

# INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

## (Disciplinary Committee)

No. IBBI/DC/206/2024

16<sup>th</sup> February 2024

### ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/112/2023-IBBI/809/1435 dated 20.10.2023, issued to Mr. Sanjay Kumar Singh, resident of 003, Windsor Grand Forte, Plot No. 76, Sigma-IV, Greater Noida, Uttar Pradesh - 201310 (herein referred as “IP”) who is a Professional Member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-002/IP-N00188/2017-18/10505.

#### 1. Background

- 1.1 The Adjudicating Authority (National Company Law Tribunal New Delhi Bench – II) (hereinafter referred as “AA”) vide its Order dated 04.11.2019, admitted the application under Section 9 of the Code for corporate insolvency resolution process (CIRP) of Monica Electronics Limited (Corporate Debtor / CD). Mr. Sanjay Kumar Singh was appointed as Interim Resolution Professional (IRP) vide the above-said Order, later also confirmed as Resolution Professional (RP) and further appointed as Liquidator for the CD on 15.03.2021.
- 1.2 The IBBI in exercise of its powers under Section 218 of the Code, read with Regulation 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 conduct investigation in the CIRP of the CD.
- 1.3 Based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the IBBI issued the SCN to Mr. Singh on 20.10.2023. The SCN alleged contraventions of provisions of the Code, the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations). The reply of Mr. Singh on the SCN was received by the Board on 27.11.2023.
- 1.4 The SCN, response of Mr. Singh to the SCN and other materials available on record were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Singh availed an opportunity of personal hearing before the DC on 01.12.2023.

1.5 Pending the adjudication of the referred SCN by the DC, Mr. Singh approached Hon'ble High Court of Delhi with the prayer *inter alia* for setting aside the instant SCN. Hon'ble High Court, while allowing Mr. Singh to withdraw his petition, granted him the liberty to raise all the contentions, including the contentions raised in the writ petition in the proceedings before the IBBI. Consequently, he made additional submissions along with documents on 18.12.2023 for perusal of DC.

## 2. **Alleged Contraventions, Submissions of the IP and Findings**

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

### **Anomalous and non-transparent sale of asset of CD**

2.1.1 It was observed that during the liquidation process, sale notice for e-auction was issued by the liquidator on 25.08.2021 and as per the same, e-auction was to be conducted on 08.09.2021. However, it was adjourned twice on 08.09.2021 and 25.09.2021 respectively. Pursuant to the sale notice, nine bid applications were received by the liquidator. Out of these, the liquidator at his assessment found four to be part of a cartel and therefore ineligible to participate in the e-auction bidding process. Out of the remaining five, three were found to be ineligible by the liquidator for other reasons. Thereafter, the liquidator proceeded with the bidding process with the remaining two applicants who were found to be eligible by him. Subsequently, the e-auction was concluded by the liquidator on 01.10.2021 by declaring one of them as the highest bidder and the sale deed was executed on 21.02.2022.

2.1.2 It was further observed that the liquidator proceeded with the e-auction on 01.10.2021 without even communicating the ineligibility for participation in the bidding process to the concerned four applicants/ bidders and refunded the EMD of ineligible applicant/ bidders on 01.10.2021 i.e., on the day of the auction without any communication of their ineligibility. The ineligibility for participation in the bidding process to the concerned four applicants/ bidders was communicated only on 02.10.2021 i.e., one day after the conclusion of the bidding process on 01.10.2021. Therefore, it was alleged in the SCN that the liquidator conducted the entire auction process in a non-transparent manner i.e. without communicating the ineligibility of the applicant/ bidders and reasons for the ineligibility. The SCN also refers to the copy of liquidator's reply dated 11.11.2021 in I.A No. 4801 of 2021 filed before Hon'ble AA wherein it has been admitted that the ineligibility was

communicated belatedly on 02.10.2021.

