

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

No. IBBI/DC/81/2021

29<sup>th</sup> December, 2021

**Order**

**In the matter of Mr. Vimal Kumar Grover, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 and Regulation 13 of Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.**

**1. Background**

- 1.1 This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/INSP/2019/38/286 dated 15<sup>th</sup> February, 2021 issued to Mr. Vimal Kumar Grover, 204, Express Arcade, H-10, Netaji Subhash Place, Pitampura, New Delhi, 110034, who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI (IPA) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00940/2017-2018/11544.
- 1.2 Mr. Grover was appointed as an Interim Resolution Professional (IRP) in respect of corporate insolvency resolution process (CIRP) of M/s Haxad Infotech Private Limited, the Corporate Debtor (CD) commenced under section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) *vide* order dated 10<sup>th</sup> April, 2019 passed by Hon'ble National Company Law Tribunal, New Delhi Bench-III, the Adjudicating Authority (AA).
- 1.3 The IBBI, having reasonable grounds to believe that Mr. Grover had contravened the provisions of the Code and the regulations made thereunder, in exercise of its powers under section 218 of the Code read with Regulation 3(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations), appointed an Inspecting Authority (IA) *vide* order dated 23<sup>rd</sup> April, 2020 to conduct an inspection of Mr. Grover pertaining to CIRP of aforesaid CD.
- 1.4 The IA, in its report dated 29<sup>th</sup> July, 2020 observed that Mr. Grover has violated section 14(1)(b), 18(f), 19(2), 21(1), 208(2)(a) and (e) of the Code and Regulations 6(1), 13(1), 16, 17(1) and 34A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), Regulation 7(2)(a) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 10, 13,

14, 15 and 25A of the First schedule to the IP Regulations and Circular no. IBBI/IP/013/2018 dated 12<sup>th</sup> June, 2018.

- 1.5 The IBBI had issued the SCN on 15<sup>th</sup> February, 2021 to Mr. Grover, on the basis of material available on record including report of IA, in respect of his role as an IRP in the CIRP of the CD. The SCN alleged contraventions of section 14(1)(b), 18(f), 19(2), 21(1), 208(2)(a) and (e) of the Code and Regulations 6(1), 13(1), 16, 17(1) and 34A of CIRP Regulations, Regulation 7(2)(a) and (h) of the IP Regulations read with clauses 10, 13, 14, 15 and 25A of the First schedule to the IP Regulations and Circular no. IBBI/IP/013/2018 dated 12<sup>th</sup> June, 2018. Mr. Grover replied to the SCN *vide* letter dated 6<sup>th</sup> March, 2021.
- 1.6 The IBBI referred the SCN, Mr. Grover's reply 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. Grover availed an opportunity of personal virtual hearing before the DC on 16<sup>th</sup> April, 2021, wherein he reiterated the submissions made in his written reply and made a few additional submissions.
2. Contraventions alleged in the SCN and Mr. Grover's written and oral submissions thereof are summarized as follows:

### **Alleged Contraventions**

#### **2.1 Non-Compliance of moratorium during CIRP**

Mr. Grover stated in the progress report dated 19<sup>th</sup> July, 2019, filed before the AA that the suspended director of the CD had been receiving rent and paying loan instalments to ICICI Bank, who is the financial creditor (FC) of the CD, and who has not filed any claim against the CD. The relevant extract of para 24 from the progress report reads as under:

*“24... He is receiving rent and paying the instalments of the loan from ICICI Bank regularly...The company is having only one asset which is pledged with ICICI Bank....”*

The IA noted that the above submissions made by Mr. Grover in the progress report is indicative of the fact that he did not take steps to enforce provisions of section 14 of the Code during CIRP and allowed payment of instalments to the ICICI Bank.

