

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/121/2022

10th August, 2022

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/(INSP)/2021/25/3681/552 dated 17th June 2022 issued to Mr. Rakesh Ahuja, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) and regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 (IP Regulations). Mr. Rakesh Ahuja is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-001/IP-P00618/2017-2018/11074.

1. Developments in relation to resolution of the CD

1.1. The Hon'ble NCLT, Chandigarh Bench (AA) *vide* its order dated 16.03.2018 admitted the application filed by Mr. Brij Lal Ashok Kumar under section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating Corporate Insolvency Resolution Process (CIRP) against Tara Chand Rice Mills Private Limited (CD). Mr. Sameer Rastogi acted as the Interim Resolution Professional as well as the Resolution Professional. Later, *vide* order dated 12.02.2019, Mr. Rakesh Ahuja was appointed as the Liquidator in the matter.

2. Issuance of Show Cause Notice (SCN) and hearing before Disciplinary Committee (DC)

2.1. The Board, in exercise of its powers under section 218 of the Code read with the IBBI Inspection Regulations, appointed an Inspecting Authority (IA) to conduct the inspection *vide* order dated 16.08.2021. The IA under sub-regulation (1) of Regulation 6 of the Inspection Regulations shared the Draft Inspection Report (DIR) with Mr. Rakesh Ahuja *vide* email dated 10.08.2021, to which Mr. Rakesh Ahuja submitted reply *vide* email dated 25.09.2021. The IA submitted the Inspection Report to the Board on 29.10.2021.

2.2. Based on the material available on record including the Inspection Report, the Board issued SCN to Mr. Rakesh Ahuja on 17.06.2022. The SCN alleged contravention of Section 208(2)(a) and 208(2)(e) of the Code, regulations 4, 34 and 35 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ('Liquidation Regulations'),

regulation 7(2)(h) of IP Regulations read with Clause 14 and 25 of Code of Conduct as specified under IP Regulations. Mr. Rakesh Ahuja replied to the SCN vide email dated 27.06.2022.

2.3. The Board referred the SCN, response of Mr. Rakesh Ahuja to the SCN and the material available on record, to the DC for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Rakesh Ahuja was given opportunity of personal hearing before DC on 01.08.2022, which he availed and participated in the proceedings along with his advocate, Mr. Harsh Garg on line.

3. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Mr. Rakesh Ahuja's submissions thereof are summarized below:

3.1. Contravention with regard to charging excess fee:

3.1.1. It has been observed that the liquidation order was issued on 12th February 2019 and in the first six months no assets could be sold. In the next six months, Mr. Rakesh Ahuja realised Rs.13.22 crore by sale of assets of the CD. Further in the next one-year period, Mr. Rakesh Ahuja realised an amount of Rs. 2.78 crore by the sale of assets. It has further been observed that Mr. Rakesh Ahuja had calculated his remuneration for realizing an amount of Rs. 2.78 crore under the category of "next one-year period" by applying 2.5% for first one crore and 1.88 % for the remaining amount of Rs. 1.78 crore net of liquidation expenses. Similarly for distribution, Mr. Rakesh Ahuja applied @1.25% for Rs.1.00 Cr and 0.94% for the remaining of Rs.1.78 Cr net of expenses distributed to stakeholders.

3.1.2. In this connection, Regulation 4 of the Liquidation Regulations provides that:

(2) The liquidator shall be entitled to such fee and in such manner as has been decided by the committee of creditors before a liquidation order is passed under sections 33(1)(a) or 33(2).

(3) In all cases other than those covered under sub-regulation (2), the liquidator shall be entitled to a fee as a percentage of the amount realized net of other liquidation costs, and of the amount distributed, as under:

<i>Amount of Realisation / Distribution (In rupees)</i>	<i>Percentage of fee on the amount realized / distributed</i>			
	<i>In the first six months</i>	<i>In the next six months</i>	<i>In the next one year</i>	<i>Thereafter</i>
<i>Amount of Realisation (exclusive of liquidation costs)</i>				
<i>On the first 1 crore</i>	5.00	3.75	2.50	1.88
<i>On the next 9 crore</i>	3.75	2.80	1.88	1.41
<i>On the next 40 crore</i>	2.50	1.88	1.25	0.94
<i>On the next 50 crore</i>	1.25	0.94	0.68	0.51
<i>On further sums realized</i>	0.25	0.19	0.13	0.10
<i>Amount Distributed to Stakeholders</i>				
<i>On the first 1 crore</i>	2.50	1.88	1.25	0.94
<i>On the next 9 crore</i>	1.88	1.40	0.94	0.71
<i>On the next 40 crore</i>	1.25	0.94	0.63	0.47
<i>On the next 50 crore</i>	0.63	0.48	0.34	0.25
<i>On further sums realized</i>	0.13	0.10	0.06	0.05

3.1.3. As the realization amount of Rs. 2.78 crore falls under the category of next forty crore and in the next one-year category, the rate applicable on realization as per above mentioned table shall be 1.25%. Correspondingly, rate applicable on distribution shall be 0.63%. By wrong application of the rate, Mr. Rakesh Ahuja has drawn excess remuneration of Rs. 3,46,666 (Rupees Three lakh forty-six thousand six hundred sixty-six only). Even in his reply to draft inspection report, Mr. Rakesh Ahuja has admitted the same and offered to return the excess withdrawn amount to the Stakeholders.

