

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/185/2023

20th July 2023

ORDER

In the matter of Mr. Sanjay Kumar Singh, 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 Professional) 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. COMP-11011/32/2022-IBBI/734/504 dated 11th April 2023, issued to Mr. Sanjay Kumar Singh, resident of 003, Windsor Grand Forte, Plot No. 76, Sigma-IV, Greater Noida, Uttar Pradesh - 201310 (herein referred as “IP”) who is a Professional Member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-002/IP-N00188/2017-18/10505.

1. Background

- 1.1 The Hon’ble National Company Law Tribunal, Indore Bench (AA) vide its Order dated 17.03.2022, admitted the application under Section 7 of the Code for corporate insolvency resolution process (CIRP) of JSM Devcons Private Limited (Corporate Debtor/CD). Mr. Sanjay Kumar Singh was appointed as Interim Resolution Professional (IRP) vide the above-said Order and was later also confirmed as Resolution Professional (RP) for the CD.
- 1.2 The IBBI in exercise of its powers under Section 218 of the Code, read with Regulation 7(2) and 7(3) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to conduct investigation in the CIRP of the CD.
- 1.3 Based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the IBBI issued the SCN to the IP on 11th April 2023. The SCN alleged contraventions of several provisions of the Code, the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (CIRP Regulations) and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations). The reply of the IP on the SCN was received by the Board on 10.06.2023.
- 1.4 The SCN, response of the IP to the SCN and other materials available on record were referred to the Disciplinary Committee (DC) for disposal of the SCN. The IP availed an opportunity of personal hearing before the DC on 14.06.2023.

2. Alleged Contraventions, Submissions of IP and Findings

The contraventions alleged in the SCN, submissions by the IP and findings of the DC are summarized as follows:

3. Charging of fee for Verification of Claims

- 3.1 It was observed from the minutes of the 1st meeting of the Committee of Creditors (CoC) held on 18.05.2022 that a sum of Rs. 1,24,500/- for verification of claims at the rate of Rs.

500 per claim for 249 claims was charged. It was further observed from minutes of 2nd CoC meeting held on 13.07.2022 that a sum of Rs. 1,87,000/- for verification of claims at the rate of Rs. 500 per claim for 374 claims was charged and made part of the CIRP cost. The SCN alleged that the IP had been charging fees for verification of claims in addition to the professional fees being charged by him to act as IRP/RP in the instant matter. The IP is duty bound to verify and collate claims in terms of section 18(1)(b) of the Code, however charging fees for verifying claims over and above the professional fees being charged by him is not in consonance with section 18(1)(b) of the Code and regulation 13(1) of the CIRP Regulations. Charging claim verification fees apart from the professional fees increases the CIRP cost and thereby burdens the debt ridden CD further with additional cost.

- 3.2 In view of the above, the Board was of the *prima facie* view that the IP has *inter alia* violated sections 18(1)(b), 208(2)(a) and 208(2)(e) of the Code, regulation 13(1) of the CIRP Regulations, and regulation 7(2)(a) and 7(2)(h) of the IP Regulations alongwith Clause 1, 2, 14 and 25 and 26 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Submissions by the IP

- 3.3 The IP in his response to SCN has submitted that the fee for verification of claim was not a fee separately charged by the IRP for verification of claims apart from the professional fee. A total amount of Rs. 1,87,000/- for verification of 374 claims has been charged. The IP has further stated that he did not outsource any of his duties to anyone. The cost incurred are in the nature of office expenses. It is not imperative on the IRP/RP to incur office expenses of several types out of the professional fees charged by him. Also, as per the format of cost disclosure provided under form CIRP 2, the cost of claim verification has to be shown separately that is why it has been mentioned separately and the same was proposed for approval of the CoC, but the resolutions were rejected. The cost shown as cost of verification of the claim is not related to any third party rather the same is cost of the IRP and his team, which is office expenses.
- 3.4 In view of the above, the IRP has pleaded that there is no violation of section 18(1)(b). All the email correspondences in respect of verification of the claims have been made by the IRP personally from his designated email id or the email id specifically created for CIRP of the corporate debtor and intimated in the public announcement made on 31.03.2022.

Findings of the DC

- 3.5 It is observed from the minutes of the second CoC meeting held on 13.07.2022, that a fee of Rs. 2,50,000/- was ratified by the CoC to be payable to the IRP. Further, in the same meeting, a separate resolution was ratified by the CoC approving additional expenses of Rs. 3,17,627/- incurred by him as an IRP, which includes expense of Rs. 1,87,000/- for verification of claims at the rate of Rs. 500/- each for 374 claims.
- 3.6 The duty casted upon an IRP in terms of regulation 13(1) of the CIRP Regulations read with section 18(1)(b) to collate and verify the claims against the CD, is one of the many duties entrusted on the IP to ensure effective outcomes under the Code. In the instant case, the CoC had already approved a consolidated fee of IRP for performing the functions entrusted upon him under the Code and regulations, including verification of claims. Therefore, the DC is of the view that the IP has wrongly presented to the CoC, an additional expense of verification of claim which is his inherent duty as an IRP. Accordingly, the DC finds the IP in contravention of section 208(2)(a) and 208(2)(e) of the Code and regulation 7(2)(a) and 7(2)(h) of the IP Regulations alongwith Clause 1, 2, 14 and 25 and 26 of the Code of Conduct.

