

# INSOLVENCY AND BANKRUPTCY BOARD OF INDIA.

## (Disciplinary Committee)

No. IBBI/DC/288/2025

11 June 2025

### ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI/C/2023/00911/881/487 dated 29.07.2024 (SCN-1) and SCN No. COMP-11015/110/2024-IBBI/928/188 dated 07.02.2025 (SCN-II), issued to Mr. Arvind Kumar who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-001/IP-P00178/2017-2018/10357 and a Professional Member of the Indian Institute of Insolvency Professionals of ICAI (IIIP-ICAI).

#### 1. Background

- 1.1 The National Company Law Tribunal, Chandigarh Bench (AA) *vide* its Order dated 18.12.2018, admitted an application filed by the operational creditor M/s. Tata Blue Scope Steel Limited under Section 9 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of M/s. Richa Industries Limited (CD) and Mr. Arvind Kumar was appointed as the Interim Resolution Professional (IRP) of the CD. Later on, Mr. Arvind Kumar was appointed as the Resolution Professional (RP) of the CD.
- 1.2 In the matter of SCN-1, the IBBI, in exercise of its powers under Section 218(1) of the Code read with Regulations 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations), appointed an Investigating Authority (IA) to conduct investigation in the instant matter on the complaint dated 05.05.2023 received against Mr. Arvind Kumar. Accordingly, the IA served a notice of investigation upon Mr. Arvind Kumar as per Regulation 8(1) of the Investigation Regulations, on 29.05.2023. In response to the said notice, Mr. Arvind Kumar submitted his reply *vide* email dated 17.06.2023. The IA submitted the investigation report (IR-1) to the Board. The Board, on perusal of the IR-1, formed a *prima facie* view that Mr. Arvind Kumar had violated the provisions of the Code and Regulations made thereunder and decided to issue the SCN-1 to Mr. Arvind Kumar on 29.07.2024. Mr. Arvind Kumar replied to the SCN-1 on 09.08.2024.
- 1.3 In the matter of SCN-2, the IBBI, in exercise of its powers conferred under Section 218 of the Code read with Regulation 7 of the Investigation Regulations, appointed the IA to conduct investigation in the matter on grievance dated 25.11.2024 received against Mr. Arvind Kumar. Thereafter, the IA served a notice of investigation as per Regulation 8(1) of the Investigation Regulations on 02.12.2024. Additional information was sought *vide* emails dated 17.12.2024 and 03.01.2025. Thereafter the IA submitted the Investigation Report (IR-2). The Board, on perusal of the IR-2, formed a *prima facie* view that Mr. Arvind Kumar had violated the provisions of the Code and Regulations made thereunder and

decided to issue the SCN-2 to Mr. Arvind Kumar on 07.02.2025. The reply to the SCN-2 from Mr. Arvind Kumar was received on 22.02.2025.

1.4 The SCNs and their responses by Mr. Arvind Kumar were referred to the Disciplinary Committee (DC) for disposal of the SCNs. Mr. Arvind Kumar availed opportunity of personal hearing before the DC through virtual mode on 11.03.2025. Pursuant to the personal hearing, Mr. Arvind Kumar submitted additional written submissions.

## **2. Alleged contraventions, submissions of Mr. Arvind Kumar and findings of the DC.**

The contravention alleged in the SCNs, oral and written submissions by Mr. Arvind Kumar and analysis and findings of the DC are summarized as follows:

### **Contraventions under SCN-I**

#### **2.1 Admission of excessive amount of claim.**

2.1.1. It was observed that Sirsa Deposits & Advances Limited entered into a corporate guarantee deed with the CD for Rs.80,83,50,000 (Rupees eighty crore eighty three lakh fifty thousand only). However, the financial assistance provided by it to the CD was only for Rs.12.98 crore, as per the AA's order dated 05.11.2019. Further, Saariga Constructions Private Limited entered into a corporate guarantee deed with the CD for Rs.43,24,10,139 (Rupees forty three crore twenty four lakh ten thousand one hundred and thirty nine only), however, the financial assistance provided by it to the CD was only for Rs.7 crore, as per the AA's order dated 05.11.2019. The IA, *vide* email dated 11.01.2024, enquired about the outstanding amount, along with its breakup in terms of principal and interest, due *inter alia* to Sirsa Deposits & Advances Limited and Saariga Constructions Private Limited. However, Mr. Arvind Kumar did not provide the required information to the queries raised by the IA.

2.1.2. It was also noted that a sub-contract agreement dated 10.10.2018 was entered into between the CD and Saariga Constructions Private Limited which stated that the CD was the contractor for construction of a multi-level car parking. The CD had completed the work amounting to Rs.2,95,78,864 (Rupees two crore ninety five lakh seventy eight thousand eight hundred and sixty four only) and the rest of the work amounting to Rs.28,82,73,426 (Rupees twenty crore eighty two lakh seventy three thousand four hundred twenty six only) was sub-contracted to Saariga Constructions Private Limited. Section 17 of the said agreement stated that a corporate guarantee equivalent to 1.50 times of the remaining sub-contract amount would be provided by the CD to Saariga Constructions Private Limited. Pursuant to the same, a corporate guarantee deed was entered into between the CD and Saariga Constructions Private Limited for Rs.43,24,10,139 (Rupees forty three crore twenty four lakh ten thousand one hundred and thirty nine only).

2.1.3. It was further observed that the CD entered into an agreement on 15.10.2018 with Sirsa Deposits & Advances Limited which led to grant of financial assistance to the CD and

pursuant to the same, a corporate guarantee deed was executed on 10.10.2018 between the CD (corporate guarantor) and Sirsa Deposits & Advances Limited.

2.1.4. Section 126 of Indian Contract Act defines a contract of guarantee as follows:

*"A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor" ...."*

2.1.5. Thus, there must be involvement of three parties to term an agreement as an agreement of guarantee. However, the CD itself is filling the shoes of both the borrower and the corporate guarantor, while there is no detail of any third party in the main agreement or the corporate guarantee deed. Moreover, in case of Sirsa Deposits & Advances Limited, the main agreement was executed on 15.10.2018 whereas the corporate guarantee deed was executed on 10.10.2018 which is prior to the date of the agreement, indicating towards discrepancies in the date of execution of the agreement and the guarantee deed.

2.1.6. Considering the above, it was observed that Mr. Arvind Kumar had verified the aforesaid claims without conducting the necessary due diligence to ascertain the nature of the deeds presented to Mr. Arvind Kumar by the said CoC members as well as the claim amount of the said CoC members. Mr. Arvind Kumar was under the duty to admit *only* the amount that was actually disbursed by Sirsa Deposits & Advances Limited and Saariga Constructions Private Limited.

2.1.7. The Board was of the *prima facie* view that Mr. Arvind Kumar had contravened Sections 208(2)(a) and (e) of the Code, Regulations 7(2)(a) and (h) of the IBBI (Insolvency Professional) Regulations, 2016 (IP regulations) read with Clauses 1, 3, 5 and 14 of the Code of Conduct for Insolvency Professionals provided under First Schedule to IP Regulations (Code of Conduct).

## **2.2. Submissions by Mr. Arvind Kumar.**

2.2.1. Mr. Arvind Kumar submitted that claims were received in first week of January 2019 and were verified and the CoC comprising of 10 financial creditors was constituted on 09.01.2019. Mr. Arvind Kumar further submitted that at the time of verifying the claims, the prevailing legal context was thoroughly analysed in consultation with the legal team. The guarantee deeds and agreements presented were clear and unequivocal, with the guarantees being unconditional and for fixed amount. Therefore, the claims were duly accepted based on these guarantees.

2.2.2. Mr. Arvind Kumar further placed reliance on the NCLAT's decision in the matter of *Export-Import Bank of India Vs. Resolution Professional of JEKPL Private Limited* and *Axis Bank Limited Vs. Edu Smart Services Private Limited* to support that the guaranteed

amount constitutes the claim amount in insolvency situations, even if the guarantee has not been invoked.

2.2.3. Mr. Arvind Kumar also submitted that the claims were based on corporate guarantees, not loans. Consequently, there was no disbursement of funds to the CD and there was no interest element in it. The guarantees were unconditional and for fixed amounts, thereby justifying the full claim amount.

2.2.4. It was submitted that information was sought from the management regarding these contracts and guarantees. It was explained that the suppliers of the CD were refusing to supply material to the CD except on advance payments. The material required by the CD was special purpose material which the manufacturers had to manufacture on the specification of the customers of the CD, which mainly was Indian Railway. The supplier manufacturers required guarantee of payment from banks or third parties to their satisfaction, i.e. the suppliers were ready to supply material to the CD only on the guarantee of banks or similar guarantees by other entities. The accounts of the CD with banks had become NPA and they were not willing to provide any guarantee for any payment by the CD. The management further explained that the entire arrangements were in the knowledge of the bank officials and the CD was actively working with the banks for enhancement of the credit facilities.

2.2.5. Mr. Arvind Kumar submitted that the AA, in CA 233/2019, dismissed the issues raised regarding these claims as infructuous and the order acquired finality as the applicant did not prefer any appeal against it till date.

2.2.6. Mr. Arvind Kumar further submitted that interpreting the provisions of the contract while collating the claims was beyond the IRP/RP's jurisdiction. The IRP/RP cannot assume role of adjudicator and interpret various laws while collating the claims. Similarly, it may be stated that the IA also was not in a position to interpret the question of law more so when it involved determining the rights of third parties. The guarantee deeds and agreements were unambiguous, and the guarantees were unconditional for a fixed amount and hence the claims for the full guarantee amount were accepted. The complaint based on which the Board had ordered the investigation also filed before the AA in Company Petition No. 149/2019, which is pending for adjudication.

2.2.7. A legal opinion on the interpretation of the order of the AA was then sought by Mr. Arvind Kumar from Hon'ble Chief Justice (Retd.) MM Kumar. The issues on which the opinion was sought were as under: -

a. Whether the Adjudicating Authority has allowed any prayers (to remove FCs from CoC) of the applicants of CA 233/2019?

b. Whether the Adjudicating Authority has reconstituted the CoC vide its order dated 05.11.2019?

c. Whether the act of RP continuing the CIRP with the originally constituted CoC is illegal?

2.2.8. The Conclusion with respect to all the issues, as opined by Hon'ble Chief Justice (Retd.) MM Kumar were as under: -

- a. The Adjudicating Authority has not allowed any prayers of the applicants of CA 233/2019.
- b. Adjudicating Authority has not reconstituted the CoC by order dated 05.11.2019.
- c. RP conduct of continuing the CIRP with the originally constituted CoC is absolutely lawful.

