

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/91/2021

8th April, 2022

ORDER

In the matter of Mr. Manoj Kumar Singh, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/(R)INSP/2021/26/335/2254 dated 30th July, 2021 issued to Mr. Manoj Kumar Singh, R/o. MARS & Associates, Cost Accountants 203, 2nd Floor, 10 Sikka Complex Community Centre, Preet Vihar, New Delhi-110092, who is a Professional Member of the Insolvency Professional Agency of Institute of Cost Accountants of India (IPA) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-003/IP-N00050/2017-18/10443.

Background

- 1.1 The SCN was issued to Mr. Manoj Kumar Singh, the IP, in respect of his role as Interim Resolution Professional (IRP) while conducting the corporate insolvency resolution process (CIRP) in the matter of Palm Developers Private Limited, Corporate Debtor (CD). The Hon'ble National Company Law Tribunal, New Delhi Bench-II, Adjudicating Authority (AA) admitted an application under section 9 of the Code for CIRP of CD vide Order dated 27th January 2020 and appointed Mr. Manoj Kumar Singh as IRP.
- 1.2 The IBBI, in exercise of its power under section 196 of the Code read with regulation 3 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations), appointed an Inspecting Authority (IA) vide Order dated 13th January 2021 to conduct an inspection of Mr. Manoj Kumar Singh, on having reasonable grounds to believe that he had contravened provisions of the Code, Regulations, and directions of AA issued thereunder. The IA submitted its report dated 6th June 2021 to the IBBI.
- 1.3 The IBBI had issued the SCN on 30.07.2021 to Mr. Singh, on the basis of material available on record including report of IA, in respect of his role as IRP in the CIRP of the CD. The IBBI was of the *prima facie* opinion that sufficient cause exists to take action against Mr. Singh in terms of section 220 of the Code read with regulations 11 and 12 of the Inspection Regulations and regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations). The SCN alleged the contravention of the provisions of sections 17, 18, 20, 25, 208(2)(a) and (e) of the Code, regulations 16B, 27, 35A, 36, 36A and 40A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulation 7(2)(a) and (h) of the IP Regulations and clauses 1, 2, 10, 13 and 14 of the Code of Conduct specified in First Schedule of the

- IP Regulations. Mr. Singh replied to the SCN *vide* letter dated 19.08.2021.
- 1.4 The IBBI referred the SCN, reply of Mr. Singh to the SCN 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. Singh availed an opportunity of personal and virtual hearing before the DC on 22.12.2021, 24.01.2022 and 18.02.2022.
- 1.5 On the request of Mr. Singh copy of the Complaint and copy of Final Inspection Report was made available and subsequently Mr. Singh filed additional submissions *vide* e-mail dated 01.03.2022.

Alleged Contraventions and Submissions

Contraventions alleged in the SCN and Mr. Singh's written and oral submissions made thereof are summarized as follows.

Contraventions

The contraventions alleged in the SCN are summarized as follows.

- 2.1 It is noted that *vide* an order dated 27.01.2020, Mr. Singh was appointed as an IRP by AA in respect of the CIRP of Palm Developers Private Limited. He constituted the Committee of Creditors (CoC) with two Corporate Guarantors. The AA in its order dated 28.02.2020, restrained the IRP from holding CoC meeting till the voting percentage is ascertained. It is observed as follows:

"In view of the aforesaid situation where CoC has been constituted with Corporate Guarantors who do not have a cause of action, no further steps shall be taken in the meeting of the CoC till the voting percentage is ascertained. The IRP is restrained from holding a meeting of CoC or putting any agenda to vote physically or online, till the constitution of CoC is ascertained. It is also brought to the notice of this Bench that the IRP has not taken any steps as mandated under the Code nor taken any steps to take over the assets of the Corporate Debtor till date".

