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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 13504/2022

ASHOK KRIPLANI

..... Petitioner

Through: Ms. Anjali Sharma, Ms. Ragini
Vinaik, Ms. A. Aggarwal and Mr.
Ashok Kriplani, Advs.

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA & ORS.

..... Respondent

Through: Mr. Sahil Monga, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

% **16.09.2022**

CM APPL. 41049/2022 (exemption)

Allowed, subject to all just exceptions.

Application shall stand disposed of.

W.P.(C) 13504/2022 and CM APPL. 41048/2022 (Interim Relief)

The Court accepts the oral prayer made by learned counsel for the petitioner for deletion of respondent No. 2 from the array of parties. The prayer as made is granted. Let an amended memo of parties be placed on the record within a period of 48 hours.

Notice. Since the first respondent is duly represented by learned counsel, let a counter affidavit be filed within a period of six weeks from today. The petitioner shall have two weeks thereafter to file rejoinder affidavit.



Prima facie the Court finds merit in the submission addressed by learned counsel for the petitioner who contends that the disciplinary action taken by the Board fails to take into account the complexities which beset the Corporate Insolvency Resolution Process and which had also been duly taken note of by both the National Company Law Tribunal [“NCLT”] in the order of 17 December 2019 as well as the National Company Law Appellate Tribunal [“NCLAT”] in its order of 13 January 2021. Learned counsel for the petitioner submits that neither of those two Tribunals found any wrongdoing against the petitioner. The Court notes that the various observations which had dealt with the difficulties faced by the petitioner acting as the Interim Resolution Professional [“IRP”] and which had been duly taken cognizance of and noted have not been considered by the Board. Matter requires consideration.

In the meanwhile, till the next date of listing, the operation of the impugned order dated 16 August 2022 shall remain stayed.

Let the matter be posted again on 02.03.2023.

YASHWANT VARMA, J.

SEPTEMBER 16, 2022

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INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/122/2022

16th August 2022

ORDER

In the matter of Mr. Ashok Kriplani, 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. IBBI/IP/INSP/2020/50/532/3559 dated 20th May, 2022, issued to Mr. Ashok Kriplani, 10/18, 1st Floor, Old Rajinder Nagar, New Delhi, Delhi- 110060 who is a Professional Member of the Insolvency Professional Agency of Institute of Cost Accountants of India and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-003/IP-N00009/2016-17/10071.

1. Background

- 1.1 Mr. Ashok Kriplani, IP was appointed as Interim Resolution Professional (IRP) and Resolution Professional (RP) in the corporate insolvency resolution process (CIRP) in the matter of M/s Dreamz Infra India Limited (CD). The NCLT, Bengaluru Bench (AA) had admitted the application for CIRP under Section 7 of the Code for CIRP of CD vide Order of the dated 20.08.2019 and appointed Mr. Ashok Kriplani as interim resolution professional (IRP). Subsequently he was also confirmed as the RP, however, the Hon'ble AA vide its Order dated 08.03.2021 replaced Mr. Kriplani and appointed Mr. Konduru Prasanth Raju as RP.
- 1.2 In exercise of its power under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, the IBBI vide Order dated 22.10.2020 appointed an Inspecting Authority (IA) to conduct an inspection of Mr. Kriplani. The IA submitted the draft inspection report (DIR) on 22.03.2021 and addendum to the DIR (ADIR) on 10.08.2021 to which Mr. Kriplani submitted his reply on 20.04.2021, 21.04.2021 and 22.08.2021. IA submitted the Inspection Report to IBBI on 13.09.2021.
- 1.3 The IBBI on 20th May 2022 issued SCN to Mr. Kriplani, based on findings in the inspection report in respect of his role as IRP/RP in the processes of CD. 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. Mr. Kriplani replied to the SCN vide email dated 10.06.2022.
- 1.4 The IBBI referred the SCN, response of Mr. Kriplani to the SCN 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. Kriplani availed an opportunity of personal hearing before the DC on 20th July, 2022 wherein he reiterated the submissions made in his written reply and also made a few additional submissions.