- 2.1.3 In addition, the liquidator also failed to submit a report to the AA with regard to the collusion among the applicant/ bidders/ prospective buyers and seek any appropriate order against such colluding parties in accordance with regulation 33(3) of Liquidation Regulations. The same has also been observed by AA vide order dated 04.07.2021. Further, it was observed that the AA vide its order dated 24.08.2023 has noted non-appearance of liquidator before the AA in the matter.
- 2.1.4 Regulation 33 read with clause 1(9) of Schedule I of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) provides that the liquidator shall sell the assets of the CD through an auction which shall be transparent. It is the responsibility of a liquidator to take prudent steps to conduct the auction process in a transparent manner, ensure communication with stakeholders, including updates and clarifications, well in advance in a clear manner and maintain written records for the decisions taken during the process along with the reasons for the same. Based on the same, the SCN states that the liquidator has failed to conduct the process in a transparent manner, communicate updates and maintain written records of the decisions taken during the process.
- 2.1.5 In view of the above, the Board was of the *prima facie* view that the liquidator has contravened 208(2)(a) of the Code, Regulation 33 of the Liquidation Regulations, Regulation 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clauses 1, 2, 13, 14 and 15 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

#### **Submissions by the IP**

- 2.1.6 Mr. Singh has submitted that in terms of the e-auction process document issued on 25.08.2021, fraudulent or corrupt practices were absolutely prohibited. It has been clearly stated in the process document about coercive practices, corrupt practices, fraudulent practices, restrictive practices and undesirable practices. The restrictive practices also included cartel, which means forming a cartel or arriving at any understanding or arrangement among the auction process applicants with the objective of restricting or manipulating a full and fair competition in the auction process.
- 2.1.7 Mr. Singh further submitted that it was specifically mentioned in the process document that the Liquidator shall reject an auction bid, revoke the Letter of Intent, as the case may

be, without being liable in any manner whatsoever to the e-auction process applicant, if the Liquidator, at his discretion, determines that the e-auction process applicant has, directly or indirectly through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the e-auction process or has undertaken any action in respect of such process which results in the breach of any applicable law including the Prevention of Corruption Act, 1988. In such an event, the Liquidator may invoke the earnest Money without prejudice to any other right or remedy that may be available to the Liquidator.

- 2.1.8 As per sale notice, the e-auction was to be conducted on 08.09.2021, but due to unfortunate death of father-in-law and one sister-in-law of the liquidator, he was forced to adjourn the date of e-auction on 08.09.2021 and 25.09.2021. The liquidator got nine bid applications, out of which one applicant withdrew and two applications were found defective. Further, four applicants were found to be part of one cartel which was in contravention of the e-auction process document and the same was not found appropriate in terms of e-auction process document. The EMD amount of all non-successful bidders were returned before commencement of the e-auction process on 01.10.2021 and they were informed that their bid applications were not found in conformity with the e-auction process documents, and they were not found eligible to participate in the bidding process.
- 2.1.9 Mr. Singh has submitted that he had reasons to believe that all the four bid applicants are part of one and same group and are part of a cartel, as they had common directors, the RTGS details and account number was in same handwriting, they were attested by same Notary and were consecutively numbered, and the envelopes of two applications were also same with address written in same handwriting and in same ink. Therefore, in accordance with terms and conditions of the e-auction process document, he had right to reject the bid.
- 2.1.10 Mr. Singh has submitted that in order dated 04.07.2023, the Hon'ble NCLT has observed that that it was not open to the liquidator under Regulation 33(3) of the Liquidation Regulations to proceed with sale of the property when he finds that the buyers are in collusion and should submit a report to the NCLT. In response to the observations made by the Hon'ble NCLT, Mr. Singh has submitted that he had filed a status report mentioning everything bearing IA no. 4796/2022. With reference to the above observation of NCLT, Mr. Singh has quoted Regulation 33(3) as under: -

*“33(3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties*

*and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties.”*

and then submitted that regulation 33(3) does not anywhere refer to the bid applicant or bidder. It talks about purchaser. The purchaser is declared only after completion of bidding process. So, the observation of Hon’ble NCLT towards rights of the liquidator is not as per law. Mr. Singh has drawn parallel to the CIRP proceedings where an RP is required to place only such resolution plans for consideration of CoC which comply with the requirements of law.

