AA did not discharge Mr. Subhash Chand Agrawal from his duties with respect to the assignments for the CD-1 and the CD-2. Subsequently, the AA *vide* its orders dated 10.10.2018 appointed Mr. Rakesh Bhatia as Liquidator in respect of CD-1 and CD-2.

2.1.2. Pursuant to the orders of the AA dated 10.10.2018, Mr. Subhash Chand Agrawal was under obligation to handover the assets of the CD-1 and CD-2 to the liquidator so appointed by the AA. However, as per Mr. Subhash Chand Agrawal's submission *vide* reply dated 08.11.2023 and 09.11.2023, Mr. Subhash Chand Agrawal had only taken symbolic possession of the offices and other assets of CD-1 and CD-2 and not actual possession and thereafter handed over the symbolic possession of CD-1 and CD-2 to Mr. Manish Jain, the director of suspended board of the both CD-1 and CD-2, without being relieved from the assignment and without a direction of the AA to that effect.

2.1.3. Despite having the statutory obligation to take control and custody of the assets of the CD-1 and CD-2, Mr. Subhash Chand Agrawal did not take control and custody of the assets of the CD-1 and CD-2, as per his own statement. This observation is further corroborated by contrary information submitted by him to the Board in CIRP forms 2 and 3 for the respective CDs. In the said CIRP Form 2, Mr. Subhash Chand Agrawal submitted in row B.l. that he took records and assets relating to the CD into his custody and same submission was made in row E.l. of CIRP Form 3.

2.1.4. From the above observations of the AA and Mr. Subhash Chand Agrawal's own contrary statements it was inferred that Mr. Subhash Chand Agrawal misrepresented the facts and information and gave false and misleading information to the Board in the aforesaid statutory CIRP Forms 2 and 3.

2.1.5. Further, by allowing physical possession to be with the directors of the suspended board during the CIRP and later instead of arranging to hand over the physical control of the assets of CD-1 and CD-2 to the liquidator so appointed by the AA, handing over even the symbolic possession to the director of the suspended board of the CD-1 and CD-2, Mr. Subhash Chand Agrawal failed to perform his functions as were required under the Code and regulations made thereunder. Moreover, it also caused delay in handover of the assets to the liquidator subsequently appointed by the AA resulting in further value erosion of the CD which is against the objective of the Code.

2.1.6. In view of the above, the Board was of the prima facie view that due to the aforesaid acts and omissions during the CIRP of CD-1 and CD-2, Mr. Subhash Chand Agrawal had contravened Sections 25(1), 25(2)(a), read with 34(2), 208(2)(a) of the Code and Regulation 7(2)(h) of the IBBI

(Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clauses 2,10,12,13, and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

**Submissions by Mr. Subhash Chand Agrawal.**

2.1.7. Mr. Subhash Chand Agrawal submitted that taking 'custody and control' does not necessarily mean taking physical possession of the offices and other assets of the CD. Even by taking symbolic possession, he had the custody and control of the assets and records of both the CDs. During the entire CIRP period, the assets and records of both the CDs were in his custody and control, and the directors of the suspended board of both the CDs were acting strictly as per his instructions when he was managing the affairs of both the CDs.

2.1.8. Mr. Subhash Chand Agrawal placed reliance on the National Company Law Appellate Tribunal (NCALT) judgement in M/s Omkara Assets Reconstruction Pvt. Ltd. Vs. ECI Infra Towers Company Pvt. Ltd (order dated 20.12.2022) to support his contention that there is no distinction between symbolic and actual possession.

2.1.9. Mr. Subhash Chand Agrawal further submitted that the AA vide order dated 13.09.2018, passed the order for liquidation of both the CDs meaning thereby that his role as an RP ended on that date, and he was left with no rights, powers and duties as the RP. Mr. Subhash Chand Agrawal also submitted that no directions were given to him in the said order regarding what would be his role and responsibilities till the Liquidator is appointed by the AA. Thereafter, the AA vide order dated 10.10.2018, appointed Mr. Rakesh Bhatia as the Liquidator to deal with the assets of the CDs. Thus, during the period between the order dated 13.09.2018 and 10.10.2018, there was an uncertainty, as all his rights, powers and duties as the RP had ceased to exist, but a liquidator was yet to be appointed.

2.1.10. Mr. Subhash Chand Agrawal submitted that Section 34(1) of the Code deals only with a situation where the RP gives his consent to act as the Liquidator. Further, there is no provision in the Code or Regulations as to handing over of assets and related records of the CD by the RP to the Liquidator. Even Section 35 of the Code does not provide for and specify from whom the Liquidator has to take custody or control of the assets and records of the CD. Mr. Subhash Chand Agrawal further submitted that at that point of time, IBC was at evolution stage, there was no clear understanding in this regard. Therefore, during the period between 13.09.2018 and 10.10.2018, the keys of the CD's offices remained with the directors of suspended board of the CD, and since they had always cooperated and behaved professionally and with integrity during the CIRP, there was no reason to believe any foul play during this period. It was reiterated that even in the order dated 10.10.2018 passed by the AA, there were no instructions to Mr. Subhash Chand Agrawal and the only instructions were that "Liquidator to deal with the assets of the CD".

