

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**IA Nos. 890/2022, 466/2020, 892/2022,  
265/2020, 266/2020, 462/2020  
in  
CP (IB) No.250/Chd/PB/2018  
(Admitted)**

**In the matter of:**

M/s. Central Bank of India .....Financial Creditor

Vs.

K.S.M. Spinning Mills Limited ...Corporate Debtor

**And in the matter of IA No. 890/2022:-**

**Under Section 60(5) of the IBC, 2016**

Vipan Mittal, Suspended Director  
S/o Late Kaur Sain Mittal,  
having its registered address at  
644, Aggar Nagar, Ludhiana-141001 .....Applicant

Vs.

Nipan Bansal,  
Resolution Professional  
having its registered office at  
10-B, Udham Singh Nagar, Ludhiana-141001  
...Respondent

**And in the matter of IA No. 892/2022, 466/2020, 265/2020, 266/2020 &  
462/2020:-**

**Under Section 60(5) of the IBC, 2016**

Sarish Mittal, Suspended Director  
S/o Vipan Mittal,  
having its registered address at  
644, Aggar Nagar, Ludhiana-141001 .....Applicant

Vs.

Nipan Bansal,  
Resolution Professional  
having its registered office at  
10-B, Udham Singh Nagar, Ludhiana-141001  
...Respondent

Order delivered on: 25.04.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present:**

For the Applicant in  
IA Nos. 890/2022, 892/2022,  
265/2020, 266/2020, 462/2020,  
466/2020

: Mr. Sandeep Suri, Advocate

For Resolution Professional

: Mr. Harsh Garg, Advocate  
Mr. Pulkit Goyal, Advocate

For Local Commissioner in  
IA 890/2022

: Mr. Prashant Kumar Kapila, Advocate

**Per: Subrata Kumar Dash, Member (Technical)**

**ORDER**

All the above applications have been filed by the Suspended Directors praying, inter alia, for the removal of the Resolution Professional on various grounds of omissions and commissions allegedly committed by him. These applications being on the same lines and relying on almost identical facts, are taken up together being interrelated and interconnected.

**IA No. 265/2020**

1. This application has been filed by the Suspended Director against the Resolution Professional on 16.07.2020 with a prayer to restrain Sh. Harsh Garg, Advocate from representing the RP on the ground that there is a conflict of interest in respect of the said counsel, who is also representing the financial creditor as well as the Resolution Professional. It is further stated that the RP-Mr. Nipal Bansal has made wrong submissions with regard to the

appointment of the said counsel as his lawyer, as the same has not been approved by the CoC.

2. A reply on behalf of the respondent-corporate debtor is submitted vide Diary No.554/01 Dated 28.12.2020 by Mr. Nipan Bansal, Resolution Professional, clarifying that the date of initiation of CIRP in the case of the corporate debtor is 01.01.2020 and the counsel appointed by the Resolution Professional had already resigned on 30.09.2019 from the Insolvency Professional Entity where he was the director.

**IA No. 266/2020**

3. This is an application filed by the Suspended Director on 16.07.2022 against the RP with a prayer to remove the Resolution Professional mainly on the ground that he has made false declarations under the relevant IBBI circular dealing with disclosures to be made by the Insolvency Professionals and other professionals appointed by the Resolution Professional of the corporate debtor. It is alleged that there is a gross misrepresentation made by the RP-Mr. Nipan Bansal. The RP, as a professional Chartered Accountant, was providing advice and services to the corporate debtor much prior to the initiation of CIRP.

4. The Respondent-corporate debtor has filed a reply by Dairy No. 00551/01 dated 28.12.2020 contending that there was no collusion between the RP and the counsel for the financial creditor and also stating that the accusation regarding Professional Consultancy and Services being rendered to the corporate debtor by the RP from the year 2014 to 2018-19 being false and fabricated. It is further stated that the transactions/services qua the loan/credit facilities availed from the IDBI Bank pertain way back to the year

2014, and the same was carried by the firm named M/s Bansal Consultants in which the RP had no role.

