

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)**

No. IBBI/DC/183/2023

6th July, 2023

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/GRV/2022-23/00930 dated 09.05.2023 issued to Mr. Pramod Kumar Sharma Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Investigation Regulations). Mr. Pramod Kumar Sharma is a Professional Member of Insolvency Professional Agency (IPA) of the ICSI Institute of Insolvency Professionals (ICSI-IIP) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with registration No. IBBI/IPA-002/IP-N00110/2017-18/10258.

1. Developments in relation to resolution/liquidation of the CDs

- 1.1. The Hon'ble NCLT, Allahabad Bench (AA) *vide* order dated 29.05.2018 admitted the application under section 9 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of M/s Uniworld Sugars Private Limited (CD) where Mr. Pramod Kumar Sharma was appointed as the Interim Resolution professional (IRP) and later he was confirmed as Resolution Professional (RP) by AA on 07.07.2018. The Committee of Creditors (CoC) in its 21st meeting held on 27.10.2020 approved the resolution plan by 100 % votes. The AA approved the resolution plan *vide* order dated 17.03.2021.
- 1.2. The order of AA approving the Resolution Plan was challenged before Hon'ble National Company Appellate Law Tribunal (NCLAT) by two appeals filed by M/s. Rana Saria Poly Pack Pvt. Ltd., who is Operational Creditor and Simbhaoli Sugars Ltd. who is joint venture partner in the CD which is a special purpose vehicle mainly against the acceptance of the third valuation, done pursuant to the decision of the CoC as well as on the ground of no provision in the resolution plan for payment to stakeholders in accordance with Section 30 of the Code.
- 1.3. The Hon'ble NCLAT *vide* order dated 12.04.2022 set aside the order of AA dated 17.03.2021 and the resolution plan only to the extent it relates to allocation of payments to the stakeholders and creditors and directed that revision of payments and subsequent approval of the revised resolution plan should be completed within two months.
- 1.4. Since the matter was part heard by the NCLT, Chandigarh Bench, on various occasions as a special Bench, and therefore, matter was transferred from NCLT, Allahabad to NCLT, Chandigarh for disposal. The NCLT, Chandigarh on 20.03.2023 approved the revised

allocation made in the second addendum to the original Resolution Plan as the same was in compliance with the order of the Hon'ble NCLAT.

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

- 2.1. The Board, in exercise of the powers conferred to it under section 218 of the Code read with the Investigation Regulations, appointed an Investigating Authority (IA) to conduct the inspection of Mr. Pramod Kumar Sharma in CIRP of CD. The IA served notice of investigation as per regulation 8(1) of the Investigation Regulations on 20.09.2022. Pursuant to the said notice, Mr. Pramod Kumar Sharma submitted reply *vide* email dated 30.09.2022. Thereafter, IA submitted investigation report to the Board.
- 2.2. Based on the material available on record including the Investigation Report, the Board issued the SCN to Mr. Pramod Kumar Sharma on 09.05.2023. The SCN alleged contravention of sections 25(2)(d), 30(2)(b), 208(2)(a) & (e) of the Code, regulation 2(1)(k), 27 and 35(1)(b) of the CIRP Regulations, regulation 7(2)(a) & (h) of the IP Regulations read with clauses 3, 5 and 14 of the Code of Conduct. Mr. Pramod Kumar Sharma replied to the SCN on 23.05.2023.
- 2.3. The Board referred the SCN, written submissions of Mr. Pramod Kumar Sharma, 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.
- 2.4. Mr. Pramod Kumar Sharma availed an opportunity of personal hearing before DC on 16.06.2023 through virtual mode where he was also represented by Mr. Abhishek Anand, Advocate. Mr. Pramod Kumar Sharma submitted further written submissions on 26.06.2023.

3. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Mr. Pramod Kumar Sharma's submissions thereof are summarized below:

Contravention

3.1. Failure to conduct required due diligence of the resolution plan.

- 3.1.1. In the conduct of CIRP of CD, it was observed that Mr. Pramod Kumar Sharma had appointed two valuers namely by Mr. Jagdish Mistry and Mr. Parag Seth to determine the fair value and liquidation value of CD. The liquidation value given by these two valuers were Rs.126.30 crores and Rs.121.01 crores respectively. However, in the 15th CoC meeting dated 09.05.2020, one of the prospective resolution applicants (PRA) suggested

for re-valuation of the assets of the CD in wake of Covid -19 but CoC declined the proposal of third valuation. It was also discussed that this would not be considered statutory valuation and attention was also drawn to the disciplinary proceedings of IBBI where an IP was penalised for conducting re-valuation out of the limited resources of the CD.

