INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/270/2025 20th February 2025

ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI/C/2023/01017-1018/856/198 dated 29.04.2024, issued to Mr. Nitin Narang ("Mr. Narang/IP") who is a professional member of ICSI Institute of Insolvency Professionals and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with registration No. IBBI/IPA-002/IP- N00828/2019-20/12629.

1. Background

1.1 The National Company Law Tribunal, Ahmedabad Bench, (AA) had admitted the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) for Corporate Insolvency Resolution Process (CIRP) of M/s Afcan Impex Private Limited (CD) *vide* its Order dated 17.02.2021 wherein Mr. Nitin Narang was appointed as Interim Resolution Professional (IRP) and later on was confirmed as Resolution Professional (RP) in the CIRP of the CD.

1.2 The IBBI, in the exercise of its powers under Section 218 of the Code read with Regulations 7(1) and 7(2) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to investigate the conduct of Mr. Narang in the CIRP of the CD.

1.3 The IA served the notice of investigation upon Mr. Narang as per Regulation 8(1) of the Inspection and Investigation Regulations and in response thereto, Mr. Narang submitted his reply on 20.02.2024 and 21.03.2024. After considering the reply of Mr. Narang, the IA submitted the Investigation Report (IR) to the Board. Based on the findings in the Investigation Report submitted by the IA, the IBBI issued the SCN to Mr. Narang on 29.04.2024. The reply of Mr. Narang to the SCN was received on 13.05.2024.

1.4 The IBBI referred the SCN, the response of Mr. Narang to the SCN and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Narang availed the opportunity of personal hearing before the DC through virtual mode on 14.02.2025.

2. Alleged Contraventions, Submissions of Mr. Nitin Narang and Findings

The contraventions alleged in the SCN, submissions by Mr. Nitin Narang, and analysis and findings of the DC are summarized as under:

Contraventions

Suppression of details of material litigations in the IM:

2.1 The Section 29 of the Code provides that the RP shall prepare the Information Memorandum (IM) in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan. Further, Regulation 36(2)(h) of the CIRP Regulations provides that the IM shall contain details of CD including details of material litigation and ongoing investigation or proceedings initiated by Government and statutory authorities.

2.2 It was observed that in the IM issued by Mr. Narang, details of material litigation and ongoing investigation or proceedings initiated by the government, statutory authorities and CD had not been disclosed, by stating that no information in this regard has been furnished by the suspended directors. However, it was noted that the suspended board vide their letter/email dated 05.04.2021 had provided Mr. Narang a document containing details of pending litigation by or against the CD.

2.3 By not providing details of material ongoing litigations, involving CD, in the IM, which were in the knowledge of Mr. Narang, the Board was of the *prima facie* view that Mr. Narang had contravened Section 29 of the Code read with Regulation 36(2)(h) of the CIRP Regulations and Clause 12 of the Code of conduct for IPs under First Schedule to IP Regulations (Code of Conduct).

Submissions of Mr. Nitin Narang

2.4 Mr. Narang submitted that the conduct of complainant throughout the entire CIR process was to derail the process by filing applications/ complaints before one or the other forum. The complainant has also preferred Civil Appeal before Hon'ble Supreme Court against CIRP admission order and chosen not to pursue the same and taken unnecessary adjournment with objective to create obstruction in approval of Resolution Plan by NCLT. The complainant has filed application in every forum such as Gujarat High Court, NCLT, NCLAT, Supreme Court, IBBI etc. which is nothing but again an attempt to disturb the CIRP process.

2.5 Mr. Narang submitted that out of 9 litigations the details of material litigation which were provided by the suspended director, 5 litigations initiated with respect to letter of Approval were against KASEZ (Kandla Special Economic Zone). The suspended Director had provided half-baked information with regard to litigation pending by or against CD by merely providing some information such as case number, next date etc. without providing copy of pleadings filed before respective courts. Furthermore, Mr. Narang submitted that the material litigation with respect to KASEZ were disclosed in IM at page 9 part B. As regards litigation with respect to VAT, the suspended director had not provided even complete case number and merely mentioned that some litigations are pending with respect to VAT. Therefore, disclosure of such half-baked and incomplete information in the information memorandum could have been misleading for stakeholders.

2.6 Mr. Narang submitted that the litigation no. CMA 48 of 2018 was a dispute between 2 parties i.e. Mr. Kishore Bachuram Kapdi (shareholder of CD) and a third party namely Mr. Balaji Naydu. The agreement between both the parties was with respect to sale of shares of CD by Mr. Kishore Bachuram Kapdi to Mr. Balaji Naydu. Since there was a dispute, Mr. Balaji Naydu had filed application before Commercial Court bearing CMA No. 48 of 2018. Mr. Narang further submitted that CD was not a party to these proceedings hence this case did not fall under the phrase "Material Litigation pending by or against CD as was required under Section 29 of the Code read with Regulation 36 of CIRP Regulations. It is further submitted that complainant had himself in its written submissions dated 04.06.2021 stated that CMA 48 of 2018 was a dispute between 2 individuals and it has nothing to do with CD.

