

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/251/2024

12 November 2024

Order

This Order disposes of the Show Cause Notice (SCN) No. IBBI/C/2023/00963/27/832 dated 18.01.2024 issued to Mr. Jitender Arora, who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00305/2017-18/10863 and is a Professional Member of the ICSI Institute of Insolvency Professionals, having residential address recorded with IBBI as 209-211, second floor, H-17/18, Laxmi Palace, Laxmi Nagar, Delhi, 110092.

1. Background

- 1.1 The NCLT, Principal Bench, Delhi (AA) vide order dated 30.05.2018, admitted application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) filed by Mr. Tek Chand, Financial Creditor (FC) for initiating Corporate Insolvency Resolution Process (CIRP) of M/s Premia Projects Limited (Corporate Debtor/CD). Mr. Alok Kumar Kuchhal was appointed as Interim Resolution Professional (IRP) of the CD. Later, Mr. Jitender Arora was appointed as Resolution Professional (RP) of the CD vide order dated 26.03.2019 of the AA.
- 1.2 The Board was in receipt of a complaint dated 08.08.2023 in Form A, against the conduct of Mr. Jitender Arora in the CIRP of the CD. In view of such complaint, the IBBI in exercise of its powers conferred under Section 218 of the Code, read with Regulations 7(1) and 7(2) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Investigation Regulations), appointed an Investigating Authority (IA) to conduct investigation of conduct of Mr. Jitender Arora in the matter of CIRP of the CD. Accordingly, notice for investigation under Regulation 8(1) of the Investigation Regulations was issued to Mr. Jitender Arora on 18.08.2023. Mr. Jitender Arora replied to the notice for investigation vide letter dated 28.08.2023. Mr. Jitender Arora submitted further information to the IA *vide* emails dated 06.10.2023, 10.10.2023 and 12.10.2023.
- 1.3 Thereafter, based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the Board formed a prima facie opinion that Mr. Jitender Arora had contravened provisions of the Code and Regulations made thereunder and issued the SCN to him on 18.01.2024. Mr. Jitender Arora replied to the SCN on 01.02.2024.
- 1.4 The SCN and reply of Mr. Jitender Arora to the SCN were referred to this Disciplinary Committee (DC) for disposal in accordance with the Code and Regulations made thereunder. Mr. Jitender Arora availed the opportunity of personal hearing through virtual mode before the DC on 19.09.2024.

1.5 The DC has considered the SCN, the reply to SCN, oral and written submissions of Mr. Jitender Arora, and proceeds to dispose of the SCN.

2. Alleged Contraventions, Submissions, Analysis and Findings

The contravention alleged in the SCN and Mr. Jitender Arora's written and oral submissions thereof are summarized as follows:

Contravention: Non-inclusion of agenda for replacement of the RP

- 2.1 The CD was admitted into the CIRP vide order dated 30.05.2018 of the AA and Mr. Jitender Arora was confirmed as the RP vide order dated 26.03.2019 of the AA. The Committee of Creditors (CoC) in this matter consisted of only creditors in a class. On perusal of the extract of requisition dated 31.12.2020 mentioned in the minutes of 13th meeting of the CoC dated 01.07.2023, it was observed that 219 financial creditors (in class) vide email dated 14.10.2020 requested Mr. Jitender Arora to place an agenda for his replacement before the CoC without any pre-requisite condition.
- 2.2 The creditors in a class (representing 38% voting share) in email dated 31.12.2020 stated that Mr. Jitender Arora was delaying the matter and has unnecessarily and intentionally intertwined the agenda for replacement of Resolution Professional with fees and expenses, which unfortunately led to rejection of the said resolution by the CoC members of the Premia Projects Ltd. *Vide* the said email, it was requested to call meeting of the CoC within 7 days and put forth the agenda for his replacement with the IP, Mr. Jalaj Kumar Grover.
- 2.3 It was, however, observed that despite the request for presenting the agenda for his replacement having been made by requisite voting share of the CoC members, Mr. Jitender Arora failed to call the meeting of the CoC within the requested 7 days time. It was further noted that the Authorized Representative (AR) in the CIRP of the CD submitted his resignation on 14.01.2021, however, he was relieved of his assignment vide order dated 16.11.2021 of the AA. Hence, there was no justification for not conducting the meeting of CoC for discussion and voting on resolution for replacement of RP till the AR was relieved of his assignment vide order dated 16.11.2021.
- 2.4 Also, the 9th meeting of the CoC was conducted on 15.07.2022 after appointment of the new AR. In the said CoC meeting, Mr. Jitender Arora did not include the agenda for his replacement, as requested by creditors in a class (representing 38% voting share) *vide* email dated 31.12.2020 on the ground that it contained mis-statements and false information. In terms of Section 27 of the Code read with Regulation 18(3) of the CIRP Regulations, Mr. Jitender Arora was duty bound to include the agenda for his replacement in the meeting of the CoC held after receipt of such requests from the CoC members with required voting share.