### 2.3. Analysis and findings of the DC.

2.3.1. The DC notes that Saariga Constructions Private Limited (Saariga) entered into a sub contract agreement on 10.10.2018 and corporate guarantee deed on 10.10.2018 with the CD for Rs.43,24,10,139 (Rupees forty three crore twenty four lakh ten thousand one hundred and thirty nine only) Similarly, the CD entered into an agreement on 15.10.2018 and a Corporate Guarantee deed on 10.10.2018 with Sirsa Deposits & Advances Limited for Rs.80,83,50,000 (Rupees eighty crore eighty three lakh fifty thousand only). The DC asked Mr. Arvind Kumar to explain the nature of the agreements entered into between the CD and the respective parties. Mr. Arvind Kumar did not explain the nature of agreements rather he stated that the guarantee deeds and agreements presented were clear and unequivocal, with the guarantees being unconditional and for fixed amounts. Therefore, the claims were duly accepted based on these guarantees.

2.3.2. Since Mr. Arvind Kumar did not explain the nature of the agreement entered into between CD and respective parties, the DC has gone through all the agreements and submissions made and further notes as under: -

#### **Agreements entered by CD with Saariga.**

The CD was awarded a contract for constructing a multi-level structural steel car parking facility at Kingker, Mussoorie by the PWD, Uttarakhand (PWD/Owner), for a contract amount of Rs.31,78,52,290 (Rupees thirty one crore seventy eight lakh fifty two thousand two hundred ninety only). The CD completed a portion of the work and intended to sub-let the remaining work, valued at Rs.28,82,73,426 (Rupees twenty eight crore eighty two lakh seventy three thousand four hundred twenty six only), to Saariga Constructions Private Limited. Accordingly, on 10.10.2018, two agreements were executed between the CD and Saariga Constructions Private Limited. The details of both agreements are as follows:

#### **Sub-contract agreement with Saariga (First Agreement).**

Sub-Contract Agreement was executed between Richa Industries Limited (Corporate Debtor/ CD)/Contractor) and Saariga (Investor/Sub-Contractor), under which the CD sub-let the remaining part of the work valued at Rs.28,82,73,426 (Rupees twenty eight crore eighty two lakh seventy three thousand four hundred twenty six only) to Saariga, sub-contractor. The revenue generated under the principal contract with PWD Uttarakhand was to be shared in the ratio of 3% to the CD and 97% to Saariga (Section 2 of the First

Agreement). For this purpose, an escrow account was to be maintained to receive project payments and automatically apportion the proceeds as per the agreed revenue sharing ratio (Section 2 of the First Agreement).

The agreement further states that in case, Sariga or any other sub-contractor delays the completion of the project, Sariga was required to indemnify the CD for any damages or claims whatsoever and to hold the CD harmless (Section 6). The agreement outlined specific situations under which it may be terminated, such as in the event of a default or breach (Section 11 of the First Agreement). It further clarified that the CD would not be liable for any acts or omissions by Sariga, and that the obligation to indemnify shall extend to claims arising even after the agreement is terminated, as well as while it remains in force (Section 12 of the First Agreement).

The agreement also provided that all machinery and equipment required for execution of the work would be supplied by the CD to Sariga free of cost (Section 16(1) of the First Agreement). Additionally, it stated that all permissions required from the project owner such as approval of designs, execution of work, extensions of time, or any other approvals would fall within the scope of CD, and all related expenses would be borne by the CD. Sariga would have no responsibility of any kind, whatsoever, in this regard (Section 16(6) of the First Agreement).

It was further agreed that all the steel material required for the project would be supplied by the CD to Sariga at a fixed rate of Rs.75 per kg. In the event the CD failed to supply the steel, Sariga was permitted to procure it from the open market, and the CD would be required to reimburse Sariga for the differential amount (Section 16(8) of the First Agreement).

To secure Sariga's investment and mitigate the risk of non-performance or default, the agreement provided for a Corporate Guarantee and an undated cheque equivalent to 1.5 times the remaining sub-contract value, a personal guarantee, and an additional undated cheque equivalent to 0.5 times the remaining sub-contract value (Section 17 of the First Agreement).

#### **Corporate Guarantee with Saariga/Second Agreement.**

As per Section 17 of the Sub-Contract Agreement, a corporate guarantee dated 10.10.2018 was executed, wherein the CD, acting as the corporate guarantor, provided an unconditional, irrevocable, and continuing guarantee in favour of Sariga Constructions (Investor).

The guarantee secured an amount of Rs.43,24,10,139 (Rupees forty three crore twenty four lakhs ten thousand one hundred and thirty nine only), which is 1.5 times of the remaining contract value of Rs.28,82,73,426 (Rupees twenty eight crore eighty two lakh seventy three thousand four hundred twenty six only). Under this Deed, the CD guaranteed the timely payment of all debts, liabilities, interest, and associated costs arising out of the Sub-

Contract Agreement, without any demur or delay, upon first demand by Sariga (Clause 1(ii), (iii), (iv) & 2 of the Second Agreement).

The agreement further stipulated that all legal costs incurred, or which may be incurred by Sariga for enforcement of the security shall be borne by the CD. It was further stated that the guarantee shall remain enforceable irrespective of any amendments, insolvency, or changes in circumstances and shall continue until all obligations under the Sub-Contract Agreement are fully satisfied (Clause 5).

2.3.3. From a plain reading of the Sub-Contract Agreement and the accompanying Corporate Guarantee dated 10.10.2018, it appears that the arrangement disproportionately favours Sariga (Investor/Sub-Contractor), while imposing extensive liabilities on the CD/Contractor). Although the CD retained only a marginal 3% share in the revenue generated under the principal contract with PWD Uttarakhand, it undertook significant obligations, including the supply of all machinery and equipment free of cost, bearing all expenses related to obtaining approvals from the project owner, and supplying steel material at a fixed rate of Rs.75 per kg, with a liability to reimburse Sariga for any differential amount if procurement was made from the open market due to the CD's failure to supply. Furthermore, to secure Sariga's investment, the CD agreed to provide a Corporate Guarantee and undated cheques equivalent to 1.5 times and 0.5 times the remaining sub-contract value respectively, which culminated in the execution of a Corporate Guarantee for Rs.43,24,10,139 (Rupees forty three crore twenty four lakh ten thousand one hundred and thirty nine only), representing 1.5 times the remaining contract value of Rs.28,82,73,426 (Rupees twenty eight crore eighty two lakh seventy three thousand four hundred twenty six only). Thus, for a nominal 3% revenue share, the CD extended extensive financial, operational, and legal commitments, effectively placing all liabilities on itself while vesting all substantial benefits with Sariga.

**Agreement entered by the CD with Sirsa Deposits & Advances Limited (Sirsa).**

2.3.4. The DC notes the submissions made by Mr. Arvind Kumar that the suppliers of the CD required advance payments in order to supply material. The material required by the CD was of a special-purpose nature and had to be manufactured as per the specific requirements of the CD's customers, primarily the Indian Railway. In view of the customized nature of the material, the suppliers were seeking payment guarantees either from banks or other third-party entities to their satisfaction. However, as the CD's accounts had been classified as Non-Performing Assets (NPA) by the banks, the banks were unwilling to issue any such guarantees. Therefore, the CD was required to obtain these corporate guarantees in order to get material for the completion of the ongoing projects of the CD. In view of the same, CD entered into an agreement dated 15.10.2018 and Corporate Guarantee dated 10.10.2018 with Sirsa for Rs.80,83,50,000 (Rupees eighty crore eighty three lakh fifty thousand only).

2.3.5. The salient terms and conditions of the agreements with Sirsa were as follows: -

**First agreement with Sirsa.**

On 15.10.2018, the CD (Borrower/First Party) entered into an agreement with Sirsa (Lender/Second Party) for grant of financial assistance in the form of material procurement assistance, wherein the Lender agreed to finance the raw material purchases of the Borrower/CD and pay off the existing creditors for raw material. The agreement provided that the Borrower shall, in order to avail the facility, provide a list of creditors intended to be paid by the Lender along with their detailed ledger accounts, balance confirmation certificates, or such other documents as may be required by the Lender, and the Lender shall make payments directly to such creditors towards discharge of the Borrower/CD's liability (Clause 4 of the First Agreement).

The agreement further provided that the Borrower/CD shall furnish to the Lender a list of suppliers from whom it intended to purchase raw materials, stating the maximum amount that may be due at any given time from each supplier. The Lender, at its sole discretion and without assigning any reason, may decline to provide funds for purchases from any particular supplier (Clause 5 of the First Agreement).

The agreement stated that the Borrower/CD would be solely responsible for ensuring the quality and quantity of raw material purchased, and any dispute in this regard shall be solely between the Borrower and the supplier. Any variation in the final amount of dues to the supplier shall not affect the Lender's right to recover the full invoice amount from the Borrower/CD (Clause 7 of the First Agreement). The Agreement provided for security in clause 15 wherein it stated as follows:

*“a) The borrower shall execute a Corporate Guarantee in favor of the lender calculated as follows:*

*i) Principal Amount Rs.40,00,00,000.00*

*ii) Interest 3 Years @ 15% pa.  
Compounded annually Rs.20,83,50,000.00*

*iii) 50% extra of Principal Amount Rs.20,00,00,000.00*

*TOTAL Rs.80,83.50.000.00*

*i.e, Corporate Guarantee of 80,83,50,000 (Rupees Eighty Crore Eighty Three Lac Thousand Only]*

*b) The Managing Director of the borrower Company would execute a Personal Guarantee in favor of the lender for an amount of Rs.40,41,75,000.00 (Forty crore Forty-One Lac Seventy-Five Thousand), The amount was equal to 50% of the amount that had been calculated in Para 15(a) above. The Personal Guarantee was executed to secure the lender against any loss or damages which it may suffer on account of any suit or legal action*

*brought in by the borrower or any supplier financed by the lender in relation to any right, obligation, duty under this agreement or connected thereto.”*

Further, one of the condition precedents for the agreement was for the borrower to execute corporate guarantee in favour of the lender. (Clause 21 (a) of the First Agreement)

**Corporate Guarantee Deed/ Second Agreement with Sirsa.**

To formalise the security as mentioned in clause 6 of the above agreement, a Corporate Guarantee Deed was executed by the CD in favor of Sirsa on 10.10.2018 wherein the CD acted as corporate guarantor and guaranteed a sum of Rs. Rs.80,83,50,000 (Rupees eighty crore eighty three lakh fifty thousand only) in favor of Sirsa (Investor). The obligations under the Guarantee Deed were absolute, unconditional, and continuing, and not affected by amendments, insolvency, changes in constitution, or other circumstances affecting the borrower. In case of default, the guarantor was liable to pay the guaranteed amount along with all legal costs and expenses. (Clause 1(ii), 2, 4, 5 of the Second Agreement)

2.3.6. The DC notes that the corporate guarantee deed with Sirsa which was executed on 10.10.2018 referred to the main agreement which was executed on 15.10.2018. During the personal hearing and also *vide* email dated 12.03.2025, the DC specifically asked Mr. Arvind Kumar to explain how document executed earlier can refer to a document executed later. However, Mr. Arvind Kumar neither provided any response during the personal hearing on the said issue nor in the additional written submissions dated 25.03.2025. In absence of any explanation, corporate guarantee deed remains questionable.