- 2.2 Further, on 07.09.2020, AA modified the direction passed in its order 28.02.2020 and directed Mr. Singh to proceed in the matter in accordance with the provisions of the Code. However, it is observed that despite the order of AA, wherein Mr. Singh was directed to proceed with the CIRP, he failed to take the CIRP forward. Hence, the conduct of Mr. Singh tarnishes the sanctity of the entire process, depriving the legitimate creditors of their rightful rights and share. Furthermore, it is alleged that Mr. Singh despite being fully aware of the provisions of the Code and Regulations made thereof failed to take into consideration that CoC could be constituted in terms of Regulation 16B of the CIRP Regulation i.e with the creditors in class whose claims had been verified in the present matter. It is alleged that by not constituting CoC, comprising of creditors in class, despite order of the AA, Mr. Singh failed to comply with provisions of Code, the Regulations made thereunder.

- 2.3 It is noted that apart from conducting the 1st CoC meeting on 26.02.2020 no notable work has been done by Mr. Singh, CIRP is a time bound process, wherein it is the endeavor to maximize the value of the assets by taking swift decisions. As an IP, Mr. Singh should have:
- (i) Appointed valuers accordance with Regulation 27 of the CIRP Regulation.
 - (ii) Shared the information memorandum with members of CoC in accordance with Regulation 36 of the CIRP Regulations.
 - (iii) Form an opinion before the 75th day of the Insolvency Commencement Date (ICD) whether the CD has been subjected to any transactions under Section 43, 45, 50 or 66 of the Code.
 - (iv) Published Form G within 75th day from the ICD in terms of Regulation 36A of CIRP Regulations.

- 2.4 The Code of Conduct, *inter alia*, provides that an IP should adhere to the timelines as prescribed under the provisions of the Code, Regulations and Circulars. This is done with an intent to enhance the credibility of the ecosystem under the Code and as an IP, it was Mr. Singh's duty to ensure reasonable care and diligence while performing his duties however *prima facie* it is alleged that Mr. Singh's conduct portrays that he contravened the provisions of the Code and Regulations made thereunder.

Submissions by Mr. Manoj Kumar Singh

- 3.1 At the outset Mr. Singh has submitted that the SCN is misconceived, unfounded and allegation and observation made are based on assumptions. It is submitted that Mr. Singh has not violated the provisions of the Code, CIRP Regulations, IP Regulations and Code of Conduct prescribed. There is no deficiency in performance of duties by Mr. Singh. That immediately upon being appointed as IRP and receiving order to this effect, Mr. Singh made a public announcement, intimated the bankers and ex-management of the commencement of CIRP of CD, visited the office of CD, appointed security service and took control of management and physical possession of assets of CD. Mr. Singh submitted that he received the claims against the CD and upon the verification of the same constituted CoC within prescribe timelines as per the Code. He has made every endeavor to protect and preserved the value of property of the CD and managed the operation of the CD as going concern. After constituting CoC on 20.02.2020, Mr. Singh convened a meeting of the COC on 26.02.2020, wherein the issues regarding fee of IRP, appointment of RP was discussed.

- 3.2 Mr. Singh has submitted that immediately after the 1st CoC meeting and before E-voting an application IA No. 1610 /2020 was filed on 25.02.2020 before the AA, by one member of the CoC represented through AR seeking to reconstitute the CoC excluding two other members namely, ECL Finance Limited and IDBI Trusteeship Services Limited, preventive them from exercising any voting rights. The AA vide order dated 28.02.2020, restrained Mr. Singh from holding a meeting of CoC or putting any agenda to vote physically or online till the constitution of CoC is ascertained. It was further directed that no further steps shall be taken in meeting of the CoC till voting percentage ascertained

in the case of said two members of the CoC.