Mr. Grover stated in his reply to Draft Inspection Report (DIR) dated 3<sup>rd</sup> July, 2020 that, *“With this submission, I admit that various provisions of the code were not followed, but I was struck. It was a deliberate attempt to not to follow these provisions blindly. If I would have followed these, it will reach nowhere. What will I do to start with CIRP, collate claims, form COC, take control of the assets of the CD, keeping the business as going concern, Provide for resolution plans... etc. Who will benefit with all these? When there*

*are no claims, how COC with only one creditor, what resolution we require? Hence, it was no negligence on my part. I know the provisions of the code and know to follow them.”*

Thus, the IA observed that Mr. Grover applied his discretion with respect to the admission of CIRP against the CD. An IP is required to fulfil his duties and responsibilities as provided under the Code read with regulations made thereunder without going into the merits of the case in terms of admission of CIRP, whether the operational creditor (OC) was right in filing application for admission of CIRP and whether the CD even requires undergoing CIRP in the first place. By making such presumptions about the merits of the case and misguided understanding of the Code, Mr. Grover tried to justify the cause of his inactions in the present case. The domain of deciding admission of CIRP against the CD lies with the Hon’ble AA and determining if the CD can be resolved or not lies with the committee of creditors (CoC). Mr. Grover attempted to usurp the role of the CoC and AA.

Accordingly, IA is of the view that Mr. Grover contravened sections 14(1)(b), 18(f), 208(2)(a) & (e) of the Code read with Regulation 7(2)(a) and (h) of the IP Regulations along with clause 10 and 14 of the Code of Conduct as given in the First Schedule of the said IP Regulations by being negligent while performing his functions and duties under the Code.

## **2.2 Non-submission of certain documents**

The IA noted that Mr. Grover has not submitted documents with respect to the following:

- (i) Self-declaration by him being independent of the CD as per Regulation 3(1) of CIRP Regulations and clause 6,7 and 8 of Code of Conduct of IP Regulations.
- (ii) Disclosures to IPAs as per the IBBI Circular No. IP/005/2018 dated 16.01.18.

Mr. Grover stated in his reply to DIR that *“Yes, it is true that I have not filed self-declaration regarding this. I was under impression; it is to be filed by RP when he was not independent. I file an apology for this non-filing, but I declare here that I am completely independent as per clause 6, 7 and 8 of code of conduct that is why being independent, I immediately accepted appointment and conveyed the message to operational creditor on 24th April, 2019.”*

IA has accepted his reply on the same.

## **2.3 Delay in verifying claims and filing progress report**

As per the Public Announcement, last date for receipt of claims was 7<sup>th</sup> May, 2019. The OC submitted claim to Mr. Grover in the prescribed form on 6<sup>th</sup> May, 2019 which was acknowledged via email on 24<sup>th</sup> May, 2019.

The IA observed that Mr. Grover did not verify the claim that was received from only one OC within the prescribed time-limit. The first progress report was filed before the Hon’ble

AA on 19<sup>th</sup> July, 2019, which is almost 2.5 months from the last date of receipt of claims, apprising the AA of receipt of one claim received from one OC, no claims by FCs and non-cooperation by the suspended Board of Director of the CD.

In reply to DIR, Mr. Grover stated that *“Though, I received claim of Operational Creditor, how could I collate it after knowing these discrepancies. Further, there was only one claim and that too from applicant operational creditor. After analysing information available with me that there are financial creditors also, I tried to reach them which took time. As per my understanding of law, being having financial creditors the COC could not be formed with applicant operational creditor only.”* Mr. Grover also replied that *“I did not find any insolvency in this case except so called outstanding by the applicant creditor. I did not find any financial irregularity except this demand. The CD was struck in the provisions of IBC, 2016, otherwise I could not find any characters of insolvency in CD.”*

The IA noted that IP is required to carry on the CIRP forward on receipt of order of admission by the AA and his appointment as IRP in the case. The question of admissibility of the CIRP by the AA is not in the domain of the IP. Further, on a receipt of claim, IP is required to verify the claim and admit the same upon verification. As per Mr. Grover’s submission, the same was not carried out by him, as he was pursuing the FCs of the CD to file their claims. He delayed the CIRP by not verifying the claims on time and filing the first progress report with the AA almost 2.5 months after the last date of receipt of claims.

In view of the above, Mr. Grover has violated Regulation 13(1) of the CIRP Regulations, section 208 (2) (a) & (e) of the Code read with Regulation 7(2) (a) and (h) of the IP Regulations along with clause 13 of the Code of Conduct.

#### 2.4 **No constitution of CoC**

The IA had observed that Mr. Grover did not receive any claim from FCs. Even after the receipt of claim from the OC, he did not constitute the CoC with one OC as a member. The CoC was not constituted, even after lapse of more than 150 days from the date of admission of CIRP. Further, since the CoC was not constituted, filing of report certifying the constitution of the CoC within 2 days of verification of claims under Regulation 17(1) of the CIRP Regulations was also not complied. As directed by AA in the admission order of CIRP dated 10<sup>th</sup> April, 2019, OC had deposited a sum of Rs. 2 lakhs with Mr. Grover to meet the expenses and carry out functions under the Code and CIRP Regulations. Yet, Mr. Grover did not carry out duties and responsibilities laid down under the Code.