- 2.5 It was further observed that even in the 10th meeting of the CoC held on 27.12.2022, the agenda for his replacement was not included by Mr. Jitender Arora. Subsequently, in the 11th CoC meeting, Mr. Jitender Arora concluded that the requisition dated 31.12.2020 sent by FCs had become infructuous in light of his response dated 04.01.2021. On perusal of the email dated 04.01.2021 of Mr. Jitender Arora, it was noted that Mr. Jitender Arora indeed intertwined the issue of his replacement with fees and other matter which was not in conformity with the provisions of the Code and Regulations made thereunder as far as replacement of the RP is concerned.
- 2.6 Thereafter, in the 13th meeting of the COC also, Mr. Jitender Arora did not place agenda for his replacement before the CoC on the same ground that it contained wrong and false information. The said agenda for replacement of Mr. Jitender Arora was finally placed for voting before the CoC in its 15th meeting held on 24.08.2023.
- 2.7 It was, thus, noted that Mr. Jitender Arora had delayed placing agenda for his replacement before the CoC on one pretext or other for more than two and half years without any adequate justification. An RP is mandated under Section 27 of the Code read with Regulation 18 (prior to amendment in 2022) and with Regulation 18(3) after amendment to place agenda for his replacement before the CoC as soon as possible when request is made by members of the committee representing at least thirty-three per cent of the voting rights. The conduct exhibited on part of Mr. Jitender Arora as observed above not only shows lethargic procrastination but also unwarranted obstinacy and unbecoming professionalism.
- 2.8 In view of the above, the Board held the prima facie view that Mr. Jitender Arora had contravened Section 24(8) of the Code, Regulation 18 of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (CIRP Regulations) as it stood before 09.02.2022, Regulation 18(3) of the CIRP Regulations as substituted on 09.02.2022 read with Clause 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Submissions by Mr. Jitender Arora.

- 2.9 It was submitted by Mr. Jitender Arora that the liquidation application for the CD was admitted by Hon'ble Delhi High Court on 12.03.2018 and insolvency proceedings against the CD commenced on 30.05.2018. The complainants/ Premia Welfare Society (PWS) who filed application for initiating liquidation proceedings against the CD, belongs to the one group of homebuyers and the homebuyers whose application under Code was admitted belonged to another group. All these homebuyers were divided into different groups and these different groups do not have cordial relationship with each other which was the main cause of the disputes between these groups of the financial creditors in class.
- 2.10 Mr. Jitender Arora further submitted that in the 8th COC meeting held on 18.11.2020, the proposal for removal of the RP was placed, however the Code does not provide for the

removal of RP because the office of RP cannot be left vacant. But on the strong recommendation of the AR, the resolution was put for voting. The CoC voted for rejection of the proposal of removal of the RP. Mr. Jitender Arora submitted that the said requisition dated 31.12.2020 contained wrong, false and misleading statements and he requested to delete all the wrong, false and misleading statements from the requisition so that proper requisition can be placed in the CoC meeting.