- 3.3 Subsequently, the AA vide order dated 07.09.2020 modified the earlier order dated 28.02.2020 to the extent that Mr. Singh is allowed to proceed in the matter in accordance with provisions of the Code. However, the IRP has been restrained from declaring the status of ECL Finance Limited and IDBI Trusteeship Services Limited till further order. It is submitted that Mr. Singh has adhered to the time limits prescribed under the Code and Regulations for CIRP and has acted in a careful manner.
- 3.4 Mr. Singh also submitted that the issue of constitution of CoC and appointment of Authorized Representative is sub-judice before the AA in IA No.1448 and 1449 of 2020. The aforesaid two applications were filed on 20.02.2020 and the same has been filed by the Mr. Singh. Out of which one report bearing no. IA No. 1449/2020 was decided on 18.08.2021 and the CoC Constituted by Mr. Singh was provisionally accepted by the AA on 18.08.2021 and the IA No. 1448/2020 was kept pending for 08.09.2021. The entire process was stalled by the applicant of the application No. 1610/2020, who has filed the application on 25.02.2020, which was heard on 28.02.2020 and ex-parte order was passed in favour of the applicant.
- 3.5 Mr. Singh has submitted that there is no dispute that vide order dated 28.02.2020, he was restrained to proceed further in the CIRP from holding a meeting of the CoC or putting any agenda to vote physically or online. The said order was not vacated by the order dated 07.09.2021 rather it was modified to the extent that IRP is allowed to proceed in the matter in accordance with the provision of the Code with the condition that he is restrained from declaring the status of Corporate Guarantors till further order. The said application is sub-judice before AA for adjudication. That the reading of the order dated 07.09.2020 can't be made in isolation and the same is to be read with the order dated 28.02.2020. In the order dated 07.09.2020, Mr. Singh was allowed to proceed with the CIRP and the allegation that Mr. Singh was supposed to proceed with the provisions of regulation 16B of the CIRP Regulations is incorrect. The bare reading of the regulation 16B states that the same can done only when there is no FC and in the absence of the FC, the CIRP can be proceed with a class of creditor through Authorised Representative. In present case, Mr. Singh has constituted CoC with two FC having their voting share of approximate 88% and the same was pending adjudication from 20.02.2020 till 18.08.2021 when it was taken on record by AA. Mr. Singh was restrained from declaring status of the FCs and the same was subject to confirmation of AA and one CoC was already in existence and there was already FC available in the CIRP. Thus, proceeding with regulation 16B was in itself violation of the provision of the Code. Mr. Singh has not moved further beyond the provision of regulation 17(3) of the CIRP Regulations and the remaining functions was to be done by the Resolution Professional and Mr. Singh was never confirmed as the Resolution Professional due to the stay order.
- 3.6 Mr. Singh submitted that documents in support of allegations have not been supplied to him, therefore, he reserves the right to file additional reply. He further contended that SCN tantamount to interference in administration of justice and parallel proceeding against him

as the matter is sub-judice before AA in IA No. 1610 of 2020. Moreover, when the reply to the SCN by Mr. Singh was pending, the IBBI moved an application before the AA seeking his removal as IRP which is not only highly unjust, illegal and violative of Article 21 of Constitution of India, but is also against the scheme of the Code. Mr. Singh was removed from the CIRP vide order dated 13.07.2021 by the AA but the order has been challenged before the Hon'ble NCLAT.

- 3.7 The issue related to taking control of all books of accounts, records of CD, direction to suspended board of Director of the CD to handover all assets to Mr. Singh and the prayer related to claim of interest in the amount admitted by Mr. Singh has been dropped by the Applicant and cannot be investigated against the IRP because the act of the Applicant in amending the Application is part of judicial record and the same is sub-judice before the AA and would be prejudicial as well as interference in the administration of the justice by the IBBI.
- 3.8 Mr. Singh submitted that he had performed his professional duties as provided under the Code properly. He had performed his function despite severe pandemic situation and almost complete lock down for considerable time endangering his life without any monetary benefit till date. Mr. Singh in the said grim situation visited CD office on regular basis to protect and preserve the property of the CD. It is submitted that Mr. Singh has always made his best efforts to comply with all the provisions of the Code and Regulations. The conduct of the IP has been fair, independent, impartial unbiased and has always worked with full professional integrity. No questions and/or objection can be raised against the integrity, honesty, independence, and professionalism of Mr. Singh. It appears that complaint has been made to the IBBI with ulterior motive and with *mala fide* design to remove Mr. Singh from the present assignment. There has been no misconduct on the part of Mr. Singh till date in the matter. Only omission is not proceedings after order dated 07.09.2020 passed by AA. The reason for the same already been stated hereinabove.
- 3.9 That vide order dated 13.07.2021 Mr. Singh was replaced with Mr. Kirti Narayan Mishra, IRP and Mr. Singh has handed over the charge. Also the new IRP has not made any concern that there were any discrepancies in the functioning of Mr. Singh. It is important to mention that vide order dated 13.07.2021, the AA has been pleased to further modify order dated 28.02.2020 and 07.09.2020 whereby CoC with a class of creditor has been permitted. This clarity was not given in the earlier order. However, the challenge to order dated 13.07.2021 is sub-judice before the Hon'ble NCLAT. Therefore, the allegations against Mr. Singh are denied as unfounded.