2.7 Mr. Narang has submitted that he disclosed all the material litigation in the information memorandum whose details were available with the RP and any allegation regarding contravention of Code or regulation for nondisclosure of litigation which is neither by or against corporate debtor is ill founded and are unsustainable. Mr. Narang also submitted that it is neither the case of any CoC member nor any resolution applicant that any prejudice has been caused on account of any non-disclosure of information in IM however suspended director who have no locus to challenge such acts, cannot maintain complaint on these grounds.

Analysis and Finding

2.8 The DC notes the email dated 05.04.2021 through which the suspended director has disclosed the list of litigations to Mr. Narang. The DC also notes that Mr. Narang had disclosed few material litigation at some other place i.e. in part B at page 9 of the IM but not in the specific heading meant for the purpose in the IM. Relevant snapshot is extracted below:

Details of all material litigation and ongoing investigation or proceeding initiated by Corporate Debtor

S. No.	Name of the Matter	Court	Case No.	Amount Involved (Rs.)
No information in this regard has been furnished by suspended directors and this section shall be updated once the requisite information is received from suspended directors.				

2.9 The DC notes that suspended board vide letter/email dated 05.04.2021 had provided Mr. Narang a document containing details of pending litigation by or against the CD, with appeal/case numbers as well as the authorities before which the case were pending:

XVII. LIST OF PENDING LITIGATIONS BY OR AGAINST THE COMPANY.

Sr. No.	Particular/ Case No.	Court / tribunal	Amount for order challenge in appeal	Next date
1	Appeal against OIO passed by DC KASEZ/12-13/2018-19 dated 15.01.2019	Dgft -delhi	Rs.96.33 Lacs	02-04-2021
2	Appeal against OIO passed by DC Order-in-Original No. KASEZ/03/2019-20 dated 10.04.2019	Dgft -delhi	Rs.5.00 Lacs	Not given
3	SCA/4237/2021	GUJ-HIGH COURT	Rs. 280.00 Lacs approx	15.03.2021
4	SCA/3641/2021	GUJ-HIGH COURT	Rs.96.33 Lacs	25.03.2021
5	SCA/18493/2019	GUJ-HIGH COURT	Rs.17.90 Lacs	05.04.2021
6.	Second appeal No.280	VAT Tribunal-A'bad	Rs.18.00 Lacs	15.04.2021
7	Second appeal No.287 &288	VAT Tribunal-A'bad	Rs.262.00 Lacs	15.04.2021
8	Second appeal No.288	VAT Tribunal-A'bad	Rs.262.00 Lacs	15.04.2021
9	SA/44/2021	DRT-1	RS.565 LACS	Not given

2.10 It is to be noted that it is the duty of the appointed RP to conduct an inquiry and due diligence regarding the above matter and present the relevant information under the appropriate heading in the IM, as required by the provisions. It is not justifiable on the part of Mr. Narang to claim that no relevant conclusions could be drawn from incomplete information.

2.11 The IM is a comprehensive document that conveys critical and essential information about the corporate debtor including its operations, and financial statements, to the Prospective Resolution Applicants (PRAs) to assess the viability of the corporate debtor's business. It ensures transparency, aids in accurate valuation, and enables the RAs to make well-informed decisions when formulating their resolution plans. The Resolution Professional (RP) must act diligently and carefully to ensure that the Information Memorandum (IM) contains all requisite information, including comprehensive details of assets, liabilities, and other critical disclosures, in compliance with Code and CIRP Regulations.

2.12 The RP is duty bound to collate all the necessary and relevant material litigation and disclose it in the information Memorandum under the specific head. In view of the above discussions, the DC holds the contravention on this count.

3. Acceptance of claim submitted beyond the prescribed period and failure to update list of creditors:

3.1 The Regulation 12(1) of CIRP Regulations provides that subject to sub-regulation (2), a creditor shall submit claim with proof on or before the last date mentioned in the public announcement. Further, Regulation 12(2) provides that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the IRP or the RP on or before the ninetieth day of the insolvency commencement date. Furthermore, Regulation 13(1) provides that the IRP or the RP shall verify every claim, as on the insolvency commencement date, within seven days from the last date of receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it. It was observed that in the updated list of creditors dated 26.09.2021 available on the website of the Board, the claim of operational creditor namely CN International was received by Mr. Narang on 15.07.2021. The ICD of CD is 17.02.2021, however, admittedly the admission order was received by Mr. Narang on 22.02.2021. Even considering 22.02.2021 as the effective ICD, the 90 days period for submission of claim ended on 22.05.2021. Admittedly, the claim of CN International was filed on 15.07.2021 which was after 144 days of ICD even after considering ICD as 22.02.2021. Despite submission of claim beyond the permissible time limit, the said claim was admitted by Mr. Narang.