- 2.11 Mr. Jitender Arora further submitted that the application filed by the AR for relieving him from duties was listed on 16.11.2021 wherein the AA relieved him from his duties and directed the RP to convene the meeting of homebuyers for appointment of a new AR. The order recorded that the AR resigned due to distress. The homebuyers meeting was held on 04.12.2021 and the IA for appointment of the AR *vide* IA 6033/ 2021 was filed before the AA, wherein *vide* order dated 17.05.2022, the AA directed the RP to re-hold the meeting as the physical presence of the homebuyers was very low. The RP reconvened the meeting on 18.06.2022. The AA appointed the new AR *vide* order dated 01.07.2022.
- 2.12 Mr. Jitender Arora submitted that the complainant lodged a complaint on 28.02.2021, containing various types of contravention including issues related to remuneration of RP. The IBBI asked the RP to provide all the documents and information for reviewing the alleged contraventions. After satisfaction of records, the complaint was closed. Later, the request for review was filed by the complainant. The IBBI appointed an Investigation officer who inspected the matter thoroughly, and such report was submitted to the Board. He later on, came to know that the complaint was disposed-off and after reviewing such IR, the Board did not issue any show cause notice or warning etc. Thus, it is further submitted that the IBBI did not apply the principle of Constructive Res-Judicata as the same dispute/ complaint was already reviewed in the former complaint which has been closed without finding any misconduct on part of the RP. Further, the complainant also filed an IA 419/2020, alleging misconduct on behalf of the RP during the CIRP. The AA dismissed the IA, without pointing any misconduct on his part. Two different authorities (IBBI and NCLT) already carried out the Quasi-Judicial proceeding against the RP, for the same alleged misconduct and complaints instituted by same complainant and none of the Authority found any misconduct on the part of the RP and had not issued any direction, order or warning against him. In the 11th CoC meeting, Mr. Jitender Arora again requested for deletion of false allegations in such requisition and highlighted dismissal of earlier complaint made by Mr. Dharmendra Verma before IBBI.
- 2.13 Pursuant to the undertaking submitted with the AA, Mr. Jitender Arora placed agenda for replacement of the RP for voting before CoC in the 15th CoC meeting held on 24.08.2023. Mr. Praveen Agarwal, AR voted against the proposal stating that the desired percentage of 66% for removal was not achieved as per the e-voting conducted for the homebuyers. The AR submitted that resolution was not passed pursuant to provisions of Section 28 of the Code. Thereafter, Dharmendra Verma filed an IA 4928-2023 with the AA against the decision

of the AR in regard to voting held for replacement of the RP. The said application is pending with the AA. Mr. Dharmendra Verma also filed an IA 5479-2023 with the prayer that all the proceeding held after the 15th CoC be declared as null and void and the same is also pending before the AA. It was submitted that the decision of AR was based on his personal wisdom and there was no connivance between the RP and the AR. The RP was bound to accept the decision as the AR clearly stated in the results, that the requirement of 66% voting was not achieved as per the requirement of Section 27 of the Code.

- 2.14 Mr. Jitender Arora submitted that the AR and the RP are two different entities, and both were working for the CIRP carrying their duties and role as envisaged under the Code and have done their duties independently without any coercion or connivance. The allegation levelled that the RP and the AR have acted in connivance is fully denied. It was submitted that the RP did not contravene the provisions of the Regulation 18 of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations 2016 (as amended from time to time). Mr. Jitender Arora stated that he always put all the necessary agendas for discussion in compliance of the provisions of the Code and Regulation from time to time.

Analysis and Findings.

- 2.15 The DC notes that in the previous complaint dated 23.02.2021 made against Mr. Jitender Arora, the issue of not placing the agenda by Mr. Jitender Arora before the CoC for his replacement had been examined by IBBI and the same was dealt keeping in view of the IA No. 419 of 2021, on the same issue being pending with the AA. The said IA was dismissed by the AA vide order dated 21.02.2022. The present complaint is dated 08.08.2023 on the new facts and events subsequent to the order passed by the AA on 21.02.2022 in IA no. 419 of 2021. In the present complaint, filed on 08.08.2023, it was alleged that Mr. Jitender Arora did not place the agenda before the CoC for his replacement and reference was made to the CoC meetings held subsequent to the order of the AA dated 21.02.2022, dismissing the IA No. 419 of 2021. Hence the DC does not find any infirmity in the matter having been investigated and issue of the present SCN by the Board, on the basis of finding in the investigation report.
- 2.16 The DC observed that the financial creditors in this matter consisted of only creditors in class i.e. homebuyers. The attendees of CoC meeting were only Mr. Jitender Arora as the RP and the AR as representative of homebuyers. The DC notes the contention of Mr. Jitender Arora that after appointment of the new AR on 01.07.2022, the matter of his replacement was taken into consideration in the 9th CoC meeting held on 15.07.2022. On perusal of minutes of the 9th CoC meeting, it is observed that paragraph 8 of minutes titled as “*To discuss on proposal received from Financial Creditors on 31.12.2020.*” clearly recorded that communication dated 31.12.2020 has been received but the same cannot be placed before the CoC for consideration as it contains mis-statement, false information as thus, requested to be deleted. The DC notes that the matter of replacement of Mr. Jitender Arora was not taken up before

