

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/264/2025

6 February 2025

ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/19/2023-IBBI/815/1449 dated 27.10.2023 issued to Mr. Akash Shinghal, an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00137/2017-18/10279, who is a Professional Member of the Indian Institute of Insolvency Professional of ICAI.

1. Background.

- 1.1 The NCLT, New Delhi, Bench-III (AA) *vide* order dated 06.06.2018 admitted the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code), filed by Deepak Khanna (Financial Creditor/FC) for initiating Corporate Insolvency Resolution Process (CIRP) of M/s Earth Infrastructures Limited (Corporate Debtor/CD). Initially, Mr. Surinder Kumar was appointed as Interim Resolution Professional (IRP) of the CD *vide* order of even date. Thereafter, Mr. Akash Shinghal was appointed as Resolution Professional (RP) of CD *vide* order dated 18.03.2019 of the AA.
- 1.2 The Board received a complaint against Mr. Akash Shinghal in the CIRP of the CD. The Board, in exercise of its powers under Section 218 of the Code read with Regulations 7(2) and 7(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations) appointed an Investigating Authority (IA) to conduct the investigation of Mr. Akash Shinghal. In compliance with regulation 8(1) of Inspection and Investigation Regulations, notice of investigation was sent to Mr. Akash Shinghal on 07.03.2023 to which his response was received *vide* e-mails dated 17.03.2023, 10.04.2023, 24.05.2023, 08.06.2023, 14.06.2023, 23.06.2023, 27.06.2023, 28.06.2023 and 29.06.2023. The IA submitted the investigation report to the Board on 01.08.2023.
- 1.3 Thereafter, based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the Board formed a *prima facie* opinion that Mr. Akash Shinghal contravened provisions of the Code and Regulations made thereunder and issued the SCN to him on 27.10.2023. Mr. Akash Shinghal replied to the SCN on 10.11.2023.
- 1.4 The Board referred the SCN and the reply to the SCN from Mr. Akash Shinghal to the Disciplinary Committee (DC) for disposal in accordance with the Code and Regulations made thereunder. Mr. Akash Shinghal availed the opportunity of personal hearing through virtual

mode before the DC on 16.02.2024 wherein he appeared with the Advocate Mr. Sumit Shukla. Mr. Akash Shinghal provided his additional written submissions on 17.02.2024.

1.5 The DC has considered the SCN, the reply to SCN, oral and written submissions of Mr. Akash Shinghal, and proceeds to dispose of the SCN.

2. Alleged Contraventions, Submissions, Analysis and Findings.

The contravention alleged in the SCN and Mr. Akash Shinghal’s written and oral submissions thereof are summarized as follows.

3. Contravention-I

Violation of timelines in conducting voting and meeting of Committee of Creditors (CoC).

3.1 According to Regulation 16A(9) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) that were applicable at the time, the Authorized Representative (AR) was mandated to circulate the agenda to the creditors in a class, announce the voting window at least twenty-four hours before it opens for voting instructions, and ensure that the voting window remains open for a minimum of twelve hours. Additionally, Regulation 19 of the CIRP Regulations, along with its proviso, stipulates that a CoC meeting must be convened with a notice period of no less than five days, which can be reduced to 48 hours by the CoC.

3.2 However, it was noted that the prescribed timelines regarding notice for conducting the CoC meeting and announcing the opening of the voting window by the AR have not been adhered to in relation to the 19th CoC meeting. The details are as follows:

S. No.	Particulars	Date & Time	Regulatory Requirement	Actual Time Allowed by IP	Compliance Status
1	Notice and agenda for the 19 th CoC meeting sent to AR	09.11.2019, 8:15 P.M.	At least 5 days’ notice (can be reduced to 48 hours)	Less than 48 hours (as Meeting was scheduled on 11.11.2019; 11:30 A.M.)	Non-compliance of regulation 19 of CIRP Regulation
2	AR circulates the agenda to homebuyers and	09.11.2019, 10:08 P.M.		-	-

	announces voting window				
3	Voting window opens voting instructions	10.11.2019, 11 A.M.	At least 24 hours before voting window opens	Only 12 hours provided	Non-compliance of regulation 16A (9) of CIRP Regulation, as effective on the said date

3.3 The Board, therefore, held *prima facie* view that Mr. Akash Shinghal contravened Sections 24(8), 208(2)(a) & 208(2)(e) of the Code, Regulations 16A(9) and 19 of CIRP Regulations, Regulations 7(2)(a) & 7(2) (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clauses 13, 14 and 15 of the Code of Conduct as specified in the First Schedule to IBBI (Insolvency Professionals) Regulations, 2016 (Code of Conduct).

Submissions by Mr. Akash Shinghal.

3.4 Mr. Akash Shinghal submitted that the CoC in its 7th meeting held on 15.04.2019 approved the reduction of time of notice period from 5 days to 48 hours as per the Regulation 19(2) of the CIRP Regulations for calling the meeting of the CoC. Such period of 5 days should be read as 48 hours' when read with the resolution dated 15.04.2019.

3.5 He submitted that in view of the amendment in Section 12 of Code, "*Time-limit for completion of insolvency resolution process*", this action has to be looked into with the objective of the Code, and it is to be read with the fact that the extended time of CIRP i.e. 330 days was ending on 14.11.2019. Therefore, keeping in mind the time constraints, the meeting was planned at 11:30 AM on 11.11.2019 and it was submitted that the time taken for negotiation and/or discussions on the resolution plans amongst the CoC members and PRA who submitted the resolution plan, such short period timelines were considered by the CoC as it was in the interest of the CoC, the AR and the class of creditors and duly adjudicated by the AA as well as by the Appellate Authority. Therefore, the alleged violation was not on account of negligence but on account of time constraints in compliance with the newly inserted third proviso of Section 12 of the Code and to strive hard to see that there is successful resolution plan for the revival of the CD to safeguard the interest/ hard-earned money of more than 4,500 homebuyers who invested their life savings in purchasing properties and ensuring that the CD will not lurch into liquidation.

3.6 The other observation was with regard to non-compliance of the Regulation 16A (9) of the CIRP Regulations stating therein that voting window was opened at 11 AM on 10.11.2019 whereas the meeting was to be held on 11.30 AM on 11.11.2019 and thus, only 12 hours were

provided for voting prior to holding of the CoC meeting. In this regard, it was submitted that the voting instructions which were issued on such short timelines were considered by the CoC members, the AR of the class of creditors, knowing fully well that such reduced timelines were not affecting their rights as claimants and thereafter, the CIRP reached to its logical conclusion which was subsequently adjudicated by the AA as well as by the NCLAT.

3.7 He also submitted that the total time required is 24 hours for instructions and 12 hours for voting i.e. total 36 hours. Considering the fact that the real estate allottees are individuals, he allowed time for 24 hours instead of 12 hours. Hence, the adequate time was made available to the claimants to consider the agenda item before voting. All this was done to ensure that the CoC could take decision qua resolution plan for the CD before expiry of 330 days, as aforesaid. He submitted that subsequently by way of amendment dated 07.08.2020, the Board stipulated the time for providing instructions to 12 hours as against 24 hours and voting window to keep open for 24 hours as against 12 hours. Hence, the actions at that time taken by him were in consonance what was in the interest and objective of the Code and was in line with the subsequent amendments made by the Board in the sub regulation 9 of Regulation 16A of CIRP Regulations. Even otherwise, this issue has already been adjudicated by the AA and the NCLAT in its orders, as aforesaid. In view of the above, these submissions may be read with such orders of the AA and the NCLAT on the similar issues. Order passed by the AA on 08.06.2021, while disposing of the objections raised under CA - 914/2019 at that time by the complainant, which are of similar to kind of the allegation dealt in the inspection carried out by the Board. The observation made by the AA in para 10 of the order dated 08.06.2021 was quoted for ready reference:

“10. It is also alleged by Applicant herein that sufficient time was not given to the class of creditors for adequately analyzing the Resolution Plan. In this connection the Counsel for RP has demonstrated by way of tabular chart, various milestones achieved in the CIRP proceedings of CD. It is seen from the same that due opportunities have been provided to members of class of creditors (home-buyers) to give their views/suggestions before taking final voting on the Plan. Further, as seen from the said chart, the Plan of Resolution Applicant was received on 15.10.2019, which is within the time frame fixed by CoC in the RFRP. However, the plan as received can always be subject to negotiations between RA and the CoC in the best commercial wisdom of CoC. Therefore, the contention of Applicant on this count, being devoid of merit, is rejected.”

3.8 He further submitted that the aggrieved by the order of the AA, the applicants therein also filed an appeal before the NCLAT vide CA(AT) (Ins.) No. 916 of 2021, CA(AT) (Ins.) 824 of 2021 and CA (AT) 283 of 2022, which were also dismissed by the NCLAT vide its order dated 14.11.2022, 25.11.2022 and 12.10.2022 respectively.

Following was the observations made by the NCLAT in paragraph 6 & 7 of order dated 12.10.2022 in Company Appeal (At) (Ins.) No. 283 Of 2022 -:

“6. We have considered the submissions of the Counsel for the Appellant and perused the record.

7. There is no dispute to the fact that the Resolution Plan has been approved by 99.97% of vote shares of CoC. The Appellant- ‘Earth Buyers Association for Justice’ itself is not member of the CoC. The 35 homebuyers who were sought to be brought on record, 29 homebuyers have not voted for the plan and the class of homebuyers have to sail with the majority of the votes of the homebuyers. Section 25A (3A) provides as follows:-

“25A. Rights and duties of authorised representative of financial creditors. - xxx xxx xxx [(3A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote: Provided that for a vote to be cast in respect of an application under section 12A, the authorized representative shall cast his vote in accordance with the provisions of sub-section (3)”

Observations made by the NCLAT in paragraph 11 of order dated 14.11.2022 in CA (AT) (INS) No. 916 of 2021

“Thus, the Authorised Representative’s primary duty and responsibility is to present the views of the financial creditors in class in the CoC meetings. We note that there is no deficiency or irregularity pointed out by the Learned Counsel for Appellant in the selection of the Authorised Representative. The fifteen Appellants in the present appeal are homebuyers. The Respondent No. 1 has stated that out of these 15 appellants, the name of one homebuyer Mr. Sharad Bhatnagar does not appear in the record of CoC. Out of the rest 14 appellants, 8 homebuyers participated in the voting held by the Authorised Representative. Their votes are thus recorded in the voting whereas 6 have not voted at all. The views/votes of 8 voting homebuyers are therefore covered in the voting exercise, where we find that an overwhelming majority of 99.97% have voted to approve the resolution plan. Thus, it is clear that a miniscule number of homebuyers have come before us as applicants and out of this small number, six have not even cared to cast their vote, have to sail with the decision of the majority of homebuyers. This is the scheme of IBC.”

Observations made by the NCLAT in paragraph 14 & 15 of order dated 14.11.2022 in CA (AT) (INS) No. 916 of 2021

“14. We find that the appellants, who have exercised their right to vote or not cared to exercise their right to vote form a miniscule minority, opposing the approval of resolution plan. Having done so, they now do not possess an independent right to challenge the majority vote (99.97%) of the homebuyers.