**IA No. 890/2022**

5. The present application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, on 18.07.2022, wherein the applicant-suspended Director has sought directions of this Bench for certain documents that were relied upon or referred to in the Resolution Plan to be handed over to him by the Resolution Professional.

6. The respondent-Resolution Professional has filed an affidavit by diary No. 01637/2 dated 10.10.2022 and 01637/5 dated 27.02.2022 wherein it has been stated that the Resolution Professional vide email dated 26.09.2020 has provided the information as sought by the applicant. The applicant has replied by email dated 28.09.2022 that complete information is not being provided. Another affidavit by diary No. 01637/4 dated 07.12.2022 has been filed, wherein certain emails have been exchanged between the parties in which the information has been provided by the Resolution Professional and a rejoinder thereto has been filed by the applicant-Suspended Director by diary No. 01637/6 dated 01.03.2023. To resolve this matter, a Local Commissioner was appointed by our order dated 15.02.2023 & 03.03.2023 and the Local Commissioner, by diary No. 00055/14 dated 06.04.2023, has filed his report before this bench. The Applicant-Suspended Director has still submitted that the information shared is incomplete. His submission is a part of the consolidated short written submission discussed in the subsequent paragraphs,.

**IA No. 466/2020**

7. This application has been filed by the Suspended Director on 22.07.2022 with a prayer to set aside the appointment of the Resolution Professional mainly on the ground that the IRP/RP has not taken adequate steps to ensure that the electricity supply is restored so that the company may be brought back to working condition. It is submitted that prior to the appointment of the IRP, all the bills raised by the Electricity Department were paid regularly; however, the IRP, on taking over, pasted banners outside of the factory wall that the factory had shut down and hence PSPCL discontinued electricity. Subsequently, the application was filed for the restoration of electricity. Thus, the IRP has failed to keep the operations of the corporate debtor in working condition. Subsequently, the consumption of electricity has gone down.

8. A reply on behalf of the respondent is submitted vide Diary No.00612/01 Dated 30.12.2020 that this application has been rendered infructuous because the Resolution Plan has already been approved by the CoC and is pending before the Adjudicating Authority for its final approval. It is further contended that the applicant has indulged in forum hunting as they have already filed the same complaints against the Resolution Professional with the IBBI.

**IA No. 462/2020**

9. This application has been filed by the Suspended Director on 23.07.2020 against the RP, praying for the removal of the Resolution Professional Sh. Nipan Bansal on the ground that he was neither appointed as RP by the CoC nor continued as such. A reference has been made to the results of the voting

by the CoC, and it is further alleged that the threshold voting of 66% for the appointment of IRP as RP has not been fulfilled.

10. The respondent has filed a reply by diary No. 00625/01 dated 28.12.2020 by Mr. Nipan Bansal, Resolution Professional of the respondent-corporate debtor stating inter alia that the CoC appointed the Resolution Professional, in strict compliance of all the relevant provisions of the IBC 2016. The Interim Resolution Professional has been appointed as RP with the requisite voting share as one financial creditor, i.e. Punjab National Bank having 14.72%, and has assented to the agenda of appointment of RP later on.

**IA No. 892/2022**

11. The present application has filed on 03.08.2022, whereby the applicant-suspended Director has prayed for the removal of the Resolution Professional on the basis of allegations levelled by him. A reference has been made to the order passed by the IBBI dated 18.05.2022, wherein it is alleged that the authorities held the appointment of Sh. Nipal Bansal itself as bad. It is further submitted that the Resolution Plan should be set aside on the ground that the malafides act of the Resolution Professional only be adjudicated by the IBBI, and based on the order of the IBBI, appropriate action should be taken by this Adjudicating Authority. According to the applicant, the IBBI has made adverse observations on the following:

- A. Failure in filing relationship disclosure by the RP with regard to the appointment of Mr. Harsh Garg as is legal counsel.
- B. The improper procedure of appointment of IRP as RP on the ground that the percentage of voting in favour of the

appointment of IRP as RP was much below the stipulated required majority of not less than 66%.

12. It is further alleged that the IP has concealed material information and has also violated the code of conduct by not maintaining complete independence in his professional relationships. It is further alleged that the members of the CoC are conniving with the RP to play fraud on the Adjudicating Authority.