3.1.4. In view of the above, the Board is of the view that Mr. Rakesh Ahuja inter-alia violated section 208(2)(a), 208(2)(e) of Code, regulation 4 of the Liquidation Regulations and Clause 14 and 25 of Code of Conduct read with regulation 7(2)(h) of IP Regulations.

3.2. Submissions of Mr. Rakesh Ahuja

- 3.2.1. Mr. Rakesh Ahuja submitted that he had taken reasonable care and diligence while performing his duties as liquidator of the CD. As far as observation regarding charging of excess fee is concerned, Mr. Rakesh Ahuja submitted that he had sold the assets of the corporate debtor in two lots. Mr. Rakesh Ahuja stated that he had doubts regarding the fee charging method and as such taken opinion regarding the fee charging method from Pulkit Goyal, Advocate who vide his legal opinion had advised him about the percentage to be applied for realization as well as for distribution of the sale of assets of the corporate debtor under liquidation.
- 3.2.2. Mr. Rakesh Ahuja submitted that when the fact came to his knowledge that he has charged the fee by applying wrong percentage, he had immediately returned the amount of Rs. 3,46,666/- and deposited the same in the liquidation account. He stated during the hearing that there was no malafide intention and negligence at his end as the entire exercise was done on the basis of legal opinion of his advocate.

3.3. Summary Findings

The DC observes that Mr. Rakesh Ahuja has not taken the due care in interpreting his entitled fee as per sub-regulation 3 of Regulation 4 of the Liquidation Regulations. However, given the fact no *mala fide* has been established and furthermore, Mr. Rakesh Ahuja had taken reasonable steps to mitigate the loss caused to the stakeholders by refunding the amount of Rs. 3,46,666 in the liquidation account of the CD. Hence this contravention may be taken as settled.

3.4. Contravention No. II with regard to delay in appointment of valuers and non-preparation of Asset Memorandum in line with Regulations:

- 3.4.1. Regulation 35(2) of the Liquidation Regulations provides that where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses of the corporate debtor under clauses (a) to (f) of regulation 32.
- 3.4.2. It is observed that liquidation commencement date in the liquidation process of the CD was 12th February 2019 and therefore the registered valuers should have been

appointed by Mr. Rakesh Ahuja on or before 19th February 2019. However, it has been noted that there has been delay of 80 days in appointment of valuers, as shown in the table below:

Sl. No	Name of the Registered valuer	Date of appointment	Delay in appointment of
1	Mr. Ratandev Garg	11.05.2019	80 days beyond due date
2	Mr. Rarnanjeet Singh	11.05.2019	80 days beyond due date
3	Mr. Naresh Kumar	11.05.2019	80 days beyond due date
4	Mr. Anuj Kumar	11.05.2019	80 days beyond due date

3.4.3. It has further been noted that Mr. Rakesh Ahuja had filed Asset Memorandum on 1st May, 2019 to AA, *i.e.*, prior to appointment of valuers. As per regulation 34, the asset memorandum shall provide the value of the asset valued in accordance with Regulation 35, intended manner of realisation and the expected amount of realisation. In the instant case, the Asset Memorandum was filed prior to appointment of valuers, the same would have been prepared based on valuation reports received during CIRP period and hence not reflecting the latest value of the assets, *i.e.*, the value arrived at by the registered valuers appointed by Mr. Rakesh Ahuja in the liquidation process.

3.4.4. In view of the above, the Board is of the view that Mr. Rakesh Ahuja inter-alia violated section 208(2)(a), 208(2)(e) of Code, regulation 34 and 35 of the Liquidation Regulations and clause 14 of Code of Conduct read with regulation 7(2)(h) of IP Regulations.

3.5. Submissions of Mr. Rakesh Ahuja

3.5.1. Mr. Rakesh Ahuja submitted that as per regulation 35 of the Liquidation Regulations, prevailing as on 12.02.2019 (date of liquidation commencement of the CD) where the valuation has been conducted under the regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall consider the average of the estimates of the values arrived under those provisions, and as such there was no need for the Liquidator to conduct fresh valuations.

3.5.2. Mr. Rakesh Ahuja further submitted that when he conducted a meeting with the

stakeholders of the CD on 07.03.2021, they recommended him to conduct fresh valuations. It is only after considering the recommendation of the stakeholders, Mr. Rakesh Ahuja decided to conduct the fresh valuations.