2.1.11. Mr. Subhash Chand Agrawal further submitted that it was only vide amendment dated l3.03.2020, proviso to Section 23(1) was amended, and provided that the RP shall continue to manage the operations of the CD after the expiry of the CIRP period, until an order approving the resolution plan under Sub-Section (1) of Section 31 or appointing a liquidator under Section 34 is passed by the AA.

2.1.12. Mr. Subhash Chand Agrawal submitted that he had received the copy of the AA's order dated 10.10.2018 on 21.10.2018 *vide* e-mail sent by the Liquidator. After receipt of the copy of the order, he handed over to Mr. Rakesh Bhatia, Liquidator all information/records of the CDs as were received by him from the directors of the suspended management of the CDs at the time of commencement of CIRP, within a period of 30 days and he had also directed the directors of the suspended management of the CDs to handover all physical assets/records of the CDs of which he had taken symbolic possession, to Mr. Rakesh Bhatia, the Liquidator.

2.1.13. Mr. Subhash Chand Agrawal further submitted that he got to know that the directors of the suspended management of the CDs had failed to handover some of the physical assets/records of the CDs to the Liquidator, when he was directed by the AA to appear vide order dated 30.04.2019 (in case of CD-2) and to give clarifications regarding the assets/records of the CD-2 handed over to Mr. Rakesh Bhatia, the Liquidator. Mr. Subhash Chand Agrawal appeared before the AA on 17.05.2019, and on the said date, he came to know that an application was filed by the Liquidator and the list of certain information/records sought by the Liquidator was handed over to him. Thereafter, on 07.08.2019, the AA, directed the directors of the suspended management of the CDs (both CD-I and CD-2) to handover the pending financial statements and statutory records to Mr. Rakesh Bhatia, the Liquidator.

2.1.14. Mr. Subhash Chand Agrawal submitted that the AA *vide* its order dated 07.08.2019 had neither given any direction to him nor was he directed to appear before the AA on the next date. The above facts prove that all alleged deficiencies/lapses on his part were explained to the satisfaction of the AA on 07.08.2019. Thereafter, Mr. Rakesh Bhatia, Liquidator sent him some e-mails asking for small information/clarifications till December 2019. After December 2019, Mr. Subhash Chand Agrawal received only one e-mail from Mr. Rakesh Bhatia, the Liquidator during August 2020, which was promptly replied. After August 2020, Mr. Subhash Chand Agrawal did not receive any communication from the Liquidator regarding non receipt of any records/assets. Thus, Mr. Subhash Chand Agrawal continued to provide all assistance/support requested from by Mr. Rakesh Bhatia, Liquidator.

2.1.15. Mr. Subhash Chand Agrawal further submitted that on 23.02.2023, i.e., after more than 3.5 years from the last date on which he appeared before the AA on 07.08.2019, he received an e-mail from the counsel of the Liquidator apprising him that *vide* its order dated 16.02.2023 (in respect of CD-I), the AA has directed Mr. Subhash Chand Agrawal's personal appearance on 22.03.2023. On 22.03.2023, Mr. Subhash Chand Agrawal personally appeared before the AA, and only during the course of hearing in respect of CD-1, he came to know that a similar order had been passed by the AA on 16.02.2023 in the case of CD-2.

2.1.16. Mr. Subhash Chand Agrawal submitted that during the hearing dated 22.03.2023, the AA, passed the order directing that a copy of the said order be sent to the IBBI for information and appropriate action. Mr. Subhash Chand Agrawal further submitted that he was also directed by the AA to extend all required support and assistance to the Liquidator in concluding the proceedings.

2.1.17. Mr. Subhash Chand Agrawal submitted that after the passing of the above order dated 23.03.2023, he perused the various orders passed in the matter from the month of August 2020 to January 2023, and from a perusal of the orders, it was apparent that the Liquidator had received all information/documents needed by him, and therefore never sought any assistance/support from him Thus, the issue which was already closed on 07.08.2019 was again sought to be reopened in March, 2023, i.e., after more than 3.5 years had elapsed.

**Analysis and findings.**

2.1.18. The DC notes that the insolvency resolution process under the Code, deals with the distressed assets. The Code casts crucial duties and responsibilities on the IRP/RP with the objective of effective insolvency resolution process. Under Section 18(d) of the Code, the IRP is required to monitor the assets of the CD and manage its operations until an RP is recommended to be appointed by the CoC. As per Section 18(f) of the Code, the IRP should take custody and control of assets over which the CD has ownership rights. In addition, Section 25 of the Code contains specific duties for the RP. Like the IRP, it is the duty of the RP to preserve and protect the assets of the CD, including the continued business operations of the CD. As per Section 25(2) of the Code, the RP is required to take immediate custody and control of all the assets of the CD, including its business records.