Analysis and finding

4. The DC after considering the oral and written submissions of Mr. Singh in response to the allegations made in the SCN, and also the provisions of the Code and the regulations made thereunder, proceeds to dispose of the SCN as follows.

- 4.1 That the Code casts strenuous responsibilities on an IP to run the affairs of the CD in distress as a going concern and to maximize the value of the assets. Such responsibilities of an IP require the highest level of professional excellence, dexterity and integrity. The role of IP is vital to the efficient operation of the processes under the Code. A well-functioning system of resolution driven by a competent IP plays a significant role in cementing together the interests of the CD with those of the creditors. It is for this reason that the need of specialized professionals to complete the resolution processes has been unequivocally emphasized.
- 4.2 The UNCITRAL Legislative Guide on Insolvency Law recognizes the role of an IP in the following words: "*However appointed, the insolvency representative plays a central role in the effective and efficient implementation of an insolvency law, with certain powers over debtors and their assets and a duty to protect those assets and their value, as well as the interests of creditors and employees, and to ensure that the law is applied effectively and impartially. Accordingly, it is essential that the insolvency representative be appropriately qualified and possess the knowledge, experience and personal qualities that will ensure not only the effective and efficient conduct of the proceedings and but also that there is confidence in the insolvency regime.*"
- 4.3 The role of an IP encompasses a wide range of functions and it is incumbent upon an IP, under section 17 and 18 of the Code the duties of the IRP have been provided as follows:

"17. Management of affairs of corporate debtor by interim resolution professional. -

- (1) From the date of appointment of the interim resolution professional, -*
 - (a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;*
 - (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;*
 - (c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;*
 - (d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.*
- (2) The interim resolution professional vested with the management of the corporate debtor, shall-*
 - (a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;*
 - (b) take such actions, in the manner and subject to such restrictions, as may be specified by the Board;*
 - (c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;*
 - (d) have the authority to access the books of accounts, records and other relevant*

documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified; and
(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.”

“18. Duties of interim resolution professional. -

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

- (a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to -*
 - (i) business operations for the previous two years;*
 - (ii) financial and operational payments for the previous two years;*
 - (iii) list of assets and liabilities as on the initiation date; and*
 - (iv) such other matters as may be specified;*
- (b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;*
- (c) constitute a committee of creditors;*
- (d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;*
- (e) file information collected with the information utility, if necessary; and*
- (f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including -*
 - (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;*
 - (ii) assets that may or may not be in possession of the corporate debtor;*
 - (iii) tangible assets, whether movable or immovable;*
 - (iv) intangible assets including intellectual property;*
 - (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;*
 - (vi) assets subject to the determination of ownership by a court or authority;*
- (g) to perform such other duties as may be specified by the Board.*

Explanation. – For the purposes of this section, the term “assets” shall not include the following, namely: -

- (a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;*
- (b) assets of any Indian or foreign subsidiary of the corporate debtor; and*
- (c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.”*

- 4.4 Further, section 20 of the Code mandates that the IRP shall make every endeavour to protect and preserve the value of the property of the CD and manage its operations of as a going concern by appointing professionals, entering into contracts, raising interim

finance, issuing instructions to the professionals of CD etc and under section 25 the duties of the Resolution Professional has been provided.

- 4.5 As per section 208(2) of the Code, the IP is to take reasonable care and diligence while performing his functions and duties. Section 208(2)(a) and (e) of the Code reads as under:

“208. Functions and obligations of insolvency professionals.

(2) Every insolvency professional shall abide by the following code of conduct: –

(a) to take reasonable care and diligence while performing his duties;

...

(e) to perform his functions in such manner and subject to such conditions as may be specified.”

