

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/152/2023

17th February 2023

ORDER

In the matter of Mr. Vivek Raheja, 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)/2021/70/4190 dated 21st October 2022, issued to Mr. Vivek Raheja, JD 2C, 2nd Floor, Pitampura, New Delhi - 110034 (herein referred as “IP”) who is a Professional Member of the Indian Institute of Insolvency Professional of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-001/IP-P00055/2017-18/10133.

1. Background

- 1.1 In respect of Trading Engineers (International) Limited (herein referred as “CD-1”), the National Company Law Tribunal, New Delhi Bench (AA) vide its Order dated 04th July 2019, admitted the application under Section 9 of the Code for corporate insolvency resolution process (CIRP) of the CD-1 and appointed Mr. Vivek Raheja as Interim Resolution Professional. He was later confirmed as Resolution Professional also.
- 1.2 In respect of Veekay Polycoats Limited (herein referred as “CD-2”), the National Company Law Tribunal, New Delhi Bench (AA) vide its Order dated 01st March 2019, admitted the application under Section 7 of the Code for CIRP of the CD-2 and appointed Mr. Vivek Raheja as Interim Resolution Professional. He was later confirmed as Resolution Professional.
- 1.3 The IBBI in exercise of its powers under Section 218(1) of the Insolvency and Bankruptcy Code, 2016 (Code), read with Regulation 3(2) and (3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations), appointed the Inspecting Authority (IA) to conduct inspection of the records pertaining to CIRP of aforesaid Corporate Debtors (referred to as CDs).
- 1.4 The IBBI on 21st October 2022 had issued the SCN to Mr. Raheja, based on findings in the inspection report in respect of his role as IRP/RP in the CIRP of above mentioned CDs. 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. The reply of Mr. Raheja on the SCN was received by the Board on 07th November 2022.

- 1.5 The SCN, response of Mr. Raheja to the SCN and other material available on record were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Raheja availed an opportunity of personal hearing before the DC on 24th January 2023.

2. Alleged Contraventions, Submissions of IP and Findings

The contraventions alleged in the SCN and submissions by Mr. Raheja are summarized as follows:

I. In the matter of CIRP of Trading Engineers (International) Limited

2.1 Delay in verification of claims

- 2.1.1 Regulation 13(1) of CIRP Regulations, 2016, provides that 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.
- 2.1.2 It was observed from the minutes of the 3rd meeting of Committee of Creditors (CoC) held on 16th November 2019, that claims of four financial creditors namely, Instronics Ltd., Techno Trexim India Pvt. Ltd., Gessup Logistics & Finance Pvt. Ltd. and Verinder Kumar Chhabra were pending verification, although the same were submitted to the IP vide email dated 14th August 2019. Thus, there was substantial delay in the verification of claims by the IP.
- 2.1.3 Accordingly, the Board was of the *prima facie* opinion that the IP had, *inter alia*, violated Regulation 13(1) of the CIRP Regulations, 2016 and clause 13 of Code of Conduct for Insolvency Professionals provided under First Schedule to Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (Code of Conduct).

Submissions by the IP

- 2.1.4 The IP has submitted that the claims of all the four above mentioned creditors was received by him, through a common representative of these creditors, vide email dated 14th August 2019. Thereafter, while verifying the claims of these creditors, the IP found certain discrepancies between the amount claimed and the amount reflected in the books of the CD-1. The same was communicated to the common representative of the above mentioned creditors vide letter dated 17th August 2019.
- 2.1.5 The IP further submitted that due to non-availability of supporting documents from the claimants, the verifications were kept pending. This fact was communicated by the IP to the CoC in its 3rd meeting held in November 2019. Further, a meeting was held with the common representative of the claimants on 06th December 2019 for necessary clarification/information with regard to the claims. After due verification, the claims were admitted, and letter dated 10th December 2019 was sent to all these creditors in this regard.

Findings of the DC

- 2.1.6 Regulation 13(1) of the CIRP Regulation provides as follows:

“13. Verification of claims.

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”

2.1.7 The DC notes that the last date for receipt of claims as provided in the Public Announcement was 2nd August 2019. The claims of the above mentioned creditors were received by the IP on 14th August 2019. After the receipt of claims of the creditors, the IP had replied to their common representatives within three days regarding discrepancies in the claim received. Later, in consultation with the common representative, the IP had verified and admitted the claims of these creditors.