2.3.7. The DC also asked Mr. Arvind Kumar about the details of amount actually disbursed/ goods purchased and supplied by the creditors under the guarantee agreements and the evidence of material received under the said agreements and how has it been subsequently used by the CD. On the said issue, Mr. Arvind Kumar submitted that the guarantee deeds and agreements presented were clear and unequivocal, with the guarantees being unconditional and for fixed amounts. Mr. Arvind Kumar submitted that at the time of admission of claim two legal precedents available, one, the NCLAT in the matter of *Export-Import Bank of India Vs. Resolution Professional of JEKPL Private Limited* and the other was the decision of NCLT in *Axis Bank Limited Vs. Edu Smart Services Private Limited*. It is submitted that these judgments declared that the guarantee amount constitutes the claim amount in insolvency and there is no need of invocation of guarantees for filing claim in CIRP. However, the DC notes that Mr. Arvind Kumar did not provide any reply/justification regarding the amount actually disbursed or goods purchased and supplied by the creditors under the guarantee agreements.

2.3.8. The DC further notes that the application for initiation of CIRP was filed on 15.03.2018. Subsequently, Saariga was incorporated two month after filing of application for initiation of CIRP. The abovesaid agreements between CD and Sariga and Sirsa was entered between the parties on 10.10.2018 and 15.10.2018 just about two months before the commencement of CIRP on 10.12.2018. Thus, the above agreement entered after initiation date and before insolvency commencement date seems to be in nature of avoidance transactions. As

mentioned in paragraph 2.3.3 above, the agreement seems to give undue benefit to Saariga at the cost of the CD. Such aspect needs to be examined with reference to provision of Section 43 to 51 and 66 of the Code and whether they were entered at the loss of the CD. Hence, the DC considers it necessary to refer the matter to the Board for further investigation whether this aspect has been examined by Mr. Arvind Kumar while determining the avoidance transaction.

2.3.9. Now the DC notes the brief timeline of the matter regarding acceptance of claim of guarantee and jurisprudence regarding the same is as under: -

<b>Date</b>	<b>Event</b>
27.10.2017	Judgement by the AA in <i>Axis Bank Limited Vs. Edu Smart Services Private Limited</i> wherein it was held that in order to qualify as debt firstly provisions of the corporate guarantee must be satisfied by raising a demand which is expressed by invoking the corporate guarantee and such invocation has to be before the ICD. Thus, the guarantee invoked after the commencement of CIRP cannot be admitted as claim.
14.08.2018	Judgement by the NCLAT in <i>Export-Import Bank of India Vs. Resolution Professional of JEKPL Private Limited</i> wherein the NCLAT set aside the judgement of NCLT order dated 27.10.2017 and it was held that maturity of claim or default of claim or invocation of guarantee for claiming the amount has no nexus with filing of claim pursuant to public announcement made under Section 13(1)(b) r/w Section 15(1)(c) or for collating the claim under Section 18(1)(b) or for updating claim under Section 25(2)(e) of the Code.
18.12.2018	CIRP of the CD was admitted.
22.12.2018	Public Announcement was made by the IRP.
24.12.2018	Claims of Saariga and Sirsa received in Form C with only the Guarantee document. Nothing was mentioned about the invocation of said guarantee.
09.01.2019	CoC was constituted
NA	Application filed before the AA by two financial creditors i.e. Indian Overseas Bank and Corporation Bank with the prayer to reconstitute the CoC and remove CoC members whose claims were wrongly admitted and nullify all the resolution passed by wrongly constituted CoC.
05.11.2019	The AA after recording the submission of all the parties has held that even after allowing the prayer in the application to reconstitute the CoC and exclude Respondent No 2 to 6 from the list of CoC, nothing will change as the Resolution Plan will still not get approved as the members of CoC voted against the Resolution Plan and dismissed the application as infructuous.
13.04.2021	Judgement of SC in <i>Ghanshyam Mishra and Sons Private Limited v. Edelweiss Assets Reconstruction Company Limited</i> pronounced wherein

the Hon'ble SC held that an uninvoked Corporate Guarantee as on date of filing of the Claim, cannot be considered as matured claim.
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2.3.10. The DC notes the RP's emphasis on the invocation of the Guarantee and relied on two judgements of the NCLAT (which are overruled by judgement of the Hon'ble Supreme Court in *Ghanshyam Mishra (supra)*). However, the moot question is what amount was actually disbursed in lieu of the said guarantee(s). As per the agreements executed above with Saariga and Sirsa, the maximum amount for which guarantee was provided was Rs.43,24,10,139 (Rupees forty three crore twenty four lakh ten thousand one hundred and thirty nine only) and Rs.80,83,50,000 (Rupees eighty crore eighty three lakh fifty thousand only) respectively. However, the dues against the CD would be of the amount actually availed under such arrangement by the CD and any interest, if any, thereon; and therefore, guarantee amount cannot exceed this amount due. Claim accepted in CIRP cannot exceed this amount due against the CD. Mr Arvind Kumar did not provide any document/explanation to show that what amount was actually disbursed by Sirsa and Saariga in lieu of the Corporate Guarantee(s).

2.3.11. Though, no explanation has been provided by Mr. Arvind Kumar, the DC notes the pleadings of Sirsa and Saariga as quoted by the AA in its order dated 05.11.2019. The submission made by Saariga as recorded in paragraph 8 of order dated 05.11.2019 is reproduced below: -

*"8. The reply by respondent No.5 was filed by Diary No.2500 dated 16.05.2019 stating that the respondent is also a sub-contractor for the main contractor i.e. corporate debtor for multi level car parking project in Bidhan Sabha, Mussorie Utrakhand and that as per the sub-contract agreement dated 10.10.2018, the respondent was required to undertake the entire cost of construction and all necessary investments and risks related thereto and that the value of the tender was Rs.31,78,50,290. It is submitted that after taking over the construction task on site, respondent No.5 has invested Rs.7.00 crores (approximately) and in order to indemnify respondent No.5 for all the investments/costs/risks to be undertaken by the respondent No.5 in execution of the sub-contract agreement, the corporate debtor executed a corporate guarantee deal on 10.10.2018. It is stated that there is no certainty of payment from the corporate debtor and it is only on the security of the corporate guarantee that the execution of the contract is commercially viable for respondent No.5."*

The submission made by, Sirsa as recorded in paragraph 9 of order dated 05.11.2019 is reproduced below: -

*"9. Respondent No.,6 filed reply vide Diary No. 2502 dated 16.05.2019 stating that the respondent No. 6 entered into agreement with the corporate debtor through Shri Sandeep Gupta, Managing Director of the corporate debtor, who was authorised by the resolution of Board of Directors dated 01.10.2018. It is stated that the corporate debtor approached respondent No.6 for grant of financial assistance in form of material procurement assistance and that the respondent No.6 was requested to finance the raw material*

*purchase for the corporate debtor and requested to pay off the existing creditors for raw material. It is submitted that the agreement has been to pay interest on facility from time to time at the rate of 15% interest per annum compounded annually till the entire outstanding facility amount and interest amount is repaid by the corporate debtor and as a security to this loan, the corporate debtor executed a corporate guarantee of Rs.80,83,50,000 in favour of respondent No.6. It is thereby submitted that respondent No.6 is not an operational creditor but is a financial creditor. It is submitted that the transaction is not sham and the respondent No.6 gave financial assistance of Rs.12,98,000,00 to various creditors of the corporate debtor based on which they have been supplying raw material to units of the corporate debtor.”*

- 2.3.12. From the above submissions as recorded in the order dated 05.11.2019, it appears that financial assistance provided by Saariga was for Rs.7,00,00,000 only and financial assistance provided by Sirsa was for Rs.12,98,00,000 only. Even these amounts should have been admitted by Mr. Arvind Kumar only when he was able to find the same in the books of account of the CD and was able to corroborate with the details of amount actually disbursed / goods purchased and supplied by the creditors under the guarantee agreements which were asked by email dated 12.03.2025 but in respect of which no reply was given by Mr. Arvind Kumar. However, Mr. Arvind Kumar admitted the maximum limit of guarantee amounts of Rs.43,24,10,139 (Rupees forty three crore twenty four lakh ten thousand one hundred and thirty nine only) and Rs.80,83,50,000 (Rupees eighty crore eighty three lakh fifty thousand only) of these parties instead of the amount actually disbursed/ good purchased/ supplied by them. Therefore, the DC notes that the RP has wrongly admitted the maximum amount along with interest which was agreed to be guaranteed as per guarantee deeds even when the same was not actually availed by the CD.
- 2.3.13. Mr. Arvind Kumar has attempted to obfuscate the real issue by conflating the concepts of invocation and availment of the corporate guarantee. Despite the DC's clear request to Mr. Arvind Kumar to specifically explain the terms of the agreements and the underlying transactions between the parties, Mr. Arvind Kumar instead focused primarily on citing two judicial precedents regarding acceptance of claim on invocation of guarantee while the real issue was determination of amounts actually availed by the CD. He failed to properly explain the substance of the agreements or the actual disbursement of funds in accordance with those agreements. It is pertinent to note that the query was not about whether the corporate guarantee had been invoked; rather, it concerned the nature of the agreements executed between the parties and the extent of the actual disbursement under the said agreements. Therefore, the reliance placed by Mr. Arvind Kumar on the cited judgments is misplaced.
- 2.3.14. The next submission of Mr. Arvind Kumar was that the issue regarding claims was already adjudicated by the AA and settled vide order dated 05.11.2019 and as per the legal opinion on the said order from Justice (Retd.) MM Kumar. The DC has gone through the order dated 05.11.2019. It is observed that the application was filed by Indian Overseas Bank and Corporation Bank under Section 60(5) of the Code, seeking following prayers: -

- a. *Remove the Respondents 2 - 7 from the Committee of Creditors wrongly constituted by the Respondent No. 1; and*
- b. *Cancel / nullify / set aside all or any of the resolutions passed by the aforesaid wrongly constituted Committee of Creditors;*

2.3.15. The applicants contended that the respondents no. 2 to 7 were admitted into the CoC based on corporate guarantees issued just before the initiation of CIRP and that these guarantees were in violation of Section 185 of the Companies Act, 2013. They alleged that these transactions were sham and were intended to dilute the genuine financial creditors' voting rights, arguing that respondents 2 to 7 were operational creditors and not financial creditors. The relevant extract is reproduced below: -

