

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/125/2022

22nd August, 2022

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2020/60/531/3551 dated 18th May 2022 issued to Mr. Nipan Bansal, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) and regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 (IP Regulations). Mr. Nipan Bansal is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with registration No. IBBI/IPA-001/IP-P00039/2017-18/10100.

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

- 1.1. The Hon'ble NCLT, Chandigarh Bench (AA) vide order dated 17.12.2019 admitted the application under section 7 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of KSM Spinning Mills Limited (CD). The AA appointed Mr. Nipan Bansal as an Interim Resolution Professional (IRP) who continued as the Resolution professional (RP).
- 1.2. On 13.11.2020, the Committee of Creditors (CoC) approved the resolution plan, with Rs 98 Crore as realizable value, by 85.29% of voting share. The resolution plan of C.Mohan International is pending with the AA for approval. An application filed under section 43, 44 and 66 of the Code is also pending before the AA against the erstwhile management of the CD for recovery of Rs. 88.96 crores.

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

- 2.1. On having reasonable grounds to believe that Mr. Nipan Bansal had contravened certain provisions of the Code, Regulations and Circulars issued thereunder, the Board, in exercise of the powers conferred to it under section 218 of the Code read with the Inspection Regulations, appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Nipan Bansal vide order dated 25.01.2021. A draft inspection report (DIR), prepared by the IA, was shared with Mr. Nipan Bansal on 19.10.2021, to which Mr. Nipan Bansal submitted reply vide email dated 29.10.2021. The IA submitted the Inspection Report to Board on 04.01.2022.
- 2.2. Based on the material available on record including the Inspection Report, the Board issued the SCN to Mr. Nipan Bansal on 18.05.2022. The SCN alleged contravention of section 22(2), section 208(2)(a), 208(2)(e), regulation 7(2)(a), regulation 7(2)(h) of IP Regulations read with Clause 3A, 5, 9, 12 and 13 of the Code of Conduct as specified in the First Schedule of the IP Regulations. Mr. Nipan Bansal replied to the SCN on

08.06.2022. Mr. Bansal requested Inspection Report *vide* email dated 26.07.2022 and the same was provided to him. Mr. Bansal submitted his amended reply on 01.08.2022.

2.3. The Board referred the SCN, written and oral submissions of Mr. Nipan Bansal, and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Nipan Bansal availed an opportunity of personal hearing before DC on 16.08.2022 through virtual mode where he along with his advocate Mr. Rajansh Thukral, were present.

3. Preliminary Objections

3.1. Before dealing with contraventions *per se*, the DC takes note of the preliminary objection raised on behalf of Mr. Bansal regarding constitution of DC by a single member and referred order of High Court of Gujarat at Ahmedabad in Special Civil Application No. 13767 Of 2022, Sunil Kumar Aggarwal vs IBBI where the stay on order of DC has been granted on the ground that section 220 (1) of the Code stipulates that the disciplinary committee shall consist of “whole time members”, hence it could be construed that the disciplinary committee should be constituted comprising of at least “two whole time members”, whereas in the present case, the coram was comprising of single member.

3.2. Observations of DC

3.2.1 On raising such jurisdictional objection, the DC asked the legal representative of Mr. Bansal whether he wishes to continue his submissions on merit to which Mr. Thukral expressed his intention to argue on merits.

3.2.2 With regards to the issue of DC being constituted with a single member, the Code neither explicitly permits nor prohibits the possibility of a one-member disciplinary committee, Regarding the word “committee” in section 220(1) of the Code to be interpreted to include a one-member committee, following legal precedents suggests that this is permitted.

In Govt. of Andhra Pradesh vs. K. Sethuraman (AIR 1986 AP 170), the Registrar had the power under Andhra Pradesh Co-operative Societies Act, 1964 to appoint a person or persons to manage the affairs of the society. The Act defined the word ‘Committee’ as the governing body of a Society by whatever name called, to which the management of the affairs of the society is entrusted. The Court held that a person or persons appointed by the Registrar under the Act to manage the affairs of the society would constitute a ‘Committee’. Therefore, it is evident that a committee under Indian legal jurisprudence can constitute of only one member. There are also foreign precedents that support the proposition of a single member committee.