3.1.2. It was, however, observed on perusal of minutes of 20th CoC meeting that after detailed deliberation, Mr. Pramod Kumar Sharma agreed to appoint valuer for conducting third valuation of the assets of the CD on behalf of CoC and also with the condition that cost of such third valuation would be borne by CoC itself. From the deliberations in the 20th CoC meeting, it can be seen that the third valuation was being conducted at the behest of CoC in order to enable the CoC to decide on the resolution plans under consideration. It was not a valuation report in terms of the provisions of the Code and regulations made thereunder so as to be a basis for payment to various stakeholders in the course of implementation of resolution plan in case the same is approved by the CoC and AA.

3.1.3. Hon'ble NCLAT order dated 12.04.2022 mentioned the liquidation value of third valuation report at Rs. 52.69 crores which is much less compared to previously conducted two valuation reports. The said order further states that this third valuation report has been taken into account for payment to stakeholders under the resolution plan of the successful resolution applicant even though the same was not a valuation conducted under the Code or the regulations made thereof. Hon'ble NCLAT in its order dated 12.04.2022 took an adverse view of this conduct as it reduced the returns for the operational creditors and observed that,

“Moreover, in the present case the third valuation estimates the liquidation value as Rs. 52.69 crores, which is even less than half of the liquidation value estimated earlier and hence significantly different from the two earlier valuations. We therefore think that the procedure of obtaining a third valuation and then considering it as basis for deciding the payment particularly of the operational creditors under Section 30(2)(b) defective and not in accordance with the stipulated norms and procedure under the CIRP Regulations.

43. Section 30(2)(b) stipulates that the payment of debts of operational creditors should be in such a manner as may be specified by the IBBI, which shall not be less than the amount to be paid to such creditors in the event of the liquidation of the corporate debtor under section 53. Hence, the correct liquidation value of the corporate debtor assumes significance insofar as payments towards stakeholders and creditors are concerned. In order to assess the quantum of payments we disregard the third valuation of liquidation value for reasons that have been discussed extensively earlier in this judgment and assume that the liquidation value would be the average of the first two liquidation value estimations, which would be Rs. 123.66 crores. The full CIRP cost of Rs. 8 crores would be paid out of the assumed liquidation valuation of Rs.123.66 crores and Rs.115.66 crores will remain available for payment to workmen, employees, financial creditors and operational creditors.”

3.1.4. It is, thus, evident that payment to various stakeholders has been proposed in the resolution plan as per the valuation conducted by the CoC for the purpose of carrying out its own due

diligence and hence the same could not have been a basis for distribution. As per regulation 2(1)(k) of CIRP Regulations, the liquidation value means the estimated realizable value of the assets of the CD, if the CD were to be liquidated on the insolvency commencement date. It was Mr. Pramod Kumar Sharma's duty under section 30(2)(b) of the Code to ensure that the resolution plans submitted are in accordance with the law. However, by allowing the liquidation value of third valuation conducted by the CoC at its own expenses as the basis for distribution of plan amount among stakeholders, Mr. Pramod Kumar Sharma have acted in violation of definition of liquidation value provided under regulation 2(1)(k) of the CIRP Regulations and also shows your failure to conduct required due diligence of the resolution plan in terms of section 30(2) of the Code.

3.1.5. In view of the above, the Board held the *prima facie* view that Mr. Pramod Kumar Sharma has contravened sections 25(2)(d), 30(2)(b), 208(2)(a) & (e) of the Code, regulation 2(1)(k), 27 and 35(1)(b) of the CIRP Regulations, regulation 7(2)(a) & (h) of the IP Regulations read with clauses 3, 5 and 14 of the Code of Conduct.

3.2. Submissions made by Mr. Pramod Kumar Sharma.

3.2.1. Mr. Pramod Kumar Sharma submitted that it has been correctly mentioned that the alleged third valuation was undertaken by the CoC for their own due diligence. However, it has been wrongly alleged that he has conducted the valuation at the behest of the CoC. He submitted that a bare perusal of the minutes of the 20th CoC meeting reveals that there was no third valuation as such of the CD under regulation 27 read with regulation 35 of the CIRP Regulations as he and his legal advisor has given a categorical statement that the valuation as per CIRP Regulations has already been completed in 2018 and no case for third valuation was made out. However, the CoC in its commercial wisdom decided to conduct a valuation of the CD for their own due diligence and the same was not carried by him. The said valuation was done probably for the reason that the CIRP commenced on 29.05.2018 and the valuation was done in 2018 itself and the 20th CoC meeting was held on 05.10.2020, i.e., 861 days from the CIRP commencement because of orders passed by AA despite opposition from the RP as well pendency of the liquidation application. Thus, one may say that it was prudent for the CoC to understand the ground realities *qua* valuation for their own due diligence wherein the statutory valuation was conducted much prior and the world economy is reeling under distress due to Covid-19.