*5. It is submitted that the transactions have been effected to dilute the applicants' rights in the CoC and to include corporate debtor's agents/parties in the CoC; the corporate guarantees are issued pursuant to forward sales contract which means that the respondent Nos. 2 to 7 are operational creditors and not financial creditors; the transactions between the corporate debtor and respondents No. 2-7 are sham transactions; there is clause in the credit sanction intimation specifically debarring the corporate debtor from issuing corporate guarantees; the procedure provided for in Section 185(1) of the Companies Act, 2013 has not been followed. It has been prayed that the respondent Nos. 2-7 be removed from the CoC wrongly constituted by respondent No.1 and all or any of the resolutions passed by the wrongly constituted CoC be cancelled/nullified/set aside.*

2.3.16. During the proceedings before the AA, Mr. Arvind Kumar submitted that even if respondents Nos. 2 to 7 were removed from the CoC, the required voting share for the rejection of the resolution plan submitted by Saariga Constructions Private Limited and for passing the resolution for liquidation would still have been achieved. The RP pointed out that even with the reconstitution of the CoC excluding respondents 2 to 7, the majority votes (over the threshold of 66%) for both rejection of the resolution plan of Saariga Constructions Private Limited and for liquidation were in place. The relevant extract from the order of the AA dated 05.11.2019 is reproduced below: -

*"19. It is pleaded by the learned counsel for the RP that even in the scenario where the CoC is reconstituted after excluding respondents No.2-7, a vote of more than 66% of the voting share of the financial creditors is for the rejection of the resolution plan submitted by Saariga Constructions Pvt. Ltd. and for the liquidation of the corporate debtor. It is thereby submitted that CA No.233/2019 becomes infructuous. It is also submitted that the CIRP has been conducted according to the provisions of the Code and the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations)."*

The AA, therefore, found no merit in pursuing the application further and based on the submission made by the RP in its reply dismissed the application as infructuous. The relevant extract from the order is reproduced below: -

“21. Both the applicants i.e. Indian Overseas Bank and Corporation Bank have voted for the rejection of the resolution plan submitted by Saariga Constructions Pvt. Ltd. and Indian Overseas Bank has voted for the liquidation of the corporate debtor. As discussed above, in the scenario application No.233/2019 is allowed and the CoC reconstituted and with the presumption that the member of reconstituted CoC would vote in the same manner as the voting was already done, 91.16% votes are for rejection of the plan and 67.69% have voted for liquidation. The CIRP period of 270 days has already expired on 17.09.2019. We therefore, agree with the learned counsel for the RP that CA No.233/2019 has become infructuous.

22. In result thereof, CA No. 233/2019 is disposed of.”

- 2.3.17. The DC notes from the perusal of the order dated 05.11.2019 of the AA that prayer was not made regarding the reduction of claim amount but with respect to wrongly constituted CoC when a contention was raised that the RP wrongly admitted the claim of Respondent(s) as Financial Creditors even though they were operational creditors. So, in the aforesaid order, the issue of the correct amounts of claims was not decided and even the issue of correct composition of CoC was dismissed as infructuous by considering the submissions of RP that the change in voting share will not affect the outcome of voting. Further, the cited legal opinion was only with respect to the order dated 05.11.2019 and not on the fact whether the RP has rightly admitted the claim of Sirsa and Saariga in lieu of the Corporate Guarantee. Further, a legal opinion is an opinion and not a judicial pronouncement. Therefore, the order as well as legal opinion on the said order is not relevant in the present case.
- 2.3.18. The submission of Mr. Arvind Kumar that the complaint, based on which the Board had ordered the investigation, has also been filed before the AA in Company Petition No. 149/2019 and is pending adjudication, is not correct. The said application pertains only to the alleged incorporation of a subsidiary without the approval of the CoC and does not raise the issue of the corporate guarantee.
- 2.3.19. Mr. Arvind Kumar has further submitted that a similar complaint was filed before IIP-ICAI, which was dismissed after a detailed inquiry. The DC has perused the complaint, the reply, and the order of the IIP-ICAI dated 25.01.2024. It is observed that Mr. Arvind Kumar had submitted that a similar matter is *sub judice* before the AA, and based on this representation, the IIP-ICAI dismissed the complaint under the impression that the matter was already pending before the AA. However, this is not correct. The issue which is pending before the AA in Company Petition No. 149/2019 is regarding formation of a subsidiary company without CoC's approval and CA 233/2019 (as discussed above) which was decided by the AA *vide* order dated 05.11.2019 was with respect to wrong formation of CoC and not whether the claim was rightly admitted or not. Therefore, the issue before this DC is different from those before IIP-ICAI and the AA. Moreover, the decision of the IIP-ICAI *vide* order dated 25.01.2024 was not on merits. The relevant extract of the said order is reproduced as under: -

*2. The allegation raised in the grievance has been duly examined by the Grievance Redressal Committee (GRC) of IIIPI. After such consideration, based on the information on record, the GRC notes that the identical allegation is sub-judice before the Hon'ble NCLT. Since the matter is already sub-judice before the Hon'ble NCLT and outcome of which shall be binding on the respondent, GRC decides not to examine the merits of the allegation involved. The grievance is accordingly closed.*

2.3.20. It is clear from the order of GRC of the IIIPI-ICAI that they have not examined the merits of the allegations involved Thus the submission of Mr. Arvind Kumar that the issue has been dealt by the AA and the IIP-ICAI is not acceptable.

2.3.21. The DC notes that the claims were admitted by Mr. Arvind Kumar solely based on corporate guarantee deeds, without proper examination of the actual financial assistance disbursed to the principal borrower. The conduct of RP for admitting the claim for full amount under the guarantee facility even for the amount not availed raises serious concerns as the same will result in the benefits to these companies at the expense of the corporate debtor and the other creditors.

2.3.22. The DC further notes that an IP is entrusted with the duty of admitting only those claims that are legally valid and supported by the evidence after verification of the books and records of the CD. The DC notes that the admission of claim in the CIRP of the CD by Mr. Arvind Kumar without proper verification created doubts on the composition of the CoC and its decision.

2.3.23. The DC notes that an IP is obligated to verify the claims with due diligence and ensure that they are based on legally enforceable obligations rather than merely relying on the face of guarantee deeds without examining the underlying financial transactions. Mr. Arvind Kumar's failure to adhere to the statutory and regulatory obligations resulted in improper admission of claims, thereby compromising the integrity and fairness of the insolvency resolution process of the CD. In view of the above, the DC holds the contravention.

#### **2.4. Failure to take control and custody of the CD.**

2.4.1. It was observed that Mr. Sandeep Gupta being the suspended director of the CD, that was admitted into CIRP on 18.12.2018, formed a new company under the name of M/s Richa Krishna Construction Pvt. Ltd on 01.01.2019. Mr. Sandeep Gupta was the subscriber and signed both the MoA and AoA, on behalf of the CD, on 26.12.2018, i.e., after the initiation of CIRP and during the period of moratorium. Further, the CD had invested an amount of Rs.51,000 (Rupees fifty one thousand) for acquisition of stake in M/s Richa Krishna Construction Pvt Ltd. Mr. Arvind Kumar in his response to the IA, replied that Mr. Arvind Kumar had issued a cheque of Rs.51,000 (Rupees fifty one thousand) to acquire 51% stake in M/s. Richa Krishna Construction Pvt. Ltd. However, Mr. Arvind Kumar failed to provide the documentary evidence of the cheque being issued in his name, despite the request of the IA regarding the same.

2.4.2. Considering the above, it was observed that Mr. Arvind Kumar failed to take control of the CD and exercise the powers of board of directors of the CD. The Board held *prima facie* view that Mr. Arvind Kumar had contravened Sections 17(1)(a) and (b), 18(d), 208(2)(a) and (e) of the Code, Regulations 7(2)(a) and (h) of the IP Regulations, Clause 1, 2, 3, 5 and 14 of the Code of Conduct.

## 2.5. Submissions by Mr. Arvind Kumar.

2.5.1. Mr. Arvind Kumar submitted that a cheque for Rs.51,000 (Rupees fifty one thousand) was issued under his signature and was duly cleared on 25.01.2019 from CD's bank account, Kotak Mahindra Bank Ltd. account no. 6211415060. This transaction was reflected in the CD's bank statement. The investment appeared in the company's balance sheet under the heading Non-Current Investments.

2.5.2. Mr. Arvind Kumar further submitted that the process of incorporating subsidiary M/s Richa Krishna Constructions Pvt. Ltd. began well before the commencement of the CIRP. Mr. Sandeep Gupta was authorized to sign the documents as the process was initiated under his name, making it impossible to change. Any change in it would have cancelled the entire process of its formation.

2.5.3. Mr. Arvind Kumar submitted that the application for seeking approval of name of subsidiary was made on 05.12.2018. Further, the RoC approved the name of the company on 10.12.2018. Subsequently, the Article of Association (AoA) and Memorandum of Association (MoA) was filed before the RoC on 17.12.2018. All these processes were initiated before initiation of the CIRP of the CD, i.e., 18.12.2018.

2.5.4. The process of incorporation was required for the tender which was awarded to the CD. The condition number 2.1.2 of the tender document required that *"Where the Bidder is a Consortium, it shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 2013 or LLP Act 2008 (the "SPV"), to execute the Concession Agreement and implement the Project."*

2.5.5. Mr. Arvind Kumar further submitted that if he could have chosen to not form the company and this alternative course of action, of not forming the company would have resulted in forfeiting the tender and causing a substantial loss to the CD, which would have been contrary to the duties of the RP to preserve and protect the interests and assets of the CD.

2.5.6. Mr. Arvind Kumar submitted that the act of forming the company has resulted in substantial benefit to the CD and these shares have become a prized possession which all competitors of the company are trying to acquire. There was no loss to the CD or personal gain to the signatory from signing the documents. Mr. Sandeep Gupta, the signatory cooperated and, on his instructions, signed the documents relating to the formation of the company. The shares in the subsidiary are owned by the CD, constituting a valuable asset.

2.5.7. Mr. Arvind Kumar further submitted that as the IRP/RP, his duty was to protect the CD's interests and assets, which he fulfilled in accordance with the true spirit of the Code. The

asset created is a significant asset of the CD. As a shareholder, he exercise full control over the subsidiary, although it operates independently. The subsidiary's quarterly balance sheets are merged with those of the CD and uploaded on the BSE India Limited website.

2.5.8. Mr. Arvind Kumar further submitted that the issues related to the formation of the subsidiary and the investment of Rs.51,000 (Rupees fifty one thousand only) are currently pending adjudication before the AA, Chandigarh Bench. Mr. Arvind Kumar submitted that the custody and control of the assets and records of the CD were physically taken over on 22.12.2018 and is being fully exercised.