- 3.5.3. At that time just prior to the commencement of liquidation of the CD, the IBBI had issued a Circular dated 17.08.2018 whereby it has been directed that w.e.f. 01.02.2019, no insolvency professional shall appoint a person other than a registered valuer to conduct any valuation under the Code or any of the Regulations made thereunder. In view of the said circular, Mr. Rakesh Ahuja had to appoint IBBI registered valuers but at that point of time there was scarcity of IBBI registered valuers in District Karnal as well as the adjoining Districts of Panipat, Kurukshetra and Ambala hence, it became very difficult for Mr. Rakesh Ahuja to appoint IBBI registered valuers.
- 3.5.4. Mr. Rakesh Ahuja further submitted that in district Panchkula, there was no IBBI registered valuer. At that time, in UT Chandigarh, there were only two IBBI registered valuers, whose services were also not available due to their other work obligations, and if they were available, they were demanding much higher fee than the ordinary valuers while taking benefit of their being IBBI registered valuers. Even the registered valuers who were there in other far regions were not ready to conduct the valuations of the assets of the CD being at faraway place as well as due to their other work obligations. Mr. Rakesh Ahuja submitted that with great difficulty he could find registered valuers Sh. Ratan Dev Garg from Gurgaon, Ramanjeet Singh from Delhi, Naresh Kumar from Ferozepur (Punjab) and Anuj Kumar from Noida and they were appointed for conducting valuation in the matter of CD on the 11.05.2019 that too after a long sequel of communication through emails and telephonically.
- 3.5.5. As far as the issue of filing Asset Memorandum before the Hon'ble AA on 01.05.2019, i.e., prior to the appointment of valuers is concerned, Mr. Rakesh Ahuja submitted that he had made every effort to appoint IBBI registered valuers in the matter of CD, but at that time due to scarcity of IBBI registered valuers, the services of IBBI registered valuers were not available even from far away regions. Mr. Rakesh Ahuja stated that the filing of Asset Memorandum with the Hon'ble AA is a timeline-based compliance to be undertaken by the Liquidator. Hence, under the compelling circumstances while finding no other alternative, Mr. Rakesh Ahuja filed the Asset Memorandum with the Hon'ble AA on 01.05.2021. After filing of the Asset memorandum, as and when Mr. Rakesh Ahuja found the IBBI registered valuers from different distant places, they were

appointed on the 11.05.2019.

- 3.5.6. Mr. Rakesh Ahuja stated that his bonafide intentions are apparent from the fact that even though he filed Asset Memorandum before the Hon'ble AA on 01.05.2019 i.e. prior to the appointment of valuers, which was based on valuation reports received during CIRP period thereby not reflecting the latest value of the assets of the corporate debtor, but he conducted the sale of the assets of the CD very honestly, with reasonable care and diligently on the basis of fresh latest valuations which is approx 2.5 crores more than the value received during CIRP which helps in maximization of the assets of the CD.
- 3.5.7. Mr. Rakesh Ahuja submitted that it is due to his reasonable care and diligence while performing his duty that he could successfully complete the liquidation process of the CD. Hence, it cannot be termed as negligence on his part. Mr. Rakesh Ahuja also referred the case of Hon'ble Supreme Court of India in Criminal Appeal No. 597 of 2010 titled *Sushil Ansal Vs. State through CBI* (decided on 05.03.2014) wherein the Hon'ble court has discussed as to what constitutes negligence.
- 3.5.8. In view thereof, Mr. Rakesh Ahuja submitted that the observations made against his conduct do not meet the ingredients of negligence. The cause of action for negligence arises only when damage occurs as the damage is a necessary ingredient of the tort. Mr. Rakesh Ahuja stated that his conduct is *bona fide* in the facts and circumstances of the matter. Even during the scarcity of the IBBI registered valuers, he had undertaken reasonable care which was actually required at that point of time, which cannot be termed as negligent as a result of which he could successfully complete the liquidation process of the CD and no loss/ damage has been caused to the liquidation process of the CD.

3.6. Summary Findings

- 3.6.1. The DC noted the submission of Mr. Rakesh Ahuja that he continued the process while dealing with the matter as per regulation 35(1) of the Liquidation Regulations and decided to conduct the fresh valuations during Liquidation process solely on the recommendations of the stakeholders. Under the regulations, advice of Stakeholders' Committee is not of binding nature and instead of draining the resources of CD, Mr. Rakesh Ahuja should have taken independent assessment on need for fresh valuation at

the belated stage. However, given the fact that this has not impacted the outcome in any way as realization so far has been above the liquidation value, therefore a lenient view is warranted on this count too.

4. Order

- 4.1. In view of the submission made by Mr. Rakesh Ahuja, and materials available on record, DC notes that Mr. Rakesh Ahuja should have been more careful in interpreting the provisions of the Code and Regulations made thereunder. Accordingly, the DC cautions Mr. Rakesh Ahuja to be more careful and vigilant in handling the assignments.
- 4.2. The Order shall come into force immediately in view of para 4.1.
- 4.3. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Rakesh Ahuja is enrolled as a member.
- 4.4. 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.

Accordingly, the show cause notice is disposed of.

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(Sudhaker Shukla)

Whole Time Member, IBBI

Dated: 10th August, 2022

Place: New Delhi