

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
(Disciplinary Committee)**

No. IBBI/DC/115/2022

20<sup>th</sup> July, 2022

**ORDER**

**This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2020/63/3525/526 dated 10<sup>th</sup> May 2022 issued to Mr. Anil Tayal, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) and regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 (IP Regulations). Mr. Anil Tayal is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-001/IP-P01118/2018-19/11818.**

**1. Developments in relation to resolution of the CD**

- 1.1. The Hon'ble NCLT, Principal Bench, New Delhi (AA) vide order dated 21.10.2019 admitted the application under section 7 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of M/s AVJ Developers (India) Private Limited (CD). The AA appointed Mr. Anil Tayal as an Interim Resolution Professional (IRP) on 21.10.2019 who was later confirmed as the Resolution professional (RP) on 12.12.2019.
- 1.2. The resolution plan submitted by Mr. Vinay Jain (director of suspended board of CD) has been approved by CoC in its 14<sup>th</sup> meeting dated 13.10.2021 and Mr. Tayal has filed application before AA on 09.11.2021 for approval of resolution plan which is pending.

**2. Issuance of Show Cause Notice (SCN) and hearing before DC**

- 2.1. On having reasonable grounds to believe that Mr. Anil Tayal had contravened certain provisions of the Code, Regulations and Circulars issued thereunder, the Board, in exercise of the powers conferred to it under section 218 of the Code read with the Inspection Regulations, appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Anil Tayal *vide* order dated 16.02.2021. A draft inspection report (DIR), prepared by the IA, was shared with Mr. Anil Tayal on 26.04.2021, to which Mr. Anil Tayal submitted reply *vide* email dated 12.05.2021. The IA submitted the Inspection Report to Board on 28.05.2021.
- 2.2. Based on the material available on record including the Inspection Report, the Board issued the SCN to Mr. Anil Tayal on 10.05.2022. The SCN alleged contravention of section 18(b), 208(2)(a) and 208(2)(e) of the Code, regulation 13(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulation 7(2)(h) of IP Regulations read along with Clause 27 of Code of Conduct under First Schedule of IP Regulations and Circular No. IP/013/2018 dated 12<sup>th</sup> June 2018 and Circular No. IP/003/2018 dated 3<sup>rd</sup> January 2018. Mr. Anil Tayal replied to the SCN on 30.05.2022.

2.3. The Board referred the SCN, written and oral submissions of Mr. Anil Tayal, 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. Anil Tayal availed an opportunity of personal hearing before DC on 12.07.2022 through virtual mode where he was present along with advocate Mr. Abhishek Anand.

### **3. Alleged contraventions and submissions of the IP**

Contraventions alleged in the SCN and Mr. Anil Tayal's submissions thereof are summarized below:

#### **3.1. Contravention – I with regards to appointment of third party for claim collation and verification**

- 3.1.1 The Board observed from the minutes of the 1<sup>st</sup> meeting of committee of creditors (CoC) held on 22.11.2019 that Mr. Tayal appointed M/s Detax Consultants Private Limited for collation of claims at a remuneration of Rs 350/- per claim amounting to a total of Rs. 1,08,150/-- (Rupees One Lakh Eight Thousand One Hundred Fifty only) plus applicable tax. It has also been observed from the description of services as stated in the invoice dated 19.11.2019 raised by M/s Detax Consultants Private Limited that type of work undertaken by it was verification of claim forms.
- 3.1.2 Further, it has been observed from the minutes of the fourth meeting of CoC held on 01.02.2020 that Mr. Tayal informed CoC that he appointed M/s Sunil Arora and Associates for claim collation. It is also observed that agenda placed before 4<sup>th</sup> CoC in this regard was to ratify/approve expenses incurred by RP for claim verification at a remuneration on Rs. 350/- per claim amounting to a total Rs. 1,07,450/- (Rupees One lakh Seven Thousand Four Hundred and fifty only).
- 3.1.3 According to Section 18(1)(b) of the Code, IRP should receive and collate all the claims submitted by creditors to him pursuant to the public announcement. Further, regulation 13(1) of CIRP Regulations states that the IRP/RP should verify every claim, as on the insolvency commencement date (ICD), within seven days from the last date of the 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. Hence, the duty to verify and collate claims is cast upon IRP/RP. IBBI circular No. IP/003/IBBI dated 03.01.2018 requires that a resolution professional shall not outsource any of his duties and responsibilities under the Code
- 3.1.4 By appointing M/s Detax Consultants Private Limited and M/s Sunil Arora and Associates for collation/verification of claims submitted to Mr. Tayal, he has outsourced his duty to third party which is not only in contravention of section 18(1)(b) of the code but also not in consonance with the directions contained in the circular dated 03.01.2018.
- 3.1.5 By appointing two agencies for the same activities, which should not have been outsourced in the first place, Mr. Tayal has caused the CIRP cost to inflate, thereby further affecting the financial condition of already distressed CD which is in contravention of Circular No. IP/013/2018 dated 12.06.2018.

### **3.2. Submissions made by the IP**

- 3.2.1 Mr. Tayal submitted that the services of M/s Detax Consultants Pvt. Ltd. were engaged only for the purpose of processing of claim forms i.e., secretarial work/ clerical work including preparation of sets after getting the printouts, etc. Every individual claim has approximately 20-100 pages which needs to be printed and proper sets are to be made accordingly. Considering the extremely bulky nature of each individual claim, the services of M/s Detax Consultants Private Limited were engaged. The said engagement was done after obtaining proper confidentiality undertakings and with a view to facilitate the CIRP. The company took printouts, made proper sets in paper book form of such 309 claims and handed over the sets to him. He thereafter conducted the verification of claims himself and clarifications were also sought from the stakeholders from time to time in respect of the documents submitted by them. Furthermore, the resolution for ratification of expenses incurred by him for claim processing has been duly approved by the members of the CoC in the 1<sup>st</sup> meeting of CoC by 97.55% of total voting share.
- 3.2.2 Mr. Tayal further submitted that after receipt of 309 claims, he appointed M/s Sunil Arora & Associates for the purpose of processing of claim forms i.e., secretarial work/clerical work including preparation of sets after getting the printouts, etc. It is to be noted that M/s Sunil Arora & Associates has thereafter processed 307 claims. It is also noteworthy that every individual claim has approximately 20-100 pages which needs to be printed and proper sets are to be made accordingly, Considering the extremely bulky nature of each individual claim, the services of M/s Sunil Arora & Associates were engaged. Also, the resolution for the ratification of expenses incurred by him for claim processing has been duly approved by the members of the CoC in the 4th Meeting of CoC by 98.07% of total voting share.
- 3.2.3 Mr. Tayal submitted that he himself verified and collated all the claims as received and has not outsourced his duties to the third party as alleged. He appointed M/s Detax Consultants Private Limited and thereafter M/s Sunil Arora & Associates for the purpose of processing of claim forms which includes preparation of sets after getting the printouts i.e. only secretarial/ clerical work, as every individual claim has approximately 20-100 pages which needs to be printed and proper sets are to be made accordingly. He submitted that he is still having all the copies of the claims as processed (i.e. preparation of sets after getting the printouts) by M/s Detax Consultants Pvt. Ltd. and M/s Sunil Arora & Associates.
- 3.2.4 Mr. Tayal submitted that M/s Detax Consultants Pvt Ltd has processed 309 claims and has duly provided the sets of the same to him, thereafter M/s Sunil Arora & Associates was appointed with the same scope of work and they have processed another 307 claims received after such 309 claims which was processed by M/s Detax Consultants Pvt Ltd.
- 3.2.5 As far as the concern is that the agenda placed before 4th CoC "Ratification of Expenses Incurred by RP for Claim Verification", the verification word intends to such secretarial/clerical work i.e. preparation of proper sets of the claims after getting the printouts and not such verification as defined in regulation 13(1) of CIRP Regulations which states that the IRP/RP should verify every claim. Mr. Tayal submitted that after getting the printouts of the claim forms along with the supporting documents, he himself verified all the claims and replied all the creditors accordingly. Hence the provisions of

regulation 13(1) of CIRP Regulations, section 18(1)(b) of the Code and the circular No. IP/003/2018 were never violated by him.