3.2 It was also observed that the updated list of creditors dated 26.09.2021 was not available on the website during investigation. Mr. Narang had admitted that the same was due to inadvertence. It was noted that there was a considerable delay in uploading the requisite list of creditors, thereby Mr. Narang had contravened Regulation 12(1) and (2) read with Regulation 13(1) of CIRP Regulation, Regulations 13(2) (ca) of the CIRP Regulations and Clause 14 of the Code of Conduct.

Submissions by Mr. Narang:

3.3 Mr. Narang submitted that claim by one party CN International was submitted on 26th May 2021 i.e. after 93 days from Insolvency Commencement date. The Resolution Plan in the present matter was approved in the 7th CoC meeting held on 1st October 2021. The RP referred to Regulation 12(2) of the CIRP Regulations which was in operation at that relevant period. Mr. Narang submitted that the aforesaid Regulation requiring creditors to submit claim within 90 days from Insolvency Commencement date were introduced by IBBI on 3rd July 2018 and were effective from 4th July 2018. Further, Mr. Narang as the RP relied on various judgements of NCLT to take a plea that the RP can condone the delay in accepting the claim and that the RP should not reject the claim just on the ground of delay as the provision is directory.

3.4 It was contended by the RP that in view of general directions issued by NCLT to all Resolution Professionals, claims even though received beyond 90 days as stipulated under then Regulation 12(2) but before approval of Resolution Plan by the CoC were to be considered and the RP cannot reject the claim on ground of delay hence non-consideration of claim of any creditor before approval of the Resolution Plan by the CoC amounts to contempt of direction as issued by NCLT in the Adel Landmarks matter. It is further submitted that legislative intent has always been such that claims of creditors which are submitted before approval of Resolution Plan should be considered by the RP. Keeping in view this legislative intent, IBBI has also introduced amendment to Regulation 13 of the CIRP Regulations required RP to consider the claim of creditor received upto 7 days prior to CoC meeting where resolution plan is to be kept on voting. The RP has relied upon the amended regulation 13(1B) which reads as follows:

> *"(1B) In the event that claims are received after the period specified under sub-regulation (1) of regulation 12 and up to seven days before the date of meeting of creditors for voting on the resolution plan or the initiation of liquidation, as the case may be, the interim resolution professional or resolution professional, as the case may be, shall verify all such claims and categorise them as acceptable or non-acceptable for collation."*

3.5 Therefore, in view of the aforesaid legal position and judicial order passed by the NCLT, it was submitted that there was no contravention of law in accepting the claim of creditor by RP prior to approval of Resolution Plan by the CoC.

3.6 The RP further submitted that list of creditors could not be submitted in IBBI web portal but now, the same has been uploaded. The inadvertent administrative error of not uploading of updated list of creditor on IBBI website had occurred. During the CIRP, the RP had engaged service of Insolvency Professional Entity 'Immaculate Resolution Professionals Pvt Ltd' for taking support services during CIRP, however as CIRP came to last stage where the Resolution Plans were getting approved, the RP discontinued services of the IPE with effect from 09.09.2021 as CIRP was almost complete. Since the IPE had been assisting the RP in undertaking compliances including updating of claims in IBBI portal and during that time, services of IPE were discontinued, and a transition period was in place therefore there was an inadvertent administrative error by not updating claims on the IBBI portal. It is submitted that updated claims were circulated to PRA and have also been dealt with in the Resolution Plan and therefore no prejudice was caused to any party.

3.7 The RP humbly submitted that non-updation of claim on the IBBI portal had been rectified immediately after it came to the notice of the RP. All the claims were informed to PRA and interest of all creditors had been safeguarded in the Resolution Plan submitted by the SRA. No prejudice had been caused to any person on account of non-updation of claim on the IBBI website.

Analysis and Findings:

3.8 The DC accepts the submission of Mr. Narang.

4. Order

4.1 In view of the foregoing discussion, the DC finds that Mr. Nitin Narang has failed to perform his duty diligently by not disclosing the material litigations pending against/by the CD in the Information Memorandum, despite having knowledge about these litigations. An IM with incomplete information leads to sub-optimal bids from prospective resolution applicants and consequent loss to creditors. It also defeats the objective of maximization of value of assets of the CD. Thus, the DC, in exercise of the powers conferred under Section 220 of the Code read with Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017, imposes a penalty of Rs.2,00,000/- (Rupees Two lakhs only) on Mr. Nitin Narang. He is directed to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of "penalty imposed by IBBI" on *https://bharatkosh.gov.in* within 45 days from the date this order. The DC also cautions Mr. Nitin Narang to comply with the provisions of the Code read with Regulations made thereunder in all his assignments under the Code.

4.2 This Order shall come into force immediately in view of para 4.1 of the order

4.3 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Nitin Narang is enrolled as a member.

4.4 A copy of this order shall be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.

4.5 Accordingly, the show cause notice is disposed of.

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

Sd/-
(Ravi Mital)
Chairperson
Insolvency and Bankruptcy Board of India

Dated: 20th February 2025
Place: New Delhi