2.1.19. The DC notes that Mr. Subhash Chand Agrawal had relied on the NCLAT judgement in M/s Omkara Assets Reconstruction Pvt. Ltd. Vs. ECI Infra Towers Company Pvt. Ltd (order dated 20.12.2022) to support his contention that that there is no distinction between symbolic and actual possession. The DC is of the view that in the judgement relied upon by Mr. Subhash Chand Agrawal, the NCLAT had discussed the symbolic and actual possession in context of SARFAESI Act, 2002 and therefore, the judgement relied upon is not relevant in the present case.

2.1.20. The DC notes Mr. Subhash Chandra Agrawal's submission that the AA vide its orders dated 13.09.2018, passed the order for liquidation of both the CDs meaning thereby that his role as a RP ended on that date, and he was left with no rights, powers and duties as the RP. The DC notes that the AA *vide* separate orders dated 13.09.2018 had initiated liquidation against the CD-1 and CD-2 while noting that Mr. Subhash Chand Agrawal did not wish to continue as the liquidator since his previous fees and expenses were not reimbursed and listed the matter for 19.09.2018 for proposing the name of the Liquidator. Later, the AA *vide* its orders dated 10.10.2018 appointed Mr. Rakesh Bhatia as the liquidator of both the CDs. The AA in its orders dated 13.09.2018 had nowhere explicitly discharged Mr. Subhash Chand Agrawal from his role and responsibilities as the custodian of both the CDs.

2.1.21. The DC notes that the Code provides for the process where the board of the CD gets suspended and all the control and custody of the assets of the CD vests with the IRP from the date of the admission order passed by the AA. The said control and custody pass on to the RP when the AA appoints the RP and when the liquidator is appointed, the said control and custody of the assets of the CD passes to the Liquidator. During this process, at no point of time, the control and custody of the assets of the CD goes back to the management of the suspended Board of the CD. The control and custody of the assets of the CD is given back to the management of the suspended board of the CD when either the CIRP is withdrawn, or the resolution plan of the suspended management is approved. Hence contention of Mr. Subhash Chand Agrawal that after passing of the liquidation order by the AA, his role as the RP ended and hence, he handed over whatever control and custody he had of the assets of the CD, to the suspended management of the CD, cannot be accepted as the same is against the spirit of the Code. It shows that Mr. Subhash Chand Agrawal has inadequate understanding about the Code.

2.1.22. During the hearing, Mr. Subhash Chand Agrawal relied on the DC order dated 13.03.2020 in the matter of Mr. Arun Kumar Gupta, Insolvency Professional, to support his contention that, in certain circumstances, symbolic possession of assets and records is not unlawful, when the suspended management does not exhibit hostility or lack of cooperation. According to him, the Code does not mandate physical possession. However, the DC observes that the facts in the case relied upon differ significantly from the present case. In the relied case, the physical possession had been taken subsequently whereas in the present case, Mr. Subhash Chand Agrawal only took symbolic possession of the offices and assets of CD-1 and CD-2 and at all times the physical possession was with the suspended management. Additionally, because Mr. Subhash Chand Agrawal did not take physical possession of the assets of the CDs, this led to a significant delay in handing over the assets to the present liquidator, as the liquidator had faced non-cooperation from the directors of the suspended board. Therefore, the case relied upon by Mr. Subhash Chand Agrawal is not applicable in the present context, where the failure to take timely possession and control has resulted in significant financial loss to the CDs.

2.1.23. In view of the above, it was observed that Mr. Subhash Chandra Agrawal had not taken control and custody of the assets of both the CDs and failed to preserve and protect these as they were with Mr. Manish Jain, director of suspended board of both the Corporate Debtors. Accordingly, there is violation of Section 25 (1) and Section 25 (2)(a) of the Code. Further, as Mr. Subhash Chand Agrawal had not taken reasonable care and diligence while performing his duties of taking control and custody of assets of the CD as well as had grossly failed in handing over all the assets of the CDs to the liquidator pursuant to the liquidation order, there is also violation of Section 208(2)(a) of the Code, Regulation 7(2)(h) of the IP Regulations read with Clauses 2,10,12,13, and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations.

**3. Order.**

3.1. The DC, in exercise of the powers conferred under Section 220 (2) of the Code read Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Mr. Subhash

Chand Agrawal having Registration No. IBBI/IPA-003/IP-N00059/2017-18/10499 for a period of two (2) years.

3.2. This Order shall come into force on expiry of 30 days from the date of its issue.

3.3. A copy of this order shall be sent to the CoC/ Stakeholder Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Subhash Chand Agrawal is providing his services, if any. The CoC/SCC may decide whether to continue his services or not. In case, the CoC/SCC decide to discontinue his services, the CoC/SCC may file an appropriate application before the AA.

3.4. A copy of this order shall be forwarded to the Insolvency Professional Agency of Institute of Cost Accountants of India where he is enrolled as a member.

3.5. A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, for information.

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

Sd/-
(Jayanti Prasad)
Whole Time Member
Insolvency and Bankruptcy Board of India

Dated: 28th February, 2025
Place: New Delhi