Mr. Grover replied to the DIR that in this case, there was financial debt of CD and Regulation 16 of the CIRP Regulations cannot be applied on CD. In this regard, the IA noted that as per section 21(1) of the Code, IRP shall constitute the CoC after collation of all claims received. In this instant matter, Mr. Grover did not receive any claim from the FC. Therefore, Mr. Grover should have constituted CoC with the OC as a member as per

the provisions under Regulation 16 of CIRP Regulations.

Thus, Mr. Grover has violated section 21(1) of the Code read with Regulation 16 and Regulation 17(1) of the CIRP Regulations, section 208(2)(a) & (e) of the Code along with Regulation 7(2)(a) and (h) of the IP Regulations read with clause 10 and 13 of the Code of Conduct.

## 2.5 Adequate steps not taken under section 19(2) of the Code

In the First Progress Report submitted before Hon'ble AA, Mr. Grover has mentioned that the suspended Board of Directors of the CD did not extend cooperation in the discharge of his duties.

The Hon'ble AA in its Order dated 24<sup>th</sup> September, 2019 stated that: *“If there has been no cooperation on the part of the Board of Directors whose powers stand suspended, it is also not explained as to why the IRP failed to approach this Tribunal under Section 19(2) and under Section 19(3) seeking for the directions of this Tribunal. In relation to non-cooperation on part of any director and the said statement made in the report clearly bring the callousness of the IRP who seems to have forsaken the duty of IRP in compliance with the provisions of IBC, 2016...”*

The IA had observed that in such a situation, where the suspended Board of Directors do not cooperate with the IP, then as per section 19(2) of the Code, IP may make an application to the AA for necessary directions to suspended Board of Directors. In this case, Mr. Grover did not make such application before Hon'ble AA. IA mentioned that Mr. Grover should have filed the application with the AA in order to take the CIRP forward in a timely manner.

Mr. Grover had replied to the DIR that *“Even though the CD was not cooperating, as I met him once and after analysing information available to me, I come to the conclusion that the resolution is not required in this case. When the financial creditors are being paid regularly, there is no creditor outstanding in balance sheet as on 31.03.2018, in the bank statement there is no receipt except rentals and financial creditor is paid regularly. There is only one asset which is pledged to financial creditor. What will we achieve in carrying on the CIRP. Nothing except the following up of procedures defined. Everything needs cost. I did not find it justifiable in making money by unnecessarily harassing CD or operational creditor”.*

The IA observed that Mr. Grover applied his discretion in determining whether the case mandates resolution or not in the first place. The duty of the IP is to facilitate the CIRP. The decision of resolution or liquidation of the CD is the domain of the CoC and is left to the commercial wisdom of the CoC. IP is required to only take the CIRP forward in a time bound manner whilst duly following the process as laid down in the Code and regulations

thereunder. In case of non-cooperation by suspended Board of Directors, then as per section 19(2) of the Code, the IP may make an application to the AA for necessary directions. In view of this, the submissions made by Mr. Grover may not be accepted.

Accordingly, IA was of the view that Mr. Grover has violated section 19(2) of the Code, section 208 (2) (a) & (e) of the Code along with Regulation 7(2)(a) and (h) of the IP Regulations read with clause 14 of the Code of Conduct.

## 2.6 Non-submission of disclosure

IA noted that Mr. Grover did not submit the documents pertaining to the following cost disclosures:

- a) Regulation 34A of the CIRP Regulations– disclosure of item wise insolvency resolution process cost to the Board.
- b) Clause 25A of the Code of Conduct of the IP Regulations – disclosure to IPA of which he is a professional member, the fees payable to him/ other professionals/ IPE.
- c) Disclosure of the fees and other expenses incurred for CIRP in accordance with the Circular no. IBBI/IP/013/2018 dated 12<sup>th</sup> June, 2018.

