

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 6988 of 2023**

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BHUPENDRA SINGH RAJPUT S/O NARAYAN SINGH RAJPUT
Versus
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

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Appearance:

MR PERCY C. KAVINA, SENIOR COUNSEL with MR.VISHAL J DAVE(6515)
for the Petitioner(s) No. 1
NIPUN SINGHVI(9653) for the Petitioner(s) No. 1
for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 20/04/2023

ORAL ORDER

Heard Mr. Percy C. Kavina, the learned Senior Counsel assisted by Mr. Vishal J. Dave, the learned advocate appearing for the writ-applicant.

By way of present writ-application the writ-applicant herein has challenged the order passed by the respondent Board dated 23.3.2023 vide No.IBBI/DC/156/2023 (Annexure-A).

Mr. Kavina, the learned Senior Counsel on the merits of the order impugned dated 23.3.2023 submitted that the impugned order is signed by one member only. It is against the provisions of Section 220(1) of the Insolvency and Bankruptcy Code, 2016. Placing reliance on the same it was submitted that the said provision clearly stipulates the Disciplinary Committee shall consist of “whole time members”

and hence it could be construed as comprising of atleast “two whole time members” whereas in the facts of the present case the coram comprises of a single member, hence submitted that the said order dated 23.3.2023 be stayed.

Issue notice making it returnable on 15.6.2023.

Considering the aforesaid submissions advanced by Mr. Kavina, the learned Senior Counsel and considering the order passed in the Special Civil Application No.13767 of 2022 dated 20.7.2022, the order impugned dated 23.3.2023 vide No.IBBI/DC/156/2023 (Annexure-A) is stayed till next returnable date.

Direct service is permitted.

K.K. SAIYED

(VAIBHAVI D. NANAVATI,J)

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/156/2023

23rd March 2023

ORDER

In the matter of Mr. Bhupendra Singh Narayan Singh Rajput, Insolvency Professional (IP) under Section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and Regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/INSP/2022/124/4172/642 dated 17th October 2022, issued to Mr. Bhupendra Singh Narayan Singh Rajput, resident of 309, Atma house, Opp Old RBI, Ashram Road, Ahmedabad, Gujarat - 380009 (herein referred as “IP”) who is a Professional Member of the Indian Institute of Insolvency Professional of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-001/IP-P00397/2017-18/10715.

1. Background

- 1.1 In respect of Rang Super Shopping Private Limited (herein referred as “CD-1”), the National Company Law Tribunal, Kolkata Bench (AA-1) vide its Order dated 27th August 2019, admitted the application under Section 7 of the Code for corporate insolvency resolution process (CIRP) of the CD-1 and appointed Mr. Bhupendra Singh Narayan Singh Rajput as Interim Resolution Professional. He was later confirmed as Resolution Professional and further as liquidator.
- 1.2 In respect of Pro Eyetechnik Private Limited (herein referred as “CD-2”), the National Company Law Tribunal, Ahmedabad Bench (AA-2) vide its Order dated 26th August 2019, admitted the application under Section 9 of the Code for CIRP of the CD-2 and appointed Mr. Bhupendra Singh Narayan Singh Rajput as Interim Resolution Professional. He was later confirmed as Resolution Professional.
- 1.3 The IBBI in exercise of its powers under Section 218(1) of the Insolvency and Bankruptcy Code, 2016 (Code), read with Regulations 3(2) and 3(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations), appointed the Inspecting Authority (IA) to conduct inspection of the IP Mr. Bhupendra Singh Narayan Singh Rajput.
- 1.4 The IA submitted draft inspection report (DIR) dated 20th June 2022 to Mr. Rajput and sought his comments on the same. The IP submitted reply to the DIR on 17th July 2022. The IA submitted inspection report to Board on 26th July 2022.
- 1.5 The IBBI on 17th October 2022 had issued the SCN to Mr. Rajput, based on findings in the inspection report in respect of his role as IRP/RP/Liquidator in the CIRP of above-mentioned CDs. The SCN alleged contraventions of several provisions of the Insolvency

and Bankruptcy Code, 2016 (Code), IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (CIRP Regulations), the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and the Code of Conduct under regulation 7(2) thereof. The reply of Mr. Rajput on the SCN was received by the Board on 17th November 2022.

- 1.6 The SCN, response of Mr. Rajput to the SCN and other material available on record were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Rajput availed an opportunity of personal hearing before the DC on 14th February 2023. Mr. Rajput submitted further written submissions on 16th February 2023.