2. Show Cause Notice, Submissions and Findings

The contraventions alleged in the SCN and Submissions by Mr. Kriplani are summarized as follows:

3. Technical objections raised by Mr. Kriplani

3.1 Mr. Kriplani has raised, *inter alia*, mainly following three technical objections while dealing with SCN:

(a) In the reply to SCN, Mr. Kriplani has objected that IA had given 8 days' notice for inspection to respond whereas the regulation 4(1) of Inspection and Investigation Regulations *inter alia* provides that IA shall serve a notice of inspection to the service provider at least 10 days before the commencement of inspection.

Findings- It is observed that the notice of inspection (along with list of documents, checklist and pre-inspection questionnaire) was issued on 26th October 2020 by IA to Mr. Kriplani on his e-mail id viz ashok.kriplani1956@gmail.com registered with IBBI. In response to the notice, Mr. Kriplani submitted the response to a pre-inspection questionnaire vide his email on 10th November 2020. Mr. Kriplani has also submitted the information/documents vide his email dated 10th November 2020, 3rd, 4th and 25th February 2021. The draft inspection report was shared with Mr. Kriplani on 22nd March 2021 and he submitted his comments on the draft inspection report on 20th April 2021 and corrigendum to his email on 21st April 2021. ADIR was shared with Mr. Kriplani on 10.08.2021 to which Mr. Kriplani replied on 22.08.2021. Further, SCN was issued to Mr. Kriplani on 20.05.2022 and Mr. Kriplani replied to the SCN vide email dated 10.06.2022. Mr. Kriplani also availed the opportunity of personal hearing on 20.07.2022 and further submitted additional written documents. Under section 186 of the Code, the Board is established as a statutory body to carry out the purposes of the Code. Section 196 (1) empowers the Board to register and regulate *inter alia* the IPs and clause (f) empowers the Board to carry out inspection and investigation of any IPs and pass such order as may be required for compliance of the Code and Regulations issued thereunder. In the present case it is observed that a fair and reasonable opportunities have been provided to the IP to submit his replies and attend personal hearing and no prejudice is caused as prescribed procedure and principle natural justice have been followed.

(b) The RP had raised an apprehension that parallel proceedings were instituted against him by both the IPA and the Board.

Findings- The DC observes that the inspection and disciplinary proceeding undertaken by the IPA is conducted in accordance with the power vested as per the due process prescribed under clause 24 of the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016. The DC of IPA can initiate their own proceedings based on their Bye Laws and that the DC proceedings of the IBBI are independent. Further, in the present

matter as no SCN has been issued by the IPA merely inspection notice was received by RP it cannot be said parallel DC proceedings have been initiated.

- (c) During the personal hearing, Mr. Kriplani raised the preliminary technical objection that DC constituted with Chairperson, IBBI is against the mandate of the Code.

Findings- In this regard, it may be noted that section 191 of the Code provides that Chairperson shall have powers of general superintendence and direction of the affairs of the Board and may also exercise such other powers as may be delegated to him by the Board. A holistic reading of above provisions provides that Chairperson can also exercise all the powers and functions of a whole-time member.

4. Contravention- I

Conduct of Committee of Creditors (CoC) meeting:

- 4.1 The following is observed from the minutes of the CoC meetings:

S.no.	Details of meeting	Date of meeting	Mode of conducting meeting
1.	1 st CoC meeting	01 st October 2019	Audio only
2.	2 nd CoC meeting	09 th November 2019	Audio only
3.	Adjourned 3 rd CoC meeting	17 th February 2020	Conference Call only
4.	4 th CoC meeting	13 th June 2020	Whatsapp video conference only