13. The respondent has filed its reply by diary No. 01817/01 dated 12.10.2022 that the applicant has never challenged the order of the IBBI and it has attained finality, and in view of the detailed order of the IBBI dated 27.07.2021, the present application is liable to be dismissed.

14. A rejoinder, thereto, has been filed by the applicant-Suspended Director by diary No. 01810/5 dated 01.03.2023 stating that the applicant has referred several extracts from the order of the IBBI in support of its claim that the RP is not exonerated in the said order.

15. In his consolidated written arguments filed by diary No. 01810/6 dated 21.04.2023 in IA Nos. 265/2020, 266/2020, 462/2020, 466/2020 and IA No. 890/2022 and 892/2022, the learned counsel has raised nineteen allegations, out of which the following allegations are directly relatable to the charges investigated by the IBBI.

- i. Counsel for the stakeholder/CBI, Financial creditor who filed the petition in the present CIRP is the counsel (Harsh Garg) for the ITP/RP.
- ii. IRP/RP was automatically disqualified
- iii. Failure in filing relationship disclosure.
- iv. Order of IBBI dated 22.08.2022, (Ann R-2 of reply of IA 892/2022 page 22-29) the IRP/RP has been held guilty.

- v. Violation of S. 22(2) of IBC.
- vi. Improper Procedure for Appointment of IRP as RP
- vii. Efforts were made by Nipan Bansal to affect the voting by trying to influence the members of the CoC by sending e-mail.
- viii. Fraud and manipulation of CIRP records.

16. The other allegations include alleged instances of violation of an order of admission, non-sharing of photographs in respect of all such portions of the factory, wherein the stocks, finished goods, and goods in production were stored, the doctrine of video recording of the plant and machinery, non-maintenance list of stocks and assets and the difference between valuations conducted on 19.03.2020 and on 18.03.2023, vehicles missing in valuation reports and non-availability of original bills of CIRP expenses.

17. We have carefully perused the contents of the application and the replies and rejoinders filed therein and have heard the learned counsels of the parties.

18. Except for IA No. 890/2022 and 466/2020, the applicants in the other aforementioned IAs have made references to various alleged lapses committed by the Resolution Professional and have prayed for his removal. It is also noted that all these allegations have been the subject matter of a thorough investigation by the IBBI, which had issued a show cause notice dated 18.05.2022 Annexure as A-1 to the application) making detailed observations regarding various acts of the Resolution Professional, which are in the teeth of the provisions of IBC. Subsequently, the IBBI has passed a detailed order dated 18.05.2022 recording its findings. The same has been discussed in the subsequent paragraphs.

19. Now, taking up IA No. 890/2022, it is noted that the applicant-suspended director prayed for directions to the RP to share copies of various communications, reports, forms etc., filed with the RP to enable it to go to the roots of the valuation and the status of the Corporate debtor. In this connection, it is noted that the Suspended Director being invited to the meetings of the CoC is expected to raise these issues in the meeting itself, and it is for the CoC to decide on the requisitions made by the Suspended Director. It is not the role of the Suspended Director to carry out a post-mortem of the activities of the RP and the Resolution Process but to give suggestions in the CoC meetings for the smooth functioning of the Resolution Process. It is pertinent to mention here that the Suspended Directors being instrumental in bringing about the financial indebtedness of the corporate debtor, have not been accorded the status of a decision-maker during the resolution process, and the same lies with the Committee of Creditors after the initiation of the CIRP. In any case, as mentioned in para 6 above, this Bench has appointed a Local Commissioner to oversee the sharing of documents/information between the Resolution Professional and the suspended directors. The Local Commissioner has submitted his report by diary No.0055/14 dated 06.04.2023. After a perusal of the same, we are of the considered view that given the time gap between the initiation of CIRP and the present, all relevant information/documents available with the Resolution Professional have been handed over to the applicant-Suspended Directors. We, therefore, find no reason to allow this application, as the proceedings under the IBC 2016 are strictly time bound processes, and no practical purpose will be served by continuing this exchange of document etc.

especially after the fact that the issues have already been extensively scrutinised by the IBBI. With these observations, IA No. 890/2022 is dismissed and stands disposed of.