- 4.6 Moreover, the various provision of CIRP Regulations cast duties on the IRP/ Resolution Professional to complete processes as per timelines,

“16B. Committee with only creditors in a class.

Where the corporate debtor has only creditors in a class and no other financial creditor eligible to join the committee, the committee shall consist of only the authorised representative(s)”

“27. Appointment of Professionals.

(1) The resolution professional shall, within seven days of his appointment but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35.

(2) The interim resolution professional or the resolution professional, as the case may be, may appoint any professional, in addition to registered valuers under sub-regulation (1), to assist him in discharge of his duties in conduct of the corporate insolvency resolution process, if he is of the opinion that the services of such professional are required and such services are not available with the corporate debtor...”

“35A. Preferential and other transactions.

(1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.

(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date.

(3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date”

“36. Information memorandum.

(1) Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier... ”

“36A. Invitation for expression of interest.

(1) The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule at the earliest, not later than seventy-fifth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans... ”

“40A. Model time-line for corporate insolvency resolution process.

The following Table presents a model timeline of corporate insolvency resolution process on the assumption that the interim resolution professional is appointed on the date of commencement of the process and the time available is hundred and eighty days”

- 4.7 It is the duty of the IP to ensure that his conduct would not undermine the credibility of the process. Therefore, while granting certificate of registration to an IP they are subjected to follow the Code of Conduct specified in the First Schedule to the IP Regulations. In this regard, regulation 7(2) (a) and (h) of the IP Regulations provides as follows:

“7. Certificate of registration.

(2) The registration shall be subject to the conditions that the insolvency professional shall –

(a) at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled;

...

(h) abide by the Code of Conduct specified in the First Schedule to these Regulations;
... ”

- 4.8 In the present matter, it is pertinent to mention that DC proceedings of the IBBI are independent proceedings. The DC of the IBBI is vested with power to conduct proceedings to dispose of SCN under section 220 issued against the service providers based on *material otherwise available on record* of the Code read with regulation 11 of the IP Regulations:

“Disciplinary proceedings.

*11. (1) Based on the findings of an inspection or investigation, or on material otherwise available on record, if the Board is of the *prima facie* opinion that sufficient cause exists to take actions permissible under section 220, it shall issue a show-cause notice to the insolvency professional.”*

- 4.9 In this regard the Hon’ble NCLAT has observed that even the orders of AA cannot quash

the DC proceedings of IBBI in the matter of *Insolvency and Bankruptcy Board of India (IBBI) Vs Shri Rishi Prakash Vats & Ors.*, CA (AT) (Ins) No. 324 of 2019 as follows:

“3. On hearing the IBBI, we are of the view that once a disciplinary proceeding is initiated by the IBBI on the basis of evidence on record, it is for the Disciplinary Authority, i.e., IBBI to close the proceeding or pass appropriate orders in accordance with law. Such power having been vested with IBBI and in absence of any power with the Adjudicating Authority/ (National Company Law Tribunal), the Adjudicating Authority cannot quash the proceeding, even if proceeding is initiated at the instance and recommendation made by the Adjudicating Authority/ National Company Law Tribunal...”

We have already noticed that once a disciplinary proceeding is initiated, the final order is required to be passed by the IBBI. Expunge of the earlier order made by the Adjudicating Authority on 26th April, 2018 may be a good ground to close the proceeding, but the Adjudicating Authority/ National Company Law Tribunal cannot quash the proceeding initiated by the IBBI.”

- 4.10 In the present matter, the DC notes that the AA vide its Order dated 27.01.2020 appointed Mr. Manoj Kumar Singh, as the IRP. Thereafter, Mr. Singh constituted the CoC with two guarantors and conducted the 1st CoC meeting dated 26.02.2020. However, in the Order of the AA dated 28.02.2020 it was observed that the CoC was constituted of two Corporate Guarantors ie., ECL Finance Limited and IDBI Trusteeship Services Limited with 88% voting share but as the Corporate Guarantees were not invoked as on date, their claim cannot culminate into a debt. Therefore, the AA restrained IRP from holding COC meeting and observed as follows:

“The Corporate Guarantees have not been invoked as yet. As such the claim has not culminated in a debt. Till such time, a financial debt crystallizes the claim of Corporate Guarantors is unsustainable, much less vests in the Corporate Guarantors to be members of the COC.

