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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 15092/2022, CM APPL. 46665/2022 (Interim Relief)

RAKESH VERMA

..... Petitioner

Through: Mr. Neeraj Malhotra, Sr. Adv.
with Mr. Chetan Garg, Mr.
Nimish Kumar and Ms. Shreya
Singh, Advs.

versus

INSOLVENCY & BANKRUPTCY BOARD OF INDIA

..... Respondent

Through: Ms. Madhavi Divan, ASG with
Mr. (appearance not given).

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

04.11.2022

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1. Notice. Bearing in mind the nature of issue which stands raised, let the respondent which is duly represented, file a reply within a period of six weeks. The petitioner shall have four weeks thereafter to file a rejoinder affidavit.
2. Let the matter be posted again on 19.04.2023.
3. Prima facie and for the consideration of the grant of interim protection, the Court takes note of the submission of Mr. Malhotra, learned senior counsel for the petitioner who contends that the expenses which were incurred in the engagement of office clerks would clearly fall within the ambit of '*out of pocket expenses*' which are permissible under the relevant Regulations. According to Mr. Malhotra, the authorised representative was constrained to engage the services of a consultant or counsel for advising the home buyers bearing in mind the large number of persons who constituted that class.
4. The Court, however, notes that the duties and obligations which stand placed upon an Authorised Representative would clearly not



warrant the engagement of a consultant or counsel for advice. The expenses incurred under that head would thus prima facie not fall within the ambit of '*out of pocket expenses*'.

5. The petitioner is also stated to have incurred expenses on the engagement of office clerks who were paid Rs. 50,000/- per month. The aforesaid expenses are questioned by Ms. Divan, the learned ASG, who submits that the records would reflect that the two office clerks were paid double what was fixed for payment to the Authorised Representatives. According to the learned ASG, the expenses incurred on office staff must necessarily be proportional.

6. In view of the aforesaid, and till the final disposal of the writ petition, the liability which stands imposed upon the petitioner to refund the amount of expenses which was incurred on the engagement of office clerks alone is stayed. The balance amount which is payable under the impugned orders may be deposited with the Insolvency and Bankruptcy Board of India [Board]. That deposit may be affected within a period of four weeks from today.

YASHWANT VARMA, J.

NOVEMBER 4, 2022
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INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/123/2022

17th August, 2022

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2021/76/3627/562 dated 28th June 2022 issued to Ms. Rakesh Verma, 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). Ms. Rakesh Verma is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-001/IP-P-01814/2019-20/12794.

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

- 1.1. The Hon'ble NCLT, New Delhi, Principal Bench (AA) vide order dated 10.01.2019 admitted the application under section 7 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of M/s Granite Gate Properties Pvt. Ltd. (CD). Ms. Rakesh Verma was appointed as Authorised Representative (AR) to represent class of creditors *vide* order dated 27.11.2019 where AA observed that appointment of Ms. Verma as AR was approved by CoC with 67% voting share in 11th meeting Committee of Creditors (CoC) dated 21.11.2019.
- 1.2. The CoC has approved the resolution plan submitted by SMV Agencies Private Limited (Jaipuria) with majority, mainly consisting of homebuyers. The approval of resolution is pending plan before AA for adjudication of applications filed by NOIDA, a member of CoC.

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

- 2.1. On having reasonable grounds to believe that Ms. Rakesh Verma 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 Ms. Rakesh Verma *vide* order dated 20.05.2021. A draft inspection report (DIR), prepared by the IA, was shared with Ms. Rakesh Verma on 27.07.2021, to which Ms. Rakesh Verma submitted reply *vide* email dated 23.08.2021. The IA submitted the Inspection Report to Board on 01.09.2021.
- 2.2. Based on the material available on record including the Inspection Report, the Board issued the SCN to Ms. Rakesh Verma on 28.06.2022. The SCN alleged violation of section 208(2)(a) and 208(2)(e), regulation 16A(8) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP

Regulations), Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clause 1, 2, 14, 25 of the Code of Conduct and Board Circular dated June 12, 2018 (No. IBBI/IP/013/2018). Ms. Verma submitted her reply to the SCN on 09.07.2022.

- 2.3. The Board referred the SCN, written and oral submissions of Ms. Rakesh Verma, 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. Ms. Rakesh Verma availed an opportunity of personal hearing before DC on 03.08.2022 through virtual mode where she sought adjournment due to ill-health. The DC adjourned the hearing to 10.08.2022 and request for appearing through physical mode was granted. Ms. Verma appeared before DC on 10.08.2022 where she was represented by Advocate Mr. Keshav Mittal.

3. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Ms. Rakesh Verma's submissions thereof are summarized below:

3.1. Contravention with regards to excess payment

- 3.1.1 The Board observed that a resolution was placed for voting in the 16th CoC meeting held on 11.03.2020 for payment of remuneration and other expenses to you as AR:

Particulars	Expense
Expenses on consultant/counsel for advise during weekly meetings with homebuyers	Rs. 15,000 per meeting
Expenses on office clerk to maintain record of correspondences received from homebuyers and other CIRP record.	Rs. 50,000 per month
Authorised Representative fee for each COC meeting as per IBBI Rules and Regulation.	Rs. 25,000 per COC meeting.

- 3.1.2 Regulation 16A(8) of CIRP Regulations *inter alia* provides that the authorised representative of creditors in a class or more than 1000 shall be entitled to receive fee of Rs. 25000/- for every meeting of the committee attended by him. It is, however, observed that along with the per meeting expense of Rs. 25,000/- as per regulation 16A(8) of the CIRP Regulations, Ms. Verma has also claimed Rs. 50,000/- per month as expenses of the office clerk and Rs. 15,000/- per meeting for weekly meetings. Expenses on account of engagement of clerk for maintaining records and expenses on consultant and counsel for weekly meeting far exceeded the fees prescribed for AR in CIRP Regulations thereby defeating the very purpose of prescribing the ceiling of remuneration of AR.
- 3.1.3 By incurring out-of-pocket expenses double your own remuneration, Ms. Verma has overburdened the already stress CD and the Board is, therefore, of the *prima facie* view that she has *inter alia* violated section 208(2)(a) and 208(2)(e), regulation 16A(8) of CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clause 1, 2, 14,

25 of the Code of Conduct and Board Circular dated June 12, 2018 (No. IBBI/IP/013/2018).

3.2. Submissions made by the IP

- 3.2.1 Ms. Verma submitted that regulation 16A(8) of the CIRP Regulation provides the fee chargeable by AR of creditors in a class as Rs. 25,000/- for every meeting "of the committee" where number of creditors in class are more than 1000. There are 4500 homebuyers in present case, i.e. the number of creditors in a class which Ms. Verma represents as Authorized Representative. The Committee of Creditors ("CoC") in its 16th meeting held on 11.03.2020, duly approved fee payable to the AR "for each CoC meeting" as Rs. 25,000/-, which is in terms of the Regulation 16A(8) of the CIRP Regulations. Therefore, as far as fee payable to AR is concerned, the same has been fixed as Rs. 25,000/- per meeting of the CoC, which is in terms of Regulation 16A(8) of the CIRP Regulations.
- 3.2.2. Ms. Verma further submitted that as far as expenses incurred by AR are concerned, the same cannot be in breach of regulation 16A(8) of the CIRP Regulations as 'expenses' are not governed under the said regulation, and as no amount (except Rs. 25,000/- per meeting of the CoC) has been charged by the undersigned for her services. Rest of the amounts, i.e. Rs. 15,000/- per meeting and Rs. 50,000/- per month were only paid to the her towards expenses incurred by the her towards consultant/counsel for advise during weekly meeting with the homebuyers themselves, and towards office clerk for maintaining records regarding thousands of homebuyers.
- 3.2.3 With regards to violation of circular bearing No. IBBI/IP/013/2018 dated 12.06.2018, Ms. Verma submitted that paragraph 6 (b) of the circular dated 12.06.2018 mentions that fee or other expenses incurred by IP should be directly related to and necessary for the CIRP. In the present case, the expenses incurred by the undersigned of Rs. 50,000/- were paid to office clerk for maintaining records of correspondence between the homebuyers and other documents related to the CIRP.
- 3.2.4 Ms. Verma submitted that it was in light of the extensive nature of the work, and with a view to ensure that the undersigned duly performs its duties and obligations as per the provisions of law and regulations and directions issued by the IBBI, she was constrained to incur expense of Rs.50,000/- towards office clerk for maintaining the records and assisting the undersigned for the said purpose.
- 3.2.5 Ms. Verma submitted that she had also incurred expenses of Rs. 15,000/- towards consultant/counsel for advise during the weekly meetings with homebuyers. She regularly conducted meetings with the homebuyers on a weekly basis, wherein homebuyers would attend and raise their specific issues, which were noted, examined, and discussed, and resolutions thereto suggested in the meetings.
- 3.2.6 Ms. Verma submitted that she complied with the circular dated 12.06.2018 and has determined the fee and other expenses incurred on an arms' length basis in consonance with the requirements, and has maintained written contemporaneous records for incurring the expenses, and also has the supporting record of expenses incurred for the last three years.
- 3.2.7 With regards to regulation 7(2)(a) & 7(2)(h) of the IP Regulations, she submitted that the fees charged by her is in compliance of the Code and applicable Regulations, and the

expenses incurred were reasonable and necessary to duly perform its duties and obligations under the Code and for the CIRP of the CD, and were thus in compliance of the Code and applicable Regulations. With regards to section 208(2)(a) & 208(2)(e) of the Code, she submitted that there is nothing on record to show or suggest that the undersigned has not performed any of its duties or functions or not taken reasonable care and diligence in doing so.

3.3. Summary Findings

3.3.1 The DC observes that the CoC in its 16th CoC meeting dated 11.03.2020 the following agenda was placed before CoC:-

“That the Authorised Representative, Mrs. Rakesh Verma, has mentioned that she has incurred expenses/costs directly relating to the insolvency resolution process of the Corporate Debtor. The details of the same are as follows:

<i>Particulars</i>	<i>Expense</i>
<i>Expenses on consultant/counsel for advise during weekly meetings with homebuyers</i>	<i>Rs. 15,000 per meeting</i>
<i>Expenses on office clerk to maintain record of correspondences received from homebuyers and other CIRP record.</i>	<i>Rs. 50,000 per month</i>
<i>Authorised Representative fee for each COC meeting as per IBBI Rules and Regulation.</i>	<i>Rs. 25,000 per COC meeting.</i>

The CoC approved the following resolution with majority:

“RESOLVED THAT the expenses incurred by the Authorised Representative details of which were shared alongwith the Notice for the 16th CoC meeting, are ratified and the same shall form part of the insolvency resolution process cost.”

Voting of home buyers : Approved with 82% in favour

Voting of Noida Authority : Abstain

The resolution is therefore approved with 83.62% vote share of the COC.

3.3.2. Despite approval of the CoC, fact remains that fee and charges which are not admissible as per provisions of the statute, no stakeholders even CoC is in position to approve and enforce such expenses. If there was strong justification for making such expenses by the AR, CoC should have considered for loading the cost on its member rather than passing it on to CIRP cost. Therefore, clearly CoC has erred in approving the same.

3.3.3 Stipulation under Regulation 16A(8) of CIRP Regulations is clear on the subject and provides as under:

“(8) The authorised representative of creditors in a class shall be entitled to receive fee for every meeting of the committee attended by him in the following manner, namely: -

<i>Number of creditors in the class</i>	<i>Fee per meeting of the committee (Rs.)</i>
<i>10-100</i>	<i>15,000</i>
<i>101-1000</i>	<i>20,000</i>
<i>More than 1000</i>	<i>25,000</i>

3.3.4. Therefore, the DC notes that regulation 16A(8) only provides for fees of Rs. 25,000/- per CoC meeting to be paid to AR of creditors in a class. There is no provision in the Code and its underlying regulations for payment of expenses of any kind to AR. Hence the DC finds that Ms. Verma has violated section 208(2)(a) and 208(2)(e), regulation 16A(8) of CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clause 1, 2, 14, 25 of the Code of Conduct and Board Circular dated June 12, 2018 (No. IBBI/IP/013/2018).

Order

- 4.1. The DC notes that handling request from more than 4500 homebuyers demands time and resources considering the quantum of queries, clarification and advises from the numerous creditors. Further, Ms. Verma agreed that technical contravention has happened on her behalf, hence the DC is taking lenient view.
- 4.2. However, Ms. Verma is directed to deposit the expenses paid to her, over and above the fees provided in the regulation 16A(8) of the CIRP Regulations back to the account of the CD within 90 days from the date of the order. The information regarding depositing the amount within stipulated time shall be provided to IBBI.
- 4.3. Further Mr. Chander Prakash, Resolution Professional of the CD is directed to place the order before CoC which may appropriately consider to re-imburse the expenses of Ms. Verma outside the insolvency resolution process cost.
- 4.4. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Ms. Rakesh Verma is enrolled as a member.
- 4.5. 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.
- 4.6. Accordingly, the show cause notice is disposed of.

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(Sudhaker Shukla)
Whole Time Member, IBBI

Dated: 17th August, 2022
Place: New Delhi