In response to the DIR, Mr. Grover mentioned that *“Yes, it is true that I have not submitted any documents to the IA pertaining to the cost. I have not appointed any professional other than me. So, no fees is to payable to any professional. I received initially, Rs. 2 Lakhs from the Operational Creditor, I am facing botheration till date in this case. Apart from publishing of public announcement, expenses incurred in conveyance and my professional services. I do not know, how long this case will go.”*

Accordingly, IA noted that Mr. Grover has not submitted any documentary evidence of the cost disclosures detailed above to the IBBI or to the IPA. Accordingly, IA was of view that Mr. Grover has violated Regulation 34A of the CIRP Regulations, Clause 25A of the Code of Conduct of the IP Regulations and Circular No. IBBI/IP/013/2018 dated 12<sup>th</sup> June, 2018.

## Submissions made by Mr. Grover

- 3.1 Mr. Grover submitted that he could not find it justifiable to form a CoC with only one OC, whose claim, even though was received, but could not be collated because of the dispute between CD and OC and because of the *ex-parte* judgment delivered by the Hon’ble AA for initiation of CIRP against the CD. It occurred to Mr. Grover that if he makes a CoC with only one OC, it will be biased towards CD. If there would be other creditors, he would have followed the timelines, procedures etc. Further, Mr. Grover also submitted that the director of CD informed him that they will file an appeal against the order of AA.

- 3.2 Mr. Grover submitted that in point no. 24 and 25 of the status report and emails to IBBI, in the month of July, 2019, he sought guidance from both the regulator and AA, to advise him on performing his duties in the given circumstances of the case. However, he did not receive advice and now, he is under the scrutiny of inspection and SCN under the provisions of the Code.
- 3.3 Mr. Grover submitted that he thought that if the order of AA is quashed in the appeal filed by the suspended directors, then the whole exercise will be futile, and it will be a waste of time and money. He kept waiting for advice from IBBI and AA as he found that no loss was caused to clients or any other person as a result of contravention of provisions/regulations of the Code because the situation was very peculiar.
- 3.4 Mr. Grover submitted that if he would have formed CoC and followed the timelines, it would be unfair for CD. He also found that the company was not undertaking any business after leaving space of OC, so going concern to be carried on, was not hampered. Also, the company was not holding such asset whose value is deteriorating, so that on liquidation, he could fetch less which is detrimental to the FCs. The company was not under stress to pay its FCs. Apart from OC, no one was at loss. So, he decided to wait for advice rather than following the timelines. As the law was new and evolving at that time, he found it better to rely on seeking advice. He further submitted that if he would have got substantial advice from IBBI or AA, he would have performed his duties.
- 3.5 Mr. Grover also submitted that as the company was small, in order to keep less financial burden on the company, he did not appoint any staff or professional to perform his duties. As he was a practicing Chartered Accountant also, there were other statutory due dates to follow and he was uncertain about the outcome of the case, he kept himself waiting for advice. Further, he submitted that because of the contraventions committed by him, no one is at a loss except the OC whose claim was subject to judicial exercise.
- 3.6 Mr. Grover submitted that in the whole exercise the issue was payment of certain claimed dues to OC. He submitted that he has read in so many judgments that the CIRP is not a recovery proceeding. The motive of the Code is to revive the business of the company, to keep the employment of workers, livelihood of persons associated with the company by keeping it as a going concern, to release the financial stress of the company by adopting different methods and if not possible, to liquidate and pay the debts as far as possible. Mr. Grover submitted that if the OC is paid or its payment is settled, nothing is required any further.
- 3.7 Mr. Grover submitted that from the day he was appointed he was not sure whether he should form CoC with only one OC whose claim is disputed as per CD. He further submitted that the payments to OC will either be made by him or CD would be through

judicial exercise. He was waiting for advice or appellate order and in the wait, all regulations were contravened. However, he is sure that no loss is caused to anyone because of the contraventions committed by him.

## **Analysis and finding**

4. The DC after considering the allegations in the SCN and submissions made by Mr. Grover in light of the provisions of the Code, regulations and relevant circulars, finds as follows:

4.1 The DC notes that an IP is a key pillar of the institutional infrastructure of insolvency and bankruptcy regime. The UNCITRAL Legislative Guide on Insolvency Law envisages the role of an IP in the following words:

*“However appointed, the insolvency representative plays a central role in the effective and efficient implementation of an insolvency law, with certain powers over debtors and their assets and a duty to protect those assets and their value, as well as the interests of creditors and employees, and to ensure that the law is applied effectively and impartially. Accordingly, it is essential that the insolvency representative be appropriately qualified and possess the knowledge, experience and personal qualities that will ensure not only the effective and efficient conduct of the proceedings and but also that there is confidence in the insolvency regime.”*