2. Alleged Contraventions, Submissions of IP and Findings

The contraventions alleged in the SCN and submissions by Mr. Rajput are summarized as follows:

I. In the matter of CIRP of Rang Super Shopping Private Limited (CD-1)

2.1 Failure to take control and custody of the assets of the CD-1

- 2.1.1 Section 35 (1)(b) of the Code provides that it shall be the duty of the liquidator to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor.

- 2.1.2 The Board noted that liquidation order was passed by Hon'ble NCLT Kolkata Bench (AA) on 18th March 2020 in CP (IB) No. 1097/KB/2018. Further, in the 4th meeting of Stakeholders Consultation Committee (SCC) held on 27th December 2021, it was resolved to file the petition before AA-1 against the suspended directors for not giving cooperation in the liquidation process and also not providing the books of accounts/statutory register and relevant documents which was required to complete the liquidation process and also to appoint the forensic auditor.

- 2.1.3 Therefore, the Board arrived at the conclusion that almost 20 months into the liquidation, the assets and important records of the CD-1 were still not in control or custody of the IP acting as liquidator. Although, the IP was also the interim resolution professional and resolution professional in the CIRP of the CD-1. Further, the IP did not file any application for non-cooperation prior to SCC resolving to do so in its 4th meeting.

- 2.1.4 Accordingly, the Board was of the *prima facie* opinion that the IP had, *inter alia*, violated section 25(2)(a) and section 35(1)(b) of the Code read with clauses 1, 2, 5, 13 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations.

Submissions by the IP

- 2.1.5 The IP in his reply has provided the timelines of various actions undertaken by him, after liquidation order was passed by the AA-1, for getting control and custody of the assets of the CD-1. The IP has further attributed the delay in filing of application of non-cooperation by the promoters and erstwhile directors, after the same was resolved by the SCC, on the advocate appointed by him for filing the application.

Findings of the DC

2.1.6 Section 35 of the Code provides as follows:

35. Powers and duties of liquidator. - (1) *Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: -*

(a)

(b) *to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;”*

2.1.7 Section 25 of the Code provides as follows:

“25. Duties of resolution professional. - (1) *It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*

(2) *For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -*

(a) *take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;”*

2.1.8 On perusal of the submissions of the IP, the DC notes that the IP has not provided any reason for the delay in taking control and custody of the assets during the corporate insolvency resolution process when the IP was interim resolution professional as well as resolution professional. Further, on perusal of the timelines provided by the IP in his reply, the DC observes that the order for liquidation of CD-1 was passed by the AA-1 on 18th March 2020. Further, the liquidator sent the documents to advocate, for the purpose of filing application, on 24th December 2021 and the application was finally filed on 29th March 2022.

2.1.9 Therefore, the DC is of the view that the delay on part of advocate, as averred by the IP, can only be attributed to around three months. However, the same does not explain the reason for total delay of more than 20 months during the liquidation period and cause of non-filing of application during the CIRP period.

2.1.10 Accordingly, the DC finds IP to be in violation of section 25(2)(a) and section 35(1)(b) of the Code read with clauses 1, 2, 5, 13 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct) as alleged in the SCN.

2.2 Failure to open bank account and deposit the funds of the CD in the said account:

2.2.1 Regulations 41(1) and 41(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Regulations) provides that the liquidator shall open a bank account in the name of the corporate debtor for the receipt of all moneys due to the corporate debtor and the liquidator shall deposit in that bank account all moneys, including cheques and demand drafts received by him as the liquidator of the corporate

debtor, and the realizations of each day shall be deposited into the bank account without any deduction not later than the next working day.

- 2.2.2 However, it was noted that the IP failed to deposit money received from daily cash collection of the shop of the CD-1 in the liquidation account. The IP had admitted in his reply to the Inspecting Authority that a bank account of CD-1 undergoing liquidation proceedings was opened, but the money was not being deposited as daily cash collection of the shop of CD-1 was very less.
- 2.2.3 Accordingly, the Board was of the *prima facie* opinion that the IP had, *inter alia*, violated regulations 41(1) and 41(2) of Liquidation Regulations read with clauses 1, 2, 13 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations.