2.1.8 The DC finds no material on record establishing that the IP had deliberately delayed in admission of claims.

2.2 Last minute inclusion of member of suspended management as joint resolution applicant:

2.2.1 In the 10th CoC meeting held on 04th August 2020, presentations were made by two Prospective Resolution Applicants viz. Suncare Formulations Pvt Ltd. and Conquerent Control Systems Pvt Ltd (Conquerent) on their respective resolution plans. Mr. Sushant Chhabra was present in the meeting in his capacity as member of suspended management of the CD-1. However, his association with the resolution applicant, Conquerent was nowhere found mentioned in the presentation made by Conquerent.

2.2.2 However, from perusal of minutes of the 12th CoC meeting held on 10th September 2020, it was found that Mr. Sushant Chhabra was also one of the partners in the resolution plan submitted by Conquerent. Mr. Sushant Chhabra was present in all these meeting as a suspended Director of the CD-1 and was privy to presentations and discussions on the Resolution Plan of the competing Prospective Resolution Applicant, Suncare Formulations Pvt Ltd.

2.2.3 Further, Mr. Chhabra had assured the CoC that dialogue would be made with Edelweiss for transfer of the land, owned by one of the group companies of CD-1 and mortgaged with Edelweiss, in favour of prospective resolution applicant.

2.2.4 It is alleged in SCN that in such scenario, the association of Mr. Chhabra with Conquerent, at advance stage of resolution process, vitiates the entire process as it puts the other resolution applicant in a disadvantageous position.

2.2.5 Accordingly, the Board was of the *prima facie* opinion that the IP had, *inter alia*, violated Sections 208(2)(a) and 208(2)(e), read with clauses 1, 2, 3, 5, 9 and 14 of the Code of Conduct.

Submissions by the IP

- 2.2.6 The IP submitted that the land on which the manufacturing unit of the CD-1 was operating was owned by a group company of the CD-1. The directors of the CD-1 were also director of the land-owning group company. There was no lease/rent agreement between the CD-1 and the land-owning group company. Therefore, it was not possible for any prospective resolution applicant to run the factory on a land for which it has no usage rights whereas full building and factory shed was constructed by the CD-1. In the absence of any clarity, it was considered necessary and expedient that the success of any resolution plans depends upon taking steps to ensure that the land is also transferred in the name of CD-1.
- 2.2.7 The IP further submitted that one of the prospective resolution applicants, namely, Suncare had suggested assignment of debt and that too at a very low price which was much below the expectations of CoC. The other PRA, namely, Conquerent after having various rounds of negotiation with the suspended directors modified its resolution plan whereby Mr. Chhabra undertook to transfer the ownership of land in favour of CD-1. In consideration to this concession given by suspended director, the PRA included Mr. Chhabra as a joint applicant in the resolution plan submitted by them.
- 2.2.8 The Conquerent in 11th meeting of the CoC held on 21st August 2020 presented resolution plans with two options. In the first option, no transfer of ownership of land was envisaged. In the second option, Mr. Chhabra was introduced as joint applicant in the resolution plan and four different scenarios were presented, wherein, the value of the resolution plan was also increased by the Conquerent and highest amount being offered when the land belonging to third party was transferred in name of CD-1. The COC being satisfied with the increase in value of resolution plan approved the resolution plan submitted by Conquerent jointly with Mr. Chhabra in its 17th meeting held on 15th February 2021.
- 2.2.9 It is noteworthy to mention that since CD-1 is an MSME, Mr. Chhabra being the suspended director of the CD-1 was not ineligible in terms of section 29A of the Code.

Findings of the DC

- 2.2.10 Section 24(4) of the Code provides as follows –

“24. Meeting of committee of creditors. -

(4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings:”

- 2.2.11 Further, section 240A(1) of the Code provides as follows –

240A. Application of this Code to micro, small and medium enterprises. –

(1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process or pre-packaged insolvency resolution process of any micro, small and medium enterprises.”

- 2.2.12 It is observed that the Code, under section 24, allows members of the suspended Board of Directors to be part of meetings of CoC without any right to vote in such meetings. Further, the Code also provides exemption in favour of micro, small and medium enterprises, such that clauses (c) and (h) of section 29A is not applicable on the suspended directors while proposing resolution plan for revival of corporate debtor.
- 2.2.13 In the instant case, the resolution plan was proposed by the suspended director of the corporate debtor, jointly with another company. The joint resolution plan had the benefit of transfer of land in favour of corporate debtor and thereby the resolution value was increased. The DC observes that the CoC, exercising its commercial wisdom, had approved the resolution plan proposed by the suspended director.
- 2.2.14 In view of the foregoing, the DC finds that the contraventions alleged in the SCN on this account, do not sustain.