Thus, we are of the clear opinion that even if some of the homebuyers have not voted in favour of the plan, but the majority (more than 50%) have voted in favour of the resolution plan approving the same, the dissenting homebuyers who are in minority have to go along with the views of the majority. They are, therefore, not entitled to prefer this appeal. The appeal is disposed of on the ground of non-maintainability

Observations made by the NCLAT in paragraph 12 of order dated 25.11.2022 in CA(AT) (INS) No. 824 of 2021

We note that there is no shortcoming or irregularity pointed out by the Learned Counsel for Appellant in the selection of the Authorised Representative. It is a fact that the nineteen Appellants in the present appeal are all homebuyers, but as the Respondent No. 1 has stated out of these 19 appellants, 5 homebuyers participated in the voting held by the Authorised Representative and rejected the resolution plan. Their votes are thus recorded in the voting whereas 4 homebuyers abstained and did not vote. The views/votes of 5 voting homebuyers are therefore covered in the voting exercise, where we find that an overwhelming majority of 99.97% have voted to approve the resolution plan. In addition, 10 Appellants have not filed claim and one not member of CoC as financial creditor in class, it is clear that a miniscule number of homebuyers have come before us as Appellants and they have to go along with the decision of the majority of homebuyers taken with 99.47% in favour. This is the scheme of IBC.

...

17. We find that the appellants, five of whom exercised their right to vote, and four who did not care to exercise their right to vote form a miniscule minority, opposing the approval of resolution plan. Having done so, they now do not possess an independent right to challenge the majority vote (99.97%) of the homebuyers. The rest ten homebuyers are not even members of the financial creditors in class, since they have not filed their claims, and they in any case cannot challenge any decision of CoC as they are not creditors.

18. Thus, we are of the opinion that even if some of the homebuyers have not voted in favour of the plan, but the majority (more than 50%) have voted in favour of the resolution plan approving the same, the dissenting homebuyers who are in clear minority have to go along with the views of the majority. They are, therefore, not entitled to prefer this appeal. This appeal is therefore, disposed of on the ground of non-maintainability.

- 3.9 He submitted that the complainant association which is having support of only 30-40 homebuyers are not leaving any stone unturned to rake up their issues again and again which infact finally stood considered and rejected by the AA and the NCLAT and now have again filed complaint with same allegations which are now again entertained by the Board whereas these similar allegations on the basis of facts mentioned herein already stood rejected by this

Board prior in time in terms of its communication dated 23.10.2020 and response thereto by Mr. Akash Shinghal on dated 19.11.2020.

- 3.10 In view of the above facts reads with the judgment of Hon'ble NCLAT, it is submitted that the conduct arose on account of compulsion in conducting voting and meeting of the CoC was without violating the objective of the Code.

4. Contravention-II

Improper conduct of voting on resolution plan.

- 4.1 Alpha Corp Development Private Limited (Alpha Corp), the Resolution Applicant (RA), submitted its initial resolution plan on 15.10.2019. This plan was shared with the CoC in 18th meeting on 18.10.2019. Subsequently, the RA submitted a revised resolution plan on 09.11.2019.
- 4.2 It was observed that the modified resolution plan received on 09.11.2019 was significantly altered from the one received and presented to the CoC in its 18th meeting. It was further noted that immediately on receipt of the modified resolution plan, 19th CoC meeting was hurriedly scheduled on 11.11.2019 by giving less than 48 hours' notice period and the agenda, notice and the modified resolution plan were circulated to the homebuyers and the financial creditors on the same day without discussion on the same in the CoC meeting. Further, the voting window for voting instructions for various agendas, including the revised resolution plan, was opened prematurely, not adhering to the minimum required 24-hour timeframe as stipulated under Regulation 16A (9) of the CIRP Regulations.
- 4.3 The voting window for the revised resolution plan was initially opened from 11 A.M. on 10.11.2019 to 11 A.M. on 11.11.2019. Just half an hour, after this voting window was closed, the 19th CoC meeting commenced at 11:30 A.M., where the revised resolution plan was deliberated upon. Subsequently, the voting window was reopened from 12 P.M. on 11.11.2019 to 12 P.M. on 12.11.2019, exclusively for those who did not vote during the initial voting period.
- 4.4 It was also observed that the revised resolution plan, despite its substantial alterations from the previous version, was put to vote without prior discussion in the CoC meeting. This denied homebuyers and other creditors adequate time to thoroughly examine the resolution plan which had significant alterations *vis a' vis* resolution plan discussed in the 18th CoC meeting held on 18.10.2019 and form an informed opinion on the revised resolution plan before casting their votes.

- 4.5 It was also observed that during the ongoing voting on the revised resolution plan after the 19th CoC meeting, the AR sent out a clarificatory email on 11.11.2019, based on information received from the SRA. This email clarified the applicability of the viability gap funding exclusively to the Earth Copia Project, rather than to all four projects in question. It was noted that the benefit of this clarification was not available to those who had already voted between 11 A.M. on 10.11.2019, to 11 A.M. on 11.11.2019, as these creditors were unable to access the voting window reopened after the 19th CoC meeting. It was thus, observed that the entire process of deliberation and voting on the modified resolution plan was vitiated.
- 4.6 Regulation 25(3) of the CIRP Regulations, as it stood at the time, mandates that the resolution professional must conduct the voting among the CoC members on any item listed for voting, subsequent to a thorough discussion on the matter. Furthermore, Regulation 25(6) of the CIRP Regulations require the AR to circulate the minutes of the meeting as received under sub-regulation (5) to creditors in a class, announce the voting window at least twenty-four hours before it opens, and ensure that the voting window remains open for a minimum of twelve hours.
- 4.7 In the light of the aforementioned observations, the Board held the prima facie view that Mr. Akash Shinghal violated Sections 208(2)(a) & 208(2)(e) of the Code, Regulations 25(3) and 25(6) of the CIRP Regulations, and Regulations 7(2)(a) & 7(2)(h) of the IP Regulations read in conjunction with Clauses 1 and 14 of the Code of Conduct.

Submissions by Mr. Akash Shinghal.

- 4.8 Mr. Akash Shinghal submitted that as per the Form G issued by him on 22.05.2019, the last date for submission of resolution plans by the prospective resolution applicants was 21.07.2019, which was, *inter alia*, extended up to 31.07.2019 by the CoC in its 10th meeting held on 20.07.2023.
- 4.9 That on 06.08.2019, Mr. Akash Shinghal received representation from Alpha Corp to request for extension of time for the submission of the resolution plan and exclusion of time taken for procurement of documents. The request made by the Alpha Corp was placed before the members in the 11th CoC meeting held on 17.08.2019 which was rejected by the members of the CoC considering the that the CIRP is a time bound process and the last date of completion of CIRP was 03.09.2019 (after considering the exclusion and extensions). Aggrieved by the decision of the CoC members, the prospective resolution applicant, Alpha Corp approached the NCLAT for seeking extension of timeline for submitting its resolution plan. Subsequently, an amendment took place in Section 12 of the Code *vide* notification dated 16.08.2019, wherein third proviso to Section 12 was introduced. As per the said third proviso “*the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including an*

extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor”.

- 4.10 Subsequent to such amendment in Section 12 of Code, in 15th CoC meeting held on 30.08.2019 on the basis of representation received from the AR in the 14th meeting and based on the letter dated 26.08.2019 received from Alpha Corp stating that they are in process of filing the resolution plan and the same will be filed by 15.09.2019, the CoC decided to make an application before the AA for seeking extension of CIRP period by 90 days in terms of the amended provisions of Section 12. During the pendency of the application filed by Alpha before the NCLAT, Alpha Corp submitted its resolution plan to the RP on 15.09.2019 with a precondition mentioned on the envelop itself that contains: *“As a precondition to the submission of the Resolution Plan herewith, we hereby propose and request that the Resolution Plan shall be opened only when, it is being decided by Committee of Creditors & Ld. Adjudicating Authority that all possible Resolution Plan (s) have been filed by any other eligible Resolution Applicant (s) and no further Resolution Plan is expected to be filed or to be allowed to be filed by the Adjudicating Authority.”*
- 4.11 He submitted that since the resolution plan submitted by the Alpha Corp contained a precondition to open the same and the application to extend the CIRP period was pending before the NCLAT, the CoC decided not to open the envelop of the resolution plan of Alpha Corp and to wait for the decision of the NCLAT/ NCLT in the pending applications of Alpha Corp and/ or the RP. The NCLAT vide its order dated 30.09.2019 accepted the application of Alpha Corp and extended the CIRP period for another 90 days in the present case in view of third proviso to sub section (3) of Section 12 which was in line with the decision taken by the CoC in their 15th meeting held on 30.08.2019. Further, the Hon'ble NCLAT suggested that *a 'Resolution Plan' submitted by the 'Resolution Applicant' or any other person, the 'Committee of Creditors' while considering the same may pass appropriate orders in accordance with law preferably within 30 days and will place the matter before the Adjudicating Authority for appropriate orders u/s 31 of the 'I&B' Code.* The matter was then discussed in the 17th CoC Meeting held on 04.10.2019, wherein the CoC in the interest of all the PRAs extended the last date for submitting the resolution plan to 15.10.2019.
- 4.12 He further submitted that despite extending the timeline for submission of resolution plan up to 15.10.2019, only one resolution plan was received from Alpha Corp on 15.10.2019 out of total 12 prospective resolution applicants and 11 PRAs did not file their resolution plan for the CD including M/s Om Drishian International Limited. He submitted that the resolution plan that was received on 15.09.2019 with precondition was returned in original as the date for submission of resolution plan was extended to 15.10.2019. Now at this stage, Alpha Corp filed its resolution plan on 15.10.2019 that contained the heading *'Revised Resolution Plan*

for Resolution of Earth Infrastructures Ltd.” whereas it was the first original / initial resolution plan filed by Alpha Corp on 15.10.2019.