In Pollock C.B. in Reynell vs. Lewis (16 LJ Ex. 30), the term ‘committee’ means an individual, or body to which others have committed or delegated a particular duty, or who have taken on themselves to perform it, in the expectation of their act being confirmed by the body they profess to represent or act for.

Similarly, Kay, J. in Re Scottish Petroleum Co. [1882 (51) LJ Ch. 845 (846)] observed that, according to the commonplace meaning of the word, a ‘committee’ consists of more

persons than one. But the word ‘committee’ means a person or persons to whom anything is committed.

3.2.4 Since Mr. Bansal accepted the jurisdiction of DC and made submissions on merits, the DC proceeds to decide the contraventions in SCN on merit.

4. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Mr. Nipan Bansal’s submissions thereof are summarized below:

Contravention – I

4.1. Failure in filing relationship disclosure

4.1.1 The Board observed that Mr. Harsh Garg was appointed by Mr. Bansal as the legal counsel in the matter of CIRP of CD. Mr. Bansal submitted that Mr. Garg was appointed on 01.01.2020. It was noted from the documents on record that the relationship disclosure for appointment of Mr. Garg as the legal counsel/advocate was made only on 11.06.2020, i.e., after 162 days from the date of appointment. The IBBI circular no. IP/005/2018 dated 16.01.2018 provides that an IP shall disclose his relationship, if any, with other professional(s) engaged by him within 3 days of appointment of such professional. In view of the above, the Board is of the *prima facie* view that Mr. Bansal has *inter alia* violated section 208(2)(a) and 208(2)(e), regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clause 3A, 5 and 13 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct) and IBBI circular no. IP/005/2018 dated 16.01.2018.

4.2. Submissions made by the IP

4.2.1 Mr. Bansal submitted that, after the appointment of a professional during the CIRP, the RP has to seek the letter of disclosure from those professionals in order to file the disclosures in accordance with the IBBI circular no. IP/005/2018 dated 16.01.2018. In the present case, he appointed Mr. Harsh Garg as legal counsel on 01.01.2020 to assist him in all pending litigations relating to the CD. After appointment of Mr. Harsh Garg as legal counsel, he immediately sought the letter of disclosure and his other requisite details in order to file relationship disclosure, in accordance with the IBBI circular no. IP/005/2018. However, there were minor delays happened on the part of the Mr. Harsh Garg in providing the relevant details sought from him. Consequently, Mr. Bansal submitted that he couldn’t file the disclosures within the prescribed period and some delays were caused in such compliances. However, any of such delays were neither intentional nor caused any prejudice or loss to any of the stakeholder of the CD. He submitted that after getting information from Mr. Harsh Garg, he filed the relationship disclosure on the website of the IBBI. In this connection, he mentioned that the said period of delay is also affected by the uncertain emergence of the pandemic ‘Covid-19’ and thus exclusion period has already been granted by the AA to the RP from 25.03.2020 to 30.06.2020. Considering the period of exclusion, the delay in filing disclosure is primarily on account of late submission of non-relationship disclosure by Mr. Harsh Garg which comes to be 83 days which is not his fault. Brief sequence of events is as follows:

1	Date of appointment of Mr. Harsh Garg	01.01.2020
2	Date of receipt of disclosure from Mr. Harsh Garg	02.06.2020
3	Date of submission to the IIIP-ICAI	11.06.2020

The delay of 9 days is covered in the above-mentioned exclusion period.

4.2.2 Mr. Bansal submitted that a conjoint reading of draft report and the SCN shows that the Board has magnanimously dropped the allegation of related party. Once such an observation is dropped, the delay in disclosure of relationship also deserved to be dropped as in any case the disclosure is “NIL” since there is no relationship. This Board has been magnanimous in its approach in dealing with hyper technicalities of this nature and the delay in filing such disclosures has been delayed in past also. The similar treatment may be given to him also on assurance of being careful in future.

4.3. Summary Findings

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 (“CBI”), being represented by Mr. Harsh Garg before AA. Therefore, on the date of giving consent to act as the IRP, 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 IPE. 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 IPA pertaining to legal counsel appointed by Mr. Bansal, the DC observes that Mr. Bansal admitted delay. There is laxity in 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 the stakeholder of the CD, the DC takes a lenient view and advises Mr. Bansal to be more cautious in handling assignments.

