

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/80/2021

09th December, 2021

ORDER

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

1. Background

- 1.1 This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/INSP/2020/51/337/2258 dated 2nd August, 2021 issued to Mr. Jaswant Singh, 70/15, 2nd Floor, Ashok Nagar, New Delhi-110018 who is a Professional Member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00372/2017-2018/11135.
- 1.2 Mr. Jaswant Singh was appointed as an Interim Resolution Professional (IRP) in corporate insolvency resolution process (CIRP) of Fourth Dimension Solutions Limited, the Corporate Debtor (CD) *vide* order dated 25th July, 2019 passed by Hon'ble National Company Law Tribunal, New Delhi Bench-II, the Adjudicating Authority (AA). Mr. Jaswant Singh was replaced by Ms. Pooja Bahry as Resolution Professional (RP) *vide* order dated 27th November, 2019.
- 1.3 The IBBI in exercise of its power under section 218 of the Insolvency and Bankruptcy Code, 2016 (Code) read with the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations), appointed an Inspecting Authority (IA) *vide* order dated 27th October, 2020 to conduct the inspection of Mr. Jaswant Singh, on having reasonable grounds to believe that Mr. Singh has contravened provisions of the Code, Regulations, and directions issued thereunder. The inspection report was submitted to IBBI on 5th April, 2021.
- 1.4 The IBBI had issued the SCN on 2nd August, 2021 to Mr. Jaswant Singh based on findings in the inspection report in respect of his role as an IRP in the CIRP of Fourth Dimension Solutions Limited. The IBBI was of the *prima facie* opinion that sufficient cause exists to take action against Mr. Singh in terms of section 220 of the Code read with regulations 11 and 12 of the Inspection Regulations and regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations). The SCN alleged contravention of sections 18(1)(b), 208(2)(a) and (e) of the Code, regulation 7(2)(a) and

(h) of the IP Regulations, 13(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 (CIRP Regulations) and IBBI Circular No. IP/003/2018 dated 3rd January, 2018. Mr. Jaswant Singh replied to the SCN *vide* letter dated 19th August, 2021.

- 1.5 The IBBI referred the SCN, Mr. Singh's reply and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Singh availed an opportunity of personal virtual hearing before the DC on 7th October, 2021, wherein he reiterated the submissions made in his written reply and made a few additional submissions. Thereafter, Mr. Singh submitted some additional documents *vide* email dated 12th October, 2021 in support of his submissions made during the personal hearing.
2. The contraventions alleged in the SCN and the submissions by Mr. Singh in his reply are summarized as follows.

2.1 **Alleged Contravention**

In pursuant to regulation 13(1) of the CIRP Regulations, it is the duty of the IP to receive, collate and verify every claim received by him. Further, the IBBI Circular no. IP/003/2018 dated 3rd January, 2018 clarifies that the IP shall not outsource any of its duties and responsibilities under the Code. It has been observed that *vide* letter dated 2nd August, 2019, an independent professional, Kumar Mukesh & Associates, Company Secretaries, has been appointed by Mr. Singh for verifications of claims. The professional raised an invoice dated 23rd September, 2019, for an amount of Rs. 85,000/- for providing professional services with respect to verification of claims received. This claim verification expense amounting to Rs. 85,000/- has been separately put under CIRP cost in the minutes of 1st meeting of Committee of Creditors (CoC) dated 1st October, 2019. The aforesaid acts shows that Mr. Singh has outsourced his responsibility to verify the claims received to an independent professional.

2.2 **Submission**

- 2.2.1 Mr. Jaswant Singh submitted that the CD was a listed entity and as per its Audited consolidated Balance Sheet as on 31st March, 2019, it had a turnover of approximately Rs. 122 crores and for FY ended on 31st March, 2018 (immediate previous year) approximately Rs. 527 crores and these financial records reflected that it was a big size running organisation having large numbers of stakeholders. Therefore, Mr. Singh felt that there might be huge quantum of claims and respective documents submitted by the stakeholders during the CIRP.
- 2.2.2 Mr. Singh submitted that the duty of IRP/RP is to receive, collate and verify claims. He submitted that it is very difficult for a single person to collect documents from claimants, take prints out of huge volumes of documents received over emails, prepare lists of documents, cross check claim amounts, calculations of interest amount etc., and to

complete the process within the prescribed times. Therefore, in order to discharge the duties of IRP and to complete the process of CIRP in timely manner with best interest of stakeholders, Mr. Singh sought the assistance from an independent professional for the following activities:

- i. Collection of claim documents and information,
- ii. Printing of claim documents as received over email by Mr. Singh,
- iii. Preparation of list of claims,
- iv. Preparation of list of documents submitted in support of claims,
- v. Collection of physical claim documents from operations creditors,
- vi. Checking of calculations as mentioned in the claim forms.

2.2.3 Mr. Singh also submitted that his intention was not to delegate his duties to others but only to take assistance in aforesaid activities and the independent professional had no other role in verification process. In this regard, he submitted that the appointment letter dated 3rd August, 2019 issued to Kumar Mukesh & Associates stated that *"This is in relation to your letter dated 03.08.2019, it is hereby informed that you have been appointed as Independent Professional to help the undersigned for verification of claims as per proposal dated 02.08.2019 in CIRP process of Fourth Dimension Solutions Ltd w.e.f. 03rd August 2019"* and the proposal letter dated 2nd August, 2019 also mentioned that *"we wish to appoint you as an Independent Professional to help the undersigned for verification of claim in CIRP process of Fourth Dimension Solutions Ltd."*

2.2.4 Mr. Singh submitted that he had taken proper care and due diligence while discharging his duties and had not outsourced any of his duties and responsibilities, and also submitted that he had personally checked, confirmed and verified all the claim documents during his tenure. Therefore, Mr. Singh submitted that there was no contravention of section 18(1)(b) of the Code, regulation 13 (1) of the CIRP Regulations and IBBI Circular no. IP/003/2018 dated 3rd January, 2018.