20. In IA No. 466/2020, it is alleged that the IRP-RP has not taken adequate steps to ensure the restoration of the electricity supply to bring the company back into working condition. In this connection, we observe that it is for the Resolution Professional to take all steps to safeguard the value of the assets of the corporate debtor, and in this regard, he is answerable before the CoC. This is pure managerial activity, and under the IBC, the right to supervise the RP lies with the CoC and not with the Suspended Directors. The latter is expected to give their suggestions in the meetings of the CoC, of which he is a non-voting member. With these observations, IA No. 466/2020 stands dismissed.

21. In IA No. 892/2022, 265/2020, 266/2020 and 462/2020, several allegations of omissions and commissions have been made by the applicants-Suspended Directors with a prayer to remove the RP. We note that the allegations made have been the subject matter of a show cause notice dated 18.05.2022, wherein the allegations contained in the aforementioned IAs have been mentioned. In its order dated 22.08.2022, the disciplinary committee of the IBBI has identified two contraventions, i.e.,

- I. failure in filing relationship disclosure and;
- II. improper procedure for the appointment of IRP as RP.

22. The findings of the IBBI (Disciplinary Committee) with regard to the aforementioned two contraventions are extracted below for the sake of clarity:

**“Summary Finding under Contravention I**

4.3.1 The circular no. IP/005/2018 dated 16.01.2018 provides as follows while explaining kinds of relationship:

*"Where the Insolvency Professional or the Other Professional, as the case may be, is a partner or director of a company, firm or LLP, such as, an Insolvency Professional Entity or Registered Valuer, the relationship of kind A, B or C of every partner or director of such company, firm or LLP with the related party."*

*As per material available on records, Mr. Nipan Bansal and Mr. Harsh Garg were appointed as director of insolvency professional entity (IPE), viz., Competent Insolvency Professionals Private Limited. Thereafter, Mr. Nipan Bansal on 30.07.2018 provided written communication in Form 2 for his appointment as IRP of CD to the applicant, viz., Central Bank of India ("BI\*"), being represented by Mr. Harsh Garg before AA.*

*Therefore, on the date of giving consent to act as the IRD, Mr. Bansal and Mr. Garg both were directors of the same IPE and were related to each other. On 30.09.2019, Mr. Garg resigned from the directorship of the the, Hence, on 17.12.2019, ie, ICD, Mr. Bansal and Mr. Garg were not related party from the date of admission of CIRP.*

*4.3.2 Regarding delay in filing relationship disclosure with IP pertaining to legal counsel appointed by Mr. Bansal, the DC observes that Mr. Bansal admitted delay. There is laxity aD approach of Mr. Bansal in obtaining undertaking from Mr. Garg and filing disclosure with IPA. However, since such delays did not cause any prejudice or loss to any of of the stakeholder of the CD, the DC takes a lenient view and advises Mr. Bansal to be more cautious in handling assignments.*

## **Summary Finding under Contravention II**

*4.6.1 The DC observes that the agenda for appointment of IRP as RP was first placed for voting before CoC in its 1st meeting dated 07.01.2020. The agenda was not approved as it received only 65.89% votes in its favour which fell short of mandatory 66% required for approval of resolution for appointment of IRP as RP as per section 22(2) of the Code. Later PNB who is one of the FC with voting share of 14.72% sent mail on 13.02.2022 according its approval for appointment of IRP as RP. Consequently, Mr. Bansal filed application before AA dated 17.02.2020 for confirmation of IRP as RP as after the email from PNB, the total voting share, as calculated by Mr. Bansal, in favour of appointment of IRP as RP went to 80.60%. The DC notes that not putting the agenda again to vote is a technical mistake.*

*Instead of adding up the votes of previous meeting with that of PNB decision as confirmed through c-mail, Mr Bansal should have taken the agenda for voting again.*

*4.6.2 The DC further observes that as no objection was raised in 3rd CoC meeting by any members of CoC and till date also no objection has been raised on appointment of Mr. Bansal as RP when the resolution plan has also been approved by CoC and pending for approval before AA. In light of the above, the DC takes a lenient view as no objections has been raised, fee of Mr. Bansal has been approved and resolution plan was approved by CoC including Bank of Baroda who once had objected to the appointment of Mr. Bansal as RP, and no harm has been done to any stakeholders.*

## **5. Order**

*5.1. In view of the submission made by Mr. Nipan Bansal, and materials available on record,*

*DC notes that Mr. Nipan Bansal should have been more careful and vigilant in conducting the CIRP. The deficiencies as noticed and conceded by Mr. Nipan Bansal appear to be technical in nature. Therefore, DC is inclined to take lenient view and cautions Mr. Nipan Bansal to be more careful in future while handling process under the Code”.*

23. As is clear from the abovementioned narrations, the allegations raised by the Suspended Director in IAs under consideration have been thoroughly investigated by the IBBI and the alleged wrongdoings, if any, have been termed as mere technical lapses and no penal provisions have been invoked against the Resolution Professional.

24. In this context, the following provisions of the IBC are extracted to put in context the status and powers of the Suspended Director

*“17. (1) From the date of appointment of the interim resolution professional,—*

*(a) xxxxx*

*(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;*

**Section 24: Meeting of committee of creditors.**

*\*24. (1) The members of the committee of creditors may meet in person or by such electronic means as may be specified.*

*(2) xxxxxx*

*(3) The resolution professional shall give notice<sup>1</sup> of each meeting of the committee of creditors to—*

*(a) xxxxx*

*(b) (b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;*

25. The role assigned to the Suspended Director under the IBC, as reflected in the aforementioned extracts, is to assist the CoC on determining whether the Resolution Plan addresses the cause of default by the company, which is a mandatory requirement for the Resolution Plan. The Suspended Directors are, therefore, given the right to participate in the meetings of the CoC and give suggestions. In the present applications, no pleading is made to suggest that the said right of participation was denied to the suspended directors. In the scheme of the Code, after the initiation of CIRP, the power to make decisions passes over from the Suspended Director to the Committee of Creditors. Furthermore, after the order of the Disciplinary Committee of the IBBI on the issues raised by the applicants in the IAs under discussion, holding that these lapses, at worst, were only technical ones, we find no merit in the applicant's prayer to re-examine the allegations.

26. We have carefully considered the allegations made in the consolidated written arguments filed on 21.04.2023 for all the IAs under discussion here. As the first eight allegations extracted in para 16 above have already been considered in detail by the IBBI, and the violations were found to be of a technical nature, we find no justification in probing these allegations again. The learned counsel for the applicant has levelled allegations of manipulation of records and doctoring of recordings, but the same is clearly beyond the

remit of this authority to adjudicate upon. The other allegations, like non-provision of the original report, the presence of the valuer in the factory premises before their formal appointment and unsigned documents of the Resolution Applicant in the records of the corporate debtor, are found to be more in the nature of nit-picking, which does not adversely affect the genuineness of the Resolution Process carried out by the RP under the supervision of the CoC.

27. Even in its decision in the case of ***Rajesh Narang vs Durha Vitrak Private Limited***, Company Appeal (AT) (INS) No. 612/2021, relied upon by the applicants, the Hon'ble NCLAT had directed to conduct an enquiry by the IBBI to identify any prima facie commission of the cognizable offence. In the present case, the IBBI, in the exercise of its power conferred under Section 218 of the Code read with the Inspection Regulations, had appointed an Inspecting Authority (IA), and a detailed inspection has already been carried out before serving the show-cause notice (SCN) on the Resolution Professional. In view of the fact that the IBBI's report is very detailed and goes into all the relevant allegations made by the Suspended Directors, we do not find any merit in re-opening the issues.

28. In the result, IA Nos. 265/2020, 266/2020, 462/2020, 466/2020, 890/2022, and IA No. 892/2022 are dismissed.

Sd/-  
**(Subrata Kumar Dash)**  
**Member (Technical)**

Sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

April 25, 2023

PB