

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/201/2024

5th January, 2024

ORDER

This Order disposes of the Show Cause Notice (SCN) COMP-11011/26/2022-1BBI/156/696 dated 03.02.2023, issued to Mr. Sandeep Chandna, an Insolvency Professional, registered with the Insolvency and Bankruptcy Board of India (IBBI) with registration no. IBBI/IPA-002/IP-N00447/2017-2018/11237 and a Professional Member of ICSI Institute of Insolvency Professionals, having residential address recorded with IBBI as H. No.23, GF, A Block, South City 2, Sector 49, Sohna Road, Gurgaon, Haryana- 122018.

1. Background

- 1.1 The National Company Law Tribunal, New Delhi, (AA) had admitted the application under Section 7 of the Insolvency And Bankruptcy Code, 2016 (Code), filed by the Financial Creditor Vistara ITCL (India) Ltd., for the Corporate Insolvency Resolution Process (CIRP) of M/s Ambience Private Limited (CD) *vide* Order dated 27.08.2019 and Mr. Sandeep Chandna was appointed as Interim Resolution Professional (IRP). Thereafter, an appeal was preferred before the Hon'ble NCLAT against the admission order, wherein the Hon'ble NCLAT *vide* Order dated 25.10.2019 remanded back the matter to the AA for reconsideration of admission order. The AA again *vide* Order dated 21.12.2020 admitted the CD into CIRP and Mr. Sandeep Chandna was again appointed as an IRP *vide* the same order. The admission Order dated 21.12.2020 has been set aside by the Hon'ble NCLAT *vide* Order dated 02.08.2022 which was preferred by one of the Directors of the CD, i.e., Mr. Raj Singh Gehlot.
- 1.2 The IBBI, in exercise of its powers under section 218 of the Code read with regulations 7(2) and 7(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection & Investigation Regulations) appointed the Investigating Authority (IA) to investigate in the matter of the CD. Thereafter, the IA served a notice of investigation under Regulations 8 (1) of Inspection and Investigation Regulations on 04.01.2023 to Mr. Chandna. Pursuant to the said notice, Mr. Chandna replied to the allegation *vide* his email dated 13.01.2023. The Investigation Report was submitted to the Board by the IA on 27.01.2023.
- 1.3 The IBBI issued the SCN on 03.02.2023 based on findings in the Investigation Report in respect of the role of Mr. Chandna as an IRP of CD, who filed his reply to the SCN on 17.02.2023. The IBBI referred to the SCN, the response of Mr. Chandna to the SCN and additional written submission, and other material available on record with the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Chandna appeared before the DC for the personal hearing along with his Advocate Nikhil Kumar Verma on 02.06.2023 and made the submission to the allegation raised in the SCN, Mr. Chandna filed his additional written submission on 07.06.2023.

2. Alleged Contraventions, Submissions of Mr. Chandna, and Findings

The contraventions alleged in the SCN and submissions by Mr. Chandna are summarized as under:

2.1 Contravention -I

Failure to protect and preserve the assets of the CD.

- 2.1.1 It is noted that the AA vide order dated 21.12.2020 admitted the CD into the CIRP and appointed Mr. Chandna as an IRP. However, Mr. Chandna in his reply to IA has stated that although he was appointed by order dated 21.12.2020, the order was uploaded on the website of the NCLT on 23.12.2020.
- 2.1.2 It is noted that post admission of the CD into CIRP vide AA order dated 21.12.2020, the suspended management of the CD executed an Apartment Buyer's Agreement on 22.12.2020. It is, however, observed that even after becoming aware of such an unauthorized transaction, Mr. Chandna did not take any action for reversing the transaction as the same was not a valid transaction for the reason that suspended management did not have power after initiation of CIRP to enter into any transaction or agreement for or on behalf of CD.
- 2.1.3 In view of the above, the Board was of the prima facie view that Mr. Chandna has contravened Sections 17, 20, 208(2)(a) and 208(2)(e) of the Code, regulation 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and Clauses 3 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