4.2 The Bankruptcy Law Reform Committee (BLRC), which conceptualised the Code, has visualised the role of the IP *vis-à-vis* that of the CoC. It made the following observations in this regard:

*“a) For the 180 days for which the IRP is in operation, the creditors committee will analyse the company, hear rival proposals, and make up its mind about what has to be done.;*

*b) These Insolvency Professionals will be delegated the task of monitoring and managing matters of business by the Adjudicator, so that both creditors and the debtor can take comfort that economic value is not eroded by actions taken by the other. The role of the professional is also critical to ensure a robust separation of the Adjudicator’s role into ensuring adherence to the process of the law rather than on matters of business, while strengthening the efficiency of the process.;*

*c) With a creditor committee in place, the RP has a wider role, in addition to monitoring and supervising the entity, and controlling its assets. In carrying out this role, if there are questions of business that arise, she can call on the creditors committee to give clarification or guidance on how she can proceed.;*  
*and*

*d) The creditors committee will have the power to decide the final solution by majority vote in the negotiations.”*

4.3 In case of a CIRP under the Code, an IP is vested with a whole array of statutory and legal duties and powers. He exercises the powers of the board of directors of the CD under CIRP, manages its operations as a going concern, makes every endeavor to protect and preserve the value of its property and complies with applicable laws in its behalf. He takes important business and financial decisions having substantial bearing on such persons and its stakeholders. The Hon'ble High Court of Bombay in Jotun India Private Limited and Ors. vs. PSL Limited (2018) 145 SCL 601(Bom) observed: “*What is, however, of crucial importance is that unlike SICA, once an application filed under IBC either by a financial creditor/ operational creditor is admitted, the Board of Directors of the company are immediately displaced and the management of the company rests in the hands of IRP.*” The duties of an IRP are enlisted in section 18 of the Code which reads as under:

*“18. Duties of interim resolution professional. –*

*The interim resolution professional shall perform the following duties, namely: -*

*(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to –*

- i. business operations for the previous two years;*
- ii. financial and operational payments for the previous two years;*
- iii. list of assets and liabilities as on the initiation date; and*
- iv. such other matters as may be specified;*

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

*(c) constitute a committee of creditors;*

*(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;*

*(e) file information collected with the information utility, if necessary; and*

*(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –*

- i. assets over which the corporate debtor has ownership rights which may be located in a foreign country;*
- ii. assets that may or may not be in possession of the corporate debtor;*
- iii. tangible assets, whether movable or immovable;*
- iv. intangible assets including intellectual property;*
- v. securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;*
- vi. assets subject to the determination of ownership by a court or authority;*

*(g) to perform such other duties as may be specified by the Board.”*

4.4 In the performance of duties, the personnel of the CD, its promoter/s and other persons are required to extend complete co-operation to the IRP. In the event of non-cooperation, the IRP may also make an application to AA for giving necessary directions in this regard under section 19(2) of the Code. Section 19(2) of the Code reads as under:

*“19. Personnel to extend co-operation to interim resolution professional.-  
(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.”*

4.5 During CIRP, the provision on “moratorium” under section 14 of the Code envisages prohibition on institution of suits by or against the CD, transfer, alienation or disposal of any of the assets or legal right or beneficial interest of the CD, action to foreclose, recover or enforce any security interest created by CD in respect of his property. This moratorium period is analogous to the insolvency resolution process period.

4.6 Under the provisions of the Code, an IP is recognized as an important component of the ecosystem who has been entrusted with a wide range of functions so as to effectively strive to maximise the value of assets of debtor during the resolution process. The credibility of the whole process under the Code hinges upon the conduct and professional competence of IP who is required to comply with the provision of the Code and regulations and to observe the code of conduct. A well-functioning system of resolution driven by a competent IP plays a significant role in cementing together the interests of the CD with those of the creditors and in establishing the credibility of the process. It is for this reason that the need of specialized professionals for processes under the Code has been unequivocally emphasized.

