

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/265/2025

12th February 2025

Order

This Order disposes of the Show Cause Notice (SCN) No. COMP-11011/45/2022-IBBI/844 dated 20.07.2023 issued to Mr. Ahsan Ahmed, who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00987/2020-2021/13183 and a Professional Member of the ICSI Institute of Insolvency Professionals.

1. Background

- 1.1 The NCLT, Bengaluru, (AA) *vide* order dated 06.01.2022 admitted the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code), filed by Park View Developers Pvt. Ltd. a financial creditor (FC) for initiating Corporate Insolvency Resolution Process (CIRP) of M/s SDU Travels Pvt. Ltd. (Corporate Debtor/CD) and appointed Mr. Anurag Sharma as the Interim Resolution Professional (IRP). The FC filed an application for the replacement of the IRP and appointment of Mr. Ahsan Ahmad (IP) as the new IRP on the ground of the demise of Mr. Anurag Sharma. The AA appointed Mr. Ahsan Ahmad as the IRP on 03.02.2022 who was later appointed as the Resolution Professional (RP) on 19.09.2022.
- 1.2 The Board was in receipt of a complaint filed by one of the financial creditors holding 27.39% of voting shares in Committee of Creditors (CoC), who is also the wife of Mr. Sunit Suri (one of the shareholders of the CD). On receipt of complaint, the Board, in exercise of its powers under Section 218 of the Code read with Regulation 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations) appointed an Investigating Authority (IA) to conduct the investigation on the conduct of Mr. Ahsan Ahmed in the CIRP of CD. Accordingly, a notice under Regulation 8(1) of the Investigation Regulations was issued to Mr. Ahsan Ahmad on 13.09.2022. Mr. Ahsan Ahmad submitted a reply *vide* e-mail dated 22.09.2022. The IA sought additional clarifications on 15.11.2022 which were also provided by Mr. Ahsan Ahmad *vide* email dated 19.11.2022. The Investigation Report was submitted to the Board by the IA on 11.04.2023.
- 1.3 The IBBI had perused the investigation report and formed a *prima facie* view that Mr. Ahsan Ahmed had contravened provisions of the Code and Regulations made thereunder and issued the SCN to Mr. Ahsan Ahmad on 20.07.2023 in respect of his role as an IRP/RP of the CD. Mr. Ahsan Ahmad submitted reply to the SCN on 02.08.2023.

1.4 The Board referred the SCN, and response of Mr. Ahsan Ahmad to the SCN to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Ahsan Ahmad availed opportunity of personal hearing through virtual mode before the DC on 18.01.2024. Mr. Ahsan Ahmad later submitted additional documents post the personal hearing.

2. Alleged Contraventions, Submissions, Analysis and Findings

The contravention alleged in the SCN and Mr. Ahsan Ahmad's written and oral submissions thereof are summarized as follows.

3. Contravention.

Assignment of voting share to related parties.

3.1 The Board observed that as per the minutes of the 4th CoC meeting held on 10.10.2022, the voting share assigned to the CoC members were as follows:

Sl No.	Financial Creditors	CoC Voting Share
1.	Park View Developers Pt. Ltd.	38.87%
2.	Umrit Exports and Investment Pvt. Ltd.	19.23%
3.	Bramhall Developers Pvt. Ltd.	14.51%
4.	Nidhi Suri	27.39%

A. Voting Share allocated to Ms. Nidhi Suri

3.2 Section 21(2) of the Code states that the CoC shall comprise of all FCs of the CD. Proviso to Section 21(2) further states that a FC or the authorised representative of the FC, if it is a related party of the CD, shall not have any right of representation, participation or voting in a meeting of the CoC. As per Section 5(24)(a) of the Code, a related party in relation to CD means a director or partner of the CD or a relative of a director or partner of the CD.

3.3 It was observed that Mr. Ahsan Ahmad in his reply to IA, stated that Ms. Nidhi Suri is wife of Mr. Sunit Suri, director of the suspended board of the CD. Further, as per minutes of the 4th CoC meeting, Ms. Nidhi Suri had been allocated a voting share of 27.39%. It was further noted that as per shareholder's agreement dated 22.02.2012, Mr. Sunit Suri had 10% shareholding in the CD. Further, as per disclosures made in the financial statement for the year 2020-21 (attached with the complaint), the shareholding of Mr. Sunit Suri in the CD had changed to 7.46%. Despite having full knowledge that Ms. Nidhi Suri is the wife of Mr. Sunit Suri, director of the suspended board as well as one of the shareholders of the CD, Mr. Ahsan Ahmad assigned 27.39% voting share to Ms. Nidhi Suri, wife of Mr. Sunit Suri, a related party of CD. Thus, the Board held the prima facie view that Mr. Ahsan Ahmad had contravened proviso to Section 21(2) read with Section 5(24)(a) of the Code and clause 1 and

14 of the Code of Conduct under First Schedule to Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (Code of Conduct).