## 2.6. Analysis and findings of the DC.

2.6.1. The DC notes that after the initiation of the CIRP and the imposition of moratorium on 21.12.2018, Mr. Sandeep Gupta, the director of the suspended board of the CD, continued to incorporate a new entity, M/s Richa Krishna Construction Pvt. Ltd., which was started on 05.12.2018. The details of the process of incorporation as submitted by Mr. Arvind Kumar are as under: -

Date	Stage
05.12.2018	Application seeking approval of the name M/s Richa Krishna Construction Pvt Ltd was made
10.12.2018	The Registrar approved the name M/s Richa Krishna Construction Pvt Ltd of Company
17.12.2018	The Articles of Association (AOA) and Memorandum of Association (MOA) were filed with the Registrar of the companies.
18.12.2018	CIRP Commenced
21.12.2018	IRP appointed
01.01.2019	Company's incorporation certificate was issued

2.6.2. From the table as stated above, it is clear that the process of the incorporation was at the final stages and the condition number 2.1.2 of the tender document required that *"Where the Bidder is a Consortium, it shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 2013 or LLP Act 2008 (the "SPV"), to execute the Concession Agreement and implement the Project."*

From the above clause of tender, it appears that the process of incorporation of subsidiary was also the requirement for the tender which was awarded to the CD for development of multilevel parking cum commercial at old Police Station, Rohtak.

2.6.3. The DC further notes the submission of Mr. Arvind Kumar that the act of forming the company resulted in substantial benefit to the CD and these shares became a prized possession which all competitors of the company were trying to acquire. There was no loss to the CD or personal gain to the signatory from signing the documents. Mr. Sandeep Gupta, the signatory, cooperated and, on his instructions, signed the documents relating to

the formation of the subsidiary. The shares in the subsidiary are owned by the CD, constituting a valuable asset of the CD.

2.6.4. The DC further notes the submission of Mr. Arvind Kumar that the amount of Rs.51,000 (Rupees fifty one thousand) was issued via cheque signed by him and was cleared from the CD's bank account on 25.01.2019. Mr. Arvind Kumar further contended that the transaction was duly reflected in the CD's bank statements and recorded as a non-current investment in the CD's balance sheet. Mr. Arvind Kumar provided the copy of cheque in his additional written submissions, after the personal hearing and stated that the signature on the cheque was made by him. He asserted that the process of incorporating the subsidiary commenced well before the initiation of the CIRP, and since the incorporation process was started under Mr. Sandeep Gupta's name, any alteration in the signatory details at that stage would have resulted in the cancellation of the entire process, which, according to him, could have led to financial losses to the CD. Mr. Arvind Kumar further submitted that forming the subsidiary was a strategic decision taken in the best interest of the CD, as it created a valuable asset.

2.6.5. The DC further notes that the issue related to incorporation of M/s Richa Krishna Constructions Private Limited is *sub judice* before the AA in Company Petition No. 149/2019. The complainant also filed the complaint before IIP-ICAI raising similar concerns regarding the incorporation by suspended management without approval of CoC. The IIP-ICAI dismissed the complaint vide order dated 25.01.2024 stating that the issues raised are already sub judice before the AA and outcome of which shall be binding on them. The relevant extract of the said order are as under: -

*“The allegation raised in the grievance has been duly examined by the Grievance Redressal Committee (GRC) of IIIPI. After such consideration, based on the information on record, the GRC notes that the identical allegation is sub-judice before the Hon'ble NCLT. Since the matter is already sub-judice before the Hon'ble NCLT and outcome of which shall be binding on the respondent, GRC decides not to examine the merits of the allegation involved. The grievance is accordingly closed.”*

2.6.6. The DC is also of the similar view that since the matter is *sub judice* before the AA, Chandigarh Bench, the DC will refrain from making any finding. The Board will be at liberty to act as deemed appropriate, after the decision of the AA.

## **2.7. Non-cooperation with the IA.**

2.7.1. The IA vide email dated 11.01.2024 had sought the following information from Mr. Arvind Kumar:

- a) Outstanding amount (along with its breakup in terms of principal and interest) due to the six CoC members.
- b) Copy of the cheque amounting to Rs.51,000 (Rupees fifty one thousand) issued by Mr. Arvind Kumar to acquire 51% shares of M/s Richa Krishna Constructions Pvt Ltd.

2.7.2. However, Mr. Arvind Kumar failed to provide the requisite information.. By not extending the necessary cooperation to the IA, Mr. Arvind Kumar had *prima facie* contravened Regulation 8(4) of Investigation Regulations and Clause 19 of the Code of Conduct.

## 2.8. Submissions by Mr. Arvind Kumar.

2.8.1. Mr. Arvind Kumar submitted that during the course of the investigation, he maintained full cooperation and transparency with the Investigating Authority (IA). The details of all communications exchanged during the investigation are as follows:

Sr. No.	Date & Time	Particulars
1	29.05.2023, 2:46 PM	First email received from IA.
2	29.05.2023, 3:19 PM	Reply to email at (1) sent.
3	29.05.2023, 4:38 PM	Reply to email at (2) received from IA.
4	08.06.2023, 9:27 AM	Email sent to IA.
5	08.06.2023, 5:11 PM	Another email sent to IA.
6	08.06.2023, 5:42 PM	Reply to emails at (4) and (5) received from IA.
7	08.06.2023, 5:53 PM	Acknowledgment email sent to IA.
8	17.06.2023, 6:08 PM	Complete reply to the investigation notice sent to IA.
9	05.12.2023, 9:51 AM	Email received from IA.
10	05.12.2023, 9:51 AM	Reply to email at (9) sent to IA.
11	08.12.2023, 2:32 PM	Email received from IA.
12	08.12.2023, 3:38 PM	Email received from IA.
13	10.12.2023, 12:07 PM	Reply to email at (11) sent.
14	12.12.2023, 10:35 AM	Email received from IA.
15	12.12.2023, 10:58 AM	Reply to email at (14) sent.
16	21.12.2023, 6:11 PM	Email received from IA.
17	24.12.2023, 2:10 PM	Reply to email at (16) sent.
18	01.01.2024, 5:34 PM	Email received from IA.
19	08.01.2024, 2:22 PM	Email received from IA.
20	08.01.2024, 4:09 PM	Reply to emails at (18) and (19) sent.
21	09.01.2024, 6:05 PM	Email received from IA.
22	11.01.2024, 3:12 PM	Reply to email at (21) sent.
23	11.01.2024, 5:20 PM	Email received from IA.
24	12.01.2024, 11:55 AM	Reply to email at (23) sent.

2.8.2. Mr. Arvind Kumar submitted that every piece of information sought by the IA was duly provided. No further reminder or request for information was received from the IA after 11.01.2024. In the response sent on 12.01.2024, Mr. Arvind Kumar requested time until 17.01.2024, for submitting the required documents.

2.8.3. Mr. Arvind Kumar submitted that regarding the claim amounts of six creditors mentioned in the IA's email at 5:20 PM on 11.01.2024, complete claim forms of all financial creditors had already been submitted via email at 3:12 PM on the same day. It was clarified that the claims of these six creditors pertained to guarantees and did not include an interest component. Further, it was confirmed that these claims had been uploaded to the IBBI website and were also mentioned in:

- a) CA/233/2019
- b) The order of the AA dated 11.11.2019, in CA/233/2019
- c) Copies of the claim forms and supporting documents submitted as part of CA/233/2019.

2.8.4. Mr. Arvind Kumar submitted that all these documents were already submitted to the IA in the reply dated 17.06.2023. Mr. Arvind Kumar submitted that he accepted full responsibility for this oversight and for delay in response and assures that he learned from this experience. He further submitted that moving forward, he will meticulously document all communications with stakeholders to ensure clarity and avoid any miscommunication. Mr. Arvind Kumar emphasized that his professional career spans over 24 years, during which he always upheld the highest standards of respect, compliance, and adherence to the law.

## **2.9. Analysis and findings of the DC.**

2.9.1. Regulation 8 of the Inspection and Investigation Regulations states that:

*“8. Conduct of Investigation*

*... (4) It shall be the duty of the service provider and an associated person to produce before the Investigating Authority such records in his custody or control and furnish to the Investigating Authority such statements and information relating to its activities within such time as the Investigating Authority may require.....*

*(8) It shall be the duty of the service provider and an associated person to give to the Investigating Authority all assistance which the Investigating Authority may reasonably require in connection with the investigation”.*

2.9.2. Clause 19 of the Code of Conduct provides that:

*“19. An insolvency professional must provide all information and records as may be required by the Board or the insolvency professional agency with which he is enrolled.”*

2.9.3. The DC notes that the cooperation of the IP with the IA is not a mere formality but a critical obligation placed upon insolvency professionals to uphold the integrity and credibility of the insolvency framework. Timely and complete furnishing of documents and clarifications is essential for ensuring regulatory oversight and maintaining confidence in the system. While Mr. Arvind Kumar submitted that he had been responsive during the investigation and attributed the delay to an oversight, the fact remains that despite a specific and time-bound request, the documents in question were not submitted within the stipulated time and the required documents were not proactively furnished, thereby defeating the objective of timely compliance.

2.9.4. The DC notes that the conduct of Mr. Arvind Kumar in not extending the required assistance and providing the required documents constitutes non-cooperation and failure by him in discharge of his duties under the Code and Rules and Regulations. Though he has now provided the copy of cheque of Rs.51,000 (Rupees fifty one thousand) issued by him to acquire 51% shares of M/s Richa Krishna Constructions Pvt Ltd, however, he should have supplied those documents to the IA in the first instance. Moreover, he has not provided any reason for not providing the required documents to the IA which shows that he has been non-cooperative in investigation against him. In view of the aforesaid, the DC holds the contravention.

#### **Contravention under SCN-II.**

#### **2.10. Significant changes in ownership interest of the CD without CoC's approval.**

2.10.1. The audited financials of the CD for the year 2018-19 reveals that auditor has formed qualified opinion on the financial statements. The basis of such qualified opinion, *inter alia*, reveals the following transactions done by the CD:

*“Note 11 to the standalone financial statement, the Company has sold 72000 shares of Richa Infrastructure Limited to Mr. Subhash Gupta at a loss of Rs.71.28 lakhs (Note 25). The management has not provided any justification of the same.*

*The Richa Industries Limited has done the investment in Richa Krishna Constructions Private Limited on 19th Jan 2019 amounting to Rs.51,000/- and acquired 51% share of Richa Krishna Constructions Private Limited. The Richa Krishna Construction Private Limited has become the subsidiary company of Richa Industries Limited. The investment was made after the CIRP Proceedings, as such we are unable to comment on the purpose of such investment made by the company.”*

2.10.2. Section 28(1)(d) requires the RP to take prior approval of CoC to record any change in the ownership interest of the corporate debtor. In the present matter, Mr. Arvind Kumar has made significant changes in investments and ownership interest of the CD i.e. acquisition of shares in M/s Richa Krishna Constructions Private Limited and sale of shares in M/s Richa Infrastructure Limited, without approval of the CoC. Hence, Mr. Arvind Kumar had

*prima facie* violated the provisions of Sections 28(1)(d), 208(2)(a) and (e) of the Code, Regulation 7(2)(a) and (h) of the IP Regulations read with Clause 14 of Code of Conduct.