3.2.2. Mr. Pramod Kumar Sharma submitted that RP was assigned with the job of engaging the chosen valuer for the simple reason that the property of the CD was under his custody in terms of section 17 read with section 18 of the Code and thus, it was more pragmatic to make the RP a nodal person to ensure the valuation for due diligence of the CoC in terms of existing market realities. Valuation conducted by the CoC at their own cost, which is not in terms of regulation 27 read with regulation 35 of the CIRP Regulations cannot be termed to be part of the CIRP and the same is not utilized for any purposes in the CIRP by him.

3.2.3. Mr. Pramod Kumar Sharma submitted that it is factually not correct that the payment to the stakeholders under the resolution plan approved by the CoC as well as subsequently by AA is based on the impugned valuation. In this regard, he brings out following list of dates in a tabular form:-

S. No.	Events	Date
1.	The RP submitted the valuation of the CD.	August, 2018
2.	The contours of resolution plan of the successful Resolution Applicant (SRA) discussed in the 16th COC meeting dated 24.07.2020 wherein the SRA agreed to submit a revised resolution plan with better financial proposal.	24.07.2020
3.	The revised resolution plan of SRA was submitted in pursuance to the discussion held in 16th CoC meeting.	08.08.2020
4.	The revised resolution plan of SRA was placed before CoC for its consideration in the 17th COC meeting wherein 10 days was granted to SRA in order to remove the deficiencies pointed out in the resolution plan.	20.08.2020
5.	The final resolution plan was submitted by the SRA for the consideration of the CoC.	30.08.2020
6.	The RP circulated the notice and agenda for 18th CoC meeting scheduled to be held on 07.09.2020. The RP <i>inter alia</i> circulated the due diligence report on the final resolution plan along with addendum for the consideration of the COC whereby the RP was of <i>prima facie</i> opinion that the resolution plan is in compliance of section 30(2) of the Code	03.09.2020
7.	The aforementioned legal due diligence report was submitted before CoC for its consideration in the 18th COC meeting. Further, the CoC discussed the revised Resolution Plan wherein certain minor explanations were sought to be brought by way of addendum to the Resolution Plan and the Resolution Plan was sent to e-voting for approval.	07.09.2020
8.	19th COC meeting held seeking further clarification on the Resolution Plan.	19.09.2020
9.	20th CoC meeting held wherein CoC decides to conduct a new valuation for their own due diligence purpose and at their own cost.	05.10.2020
10.	Resolution Plan of CoC approved by the CoC with 100% majority.	07.11.2020

3.2.4. He submitted that the aforementioned timelines make it clear that in terms of the mandate of the Code, the final resolution plan along with amendments were placed before the CoC in 18th COC meeting whereby the RP also placed his legal due diligence report. The relevant portion of legal due diligence report annexed with notice dated 03.09.2020 for 18th COC meeting is reproduced as under:-

Section 30(2)(b)(i) and (ii) both are complied in view of NIL Liquidation Value to Operational Creditors.

- 3.2.5. He submitted that the decision with regard to impugned valuation of the CD for CoC due diligence was taken only in 20th CoC meeting dated 05.10.2020. By the said time, the RP has already provided his due diligence report and in fact, in 21st CoC meeting, the RP specifically recorded that since there is no material change in the resolution plan along with addendum placed before CoC in 18th CoC meeting, the RP did not submit any new legal due diligence report other than already submitted on 03.09.2020. The relevant portion of minutes of 21st CoC meeting dated 27.10.2020 is reproduced as under:-

The Chairman had already mailed the Revised Resolution Plan and Revised addendum to Resolution Plan of N Circle Exim LLP on 24th September 2020. Since there was no change in Resolution Plan, Addendum to Resolution Plan and due diligence report therefore the copy of said documents were not circulated again.

- 3.2.6. Mr. Pramod Kumar Sharma submitted that all the due diligence of the resolution plan by RP as well as scrutiny by the CoC was done prior to the valuation conducted pursuant to the 20th CoC meeting. Further, there is nothing in the minutes of the meeting of 20th CoC meeting and there onwards suggesting that CoC scrutinized the compliance of the resolution plan under section 30 of the Code based on the impugned valuation. He submitted that the impugned valuation was solely for the purposes of the CoC due diligence which is per se not bared under law as even admitted by the Hon'ble NCLAT in the judgment dated 12.04.2022. The entire scrutiny of the resolution plan was done in accordance with the two valuations conducted in 2018 in accordance with regulation 27 read with regulation 35 of the CIRP Regulations. Thus, there is no question of scrutiny of distribution under the resolution plan on a valuation report which has not even started when the scrutiny from RP was already completed.
- 3.2.7. Mr. Pramod Kumar Sharma relied on order of Hon'ble Supreme Court in the matter of *Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta & Ors. (2019) 2SCC* and submitted that the role of RP is to simply give his *prima facie* opinion with regard to compliance of section 30(2) of the Code which has already been done by him *vide* legal due diligence report dated 03.09.2020. After receiving the final resolution plan and giving his *prima facie* opinion, he forwarded the resolution plan for the consideration of the CoC, from this point onwards, he has no role to play in the scrutiny of the resolution plan including taking a decision of compliance of the resolution plan under section 30(2) of the Code, and the same vests with the CoC. Therefore, once the resolution plan after giving his *prima facie* opinion on compliance of section 30(2) has been given obviously relying upon the earlier valuation done in 2018 in terms of CIRP Regulations, as the impugned valuation was not existing at the said time, he cannot be termed to have failed to do the due diligence of the resolution plan.

- 3.2.8. Mr Pramod Sharma submitted that the pursuant to judgement dated 12.04.2022 in CA(AT)(Ins.) 422/2021 titled as Rana Saria Poly Pack Pvt Ltd. Vs Uniworld Sugars Pvt. Ltd. And Anr. And CA(AT)(Ins.) 741/2021 titled as Simbhaoli Sugars Ltd. Vs Uniworld Sugars Pvt. Ltd. And Anr, the RP called 22nd CoC meeting dated 25.4.2022 whereby CoC unanimously resolved to implement the judgement in letter and spirit. Since, the judgement of the Hon'ble NCLAT didn't set aside the resolution plan *per se* and rather sent the matter back to the CoC for redistribution to the stakeholders, thus, the CoC in its wisdom thought it as an opportunity whereby the recoveries to the creditors may increase and thus result in maximization of assets of the CD. Thus, the CD for the practical implication of the judgement decided against filing appeal, which in result restrained him from filing appeal before Supreme Court.
- 3.2.9. Mr. Pramod Kumar Sharma submitted that the same resolution plan except only the payment to employees were marginally increased was approved by AA *vide* order dated 20.03.2023. Thus, it clearly proves that there was no infirmity in the due diligence conducted by RP on the resolution plan.
- 3.2.10. Mr. Pramod Kumar Sharma submitted that the disclosure in the Form-H with regard to the impugned valuation conducted by the CoC was merely an exercise of abundant caution with an aim to bring complete facts on the record and show highest standard of transparency before AA.
- 3.2.11. Mr. Pramod Kumar Sharma submitted that third valuation report was not considered by him. A comparison between the original Form H dated 20.11.2020 and revised Form H dated 11.06.2022 representing the payment to various sub-heads of operational creditors is as follows:-

Class of Creditor	Payment Proposed against accepted claim as per original Form H dated 20.11.2020 (In Percentage)	Payment Proposed against accepted claim per revised Form H dated 11.06.2022 (In Percentage)
Financial Creditors	85.37%	85.37%
Related Party Operational Creditors of CD	NIL	NIL
Workmen	81.57%	100%
Employees	20.25%	100%
Others	18.84%	18.84%

3.2.12. He submitted that there is no change in the proposed payment to FCs and the payment proposed to operational creditor except that of workman and employees which was done by SRA without having legal obligation to do so under section 30 of the Code under revised resolution plan has been marginally increased and the same is in accordance of section 30(2) read with section 53 of the Code.

3.3. Analysis and Findings.

3.3.1. The DC notes that from the minutes of 20th CoC minutes it is apparent that impugned third valuation was done at the behest of CoC members. The provisions of valuation under regulation 27 and 35 of the CIRP Regulations were discussed and it was placed before CoC that there is no need of third valuation as there is no disparity between the two valuations done in 2018. Still the CoC was of the view of conducting the third valuation of CD.

