

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**  
**(Disciplinary Committee)**

No. IBBI/DC/133/2022

12<sup>th</sup> October, 2022

**ORDER**

**In the matter of Mr. Rajendra K Bhuta, Insolvency Professional (IP) under Section 220 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 and Regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.**

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/INSP/2022/119/3998/596 dated 5<sup>th</sup> September, 2022, issued to Mr. Rajendra K Bhuta, 1207, Yogi Paradise, Yogi Nagar, Borivali (West), Mumbai, Maharashtra- 400092 who is a Professional Member of the Indian Institute of Insolvency Professional of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00141/2017-18/10305.

**Background**

- 1.1 Mr. Rajendra K Bhuta, IP was appointed as interim resolution professional (IRP) and Resolution Professional (RP) in the corporate insolvency resolution process (CIRP) in the matter of Topsgroup Services and Solutions Limited (CD). The National Company Law Tribunal, Mumbai Bench (AA) vide Order dated 19.02.2021 had admitted the application under Section 7 of the Code for CIRP of CD and appointed Mr. Rajendra K Bhuta as IRP. Subsequently he was replaced by Mr. Anshul Gupta as RP vide its order dated 27.07.2021.
- 1.2 In exercise of its power under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, the IBBI vide Order dated 22.03.2022 appointed an Inspecting Authority (IA) to conduct an inspection of Mr. Bhuta. IA shared the Draft Investigation Report (DIR) to the IP for his comments on 15.06.2022. The IP provided his comments to DIR vide e-mail dated 20.07.2022. Thereafter, the IA submitted the Inspection Report on 29.07.2022.
- 1.3 The IBBI on 05<sup>th</sup> September 2022 had issued the SCN to Mr. Bhuta, based on findings in the inspection report in respect of his role as IRP/RP in the CIRP of CD. The SCN alleged contraventions of provisions of the Insolvency and Bankruptcy Code, 2016 (Code), IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (CIRP Regulations), the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and the Code of Conduct under regulation 7(2) thereof. Mr. Bhuta replied to the SCN vide email dated 12.09.2022.
- 1.4 The IBBI referred the SCN and response of Mr. Bhuta to the SCN to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Bhuta availed an opportunity of personal hearing before the DC on

3<sup>rd</sup> October, 2022 along-with his advocate Mr. D B Pereira wherein he reiterated the submissions made in his written reply.

## 2. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Mr. Rajendra K Bhuta's submissions thereof are summarized below:

### 2.1 Contravention Charging fee for claim verification

2.1.1 Section 18(1)(b) of the Code casts duty upon IRP to receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under Sections 13 and 15 of the Code. Further, Regulation 13(1) of CIRP Regulations, the IRP or the RP, as the case may be, is required to verify every claim received.

2.1.2 It is observed that while communicating the creditors about status of claims submitted by such creditors pursuant to public announcement, Mr. Bhuta asked them to pay verification claim fee to the IRP, the amount of which has also been mentioned in that communication. The different amount of verification claim fee mentioned in communications sent to creditors is mentioned in table below:

Financial, Operational Creditors and other Stake Holders amount outstanding or amount in default per creditor (Rs)	Amount Rupees	GST	Total Amount
1 to 25,00,000	10,000	1,800	11,800
25,00,001 to 1,00,00,000	15,000	2,700	17,700
1,00,00,001 to 5,00,00,000	25,000	4,500	29,500
5,00,00,001 to 25,00,00,000	50,000	9,000	59,000
25,00,00,001 to 100,00,00,000	1,00,000	18,000	1,18,000
100,00,00,001 to above	2,00,000	36,000	2,36,000
Employees/ Per employee	5,000	900	5,900

2.1.3 In his submission to the DIR, Mr. Bhuta admitted having asked creditors to pay claim verification fee for verification of 402 claims done by him. He has also stated therein that claim verification fee was, however, paid by only 13 creditors (5 operational creditors and 8 employees) totalling Rs 1,10,000/.