## **2.11. Submissions by Mr. Arvind Kumar.**

- 2.11.1. Mr. Arvind Kumar submitted that the CIRP of the CD commenced on 18.12.2018, however, the transfer of shares of M/s Richa Infrastructure took place much before the commencement of the CIRP, and the IRP/RP had no role in it. The said transaction was considered from the PUFÉ transaction point of view as sales to a related party. However, considering the documents available on record, the transaction could not be covered under Section 43, i.e. preferential transaction, nor under Section 45, i.e. undervalued transaction. The transfer was carried out after following the requisite procedure applicable at the relevant time. Therefore, no provision of the Code was violated, as mentioned in the notice.
- 2.11.2. Mr. Arvind Kumar submitted that the complete issue relating to investment in the shares of M/s Richa Krishna Construction Pvt Ltd. is pending before the AA in Company Petition No.149/2019. He further submitted that at the time of commencement of the CIRP, the CD had participated in a tender for the construction of two multilevel car parking in Rohtak, Haryana. The process of awarding the tender was going on at the commencement of the CIRP. One of the tender conditions was that a separate entity should be formed, and the CD must hold 51% of the shares in it for five years until the project's completion. The process of forming a separate entity was going on at the commencement of the CIRP of the CD. The tender was awarded to the CD, and the competitors launched a legal battle against the tender award.
- 2.11.3. Mr. Arvind Kumar further submitted that the legal issues relating to the award and the CD, including the fact that CIRP has commenced against the CD, were twice raised before the Hon'ble High Court of Punjab and Haryana and before the Hon'ble Supreme Court of India. In all the courts, the tender award was upheld, the legality of the awardee, i.e. M/s Richa Krishan Construction Pvt Ltd., was established, and no other illegal activity was committed. The same issue has been raised in complaint to the IIP-ICAI.
- 2.11.4. He submitted that after the complainant's failed attempts before the Hon'ble High Court and Hon'ble Supreme Court, the complainant came before the AA. He filed an application alleging that M/s Richa Krishna Constructions Private Limited, the Company to whom the tender for multilevel car parking was awarded, has been wrongly formed and should be liquidated. The application alleges that the RP could not have invested Rs.51,000 (Rupees fifty one thousand). The said application was filed after the CIRP of the CD was over, and the RP, on the directions of the CoC, had already filed the application before the AA seeking an order for the liquidation of the CD.
- 2.11.5. The Company's formation process was going on much before the commencement of the CIRP and was in the normal course of the CD's business activities. The only alternative to this was to abandon the Company's project. The chosen action has resulted in a huge benefit to the CD, and this investment of Rs.51,000 (Rupees fifty one thousand only) is worth more than Rs.2 crore at present, and all the competitors of the CD are eying this amount. The

transaction was carried out in the normal course of the business, like other transactions conducted during the CIRP. There was no change in any existing ownership interest of the CD. Hence, there was no requirement to get any prior approval from the CoC to continue the business activities.

2.11.6. Mr. Arvind Kumar additionally submitted that the Company M/s Richa Infrastructure Limited was incorporated in the year 2007 and 72,000 (Seventy- two thousand shares) were allotted to the CD (At that time, the CD was known as Richa Knits Limited). The said shares were allotted to Richa Knits Limited on 26.12.2007. The first annual return of M/s Richa Infrastructures Limited uploaded on the MCA portal is for the F.Y. ended on 31.03.2008. The said annual return shows the details of 72000 shares of M/s Richa Infrastructures Limited held by CD.

2.11.7. The CD sold these shares in April 2018. The transaction was scrutinized during CIRP for its reporting under the avoidance transaction. The facts that emerged on the scrutiny were as follows:

- The total issued capital of the investee company (M/s Richa Infrastructure Limited) was Rs.66,80,000 (Rupees sixty six lakhs eighty thousand) , and accumulated losses were Rs.12,18,49,449 (Rupees twelve crores eighteen thousand forty nine thousand four hundred and forty nine) as on 31.03.2019.
- The net worth of the Company Richa Infrastructure Limited was negative (Rs.11,51,69,449 (Rupees eleven crores fifty one lakhs sixty nine thousand four hundred and forty nine)).
- The Company M/s Richa Infrastructure Limited had defaulted on its loans from Haryana State Industrial Development Corporation (HSIDC), the lender had initiated recovery proceedings against the Company and its directors. (Cheque bouncing cases).
- The Company was not carrying any business and total revenues of the Company during 2017-18 and 2018-19 were Rs.2,22,354 (Rupees two lakhs twenty two thousand three hundred fifty four) and Rs.4,50,930 (Rupees four lakhs fifty thousand nine hundred and thirty). The bank borrowings of the Company as on 31.03.2018 was over Rs.29.51 crores.
- Before the sales of these shares, the CD obtained a valuation report that arrived at NIL/negative value of the investment.
- The Company has disclosed the facts regarding sales and loss in its financial statements.
- The transaction was not undervalued, as the valuation report and financial statements established that the entire equity capital value was zero.

## **2.12. Analysis and findings of the DC.**

### **Transfer of shares of M/s Richa Infrastructure Limited.**

2.12.1. The DC notes that the audited financial statements of the CD for the year 2018-19 indicate that 72,000 shares of M/s Richa Infrastructure Limited were sold to Mr. Subhash Gupta at a loss of Rs.71.28 lakhs. The facts corroborate with the balance sheet of M/s Richa

Infrastructure Limited where the shares held by the CD in M/s Richa Infrastructure Limited were sold. Mr. Arvind Kumar has provided valuation report dated 30.04.2018 where the fair value of the equity share of M/s Richa Infrastructure Limited having Face Value of Rs.10 each was assessed as Rs. (-)72.13 or Nil. The DC notes the submission of Mr. Arvind Kumar that the transfer of shares in M/s Richa Infrastructure Limited occurred before the initiation of CIRP on 18.12.2018 and, therefore, was beyond his control. It is further noted that transaction was not undervalued, as the valuation report and financial statements established that the entire equity capital value was zero. The DC accepts the submission of Mr. Arvind Kumar on this issue.

### **Investment in shares of M/s Richa Krishna Construction Pvt. Ltd.**

2.12.2. The DC notes that the issue related to incorporation of M/s Richa Krishna Constructions Private Limited is *sub judice* before the AA in Company Petition No. 149/2019. The complainant also filed the complaint before IIP-ICAI raising similar concerns regarding the incorporation by suspended management without approval of CoC. The IIP-ICAI dismissed the complaint vide order dated 25.01.2024 stating that the issues raised are already sub judice before the AA and outcome of which shall be binding on them. The relevant extract of the said order are as under: -

*The allegation raised in the grievance has been duly examined by the Grievance Redressal Committee (GRC) of IIP. After such consideration, based on the information on record, the GRC notes that the identical allegation is sub-judice before the Hon'ble NCLT. Since the matter is already sub-judice before the Hon'ble NCLT and outcome of which shall be binding on the respondent, GRC decides not to examine the merits of the allegation involved. The grievance is accordingly closed.*

The DC is also of the similar view that since the matter is sub-judice before the AA, Chandigarh Bench, the DC is not inclined to comment on the merits of the case. The Board will be at liberty to act as deemed appropriate after the decision of the AA in this case.

### **2.13. Raising interim finance without CoC's prior approval.**

2.13.1. Section 28(1)(a) of the Code requires the RP to take prior approval of the CoC in order to raise any interim finance in excess of the amount as may be decided by the committee in their meeting.

2.13.2. It has been observed that Mr. Arvind Kumar has raised interim finance of Rs.1 crore from Saariga (one of the CoC member) on 29.12.2018 without prior approval of the CoC.

2.13.3. Mr. Arvind Kumar in his reply submitted that the CoC approved the interim finance of Rs.15 crore in its first meeting held on 17.01.2019. Mr. Arvind Kumar only informed the CoC of raising the interim finance of Rs.1 crore from Saariga, however, did not seek prior approval of the CoC for the same.

2.13.4. Mr. Arvind Kumar also failed to provide the copy of interim finance agreement entered into with Saariga, despite the same being mentioned in the IA's notice dated 02.12.2024 and email dated 03.01.2025.

2.13.5. In view of the above, Mr. Arvind Kumar had *prima facie* violated the provisions of Sections 28(1)(a), 208(2)(a) and (e) of the Code, Regulation 7(2)(a) and (h) of the IP Regulations read with Clauses 14, 18 and 19 of Code of Conduct and Regulation 8(4) and 8(8) of the Investigation Regulations.

#### 2.14. Submissions by Mr. Arvind Kumar.

2.14.1. Mr. Arvind Kumar submitted that the CIRP of the CD commenced on 18.12.2018, and the interim finance was obtained from Sariga Constructions Pvt. Ltd. on 29.12.2018, whereas the CoC of the CD was constituted on 10.01.2019. Thus, the interim finance was raised much before the constitution of the CoC.

2.14.2. Mr. Arvind Kumar further submitted that the interim finance from Sariga Constructions Private Limited was obtained under Section 20(2)(c) of the Code, which provides that the interim resolution professional shall have the authority to raise interim finance, provided that no security interest shall be created over any encumbered property of the CD without the prior consent of the creditors whose debt is secured over such encumbered property. Furthermore, no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.

2.14.3. Mr. Arvind Kumar submitted that in light of the aforementioned provision, Mr. Arvind Kumar was well within his authority to raise interim finance before the constitution of the CoC. It is respectfully submitted that the provisions of Section 28 of the Code apply to the RP and not to the IRP.

2.14.4. Mr. Arvind Kumar further submitted that the necessity for obtaining interim finance arose due to the peculiar circumstances prevailing at the time of taking charge of the Corporate Debtor on 22.12.2018, which are as follows:-

- a) No funds were available with the IRP to manage the operations of the Corporate Debtor.
- b) The bank accounts were frozen, and the continuing banker, Indian Overseas Bank (IOB), refused to allow their operation by the IRP.
- c) Employees had not received their salaries for November, leading to resentment and disruption of operations.
- d) Production activities at the Kashipur unit had completely ceased.
- e) A workers' union was actively protesting and demanded complete salary payments before resuming work.
- f) There were threats to plant security, and damage to plant and machinery had already occurred.
- g) The textile unit required critical supplies, including coal and consumables, to resume operations.

h) The IRP's attempts to persuade the IOB to release funds for salary payments were unsuccessful.