2.2 Submission made by Mr. Chandna.

- 2.2.1 Mr. Chandna submitted that Mr. Manohar Malik (Complainant) bought a flat bearing no. B-102 in the Project on 19.10.2020 when he paid an amount of Rs. 10,00,000 (Rupees ten lakh only) to the CD through cheque bearing no.00095 and also paid an amount of Rs. 10,00,000 (Rupees ten lakh only) subsequently through another cheque bearing no.00094. Consequently, the CD issued the receipts in respect of the above-mentioned payments.
- 2.2.2 The payment of the above-mentioned two cheques was received by the CD on 23.10.2020 and 04.11.2020 respectively and it is imperative to mention that the payment schedule for the flat sold was also shared by the CD with the Complainant on 19.10.2020 i.e., upon receiving the cheque. After receiving the initial booking amount, the builder-buyer agreement had to be delivered upon the demand and availability of the Home Buyer. Further, the agreement was signed by an authorized signatory from the marketing department of the CD under the normal business activity of the CD at the prevailing market price. Mr. Chandna inspected and found that no solicitation was done for the amount, and it was a routine business transaction.
- 2.2.3 Mr. Chandna further submitted that because of his determined endeavor, the project had been brought to 95% completion stage by 02.08.2022 from roughly 60% completion stage as on

the date of commencement of CIRP viz. 21.12.2020, and now when the CIRP has already been set aside by Hon'ble NCLAT vide order dated 02.08.2022, the IRP of the CD is being dragged by filing a complaint before the Board and that too by the person who has already settled his dispute with the CD and got his money back. The complainant also gave a declaration to the CD to the effect that he would withdraw all complaints pending before any forum.

2.2.4 Therefore, in light of the above-mentioned facts and circumstances, Mr. Chandna prays that his efforts and dedication may be considered while deciding the present case who has served the CD with utmost care and diligence despite not receiving his remuneration and expenses incurred by him.

2.3 Analysis and Finding

2.3.1 Based on peculiar facts and circumstances of the matter in this case, the DC accepts the submission of Mr. Chandna.

2.4 Contravention-II

Non-publication of the Public Announcement on the website of the CD.

2.4.1 Regulation 6(2)(b)(ii) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) provides that the insolvency professional shall make a public announcement immediately on his appointment as an IRP and he shall publish the same on the website of the CD, if any. It is observed that Mr. Chandna made a public announcement on 25.12.2020 by publishing the same in the newspapers, Financial Express, and the Jansatta. But he failed to publish the same on the website of the CD. It is further noted that Mr. Chandna in his reply to IA mentioned that the CD did not have a website of its own, and therefore Form A could not have been uploaded thereupon. It is, however, observed that CD had its websites namely <http://ambiencegroup.in/> and <https://www.tivertonambience.in> for residential apartment complexes based in Noida Sector 50. There has been a lapse in duly making public announcements that could affect the interests of various stakeholders who would be unaware of the initiation of the CIRP.

2.4.2 In view of the above, the Board was of the prima facie view that Mr. Chandna has contravened section 15 (2) of the Code, regulation 6(2)(b)(iii) of the CIRP Regulations and Clause 13 and 15 of the Code of Conduct.

2.5 Submission made by Mr. Chandna

2.5.1 Mr. Chandna submitted that on the inquiry it was found that CD did not have any website of its own, and he did not have the prerogative to use the website of the Group therefore, a public announcement was made on the IBBI's website, in addition to this being published in English and Vernacular language newspapers. A letter from the Compliance Head of the Group to this effect is annexed with the reply.

2.6 Analysis and Finding

- 2.6.1 On perusal of the documents, it is noted that Mr. B.R Mishra, Chief Compliance Officer has issued a letter dated 15.01.2021 wherein it was stated that there is only one website for the whole group i.e., www.ambiencegroup.in and apart from this there is no other website for the CD. If that was the case, Mr. Chandna could have written to the compliance department of the group company of the CD for publishing the announcement of the CIRP of the CD on the group website.
- 2.6.2 Accordingly, the DC is of the view that Mr. Chandna failed to act as per the section 15 (2) of the Code, regulation 6(2)(b)(iii) of the CIRP Regulations, and clauses 13 and 15 of the Code of Conduct as specified in the First Schedule of IP Regulations.

3. Order

- 3.1 In view of the peculiar facts and circumstances of the matter, the DC, in exercise of the powers conferred under section 220(2) of the Code read with IBBI (Insolvency Professionals) Regulations, 2016 and the IBBI (Inspection and Investigation) Regulations, 2017, hereby, warns Mr. Sandeep Chandna to be extremely careful while handling assignments under the Code and ensure full compliance with the provisions of the Code and Regulations made thereunder.
- 3.2 This Order shall come into force with immediate effect in view of para 3.1 of the order.
- 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. Chandna is providing his services, if any, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Chandna.
- 3.4 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Sandeep Chandna is enrolled as a member.
- 3.5 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.
- 3.6 Accordingly, the show cause notice is disposed of.

Sd/-
(Jayanti Prasad)
Whole Time Member, IBBI

Dated: 5th January 2024
Place:- New Delhi