2.2.5 During the personal hearing, Mr. Jaswant Singh reiterated the submissions made in the reply to SCN and also stated that the email/ correspondence from the claimants were done on his behalf and the independent professional was employed to oversee the paperwork. He had submitted copies of multiple emails to reflect his direct involvement in verification of claims. Mr. Singh further submitted that his intention was to do good to the claims received and there was a time constraint while performing his role as an IP.

3. **Analysis and Findings:**

3.1 An IRP / RP is appointed by the AA and is duty bound to conduct CIRP with fairness and diligence and must maintain absolute independence in discharge of his statutory duties without any external influences. The entire resolution process of a CD is dependent on the IRP/ RP who is primarily responsible for efficiently and effectively steer it towards resolution. It is due to this reason that the role of the IRP/ RP becomes paramount during CIRP. Further, it is the duty of the IP to follow the guidelines and Code of Conduct laid

down under the Code and the Regulations made thereunder so as to legitimately meet the interests of all stakeholders. As per the section 18(1)(b) of the Code, it is the duty of the IP to receive and collate all the claims which reads as under:

“18. Duties of interim resolution professional. –

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

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

- 3.2 An IP is also obligated under section 208(2)(a) and (e) of the Code to take reasonable care and diligence while performing his duties. Section 208(2)(a) and (e) reads as follows:

“208. Functions and obligations of insolvency professionals.-

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

(a) to take reasonable care and diligence while performing his duties;

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

- 3.3 The regulation 13(1) of the CIRP Regulations provides for verification of claims:

“13. Verification of claims.

(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

- 3.4 Further, the IBBI Circular no. IP/003/2018 dated 3rd January, 2018 relating to “*Insolvency professional not to outsource his responsibilities*” clarifies that:

“3. It is hereby directed that an insolvency resolution professional shall not outsource any of his duties and responsibilities under the Code.”

- 3.5 In the present case, the DC notes that the offer letter issued by Mr. Singh to Kumar Mukesh & Associates, dated 2nd August, 2019, *inter alia*, stated as follows:

“We wish to appoint you as an independent professional to help the undersigned for verification of claim in CIRP Process of Fourth Dimension Solutions Ltd. and seek your consent.

The Scope of Work includes:

- *Verification of claim of Financial Creditors*
- *Verification of claim of Operational Creditors*
- *Verification of claim of Employees/workmen”*

- 3.6 The DC further notes that the acceptance letter of Kumar Mukesh & Associates dated 3rd

August, 2019 stated as follows:

“I accept your offer to work as an Independent Professional for verification of claim of Fourth Dimension Solutions Ltd. undergoing CIRP on following terms and conditions:-

1. Our professional fees for the verification of claims are as follows:

- For claim upto 100-INR 40,000/- (Rupees Forty thousand only).*
- For claim upto 250-INR 85,000/- (Rupees Eighty five thousand only).*
- For claim upto 400-INR 1,20,000/- (Rupees One Lakh Twenty thousand only).”*

3.7 The DC further takes note of the appointment letter dated 3rd August, 2019 which stated that, *“It is hereby informed that you have been appointed as Independent Professional to help the undersigned for verification of claim as per the proposal dated 01.08.2019 in CIRP Process of Fourth Dimension Solutions Ltd.”*

3.8 The DC also notes that in the 1st meeting of CoC dated 1st October, 2019, the expense of Kumar Mukesh & Associates amounting to Rs. 85,000/- is charged separately for verification of claim in the item no. 6 of the voting resolution and which was approved by the CoC.

3.9 In view of the above, the DC finds that the Code in explicit terms casts duty of verification of claims on the IRP/RP. Further, the IBBI Circular no. IP/003/2018 dated 3rd January, 2018 lays down specific guidance in this regard. Therefore, the DC finds that Mr. Singh had outsourced his primary duty in engaging an independent professional for verification of claims which is clear from the terms of engagement letter defining the scope of work, despite the clarification provided by IBBI in the Circular no. IP/003/2018 dated 3rd January, 2018. Further, he included the expense of Rs. 85,000/- incurred in verification of claims separately in the CIRP cost which is in contravention of provisions of section 18(1)(g) of the Code read with regulation 13(1) of the CIRP Regulations and section 208(2)(a) and (e) of the Code.

4. **Order:**

4.1 In view of the above, the DC, in exercise of the powers conferred under section 220 of the Code read with regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016, and regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017, hereby issues the following directions:

4.1.1 Mr. Jaswant Singh shall pay a penalty equal to the fee paid to Kumar Mukesh & Associates and directs him to deposit the penalty amount by a crossed demand draft payable in favour of the “Insolvency and Bankruptcy Board of India” within 45 days from the date of issue of this Order. The Board in turn shall deposit the penalty amount in the Consolidated Fund of India.

4.1.2 This Order shall come into force immediately, considering the time given to Mr. Singh to deposit the penalty amount.

- 4.2 A copy of this Order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Jaswant Singh is enrolled as a member.
- 4.3 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, for information.
5. Accordingly, the Show Cause Notice is disposed of.

-sd-

(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Dated: 09th December, 2021
Place: New Delhi