2.14.5. Mr. Arvind Kumar submitted that, in light of the exigencies mentioned above, the IRP, in order to prevent the situation from deteriorating further, raised interim finance of Rs.2 crore from Sariga at an interest rate of 18% per annum. The lender, upon request of the IRP, immediately released Rs.1 crore, which enabled payment of salaries to striking workers and procurement of critical supplies. Mr. Arvind Kumar further submitted that had the interim finance not been raised, the only outcome would have been the shutdown of the factory, which would have resulted in:

- a) Significant loss of assets, including raw materials worth over Rs.30 crore.
- b) Irreversible damage to the textile unit due to improper shutdown procedures.
- c) Serious law-and-order issues as local villagers had also started supporting the workers' agitation.
- d) Loss of ongoing projects valued at approximately Rs.110.9 crore.
- e) Potentially rendering the resolution of the CD unviable.

2.14.6. Mr. Arvind Kumar further submitted that the exigences were discussed in the first CoC meeting under agenda 2 and 6.

2.14.7. Mr. Arvind Kumar further submitted that the interim finance was obtained transparently and in compliance with the provisions of the Code. The terms of the finance were documented in writing via email dated 29.12.2018 and were duly disclosed to the CoC, which has never raised any objections in the last 48 meetings. It is further submitted by Mr. Arvind Kumar that the requirement of Section 28 of the Code does not apply in this case as it pertains to the actions of the RP, whereas the IRP is expressly empowered under Section 20(2)(c) to raise interim finance. The actions of Mr. Arvind Kumar as IRP were in complete adherence to the statutory mandate of ensuring that the Corporate Debtor remains a going concern.

## 2.15. Analysis and findings of the DC.

2.15.1. Section 20(2)(c) of the Code is reproduced as under: -

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

*(1)...*

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

...

*(c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property:*

*Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.*

Further Section 28(1)(a) is reproduced as under: -

*28. Approval of committee of creditors for certain actions.*

*(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely: -*

*(a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;*

- 2.15.2. The DC notes that Section 20(2)(c) empowers the IRP to raise interim finance to maintain the Corporate Debtor as a going concern, and the restrictions under Section 28(1)(a) apply only to the RP post-CoC constitution. In the present case, the interim finance was raised on 29.12.2018, whereas the CoC of the CD was constituted on 10.01.2019.
- 2.15.3. Further as far as the non-submission of interim finance agreement is concerned, Mr. Arvind Kumar submitted that no formal agreement was entered into however the terms were agreed in writing through email dated 29.12.2018, which were fully disclosed to the CoC and no objection or issues was ever raised by any CoC member in last 48 meetings. In the said email dated 29.12.2018, it was stated that no specific charge will be created on the assets of the Corporate Debtor for securing the loan.
- 2.15.4. The DC further notes the submission of Mr. Arvind Kumar that the decision to raise interim finance was driven by multiple compelling factors, including the non-availability of funds, frozen bank accounts, unpaid employee salaries, halted production activities, labour unrest, security threats, and the urgent need for working capital to sustain operations. He submitted that raising interim finance was necessary to prevent severe operational and financial consequences, such as loss of assets, law-and-order issues, and the potential failure of the resolution process. Further, Mr. Arvind Kumar, submitted that the reason for taking interim finance includes the non-availability of funds, frozen bank accounts, unpaid employee salaries, halted production activities, labour unrest, security threats, and the urgent need for working capital to sustain operations. Mr. Arvind Kumar also submitted that raising interim finance was a necessity to prevent severe operational and financial consequences, including asset losses, law-and-order issues, and potential resolution failure. In view of the above, the DC accepts the submission of Mr. Arvind Kumar on this account.

**2.16. Delegating authority to suspended director without CoC's prior approval.**

2.16.1. Section 28(1)(h) of the Code requires the RP to take prior approval of the CoC for delegating its authority to any other person. It has been observed that in the 2<sup>nd</sup> CoC meeting held on 12.02.2019, Mr. Arvind Kumar informed that he has authorised Mr. Sandeep Gupta (suspended director) to lead the execution of ongoing projects at Mussoorie and Rourkela and ensure their earliest completion. It was noticed that instead of seeking prior approval of the CoC, Mr. Arvind Kumar only informed the CoC of his decision to authorise Mr. Sandeep Gupta to lead the execution of certain projects of the CD. Further, Mr. Arvind Kumar in his reply to IA stated that CBI conducted a search on all the business premises of the CD in December 2019 and advised Mr. Arvind Kumar to immediately take the records into his physical possession as the records could be tampered by the ex-management. Despite being aware of the potential risk of record tampering by the suspended management, Mr. Arvind Kumar continued to delegate the management of the CD's operations to them, and hence *prima facie* failed to take reasonable care in protecting the assets and records of the CD and informing the CoC in this regard.

2.16.2. Further, as observed from ledger of Mr. Sandeep Gupta provided by Mr. Arvind Kumar, certain payments made to Mr. Sandeep Gupta are in the nature of travelling and conveyance expenses and running and maintenance of vehicles. A total of Rs.21.61 lakh (Rs. Twenty one lakh sixty one thousand only) was booked as expenditure against such payments. On perusal of supporting documents in respect of these expenses, following irregularities and improprieties were observed:

- a. Insurance policy dated 09.06.2022 in respect of vehicle no. UK06U0001 was issued in the name of Mr. Sandeep Gupta, and not the CD.
- b. Hotel bill dated 10.11.2019 was in the name of Mr. Sandeep Gupta. However, the company name is mentioned as Saariga, one of the CoC member.

Hence, Mr. Arvind Kumar *prima facie* failed to ensure due diligence in processing such irregular payments to Mr. Sandeep Gupta.

2.16.3. Mr. Arvind Kumar also failed to submit the contract of employment of Mr. Sandeep Gupta so as to ascertain the duties assigned to the director of the suspended board of the CD and his eligibility to claim reimbursements of various expenses, despite the same being mentioned in the IA's notice dated 02.12.2024 and email dated 03.01.2025.

2.16.4. In view of the above, Mr. Arvind Kumar had *prima facie* violated the provisions of Sections 25(1), 28(1)(h), 208(2)(a) and (e) of the Code, Regulations 7(2)(a) and (h) of the IP Regulations read with Clauses 14, 18 and 19 of Code of Conduct and Regulation 8(4) and 8(8) of the Inspection and Investigation Regulations.

## 2.17. Submissions by Mr. Arvind Kumar.

- 2.17.1. Mr. Arvind Kumar submitted that no authority of the IRP or RP was ever delegated to any person during the CIRP. The CD continued its operations, and its employees and workers retained their positions. The IRP/RP could not have replaced the workers and employees or appointed new ones to execute ongoing projects and run the CD's operations. Those who worked were paid their wages and salaries wherever applicable.
- 2.17.2. Mr. Arvind Kumar submitted that at the commencement of the CIRP, the CD had the following ongoing projects which are tabulated as under: -

Sr.	Project Name
1.	Rocksand Support Services, Noida UP
2.	ACCIL, Bawal Haryana
3.	ACCIL-WaterTank, Bawal Haryana
4.	SPML, Kolkata West Bengal
5.	Power Grid Corporation of India Limited (PGCIL), Vadodara, Gujrat
6.	IRCON, Orissa (Construction of Locomotive Shed for Indian Railway) Orissa
7.	Badli Depo-117 Construction of Depot building for Delhi Metro Rail Corporation) New Delhi
8.	Aramuc Academic Press Pvt Ltd., Noida UP
9.	Satnam Anami Trust Noida UP
10.	Indian Railway and Max Out Construction Rail Over Bridge (ROB) Jhansi UP
11.	Multi-level Car Parking (Masoorie) Uttarakhand
12.	Jamui Bihar. Construction of 15000 Metric Tonn PEB Godown Bihar
13.	Munger Bihar. Construction of 10000 Metric Tonn PEB Godown Bihar
14.	Sekhipura Bihar. Construction of 5000 Metric Tonn PEB Godown Bihar
15.	Lakhisarai. Bihar. Construction of 5000 Metric Tonn PEB Godown Bihar
16.	Begusarai, Bihar. Construction of 5000 Metric Tonn PEB Godown Bihar

The entire PEB and EPC division of the CD resigned following the commencement of the CIRP, leaving the company without the necessary technical expertise to complete these projects. With only the suspended directors of the CD and a few marketing personnel remaining familiar with these projects, the situation was critical, particularly as many of these projects were of national and defence importance. In such a scenario, the directors of the suspended board were the only recourse for help, and after initial hostility, they cooperated with the IRP/RP once they were made aware of the legal provisions related to cooperation.

- 2.17.3. Mr. Arvind Kumar further submitted that the technical complexity of these projects exceeded his expertise. The IRP/RP could not have executed these projects without the cooperation of the CD's personnel. Therefore, as there were no employees left, the directors of the suspended board were asked to cooperate, and after initial resistance, they did so. However, no authority was delegated to the directors, and they only performed the work that would have otherwise been carried out by the employees.
- 2.17.4. Mr. Arvind Kumar further submitted that had the directors of the suspended board refused to cooperate, Mr. Arvind Kumar would have been forced to file applications under Section 19(2) of the Code seeking directions for cooperation. The directors of the suspended board, particularly Mr. Sandeep Gupta and Mr. Lavesh Kansal, were instrumental in ensuring the successful completion of all projects. Mr. Arvind Kumar was aware of the emerging situation, sought permission from the CoC during its first meeting to enter into related party transactions. The CoC authorized the RP to enter into such transactions in the regular course of business, including the continuation of employment contracts and sub-contract agreements during the CIRP.
- 2.17.5. Mr. Arvind Kumar submitted that services of the directors of suspended board were utilized as and when required for emergency situations. Some notable instances include the directors' assistance in controlling a potential boiler explosion at the textile unit, handling a major accident at the Multilevel Car Parking project in Mussoorie, diffusing a conflict following a worker's murder at the textile unit, assisting with the negotiation for an expanded scope in the IRCON project, pacifying striking workers at the PEB unit, and resolving issues with the workers and railways at the Jhansi project site. In each of these instances, the directors' guidance was crucial in ensuring the projects' continuation. No special remuneration was paid to them for their assistance, and they were reimbursed only for actual expenses incurred, with proof of payment required. The directors of the suspended board were accompanied by Mr. Arvind Kumar or other company employees in all interactions, meetings, and travels.
- 2.17.6. Mr. Arvind Kumar further submitted that no special agreements were made with any of the directors of the suspended board, and they were treated in the same manner as all other workers and employees who continued with the CD. Sariga Construction Company, a sub-contractor, was engaged in the execution of two projects, and the expenses incurred, except for regular visits, were charged to the sub-contractor. He submitted that Mr. Arvind Kumar being the IRP/RP of the CD had never delegated any authority to the directors of the suspended board, and there has been no dereliction of duties during the CIRP. The CD's textile unit factory continues to operate, providing employment to over 250 workers, and the PEB unit has been maintained in a ready state that can be operationalized within a day.