the CoC in the 9th CoC meeting. The DC further notes that the said issue of replacement of Mr. Jitender Arora was further not taken up in the 10th, 11th, and the 12th CoC meetings dated 27.12.2022, 22.03.2023 and 06.05.2023 respectively. It was only during the 13th CoC meeting on 01.07.2023 when this issue was included as item No. 10 with title as “*To consider and discuss the suggestion received by AR from CoC members holding 38% voting shares as Financial Creditor in Class (Home Buyers)*”. The DC notes that although detailed para wise reply was recorded in the minutes of the 13th CoC meeting by Mr. Jitender Arora, but again he ended up concluding that such requisition dated 31.12.2020 contains false information and cannot be allowed to put for voting. Again, no discussion was brought up in the 14th CoC meeting. It was only in the 15th CoC meeting when such matter was brought up before the CoC for discussion and voting. Mr. Jitender Arora was only trying to find one or other escape route again and again to avoid putting up such proposal for his replacement. The DC is of considered view that Mr. Jitender Arora failed to adhere to the timelines provided under the Code and despite the CoC meetings held on 15.07.2022, 27.12.2022, 22.03.2023 and 01.07.2023 i.e. 9th, 10th, 11th and 13th CoC meeting, agenda for his replacement was put forward at much later stage in the 15th CoC meeting held on 24.08.2023.

2.17 Mr. Jitender Arora also stated that such requisition was duly considered in the 15th CoC meeting wherein such resolution for his replacement failed. In the 15th CoC meeting, the AR did not vote in favour of the resolution for replacement of Mr. Jitender Arora on the ground that the requirement of 66% of the voting share was not achieved. It is to be noted that since more than fifty percent of the creditors in a class had voted for replacement of Mr. Jitender Arora, the AR should have voted in favour of the resolution for replacement of, Mr. Jitender Arora considering it as voice of 100%, since CoC was comprised of only creditors in class i.e. homebuyers. In this regard, Section 25A(3A) of the Code provides as under -:

“Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote”

2.18 Since the action of the AR was not in accordance with Section 25A(3A) of the Code, Mr. Jitender Arora should have taken note of the same and guided the AR for proper voting.

2.19 The DC observes that Mr. Jitender Arora has not only delayed the proposal of homebuyers for replacement of RP but also failed to act in accordance with the directions of the members of the CoC. It may be noted that the RP is key professional and critical pillar under the Code to conduct the entire resolution process ensuring the credibility, transparency and objectivity in the process. It is duty of the RP to conduct the entire insolvency process with due diligence and utmost care in order to establish integrity, independence, objectivity, and professional competence in order to ensure the credibility of both the process and the profession.

2.20 In view of the above, the DC finds that Mr. Jitender Arora has failed to act per the provisions of the Code and Regulations framed thereunder. Hence the DC holds the contravention.

3. Order

3.1 In view of the forgoing discussion, SCN, reply to the SCN, oral and written submission made by Mr. Jitender Arora, the DC finds that Mr. Jitender Arora had contravened Section 24(8) of the Code, Regulation 18 of the CIRP Regulations as it stood before 09.02.2022 Regulation 18(3) of the CIRP Regulations as substituted on 09.02.2022 read with Clause 14 of the Code of Conduct as specified in the First Schedule of IP Regulations.

3.2 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. Jitender Arora for a period of one year.

3.3 This Order shall come into force after 30 days from the date of issuance of this order.

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. Jitender Arora is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Jitender Arora.

3.5 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Jitender Arora is enrolled as a member.

3.6 A copy of this Order shall also be forwarded to the Registrar of the Mumbai Bench of the National Company Law Tribunal.

3.7 Accordingly, the show cause notice is disposed of.

Dated: 12 November 2024
Place: New Delhi

Sd/-
(Jayanti Prasad)
Whole Time Member
Insolvency and Bankruptcy Board of India