- 4.13 The members of CoC in the 18th meeting held on 18.10.2019 discussed this original plan of Alpha Corp that was received on 15.10.2019 which bearing heading ‘*Revised Resolution Plan*’ was opened and discussed in detail wherein the members of the CoC were informed and apprised about the key features of the resolution plan. The authorised representative of Alpha Corp also gave a detailed presentation about its resolution plan to the members of the CoC and further explained its key features. Therefore, the initial resolution plan that was received from Alpha Corp on 15.10.2019 that contained heading as ‘*Revised Resolution Plan*’ along with project wise key features, was only forwarded to the members of the CoC as 1st resolution plan i.e. the AR and HDFC Bank *vide* email dated 19.10.2019.
- 4.14 Thereafter, various meetings and rounds of negotiation were held among the members of the CoC, AR of the CoC and representative of Alpha Corp on the resolution plan that was opened and discussed in the 18th meeting of CoC held on 18.10.2019. There were several negotiations held on the resolution plan amongst the stakeholders / homebuyers and Alpha Corp from 19.10.2019 to 08.11.2019 (21 days). These all facts were duly incorporated in the sur joinder filed on 26.11.2020 in IA no. 914 of 2019 by him before the AA. Further, it was clarified that the resolution plan which is termed as “*Revised Resolution Plan*” everywhere in the investigation report/ complaint dated 06.03.2023 in the matter of Earth Infrastructures Limited as well as in SCN, was the original/ initial plan that was received by him from Alpha Corp on 15.10.2019 though it bears the heading ‘*revised resolution plan*’ but it was an original resolution plan. It was further submitted that Alpha Corp used the word ‘*revised resolution plan*’ in resolution plan dated 15.10.2019 considering its earlier resolution plan that was submitted on 15.09.2019 but the same was returned to Alpha Corp as it was neither opened nor discussed in CoC.
- 4.15 Regarding revised resolution plan dated 09.11.2019, Mr. Akash Shinghal submitted that upon discussions on the resolution plan amongst the Alpha Corp and the stakeholders, between 19.10.2019 to 08.11.2019, the Alpha Corp furnished its “revised resolution plan” on 09.11.2019 that unfortunately contained the heading ‘*Resolution Plan for Resolution of Earth Infrastructures Ltd. dated 15.10.2019*” and this does not contain the word ‘*revised*’. Hence, it appears that there was a lot of confusion while issuing the SCN between the original plan and revised plan that contained substantial changes, whereas the fact that the ‘revised plan’ that was filed on 09.11.2019 was not having major changes, and the changes incorporated by Alpha Corp after negotiations with the CoC and stakeholders were in consultation and/ or in the interest of CoC members as evident from the contents mentioned hereinafter.
- 4.16 He submitted that the revised plan dated 09.11.2019 contained 117 pages as against 111 pages of original plan. Hence, based upon the negotiations by the CoC, specific modifications were

made and 6 pages were added by the RA in its revised resolution plan. This revised resolution plan was also provided with concise document in brief narrating the amendments that termed as '*amendment cum addendum to the revised resolution plan dated 15.10.2019*'. It was further submitted that inadvertently, such 'amendment cum addendum' was placed with the SCN with initial resolution plan dated 15.10.2019 and without noticing the heading of this summary document termed as "*amendment cum addendum to the revised resolution plan dated 15.10.2019*". This fact clearly proves that while issuing the SCN there had been confusion that which was the original plan, which was revised plan, and what are the contents of revised resolution plan. This amendment dated 09.11.2019 contained following amendments:

- a. Clause - G - page 2 - In original plan dated 15.10.2019 it contained that the claims as on 30.09.2019 shall be considered by the RA whereas now in this amendment Alpha Corp agreed to consider the claims until 01.11.2019. Hence, this amendment gives relief to the real estate allottee(s).
- b. In clause IV part II- page -2 Alpha Corp included the real-estate allottees of the subsidiary companies as well whereas it was not in the original plan dated 15.10.2019; Hence, this amendment gives relief to the real estate allottee(s).
- c. Virtual Gap Funding- clause (XIX) Part II: - page 3- Alpha Corp agreed to reduce the VGF charges from the real estate allottees from Rs. 610/- per square feet to Rs. 450/- per square feet in case of Plan-A Copia and agreed to charge Rs. 250/- as against Rs. 425/- in case of Plan B- Copia and no change in Techone.

Hence, this amendment contained relief to the real estate allottee(s) and majority of the amendments that were incorporated in the revised resolution plan dated 09.11.2019 were for the benefit of the claimants/ real estate allottees, in consultation with the AR and other stakeholders that held from 19.10.2019 to 08.11.2021 and cannot be termed that the revised resolution plan substantially amended.

- 4.17 It was further submitted that the outcome of the voting process i.e. 99.97% vote shares of the CoC voted in favour of the resolution plan confirmed that the CoC could take the decision only because they were fully aware about various modalities of the plan which was negotiated by them.
- 4.18 He submitted that the SCN considered the original resolution plan dated 15.10.2019 as '*revised resolution plan*' whereas the revised plan dated 09.11.2019 with brief note on amendments were circulated amongst the members on 09.11.2019 together with the notice of 19th CoC meeting. It is clearly evident from the amendment cum addendums attached to the resolution plan dated 09.11.2019 that narrated above that no significant changes were made therein, however, few amendments and clarifications only were made as per the suggestions made by the members of the CoC only.

- 4.19 He submitted that the period of sending notice and period allowed for voting has been replied above which *inter alia* included that the voting was opened for 24 hours as against 12 hours. Further, the notice period of below 48 hours was never objected by the AR or any stakeholders considering the importance of the fact that the time as the CIRP time was expiring on 15.11.2019. He submitted that the discussions on resolution plan amendments dated 09.11.2019 was limited to the extent of effect of amendments which significantly contained the narratives as stated above and therefore, the period of half an hour was more than sufficient. It was further submitted that the AA and the NCLAT in appeals discussed and dealt with this issue. Hence, this is also the issue which already stood discussed and adjudicated by the NCLAT and therefore, each of the actions of the RP were to achieve the objective of the Code i.e. resolution plan for the CD where the claimants are more than 4,500 homebuyers.
- 4.20 He submitted that with regards to the email dated 11.11.2019 sent by the AR to the homebuyers, it was clarified at page 4 of the amended / revised resolution plan synopsis by which Alpha clarified that the viability gap funding shall be reduced to Rs. 200/- if FSI of 4.57 acre is made available to it. Further, the benefit of email dated 11.11.2019 *qua* change was sent by the AR to the real estate allottees was not available to those real estate allottees who already voted. In this regard, it was submitted that it was for the benefit to all the real estate allottees that after the voting opens for the CoC meeting and if any voting member wanted to change his or her voting after conclusion of the CoC, he or she can do so. It was further submitted that this clarification was also available to the benefit of the claimants on the voting website that showed an option on voting website platform to 'revise' the voting what they have already done, meaning thereby the person who voted until 11.11.2019 till 11 AM were entitled to change their voting after the voting opened upon conclusions of the CoC meeting. The voting window that was reopened at 12 PM on 11.11.2019 continued until 12 PM on 12.11.2019, i.e. 24 Hours, and therefore, all the CoC members had benefit to revise their voting and therefore they had benefit of this email from 3.50 PM onwards from 11.11.2019 to 12 PM on 12.11.2019. This issue was also specifically discussed and argued before the NCLAT in the appeal filed by the complainant organization and order of NCLT dated 08.06.2021 in IA No. 914 of 2019.
- 4.21 In view of the above facts, all the issues that are raised in the SCN were discussed, deliberated and considered by the AA and the NCLAT on the objections on the same issue and therefore, it was submitted that now it is not open as discussed, considered as decided by the judicial forums prior in time.
- 4.22 He submitted that in the light of the discussion between the homebuyers/ CoC members/ AR/ legal counsel/ process advisors with the resolution applicants on the resolution plan itself for the period from 18.10.2019 to 09.11.2019, it would not be fair to allege that the members of the CoC couldn't get enough time to take informed decision on the resolution plan. It was

apparent from the event timeline that the CoC had taken enough time i.e. more than 20 days discussion on that said plan, thereafter the amendment cum addendums were issued by the SRA as per the suggestions and negotiation by the members of the CoC. Thereafter, considering the fact that the end date of the CIRP was 14.11.2019, the 19th CoC was called by him by issuing notice on 09.11.2019 with the revised resolution plan along with the amendments cum addendums issued by the SRA as per the suggestions made by the homebuyers/ AR/ members of the CoC, was circulated to the members of the CoC on 09.11.2019.

4.23 Further, it was never that the CoC was held in hurry by the RP for any malafide intention, however, it was always with the good intention and in consultation with the AR and the representatives of the homebuyers' associations, the legal counsel and the process advisor, the RP scheduled the CoC meetings for healthy discussion and decisions in the interest of all the stakeholders. Regarding e-voting in the 19th CoC meeting initially, the e- voting window was opened on 10.11.2019 at 11:00 AM to 11.11.2019 at 11.00 PM. The e-voting window was again reopened from 11.11.2019 at 12:00 PM to 12.11.2020 at 12:00 PM for all left out FCs with the option to all the FC's who have already did the voting to change their vote, if they required so. In this way all the CoC members were provided a total time of approx. 63 hours (15 hours + 24 hours + 24 hours) to decide upon the resolution plan placed for e-voting by RP as against the minimum time of approx. 60 hours (48 hours + 12 hours) as specified under Regulation 19 and Regulation 16A (9) of CIRP Regulations, as effective on the said date. Since the CIRP period was going to end on 14.11.2019, Mr. Akash Shinghal in consultation with the associations of homebuyers, authorized representative, legal counsel and the process advisor sent the notice on 09.11.2019 to call the meeting of the CoC on 11.11.2019.

4.24 He submitted that the amended Regulation 16A (9) also provide that creditors shall have a time window of at least 12 hours to submit their preliminary views, and the said window opens at least 24 hours after the authorized representative seeks preliminary views. In view of the above facts, it is clearly evident that the action of the RP was in consultation of the legal counsel, that considering the facts and circumstances explained. Mr. Akash Shinghal prayed that the observations made in para II of SCN be disposed-off without any adverse remarks.

Analysis and Findings.

4.25 Since the contravention made in I and II are based on same factual timeline, hence, they are being dealt together. The timeline of the events was follows:

Date and Time	Events
09.11.2019	Revised resolution plan submitted by Alpha Corp to Mr. Akash Shinghal.
09.11.2019 at 8:15 PM	Notice and agenda for 19 th CoC meeting sent to AR.
09.11.2019 at 10:08 PM	AR circulates the agenda to homebuyers.
10.11.2019 at 11 AM	Voting window opens for the revised resolution plan.
11.11.2019 at 11 AM	Voting window for the revised resolution plan closed.
11.11.2019 at 11:30 AM	19 th CoC meeting commenced.
11.11.2019 at 12 Noon	Voting window was reopened for the revised resolution plan.
	While the voting on revised resolution plan was going on, the AR sent out a clarificatory email based on information received from the SRA which clarified the applicability of viability gap funding exclusively to the Earth Copia Project, rather than to other projects.
11.11. 2019 at 12 Noon	Voting window closed for the revised resolution plan.
14.11.2019	Timeline for CIRP was ending.

4.26 In the SCN it was alleged that:-

- (a) CoC was convened with a notice period of less than five days, hence violating the provisions of Regulation 19 of the CIRP Regulations.
- (b) Less time was granted to the AR for circulating agenda to creditors in a class before the voting opened, hence violating the provisions of Regulation 16A(9) of the CIRP Regulations.
- (c) AR shall distribute the minutes of the meeting to creditors in a class and announce the voting window at least twenty-four hours before it opens and ensure that the voting window remains open for a minimum of twelve hours, hence violating the provisions of Regulation 25(6) of the CIRP Regulations.
- (d) Voting must be done among the CoC members subsequent to a thorough discussion on the matter, hence violating the provisions of Regulation 25(3) of the CIRP Regulations.

4.27 Regarding the point (a) above, the DC notes the submissions of Mr. Akash Shinghal that the CoC in its 7th meeting held on 15.04.2019 approved the reduction of time of notice period from 5 days to 48 hours as per Regulation 19(2) of CIRP for calling the meeting of CoC. Upon perusal of minutes of 7th meeting of CoC held on 15.04.2019, it is observed that a similar proposal was made before the CoC to reduce such period for calling meeting. To which, it was resolved by the CoC that to save the time and to call a meeting for smooth functioning of CIRP, the notice period was reduced from 5 days to 48 hours. However, it is clear on the face of it that a period less than 48 hours has been provided before scheduling such meeting dated 11.11.2019. As 19th meeting was scheduled for 11.11.2019 at 11:30 A.M

whereas information for same was made available at 8:15 P.M at 09.11.2019 which is almost 39 hours 15 minutes that does not fulfil the criteria of 48 hours. Hence, there is contravention of the relevant provision.