2.1.11 Mr. Singh in his further submissions dated 18.12.2023 has mentioned that the law point in respect of interpretation of Regulation 33(3) of the Liquidation Process Regulations, 2016, is pending before Hon'ble NLCT for final adjudication.

### **Findings of the DC**

2.1.12 The DC notes that Mr. Singh has himself submitted that out of the nine bid applications, one applicant withdrew, and two applications were found defective, and four applicants were found to be part of one cartel which was in contravention of the e-auction process document. Further, the SCN notes that the ineligibility for participation in the bidding process to the concerned four applicants/bidders was communicated only on 02.10.2021 i.e., one day after the conclusion of the bidding process on 01.10.2021.

2.1.13 The DC observes that Mr. Singh has incorrectly tried to draw a parallel between the process of submission of resolution plans in the insolvency resolution process with the e-auction process during the liquidation process. The statutory obligation and duty of the resolution professional and liquidator is very clear in this regard. Section 30 of the Code mandates a resolution professional to examine every resolution plan to be in compliance with the requirements mentioned therein and section 25(2)(i) cast upon him the duty to present all resolution plans at the meetings of the committee of creditors. While during the liquidation process, Regulation 33(3) of the Liquidation Regulations casts an obligation on the liquidator not to proceed with sale of assets and approach AA for necessary directions, if he is of the opinion that there is possible collusion.

2.1.14 In the instant case, Mr. Singh had disqualified the prospective buyers from participating in the auction process even before the e-auction process. In the opinion of Mr. Singh, there was a possibility of collusion amongst 4 applicants on the basis that they had common

directors, the RTGS details and account number was in same handwriting, they were attested by same Notary and were consecutively numbered, and the envelopes of two applications were also same with address written in same handwriting and in same ink. The DC finds that these grounds cannot be the basis of conclusively determining the collusion amongst the buyers. Further, the alleged evidence of same handwriting and ink are the matter of forensic examination and may not be superficially determined by Mr. Singh on preliminary basis. Also, if Mr. Singh was so confident of the collusion amongst the buyers, he had the right to forfeit the EMD amount of such buyers, in terms of the e-auction notice (reference to page 19 of the E-auction Process Document), which he chose not to do. Therefore, there is inconsistency in the submissions and conduct of Mr. Singh.

2.1.15 Further, the DC is also not inclined to accept the narrow interpretation of section 33(3) given by Mr. Singh to the effect that it applies only on the successful purchaser when the auction sale is completed. It is pertinent to look at Regulation 33 of the Liquidation Regulations which deals with mode of sale during the liquidation process which prescribes sale of assets through auction or in certain special circumstances as mentioned therein, through private sale. Further, sub-regulation (3) provides that the liquidator shall not proceed with the sale of asset if he has reasons to believe there is any collusion between the buyers and also submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties. The said sub-regulation provides as follows:

*(3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the **buyers**, or the corporate debtor's related parties and **buyers**, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, **seeking appropriate orders against the colluding parties.***

2.1.16 The DC notes that the term used in sub-regulation (3) is “buyers” which implies that there are multiple people intending to buy the same asset. If purchaser was intended in the said sub-regulation, as asserted by Mr. Singh, instead of the buyers intending to purchase the asset, the term “buyers” in above sub regulation will be wholly inappropriate. There cannot be any collusion if only a single party is involved as is being asserted by Mr. Singh as a single party cannot collude with itself. The phrase “any collusion between the buyers” clearly refers to any collusion between the intending buyers and any other interpretation will be unreasonable. Further, the sub-regulation clearly intends that once liquidator is of opinion that there is any collusion, the same should be brought to the notice of AA for

appropriate orders. If the liquidator himself takes action in respect of colluding parties, there will not be any purpose in submitting a report to AA and seeking any order against the colluding parties. In the instant case, the conduct of Mr. Singh goes against the real intent of the said sub-regulation and has made the sub-regulation totally redundant.