- 4.2 Regulations 21(1) of CIRP Regulations *inter alia* states that the notice shall inform the participants about the option available to them to participate through video conferencing or other audio and visual means. Further Regulation 23(1) of CIRP Regulations further states that the notice convening the meetings of the committee shall provide the participants an option to attend the meeting through video conferencing or other audio and visual means in accordance with this Regulation.
- 4.3 In response to DIR, Mr. Kriplani has, *inter alia*, stated that he could not conduct audio video meetings on account of refusal of infrastructure by advocate of applicant Financial Creditor (FC). It was his responsibility as IRP/RP to conduct meeting of CoC as per the procedure laid down under Regulations 21(1) and 23(1) of CIRP Regulations, which Mr. Kriplani failed to perform. In view of the above, Mr. Kriplani has violated regulation 21(1) and 23(1) of the CIRP Regulations.

Submission

- 4.4 Mr. Kriplani admits that he had conducted the meeting through the mediums as has been alleged but he had rectified his actions in the 5th CoC Meeting which he conducted in audio-video mode. He has submitted that there was no consequences and impact of the same. He also submits that, even now, most of the VC meetings are held by keeping videos switched off rendering the meeting as audio only and for namesake as audio-video meeting. Mr. Kriplani however, apologises for the deficiency and promises to take care in future to adhere to the Code and the regulations.

Findings

4.5 In the present matter it is observed that the regulation 21(1) of the CIRP Regulations states as follows:

“21. Contents of the notice for meeting.

(1) The notice shall inform the participants of the venue, the time and date of the meeting and of the option available to them to participate through video conferencing or other audio and visual means, and shall also provide all the necessary information to enable participation through video conferencing or other audio and visual mean.”

4.6 The intent of the provision is to allow for *video conferencing or other audio and visual means* so as to ensure uniform participation. That is, if the participants are unable to attend a physical meeting, then they are facilitated to participate through audio and video mode. IRP/RP are mandated to make suitable arrangements to organize the CoC meetings to facilitate the effective participation of CoC members. Mere audio/ voice conference would limit the participants/ members without any visual access to PPTs/ reports/ agendas being discussed. Further, audio-only-conference for large group of members such as homebuyers makes the meeting very much disorganized without any way of identifying the speaking participants.

4.7 On the request made by Mr. Kriplani for fixation of fee of Rs. 6.75 Lakhs per month plus GST, plus out of pocket expenses and variable fees of 10% plus GST as the success fee measured on the difference of liquidation valuation done by the valuers as per law and the valuation done at the time of completion of the projects and the same was allowed by AA vide its order dated 17.12.2019. Since Mr. Kriplani was being paid an aforesaid fee, hence the contention of Mr. Kriplani pertaining to lack of infrastructure cannot be accepted.

4.8 The IRP/RP is responsible to properly organize the CoC meetings to assist the CoC members to co-ordinate and resolve without any confusion, technical hindrance, and communication gap. Hence, the admission by Mr. Kriplani of conducting the CoC meeting in only audio medium establishes the contravention.

5. Contravention-II

Non-submission of list of Creditors with AA:

5.1 It is observed that Mr. Kriplani did not file the list of creditors with the AA as required under Regulation 13(2)(d) of CIRP Regulations as per which the list of creditors is to be filed with the AA. In his response to the DIR, Mr. Kriplani stated that the same was not filed on account of absence of infrastructure promised by advocate of applicant FC.

5.2 In view of the above, Mr. Kriplani has *inter alia* violated regulation 13(2)(d) of the CIRP Regulations.

Submission

5.3 Mr. Kriplani submitted that he has filed the list of creditors on 15.06.2020 before the AA when most of the claims stood filed and the same were filed before the CoC time to time and were

uploaded on the website of the CD created by IP. Further, Mr. Kriplani submits that the aforesaid actions cure the deficiencies in following the Regulations and the same has not prejudiced anybody and he apologises for the deficiencies and shall take care in future to adhere to the Code and the regulations.

Findings

5.4 The regulation 13 of the CIRP Regulations states as follows:

“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.

(2) The list of creditors shall be –

...(d) filed with the Adjudicating Authority; and”

5.5 In the present matter it is observed that CIRP of CD was initiated on 20.08.2019 and by the same order Mr. Kriplani was appointed as the IRP. As per the scheme of the Code, the IRP is required to verify the claims within 7 days of submission of the claims and within 23 days of the commencement date, the FC have to be identified for constitution of CoC and the report certifying constitution of CoC is to be filed with AA. Based on the list of creditors- the amount of debt, classification of creditors and voting shares in CoC are decided which is the cornerstone of the CIRP as it ensures transparency and accountability. But in the present case it is observed that the RP has filed the list of creditors on 15.06.2020, i.e 300 days from the date of appointment of Mr. Kriplani as IRP. Hence, the non-filing of list of creditors with the AA being the supervising authority is a gross negligence as it brings to question the integrity, transparency and accountability in the process conducted. Hence, contravention could be made out.

6. Contravention-III

Non-compliance with timelines under CIRP Regulations:

6.1 It was observed that the actual time taken by Mr. Kriplani for the activities listed under regulation 40A of CIRP Regulations were as follows:

Event	Particulars and Date	Delay
Public announcement	Public announcement dt 03 rd Sept 2019	11 days
Appointment of Valuer	Mr. Subhajit Guha appointed on 05 th August 2020	304 days
	Mr. Sandeep Dash appointed on 05 th August 2020	304 days
	Mr. S. Lakshman appointed on 30 th June 2020	268 days
	Mr. K. S Nagarajaiah appointed on 17 th April 2020	194 days
	Mr. S. J. Ranganatha appointed on 12 th February 2020	129 days
Submission of	IM issued on 24 th August 2020	316 days

Information Memorandum (IM) to CoC		
Publish Form G/Invitation of EOI	1 st Form G published on 19 th February 2020	108 days

6.2 Regulation 40A of CIRP Regulations provides model timeline for CIRP and *inter-alia* requires public announcements to be made within 3 days from insolvency commencement date (ICD), valuers to be appointed within 47 days of ICD, IM to be submitted within 54 days of ICD and publishing of form G within 75 days of ICD.

In his response to DIR, Mr. Kriplani has, *inter alia*, stated that appointment of valuers was deferred in absence of custody of sites of CD, IM was delayed in absence of information available, and Form G was delayed on account of non-cooperation of CD.

6.3 In view of the above, Mr. Kriplani has *inter alia* violated regulation 40A of CIRP Regulations.

Submission

6.4 Mr. Kriplani submitted that under regulation 27 of the CIRP Regulations, the IRP/RP need to appoint valuers within 47th day of the ICD and this regulation is directory and not mandatory as held in cantena of case by the Hon'ble NCLT/NCLAT and the SC.

6.5 That where all the land parcels and documents thereof were in possession of the Asst. Commissioner vide order of the Government of Karnataka it was impractical to appoint Valuers without having possession of the lands and the documents. An application was pending against the AC since 08.02.2020 and yet to be decided till date. Still the IP appointed the Valuers.

6.6 In the case of the IM, it was first issued provisionally as on 09.03.2020 and for which Authorised Representatives of the homebuyers was intimated as on 10.03.2020 who gave the undertaking as on 31.03.2020. The IM thereafter was improved upon when further information was received. The delay in issue of IM was due to the non-cooperation of CD and the AC. Mr. Kriplani, however apologised for the deficiency in following the Regulation and shall take care in future to adhere to.

Findings

6.7 The intent behind the regulation 40A of CIRP Regulations is to ensure the timely completion of the CIRP under the Code within a mandatory period of 180 days. The regulation provides for the strict adherence to the timelines for individual process in the CIRP. In the present matter it is observed that, Mr. Kriplani has not sought to justify the delay of 11 days and 108 days in the publication of the Public Announcement and the Form-G (Invitation of EOI) respectively.

6.8 However, regarding the delay in appointing valuers it is observed that a notification dated 20.06.2019 was issued by the Government of Karnataka (prior to the insolvency commencement) informing that the properties of the CD have been attached and vests with the Assistant Commissioner pending further orders of Special Court. Further, it is also observed that Mr. Kriplani had filed an application dated 13.02.2020 with the AA to direct the Assistant

Commissioner to provide list of properties and handing over of said properties to the RP. It is also observed that various correspondences were made by Mr. Kriplani to Assistant Commissioner regarding the same to no avail. It is noted that for furnishing IM the details of the CD with respect to the description of its assets and liabilities for ascertaining their values is vital. Hence, submission of Mr. Kriplani is accepted.

7. Contravention-IV

Amount charged on CD's account:

- 7.1 It is observed that Mr. Kriplani charged an amount of Rs. 5,564 on CD's account for air ticket of Siddharth Kriplani and included the same in the insolvency resolution process costs (IRPC). In his response to DIR, Mr. Kriplani stated that Mr. Siddharth Kriplani is his son and accompanied him as his security. Mr. Kriplani also stated that he shall reverse the amount in respect of Mr. Siddharth Kriplani's Air ticket.
- 7.2 IRPC under section 5(13) of Code has been defined under Regulation 31 of CIRP Regulations which does not cover expenditure of the nature mentioned above as IRP cost. Clause 1 of Code of Conduct prescribed under regulation 7(2)(h) of IP Regulations requires that an IP must maintain integrity by being honest, straightforward, and forthright in all professional relationships.
- 7.3 In view of the above, by charging air fare of his son, Mr. Siddharth Kriplani on CD's account and including the same in the IRPC, Mr. Kriplani has *inter alia* violated regulation 31 of CIRP Regulations and clause 1 of Code of Conduct prescribed under regulation 7(2)(h) of IP Regulations.

Submission

- 7.4 Mr. Kriplani submitted that the alleged amount has long been reversed as submitted before the IA and is reflected in the enclosed voucher on the CIRP costs incurred, even though the IP took his son with him once only in a new city and to a project marred by frauds and fraudulent Suspended Directors of the CD, for his security reasons.

Findings

- 7.5 In the present issue it is observed that Mr. Kriplani took Mr. Siddharth Kriplani, his son to accompany him as his security and charged an amount of Rs. 5,564 on CD's account for air ticket of Siddharth Kriplani. That the aforesaid facts have been admitted by Mr. Kriplani and he has also reversed the amount. However, it is observed that he had not taken the approval of the CoC for the appointment of Mr. Siddharth Kriplani as his security personnel nor was the expenses ratified by the CoC but still the cost was charged to the IRPC. Further, had the Inspecting Authority not pointed out the contravention, the violations would have gone unrectified. Hence, contravention could be made out.

8. Contravention-V

Outsourcing verification of claims:

- 8.1 It is observed that Mr. Kriplani appointed Mr. Ashok Kumar Gupta for collation and verification of claims @ Rs. 200 plus GST per claim vide email dated 05.09.2019. Furthermore, Mr. Ashok Kumar Gupta raised two invoices dated 25.09.2019 and 28.10.2019 for amounts of Rs. 4,33,060 and Rs. 1,39,476 respectively for collection, verification and determination of claim.
- 8.2 According to section 18(1)(b) of the Code and regulation 13(1) of the CIRP Regulations, it is duty of RP to receive, collate and verify the claims. IBBI Circular no. IP/003/2018 dated 3.01.2018 prohibits an IP from outsourcing his responsibilities. By appointing Mr. Ashok Kumar Gupta for collation and verification of claim, Mr. Kriplani outsourced his responsibility.
- 8.3 In view of the above, has *inter alia* violated section 18(1)(b) of the Code read with regulation 13(1) of the CIRP Regulations and IBBI Circular no. IP/003/2018 dated 03.01.2018.

Submission

- 8.4 Mr. Kriplani submitted that as per section 20(2)(a) of the Code the RP shall have the authority to appoint accountants, legal or other professionals as may be necessary. To appoint a reputed professional like Mr. Ashok Gupta and that too on competitive terms to collate and verify claims of as much as about 2000 home buyers in a short span of 7 days as specified in the relevant Regulations, comes under the job of an accountant which is very much allowed to do so under the aforesaid provision.
- 8.5 The relevant directions under the circular dated 03.01.2018 are reproduced as follows:

“3. It is hereby directed that an insolvency resolution professional shall not outsource any of his duties and responsibilities under the Code. He shall not require any certificate from another person certifying eligibility of a resolution applicant.”

- 8.6 The first part of the above para hits the section 20 of the Code hence, it is not applicable whereas the second part is not applicable to Mr. Kriplani as he has not taken any Certificate from Mr. Gupta against his work done. However, Mr. Kriplani submits that he is ready and willing to reverse the fees charged by Mr. Gupta and take the same upon himself and pay him when he himself realises his CIRP costs. Mr. Kriplani realised his fees only to the extent of 15% in the most complex and taxing CIRP.

Findings

- 8.7 The DC observes that Mr. Kriplani engaged the independent professional, Mr. Ashok Gupta for verification of claim of about 2000 claims at the rate of Rs. 200 plus GST per claim vide email dated 05.09.2019 and that Mr. Ashok Kumar Gupta had raised invoices dated 25.09.2019 and 28.10.2019 for a collective amount of Rs. 5,72,536. On perusal of minutes of 1st CoC meetings and 2nd CoC meetings, application filed on 27.11.2019 by Mr. Kriplani, the DC further observes that aforesaid expense of Rs. 5,72,536 was not approved by the CoC. Further, the point made by Mr. Kriplani in his submission that he needs expert help to verify claims of 2000 home buyers in

7 days deserves merit. However, Mr. Kriplani should have obtained approval of CoC for the independent professional for assistance in verification of claims. In view of the above, the submission of Mr. Kriplani cannot be accepted.

9. Contravention-VI

Intimidating Homebuyers/Claimants of rejection of claims in case of non-contribution to interim finance by CoC:

- 9.1 It is observed from Agenda No. 7 of the minutes of 1st CoC meeting that homebuyers/ claimant were directed by CoC/ IRP to contribute interim finance and claims of such homebuyers/claimant will be rejected by IRP who do not contribute. Subsequently, Mr. Kriplani published notice on CD's website stating that claims of homebuyers who fail to contribute will be simply rejected. The notice also stated that Mr. Kriplani filed an application against the non-contributors before AA to reject their claims for non-contribution.
- 9.2 In his response to DIR, Mr. Kriplani, *inter alia*, stated that it is trite law that where CoC does not pay CIRP costs, their claims need to be rejected. Mr. Kriplani further mentioned therein that in agenda no.15 in the 3rd CoC meeting, he eliminated the voting rights of such non contributors of CIRP Finance with the approval of the COC.
- 9.3 According to section 21(2) of Code, the CoC shall comprise all FCs of CD. Further, Regulation 13(1) of CIRP Regulations requires the IRP or the RP, as the case may be, shall verify every claim, as on the ICD, 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.
- 9.4 No provision under Code or regulations made thereunder state that on non-contribution of interim finance, the claim of CoC members shall be rejected or they will be divested of the voting rights. In view of the above, Board is of *prima facie* view that Mr. Kriplani has *inter alia* violated section 21(2) of the Code and regulation 13(1) of CIRP Regulation.

Submission

- 9.5 Mr. Kriplani submitted that the agenda no.7 in the 1st CoC Meeting was passed by the AR of the CoC and the Corporation Bank and it is the direction of the CoC/IRP and not alone of the IRP. He also submits that he was asking for a limited budget in a complex CIRP to meet petty expenses and that too on "as and when required basis". Further, it is the CoC which approved the resolution, resolving to eliminate Voting Rights of the non-contributors to the CIRP costs.
- 9.6 Mr. Kriplani submits that he is protected by the decision of the Hon'ble NCLT, PB, in the case of Reliance Commercial Finance Ltd., wherein it was held that in case the FC does not contribute, its claim would not be considered. An application was filed by Mr. Kriplani on the subject of rejection of claims/ elimination of their voting rights which is still pending before the AA since 30.01.2020.

Findings

- 9.7 The RP has the responsibility to receive, collate and verify the claims and has no authority to reject/ adjudicate on claims based on non-contribution of interim finance. Further, under the duties of RP to maintain an updated list of Claim, he cannot change the status of an existing creditor on his own. But to maintain an updated list of claims the IRP/RP is authorised to add to existing claims or admit or reject further claims received collating them and thus update the list of creditors accordingly. The Code/Regulations do not envisage removal of any CoC member or rejecting the voting rights of CoC on non-payment of interim finance/ CIRP finance/CIRP costs.
- 9.8 In the present case, it is observed that in the 1st CoC meeting itself Mr. Kriplani has raised the agenda that the homebuyers/ claimants are to mandatorily deposit interim finance amount and non-contributing claimants would be rejected from the CoC. The DC further observes that in the notice issued for 3rd CoC meeting, it is mentioned that *“To consider the rejected claims filed after 17/11/2019 and accept the same and to approve the action of the RP in eliminating the Voting Rights of the non-contributories to the CIRP costs”*. Thus, Mr. Kriplani had already rejected that the voting rights of non-contributing members and sought the approval of CoC for the same. This illegal ousting of *bona fide* CoC member shows a gross negligence in conduct of Mr. Kriplani. Further, order dated 17.12.2019 of the AA clearly states that the *“fees of RP/AR and expenses of CIRP of Corporate Debtor, will be borne by COC as per extant provisions of Code and the Rules made thereunder.”* The order of AA nowhere allows RP to go beyond the provisions of Code in rejecting claims or intimidating the homebuyers.
- 9.9 The IP is required to strictly adhere to the provisions of Code and regulations made thereunder while performing his obligations under the Code/Regulations and any deviation from such provision would be tantamount to its violation. Rejecting the voting rights of CoC members based on non-contribution of interim finance/CIRP costs is violation. Hence, the DC finds that Mr. Kriplani has blatantly violated the section 21(2) of the Code and regulation 13(1) of CIRP Regulation.

10. Contravention-VII

Non-cooperation for handover after replacement:

- 10.1 It is observed that vide order dated 08.03.2021 passed by AA, Mr. Kriplani was replaced and Mr. Konduru Pransanth Raju was appointed as RP in the CIRP of CD. Subsequent to the said order, Mr. Kriplani submitted a representation dated 17.03.2021 to Board stating that Mr. Raju was appointed without confirmation from Board. On 08.04.2021, Board received email from Mr. Raju stating that Mr. Kriplani did not hand over the documents pertaining to CD to him. Board vide email dated 23.04.2021, sought information whether Mr. Kriplani had complied with the orders of AA and he was advised to cooperate with Mr. Raju. It is, however, noted from Mr. Kriplani's response to Addendum to Draft Inspection Report (ADIR) that the hand over process was completed only on 4.07.2021. This clearly shows that there has been inordinate delay in the process of hand over of documents pertaining to CIRP of CD.
- 10.2 In his response to ADIR, Mr. Kriplani stated, *inter alia*, that the appointment of Mr. Raju is not lawful. Mr. Kriplani further stated that the hand over was completed on 04.07.2021 and the same

was delayed due to prevailing pandemic. Mr. Kriplani also stated that the handover has taken place due to pressures mounted on him and not voluntarily and not at the instance of AA and not under law.