## **2.18. Analysis and findings of the DC.**

- 2.18.1. The DC notes that Section 28(1)(h) of the Code mandates the RP to obtain prior approval of the CoC before delegating any of his authority to another person. Mr. Arvind Kumar, in his submissions, has claimed that no authority was delegated to any person and that the

suspended directors only assisted as and when required. However, the DC notes from the minutes of the 2<sup>nd</sup> CoC meeting dated 12.02.2019 that Mr. Arvind Kumar had merely informed the CoC that he had authorised Mr. Sandeep Gupta to lead the execution of ongoing projects at Mussoorie and Rourkela. Merely informing the CoC after taking a decision does not amount to seeking prior approval, as required under Section 28(1)(h) of the Code. Despite being express provision in the Code, Mr. Arvind Kumar did not seek the CoC's prior consent, thereby violating the Section 28(1)(h) of the Code.

2.18.2. The DC further notes that IP has made submissions before the DC that the role of suspended director was only to provide assistance however, from the minutes of the 2<sup>nd</sup> CoC meeting it is clear that he has authorised suspended director (Mr. Sandeep Gupta) to lead the execution of ongoing projects at Mussoorie and Rourkela. The submissions made by the IP before the DC are not supported by any evidence. In view of the clear language used in the 2<sup>nd</sup> CoC meeting it cannot be argued that suspended director was merely providing assistance and not leading execution which amounts to delegation of authority.

2.18.3. The DC notes that Section 19(2) of the Code provides as follows:

*“(1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.”*

While Section 28(2)(d) of the Code provides as follows:

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

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

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

...

*(d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and”*

A combined reading of the above two provisions explains that while an IRP/RP can seek assistance of both personnel of the corporate debtor and its promoter but he can issue instructions only to personnel of the corporate debtor. Here he authorized the promoter of the CD to lead execution of two projects. Since the promoters of the CD are not the personnel of the CD, making the promoters to run the CD as a going concern is nothing less than delegation of his authority of running the CD as a going concern. The minutes of the 2<sup>nd</sup> CoC meeting clearly state that the promoter has been asked to lead the execution of the project and not to provide assistance as is being claimed by Mr. Arvind Kumar.

2.18.4. In such circumstances, the appropriate course would have been to either obtain CoC's prior approval for delegation of authority or appoint the professionals who have the technical knowhow of the business of the CD. Instead, the RP allowed the suspended director to lead the execution of projects without adhering to due process, thereby amounting to unauthorised delegation of authority. The submission that Mr. Arvind Kumar was compelled to involve the suspended management due to the resignation of technical personnel and the complexity of projects is not supported by evidence and even otherwise cannot override the statutory requirement. Further, the DC observes that Mr. Arvind Kumar has claimed that the assistance of the suspended directors was limited to emergency situations and that no remuneration was paid to them apart from reimbursement of actual expenses incurred. However, the DC notes that the insurance policy dated 09.06.2022 for vehicle number UK06U0001 was issued in the name of Mr. Sandeep Gupta and not in the name of the CD. Additionally, a hotel bill dated 10.11.2019 was found in Mr. Sandeep Gupta's name, with the company name mentioned as Sariga Constructions Private Limited thereby raising questions about the appropriateness and legitimacy of such reimbursements. These facts reflect a lack of due diligence and inadequate financial scrutiny on the part of the RP in processing these payments. These documents suggest a lack of due diligence in processing reimbursement claims, which is inconsistent with the standards expected from an IP. Therefore, the DC holds Mr. Arvind Kumar responsible for failing to exercise adequate scrutiny in verification of the bills raised. In view of the above, the DC holds the contravention.

**2.19. Non-cooperation with the IA.**

2.19.1. The IA issued the Investigation notice in the matter vide email dated 02.12.2024. Additional information was sought vide emails dated 17.12.2024 and 03.01.2025. Mr. Arvind Kumar provided part responses vide emails dated 12.12.2024 and 09.01.2025. However, despite multiple reminders, he failed to submit the information / documents as under:

<b>Sl.</b>	<b>Notice / Email dated</b>	<b>Relevant point</b>	<b>Nature of documents</b>
1.	02.12.2024	Point 11 of Annexure	Stock register, purchase invoices, ledgers and agreements in respect of certain transactions
2.	17.12.2024	All 7 points in the notice	Material inward entries and purchase invoices in respect of certain transactions and documents in support of cash settlements with debtors.
3.	03.01.2025	All 3 points in the email	Contracts / Agreements with Mr. Sandeep Gupta, Mr. Manish Gupta and Saariga.

- 2.19.2. Regulation 8(4) of the Investigation Regulations provides that it shall be the duty of the service provider and an associated person to produce before the IA such records in his custody or control and furnish to the IA such statements and information relating to its activities within such time as the Investigating Authority may require. Regulation 8(8) of the Investigation Regulations provides that it shall be the duty of the service provider and an associated person to give to the Investigating Authority all assistance which the IA may reasonably require in connection with the investigation.
- 2.19.3. In view of the above, Mr. Arvind Kumar *prima facie* violated the provisions of Section 208(2)(e) of the Code, Regulation 7(2)(a) and (h) of the IP Regulations read with Clauses 18 and 19 of Code of Conduct and Regulation 8(4) and 8(8) of the Investigation Regulations.

## 2.20. Submissions by Mr. Arvind Kumar.

- 2.20.1. Mr. Arvind Kumar submitted that the entire books for the six years since the commencement of the CIRP, recording every transaction entered by the CD, were provided. There was no transaction beyond these records. Additionally, all financial statements and complete bank statements since the commencement of the CIRP were submitted, covering the entire information sought, within the prescribed timelines. Every transaction, including purchases, sales, inward and outward movements, and expenses, was recorded and audited five times a year. With over 150,000 transactions recorded in day books spanning more than two thousand pages, the completeness of disclosures is evident. Furthermore, it is reiterated that no contract existed with Mr. Sandeep Gupta, Manish Gupta, or Sariga Construction Pvt Ltd. There has been no intentional disobedience of any directions from the inspecting authority, and the right to be heard is availed.
- 2.20.2. Mr. Arvind Kumar further submitted that the Notice of Investigation lacks jurisdiction and contravenes the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017. Regulation 3(4) mandates that a grievance or complaint must be filed within forty-five days of the occurrence of the cause of action, with only a limited condonation period of thirty days. The allegations raised in the present case pertain to events from several years ago and are clearly time-barred, rendering the complaint non-maintainable. Moreover, as per Regulation 7 of the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017, an investigation can only be ordered where a *prima facie* case exists. Since the complaint is itself time-barred, no *prima facie* case could have been made out, and therefore, no investigation should have been ordered.
- 2.20.3. Mr. Arvind Kumar further submitted that the complainant, Mr. Ravi Kant Garg, is not a stakeholder in the CD, and the allegations appear vexatious and motivated by malafide intent. These allegations are identical and repetitive to complaints previously filed by one Shivam Gupta, who has been engaged in a pattern of harassment. Mr. Arvind Kumar also submitted that the complainant does not meet the definition of "aggrieved" or "stakeholder" under the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017. The complainant has no direct interest in the insolvency proceedings of the CD and has never

raised any grievance before the RP. The filing of this complaint without first addressing grievances before the RP itself renders it non-maintainable.

## 2.21. Analysis and findings of the DC.

- 2.21.1. The DC notes that Regulation 8 read with Clause 19 of the Code of Conduct of the Inspection and Investigation Regulations as referred in paragraph 2.9.1 and 2.9.2 impose a clear duty on the insolvency professional to fully cooperate with the Investigating Authority and the Board. This includes producing records, furnishing information, and providing all assistance as required during the course of investigation.
- 2.21.2. Section 217 of the Code provides that *“Any person aggrieved by the functioning of an insolvency professional agency or insolvency professional or an information utility may file a complaint to the Board in such form, within such time and in such manner as may be specified.”* Thus, the term stakeholder under the Code cannot be strictly construed. The Regulation 2(j) of the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 also entitles any person having interest in the insolvency transaction under the Code as a ‘stakeholder’. Further, in terms of Section 218 of the Code read with Investigation Regulations, the Board is empowered to take into account any material made available to it, regarding any alleged misconduct by the service provider. It should be noted that the Board constituted under Section 188 of the Code is entrusted with the duty to ensure effective implementation of the provisions and objectives of the Code. Section 196 of the Code bestows various powers and functions on the Board, including regulation of working of service providers, carry out inspection and investigation on service providers and pass such orders as may be required for compliance of provisions of the Code and regulations, monitoring of performance of service providers, etc. The conduct of an IP in a CIRP has wide implications and affects the rights and interests of all the stakeholders. Therefore, to effectively discharge its statutorily mandated duties and functions, under the Code, the Board can very well examine the conduct of the IP whenever any information about the conduct related issue is received by the Board by any person. Accordingly, the DC finds no infirmity in the issuance of SCN by the Board based on material found during the course of investigation and detailed in the investigation report.
- 2.21.3. The DC further notes that the conduct of Mr. Arvind Kumar in not extending the required assistance and providing the required documents constitutes non-cooperation and failure by him in discharge of his duties under the Code and Rules and Regulations. Thus, the DC finds Mr. Arvind Kumar’s act as dereliction of his duty and contravening Inspection and Investigation Regulations and Code of Conduct. The charge of non-cooperation, further fructified by his act of non-cooperation with the IA, during investigation conducted vide Investigation notice dated 29.05.2023, wherein the IA had sought certain information from Mr. Arvind Kumar, however, Mr. Arvind Kumar failed to provide the given explanation or documents.

2.21.4. Moreover, he has not provided any reason for not providing the required documents to the IA which shows that he has been non-cooperative in investigation against him. In view of the above, the DC holds the contravention.

### 3. Order.

3.1. In view of the foregoing discussion, the SCN, reply to the SCN, oral and written submissions made by Mr. Arvind Kumar, the DC finds Mr. Arvind Kumar had failed to perform his duties provided under the Code read with Regulations made thereunder. The DC is of the view that Mr. Arvind Kumar made the following contraventions of the Code, and the Regulations made thereunder:-

3.1.1. Admission of excessive amount of claim.

3.1.2. Delegating authority to suspended director without CoC's prior approval including lack of due diligence in processing payments to Mr. Sandeep Gupta.

3.1.3. Non-cooperation with the IA.

3.2. 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 suspends the registration of Mr. Arvind Kumar (Registration No. IBBI/IPA-001/IP-P00178/2017-2018/10357) for a period of two years.

3.3. This Order shall come into force on expiry of 30 days from date of its issue.

3.4. A copy of this order shall be sent to the CoC/Stake Holders Consultation Committee (SCC) of all the corporate debtors in which Mr. Arvind Kumar is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Arvind Kumar.

3.5. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI. where Mr. Arvind Kumar is enrolled as a member for their further necessary action.

3.6. 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.

3.7. Accordingly, the show cause notices are 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: 11 June 2025

Place: New Delhi