4.6.1 The role of an IP encompasses a wide range of functions, and it is incumbent upon an IP, under section 208(2)(a) of the Code, to take reasonable care and diligence while performing his functions and duties. Section 208(2)(a) reads as under:

*“208. Functions and obligations of insolvency professionals.*

*(2) Every insolvency professional shall abide by the following code of conduct: –*

- (a) to take reasonable care and diligence while performing his duties;*
- (b) to comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member;*
- (c) to allow the insolvency professional agency to inspect his records;*
- (d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and*

*(e) to perform his functions in such manner and subject to such conditions as may be specified...*”

4.7 An IP shall befittingly perform a wide array of responsibilities and duties which are bestowed upon him in the CIRP. Hence, successful resolution of insolvency of a CD depends mainly on the professionalism demonstrated by the IP in discharging his functions under the Code as well as the Regulations made thereunder. Section 21 of the Code provides that an IRP shall constitute a CoC comprising of all FCs. However, Regulation 16 of the CIRP Regulations provides for constitution of CoC with OCs only. Section 21 of the Code states as under:

*“21. Committee of creditors. –*

*(1) The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.*

*(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:*

*Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors:*

*Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date...*”

Regulation 16 of the CIRP Regulations provides as under:

*“16. Committee with only operational creditors.*

*(1) Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be set up in accordance with this Regulation.*

*(2) The committee formed under this Regulation shall consist of members as under –*

*(a) eighteen largest operational creditors by value: Provided that if the number of operational creditors is less than eighteen, the committee shall include all such operational creditors;*

*(b) one representative elected by all workmen other than those workmen included under sub-clause (a); and*

*(c) one representative elected by all employees other than those employees included under sub-clause (a).*

*(3) A member of the committee formed under this Regulation shall have voting rights in proportion of the debt due to such creditor or debt represented by such representative, as the case may be, to the total debt.*

*Explanation – For the purposes of this sub-regulation, ‘total debt’ is the sum of-*

*(a) the amount of debt due to the creditors listed in sub-regulation 2(a);*

*(b) the amount of the aggregate debt due to workmen under sub-regulation 2(b); and*

*(c) the amount of the aggregate debt due to employees under sub-regulation 2(c).*

*(4) A committee formed under this Regulation and its members shall have the same rights, powers, duties and obligations as a committee comprising financial creditors and its members, as the case may be.”*

4.8 Regulation 17 of the CIRP Regulations provides that an IRP shall file a report before the AA certifying constitution of CoC. Regulation 17 states as under:

*“17. Constitution of committee.*

*(1) The interim resolution professional shall file a report certifying constitution of the committee to the Adjudicating Authority within two days of the verification of claims received under sub-regulation (1) of regulation 12.*

*(2) The interim resolution professional shall hold the first meeting of the committee within seven days of filing the report under this regulation.*

*(3) Where the appointment of resolution professional is delayed, the interim resolution professional shall perform the functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed under section 22.”*

4.9 Regulation 13(1) of the CIRP Regulations contains provision regarding verification of claims and provides as under:

*“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.”*

4.10 Regulation 34A of the CIRP Regulations also imposes a duty upon the IRP/ RP to make disclosure of the insolvency resolution professional costs. It states as under:

*“34A Disclosure of Costs.*

*The interim resolution professional or the resolution professional, as the case may be, shall disclose item wise insolvency resolution process costs in such manner as may be required by the Board.”*

- 4.11 It is also the duty of an IP to ensure that his conduct during CIRP does not undermine the credibility of the insolvency process. Therefore, while granting certificate of registration to an IP they are subjected to follow the Code of Conduct specified in the First Schedule to the IP Regulations. In this regard, clauses (a) and (h) of regulation 7(2) of the IP Regulations provides as follows:

*“7. Certificate of registration.*

*(2) The registration shall be subject to the conditions that the insolvency professional shall –*

*(a) at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled;*

*...*

*(h) abide by the Code of Conduct specified in the First Schedule to these Regulations; ...”*