- 4.28 Regarding the point (b) above, the DC notes that the AR circulated agenda at 10:08 PM on 09.11.2019 and voting window opened at 11 AM on 10.11.2019 which is less than mandated twenty four hours after an AR seeks preliminary views as provided under Regulation 16A(9) of CIRP Regulations. Hence, there is contravention of the relevant provision.
- 4.29 Regarding the point (c) above, the DC notes that the minutes of the 19th CoC meeting were not circulated and the voting window not announced by the AR at least twenty-four hours before the window opened for voting instructions. Instead, the voting window was opened even before the CoC meeting began. Moreover, it is not clear what was the percentage of voting in the first voting window opened before 19th CoC meeting. The contention of Mr. Akash Shinghal that an option to “Revise” the vote was made available to all could not be verified. Upon perusal of the screenshot of demo of voting portal, no option to facilitate revision of vote can be traced. The print is also not properly clear. Furthermore, the fact cannot be ignored that majority of the voters in CIRP of CD are homebuyers and are not well versed with the steps of insolvency process, moreover by any stretch of imagination, this cannot be expected that any clarification can be brought up during the period when voting is going on. It was further observed that certain modifications to the resolution plan were also circulated during the course of the voting. Mr. Akash Shinghal did not circulate the agenda for 19th CoC meeting in accordance with Regulation 19 of CIRP Regulations as well as not enabled the AR to conduct the voting for 19th CoC meeting.
- 4.30 Regarding point (d) above, the DC notes that the 19th CoC meeting was held only for 30 minutes. However, Mr. Akash Shinghal submitted that period from 19.10.2019 till 08.11.2019 i.e. 21 days were available with the CoC for consideration of the previous resolution plan and it was due to negotiations and/or discussions amongst the CoC members and SRA, regarding resolution plan, the revised resolution plan was provided on 09.11.2019. He submitted that an addendum to facilitate gist of the revisions was also made available to the members of CoC and there was inclusion of only 6 pages from that of the original one. The DC notes that the changes being limited to six pages cannot do away the need for discussion on the changes in resolution plan which seem to be substantial and even adverse to some homebuyers. Moreover, the changes were appearing at different place in the resolution plan making it difficult to gauge the effect of these changes. So, what is important is the extent of change and not the number of pages. Even change of one line can make a substantial difference and may be difficult to interpret. The DC notes the submission of Mr. Akash Shinghal that the discussion was being done on the resolution plan dated 15.10.2019 for 21 days, and thus there was no need for discussion on the revised resolution plan

submitted on 09.11.2019 does. But this does not appear to be correct as any changes made need to be duly considered by the CoC members.

4.31 The DC observes that the changes made in the resolution plan and submitted on 09.11.2019 were highlighted by Mr. Akash Shinghal to the AA. The DC notes that there was sufficient time to discuss the resolution plan submitted on 15.10.2019 but not enough time for resolution plan submitted on 09.11.2019. The DC further notes submission of Mr. Akash Shinghal regarding the revised resolution plan dated 09.11.2019 that they were for the benefit of the allottees. In this regard, the DC notes that SCN mentions that significant alterations were made in the revised resolution plan. The DC notes that investigation report contains following significant alterations which were made in the revised resolution plan and which were adverse to the interest of the allottees:-

Terms in resolution plan dates 15.10.2019 of Alpha Corp	Terms in resolution plan dates 09.11.2019 of Alpha Corp
In the Earth Techone Project, while some of the MOUs had interior work and furnishings in the terms of the agreement, some others only provided for the bare shell and accordingly the prices offered to various allottees were also not uniform.	In the revised resolution plan for Earth TechOne in Clause 1.4, it was mentioned that <i>no interior work, furnishing and/or office equipment shall be provided by the Resolution Applicant</i> which was applicable to all the allottees of Earth Techone Project.
In the Revival and Construction of Earth Copia Project, in Clause 4.1 (vi) it was mentioned that those claims that had not been filed up to 30.09.2019, they would be charged additional Rs. 500 per sq. ft. for residential units and Rs. 1000 per sq. ft. for commercial units.	Additional charge was increased by Alpha Corp from 500 per sq. ft. to 1000 per sq. ft. for residential units and Rs. 1000 per sq. ft to Rs. 2000 per sq. ft, for commercial units
No Viability Gap Funding (VGF) was sought for Earth Iconic project.	In case of Earth Iconic-VGF for the Iconic Project was listed as Rs. 600 per sq ft.

4.32 The DC notes that these changes have not been pointed out by Mr. Akash Shinghal and contradict his submissions that all changes were beneficial to the allottees. In the light of the above, the DC finds that though members of the CoC had sufficient time to consider the resolution plan dated 15.10.2019 but did not have sufficient time to consider the revised resolution plan dated 09.11.2019 which had several significant changes which were adverse to the real estate allottees. By not giving sufficient time, Mr. Akash Shinghal has acted against the interest of the allottees.

- 4.33 The DC also notes that voting for the resolution plan started on 10.11.2019 at 11:00 am. Further, the 19th CoC meeting was conducted on 11.11.2019 at 11:30 am. However, clarifications on the resolution plan were received from M/S Alpha Corp even after the voting had started for the 19th CoC meeting. In the revised resolution plan circulated on 09.11.2019, it was mentioned that in case the Resolution Applicant could utilize FSI of 4.57 acres, then the VGF would be reduced by Rs. 200 per sq. ft. and this particular clause was made applicable to all the projects, viz. Earth Copia, Earth Iconic, Earth Sapphire Court and Earth Tech One. However, in one of such clarifications, with regards to Viability Gap Funding (VGF) via mail dated 11.11.2019 at 3:50 pm, the SRA made this clause applicable only to the Earth Copia Project and not to the other three projects.
- 4.34 The DC notes that voting on the plan has been done in a hurried manner by Mr. Akash Shinghal while the changes to the resolution plan and clarification regarding various clauses were still being given, therefore giving insufficient time to the members of the CoC to consider the same. Hence, the DC holds the contravention.

5. Contravention-III.

Transfer of lease property in resolution plan.

- 5.1 It was observed that a lease deed was executed between the Greater Noida Industrial Development Authority (GNIDA) and M/s Neo Multimedia Ltd., the landowning company of the Earth Techone Project on 04.02.2008 and further a development agreement was entered between M/s Neo Multimedia Ltd. and the CD on 25.04.2011. Similarly, a lease deed was executed between GNIDA and M/s Nishtha Software Pvt. Ltd, the landowning company of Earth Sapphire Project on 01.09.2009 and a development agreement was entered between Nishtha Software Pvt Ltd. and the CD on 20.02.2010. The revised resolution plan itself at para (5), (6) and (7) states about the land-owning company of three projects of the CD. It is, thus, noted that the CD only had development rights and not the leasehold rights on the project land of projects- Earth Techone and Earth Sapphire Court.
- 5.2 It was, however, observed that in clause 12.1 of the revised resolution plan in respect of Earth Sapphire Court project and Earth Techone Project, there was a provision for transfer of title of project land to the RA, which was a leasehold land, the leasehold right of which is with the subsidiary companies of the CD and not the asset of the CD. Hence, the resolution plan sought to transfer, not only the development rights on the project land, but also the leasehold rights in favour of the RA without obtaining prior approval/no objection of the lessor. The resolution plan sought to bypass the consent of the GNIDA, a public authority and tried to transfer the ownership rights of the property by getting the plan approved directly from the AA.
- 5.3 In this regard the NCLAT vide its order dated 30.01.2023 observed as follows:-

“78. The development right in the project under which the developer is entitled to carry on development is not akin to any ownership/lease hold right in the leased land. Resolution Professional has certified the Resolution Plan that it is in accordance with I&B Code which clearly deals with the project land that is lease land in its entirety...

...The RP did not communicate with Appellant nor informed that Resolution Plan has already been approved by CoC dealing with its Land. We are feeling that RP did not reply the letter dated 18.09.2019 since he wanted to conceal from appellant the details of Resolution Plan and proceedings of its approval.”

- 5.4 It was observed that Section 30(2)(e) of the Code provides that the RP shall examine each resolution plan received by him and ensure that it does not contravene any of the provisions of the law for the time being in force. Regulation 38(3)(d) of the CIRP Regulations provides for mandatory requirement in resolution plan which includes provisions for approvals required and the timeline for the same. However, in the present case Mr. Akash Shinghal failed to confirm the fulfilment of the mandatory requirement in the resolution plan before putting it before the CoC for voting.
- 5.5 In view of the above, the Board held the *prima facie* view that Mr. Akash Shinghal, *inter alia*, violated Sections 30(2)(e) and 208(2)(a) & 208(2)(e) of the Code, Regulation 38(3)(d) of the CIRP and Regulations 7(2)(a) & 7(2)(h) of IP Regulations read with Clause 1, 2 and 14 of the Code of Conduct.

Submissions by Mr. Akash Shinghal.

- 5.6 Mr. Akash Shinghal submitted that without prejudice to the ‘*status quo*’ on the orders dated 30.01.2023 of the NCLAT, as per order dated 13.04.2023 of the Hon'ble Supreme Court, at the time of initiation of the CIRP, the CD was developing five real estate projects namely, Earth Towne (Greater Noida), Earth Sapphire Court (Greater Noida), Earth Techone (Greater Noida), Earth Copia (Gurugram), Earth Iconic (Gurugram). All the lands on which the CD constructed buildings were in the name of its five subsidiaries (the land-owning companies). The IRP/RP was aware that the land does not belong to the CD. However, under Sections 18 and 25 of the Code, IRP & RP were required to take custody and control of assets of the CD which primarily included the building constructed over the land of subsidiaries since buildings were constructed after utilizing the money received from homebuyers. It was further submitted that the buildings are inseparable from the land and the impression was sought to be given during arguments that the land which belonged to the land-owning companies was also taken over by the RP, which is never the case. It is clarified that the RP only took control and custody of the buildings constructed over the land. Hence, there is no violation of Sections 18 and 25 of the Code.