Moreover, the Circular No. IP/013/2018 states about the "*Fee and other Expenses incurred for Corporate Insolvency Resolution Process*" and the Insolvency Professional is directed to ensure that:

*(a) the fee payable to him, fee payable to an Insolvency Professional Entity, and fee payable to Registered Valuers and other Professionals, and other expenses incurred by him during the CIRP are reasonable;*

*(b) the fee or other expenses incurred by him are directly related to and necessary for the CIRP;*

*(c) the fee or other expenses are determined by him on an arms' length basis, in consonance with the requirements of integrity and independence;*

*(d) written contemporaneous records for incurring or agreeing to incur any fee or other expense are maintained;*

*(e) supporting records of fee and other expenses incurred are maintained at least for three years from the completion of the CIRP;*

*approval of the Committee of Creditors (CoC) for the fee or other expense is obtained, wherever approval is required; and*

*(g) all CIRP related fee and other expenses are paid through banking channel.*

3.2.6 Mr. Tayal submitted that he has complied with above points and paid reasonable cost for the purpose of processing of claims. It is pertinent to note herein that the CoC in its commercial wisdom, has duly approved the resolution proposed for the ratification of fees of M/s Detax Consultants Private Limited (in 1st CoC Meeting) as well as Mis Sunil Arora and Associates (in 4th CoC Meeting) by 97.55% and 98.07% respectively. Hence, the terms of Circular No. IP/013/2018 were never violated by him and has been duly complied with. Mr. Tayal submitted that the law is evolving and the fact the engagement was done only to get the documents of claim in order to be collated for the purposes so that no claim or document is missed out by the Noticee whilst verification of the claim.

### **3.3. Summary Findings**

3.3.1 The DC notes the relevant agenda in 1<sup>st</sup> CoC Meeting dated 22.11.2019

*AGENDA ITEM NO. 19: RATIFICATION OF EXPENSES INCURRED BY IRP FOR CLAIM VERIFICATION: The chairman informed the COC that the IRP has received a total of 309 claims from the financial creditors, operational creditors and the financial creditors in a class. For this purpose the IRP has appointed M/s Detax Consultants Private Limited for the collation. The COC is requested to ratify/approve the ratification of expenses incurred by IRP for claim verification and pass the following resolutions:*

*“RESOLVED THAT, a remuneration of Rs.350/- per claim amounting to a total 1,08,150/- (Rupees One Lakh Eight Thousand One Hundred Fifty only) plus applicable taxes be and*

*is hereby approved for M/s Detax Consultants Private Limited in the matter of AVJ Developers (India) Private Limited."*

*"FURTHER RESOLVED THAT, the fees and the expenses payable to M/s Detax Consultants Private Limited is hereby approved as Corporate Insolvency Resolution Process cost."*

Further, the relevant agenda for 4<sup>th</sup> CoC meeting dated 01.02.2020 was as follows:

*Agenda Item No. 12: Ratification Of Expenses Incurred By RP For Claim Verification: The Chairman apprised the COC that the after 2nd COC held the RP has appointed M/s Sunil Arora & Associates for the claim collation. The COC is requested to ratify/approve expenses incurred by RP for claim verification and pass the following resolutions: The following resolution is therefore place before the COC for consideration:*

*Resolution*

*"RESOLVED THAT, a remuneration of Rs.350/- per claim amounting to a total 1,07,450/- (Rupees One Lakh Seven Thousand Four Hundred and Fifty only) plus applicable taxes be and is hereby approved for M/s Sunil Arora & Associates in the matter of AVJ Developers (India) Private Limited."*

*"FURTHER RESOLVED THAT, the fees and the expenses payable to M/s Sunil Arora & Associates is hereby approved as Corporate Insolvency Resolution Process cost."*

The invoice dated 19.11.2019 from Detax Consultants Private Limited raised to CD narrates description of services as 'Verification of Claim Forms'.

3.3.2 The engagement letter issued to M/s Detax Consultants Pvt. Ltd. dated 25.10.2019 and M/s Sunil Arora and Associates dated 30.12.2019 mentioned scope of work as

- *Taking Print outs of the Claim Forms along with Annexures received by the Undersigned.*
- *Making proper sets of the claim Forms along with the annexures received after getting the prints outs.*

3.3.3 The DC observes that though engagement letter matches the submission of the Mr. Tayal however a bare perusal of the above resolutions passed in respective CoC meeting highlights that the appointment of third party was for the purpose of collation and verification of claims. The submission of Mr. Tayal that the service providers were appointed for the purpose of processing of claim forms which includes preparation of sets after getting the printouts i.e. only secretarial/ clerical work, as every individual claim has approximately 20-100 pages which needs to be printed and proper sets are to be made accordingly is not convincing in light of the resolutions passed and description in invoice quoted above. The DC notes that section 18(b) of the Code provides as follows :

*"18. Duties of interim resolution professional. - The interim resolution professional shall perform the following duties, namely:*

*(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;"*

Further regulation 13(1) of CIRP Regulations provides as follows:

*“13. Verification of claims.*

*(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the 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.”*

Recently, the Apex Court in the matter of Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta & Ors. (Civil Appeal No. 8766-67 of 2019) also highlighted the role of RP in the revival of the CD. The Hon<sup>ble</sup> Court remarked as under:-

*“...Thereafter, under Regulation 13, the resolution professional shall verify each claim as on the insolvency commencement date, and thereupon maintain a list of creditors containing the names of creditors along with the amounts claimed by them, the amounts admitted by him, and the security interest, if any, in respect of such claims, and constantly update the aforesaid list – see Regulation 13(1).”*

Circular No. IP/003/2018 dated 03.01.2018 provides as follows:

*“It is hereby directed that an insolvency resolution professional shall not outsource any of his duties and responsibilities under the Code.”*

Circular No. IBBI/IP/013/2018 dated 12.06.2018 provides as follows:

*“6. Keeping the above in view, the IP is directed to ensure that:-  
(a) the fee payable to him, fee payable to an Insolvency Professional Entity, and fee payable to Registered Valuers and other Professionals, and other expenses incurred by him during the CIRP are reasonable;”*

3.3.4 As per above quoted circulars, Mr. Tayal cannot outsource his duties as IRP/RP. Further, the expenses should be reasonable in correlation to the work done. However, a lenient view is warranted in light of availability of CoC approval on engagement and associated cost.

#### **3.4. Contravention-II with regards to appointment of professionals**

3.4.1 The Board observed from the minutes of 5<sup>th</sup> CoC meeting dated 23.06.2020 that Mr. Anil Goel was appointed as CIRP Advisor/Consultant to assist Mr. Tayal in the CIRP at a remuneration of Rs. 6,00,000/- per month. It has, however, been observed from email dated 16.03.2020 addressed to Mr. Anil Goel that instead of Mr. Tayal fixing the scope of work of the process advisor, he had requested the advisor to propose a scope of work. It has further been noted that Mr. Tayal proposed an agenda for appointment of Mr. Anil Goel as CIRP consultant in 5<sup>th</sup> CoC meeting held on 23.06.2020. However, the payment of fees made to Mr. Anil Goel was with effect from 21.03.2020 i.e., much before the fifth CoC meeting.

3.4.2 According to section 208(2)(a) of the Code, an IP is obliged to take reasonable care and diligence while performing his duties, including incurring expenses. Clause 27 of Code of Conduct under First Schedule of IP Regulations states that an IP shall disclose all costs towards the insolvency resolution process costs, liquidation costs, or costs of the bankruptcy process, as applicable, to all relevant stakeholders, and must endeavour to ensure that such costs are not unreasonable. The above provisions of code and regulation requires in IP to ensure that not only fee payable to him is reasonable, but also other expenses incurred by him are reasonable. Appointment of a process adviser at a fee equal to fee of RP (which is 6,00,000/-) without clearly defined scope of work is prima facie against the provision of section 208(2)(a) of the code and clause 27 of Code of Conduct under IP Regulations.

### 3.5. Submissions made by the IP

3.5.1 Mr. Tayal submitted that in order to achieve the objective of the Code which is resolution not liquidation and avail the process advisory services, has approached CA Anil Goel, who is the founder partner and the Chairman of the AAA Insolvency Professionals LLP, which is a duly registered IPE recognized by the IBBI in the month of March, 2020. Mr. Tayal submitted that Mr. Anil Goel was appointed as CIRP Advisor only after considering his experience with real estate companies' resolutions, for a better prospective for finding a resolution for the CD in accordance with the provisions of the Code. He submitted that before appointing Mr. Anil Goel as CIRP Advisor, he has diligently analyzed about him and took reasonable steps by conducting various physical or virtual meetings with Mr. Goel and therefore, in order to discuss the scope of work methodically, the scope of work has been discussed in a physical meeting and thereafter, in order to formalize the same, he wrote to Mr. Goel *vide* mail dated 16.03.2020 to submit his proposal and letter of intent to appoint CA Anil Goel as the process advisor for the insolvency process of the CD. Thereafter, in order to formalize the appointment of CA Anil Goel as process advisor, Mr. Tayal has signed the engagement letter on 21.03.2020 which was a mutual arrangement between the parties to which both parties agreed to and signed the same. However, as the scope of work of Mr. Goel was restricted only up to assisting and advisory work moreover, the responsibility of taking decisions solely lies with Mr. Tayal.

3.5.2 Mr. Tayal submitted that effective date of appointment as mentioned in the duly signed engagement letter was agreed to be 21.03.2020 and the fee for the same was agreed at Rs. 6 Lakhs per month, subject to the approval and ratification of the CoC. Mr. Tayal submitted that due to the outbreak of Covid-19 and a nationwide lockdown, the approval of the CoC could not be taken as the meeting was not called. However, once the situation got normal, he convened the 5th meeting of CoC on 23.06.2020, wherein the fees and the appointment of Mr. Anil Goel as the process advisor was duly approved by the CoC with 97.29% voting in favour of the said resolution and in the same meeting, it was also resolved that the fee pertaining to the process advisory services of the CA Anil Goel herein shall be included in the insolvency process resolution cost. The fee of Mr. Anil Goel was paid for one month only due to lack of funds and that too in 2021 only after taking the approval of the CoC in the 5th meeting.

3.5.3 Mr. Tayal submitted that as per section 20(1), the IRP/RP shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the CD as a going concern and as per section 20(2)(a) of the IBC, 2016, RP shall have the authority to appoint accountants, legal or other professionals as may be

necessary and therefore, in accordance with the provisions of 20(2)(a) of the Code, he has appointed Mr. Anil Goel in order to get the assistance in bidding process and search of suitable resolution applicant for the CD. Further, the same was put forth for ratification by the CoC in its 5th meeting and the same was duly approved. Further, any data that was shared with Mr. Goel was done after duly obtaining a confidentiality undertaking from him. He submitted that the appointment of CIRP Advisor has been done on 21.03.2020 and subsequently, the advisor started providing its services to the him as evident from the various mails and meetings held between the period from 21.03.2020 (Date of Engagement of CIRP Advisor) to 23.06.2020 (Date of 5th Meeting of CoC).

3.5.4 Mr. Tayal submitted that he has sent the engagement letter to Mr. Anil God on 21.03.2020, wherein he himself wrote the scope of work of the CIRP advisor as follow:

*Process Consultant's Scope of Services will include the following activities (A.1 to A.7), subject to facilitation and provision of information by the Company/RP.*

*A.1 Finalization of strategy and structure for the Resolution Process on the conduct of CIRP of the Company including.*

*a. Assistance in conduct of Town Hall Meeting and answering the queries raised therein*

*b. Assistance in pre-CoC meeting with Class of Creditors*

*A. 2 Assistance in assessing the overall Financial Position of the project with respect to*

*a. Liabilities as per books/ claims admitted*

*b. Cost to complete the unfinished portion of the project including all the specification heldout in the Brochure of the project.*

*c. Assimilating the unsold Inventory of the project and its probable realizable value*

*d. Evaluation of possibilities to exploit any unutilized FAR*

*A. 3 Assistance in Bidding Process and search of suitable prospective Resolution Applicant*

*A.4 Evaluation of Proposed Resolution Plans including compliances and Legal vetting of the Resolution Plan*

*A.5 Assisting Resolution Professional in the CoC meeting*

*A.6 Assisting RP & CoC, in negotiation of Proposed Resolution Plans with Resolution Applicants*

*A.7 Upon approval of resolution Plan by CoC*

*a. Assistance in formulation of Litigation Strategy, if any*

*b. Assistance in Completion of all formalities for handover to the Successful Resolution Applicant upon approval of the Plan by the Adjudicating Authorities."*

3.5.5 Section 208(2)(a) of the code provides that RP shall take reasonable care and diligence while performing his duties and 208(2)(a) states that an IP shall perform his functions in such a manner and subject to such conditions as may be specified, Mr. Tayal submitted that he has been duly complying with the mentioned provisions and has been taking reasonable care and diligence since its appointment i.e., 21.10.2019, it is pertinent to note



herein that it is a real estate project including the interest of homebuyers and there are 11 towers which contain about 1888 flats and commercial shops. There are approximately 1200 families residing at the project of the CD. He has been taking care for all and making all reasonable efforts for the betterment of the project and the smooth conduct of the CIRP. Hence, he has never violated the provisions of 208(2)(a) and (e) of the Code.

3.5.6 Regulation 7(2)(h) of IP Regulations states that an IP shall abide by the Code of Conduct specified in the First Schedule to these Regulations, which he has always abide with and therefore has never violated Regulation 7(2)(h) of IP Regulations. Also, clause 27 of the said Code of Conduct which specifies an IP to disclose costs towards the insolvency resolution process costs, liquidation costs or costs of the bankruptcy process as applicable to all relevant stakeholders and must endeavour to ensure that such costs are not unreasonable has also been duly followed by him. The Board has notified the regulations pertaining to the IP *vide* notification no. IBBI/2020-21/GN/REG061 dated 30.06.2020 whereby it stated that an IPE can provide the support services to any practicing Insolvency Professional.

### 3.6. Summary Findings

3.6.1 The DC notes that email dated 16.03.2020 written by Mr. Tayal to Mr. Anil Goel specified as follows:

*“You are thereby requested to submit your proposal in regards to the same, expressing the terms and conditions of retainership along with the scope of work being offered by you.”*

3.6.2 Mr. Tayal sent engagement letter to Mr. Anil Goyal on 21.03.2020, whereas the proposal to engage Mr. Anil Goel as advisor was placed in 5<sup>th</sup> CoC on 23.06.2020 and fee also was paid to Mr. Anil Goel from 21.03.2020. The relevant agenda no. 10 of the 5<sup>th</sup> CoC was for appointment of Mr. Anil Goel as advisor and not for ratification of action of Mr. Tayal, about appointment of Mr. Goyal from 21.03.2020. Pursual of agenda item as placed for consideration of CoC does not reflect in, anyway, that proposal is for ratification of appointment which was already done w.e.f 21.03. 2020. Hence for all practical purposes, appointment of Mr. Anil Goel cannot be construed from 21.03.2020 but from 23.06.2020 only.

3.6.3 During personal hearing, Mr. Tayal submitted that he has entered into MoU with AAA Insolvency Professional (LLP), and submitted copy of the said MoU by e-mail on 14.07.2022. On perusal of the said MoU, it came to light that the previous engagement letter of Mr. Anil Goel was terminated with effect from 30.06.2020. Though this MoU was signed on 06.07.2020, the same was made effective from 01.07.2020. So effectively, there was no advisory services between 30.06.2020 to 05.07.2020. It is very surprising that proposal to engage Mr. Anil Goel was proposed in 5<sup>th</sup> CoC meeting on 23.06.2020 and the said engagement was terminated with effect from 30.06.2020. There is nothing on record to suggest that this termination took place with approval of CoC. This action indicates that Mr. Anil Tayal was conducting CIR process as per his own whims and fancy.

3.6.4 The above statement highlights that Mr. Tayal was inviting Mr. Anil Goel to run the CIRP as per his convenience. Further he is allowing a third party to interfere with the independence of and IRP/RP which is not an objective of the Code. The fees fixed for Mr.

Anil Goel in engagement letter dated 21.03.2022 is equal to fees of Mr. Anil Tayal as RP of CD, ie. Rs. 6 lakh per month which is usurious for the capacity of advisory services.

3.6.5 Section 20(2)(a) of the Code provides that

*“20. Management of operations of corporate debtor as going concern.-*

*(1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.*

*(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority-*

*(a) to appoint accountants, legal or other professionals as may be necessary;”*

3.6.6 The engagement letter executed on 21.03.2020 between Mr. Tayal and Mr. Anil Goel had following clauses:

*C.2.2 Notwithstanding anything contained in this Engagement Letter, Process Consultants shall be entitled to disclose the Confidential Information received hereunder, on need to know basis to any third party or prospective parties, after obtaining prior written consent from the Company/RP, which the Company/RP shall not withhold unreasonably.*

*C.2.3 Process Consultants may disclose Confidential Information received hereunder to its employees, partners and advisors who have a need to know, for the purposes of this Engagement, and who are bound to protect the Confidential Information to the extent set out in this Engagement Letter.*

*C.2.4 The obligations of confidentiality provided hereof shall not apply with respect to any information or data which:*

- Have been known to Process Consultants prior to its disclosure by the Company; or*
- Is in public domain or which subsequently enters into the public domain otherwise than by any breach of this clause by Process Consultants; or*
- Is required to be disclosed under any law for the time being in force; or*
- Has been disclosed by Process Consultants to any third party or prospective parties after obtaining written approval from the Company; or*
- Has been independently developed by Process Consultants in the course of execution of this or any other engagement; or*
- Has been acquired by Process Consultants from a third party which is not, to Process Consultants' knowledge, under an obligation to the Company/RP to keep such information confidential.*

*C.2.5 In the event Process Consultants received a validly issued administrative or judicial process required disclosure of Confidential Information, Process Consultants shall provide prompt notice to the Company/RP of such receipt. Process Consultants shall*

*thereafter be entitled to disclose any Confidential Information in order to comply with such administrative or judicial process.*

*C.2.6 Notwithstanding anything contained in this Engagement Letter, Process Consultants shall be entitled, upon completion of the work as stipulated hereunder, to include a general description of services performed hereunder, for the purposes of demonstrating its experience to other potential clients for similar services, without any prior approval from the Company/RP*

3.6.7 DC observers that Mr. Tayal has followed rather unprofessional approach in taking decision on hiring professional and other support services. It is evident that many of the activities which have been delegated to process consultant, under the statute are required to be accomplished by Mr Tayal as RP. Evidence is also available to indicate that instead of being certain about what kind of activities he requires from other professionals and support staff, surprisingly he enquired the so called process consultant to detail the “ *terms and condition of relationship along with the scope of work being offered*” by him.

#### **4. Order**

- 4.1. The DC find that the actions of Mr. Anil Tayal are in violation of 208(2)(a) and 208(2)(e) of the Code, regulation 7(2)(h) of IP Regulations read along with Clause 27 of Code of Conduct under First Schedule of IP Regulations.
- 4.2 IP acting as IRP and RP is duty bound to preserve and protect the assets of the CD and manage the operation of CD as going concern. For this purpose, Code permits IRP (under section 20(2)(a) of the Code) and RP (under section 25(2)(d) of the Code) to appoint accountants, legal or other professionals. Section 23 of the Code clearly provides that RP shall conduct the entire corporate insolvency resolution process (CIRP) and manage the operation of CD during CIRP. For support services, the Code also permits IP to appoint an IPE recognised by IBBI under regulation 13(1)(c) of IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations).
- 4.3 Further, regulation 39(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) *inter alia* requires RP to submit to the committee of creditors, all resolution plans which comply with the requirements of the Code and regulations made thereunder. Regulation 40A of the CIRP regulations also provide for model timelines for CIRP.
- 4.4 Regulation 7 (2) (bb) of IP Regulations prohibits outsourcing of duties and responsibilities by IP. The Code of Conduct as specified vide First Schedule to IP Regulations, also requires IP to ensure that the confidentiality of the information relating to the processes is maintained at all times.
- 4.5 The material available on record indicates that IP has entered into an arrangement with one Mr. Anil Goel, on March 21, 2020 for appointment of Mr. Anil Goel as advisory services in CIRP of CD. The scope of services, as provided in the said engagement letter covers finalisation of strategy and structure for resolution process on conducting CIRP of CD, assisting in assessing overall financial position, assistance in bidding process and search for suitable prospective resolution applicant and evaluation of proposed resolution

plan including its compliance and legal vetting. The said terms of engagement clearly indicates that IP had outsourced his responsibilities under regulation 39(2) of CIRP regulations read with regulation 40A of CIRP regulations.

- 4.6 In view of above, it is clear that nature of contraventions are serious and crosses the line for being considered for bit harsher penalty rather than imposing mere monetary penalty alone. Hence, the DC, in exercise of the powers conferred under section 220(2) of the Code read with regulation 11 of IP Regulations and regulation 13 of the Inspection Regulations hereby suspends the registration of Mr. Anil Tayal having registration no. IBBI/IPA-001/IP-P01118/2018-19/11818 for a period of six months.
- 4.7 The Code and its underlying regulations does not envisage appointment of any process advisor or consultant. Since CoC has approved such appointment and fees in exercise of its commercial wisdom, the DC is taking lenient view. However, Mr. Tayal is directed to deposit fees paid to Mr. Anil Goel in capacity of CIR process advisor from 21.03.2020, ie, his alleged date of appointment to 23.06.2020, ie, date of approval of resolution by CoC for appointment CIR process advisor, back to the account of the CD within 45 days from the date of the order. The information regarding depositing the amount within stipulated time shall be provided to IBBI.
- 4.8 This Order shall come into force on expiry of 30 days from the date of its issue.
- 4.9 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Anil Tayal is providing his services, if any. The CoC may decide whether to continue his services or not. In case, CoC decide to discontinue his services, CoC may file an appropriate application before AA.
- 4.10 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Anil Tayal is enrolled as a member.
- 4.11 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.
- 4.12 Accordingly, the show cause notice is disposed of.

-sd-

(Sudhaker Shukla)  
Whole Time Member, IBBI

Dated: 20<sup>th</sup> July, 2022

Place: New Delhi