2.1.4 In view of the above, the Board had held a *prima facie* view in the SCN that Mr. Rajendra K Bhuta has *inter alia* violated section 18(b), 208(2)(a) and (e) of the Code, regulation 13(1) of the CIRP Regulations, clause 1, 2, 14, 25 and 26 of the Code of Conduct given in the first schedule of IBBI (Insolvency Professionals) Regulations 2016..

### 2.2 Submissions made by the IP

2.2.1 Mr. Rajendra K Bhuta submitted that pursuant to the public announcement made on

23.02.2021, he had received claims from 3 Financial Creditors, 32 Operational Creditors, and 367 Employees. All the claims submitted by all the creditors were received and collated by IRP. On verification of additional, supporting documents, verified from documents with the CD, the correct amount was ascertained to Rs. 174.40 crore which was based on demand notice, and duplicate claims were rejected.

- 2.2.2 Mr. Bhuta submitted that the operations of the CD were closed for more than one year. There was no employee to provide information and record to cross verify the records. With the help of contact, Mr. Bhuta reached out to the persons who had worked in the accounts department and persuaded them to help reconcile the data. The records had several discrepancies and the IRP had to bring in six additional staff members for four months only for verification of claim amount vis-a-vis all the documents, records, or by calling additional documents of proof to substantiate the claim.
- 2.2.3 In view of the tasks completed, Mr. Bhuta submitted that as soon the duty is cast for verification of claims under regulation 13 of the CIRP Regulations, the reward/remuneration fees for such act of verification process of calling the proof, examining the proof as part of the verification is provided in Regulation 11 of the CIRP Regulations. Regulation 11 provides "*A creditor shall bear the cost of proving the debt due to such creditor.*" Proving a debt by the support of documents or other third-party evidence is part of the process of verification. The objective of regulation 11 is that the cost for providing documents or additional documents as may be called for proving the debt is to be borne by the creditor. IRP/RP is the only person who is required to verify the proof as part of verification under regulation 13 and regulation 11 clarifies that the cost of proof for verification is to be borne by the creditor. The objective of regulation 11 is that the duty of verification by IRP/ RP is rewarded under regulation 11. Regulation 10, 11 or 13 is in no way restrict or debar IRP/ RP from charging cost of proof and the cost of verification of proof from the creditor.
- 2.2.4 Mr. Bhuta submitted that as the IRP had performed his part of the duty of verification of proof by calling additional documents, he should be entitled to verification fees for the efforts of proving such a claim from the creditor. The purpose of regulation 11 is for rewarding the IRP for verification and proving the debt. The fee charged for verification of the documents of proof for the claim of debt is to be borne by the creditor. The number of documents for proving the debt may require legal knowledge and experience as well it may run in several pages. The time taken for verification of each claim may vary from one hour to number of days depending on a case-to-case basis. The debt record of default can be verified by Information Utility (IU) for which a fee is charged. Even if it is verified by Information Utility, the IRP/RP is not barred from verification, based on such certificate from IU. A claim verification fee is a reward for performing a professional duty to comply with regulation 13 of the verification of the claim.
- 2.2.5 Mr. Bhuta also submitted that the claim verification cost does not form part of the CIRP cost. If any cost is incurred by IRP/RP towards verification and proving the debt, such cost is to be collected from such respective creditor. The CIRP cost is the cost that is to be borne by the CD. Regulation 11 is clear that the verification fee is to be paid by the creditor, therefore, it is to be borne by the respective creditor. Hence, it is not part of the CIRP cost. Further, there is no embargo that the IRP cannot charge such fees from the

creditors.