- 5.7 Mr. Akash Shinghal submitted that during the CIRP, he duly informed the GNIDA about the CIRP of the CD, in the capacity of the developers of the land owned by its subsidiaries. He further submitted that he did not get any cooperation, support, assistance and/or the data from the directors of the suspended board of the CD as they were in judicial custody. The RP made tremendous efforts to gather information about the CD and based on the information obtained from the EOW Delhi Police and information available in public domain, the RP prepared the IM clearly stating the facts that included- (i) the land on which projects are built-up/ developed belongs to companies that are wholly owned subsidiaries of the CD, (ii) such projects are being developed on the lands that was leased out by the GNIDA to the wholly owned subsidiaries of the CD, (iii) tentative amount due and payable to the GNIDA by the subsidiaries of the CD (which was ultimately to be funded by the CD) and (iv) the CD is only having the development and marketing rights of the projects in exchange of 15%-20% of the units in the underlying projects to the respective subsidiaries.
- 5.8 The resolution plans submitted by the PRAs duly acknowledged the fact that the CD is not a land owning entity and the amount payable by the land owning companies are wholly owned subsidiaries companies of the CD. Before the approval of the said resolution plan by the CoC, the SRAs had multiple rounds of negotiation with the home-buyers, the association of the home-buyers and the AR of the home-buyers, including the discussion on past dues of the GNIDA and the treatment of the same. During meeting with homebuyers, the AR of the homebuyers etc, the factum of dues of the GNIDA owed by the land-owning companies was clearly discussed. The resolution plan made by the SRAs and negotiated by the CoC in the interest of homebuyers. This clearly shows that the homebuyers and the SRAs were completely aware of the dues payable to the GNIDA and took a conscience decision in approving the resolution plan which dealt with the dues of the GNIDA and the same is evident from the plan and addendums filed by the SRA. It was further submitted that the RP, by two separate communications, intimated the GNIDA about (i) the CIRP of the CD and (ii) requested the GNIDA to confirm dues payable by the subsidiaries of the CD to GNIDA under their respective lease deeds, which indisputably, the GNIDA failed to provide.
- 5.9 It was further submitted that the PRAs and the CoC members were fully aware of the status of the projects land allotted by the GNIDA, and the CD was only having the development and marketing rights of respective projects. Further, the facts relating to the GNIDA dues in respect of the project lands were also acknowledged by both the PRAs.
- 5.10 Mr. Akash Shinghal submitted that when the application for approval of the resolution plan was being considered by the AA, the fact of the land belonging to the subsidiaries obtained on lease from the GNIDA was also discussed and the AA was in complete knowledge of the factual position as to the ownership/lease of the land vested with subsidiary companies and not with the CD and this fact was duly considered and also the outstanding dues payable to

the GNIDA. In other words, nothing was hidden from the AA about the ownership of the land on which the CD had development rights at the time of the approval of the resolution plan. While approving the resolution plan submitted by the Alpha Corp., the AA, in its order dated 08.06.2021 dealt with the objections relating to the plan not being in compliance of provisions of Section 30(2) of the Code read with its Regulation 38. In this connection, it is relevant to reproduce para 9 of the order dated 08.06.2021:

“9. The Applicants have further objected to the Resolution Plan on the ground that it is too complex, there being no assets left with CD, handing over/transferring assets worth over Rs.1000 crores to newly formed SPV etc. It is also alleged that the Resolution Plan does not provide for various compliances mandated under Section 30 (2) of the Code read with Regulation 38. In this connection, our attention has been drawn to Explanation to section 5(26) of the Code, which reads as follows:

Explanation: For the removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the Corporate Debtor, including by way merger, amalgamation and demerger,’

It is clear from the above that the objections relating to non-compliance of Section 30(2) of the Code was comprehensibly dealt with by the AA in CA 914/2019 while approving the resolution plan in IA 05/2020.

- 5.11 Mr. Akash Shinghal submitted that he carried out the CIRP in most transparent manner in all aspects to all the stakeholders of the CD including the SRAs. When the SRA has recorded the facts of GNIDA dues in their resolution plan and /or scheme of merger which was voted by the real estate allottees, it cannot be termed as incomplete disclosure of information by the RP. Therefore, the resolution plan that was eventually approved by the CoC and confirmed by the AA, acknowledged the fact that the lands of the wholly owned subsidiaries do not belong to the CD and that there is no non-compliance of the provision of Section 30(2) of the Code read with Regulation 38.
- 5.12 The SRA in the resolution plan itself provided the mechanism of payment of outstanding dues of land to the GNIDA knowing the fact regarding the liability of the land owning company towards the GNIDA with respect to the project land over which the projects are to be built under the development agreement.
- 5.13 Therefore, the resolution plan of the Alpha Corp was complete and was in accordance with the provisions of the Code and applicable laws to further develop the project and to hand over the same to the CoC members/ real estate allottees. Hence, the resolution plans approved by the AA cannot be said to be incomplete and in violation of provisions of the Code.

- 5.14 It was further submitted that in the approved resolution plan, the SRA recorded (a) proposed merger and demerger of the subsidiaries and (b) sought the relief of waiver of the GNIDA dues from the AA. The resolution plan of Alpha Corp specifically records that in case relief is not granted by way of waiver of the GNIDA dues and / or if the same is rejected by the AA, the same shall be charged from the home buyers in the proportionate manner against the per sq. ft. area allotment made to them.
- 5.15 He submitted that the issue regarding the fact that the land over which the CD had development rights is not owned by the CD and is owned by some other wholly owned subsidiary of the CD is a duly disclosed fact in the Information Memorandum. Hence, the terms of lease deed between the respective subsidiary company and the GNIDA and the amount payable by such subsidiary to the GNIDA was disclosed to the PRAs and accordingly, the resolution plan of Alpha Corp contained a provision of payment of dues to the GNIDA, and is forming part of *Part III clause C- 4 "DUES TOWARDS NOIDA AUTHORITY" and clause D- 4 "DUES TOWARDS NOIDA AUTHORITY"*, that specifically provides the treatment of amount payable to the GNIDA. This fact is also mentioned in para 35-36 of the NCLAT order. It was further submitted that this order dated 30.01.2023 of the NCLAT is the subject matter of appeal pending before the Hon'ble Supreme Court under Civil Appeal No. 2406 and 2407 of 2023 filed by Mr. Akash Shinghal against the observations made by the NCLAT dated 30.01.2023. The Hon'ble Supreme Court ordered for status quo *vide* its order dated 13.04.2023.
- 5.16 He submitted that the IM which was prepared and issued by him to the CoC as well as to the PRAs, clearly reflected the particulars of the lease deed in question. It was further submitted that the resolution plan prepared by the SRA was reviewed, negotiated and finally voted upon by the CoC. The NCLAT in its order dated 30.01.2023 also mentioned in its para 30 which is reproduced as below: -
- '30. The Information Memorandum, thus, clearly mentions that land of the above three Projects are leased land, leased by Greater Noida Industrial Development Authority and M/s Earth Infrastructure Limited is the developer.'*
- 5.17 Mr. Akash Shinghal submitted that he allowed only the transfer of development right to the Alpha Corp that was owned by the CD and not the land which is owned and leased out by GNIDA to the wholly owned subsidiary of the CD, as stated in the form of finding by the NCLAT in para 30 of its order dated 30.1.2023. Hence, he neither represented to the Alpha Corp nor committed that the CD will transfer the rights of land which was owned by its wholly owned subsidiary. Mr. Akash Shinghal further requested/ prayed that since this order dated 30.01.2023 is a subject matter of pending appeal before the SC, no comments on merits be made at this stage as there is a "*status quo*" and it would be in the interest of justice that

this point is taken up only after the adjudication of appeals pending before the SC which would enable the undersigned to furnish the detailed reply at appropriate time.

- 5.18 Mr. Akash Shinghal referred the provisions of clause no 8 of the Scheme Code No. BRS-01/2010(I) of the GNIDA. In terms of the clause 8(d) and 8(e) of the scheme for allotment, the CD with the consent of the GNIDA had formed Special Purpose Company [SPC] by creating a separate corporate legal entity namely M/s Earth Towne Infrastructure Pvt Ltd., as a wholly owned subsidiary and SPC of the CD, i.e. an entity owned and controlled by the CD. The said SPC was incorporated on 21.07.2010 i.e., after the allotment of land by GNIDA to and in favour of the consortium led by the CD as per allotment letter dated 19.03.2010.
- 5.19 He submitted that accordingly, upon formation of the SPC, after allotment of the land in accordance with the GNIDA Scheme, the GNIDA executed a lease deed dated 01.09.2010 with the SPC formed by the CD. Further, it is evident from the said lease deed that the lessor i.e. GNIDA itself has approved the name of the SPC. Subsequent to the execution of the lease deed, the management of the CD executed a development agreement dated 09.09.2010 with its wholly owned subsidiary to construct the real estate units in the project that was to be developed and constructed on the said allotted land of the SPC. As per the terms of such development agreement the CD being holding company was solely responsible for development of the project. Hence, it would not be wrong to infer that the creation of the SPC was at the instance of the GNIDA and the GNIDA was well aware of the project which was being developed on the land originally allotted to the CD and then executed lease deed in name of the SPC as per its own scheme.
- 5.20 He further submitted that the Resolution Plan submitted by PRA incorporated the provisions of demerger of the respective subsidiary of the CD and thereby merger of the same into the SRA entity so that SRA can gain right and title over land that was allotted by the GNIDA to the CD and then executed lease deed through agreement in name of the SPC specifically created at the instance of the GNIDA. That the provision of such legal proposition in the resolution plan was on account of the fact that it was the RP who acted diligently and provided the status of the anticipated outstanding dues of the GNIDA towards the land-owning company/ subsidiary of the CD to the PRAs despite the fact the GNIDA did not file its claim even after receipt of intimations of the CIRP from the IRP/RP. This fact itself clearly demonstrates that the RP did not include the leased land that was owned by the SPCs i.e. formed by the CD as its subsidiaries, at the instance of the GNIDA. Hence, the RP never included the leased land as assets of the CD in the CIRP. Without treatment of the land in the resolution plan, the CD could not have been revived as a going concern. Hence, the continuance of business of the CD i.e. marketing and development of the project was envisaged in the resolution plan by the PRA by incorporating the provision of transfer of rights of land owned by the SPC by seeking the relief so sought by the SRA from the AA/GNIDA.

- 5.21 He submitted that the GNIDA being aggrieved with the relief so granted by the AA to the SRA wrongly contested before the NCLAT that the RP included the land of SPC in the resolution plan for the CD, whereas the above facts clearly demonstrate that the RP did not include such land as an asset of the CD in the CIRP and made all proper disclosure with regard to status and ownership of such land(s) to the PRAs, a fact evident from the resolution plan submitted by PRA where a specific treatment is provided for payment of the GNIDA dues including the options i.e. in the event if such relief is granted or not granted by the AA. The NCLAT by allowing such appeal directed the GNIDA to file its claim in the SPV of the CD as claim in the CIRP of the CD and directed the RP to consider such claim and place before the CoC by allowing 6 months period as extended CIR Period vide its judgment dated 30.1.2023.
- 5.22 He submitted that aggrieved by the aforesaid order of the NCLAT, all parties filed respective appeals before the Hon'ble Supreme Court of India.
- 5.23 He submitted that on 13.04.2023, the Hon'ble Supreme Court considering the merits of the appeal, passed "status quo" order. The said "status quo" is still in operation and the matter is scheduled to be listed for arguments before the Hon'ble Supreme Court on 20.02.2024. In the aforesaid manner, the issue with regard to relief so granted by the AA with regard to land allotted by the GNIDA to the CD and then executed agreement in name of the SPC which was specifically formed at the instance of the CD vis-a-vis the resolution plan approved by the CoC and confirmed by the AA is the subject matter in the pending appeal before the Hon'ble Supreme Court of India.

6. Contravention-IV

Waiver of dues of GNIDA.