- 4.12 With respect to the first issue regarding non-compliance of moratorium during CIRP, the DC notes that Mr. Grover stated in his progress report dated 19<sup>th</sup> July, 2019 filed before the AA that the suspended director of the CD had been receiving rent and paying loan instalments to ICICI Bank, the FC, during the period of moratorium. The DC further notes that Mr. Grover also admitted in his reply to DIR that he deliberately failed to follow the provisions on moratorium by allowing payment of instalments to ICICI Bank by the suspended director of CD. Since, an IP is duty bound to perform his duties as envisaged under the Code, the DC finds that Mr. Grover knowingly failed to observe the provisions on moratorium under section 14 of the Code and therefore, the DC finds that Mr. Grover has contravened section 14(1)(b), section 18(f), section 208(2)(a) & (e) of the Code read with Regulation 7(2)(a) and (h) of the IP Regulations along with clause 10 and 14 of the Code of Conduct as given in the First Schedule of the said IP Regulations by being negligent while performing functions and duties under the Code.
- 4.13 With respect to the second issue regarding non-submission of documentary evidence, the DC notes that Mr. Grover failed to submit the documentary evidence of self-declaration of being independent of the CD as per Regulation 3(1) of CIRP Regulations and clauses 6, 7 and 8 of Code of Conduct of IP Regulations, and disclosures to IPA as per the IBBI Circular No. IP/005/2018 dated 16<sup>th</sup> January, 2018. However, the DC also notes that Mr. Grover tendered his apology for the same in his reply to DIR and declared that he is completely independent of the CD as per the clauses 6, 7 and 8 of Code of Conduct of IP Regulations. Hence, DC takes a lenient view.

- 4.14 With respect to the third issue regarding delay in verification of claims and filing of progress report, the DC notes that the OC submitted his claim to Mr. Grover in the prescribed form on 6<sup>th</sup> May, 2019 which was acknowledged on 24<sup>th</sup> May, 2019. The DC also notes that the progress report was filed before the AA on 19<sup>th</sup> July, 2019, i.e., after two and a half months after receipt of claim from the only OC. The DC further notes from the submissions made by Mr. Grover that he could not collate the claim of OC because of the dispute between CD and OC and he failed to verify the claim submitted by one OC since he was pursuing the FC of the CD to file their claims. The DC also notes that Mr. Grover also made presumptions regarding the very admissibility of CIRP by AA in the present case. He submitted that the initiation of CIRP was ordered because of an *ex-parte* judgment by the AA and if he proceeds to perform his duties in the present case, it will be biased towards the CD. Thus, the DC finds that Mr. Grover applied his discretion in not performing his duties and responsibilities as provided under the Code read with regulations made thereunder without going into the merits of the case. He further attempted to justify his inactions by raising questions upon the admissibility of CIRP by the AA. The DC notes that the domain of deciding the question of admission of CIRP against the CD lies with the Hon'ble AA and determining the fact whether the CD can be resolved or not lies with the CoC. However, in the present case, Mr. Grover attempted to usurp the role of both, the CoC and the AA. On such unfounded pretexts, he failed to carry out his primary duty of verifications of claims and admission of the same in accordance with Regulation 13(1) of the CIRP regulations. Thus, the DC finds that Mr. Grover unnecessarily delayed the CIRP by not verifying the claim submitted by only one OC and submitting the progress report with the AA almost two and half months after the last date of receipt of claims. Hence, the DC finds that Mr. Grover has contravened Regulation 13(1) of the CIRP Regulations, section 208 (2) (a) & (e) of the Code read with Regulation 7(2) (a) and (h) of the IP Regulations along with clause 13 of the Code of Conduct.
- 4.15 With respect to the fourth issue regarding non-constitution of CoC, the DC notes that Mr. Grover failed to constitute the CoC with only one OC even after receipt of its claim. The DC notes that Regulation 16 of the CIRP regulations explicitly provides for constitution of CoC with OCs only where there is no FC. Despite such clarity, Mr. Grover displayed utter misunderstanding of the provisions of the Code and failed to appreciate the value of a time bound CIRP under the Code. The DC further notes that Mr. Grover failed to file a report certifying constitution of CoC in accordance with Regulation 17 of the CIRP regulations. Thus, the DC finds that Mr. Grover failed to perform his duties as envisaged under the Code by not constituting CoC with OC in accordance with Regulation 16 of the CIRP regulations and consequently not filing the report certifying constitution of CoC in accordance with Regulation 17 of the CIRP regulations. Hence, the DC finds that Mr. Grover has contravened Regulation 16 and Regulation 17(1) of the CIRP Regulations, section 208(2)(a) & (e) of the Code along with Regulation 7(2)(a) and (h) of the IP Regulations read with clause 10 and 13 of the Code of Conduct.