- 2.2.6 Although Mr. Bhuta had requested the creditors for a verification fee, only 13 creditors (5 operational creditors and 8 employees) paid verification fee totalling Rs. 1,10,000 which is very negligible. In the reply submitted, Mr. Bhuta tendered apology and submitted the following: -

*“I apologise for such act of charging verification fees and request that the amount charged is very small as compared to the total amount of claims lodged, I may be pardoned, and no hard action be taken against me.”*

## **2.3 Findings**

- 2.3.1 Section 18 of the Code confers duty on the IRP to receive and collate claims which is as follows:

*“18. Duties of interim resolution professional. –*

*The interim resolution professional shall perform the following duties, namely: -*

*...(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15; ...”*

- 2.3.2 Further, regulation 13(1) of the CIRP Regulations provides for as follows:

***“13. Verification of claims.***

*(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it”*

- 2.3.3 In the present matter, Mr. Bhuta admitted in his reply that he requested the creditors for a separate verification fee. He also submitted that regulation 11 of the CIRP Regulations provides for *the creditor to bear the cost of proving the debt due* and as the IRP has verified and collated the claims, he should be awarded the cost/ fees for verification of the claim. He further argued that the separate verification fees was not to be included in CIRP cost as the same was to be borne by the creditors.

- 2.3.4 The DC observes that regulation 33 and 34 of the CIRP Regulations clearly envisages the process and the fees payable to the IRP/ RP as follows:

***“33. Costs of the interim resolution professional.***

*(1) The applicant shall fix the expenses to be incurred on or by the interim resolution professional.*

*(2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).*

*(3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.*

*(4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.*

*Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid*

*to the interim resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional.*

**34. Resolution professional costs.**

*The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.*

*Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.”*

- 2.3.5 In view of the above, the DC observes that the CIRP Regulations covers the complete expenses and fees of the IRP/ RP, and this fee is payable after ratification by the CoC. The approval by the CoC of the expenses incurred in the CIRP is a mechanism for keeping a check on the expenditures made by the IRP/ RP. In the present matter the DC notes that, the IRP has unilaterally fixed an arbitrary amount as fee for verification of claims of the creditors to be borne by them, separate from the IRP fees approved by the CoC, thereby going beyond the scope of the Code and the CIRP Regulations made thereunder. It is observed that this collection of separate verification fees from creditor creates a conflict of interest for the IRP/ RP as it raises a bias towards the creditors who have paid the verification fees and allows for grounds of rejecting a claim if fees are unpaid. Hence, Mr. Bhuta has failed to appreciate the provisions of the Code and regulations made thereunder.
- 2.3.6 The DC notes that the core duties conferred upon IPs include receiving, collating and verifying claims and that IPs can be adequately compensated for performing these duties by being paid a monthly fee as approved by the CoC. Further, an IP can take support by appointing IPEs, accountants, legal or other professionals as may be necessary and include their expenses in the CIRP costs. However, he cannot charge separate fees for each primary duty performed when a consolidated fees for his role as IRP/ RP is already being paid. The DC, however, notes that Mr. Bhuta in his reply has apologized for his act of charging such verification fees and has prayed that hard action may not be taken.
- 2.3.7 During the personal hearing on being asked by the DC about the apology tendered in the written reply, Mr. Bhuta submitted that he stands by his apology tendered in his written reply and requested for leniency.
- 2.3.8 The DC further notes that though contravention of sections 18(b), 208(2)(a) and (e) of the Code, regulation 13(1) of the CIRP Regulations and the clause 1, 2, 14, 25 and 26 of the Code of Conduct could be made out, in view of apology tendered by Mr. Bhuta, the DC is inclined to take a lenient view.

**3. Order**

- 3.1 In view of the above, the Disciplinary Committee, in exercise of the powers conferred

under Section 220 of the Code read with Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017, disposes of the SCN with the following directions:

- (a) Mr. Rajendra K Bhuta is directed to refund the amount of Rs. 1,10,000 (Rupees one lakh ten thousand only) received as verification fee to the respective thirteen creditors 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.
- (b) Mr. Rajendra K Bhuta is advised to be more careful and cautious while dealing with the provisions of the Code and the Rules and Regulations made thereunder.

- 3.2 The Order shall come into force immediately, considering the time given to Mr. Rajendra K Bhuta to refund the amount to the respective creditors.
- 3.3 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Rajendra K Bhuta is enrolled as a member.
- 3.4 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.
- 3.5 Accordingly, the show cause notice is disposed of.

-Sd-  
(Shri Jayanti Prasad)  
Whole Time Member, IBBI

Dated: 12<sup>th</sup> October, 2022

Place: New Delhi