Submissions by the IP

- 2.2.4 The IP submitted that the liquidator had opened the liquidation account. However, the revenue generated from the shop was not enough to meet even the daily staff expenses. Therefore, the liquidator decided to discontinue the same as after meeting the daily staff expenses nothing was left to deposit in liquidation account. He further orally submitted during the personal hearing that the receipt of money in excess of rupees five thousand is only required to be submitted in the liquidation account.

Findings of the DC

- 2.2.5 Regulation 41 of the Liquidation Regulations provides as follows:

“41. All money to be paid in to bank account.

(1) The liquidator shall open a bank account in the name of the corporate debtor followed by the words ‘in liquidation’, in a scheduled bank, for the receipt of all moneys due to the corporate debtor.

(2) The liquidator shall deposit in the bank account opened under sub-regulation (1) all moneys, including cheques and demand drafts received by him as the liquidator of the corporate debtor, and the realizations of each day shall be deposited into the bank account without any deduction not later than the next working day.

(3) The liquidator may maintain a cash of one lakh rupees or such higher amount as may be permitted by the Adjudicating Authority to meet liquidation costs.

(4) All payments out of the account by the liquidator above five thousand rupees shall be made by cheques drawn or online banking transactions against the bank account.”

- 2.2.6 The DC observes that opening of liquidation account is a mandatory requirement for IP during the liquidation proceedings. The plea of the IP with respect to the daily expense of CD-1 being greater than the revenue generated cannot be accepted as a ground for discontinuation of liquidation account.

- 2.2.7 Further, as averred by the IP that only amount received in excess of rupees five thousand is required to be deposited in the liquidation account is wrong understanding of regulation 41 of the Liquidation Regulations. It is pertinent to note that regulation 41(3) states that the payment of amount greater than five thousand rupees has to be made through cheque or online banking transactions.
- 2.2.8 Accordingly, the DC finds that IP is in violation of regulations 41(1) and 41(2) of Liquidation Regulations read with clauses 1, 2, 13 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations.

II. In the matter of CIRP of Pro Eyetech Elektrotekniks Private Limited (CD-2)

2.3 Non- adherence of Model timeline for corporate insolvency resolution process

- 2.3.1 Section 12(1) of the Code provides that CIRP shall be completed within a period one hundred and eighty days from the date of admission of the application to initiate CIRP. Further, section 12(2) of the Code provides that an insolvency professional shall file an application to AA to extend the period of CIRP beyond one hundred and eighty days on the prior approval from Committee of Creditors (CoC).
- 2.3.2 The Board observed that CIRP in the aforesaid matter was initiated vide order dated 26th August 2019 by AA-2. In the 7th CoC meeting held on 10th September 2020 the resolution for liquidation was passed by CoC unanimously. However, the IP filed application for liquidation before AA-2 only on 19th October 2020. This delay in filing the liquidation application was also noted by AA-2 in its order dated 7th January 2021.
- 2.3.3 Accordingly, the Board was of the *prima facie* opinion that the IP had, *inter alia*, violated Section 12(1), 17(2)(e) of the Code read with Clause 1, 2, 13 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations.

Submissions by the IP

- 2.3.4 The IP has submitted the timelines of conduct of CIRP of CD-2. He has further stated that the AA-2 in its order dated 7th January 2021 had condoned the delay in filing the application for liquidation of CD-2.
- 2.3.5 The IP has further stated that vide order dated 2nd November 2020 the NCLAT in Company Appeal (AT)(Insolvency) No. 942 of 2020 had directed that the period commencing from 25th March 2020 till 15th September 2020 shall be excluded while computing the period of 180 days for the purpose of bringing the CIRP to its logical conclusion.

Findings of the DC

- 2.3.6 On perusal of the afore-mentioned Hon'ble NCLAT Order dated 2nd November 2020 and taking into account the COVID pandemic, the DC takes a lenient view on the delay caused by the IP in the CIRP.

2.4 Delay in appointment of valuers

- 2.4.1 Section 25(2)(d) of the Code cast duty upon the IP to appoint accountants, legal or other professionals in the manner specified by the Board. Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) provides that the resolution professional shall, within seven days of his appointment but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the CD in accordance with regulation 35 of CIRP Regulations.
- 2.4.2 The Board observed that the valuers were appointed only on 12th March 2020 i.e with a delay of 147 days. Appointing valuers with such a substantial delay has eventually delayed the entire CIRP process, thus defeating the essence of the Code which envisages that the various timelines for completing each step in the CIRP process.
- 2.4.3 Accordingly, the Board was of the prima facie opinion that the IP had, inter alia, violated section 25(2)(d) of the Code, regulation 27 of CIRP Regulations and Clause 3, 5 and 13 of Code of Conduct as specified in the First Schedule of IP Regulations.