4. Delay in filing report certifying for constitution of CoC

- 4.1 The Board observed that as per the public announcement, the last date for submission of claim was 14.04.2022 and therefore the claim verification should have been completed on or before 21.04.2022 and report certifying constitution of the CoC should have been filed before AA by 23.04.2022. However, the report certifying constitution of CoC was filed before AA on 03.05.2022. Accordingly, there was a delay of 10 days in filing the report certifying constitution of CoC before AA. The Board therefore was of the *prima facie* view that the IP has *inter-alia* violated regulation 17(1) of the CIRP Regulations and clauses 1, 2, 13 and 14 of the Code of Conduct.

Submissions by the IP

- 4.2 The IP has submitted that the delay was not intentional, and the IRP was trying his best to complete the constitution of CoC within the time frame provided under the Code and regulations made thereunder. The IP further submitted that in terms of public notice, the homebuyers filed their claims, but the documents were not organized, there were several claims under which the copy of allotments, receipts of payments, details of the bank accounts from where the payments were made were not provided. The claimants had filed claims mentioning that they had paid crores of rupees in cash. The IRP was not able to verify the cash payments as there was no books of account available. The IRP asked them to furnish proof of payments so that their claims may be verified and provided them chance to file their replies. Due to voluminous and unorganized documents, which lead to delay in certifying constitution of CoC. Therefore, the IP pleads that the delay was not due to failure in discharge of duty by IRP, rather he wanted to get the documents and clarifications from maximum number of homebuyers, so that they may be included in the CoC.

Findings of the DC

- 4.3 The DC accepts the submission of the IP.

5. Delay in conducting the 1st CoC meeting

- 5.1 The Board observed that the report certifying constitution of CoC was filed before AA on 03.05.2022. Accordingly, 1st CoC meeting was to be conducted on or before 10.5.2022. However, first CoC meeting was conducted by the RP on 18.05.2022. Accordingly, the Board observed that there was a delay of 8 days in conducting the 1st CoC meeting. Therefore, the Board was of the *prima facie* view that the IP has *inter-alia* violated regulation 17(2) of the CIRP Regulations and clauses 1, 2, 13 and 14 of the Code of Conduct.

Submissions by the IP

- 5.2 The IP has submitted that the delay in constitution of the CoC was caused due to delay in verification and also due to the reasons as mentioned in para 2.2.5 above. He has further submitted that as soon as the verification got completed, the CoC was constituted on 02.05.2022 and the report was filed with AA on 3.05.2022. Also, since the CD was in the real estate business, he had provided an option for appointment of Authorized representative of the homebuyers for their representation in the CoC. The application for appointment of Authorized Representative was also filed separately on 03.05.2022 which was heard and allowed on 06.05.2022. Due to delay in communication of order, the notice of first meeting of the CoC was issued on 13.05.2022 and the meeting was conducted on 18.05.2022.

Findings of the DC

- 5.3 Regulation 17(2) of the CIRP Regulations mandates the Interim Resolution Professional to hold the first meeting of the CoC within seven days of filing the report. The report was

filed by the IP on 03.05.2022 and the meeting was conducted on 18.05.2022. Considering the quantum of delay is not substantial, the DC is inclined to take lenient view on this lapse of IP with the caution that he must adhere to the timelines provided under the Code and regulations.

6. ORDER

- 6.1 In view of the foregoing, 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 warns the Mr. Sanjay Kumar Singh (Registration No. IBBI/IPA-002/IP-N00188/2017-18/10505) to be extremely careful and diligent in performance of his duties under the Code and also directs him to deposit an amount of Rs. 1,87,000/- in the account of the CD - JSM Devcons Private Limited, if the same has already been paid to the IP from the accounts of CD, within forty-five days from the issuance of this Order.
- 6.2 This Order shall come into force with an immediate effect in view of the para 6.1 above.
- 6.3 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Sanjay Kumar Singh is enrolled as a member.
- 6.4 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Sanjay Kumar Singh is providing his services, if any.
- 6.5 A copy of this order shall be forwarded to Ms. Chhaya Gupta (Registration Number: IBBI/IPA-002/IP-N00984/2020-2021/13133), who is current Resolution Professional of the CD for her information.
- 6.6 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.
- 6.7 Accordingly, the show cause notice is disposed of.

Sd/-

(Ravi Mital)
Chairperson, IBBI

Dated: 20th July 2023

Place: New Delhi