- 10.3 Section 23(3) of Code requires that in case of any appointment of a RP under section 22(4), the IRP shall provide all the information, documents and records pertaining to the CD in his possession and knowledge to the RP. Clause 1 of Code of Conduct requires an IP must maintain integrity by being honest, straightforward, and forthright in all professional relationships. Clause 2 of Code of Conduct requires an IP must not misrepresent any facts or situations and should refrain from being involved in any action that would bring disrepute to the profession. Clause 14 of Code of Conduct requires an IP must not act with *mala fide* or be negligent while performing his functions and duties under the Code.
- 10.4 In view of the above, Mr. Kriplani has *inter alia* violated section 23(3) of Code and clauses 1, 2 and 14 of Code of Conduct prescribed under regulation 7(2)(h) of IP Regulations.

Submission

- 10.5 Mr. Kriplani submitted that the present allegation is outcome of ADIR. The existence of the ADIR is violative as it is not backed by the Order of the Board, violating regulation 3 of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection and Investigation Regulations). Hence, the alleged contravention, needs to be Closed at the threshold, itself except the reply herein to take action, if any, on the allegations made herein the Reply. Thus, the Addendum is motivated and managed by officers of the IBBI. It is premeditated being without order of the Board. That, Mr. Kriplani faced threats in the present assignment from officers of IBBI. That an appeal no. 40/2022 is pending before Hon'ble NCLAT, Chennai, against the order dated 08.03.2021 of the AA, by virtue of which the present Addendum has arisen.

Findings

- 10.6 The DC observes that, the submission of the RP alleging that the ADIR is violative of Inspection and Investigation Regulations does not hold ground as the ADIR is prepared after taking into account advice/ queries of the Board on DIR as provided under regulation 6(3) of Inspection and Investigation Regulations and no separate Order of the Board is required to be provided. Further, the DC proceedings of the IBBI are independent from proceedings before the Adjudicating Authority/ Appellate Authority.
- 10.7 It is observed that vide order dated 08.03.2021, the AA replaced Mr. Kriplani with Mr. Konduru Pransanth Raju as RP in the CIRP of CD. However, despite the directions Mr. Kriplani failed to immediately handover the records of the CD and the hand over process was completed only on 4.07.2021 after a period of 118 days delay. Even including the pandemic lock-down the delay could not be for over 3 months especially when the CIRP itself is a time bound process. Hence, the DC finds that Mr. Kriplani has violated the provisions of section 23(3) of Code and clauses 1, 2 and 14 of Code of Conduct prescribed under regulation 7(2)(h) of IP Regulations.

11. ORDER

- 11.1 On the basis of aforesaid findings, it is clear that Mr. Ashok Kriplani has violated the provisions of the Code and regulations, *inter alia*, by conducting the CoC meetings in audio medium, non-filing of list of creditors with the AA in stipulated time period and delay in handover the records of the CD to new RP. However, the most serious contraventions relate to eliminating the voting rights of CoC members for non-contribution to the CIRP costs. This contravention goes against the letter and spirit of the Code. Further, the amount charged for air ticket of Mr. Kriplani's son to CIRP costs is unpardonable. Hence, the DC, in exercise of the powers conferred under section 220 (2) of the Code read Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Mr. Ashok Kriplani having Registration No. IBBI/IPA-003/IP-N00009/2016-17/10071 for a period of three years.
- 11.2 This Order shall come into force on expiry of 30 days from the date of its issue.
- 11.3 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Ashok Kriplani is providing his services, if any. The CoC may decide whether to continue his services or not. In case, CoC decide to discontinue his services, CoC may file an appropriate application before AA.
- 11.4 A copy of this order shall be forwarded to the Insolvency Professional Agency of Institute of Cost Accountants of India where Mr. Kriplani is enrolled as a member.
- 11.5 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.
- 11.6 Accordingly, the show cause notice is disposed of.

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(Ravi Mital)
Chairperson, IBBI

Dated: 16th August 2022
Place: New Delhi