Contravention-II

4.4. Improper Procedure for Appointment of IRP as RP

4.4.1 The Board observed that the resolution for appointment of IRP as RP was placed in the 1st meeting of CoC held on 07.01.2020 for e-voting. As per the result of the e-voting, 65.89% of the CoC voted in favour of appointment of IRP as the RP and 34.11% voted against the said resolution. As only 65.89% voted in favour of resolution for appointment of IRP as RP, the resolution could not have been declared as successful as per section 22(2)

of the code which requires majority vote of not less than 66%. However, it has been observed from the e-voting result that the said resolution has been mentioned as carried in the e-voting result. Mr. Bansal knowingly made misleading and incorrect statement before the AA in the application dated 17.02.2020 for confirmation of IRP as RP stating “*That the IRP had also conducted the second CoC meeting of the above-mentioned corporate debtor on 27.01.2020. Even in that meeting, none of the COC members pointed out nor raised any objection qua the IRP to continue as RP nor did they add any agenda in the COC meeting qua the same.*” However, it is on record that Bank of Baroda (Financial Creditor 9.6%) vide email dated 30.01.2020 conveyed its request for voting on appointment of RP. Bank of Baroda vide the said e-mail also requested Mr. Bansal to put up an e-voting agenda again for appointment of RP. Further it is noted that in the 3rd CoC meeting held on 04.03.2020, the matter regarding the appointment of IRP as RP was discussed and appointment was confirmed without putting up the agenda for voting again. In view of the above, the Board is of the *prima facie* view that you have *inter alia* violated Section 22(2), 208(2)(a) and 208(2)(e) of the Code, Regulation 7(2)(a) and 7(2)(h) of IP Regulations and Clause 5, 9 and 12 of Code of Conduct.

4.5. Submissions made by the IP

- 4.5.1 Mr. Bansal submitted that he is an accounting professional and was under the *bona fide* belief that this 65.89% could be squared off to 66% by rounding of and this would meet the test of law. Hon’ble SC in Civil Appeal No. 4079/2004 in the matter of State of U.P. & Anr. Vs. Pawan Kumar Tiwari & Ors dated 04.01.2005 held that “*The rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done.*”
- 4.5.2 Mr. Bansal submitted that the fees of the IP as RP was also approved at the same CoC meeting. PNB, one of the CoC members submitted his consent to the appointment of IP as RP and the requirement of 66% was thus completed. That the Board is already seized of the matter that the representatives of CoC members do not come to meetings of CoC with proper instructions and as such sometimes it leads to chaos of this kind and referred circular dated 10.08.2018.
- 4.5.3 Mr. Bansal submitted that the name of any other IP was not proposed to be appointed as RP in replacement and no proceedings were initiated under section 27 of the Code to replace the IP as RP. He further submitted that even if the IP is considered as not replaced despite voting of 65.89%, even then pursuant to regulation 17(3) of CIRP Regulations, he could not have left the CIRP until a RP was appointed in accordance with section 22 of the Code. Since there was no objection from any CoC member and appointment as RP was confirmed with 80% voting, so the appointment was regularised. The resolution plan of Rs. 98 crores were approved on 27.11.2020 as per the timelines laid down under the code.
- 4.5.4 Mr. Bansal submitted that regulation 17(3) of CIRP Regulations says that an IRP is duty bound to perform the functions of the RP till another RP is appointed under section 22 of the Code. The relevant portion of regulation 17(3) of CIRP Regulations, 2016, is reproduced hereunder:

“17. Constitution of committee.

(3) *Where the appointment of resolution professional is delayed, the interim resolution professional shall perform the functions of the resolution professional from the fortieth*

day of the insolvency commencement date till a resolution professional is appointed under section 22.”

He submits that it is clear from above regulation that IRP is bound to continue to work as RP until and unless he is not replaced by any other RP by the CoC under section 27 of Code. In the present case, his appointment as RP was confirmed by 80.60% majority votes and none of the member of CoC ever raised any objection against his appointment as RP at any stage of CIRP. The CoC members neither proposed the name of any other IP to replace the present RP nor they approached AA under section 27 of the Code for his replacement with another RP.

4.5.5 Mr. Bansal submitted that the second meeting of CoC was held on 27.01.2020 whereas email received from Bank of Baroda (BoB) was dated 30.01.2020. There was no objection raised by any member of CoC till the conclusion of second CoC meeting. The email dated 30.01.2020 came only as an afterthought as the fees of the RP was also approved. He submitted that there cannot be any request for e-voting after the meeting is held and the minutes are circulated. After the second meeting of CoC the Punjab National Bank (PNB) provided their written assent dated 13.02.2020 to the appointment of RP with 14.72% share making the total to 80.60%, and it was mutually felt between the members of CoC and the RP that fresh e-voting is not required which was also admitted by BoB in the email dated 30.01.2020. Accordingly, his appointment as RP stood confirmed by 80.60% majority voting as the CoC members who voted in favour of said agenda did not raise any objection against his appointment as RP. The said email was communicated to all the CoC members and also recorded in the minutes of third meeting of the CoC held on 04.03.2020 without any objection from any of the CoC members including BoB. The said facts and circumstances were also mentioned in the application filed by him before AA.

4.5.6 That BoB raised objection only once and that too after the second meeting of CoC and that too upon the instructions of higher authorities, who were not part of the CoC, and not repeatedly. The BoB itself mentioned in their email that *“It was confirmed over there that again e-voting will not be there & those financial creditors who voted against the appointment of RP i.e. Punjab National Bank, Corporation Bank & Bank of Baroda will review their decision on individual basis & same will be reviewed/confirmed in the next meeting”*

That BoB is one of the members of CoC who voted in favour of the Resolution Plan.

4.5.7 In the show-cause notice, reference has been taken of email dated 30.01.2020, sent by one of the CoC member i.e. BoB having 9.6% voting rights, wherein the objection was raised by the higher authorities of the BoB relating to appointment of Mr. Bansal as RP which clearly shows that it was an afterthought. He referred circular no. IBBI/CIRP/016/2018 dated 10.08.2018 issued by IBBI which specifically deals with the authorisation and powers of the representatives of the Financial Creditors in the CoC meetings. A relevant extract of the said circular is reproduced hereunder:

“The Financial Creditors/Banks must send only those representatives who are competent to take decisions on the spot. The wastage of time causes delay and allows depletion of value which is sought to be contained. The IRP/RP must in the communication addressed to the Banks/Financial Creditors require that only competent members are authorized to

take decisions should be nominated on the CoC. Likewise, Insolvency and Bankruptcy Board of India shall take a call on this issue and frame appropriate Regulations.”

4.5.8 That in the present case, the BoB was represented by Ms. Nisha Kumari, Chief Manager in all CoC meeting conducted in the whole CIRP of the CD. Ms. Nisha Kumari was acting as an authorised representative of the BoB *vide* authorization letter dated 02.01.2020 and is the only competent person as per the abovementioned circular to take decision on behalf of the BoB. Ms. Nisha Kumari never raised any objection regarding his appointment as RP during any of the 10 CoC meetings conducted in the CIRP of CD. The objection was raised after a lapse of 3 days from the CoC meeting held on 27.01.2020 that the higher authorities of BoB had raised an objection regarding his appointment as RP who are not even the part of the CoC meeting. In this connection, it is significant to state that the objection raised by the higher authorities of the BoB was unauthorised and baseless and the said objection has no relevance in the eyes of law. Mr. Bansal submitted that he was bound by law to act as RP until and unless he was replaced by another RP the under section 27 of the Code which is reproduced hereunder:

27. Replacement of resolution professional by committee of creditors. –

(1) Where, at any time during the corporate insolvency resolution process, the committee or creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.

(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.

(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.

(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.

(5) Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.

He submitted that it is clear from the abovementioned section that the CoC is empowered under section 27 of the Code, to replace the RP at any time during the CIRP by making an application before AA for replacement of the RP. However, in the present case, neither any member of the CoC ever expressed its intention with respect his replacement by another RP nor raised any objection in the third CoC meeting with respect to the appointment of the RP.

Mr. Bansal submitted that his fees has been approved by CoC including the BoB who initially objected on his appointment as RP.

4.6. Summary Findings

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 to 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 e-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.
- 5.2. In case, such repetitive instances are noticed in future, the matter will be treated as wilful negligence and action will be taken accordingly.
- 5.3. This Order shall come into force immediately in view of para 5.2.
- 5.4. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Nipan Bansal is enrolled as a member.
- 5.5. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.
- 5.6. Accordingly, the show cause notice is disposed of.

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(Sudhaker Shukla)
Whole Time Member, IBBI

Date: 22nd August 2022

Place: New Delhi