II. In the matter of CIRP of Trading Engineers (International) Limited and M/s Veekay Polycoats Limited

2.3 Out-sourcing of duties of the RP to the Process Advisor

- 2.3.1 Regulation 7(2)(bb) of the IP Regulations, 2016 bars an Insolvency Professional from outsourcing any of his duties and responsibilities under the Code, except those specifically permitted by the Board. The Board Circular No. IP/003/2018 dated 03-01-2018, too, states that an insolvency resolution professional shall not outsource any of his duties and responsibilities under the Code.
- 2.3.2 In the CIRP of Trading Engineers (International) Limited, the IP had appointed a Process Advisor at a monthly fee of Rs. 2.5 lakh and a success fee of 0.75% of the resolution amount subject to a maximum of Rs. 37.50 Lakhs. The scope of work included, *inter alia*, evaluation of the Expression of Interest, to scrutinize resolution plans/revised resolution plan submitted by each of prospective resolution applicant to ensure the same is compliant with Code and rules and regulations made thereunder, to suggest modifications therein, to enter into negotiations with the Prospective Resolution Applicants etc.
- 2.3.3 In the matter of CIRP of M/s Veekay Polycoats Limited also, the IP had appointed the process advisor at a monthly fee of Rupees Two lakhs and a success fee of one percent of the resolution amount subject to a maximum of Rs. 45 Lakhs. The scope of work included, *inter alia*, evaluation of the Expression of Interest, to scrutinize resolution plans/revised resolution plan submitted by each of prospective resolution applicant to ensure the same is compliant with Code and rules and regulations made thereunder, to suggest modifications therein, to enter into negotiations with the Prospective Resolution Applicants etc.
- 2.3.4 As per the scheme of Code and CIRP Regulations, these activities are primarily the responsibilities of resolution professional. By appointing a process advisor with the scope of work akin to responsibilities of a resolution professional, the IP is alleged to have

outsourced his responsibilities as resolution professional in the CIRPs of the CD-1 and CD-2.

- 2.3.5 Accordingly, the Board was of the *prima facie* opinion that the IP had, *inter alia*, violated sections 208(2)(a) of the Code, Regulation 7(2)(bb) of the IP Regulations, 2016, Clause 1, 3 and 5 of the Code of Conduct and Circular No. IP/003/2018 dated 03-01-2018 issued by the Board.

Submissions by the IP

- 2.3.6 The IP submitted that section 20 of the Code empowers an interim resolution professional to appoint professionals for providing assistance and support for efficient conduct of the CIRP. In the instant cases also, the process advisors were appointed only for extending support and assistance to the IP for resolving complex commercial and operational issues faced during the CIRP, and for aiding the IP in ensuring the objective of resolution of CDs is met successfully and in a timely manner. The role of process advisor was not to substitute the role of IP.
- 2.3.7 The IP provided the scope of work of the process advisor and reasoned that no core functions and responsibilities of the IP were delegated to the process advisor. The process advisor had no power to take any decisions on behalf of the CDs and the entire decision making vested only with the IP. Further, the engagement of process advisor was on the advice and due approval of CoC.

Findings of the DC

- 2.3.8 The Code casts important duties on a resolution professional to carry on the business of the corporate debtor during the insolvency resolution process and to resolve the corporate debtor in accordance with the provisions of the Code. The Resolution Professional can also appoint such professionals as he deems necessary for this purpose.
- 2.3.9 Section 20 of the Code provides as follows:

“20. Management of operations of corporate debtor as going concern. –

(1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority- (a) to appoint accountants, legal or other professionals as may be necessary;

(b).....”

- 2.3.10 The Code also envisages delegation of authority by a resolution professional, albeit with the approval of CoC. Section 28(1)(h) of the Code provides as follows –

“28. Approval of committee of creditors for certain actions. –

(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take

any of the following actions without the prior approval of the committee of creditors namely: -

(h) delegate its authority to any other person;”

- 2.3.11 It is noted that the IP had appointed same process advisor in both the CIRPs. The fee for the process advisor in both these CIRPs were fixed in similar manner. The engagement letter between the IP and the process advisor states that the appointment of process advisor was to assist the IP in performance of his functions under the Code.
- 2.3.12 The DC notes that the appointment of process advisors in both the CIRPs was approved by the CoC. Further, there is no material on record to specifically point out instances of outsourcing of duty by the IP.

3. ORDER

- 3.1. 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 disposes the SCN, without any directions.
- 3.2. The Order shall come into force immediately in view of directions in paragraph 3.1.
- 3.3. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Raheja is enrolled as a member.
- 3.4. 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.
- 3.5. Accordingly, the show cause notice is disposed of.

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(Jayanti Prasad)

Whole Time Member, IBBI

Dated: 17th February 2023

Place: New Delhi