3.3.2. Hon'ble NCLAT in its order dated 12.04.2022 observed as under:

“25. In the instant case, we find that the first valuation by two registered valuers were made on 28.5.2018 and the two valuations of liquidation value were Rs.126.30 crores and Rs.121.01 crores, leading to average value of Rs.123.66 crores. We feel that even if the CoC thought it fit to get another valuation of a more recent date, it was desirable that the procedure outlined in regulations 27 and 35 should have been followed. The source of payment for valuation is not a material factor insofar as valuation figures are concerned nor will they have any impact on them. They are really disjointed activities. Moreover, in the present case the third valuation estimates the liquidation value as Rs. 52.69 crores, which is even less than half of the liquidation value estimated earlier and hence significantly different from the two earlier valuations. We therefore think that the procedure of obtaining a third valuation and then considering it as basis for deciding the payment particularly of the operational creditors under Section 30(2)(b) defective and not in accordance with the stipulated norms and procedure under the CIRP Regulations.

...

Since the liquidation value forms the basis of deciding the inter se` payments to creditors it requires that the valuation exercise be undertaken with absolute impartiality and. Hence, in our view the relevance and application of Regulations 27 and 35 are pertinent in the process of appointment of valuers and for establishing the need for a fresh valuation.”

The Hon'ble NCLAT concluded that the valuation was not done in accordance with regulations 27 and 35 of CIRP Regulations.

3.3.3. From the facts available before DC, it is further noted that the legal due diligence report was circulated before CoC along with notice for 18th CoC meeting dated 07.09.2020

wherein the share of operational creditors (OC) was provided as nil in compliance of section 30(2)(b) of the Code.

3.3.4. On further perusal of compliance certificate in Form H dated 20.09.2020 the share of OC, related party to CD was nil. The share of other OCs is tabulated as below:

Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan#	Amount provided to the amount claimed%
Workmen	0.34	0.34	0.28	81.57%
Employees	1.55	1.51	0.30	20.25%
Others	10.05	8.34	1.58	18.940%

3.3.5. The decision to appoint valuers for third valuation was taken in 20th CoC meeting dated 05.10.2020. Their valuation report was considered in 21st CoC meeting dated 27.10.2020. It was recorded that

“Resolution Professional stated that the valuation report was shared on 19th October, 2020 but no objections, suggestions or queries were received by him till date.

....

COC after considerations and deliberations took note of the latest valuation and valuation reports.”

The resolution plan was passed with 100% majority.

3.3.6. Later when revised resolution plan was approved by AA on 20.03.2023, the share of workmen and employees was increased and they received 100% of the amount claimed. From the chain of events and facts available, the third valuation does not seem to have affected the distribution under the resolution plan.

3.3.7. The DC notes that in the Form H dated 20.11.2020, Mr. Pramod Kumar Sharma informed the liquidation value as Rs. 52.69 crores which was based on third valuation. However, in the revised Form H filed on 11.06.2022, the liquidation value was provided as Rs. 123.66 crores which was based on valuation conducted as per regulation 27 and 35 of CIRP Regulations. It is clear case where CoC, in the name of commercial wisdom exceeded its mandate. However supporting logic has been that during pandemic, value of assets, in general, registered a drastic fall, and CoCs in many cases, in zeal to get latest valuation of the CD, insisted for third valuation to be done during extra-ordinary times of Covid-19. As mentioned by Hon’ble NCLAT such a precautionary exercise was violative of regulations 27 and 35 of the CIRP Regulations. However, in the instant case, role of RP, in pursuing the third value, is not established beyond doubt.

4. Order

- 4.1. The DC is of the view that if there was any factual discrepancy and non-reliance on the same for the purpose of distribution of the amount of the resolution plan, Mr. Pramod Kumar Sharma should have filed application before Hon'ble NCLAT for the due rectification. Mr. Sharma should have been more careful in taking up the matter before NCLAT. In view of the foregoing discussion, the DC, in exercise of the powers conferred under Section 220 of the Code read with regulation 13 of the Investigation Regulations disposes of the SCN with caution to Mr. Sharma to be more careful in representing matter before AA and Hon'ble NCLAT.
- 4.2. This Order shall come into force with an immediate effect in view of the para 4.1 of the order.
- 4.3. A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Pramod Kumar Sharma is providing his services, if any.
- 4.4. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Pramod Kumar Sharma is enrolled as a member.
- 4.5. 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.
- 4.6. Accordingly, the show cause notice is disposed of.

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(Sudhaker Shukla)
Whole Time Member, IBBI

Date:6th July, 2023

Place: New Delhi