- 6.1 It was observed that the revised resolution plan also provided for the waiver of dues of the GNIDA which it had over the subsidiary companies of the CD without the consent/approval from GNIDA about waiver of its dues.
- 6.2 The NCLAT in its order dated 30.01.2023 also remarked on the conduct of the RP as follows, “...*The Resolution Professional did not communicate to the appellant about the receiving of the Resolution Plan and the nature of resolution plans which have been received nor invited attention of the Appellant that Appellant’s dues are not being taken care in resolution plan. The Appellant is also a public authority who is engaged in public functions. Dues of public authority cannot be so casually and negligently dealt with by the Resolution Professional. It is relevant to notice that vide letter dated 18.09.2019 the appellant informed the Resolution Professional about its dues against Towne Infrastructure, the lessee. The Appellant further*”

wrote to RP to intimate the date and proceedings. The RP did not communicate with Appellant...”

- 6.3 Regulation 38(3)(d) of the CIRP Regulations provides for mandatory requirement in the resolution plan which includes having provisions for approval required and the timeline for the same. However, in the present case Mr. Akash Shinghal failed to confirm the fulfilment of the mandatory requirement in the resolution plan before putting it to the CoC for voting.
- 6.4 In view of the above, the Board held the prima facie view that Mr. Akash Shinghal contravened Sections 208(2)(a) & 208(2)(e) of the Code, Regulation 38(3)(d) of CIRP Regulations, Regulation 7(2)(h) of the IP Regulations read with Clauses 1, 2, and 14 of the Code of Conduct.

Submissions by Mr. Akash Shinghal.

- 6.5 Mr. Akash Shinghal submitted that neither waiver was ever granted or promised by him to the PRAs nor the resolution plan of Alpha Corp has contemplated the waiver of the GNIDA dues because it contained the provisions that in the event if such waiver is not granted, then such dues shall be proportionately distributed amongst the allottees. This fact is duly recorded in Part III clause C- 4 “DUES TOWARDS NOIDA AUTHORITY” and clause D- 4 “DUES TOWARDS NOIDA AUTHORITY”. Therefore, no question of waiver, as it has been contemplated in the show-cause notice. This fact is also recorded in the order dated 30.01.2023 passed by the NCLAT in para 35 and 36 of the order which are reproduced hereunder:

“35. Similarly, we may also notice the relevant parts of the Resolution Plan submitted by the Alpha Corp Development Private Limited with regard to Project Earth Sapphire Court and Earth Techone. Part — C of the Plan, which deals with Earth Sapphire Court in paragraph 4, provides as follows:

“4. Dues towards Noida Authority As per the IM, the claims admitted do not include dues payable to Greater Noida Industrial Development Authority (GNIDA). The Resolution Applicant proposes not to take any liability to GNIDA that may arise for transfer of the land in the manner as proposed in this plan, as such admission of any such claim will make the project unviable. Further, the Resolution Applicant seeks waiver of “GNIDA Dues”. However, if such waiver is not granted to the Resolution Applicant by GNIDA, then such dues shall be proportionately distributed amongst all the Allottees of “Earth Sapphire Court”.

36. Similarly, in paragraph 3, relating to Earth Techone Project, Clause 4 provides as follow:

“4. Dues towards Noida Authority

As per the IM, the claims admitted do not include dues payable to Greater Noida Industrial Development Authority (GNIDA). The Resolution Applicant proposes not to take any liability

to GNIDA that may arise for transfer of the land in the manner as proposed in this plan, as such admission of any such claim will make the project unviable. Further, the Resolution Applicant seeks waiver of "GNIDA Dues". However, if such waiver is not granted to the Resolution Applicant by GNIDA, then such dues shall be proportionately distributed amongst all the Allottees of "Earth TechOne".

Mr. Akash Shinghal submitted that the said order is subject matter of the pending adjudication before the Hon'ble Supreme Court.

- 6.6 Mr. Akash Shinghal further submitted that the letter written by the GNIDA on 18.09.2019 was received by him after approval of the resolution plan by the CoC on 26.08.2019 and filing application being IA No. 751 of 2019 dated 03.09.2019.
- 6.7 He further stated that such letter was only for asking the dates and proceedings by which the claims of Earth Towne Infrastructures Private Limited shall be examined, but it is a matter of record that the he has informed the dues of the GNIDA to the PRAs, despite the fact that the GNIDA did not respond to the letter dated 19.12.2018 and 28.05.2019 written by him as well as by the IRP prior in time until the resolution plan is approved by the CoC on 26.08.2019 and application for approval/ confirmation of resolution plan was filed before the AA on 03.09.2019.
- 6.8 It was further submitted by Mr. Akash Shinghal that the said claim filed by the GNIDA *vide* letter dated 18.09.2019 was found in spam email and then he consulted the legal counsel appointed in the CIRP and the view was taken that now upon approval of resolution plan by the CoC, this letter is not to be replied considering the present situation at that time as,
- i. the claim filed by the GNIDA dues is in the case of M/s Earth Towne Infrastructure Pvt. Ltd., and not in case of CIRP of CD and resolution plan for project of the CD was duly approved by the CoC and the applications were already filed before AA,
 - ii. the dues were duly disclosed by the RP to the PRAs and the same is also available at the website in public domain and consequently known to the PRAs;
 - iii. provision of treatment of the dues to the GNIDA is duly incorporated in the resolution plan approved by the CoC and was pending before the AA;
 - iv. it was the GNIDA who despite being in receipt of the intimation dated 19.12.2018 and 28.05.2019 from the IRP and the RP did not provide the requisite information, yet the RP after obtaining such details and information from public domain and homebuyers, disclosed to the PRAs to make it clear and evident that the land over which the CD has development right from the GNIDA on the lease land are outstanding in the name of wholly owned subsidiary of the CD.

- 6.9 Mr. Akash Shinghal stated that it is the GNIDA who did not respond to the letters written by the RP and they filed the claim against Earth Towne Infrastructures Private Limited which could not have been accepted in the CIRP of the CD, and he only received the plan for development rights that the CD has over the project land, and he never agreed to transfer the project land without payment or ever consented for 'waiver'. He had always disclosed the dues of the GNIDA and by disclosing such details he never interfered with the rights of the GNIDA to recover such dues in accordance with the law. It was further submitted that it was his proactive steps to include the expected dues of the GNIDA in the IM, due to which the SRA made the treatment for the same in its resolution plan. It was submitted that it is the AA in its wisdom found it appropriate to direct the waiver of dues payable by the GNIDA (which again is subject matter of pending appeals before the Hon'ble Supreme Court).
- 6.10 He additionally submitted that the GNIDA was specifically informed about the CIRP of the CD, and it was the GNIDA who neither acted nor responded to such letters. It cannot be said that the CD was an alien to the GNIDA or the GNIDA had no contractual arrangement with the CD. Pertinently, it was never the case of the GNIDA either before the NCLAT or the Hon'ble Supreme Court that the GNIDA was not in receipt of the aforesaid letters from IRP/RP. Therefore, to this extent there is no dispute that the GNIDA was (a) well aware of the CIRP of the CD; and (b) the GNIDA was asked to submit its claim of the lease rentals due from the EIL subsidiaries of the CD. It is a matter of record and fact even from the order of the NCLAT that the GNIDA, belatedly had submitted its claim in the name of the SPC *vide* its communication dated 18.09.2019 to the RP i.e. after the approval of the resolution plan by the CoC in its 14th meeting held on 26.08.2019 and post filing of the application by the RP before the AA i.e. on 03.09.2019. By filing the claim, admittedly the GNIDA sought the resolution / treatment to their dues by way of the CIRP of the CD and also admitted / recognized the fact that the project was being developed by the CD on the land allotted by it to the consortium led by the CD in terms of the MOU / joint development agreement dated 09.09.2010 and the lease deed of which was executed by the GNIDA in the name of the SPC that was formed under a specific requirement and knowledge of the GNIDA. Also *vide* order dated 30.01.2023, the NCLAT had specifically made the following directions:

ii. The Appellant is directed to recalculate its dues payable by the respective land-owning companies without charging any penal interest and communicate the same to the Resolution Professional and the Flat Buyers Association(s) of three projects within 75 days of this order."

Hence, it is clear that the RP informed the GNIDA about the CIRP of the CD and then it was the statutory obligation of the GNIDA to avail appropriate remedy available to it under the law, as the CD was not alien to the GNIDA and was indisputably making payments to the GNIDA on behalf of subsidiaries under the respective lease deeds.

- 6.11 He further submitted that the outstanding dues of all the GNIDA projects, i.e, Earth Towne Project, Earth Techone Project and Earth Sapphire Project was included in the IM. He submitted that he duly informed all the facts in the IM, which was also acknowledged by the NCLAT in its judgment dated 30.01.2023. In the Para 30 of the said order it was observed by the Hon'ble NCLAT that
- "The Information Memorandum, thus, clearly mentions that land of the above three projects are lease land, leased by Greater Noida Industrial Development Authority and M/s Earth Infrastructure Limited is the developer".(ytara 30, page 110).*
- 6.12 On the basis of the utmost due care and caution and despite the fact that the GNIDA did not respond to the above referred communications, he collated the information in the absence of records as the directors of the suspended board of the CD were in judicial custody and provided all requisite information to all the PRAs and all PRAs were aware about such outstanding debt of the GNIDA in 100% owned subsidiaries of the CD so that they can take an informed decision. Hence, the SRA's were duly provided with the details of dues of the GNIDA against the leased land on which the CD had the development right and/ or marketing rights and the PRAs dealt with the treatment of such dues in their resolution plan(s). The treatment of the GNIDA dues by the PRAs clearly demonstrates that the claim of the GNIDA were taken in to account by the RP to the best of his ability.
- 6.13 He further submitted that the dues of the GNIDA were informed to the PRAs in the google drive by him, resulted into a proposition that the PRAs considered such dues and dealt with in their resolution plan(s) submitted in terms of provisions of the Code. This fact is also evident from the fact that Om Drishian made a provision in its Resolution Plan *qua the* GNIDA dues as stated in the order dated 18.11.2020 in IA- 818/2019. The comparative chart analysis included the treatment of the dues of local authorities of land-owning Companies by all the PRAs including M/s Om Drishian International Limited & Consortium. The resolution plan of the PRAs clearly show that they have given the treatment to the dues of the GNIDA and mechanism is also provided by the PRAs in the event if the relief so sought is not granted by the AA. Hence, it is clear that after having the knowledge of the GNIDA dues, each PRA who had submitted its resolution plan for the CD had given a treatment to the GNIDA dues.

Analysis and Findings

- 6.14 Mr. Akash Shinghal drew the attention of the DC towards order dated 13.04.2023 passed by Hon'ble Supreme Court of India directing to maintain "*status quo*" with regard to order dated 30.01.2023 of the NCLAT which dealt with the issue of transfer of lease property under resolution plan and dues of the GNIDA. This is a case where the NCLAT has reversed the views of the AA and dealt with several contentious issues. The 12 tagged appeals on these contentious issues are *sub judice* before the Hon'ble Supreme Court of India. Therefore, this

DC thinks it appropriate to await the order of the Hon'ble Supreme Court on these issues. Hence, the Board may re-look into the issues surrounding the above contraventions after disposal of appeals by the Hon'ble Supreme Court.

7. Contravention-V

Delay in submission of CIRP Form with the Board.