In view of the aforesaid situation where the COC has been constituted with Corporate Guarantors who do not have a cause of action, no further steps shall be taken in the meeting of the COC till the voting percentage is ascertained.

The IRP is restrained from holding a meeting of the COC or putting any agenda to vote physically or online, till the constitution of the COC is ascertained...”

- 4.11 The DC further notes the observation of the AA in the aforesaid order made with regard to his dereliction of duties by Mr. Singh:

“It is also brought to the notice of this Bench that the IRP has not taken any steps as mandated under the Code nor taken any steps to take over the assets of the Corporate Debtor till date.

Further, there is no report filed before this Bench as to how many units have been allotted and whether all allottees have been notified. This is required to ensure the appointment of the authorized representative of all flat owners in the COC.”

- 4.12 The DC notes that the AA in its Order dated 07.09.2020 modified the order dated 28.02.2020 with the following directions,

“.... It is made clear that the order dated 28th February 2020 is hereby modified to the extent that the IRP is allowed to proceed in the matter in accordance with the provisions of the IBC. However, he is restrained from declaring the status of Respondent in IA 1610/2020 till further orders...”

- 4.13 In view of the above, the DC observes that Mr. Singh had incorrectly constituted the CoC with two Corporate Guarantors whose guarantees were yet to be invoked. Subsequently, the aforesaid order dated 28.02.2020 of the AA stayed the IRP from holding a meeting of the CoC or putting any agenda to vote physically or online. However, the stay was lifted by the AA vide order dated 07.09.2020 directing that the earlier order was modified to the extent that Mr. Singh is allowed to proceed in the matter in accordance with the provisions of the Code and he is restrained from declaring the status of Corporate Guarantor. However, the DC notes that despite the aforesaid directions of AA, no further actions were taken by Mr. Singh to continue the CIRP which is in contravention to the directions of the AA. The DC further notes the submission of Mr. Singh that he was not allowed to proceed with the CIRP due to the stay by AA and the provisions of regulation 16B of the CIRP Regulations was not applicable as it is only applies when there is no FC but the CoC was already constituted with two FC having voting share of approximate 88% and the issue was pending adjudication till 18.08.2021. However, this submission of Mr. Singh holds no ground as regulation 16B clearly states that *the corporate debtor has only creditors in a class and no other financial creditor eligible to join the committee* shall consist of only ARs. Since, the Corporate Guarantees were not invoked yet the two Corporate Guarantors were not eligible to join the CoC and a CoC could have been constituted with remaining members whose claims were verified, i.e., class of creditors. However, Mr. Singh sought to take advantage of his own mistake of wrongly including Corporate Guarantors in CoC and the entire CIRP got delayed for over 309 days. The DC observes with regards to the issue of ambiguity arising out of order dated 07.09.2020, no application has been preferred by Mr. Singh to seek clarification of the same.
- 4.14 The DC observes that Mr. Singh's conduct displays a lack of understanding of the Code and the Regulations made thereof as the CIRP is a strictly time bound mechanism and he continued to justifies the delay on the pretext awaiting the decision of the AA on the issue of Corporate Guarantors to constitute the CoC. The issue of the claim of the Corporate Guarantors was a separate issue being dealt before the AA which could not be a ground to bring the entire CIRP to a halt.
- 4.15 The DC notes that IBBI had filed a separate application in the matter for replacement of Mr. Singh by another IRP considering the excessive delay in conducting CIRP and Mr. Singh was removed. The DC also notes that the AA in its order dated 13.07.2021 has made following observations on the conduct of Mr. Singh stating that,

“15. That further, we are of the firm view that the dispute about the status of two Corporate

Guarantors cannot be taken as ground to stall the entire CIR Process especially when (a) there are other Financial Creditors present, who have filed their claims, whose claims are verified and who have been found eligible to be part of the CoC, and (b) this Adjudicating Authority vide its order dated 07.09.2020 has made it clear to allow the IRP to proceed in the matter in accordance with the provisions of the IBC.