B. Voting Share allocated to Umrit Exports and Investment Pvt. Ltd. (Umrit)

3.4 It was observed that as per minutes of the 3rd and 4th CoC meeting, the Umrit had been allocated a voting share of 19.23%. However, in his reply to IA, Mr. Ahsan Ahmad stated that the voting shares assigned to Umrit was 43.09%.

3.5 Further, the list of shareholders filed on MCA website for Umrit, is as under:

Sl No.	Name of Company	Shares %
1.	Mr. Umesh Hingorani	49.89%
2.	Mrs. Shambhavi Hingorani	50.11%

3.6 It is, thus, seen that Mr. Umesh Hingorani and Mrs. Shambhavi Hingorani controlled 100% shareholding of Umrit. As per CD's Shareholding Agreement dated 22.02.2012, Mr. Umesh Hingorani and Mr. Hemant Golcha (referred in the said agreement as parties to the second part) are the promoters of the CD. Further, Mr. Umesh Hingorani and Ms. Shambhavi Hingorani are not only the 100% shareholders of Umrit but also Directors of Umrit. It can, thus, be seen that Mr Umesh Hingorani, one of the Promoters of the CD, is also one of the shareholders and Directors of Umrit which is a FC in the CoC having assigned 19.23% voting percentage (43.09% as per reply of Mr. Ahsan Ahmad to IA).

3.7 Further, as per Shareholder agreement, Mr. Umesh Hingorani, promoter of the CD was initially having 25% shareholding in the CD. Mr. Umesh Hingorani was also Director of the CD till 23.12.2018. It is also observed that Mr. Umesh Hingorani and Ms. Shambhavi Hingorani were the only Directors of SDU Projects Pvt. Ltd and Umrit, which are having 14.43% and 4.23% shareholding in the CD respectively. It may be further noted that Mr. Umesh Hingorani is having shareholding in the CD too. Thus, Mr. Umesh Hingorani being Promoter, ex-Director and shareholder of the CD was in a position to direct managers, etc of the CD to act on his direction.

3.8 It was further noted that as per Clause 6 of the Shareholder's agreement dated 22.02.2012, Mr. Umesh Hingorani and Mr. Hemant Golcha, parties to the second part in the said agreement, can nominate two individuals, from parties to the second part only, as Directors of the CD. By virtue of this clause of the said agreement, Mr. Umesh Hingorani, one of Directors and shareholders of Umrit, a FC of CD, can control the composition of the Board of Directors of the CD.

3.9 Section 5(24)(h) of the Code defines a related party in relation to a CD, as any person on whose advice, directions or instructions, a director, partner or manager of the CD is accustomed to act. Further, Section 5(24)(l) of the Code defines related party as any person

who can control the composition of the board of directors or corresponding governing body of the CD. The above definition of related party makes it clear that Umrit is a related party to the CD. Being a related party to CD, assignment of voting rights to it in the CoC was in violation of proviso to Section 21(2) of the Code. In view of the foregoing, it was observed that, Mr. Ahsan Ahmad constituted the CoC with various related parties of CD and illegally assigned voting rights to them in violation of the proviso to the Section 21(2) of the Code. In view of the above, the Board held the *prima facie* view that Mr. Ahsan Ahmad contravened Sections 21(2) and 208(2)(a) of the Code and Regulation 7(2)(h) of IP Regulations read with clauses 1, 3, 9, and 14 of the Code of Conduct.

4. Submissions by Mr. Ahsan Ahmad.

A. Voting Share allocated to Ms. Nidhi Suri

- 4.1 Mr. Ahsan Ahmad submitted that Ms. Nidhi Suri filed her claim in CIRP of the CD and after certain clarifications, her claim was accepted as an FC and in accordance with Section 21 (2) of the Code and 27.30% voting share was allocated to her. He submitted that he verified the claim including compliance of proviso to Section 21 (2) read with 5(24) (a) of the Code, and held that she was not a related party in terms of Section 5(24) (a) of the Code as her husband (who filed the complaint under reference), Mr. Sunit Suri, had resigned from the office of the Directors w.e.f 22.04.2019 by sending his resignation letter to the CD. Further, Mr. Sunit Suri had filed Form DIR-11 with the office of the Registrar of the Companies, Bengaluru intimating his cessation from the office of Directorship of CD.
- 4.2 It was further submitted that Section 168 (1) of the Companies Act,2013 states that a director may resign from his office by giving a notice in writing to the Company and Section 168 (3) of the Companies Act, 2013 states that the resignation of director shall take effect from the date on which the notice is received by the Company. Accordingly, Mr. Sunit Suri's resignation became effective from 22.04.2019, i.e., the date when his resignation letter was received by the CD. Therefore, Mr. Sunit Suri ceased to be the director of the CD on 22.04.2019 after his resignation notice was received by the CD. The name of Mr. Sunit Suri is still appearing in the master data of the CD as the Board of Directors of the CD has not filed requisite eForm DIR-12 with the office of Registrar of Companies, Bengaluru for intimation of cessation of office of directorship of Mr. Sunit Suri w.e.f. 22.04.2019. Mr. Sunit Suri in his letter dated 26.05.2022 (received via email by the RP) informed that he has resigned from the office of the Managing Director of the CD and his eForm DIR-12 has not been filed.
- 4.3 Mr. Ahsan Ahmad submitted that Regulation 13 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (CIRP Regulations) states that the IRP or RP shall verify every claim as on insolvency commencement date, i.e., 06.01.2022, when the AA passed the order triggering CIRP of the

CD. As Mr. Sunit Suri ceased to be the director of the CD w.e.f. 22.04.2019, much before the insolvency commencement date, accordingly, Mrs. Nidhi Suri was not a related party in terms of Section 5 (24) (a) of the Code and therefore, proviso to Section 21 (2) of the Code is not applicable in the case of claim of Mrs. Nidhi Suri. Thus, Mr. Ahsan Ahmad accepted the claim of Mrs. Nidhi Suri and allocated voting share (27.39%) to her. That Mr. Sunit Suri has 7.46% shares in the CD as on insolvency commencement date and therefore, the provisions of Section 5(24) of the Code is not applicable in the case of Mrs. Nidhi Suri.

B. Voting Share allocated to Umrit Exports and Investment Pvt. Ltd. (Umrit)

- 4.4 Mr. Ahsan Ahmad submitted that Umrit had filed its claim in the CIRP of the CD and its claim was accepted as an FC and in accordance with Section 21 (2) of the Code and 63.86% voting share was allocated to Umrit. Further, after acceptance of claim of Bramhall Developers Private Limited as FC and its inclusion in the CoC, the voting shares of Umrit changed to 43.09%, which was further changed to 19.23% after acceptance of claim of Mrs. Nidhi Suri as Financial Creditor and her inclusion in the committee of creditors.
- 4.5 Mr. Ahsan Ahmad submitted that he verified the claim of Umrit including compliance of Proviso to Section 21 (2) read with 5 (24) (h) and 5 (24) (l) of the Code and held that Umrit is not a related party in terms of Section 5 (24) (h) and 5 (24) (l) of the Code. Mr. Umesh Hingorani and Mrs. Sambhavi Hingorani ceased to be the shareholders of the CD w.e.f. 01.10.2012. Accordingly, both Mr. Umesh Hingorani and his wife Mrs. Sambhavi Hingorani had not been associated with the CD as shareholders since 01.10.2012. It was further submitted that Mrs. Sambhavi Hingorani resigned from the office of directorship w.e.f., 09.07.2013.
- 4.6 Mr. Ahsan Ahmad further submitted that Mr. Umesh Hingorani also resigned from the office of the directorship w.e.f. 23.12.2018. Mr. Umesh Hingorani and Mrs. Sambhavi Hingorani ceased to be the shareholders of the CD on 01.10.2012 and Mr. Umesh Hingorani and Mrs. Sambhavi Hingorani ceased to be the directors w.e.f. 23.12.2018 and 09.07.2013 respectively. Therefore, they have not been associated with the CD either as shareholders or directors on or after 23.12.2018. Mr. Umesh Hingorani and Mrs. Sambhavi Hingorani are the shareholders of SDU Projects Private Limited and Umrit. Further, SDU Projects Private Limited and Umrit hold 14.43% and 4.23% shares of the CD, which is less than 20% shares.
- 4.7 Mr. Ahsan Ahmad submitted that Mr. Umesh Hingorani and Mrs. Sambhavi Hingorani have not been associated with the CD either as shareholders or directors on or after 23.12.2018, much before the insolvency commencement date, therefore, Umrit is not a related party in terms of Section 5(24) (h) and 5 24 (l) of the Code and therefore, proviso to Section 21 (2) of the Code is not applicable in the case of claim of Umrit. Therefore, it can't be said that the Board of Directors of the CD was accustomed to act as per the instruction of Mr. Umesh Hingorani. Further, Section 2 (69) of the Companies Act,2013 defines promoter as under:

"promoter" means a person

a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Mr. Ahsan Ahmad further submitted that the CD did not circulate any prospectus, nor the name of Mr. Umesh Hingorani and Mrs. Sambhavi Hingorani are mentioned as Promoter in the annual return filed with the ROC for the financial year 2020-2021, immediately preceding financial year in which CIRP of the CD was initiated. Further, Mr. Umesh Hingorani and Mrs. Shambhavi Hingorani are neither the shareholder, director or otherwise exercising any powers as directors or shareholders as on 06.01.2022.

- 4.8 Mr. Ahsan Ahmad submitted that as per the minutes book of the CD, he could not find any item recorded by the Board of Directors, whereby it can be collated that any decision taken by the Board which, in the ordinary course of the business of the corporate debtor or otherwise, was in accordance with the advice, directions or instructions of Mr. Umesh Hingorani and/or Mrs. Shambhavi Hingorani. Having regard to the facts as stated hereinabove, he accepted the claim of Umrit and allocated voting share (19.23%) to it.

5. Analysis and Findings.

- 5.1 The contravention alleged in the SCN is regarding proviso to Section 21(2) of the Code which provides that a FC shall not have any right of representation, participation or voting in a meeting of the CoC if it is a related party of the CD. It was alleged that Ms. Nidhi Suri was related party to the CD under Section 5(24)(a) of the Code and Umrit was a related party under Section 5(24)(h) and (l) of the Code. These allegations in the SCN have been analysed with reference to the reply furnished before the DC.

A. Voting Share allocated to Ms. Nidhi Suri.

- 5.2 From the submissions by Mr. Ahsan Ahmad, the DC notes that in his reply dated 02.09.2022 to the complaint, Mr. Ahsan Ahmad submitted that Mr. Sunit Suri was a member of the suspended board of the CD and despite several emails, Mr. Sunit Suri failed to provide documents and records to him. He further submitted that Mr. Ahsan Ahmad filed application under Section 19(2) of the Code *vide* IA/150/2022 before the AA on 09.04.2022 wherein Mr. Sunit Suri was made respondent no.1. Mr. Sunit Suri in his reply dated 04.10.2022 to the AA submitted that he had resigned from the board of directors of CD on 22.04.2019. However, it is also a fact that the MCA records still show Mr. Sunit Suri as director of the suspended

board of the CD. The AA while disposing the application filed under Section 19(2) of the Code, by order dated 24.08.2023 did not give any finding on the status of Mr. Sunit Suri being a director of the suspended board of the CD.

5.3 The DC notes that Mr. Ahsan Ahmad became aware of resignation of Mr. Sunit Suri from board of directors of CD *vide* letter of Mr. Sunit Suri dated 26.05.2022 which was addressed to him. Mr. Sunit Suri informed Mr. Ahsan Ahmad that he resigned from directorship of the CD w.e.f 22.04.2019 and also filed Form DIR-11. Thereafter, Mr. Ahsan Ahmad informed Ms. Nidhi Suri regarding acceptance of her claim on 23.07.2022. Further, Ms. Nidhi Suri attended the 3rd CoC meeting dated 28.07.2022 and 4th CoC meeting dated 10.10.2022 represented by Advocate Ankit Chaturvedi who also represented Mr. Sunit Suri as director of the suspended board.

5.4 The DC also notes that Mr. Ahsan Ahmad filed an application under Section 66 of the Code before the AA on 10.01.2023 arraying Mr. Sunit Suri as first respondent and submitted that *“Mr. Sunit Suri allegedly resigned as Managing Director of the Corporate Debtor w.e.f. 22.04.2019. However, his resignation was not accepted by the Company till date.”* The above statement is contradictory to his submissions made above that Mr. Sunit Suri is not a director of CD and hence Ms. Nidhi Suri is not a related party. The DC also notes that Mr. Ahsan Ahmad stated in his reply dated 22.09.2022 to the investigating authority that Mr. Sunit Suri being a director of suspended board of the CD was not cooperating with him as required under Section 19(1) of the Code. From the above facts, it is evident that Mr. Ahsan Ahmad made contradictory statements at different point of time before authorities raising doubt that he himself was not clear on the issue whether Mr. Sunit Suri was a director of the CD or not. However, as per Section 168 of the Companies Act, 2013 read with rule 16 of the Companies (Appointment and Qualifications of Directors) Rules, 2014, Mr. Sunit Suri ceased to be director of the CD on 22.04.2019 when notice is received by the CD. So, Ms. Nidhi Suri is not a related party of the CD as per clause 5(24)(a) of the Code which provides that *“related party”, in relation to a corporate debtor, means- (a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;”* Mr. Ahsan Ahmad became aware about Mr. Sunit Suri, ceasing to be the director of the CD, from the letter of Mr. Sunit Suri dated 26.05.2022. But inspite of that, Mr. Ahsan Ahmad allowed the representative of Mr. Sunit Suri to attend the meeting of the CoC. Mr. Ahsan Ahmad was negligent in allowing representative of Mr. Sunit Suri, to attend the meeting of the CoC, even after becoming aware that Mr. Sunit Suri ceased to be the director of the CD.

B. Voting Share allocated to Umrit Exports and Investment Pvt. Ltd. (Umrit)

5.5 The SCN alleges that Umrit is a related party to the CD as per Section 5(24)(l) and 5(24)(h) of the Code.

Section 5(24)(l) which provides that “related party”, in relation to a corporate debtor, means- *any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;*

The above provision consists of word ‘control’ which has not been defined in the Code. In that case, reference may be drawn to the Section 3(37) of the Code which provides those words and expressions used but not defined in the Code but defined in the Companies Act, 2013 shall have the meanings respectively assigned to them in those Acts. In this light, this DC refers to the expression "control" which is defined in Section 2(27) of the Companies Act, 2013 as follows:

"2. (27) "control" shall include the right to appoint majority of the Directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;"

So a person cannot have control over composition of board of directors when he has no right to appoint majority of the directors in the board.

5.6 In the facts before the DC, it is observed that Mr. Ahsan Ahmad had admitted that SDU Projects Private Limited and Umrit hold 14.43% and 4.23% shares of the CD respectively. Umrit is 100% owned and controlled by Mr. Umesh Hingorani and Mrs. Sambhavi Hingorani. In SDU Projects Private Limited also, both Mr. Umesh Hingorani and Mrs. Sambhavi Hingorani are directors. Hence, Mr. Umesh Hingorani and Mrs. Sambhavi Hingorani, indirectly controlled 18.66% shareholding of the CD. This is less than the shareholding required for controlling the composition of board of directors. Hence contravention of Section 5(24)(l) is not made out.

5.7 Section 5(24)(h) provides that “related party”, in relation to a corporate debtor, means “*any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;*”

5.8 A person can be said to be accustomed to act on the advise of another person when several such instance of person acting on such advice have been pointed out. The SCN before the DC does not bring any such instance. Thus, the DC holds that, there is no evidence to support that director, partner or manager of the CD were acting on the advice of Mr. Umesh Hingorani or any director of Umrit. Therefore, the DC does not find that Umrit is a related party under Section 5(24)(h) in absence of any evidence about the same.

6. Order

- 6.1 In view of the forgoing discussion, the DC is of the view that Mr. Ahsan Ahmad failed to take a consistent stand regarding the directorship of Mr. Sunit Suri. Even after coming to the conclusion that Mr. Sunit Suri was not director of the suspended board of the CD, Mr. Ahsan Ahmad allowed Advocate Ankit Chaturvedi to represent Mr. Sunit Suri as director of the suspended board, in the CoC meeting which shows casual and negligent approach of Mr. Ahsan Ahmad in ensuring that only persons duly entitled attend the CoC meeting.
- 6.2 The DC, in exercise of the powers conferred under Section 220(2) of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby imposes
- (i) penalty of Rs.50,000(Rupees fifty thousand) on Mr. Ahsan Ahmad and 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.
 - (ii) warns Mr. Ahsan Ahmad to be more careful in handling the assignments, under the Code and the Regulations made thereunder.
- 6.3 This Order shall come into force immediately in view of paragraph 6.2 of the order.
- 6.4 A copy of this order shall be sent to the CoC/Stake Holders Consultation Committee (SCC) of all the corporate debtors in which Mr. Ahsan Ahmad is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Ahsan Ahmad.
- 6.5 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Ahsan Ahmad is enrolled as a member.
- 6.6 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.
- 6.7 Accordingly, the show cause notice is disposed of.

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

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

Dated: 12th February 2025
Place: New Delhi