- 7.1 IBBI Circular No. IBBI/CIRP/023/2019 dated 14.08.2019 on 'Filing of Forms for the purpose of monitoring corporate insolvency resolution processes and performance of insolvency professionals under the Insolvency and Bankruptcy Code, 2016 and the regulations made thereunder', mandates that, an IP shall file electronically the forms along with relevant information and records, in respect of all CIRPs, both closed and ongoing, conducted by him and along with the relevant information and records by the timelines as specified.
- 7.2 However, it was observed that CIRP Forms 1, 3, 4 and 6 submitted by Mr. Akash Shinghal to the Board after a substantial delay which is as follows:

Form	Due Date	Date of Submission	Delay (in days)
CIRP Form 3	30.09.2019	10.10.2019	10
CIRP Form 4	30.09.2019	11.10.2019	11
CIRP Form 6 (Extortionate Credit Transaction)	30.09.2019	14.10.2019	14
CIRP Form 6 (Preferential Transaction)	30.09.2019	14.10.2019	14
CIRP Form 6 (Extension of period of CIRP)	07.10.2019	12.10.2019	5
CIRP Form 6 (Extension of period of CIRP)	30.09.2019	11.10.2019	11

- 7.3 In view of the above, the Board held the *prima facie* view that Mr. Akash Shinghal, *inter alia*, violated Section 208(2)(e) of the Code, Regulation 40B of the CIRP Regulations and Regulations 7(2)(a) & 7(2)(h) of IP Regulations read with Clauses 13,15 and 19 of the Code of Conduct and also read with Circular No. IBBI/CIRP/023/2019 dated 14.08.2019.

Submissions by Mr. Akash Shinghal.

7.4 Mr. Akash Shinghal submitted that he always committed to the assigned roles and duties as specified by the Board under the Code. Accordingly, he always submitted the CIRP forms as mandated by the IBBI Circular No. IBBI/CIRP/023/2019 dated 14.08.2019 on 'Filing of Forms for the purpose of monitoring corporate insolvency resolution process and performance of the insolvency resolution professionals under the Insolvency and Bankruptcy Code, 2016 and the regulations made thereunder' in due time limit.

7.5 He further referred the letter no. CIRP-11012/1/2019 dated 30.09.2019 issued by the Board, wherein the due date for filing the CIRP form by the IPs was extended up to 15.10.2019. The extracts of para 2 of the aforesaid letter is reproduced herein as under:

“It is observed that a large number of insolvency professionals have filed Forms, which were due on or before 15th September, 2019, in respect of corporate insolvency resolution processes (CIRPs) conducted by them, by close of business today, that is, 30th September, 2019, as required under the aforesaid Circular. The three Insolvency Professional Agencies (IPAs) have informed that they are working with the remaining insolvency professionals to ensure filings and for this purpose, sought time for another 15 days. It has, therefore, been decided to allow filing of Forms, which are due on or before 30th September, 2019 in respect of CIRPs, both closed and ongoing, by 15th October, 2019.”

7.6 Pursuant to the aforesaid due date extension notification issued by the Board on 30.09.2019, her filed the CIRP forms with the Board as per the details hereunder:

Form	Due Date	Extended due date as per notification dated 30.09.2019	Date of submission	Delay
CIRP Form 3	30.09.2019	15.10.2019	10.10.2019	Nil
CIRP Form 4	30.09.2019	15.10.2019	11.10.2019	Nil
CIRP Form 6 (Extortionate Credit Transaction)	30.09.2019	15.10.2019	14.10.2019	Nil
CIRP Form 6 (Preferential Transaction)	30.09.2019	15.10.2019	14.10.2019	Nil
CIRP Form 6 (Extension of period of CIRP)	07.10.2019	15.10.2019	12.10.2019	Nil

CIRP Form 6 (Extension of period of CIRP)	30.09.2019	15.10.2019	11.10.2019	Nil
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Analysis and Findings.

7.7 The DC notes that *vide* letter dated 30.09.2019 CIRP-11012/1/2019, due date for filing forms in consonance of “Circular No. IBBI/CIRP/023/2019 dated 14th August 2019” was extended till 15.10.2019 and it is observed that although certain forms in this regard were filed belatedly but the RP was able to furnish such forms before extended due date of 15.10.2019. Hence, no contravention can be established in this regard against Mr. Akash Shinghal.

8. Contravention-VI

Delay in submission of Relationship Disclosure Form.

8.1 The IBBI Circular No. IP/005/2018 dated 16.01.2018 on ‘Disclosures by Insolvency Professionals and other Professionals appointed by Insolvency Professionals conducting Resolution Processes’, specifies that, an IP shall ensure disclosure of the relationship, if any, of the other professional engaged by him with himself, the CD, FC, Interim Finance Provider and Prospective Resolution Applicant to the Insolvency Professional Agency (IPA) of which he is a member, within the time specified. Further, disclosure of supply of information memorandum (IM) to the Prospective Resolution Applicant (PRA) is to be made within three days. The clause 8C of Code of Conduct states that an IP shall ensure disclosure of the relationship of the other professionals to the IPA of which he is a member and clause 19 of the said Code of Conduct also dictates an IP to provide all information and records, as may be, required by the Board or the IPA with which he is enrolled.

8.2 It was observed that there was delay in the submission of Relationship Disclosure of various professionals appointed by Mr. Akash Shinghal to the IPA as follows:

Details	Date of Appointment	Date of Submission	To be filed within (as per IBBI circular dated 16.01.2018)	Delay of (in days)
Mr. Akash Shinghal (RP)	18.03.2019	25.06.2019	3 days from date of appointment	96 days
Chartered Accountant (Khandelwal Jain & Co)	18.06.2019	25.06.2019	3 days from date of appointment	4 days
AMC Law Firm- Advocate	15.04.2019	25.06.2019	3 days from date of appointment	68 days

Process Facilitation Agencies - Resurgent India Private Limited	20.07.2019	21.12.2019	3 days from date of appointment	151 days
Registered Valuer– Abhinav Rajvanshi	25.06.2019	20.12.2019	3 days from date of appointment	175 days
Registered Arora- Devinder Arora	29.06.2019	20.12.2019	3 days from date of appointment	171 days
Ashish Agarwal- Advocate	10.01.2020	05.02.2020	3 days from date of appointment	23 days
Registered Valuer - Adroit Appraisers and Research Pvt Ltd	23.03.2021	03.04.2021	3 days from date of appointment	8 days
Registered Valuer - Sanjay Chopra	23.03.2021	03.04.2021	3 days from date of appointment	8 days
Details of PRA	Date of Supply of IM	Date of Submission	To be filed within (As per IBBI circular dated 16.01.2018)	Delay of (in days)
Om Drishian Pvt. Ltd	21.06.2019	26.06.2019	3 days of the supply of IM to PRA	2 days
Apex Heights Pvt. Ltd.	21.06.2019	26.06.2019	3 days of the supply of IM to PRA	2 days
Mahaluxmi Buildtech Consortium Pvt Ltd	21.06.2019	26.06.2019	3 days of the supply of IM to PRA	2 days
Mahaluxmi Buildtech Limited	21.06.2019	26.06.2019	3 days of the supply of IM to PRA	2 days
Mahaluxmi Realtech Pvt Ltd	21.06.2019	26.06.2019	3 days of the supply of IM to PRA	2 days
Mahaluxmi Infrahome Pvt Ltd	21.06.2019	26.06.2019	3 days of the supply of IM to PRA	2 days
SJP Hotels & Resorts Pvt Ltd	21.06.2019	26.06.2019	3 days of the supply of IM to PRA	2 days
Alpha Corp Development Pvt Ltd	21.06.2019	26.06.2019	3 days of the supply of IM to PRA	2 days
E-Homes Infrastructure Pvt Ltd	21.06.2019	26.06.2019	3 days of the supply of IM to PRA	2 days
Roma Unicon Designex Consortium	21.06.2019	26.06.2019	3 days of the supply of IM to PRA	2 days
One City Infrastructure Pvt Ltd	21.06.2019	26.06.2019	3 days of the supply of IM to PRA	2 days

8.3 An IP is obliged under the Code to take reasonable care and diligence while performing duties, including making timely disclosures to ensure transparency and accountability. Hence, by failing to make timely relationship disclosure of the professionals appointed by

Mr. Akash Shinghal, a doubt is casted on the transparent conduct of the processes under the Code.

- 8.4 In view of the above, the Board held the prima facie view that Mr. Akash Shinghal, *inter alia*, violated Sections 208(2)(a) & 208(2)(e) of the Code and Regulation 7(2)(h) of the IP Regulations read with Clause 8C and 13 of the Code of Conduct and also read with Circular No. IP/005/2018 dated 16.01.2018.

Submissions by Mr. Akash Shinghal.

- 8.5 Mr. Akash Shinghal submitted that the appointment of all the professionals were made within the time limit after obtaining the requisite disclosures. Hence, he apologised for the inadvertent mistake/ delay in filing of these disclosures, and it was requested to condone the delay on the part of the RP for filing the form before the Insolvency Professional Agency i.e., Indian Institute of Insolvency Professionals of ICAI. He assured that he would take proactive approach to eliminate such unintentional, inadvertent mistakes in future, and such inadvertent and unintentional mistakes caused on account of some unforeseen circumstances and he will ensure timely compliance in future.
- 8.6 Mr. Akash Shinghal further submitted that all the disclosure forms submitted before the IPA clearly disclosing the relationship in accordance with the provisions of the Code applicable to an IP and it is clearly demonstrated as per the submitted forms that he did not have any relationship involved with any of the professional appointed.

Analysis and Findings.

- 8.7 The DC notes that the delay in relationship disclosure ranges from 2 to 175 days and there is no reasonable explanation for such delays. Mr. Akash Shinghal had submitted that, as can be seen from the forms filed with IPA by Mr. Akash Shinghal, there is no relationship stated in terms of Circular No. IP/005/2018 dated 16.01.2018. Mr. Akash Shinghal has also apologised for delay in filing of these disclosures. However, it does not absolve him for the delays caused in submission of relationship disclosure forms. The DC notes that such delays defeat the whole purpose of having the timelines for disclosures whose purpose is to make the process transparent. Hence the DC upholds the above contraventions.

9. Contravention-VII

Burdening stressed CD with unreasonable expenses.

- 9.1 It was noted from the minutes of 7th CoC meeting held on 15.04.2019 that the advocate's fee had been ratified at Rs.1,00,000 p.m. whereas from the break-up for CIRP costs provided by Mr. Akash Shinghal, the expense for advocate's fee in March 20, Feb 21, March 21 and June

21 (up to 08.06.21) were Rs.2,00,000, Rs.2,26,000, Rs.6,27,095 and Rs. 2,38,220 respectively. In addition to that, rent charges as below were part of CIRP costs but these expenses were also not ratified in any of the CoC meetings:

Rent Charges	
Month	Amount
September 2020	89,000
November 2020	34,480
December 2021	20,000
January 2021	20,000
February 2021	20,000
March 2021	20,000
April 2021	20,000
May 2021	20,000
June 2021 (up to 08.06.2021)	25,333
Total	2,68,813

9.2 Regulation 34 of the CIRP Regulations states that the CoC shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs. In view of the above, it is observed that Mr. Akash Shinghal burdened the CD with expenses not approved by the CoC.