2.1.17 The DC further notes that the said sub-regulation is intended to prevent a sale where the competition has been limited by colluding parties. When the liquidator finds that the auction suffers from collusion and thereby there was limited competition in the auction process, he can approach the AA for appropriate orders to ensure fair auction process and maximum price discovery for the assets of the corporate debtor, through a healthy competition. However, in the instant matter, Mr. Singh has done the reverse of what is being intended by the sub-regulation. There were nine prospective bidders, out of which four were disqualified on the grounds of collusion, one withdrew and two were disqualified on the grounds of application being defective without giving them opportunity to cure the defect thereby, limiting the auction process to only two bidders instead of more bidders and thereby limiting the competition in auction process. By this conduct, Mr. Singh has in fact aided to the collusion between parties as there is greater possibility of collusion between two bidders rather than seven bidders.

2.1.18 The DC also notes that Mr. Singh had disqualified two bidders on the ground that they made defective applications. The documents available on record nowhere shows that they were provided opportunity to cure the defects and participate in the e-auction process, even when the e-auction was adjourned twice on 08.09.2021 and 25.09.2021.

2.1.19 The DC notes that the one of the major objectives of the Code is to maximise the value of assets. The whole processes under the Code be it insolvency resolution process or the subsequent liquidation process aims for value maximisation of the corporate debtor so that the assets/resources of the corporate debtor is put to best use. Therefore, in case any prospective bidder is not found eligible to participate in the auction process, the liquidator should adequately inform him beforehand, so that he has the option to cure the defect and participate in the auction process in a transparent manner. This would have enabled better value maximisation of the assets of the CD.

2.1.20 The DC further notes that although Mr. Singh has submitted that the EMD amount was returned to the disqualified bidders prior to the date of e-auction 01.10.2021 and they were also informed that their bid applications were not found in conformity with the e-auction process documents, and they were not found eligible to participate in the bidding process,

no proof has been submitted by Mr. Singh to establish his contention that the disqualified bidders were duly informed prior to the e-auction date.

2.1.21 The DC is not able to decipher what benefit has accrued to auction process by limiting the auction process to only two bidders. If the other bidders were given fair chance to participate in the auction process, there were only more chance of getting a better price and not lower price. In situation where the alleged colluding bidders were allowed in the auction process and they were actually colluding, even then effectively there would have been three bidders for the auction process which in any case ensures more participation leading to better value maximisation than given by two bidders. At worst, the same result which has been achieved through these two bidders would have been achieved.

2.1.22 The DC observes from the e-auction process document that the reserve price of the asset to be sold was rupees twenty lakhs and fifty thousand only and the successful bid for the same was very close viz. twenty-one lakhs only. This fact supports the reasoning of the DC provided in the above-mentioned paras.

2.1.23 The DC is also apprised of the fact that one of the disqualified bidders had filed an interim application no. 4801/2021 for setting aside the e-auction process and staying the further proceedings in the liquidation process. The same is pending for final adjudication.

2.1.24 In light of the above, the DC is therefore of the view that Mr. Sanjay Singh is in contravention of sections 208(2)(a) of the Code, Regulation 33 and clause I.(9) of Schedule- I read with sub-regulation (1) of regulation 33 of the Liquidation Regulations, Regulation 7(2)(h) of the IP Regulations read with Clauses 1, 2, 13, 14 and 15 of the Code of Conduct.

### **3. ORDER**

3.1. In view of the foregoing, the DC in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby suspends the registration of Mr. Sanjay Kumar Singh (Registration No. IBBI/IPA-002/IP-N00188/2017-18/10505) for a period of 2 years to run consecutively from the expiry of previous suspension Order.



- 3.2. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Sanjay Kumar Singh is enrolled as a member.
- 3.3. A copy of this order shall be sent to the CoC/Stake Holders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Sanjay Kumar Singh is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Sanjay Kumar Singh.
- 3.4. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.
- 3.5. Accordingly, the show cause notice is disposed of.

-sd-

(Sandip Garg)

Whole Time Member, IBBI

-sd-

(Sudhaker Shukla)

Whole Time Member, IBBI

Dated: 16<sup>th</sup> February 2024

Place: New Delhi