Submissions by the IP

- 2.4.4 The IP has submitted that in the first CoC meeting, the IP had put the agenda for the appointment of valuers where it was decided that the IP is authorised to appoint two registered valuer and confirmation may be taken in next CoC. However, due to talks of settlement of CD-2 with the financial and operational creditors, the appointment of valuers was postponed till third CoC meeting held on 18th February 2020. The IP appointed valuers only when the extension to CIRP was granted by AA-2 on 3rd March 2020.

Findings of the DC

- 2.4.5 The CIRP against CD-2 was admitted by AA-2 on 26th August 2019. The Code envisages time bound insolvency resolution mechanism to maximise the value of the assets. To achieve this purpose the regulations framed under the Code provides timelines for every activity which should be adhered to by the Insolvency Professionals to achieve the objectives of the Code.
- 2.4.6 The DC finds the reasoning provided by the IP with respect to the ongoing settlement process by the CD as not acceptable for delay in appointment of valuers. The IP is duty bound to conduct the CIRP in the time bound manner.
- 2.4.7 Accordingly, the DC finds that IP is in violation of section 25(2)(d) of the Code, regulation 27 of CIRP Regulations and Clause 3, 5 and 13 of Code of Conduct as specified in the First Schedule of IP Regulations.

2.5 Delay in publishing Form G

- 2.5.1 Regulation 36A of CIRP Regulations provides that Resolution Professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule at

the earliest but not later than seventy-fifth day from the Insolvency Commencement Date.

- 2.5.2 The Board, however observed that invitation of Expression of Interest in the CIRP of the CD was published on 22nd June 2020 i.e. with a delay of 221 days.
- 2.5.3 Accordingly, the Board was of the prima facie opinion that the IP had, inter alia, violated regulation 36A of CIRP Regulations read with clauses 5 and 13 of the Code of Conduct as specified in the First Schedule of IP Regulations.

Submissions by the IP

- 2.5.4 The IP has submitted that he had prepared Information Memorandum earlier in due course and the same was circulated to the CoC members through email at the time of publishing the Form G.
- 2.5.5 The IP further submitted that after appointment of valuer on 12th March 2020 lockdown was imposed so the valuation report was received on 06th June 2020. Thereafter the IP called CoC on 16th June 2020 and in this meeting the Form G was approved and finally published on 22nd June 2020.

Findings of the DC

- 2.5.6 The CIRP against CD-2 was admitted on 26th August 2019. Going by the timelines prescribed under regulation 36A of the CIRP Regulations, the Form G should have been published latest by 10th November 2019. The lockdown due to COVID was imposed only in March 2020. Therefore, the arguments of the IP for delay in publishing Form G cannot be accepted.
- 2.5.7 Therefore, the DC finds that IP is in violation of regulation 36A of CIRP Regulations read with clauses 5 and 13 of the Code of Conduct as specified in the First Schedule of IP Regulations

3. ORDER

- 3.1. In view of the foregoing, it is evident that there was avoidable delay on the part of Mr. Rajput in filing application under Section 19(2) of the Code for non-cooperation of directors/promoters of CD, in taking control of assets of CD, in appointing registered valuers and in publication of Form G and he did not operate the liquidation account opened in accordance with the Liquidation Regulations.
- 3.2. Therefore, the DC, in exercise of the powers conferred under section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016, hereby suspends the registration of Mr. Bhupendra Singh Narayan Singh Rajput (IBBI Registration No. IBBI/IPA-001/IP-P00397/2017-18/10715) for a period of one year.
- 3.3. This Order shall come into force on expiry of 30 days from the date of its issue.

- 3.4. A copy of this order shall be sent to the Committee of Creditors of all the Corporate Debtors in which Mr. Bhupendra Singh Narayan Singh Rajput (IBBI Registration No. IBBI/IPA-001/IP-P00397/2017-18/10715) is providing his services, if any.
- 3.5. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Bhupendra Singh Narayan Singh Rajput is enrolled as a member.
- 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 notice is disposed of.

Sd/-

(Jayanti Prasad)

Whole Time Member, IBBI

Dated: 23rd March 2023

Place: New Delhi