9.3 In view of the above, the Board held the *prima facie* view that Mr. Akash Shinghal contravened Section 208(2)(a) of the Code, Regulation 34 of CIRP Regulations, Regulations 7(2)(a) & 7(2)(h) of the IP Regulations read with Clauses 1 and 14 of the Code of Conduct.

Submissions by Mr. Akash Shinghal.

9.4 Mr. Akash Shinghal referred agenda item no. 14 of the said 7th meeting of the CoC, wherein the proposed fee of the legal counsel was discussed and approved as Rs.1,00,000 per month on retainership basis, where appearance exceeding four in a calendar month, and any appearance before any other forum, court or authority shall be charged @ Rs. 21,000 per appearance and out of pocket expenses shall be charged at actuals which ordinarily were not expected to exceed 10% of the fee charged. Filing fee, transport/travel cost for travels outside NCR shall be charged separately on actual basis. The entire discussion which formed part of the minutes of the 7th CoC meeting contained that in addition to fee of Rs.1,00,000 per month, the counsel will be entitled to charge Rs.21,000/- per appearance for appearances exceeding 4 in a calendar month. The extract of the of minutes of 7th CoC meeting item no 14 page 14 of 24 reproduced below:

“Proposed fee structure shall be as under:

- a) In respect of the scope of work described above, fees shall be INR 1,00,000 per month.*
- b) For appearance exceeding four in a calendar month, and any appearance before any other forum, court or authority shall be charged @ Rs. 21,000/ - per appearance.*

c) Out of pocket expenses shall be charged at actuals which ordinarily are not expected to exceed 10% of the fee charged. Filing fee, transport/travel cost for travels outside NCR shall be charged separately on actual basis.”

Therefore, the legal counsel fees was paid over and above to Rs.1,00,000 per month which was approved by the CoC for the cases where appearances exceeded four in a calendar month.

9.5 He further submitted that the rental charges are in the nature of cost of storage of documents and records of the CD lying at the office premises of the CD which he received from the landlord of the said office premises of the CD at B-100, Second Floor, Naraina Industrial Area, Phase 1, Delhi-110028 in 2 truck load which were delivered to his office without any prior intimation on evening of 19.03.2020 in two loaders (transport vehicles). In absence of such adequate availability of the space, he took a call and arranged storage of records to protect the same as per the provisions of the IBC. However, there was no occasion at that relevant point of time to call CoC as the resolution plan was already approved and filed before the NCLT because:

a) The CIRP period of the CD already ended;

b) The renting of the space for safe custody of records of the CD was important as there was no time left to deal with the records that received unexpectedly.

c) When there was no CoC to be called upon to decide in course of action in those circumstances.

d) The whole India was affected with the wave of Covid-19 and several life threatening implications were there which extended till July 2021.

9.6 Mr. Akash Shinghal submitted that under such unprecedented situations and in the interest of the CD and to protect the documents and records of the CD, he was compelled to make adequate arrangement to store the documents sent by the landlord in two full loaders (transport vehicle). Accordingly, he has kept the documents stored in some rental premises for which rent was accrued during the Covid-19 period.

9.7 It was further submitted that such facts were duly informed to the AA by way of the status report, to the successful resolution applicants after approval of their resolution plans by the AA *vide* order dated 05.04.2021 and on 08.06.2021 in the first joint meeting. It is also to be noted that the SFIO, investigating in the matter of the CD and its subsidiary and associate companies was already informed about the facts that the documents received at the time of handover of the documents and records to both the SRA in presence of the team of SFIO at the rented premises at E-12 Mulatan Nagar, New Delhi- 110056. The handover letter dated 05.07.2021 was signed in presence of the SFIO which confirms that records were kept at E-12 Mulatan Nagar, New Delhi- 110056 for which rent was paid.

- 9.8 He further submitted that there was no such provision in the Code at that time to call the meeting of the CoC after approval of the resolution plan by the CoC and prior of approval of such resolution plan by the AA. Therefore, the cost pertaining to the rental/ storage charges of the documents of the CD could not be ratified by the CoC as such arrangements were being made in special circumstances in unprecedented situations but the SRAs who received the records of the CD around Covid-19 lockdown. Apart from that, every single rupee cost is duly approved and ratified by the CoC. Hence, all payments *qua* legal fee were made in consonance with the approved fee by CoC.
- 9.9 He additionally submitted that proposal of AMC Law firm duly discussed in the CoC and details of breakup of amount paid to AMC law firm over and above monthly fees of Rs.1 lakh.
- 9.10 He additionally submitted that it is a matter of record and fact that the CIRP came to an end on 14.11.2019 after the CoC of the CD approved the resolution plan though it was pending for adjudication and confirmation before the AA. The records of the CD were transported by the landlord of the premises during the Covid-19 and since there was no CoC and the record that was transported by the landlord in 2 trucks could not have been stored in his premises being RP, he had no other option but to take a premises on rent and place such record safely until the resolution plan is confirmed and charge of CD could be handed over to the SRAs. Hence, this rent expense of Rs.2,68,813 lakh for the period of 15 month from March 2020 to June 2021, neither could be placed before CoC for expense approval nor there was any other option to protect the records of the CD. Under the circumstance, being peculiar in nature, he took a decision as per the situation with the reasonable prudence. It is pertinent to mention here that such decision of the RP was duly accepted by the SRAs at the time of taking of charge of respective project of CD in the joint meeting on 21.7.2021.

Analysis and Findings

- 9.11 As far as issue with regards to payment of rental charges to the tune of Rs. 2,68,813 is concerned, it was submitted by Mr. Akash Shinghal that such rental charges were paid for keeping records of CD that were being sent to him during Covid-19. He submitted that since resolution plan was under approval from the AA, such expenses could not be placed for CoC approval nor there was any other option to protect the records of the CD. The DC also notes that Mr. Akash Shinghal informed the AA by way of status report, to the SRA in joint meeting of Alpha Corp and M/S Roma Urban Dream Projects Private Limited held on 21.07.2021 after approval of resolution plans of CD, which stated :

“Mr. Akash Shinghal apprised the representatives of both Alpha Corp and RUD that in terms of the Expense Sheet (attached along with the minutes as "Annexure - 1") till the closure of Corporate Insolvency Resolution Process (CIRP), i.e., 08.06.2021, the expenses incurred amount to Rs.2,68,41,012/- out of which Rs.2,67,58,752/- has already been paid by Mr. Akash

Shinghal as Resolution Professional of Earth Infrastructure Limited and Rs. 82,260/- still remain outstanding. The members were further informed that as per the said Expense Sheet, expenses incurred from 09.06.2021 till 05.07.2021 i.e. the date of the handover of Project Site and physical documents as received from the landlord of EIL on as is where is and whatever there is basis, to both the Resolution Applicants viz. Alpha Corp and RUD by the Resolution Professional, an additional expenses to the tune of Rs. 9,27,015/- have been incurred by him as per "Annexure-2"

9.12 The DC notes that records maintenance charges amounting to Rs.2,68,813 (Rupees two lakh sixty eight thousand eight hundred thirteen) as provided in the SCN relates to period after approval of resolution plan by the CoC and was included in the CIRP expenses being informed to the SRAs in the above meeting. The DC also notes that there were extraneous circumstances in which records were sent to Mr. Akash Shinghal and immediate measures taken thereto. Though Mr. Akash Shinghal intimated the SRA regarding the records maintenance charges in a meeting in July 2021 while these charges were being incurred on monthly basis from June 2020. Mr. Akash Shinghal could have easily kept the member of the CoC informed about this extra cost by writing to them which appears to have not been done. Moreover, he has not provided the copy of the alleged status report filed before the AA informing about the records maintenance charges. Hence, the DC holds that conduct of Mr. Akash Shinghal in this regard is not up to the mark.

9.13 The DC notes that as per item no. 14 of the 7th CoC meeting along with scope of work to be done by M/s AMC Law Firm, included the fee structure which provided payment of Rs. 1,00,000 p.m. for the scope described and Rs.21,000 per appearance where number of appearances exceeds four in a calendar month. It also included payment of out-of-pocket charges that were expected to range 10% of fees charged. It is further observed that it would need specific analysis of legal fees paid at different point of time and the same is briefed as under: -

S.No	Period	Documentary proofs/ submissions
1.	March 2020 Rs. 2,00,000	Rs.1,00,000 + Rs.1,00,000 Ledger of Earth Infrastructure Limited
2.	February 2021 Rs. 2,26,000	Ledger dated 01.02.2021 to 28.08.2021 Rs.1,00,000 + (Rs. 21,000* 6 hearings) = Rs.2,26,000-
3.	March 2021 Rs. 6,27,095	Ledger dated 01.03.2021 to 31.03.2021 Rs.1,00,000 + Rs.92,000 (Legal Services) + Rs.70,895 (Against Bill No 1791) + Rs.1,26,000 (against Bill No 1540) + Rs.2,10,000 (against Bill No 1514) + Rs.6,200 + Rs.22,000 (Mr. Gulshan Gaba as reimbursement) = Rs.6,27,095
4.	June 2021	Ledger dated 01.06.2021 to 30.06.2021

	(till 18.05.2021) Rs. 2,38,220	Rs.1,05,340 (Fees of May @ Rs.1,00,000 for 24 days and bill No.1820) + Rs.68,440 (Hearing and OPE) + Rs.68,440 (Hearing and OPE). = Rs. 2,38,220
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9.14 The DC observes that the details and additional explanation provided by Mr. Akash Shinghal is insufficient to justify the alleged legal fees incurred by him as he has not provided details of the court hearings, working of the additional cost and copy of bills to justify the expenses which are not as per approval by the CoC. Hence, the DC holds the contravention as Mr. Akash Shinghal has not taken approval of the CoC for these additional legal expenses by disclosing them in a transparent manner.

10. Order

10.1 In view of the forgoing discussion, the SCN, reply to the SCN, oral and written submission made by Mr. Akash Shinghal, the DC finds Mr. Akash Shinghal in contravention of Sections 24(8), 208 (2)(a) and 208(2)(e) of the Code, Regulations 16A(9), 19, 25(3), 25(6), 34, of the CIRP Regulations, Regulations 7(2)(a) &7(2)(h) of the IP Regulations read with Clauses 1, 8C, 13, 14 and 15 of the Code of Conduct specified thereunder read with Circular No. IP/005/2018 dated 16.01.2018.

10.2 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 hereby:

- a) suspends the registration of Mr. Akash Shinghal for a period of three years,
- b) directs the Board to re-look into the issues surrounding the contravention III and IV after disposal of appeal by the Hon'ble Supreme Court.

10.3 This Order shall come into force on expiry of 30 days from the date of its issue.

10.4 A copy of this order shall be sent to the CoC/Stakeholders Consultation Committee (SCC) of all the corporate debtors in which Mr. Akash Shinghal is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Akash Shinghal.

10.5 A copy of this order shall be forwarded to the ICAI Institute of Insolvency Professionals where Mr. Akash Shinghal is enrolled as a member.

10.6 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.

10.7 Accordingly, the show cause notice is disposed of.

Sd/-
(Sandip Garg)
Whole Time Member
Insolvency and Bankruptcy Board of India

Sd/-
(Jayanti Prasad)
Whole Time Member
Insolvency and Bankruptcy Board of India

Date: 6 February 2025

Place: New Delhi