- 4.16 With respect to the fifth issue regarding adequate steps not being taken against non-cooperation by suspended board of directors, the DC notes that in circumstances where the suspended board of directors do not cooperate with the IP, then as per section 19(2) of the Code, IRP may make an application to the AA for necessary directions to suspended Board of Directors. The DC also notes that section 19(2) of the Code gives a discretion to IRP for taking a call on filing of application or not by the use of word ‘may’. Thus, a duty is imposed upon the IRP to take a balanced view on the basis of the prevailing situation and then decide an appropriate course of action. In the present case, the DC notes that Mr. Grover did not make any such application before AA and the AA, *vide* its order dated 24<sup>th</sup> September, 2019 also stated that: *“If there has been no cooperation on the part of the Board of Directors whose powers stands suspended, it is also not explained as to why the IRP failed to approach this Tribunal under Section 19(2) and under Section 19(3) seeking for the directions of this Tribunal. In relation to non-cooperation on the part of any director and the said statement made in the report clearly bring the callousness of the IRP who seems to have forsaken the duty of IRP in compliance with the provisions of IBC, 2016... ”*. In view of the above, the DC finds that it is imperative upon an IP, who does not get cooperation from the suspended board of directors, to actively bring the fact thereof to the notice of the AA. However, Mr. Grover failed to take any further steps against the suspended board of directors to take the CIRP forward in a timely manner. Hence, the DC finds that Mr. Grover has contravened section 19(2) of the Code, section 208(2)(a) & (e) of the Code along with Regulation 7(2)(a) and (h) of the IP Regulations read with clause 14 of the Code of Conduct.
- 4.17 With respect to the sixth issue regarding non-submission of disclosures of item wise insolvency resolution process cost to IBBI under Regulation 34A of the CIRP Regulations, disclosure to IPA of which he is a professional member, the fees payable to him/ other professionals/ IPE under clause 25A of the Code of Conduct of the IP Regulations and disclosure of the fees and other expenses incurred for CIRP in accordance with the Circular no. IBBI/IP/013/2018 dated 12<sup>th</sup> June, 2018, the DC notes that Mr. Grover admitted in his response to DIR that he failed to submit any documents pertaining to cost to the IA or IBBI and also that he did not appoint any professional and thus, no fee was payable to any professional. Further, Mr. Grover initially received Rs. 2 lakhs from the OC. However, the DC notes that mere admission of non-filing of disclosures cannot be a ground for excusing the conduct of Mr. Grover in not non-filing of disclosures as required under the provisions of the CIRP Regulations. Hence, the DC finds that Mr. Grover has contravened Regulation 34A of the CIRP Regulations, Clause 25A of the Code of Conduct of the IP Regulations and Circular No. IBBI/IP/013/2018 dated 12<sup>th</sup> June, 2018.
- 4.18 When a CD fails to service the debt, its control shifts to the creditors, represented by a CoC for resolving insolvency. The Code empowers and facilitates the CoC to decide the fate of the CD and consequently of its stakeholders. The institution of IP is a key

facilitator. An IP, who is appointed by the AA on the recommendation of the CoC, cannot substitute itself for the CoC. In the present case, Mr. Grover has displayed utter misunderstanding of the provisions of the Code and regulations made thereunder. He failed to constitute CoC with only one OC who filed its claim and thus, deprived the CoC of its right to decide the fate of the CD. He himself stepped into the shoes of the CoC and unilaterally decided that no resolution was possible and no loss is caused to anyone. He also failed to appreciate the value of time in insolvency proceedings and waited for instructions and advice from IBBI and AA indefinitely, despite clarity of provisions of the Code in that regard. Therefore, the DC is of the view that Mr. Grover failed to act in the best interests of the CD and the creditor.

## **Order**

5. In view of the above, the DC, in exercise of the powers conferred under section 220 of the Code read with regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017, hereby cancels the registration of Mr. Vimal Kumar Grover as an insolvency professional, having Registration Number IBBI/IPA-001/IP-P00940/2017-2018/11544 and debars him from seeking fresh registration as an insolvency professional or providing any service under the Code for a period of one year from the date of this Order.
6. This Order shall come into force immediately from the date of issue of this Order in view of directions in para 5 above.
7. A copy of this Order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where he is enrolled as a member.
8. A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, for information.
9. Accordingly, the Show Cause Notice is disposed of.

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(Dr. Mukulita Vijayawargiya)  
Whole Time Member, IBBI

Dated: 29<sup>th</sup> December, 2021

Place: New Delhi