16. That the Respondent/IRP has not been able to give any cogent reasons for not being able to carry forward the CIR process and as to why no meeting of CoC with the remaining Financial Creditors could be convened after the order dated 07.09.2020.

17. That the CIR Process is a time bound process involving certain common steps those need to be performed by every IRP/RP like Appointment of valuers, Issuance of Form-G, Evaluating and placing Resolution Plan before CoC etc and for performing such mandated tasks, it is necessary that the CoC is in operation. The non-performance of the aforesaid steps within the prescribed time lines will make the entire CIR Process infructuous, which per force will drive the Corporate Debtor into Liquidation eventually.

18. Further, the defence taken by the Respondent/IRP that he cannot be removed by virtue of the immunity granted to him under Section 16(5) of IBC, 2016 will not support the case of IRP. Since the IRP himself has made the CoC inoperative by not convening its meeting post 07.09.2020. Further, by not allowing CoC to function, the Respondent/ IRP has effectively prevented the COC to consider and take decision either for his confirmation as RP or replacing him by another Resolution Professional.

19. In view of the above and in an extra-ordinary situation, where the Respondent/IRP has neither conducted any meeting of CoC despite clear direction and vacation of stay on functioning of CoC by this Adjudicating Authority vide order dated 07.09.2020 nor taken concrete steps for carrying forward the CIR Process in accordance with the provisions of the IBC though a period of 309 days have elapsed in the meantime against the statutory initial timeline of 180 days, we are of the opinion that this a case of abuse of the process of the IBC/Tribunal and in order to protect the interest of the Corporate Debtor and its stakeholders, and for furtherance of the CIR Process, it has become inevitable to grant the prayer of IBBI for replacement of the present IRP.”

4.16 It is pertinent to mention here that for non-compliance of the directions of the AA contained in order dated 07.09.2020, it has held Mr. Singh liable for contempt. The AA observed as follows:

“44. That the Respondent has made continuous contempt of the directions passed vide order dated 07.09.2020 from 08.09.2020 till 12.07.2021 by not conducting the meeting of CoC and not carrying forward the CIR process of the Corporate Debtor. Therefore, the contempt proceedings has been initiated within one year, which is in terms of Section 20 of the Contempt of Courts Act, 1971.

45. That the Respondent has not made any apology at any stage, therefore, the question of discharging the Respondent on this ground in terms of proviso to Section 12 of the Contempt of Courts Act, 1971 does not arise.

46. Accordingly, in view of the facts and circumstances of the case as above, we hold that the Respondent Mr. Manoj Kumar Singh IP has committed the contempt of the directions passed by this Adjudicating Authority vide order dated 07.09.2020. The Respondent is directed to appear through VC for hearing on punishment on 19.01.2022.”

- 4.17 The DC finds that Mr. Singh failed to conduct the CIRP as per the provisions of the Code and the Regulations as no further actions were taken on the ground as submitted by him that the issue of Corporate Guarantors to constitute the CoC was yet to be resolved, which was an issue of his own making. In view of the aforesaid, the DC notes that there is a contravention of the provisions of sections 17, 18, 20, 25, 208(2)(a) and (e) of the Code, regulations 16B, 27, 35A, 36, 36A and 40A of CIRP Regulations, regulation 7(2)(a) and (h) of the IP Regulations and clauses 1, 2, 10, 13 and 14 of the Code of Conduct specified in First Schedule of the IP Regulations.

ORDER

5. 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: -

- (i) Mr. Manoj Kumar Singh shall not seek or accept any process or assignment or render any services under the Code for a period of two years from the date of coming into force of this Order. He shall, however, continue to conduct and complete the assignments / processes he has in hand as on date of this order.
- (ii) This Order shall come into force on expiry of 30 days from the date of its issue.
- (iii) A copy of this order shall be forwarded to the Insolvency Professional Agency of Institute of Cost Accountants of India where he is enrolled as a member.
- (iv) A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, for information.

6. Accordingly, the show cause notice is disposed of.

-Sd-

Dated: 8th April, 2022

Place: New Delhi

(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI