

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/151/2023

15th February 2023

ORDER

In the matter of Mr. Anurag Kumar Sinha, Insolvency Professional (IP) under Section 220 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2021/143 dated 28th December, 2022 issued to Mr. Anurag Kumar Sinha, Flat No. 3602, Redwood (Tower No. 7), Runwal Greens, Mulund- Goregaon Link Road, Bhandup (West), Mumbai City, Maharashtra, 400078, who is a Professional Member of Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-POO427/2017-2018/10750.

Background

1.1 The Hon'ble NCLT, Hyderabad Bench, *vide* its order dated 13.08.2019, admitted an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by SBI (Financial Creditor), initiating CIRP in the matter of M/S PPS Enviro Power Private Limited (Corporate Debtor). Mr. Anurag Kumar Sinha, IP, was appointed as IRP *vide* the same order dated 13.08.2019. The Hon'ble NCLT, Hyderabad Bench-I, *vide* its order dated 24.12.2021, ordered for liquidation in the said matter, *inter alia* observing failure in compliance of performance bank guarantee despite orders of the Adjudicating Authority and dereliction of duty by the Resolution Professional.

1.2 The Insolvency and Bankruptcy Board of India (IBBI/ the Board), in exercise of its powers under Section 218 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 3(1) and 3 (3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations), appointed the Inspecting Authority (IA) *vide* its order dated 28th March, 2022 to conduct inspection of assignment of Mr. Anurag Kumar Sinha, as Interim Resolution Professional (IRP) and later Resolution Professional (RP) in the Corporate Insolvency Resolution Process (CIRP) of M/s PPS Enviro Power Private limited (Corporate Debtor/CD).

1.3 The Draft Inspection Report (DIR) was shared with Mr. Anurag Kumar Sinha, *vide* e-mail dated 29th June, 2022. His response to the same was received *vide* email dated 22nd July, 2022.

1.4 On the basis of material available on record, certain contraventions were observed with respect to his assignment as IRP/RP in the CIRP of the CD.

2. Observed Contraventions and Submissions

Contraventions observed in the SCN and Mr. Anurag Kumar Sinha's submissions are summarized below:

2.1 Contravention – I

Dereliction of Duty in submitting resolution plan for approval of Adjudicating Authority

2.1.1 It is noted that Section 30(2)(f) of the Code *inter alia*, requires the resolution professional to examine each resolution plan to confirm that each resolution plan conforms to such other requirements as may be specified by the Board. Further, Section 30(3) of the Code provides that the resolution professional shall present to the CoC for its approval such resolution plans which confirm to the conditions referred in sub-section (2).

2.1.2 It is noted that Regulation 36B(4A) of the CIRP Regulations states as follows:

“The request for resolution plan shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule”.

2.1.3 It is further noted that Regulation 39(4) of CIRP Regulations states as below:

*“The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, **along with a compliance certificate in Form H of the Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36**”.*

2.1.4 It is observed that as per para 12-1.9.1 of Request for Resolution Plan (RFRP), the successful resolution applicant (SRA) was required to submit the performance bank guarantee (PBG) of 20% of bid value in the format as provided in the Appendix 4 to RFRP within 7 days of approval of resolution plan or within such time as extended by COC.

2.1.5 It is noted that on the perusal of Mr. Anurag Kumar Sinha's reply to the DIR, the resolution plan approved by CoC contained following clause regarding submission of PBG:

“The PBG will be submitted within 21 days of communicating COC approval of the plan to RA or within 7 days of approval of resolution plan by NCLT whichever is earlier.”

2.1.6 It is noted that the resolution plan placed before the CoC for approval had timeline for submission of PBG which was at variance with the one contained in RFRP. Thus, it indicated that proper due diligence of resolution plan had not been undertaken by Mr. Anurag Kumar Sinha, as required under section 30(2)(f) and 30(3) of the Code read with Regulation 36B(4A) and 39(4) of CIRP Regulations.

2.1.7 It is also observed on perusal of Hon'ble NCLT, Hyderabad Bench (AA) order dated 24th December 2021, that consequent to the approval of the resolution plan of SRA, Mr. Anurag Kumar Sinha filed an application before the AA for approval of the resolution plan without having received the PBG as per RFRP which was in contravention of Regulation 39(4) of CIRP Regulations requiring a resolution professional to file for approval of resolution plan inter alia with evidence of receipt of PBG required under Regulation 36B(4A).

2.1.8 It is further noted from AA's order dated 24th December, 2021, that the AA had granted multiple extensions of time to SRA to submit PBG, but it failed to submit the same. The AA subsequently ordered liquidation of the CD, approximately 9 months after the resolution plan was approved by the CoC, on account of failure on part of SRA to submit PBG. If Mr. Anurag Kumar Sinha had followed the relevant provisions of the Code and Regulations, and had asked for PBG as per the timeline mentioned in RFRP, valuable time in the process would have been saved. Further, it is noted that, by not ensuring that the PBG is received before seeking approval of the resolution plan by the AA, the provision under Regulation 36B(4A) with regard to forfeiture of PBG in case of failure to implement the resolution plan approved by the AA had been made ineffective and irrelevant by Mr. Anurag Kumar Sinha.

2.1.9 In view of the above, the Board held the *prima facie* view that Mr. Anurag Kumar Sinha has, *inter alia* violated Section 30(2)(f), 30(3), 208(2)(a), 208(2)(e) of Code read with Regulation 36B(4A), 39 (4) of the CIRP Regulations as well as Clause 3, 13 and 14 of Code of Conduct of IP Regulations.

2.2 Submissions by the IP

2.2.1 With regard to the aforesaid contravention, Mr. Anurag Kumar Sinha submitted that all the resolution plans submitted by resolution applicants were examined as per the requirements of the Code and the Board, hence, there was no violation of Section 30(2)(f) and 30(3) of the Code. The resolution plan contained payment of insolvency resolution process cost, payment of debts of operational creditors in the manner as specified by the Board, provided for management of affairs of the CD, implementation, and supervision of resolution plan etc. Hence, the resolution plan was compliant with the provisions of sections 30(2) of Code and hence, also with section 30(3).

2.2.2 Mr. Anurag Kumar Sinha submitted that there was no violation of regulation 36B(4A) of CIRP regulations. The RFRP contained the clause for submission of performance security within specified time and contained provision also for forfeiture of performance security/ invocation of performance guarantee in case of breaching of any of the conditions of resolution plan, for violation of the Code or the Regulations by SRA etc.

2.2.3 He further submitted that there was no violation of Regulation 39(4) of CIRP Regulations also as the resolution plan approved by CoC was filed before Honourable NCLT on 08.03.2021, that is, 23 days before the end of the CIRP period (31.03.2021), as per the approval given by Honourable NCLT. As such, requirement of Regulation 39(4) of submitting resolution plan at least 15 days before the maximum period for completion of corporate insolvency resolution process was complied with. Form H was also submitted along with resolution plan. He submitted that with respect to evidence of receipt of performance security, it was mentioned in Form H that performance security will be submitted within 21 days of communicating COC approval of the plan to RA.

2.2.4 Mr. Anurag Kumar Sinha in his submissions referred to Para 12-1.9.1 of RFRP, Para 11-1.8.1 of RFRP and Para 8-1.5.1 of RFRP, which is reproduced as below:

Para 12-1.9.1 of RFRP

The successful resolution applicant i.e., resolution applicant whose plan would be approved by COC is required to submit the performance bank guarantee of 20% of bid value. The performance bank guarantee should be submitted in the format as provided in the Appendix 4 within 7 days of approval of resolution plan or within such time as extended by COC.

Para 11-1.8.1 of RFRP

The resolution applicant whose name is included in the final list of prospective resolution applicants shall submit the bid guarantee of Rs 1 crore in the name of... (Name of Bank), being the Bank having major voting share, on behalf of the Committee of Creditors.

Para 8-1.5.1 of RFRP

Notwithstanding anything contained in the RFRP, the COC reserve the absolute right to accept any resolution plan with or without modification, select or approve any proposal or resolution plan, as it may deem fit, at any time, without any liability or any obligation for such acceptance or rejection.

2.2.5 Mr. Anurag Kumar Sinha submitted that when the resolution plan of successful resolution applicant, Zulaikha Motors Pvt Ltd (hereinafter mentioned as 'ZMPL') failed, the said bid guarantee was invoked by SBI (COC member) and Rs 1 crore was received by COC.

2.2.6 Mr. Anurag Kumar Sinha submitted that the final resolution plan submitted by ZMPL and approved by COC contained the following clause regarding submission of PBG -

"The PBG will be submitted within 21 days of communicating COC approval of the plan to RA or within 7 days of approval of resolution plan by NCLT whichever is earlier."

2.2.7 He further submitted that since as per RFRP, the COC had the power to extend the time for submission of PBG and COC had also the right to accept any resolution plan with or without modification, it cannot be said that there was violation of RFRP clauses. CoC exercised their right regarding submission of PBG which was mentioned in 23rd CoC Meeting Minutes.

2.2.8 He submitted that it was not correct to say that the resolution plan placed before the CoC for approval had timeline for submission of PBG which was at variance with the one contained in RFRP. Hence, it was also not correct to say that proper due diligence of resolution plan had not been undertaken by him as required under section 30(2)(f) and 30(3) of the Code read with Regulation 36B(4A) and 39(4) of CIRP regulations, in view of the reasons mentioned by him.

2.2.9 Mr. Anurag Kumar Sinha submitted that when the resolution plan of ZMPL was approved by COC, it was desired by COC to submit resolution plan to Honourable NCLT urgently and at the earliest. He submitted that probably, it was in the mind of COC to

get some amount before 31.03.2021. He further submitted that for every Bank, 31st March is year end and is very important. So, while it may not be on record, but it was in the mind of everybody to get some recovery for financial creditor before 31.03.2021 apart from resolution of the account. This was also one of the reasons that the resolution plan was submitted on 08.03.2021 without waiting for PBG to come.

2.2.10 He submitted that the resolution plan was to be submitted minimum 15 days before the expiry of CIRP period. So anyhow, it was to be submitted by 16.03.2021 as CIRP period was expiring on 31.03.2021 and it was mentioned in the Order that no further extension will be permitted. Further, the PBG as per the approved plan was not expected to come by 16.03.2021 as SRA had asked for 21 days' time. Hence, the resolution plan without having PBG was submitted to NCLT in good faith with the sole intention of revival of the company (CD), instead of going for liquidation.

2.2.11 Mr. Anurag Kumar Sinha submitted that seeing that PBG is not being received as mentioned in the plan, he filed IA No 478/2021 before Honourable NCLT with a prayer that Resolution Applicant be directed to submit the PBG immediately. He submitted that PBG as mentioned above did not come within 21 days of communicating COC approval and the SRA, ZMPL was giving several reasons for non-submission of PBG some of which were, Covid Phase 2, Lockdown in the country, Elections in Tamil Nadu, bank branches not functioning properly, absence of Government officials, government official on election duty, absence of bank officials etc. He further followed up with SRA's Bankers also in order to get PBG at an early date.

2.2.12 He submitted that after 31.03.2021, no hearing took place in PPS Enviro matter for more than 3 months because of Covid situation though we regularly prayed for early hearing, and an application was also filed in NCLAT and NCLT for the purpose. He submitted that against this background, an IA (478/2021) was submitted to the Honourable NCLT with a prayer that Resolution Applicant (also mentioned as SRA elsewhere) be directed to submit PBG immediately, filing of such IA was also discussed in the CoC meeting.

2.2.13 He submitted that the Respondent ZMPL filed reply to the above IA and asked for time, while the IP always pleaded in the Court for not giving any time to RA. However, the Honourable NCLT permitted RA on 03.09.2021 to file reply within 2 weeks which was in regard to submission of PBG and directed RA to submit PBG within 4 weeks' time on 23.09.2021. Again on 18.11.2021, the Honourable NCLT granted one week time for submission of PBG and also mentioned in the Order that if PBG is not received, appropriate direction will be issued to the COC and RP. The Honourable NCLT in the hearing held on 23.12.2021 and in Order dated 24.12.2021 passed adverse observation against RP and COC.

2.2.14 He further submitted that as per clause 1.9.3 of RFRP, it is mentioned therein that, non-submission of PBG will lead to rendering of resolution plan by such resolution applicant as non-responsive and CoC shall have the right to reject the resolution plan. However, he submitted that the CoC did not have any intention even in November,2021 to reject the resolution plan though PBG had not come by that time as is clear from the minutes of 26th CoC meeting.

2.2.15 Mr. Anurag Kumar Sinha further submitted that he filed IA No 218/2020 regarding avoidance transactions on 24.02.2020 for recovery of Rs 54.53 Crore (Fraudulent & Preferential Transaction) from the Directors/Related Parties of Corporate Debtor. As no

order was forthcoming in the IA No 218/2020, another IA (IA No 1099 / 2020) was filed for recovering Rs 45.50 Lacs from Acolyte Soft Private Limited (Group Company of PPS Enviro Power Pvt Ltd) as the amount was lying in the Account of Acolyte Soft Private Limited at ICICI Bank, Adyar Branch.

2.2.16 He submitted that CIRP was initiated against PPS Enviro Pvt Ltd on 13.08.2019, the Order of which was received by him on 16.08.2019. Immediately, a letter was written to ICICI Bank, Adyar Branch, Chennai for taking control of the account of PPS Enviro Power Pvt Ltd. However, before the letter could reach ICICI Bank, Adyar Branch, Chennai, an amount of Rs 45,50,000/- was withdrawn from the account of PPS Enviro Power Pvt Ltd on 19.08.19 and was transferred to the account of Acolyte Soft Pvt Ltd (a group company of PPS Enviro Power Pvt Limited) which was also maintained at the same branch. He submitted that on coming to know of the fact that Rs 45,50,000/- has been transferred from the account of PPS Enviro Power Pvt Ltd on 19.08.2019, a mail was sent to ICICI Bank, Adyar Branch for noting Lien in the account of Acolyte Soft Pvt Ltd to the extent of Rs 45,50,000/- i.e. the amount transferred from the account of PPS Enviro Power Pvt Ltd on 19.08.2019. After lots of efforts & persuasion, the Bank agreed to note the lien in the account of Acolyte Soft Pvt Ltd. Thus, he submitted that it was because of his alertness, that there could have been recovery of Rs 45,50,000/- where the money had already been diverted in other account.

2.2.17 Thus, he submitted that there was no violation of clause 3, 13 and 14 of code of conduct of IP regulations as he acted with objectivity, adhered to the timeline for submission of resolution plan before Honourable NCLT and that he did not act with malafide intention or acted negligently. He further submitted, that he also complied with provisions of section 208(2)(a) and 208(2)(e) of the Code as he took reasonable care and diligence while performing duties. Further, there was no violation of regulation 7(2)(a) and 7(2)(h) of IP regulations also as he abided by the Code, rules and regulations and also abided by Code of Conduct. He submitted that all possible steps were taken in order to run the corporate insolvency resolution process as per the norm and as required as per the Code and the Regulations.

2.3 Findings

2.3.1 From the submissions it is noted that on coming to know of the fact that Rs 45,50,000/- has been transferred from the account of PPS Enviro Power Pvt Ltd on 19.08.2019 and efforts were made for its recovery.

2.3.2 It is also noted that favourable Order was obtained in respect of IA No 218/2020 wherein Honourable NCLT passed Order directing the Directors/ suspended board of the corporate debtor i.e., respondent no 1 -3 to pay back/ contribute a sum of Rs 54,53,69,518/- with interest raised out of fraudulent transactions.

2.3.3 However, it is evident that on performance guarantee issue, Mr. Anurag Kumar Sinha has not only erred in interpreting the requirement but also failed in guiding the CoC in taking the informed decision as per requirement of the law . To remove any scope of ambiguity the relevant provisions and there sequencing is elaborated below:

- The Regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (hereinafter 'CIRP

Regulations’), mandates that the request for resolution plan shall provide for submission of performance security upon approval of the Resolution Plan by the CoC as prescribed under Section 30(4) of the Code.

- Regulation 39(4) of the provides that the Resolution Professional (RP) shall submit the Resolution Plan along with a compliance certificate and evidence of receipt of performance security required under Regulation 36B(4A). In accordance with the said Regulation, it was incumbent upon the RP to submit the Resolution Plan before the Adjudicating Authority along with evidence of receipt of performance security.
- The conjoint reading of Regulation 39(4) and Regulation 36B(4A), indicates that there is no confusion regarding the authority from which approval was to be sought for the purpose of reckoning the time for submission of performance guarantee. Thus, it was the period of seven days after the approval of the CoC, that the Performance Bank Guarantee was to be provided by the SRA, as per the terms of the Request for Resolution Plan. The Resolution Plan had to be submitted before the Adjudicating Authority, along with Performance Bank Guarantee.

2.3.4 Above mentioned framework has been so devised to create adequate disincentives to deter the resolution applicants from not honouring their commitments under the approved resolution plans. In the past there has been several litigations in connection with the implementation of resolution plans of corporate debtors where the successful resolution applicant have not complied with the timelines for implementation of the resolution plans. Therefore, possible forfeiture of PG has been visualized as potent deterrent.

2.3.5 While debating the basis for insertion of Regulation 36B(4A) under CIRP Regulations vide amendment dated 24th January, 2019, it was justified on the grounds that there should be clear meeting of minds of parties on all the terms of resolution plan and no ambiguity shall be left for interpretation at a later stage, particularly regarding critical implementation terms of resolution plan. Such disputes question the very sanctity of the resolution plan, which once approved by the Adjudicating Authority, is binding on all stakeholders including the resolution applicants. In terms of the same, the understanding of law and underlying Regulations is succinctly clear. If any other approach is permitted, then it would set the clock back in time undoing the purpose and intent of framing and insertion of Regulation 36B(4A) in the corporate insolvency process.

2.3.6 Furthermore, in terms of the landmark judgement passed by Honourable Supreme Court in the matter of Ebix Singapore Pvt. Ltd. Vs. CoC of Educomp Solutions Ltd. & Anr. made vide judgement dated 13th September, 2021, it has been held that:

*‘136. The timeline for the submission of Resolution Plans can be extended by an RP with the approval of the CoC. **The RFRP must require the resolution applicant to furnish a performance security in case their Resolution Plan is approved by the CoC under Regulation 36B(4A).** The performance security shall stand forfeited if, after the approval of the Resolution Plan by the Adjudicating Authority, the Resolution Applicant fails to implement or contributes to the failure of implementation of the plan.*

..

145.....**Regulation 36B (4A) of CIRP regulations provides for the furnishing of such performance security once the plan is approved by creditors.** The Regulations do not provide that the performance security has to be a reasonable estimate of loss as is expected of penalty clauses under contract law, rather the explanation provides that the performance security should be of “such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor”.

150.**Regulation 36B(4A) requires the furnishing of a performance security which will be forfeited if a Resolution Applicant fails to implement the Plan. This is collected before the Adjudicating Authority approves the Plan.** Notably, the regulations also direct forfeiture of the performance security in case the Resolution Applicant “contributes to the failure of implementation”, which could potentially include any attempts at withdrawal of the Plan.’

2.3.7 The above judgement makes it sufficiently clear that the requirement of submission of performance security is in the event of approval of resolution plan by the CoC and prior to approval by Adjudicating Authority. The Adjudicating Authority before approving the resolution plan under Section 31 must be satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30. Therefore, the AA must satisfy itself that the requirements of performance security under Regulation 39(4) of the Regulations read with 36B(4A) of the Regulations are complied with. The same was also expressed by the Adjudicating Authority in *CA Kannan Tiruvengadam, erstwhile RP, Chairman of the Monitoring Committee Vs. Almas Global Opportunity Fund SPC (Successful Resolution Applicant) in IA (IB) No.1275/KB/2020 in CP (IB) No.1237/KB/2018* vide judgement dated 20th April, 2022:

‘The entire process begs the question as to how the CoC assessed the viability and feasibility of the Resolution Plan submitted by the SRA. It also raises a question as to how the CoC approved the Resolution Plan without insisting on an unconditional PBG, which is envisaged in terms of regulation 36B(4A) of the CIRP Regulations, immediately after the CoC approved the Plan. The RP presented the Resolution Plan for the Adjudicating Authority’s approval without taking an unconditional PBG. This is a violation of the law.’

2.3.8 The pursuance of the response to the SCN, Mr. Anurag Kumar Sinha has mentioned that “if you peruse the requirement regarding submission of PBG, it is mentioned in the RFRP that the PBG was to be submitted within 7 days of approval of resolution plan. Since it was not clear in RFRP whether it is within 7 days of approval of resolution plan by COC or within 7 days of approval of resolution plan by NCLT, the resolution applicant interpreted this clause in their own way and as such, ZMPL mentioned in the final resolution plan that the PBG would be submitted within 21 days of communicating COC approval to RA or within 7 days of NCLT approval whichever is earlier which CoC agreed (Mentioned in 23rd CoC Meeting Minutes)

2.3.9 Section 30 (3) provides that “ The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in

sub-section (2).” The Regulation 39(2) further mandates that the resolution professional shall submit to the committee all provisions which comply with the requirements of the Code and regulations made thereunder. In view of this resolution professional cannot hide behind any mis-interpretation of requirement by the resolution applicant. The provisioning of PBG after approval of Plan by AA is not in conformity of the provisions of the law and hence render the plan non-compliant . It was Mr. Anurag Kumar Sinha’s responsibility firstly not bring such non-complaint plan for the consideration of the CoC and even if inadvertently it was put up for consideration of CoC, again responsibility to point out such deficiencies, again, rests with him. The PBG had to be submitted within seven days of approval of the Resolution Plan by the CoC. The Clause in the approved Resolution Plan, regarding submission of Performance Bank Guarantee within 21 days of communicating approval of CoC by to the RA or within seven days of approval by NCLT, was in violation of Regulation 36B(4A) of CIRP Regulations, Para 12-1.9.1 of RFRP, and consequently Regulation 39(4). Due to failure of the IP in ensuring the same, the AA was unnecessarily burdened with the task of directing the SRA for submission of PBG, of deciding the time period of submission of PBG, and had to grant extensions in the same matter, thereby also wasting the time of the AA. Due to the said failure, valuable time for completion of CIRP was wasted and the chances of for being resolved considerably diminished and ultimately move into liquidation became *fait accompli*.

2.3.10 Hence contravention on this count is established beyond any iota of doubt. Considering the fact that timeline for submission of PBG was varied from RFRP, it indicated that proper due diligence of resolution plan had not been undertaken by Mr. Anurag Kumar Sinha, as required under section 30(2)(f) and 30(3) of the Code read with Regulation 36B(4A) and 39(4) of CIRP Regulations.

3. Order

3.1 As noted above, Mr. Anurag Kumar Sinha has erred in his judgement in placing a non-compliant resolution plan for the consideration of the CoC. Further, despite being non-compliant plan, it was passed and placed for AA’s approval. AA has strongly commented on the issue in its judgement pointing out the mistake of the resolution professional and the CoC in submitting the plan despite PG issue being unresolved and directed ‘*.IBBI to look into the conduct of the Applicant and initiate appropriate action against the Resolution Professional*’ .

3.2 Post commitment of mistake, Mr. Anurag Kumar Sinha took several steps to get the issue of relevant PBG resolved, however, the fact remains that with initial due diligence, such grave mistake could have been avoided. In its order dated 24.12.2021, AA has opined that, ‘*We have no hesitation to hold that the act of filling IA 478/2021 is nothing but dereliction of his functions as Resolution Professional, besides violation of CIRP Regulations referred supra. Here the conduct of CoC member also raises serious questions/doubts in approving the resolution plan in a mechanical and callous manner and presenting it for before the authority.*’

3.3 The DC noted that the resolution plan placed before the CoC for approval had timeline for submission of PBG which was at variance with the one contained in RFRP. Thus, it indicated that proper due diligence of resolution plan had not been undertaken. Given the circumstances of the case, ends of justice will not meet, if action against SRA is not taken. The Board is hereby directed to consider taking action against SRA as per provisions of the code, as it may deem necessary.

3.4 Given the circumstances of the case, ends of justice will not meet, if action against SRA is not taken. The Board is hereby directed to consider taking action against SRA as per provisions of the code, as it may deem necessary.

3.5 The SCN is disposed with a caution to Mr. Anurag Kumar Sinha, to be more careful in future and directs him to strictly comply with the applicable provisions of the Code and its underlying Regulations while performing his duties and imposes penalty of Rs 2,00,000 (Rupees two Lakh). In view of this, it directs Mr. Sinha to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of “penalty imposed by IBBI” on <https://bharatkosh.gov.in> within 45 days from the date of issue of this order and submit a copy of the transaction receipt to the Insolvency and Bankruptcy Board of India.

3.6 Further, in exercise of the powers conferred under section 220 (2) of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby directs Mr. Anurag Kumar Sinha to undergo 50 hours pre-registration educational course (PREC). Till the completion of PREC, the Authorisation for assignment (AFA) of Mr. Anurag Kumar Sinha will remain in suspended animation and he will not undertake any fresh assignment in the capacity of Insolvency Professional during this period.

3.7 In respect of CD, it is evident from the order of AA dated 24.12.21 that efforts of CoC were rather detrimental as they approved the resolution plan keeping the issue of PBG unresolved and related delays had pushed the CD towards liquidation. This order along with copy of the AA’s order shall be forwarded to the respective corporate offices of the CoC members for taking note of AA’s observations and place corrective mechanism accordingly.

3.8 Given the circumstances of the case, ends of justice will not meet, if action against SRA is not taken. The Board is hereby directed to consider taking action against SRA as per provisions of the code, as it may deem necessary.

3.9 This shall come into effect immediately in view of para 3.5 and 3.6 of the order.

3.10 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Anurag Kumar Sinha is providing his services, if any.

3.11 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Anurag Kumar Sinha is enrolled as a member.

3.12 A copy of this order shall also be forwarded to the Registrar of the Principal Bench of National Company Law Tribunal, New Delhi, for information.

3.13 Accordingly, the show cause notice is disposed of.

-sd-

(Sudhaker Shukla)

Whole Time Member, IBBI

Date: 15th February 2023

Place: New Delhi