

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/78/2021

November 25th, 2021

Order

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

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/INSP/2020/45 dated 01.04.2021 issued to Mr. Pawan Kumar Garg, R/o – 25-A, J-Pocket, Sheikh Sarai-II, New Delhi-110017 who 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 (IBBI) with Registration No. IBBI/IPA-001/IP-P00608/2017-18/11069.

Background

- 1.1 The Hon'ble NCLT, Principal Bench, New Delhi (AA) *vide* order dated 17.10.2018 admitted the application under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating Corporate Insolvency Resolution Process (CIRP) of M/s. Puma Realtors Private Limited (CD). The AA appointed Mr. Pawan Kumar Garg as an Insolvency Resolution Professional (IRP) and who was later confirmed as the Resolution professional (RP).
- 1.2 The IBBI, in exercise of its powers under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Pawan Kumar Garg *vide* order dated 05.08.2020 on having reasonable grounds to believe Mr. Pawan Kumar Garg had contravened provisions of the Code, Regulations and Circulars issued thereunder. A draft inspection report (DIR), prepared by the IA, was shared with Mr. Pawan Kumar Garg on 23.11.2020, to which the Mr. Pawan Kumar Garg submitted reply *vide* email dated 14.12.2020. The IA submitted the Inspection Report to IBBI on 17.12.2020.
- 1.3 The IBBI issued the SCN to Mr. Pawan Kumar Garg on 01.04.2021 based on the material available on record including the inspection report in respect of his role as an IRP/RP in the CIRP of CD. The SCN alleged contraventions of sections 5(13) and section 208(2)(a) and (e) of the Code, IBBI Circulars No. IP/004/2018 dated 16.01.2018 and No. IBBI/RV/022/2019 dated 13.08.2019 read with Regulation 31 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2017 (CIRP Regulations), Regulation 7(2)(a) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and Clause 2, 14, 16, 19, 20, 25A and 27 of the Code of Conduct under First Schedule of regulation 7(2) thereof. Mr.

Pawan Kumar Garg replied to the SCN *vide* letter dated 20.06.2021.

- 1.4 The IBBI referred to the SCN, response of Mr. Pawan Kumar Garg 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. Pawan Kumar Garg availed an opportunity of virtual personal hearing before the DC on 12.08.2021 wherein he was represented by his counsel, Mr. Aashish Makhija. Mr. Garg submitted additional submissions via email dated 19.08.2021.

2. Alleged Contraventions and Submissions

Contraventions alleged in the SCN and Mr. Garg's submissions thereof are summarized as follows.

I Contravention

- 2.1 CIRP of Puma Realtors Pvt. Ltd. commenced on 17.10.2018. In the 1st CoC meeting held on 25.02.2019, homebuyers decided to appoint a Chartered Accountant, M/s Jindal Anil and Associates as continuous independent auditor for carrying out independent audit and reporting to CoC at a monthly remuneration of Rs. 35,000/- plus applicable taxes. IA observed that Mr. Garg charged the fees of the independent auditors appointed for reporting to CoC as CIRP cost.
 - 2.1.1 Further, it was observed by the IA that Mr. Garg's fees as the IRP was ratified at Rs. 6.50 lakh per month and fees as RP at Rs. 12 lakh per month which included the fees of legal associates to assist Mr. Garg for any legal consultation, discussion and opinion. It is noted that AMC Law firm was also appointed by Mr. Garg for the purpose of legal services. The fees charged by AMC Law Firm was of Rs. 1,25,000/- per month for various services which included providing legal opinion as requested by Mr. Garg. IA observed that Mr. Garg's fee included the cost for any legal opinion and the entire fee payable to AMC law firm also included fee for legal opinion, and this was again made part of the CIRP cost.
 - 2.1.2 Mr. Garg in his reply to the DIR submitted that independent auditors were appointed on the request of the members of CoC for better transparency and the Code or Regulation doesn't expressly prohibit such appointment during CIRP of the CD and thus, fee of the independent auditors shall form part of insolvency resolution process cost. The services of the AMC law firm were hired to handle legal cases, appearances, drafting and legal opinion was an additional service provided by the firm as part of their retainership and no extra cost of legal opinion was paid to the firm.
 - 2.1.3 IA observed that the fees of the independent auditors is to be borne by CoC separately and not as a part of CIRP cost. Additionally, the engagement letter of AMC law firm clearly states "*the legal opinions as requested by the Resolution Professional*". IA noted his submission that no extra cost was paid to the AMC Law firm but IA observed that there was lack of transparency in the documents submitted by Mr. Garg.
 - 2.1.4 In view of the same, IBBI was of the view that Mr. Garg has violated section 5(13)

of the Code read with Regulation 31 of the CIRP Regulations, Regulation 7(2)(a), 7(2)(h) of the IP Regulations and Clauses 2, 14, 25A and 27 of the Code of Conduct of the IP Regulations.

Submission

2.2 With regard to the aforesaid contravention with respect to the payment to independent auditor, Mr. Garg made the following submissions:

2.2.1 Payment to Independent Auditors

- (a) Mr. Garg stated that the independent auditor, namely, M/s Jindal Anil & Associates, Chartered Accountants was appointed for carrying out independent audit for greater transparency in the operations of the Corporate Debtor with the approval of CoC. He submitted that it was easy and convenient to presume that the cost of appointing a continuous independent auditor was not a part of CIRP cost. However, one should not lose sight of the background of the Corporate Debtor that it was a real estate company involved in the business of developing real estate projects and there were over 800 allottees as on the insolvency commencement date. Mr. Garg submitted that when he assumed office as IRP of Corporate Debtor, he organized several meetings with over 800 allottees, to understand their concerns as all of them were quite anguished on account of failure of the Corporate Debtor to deliver flats/Plots to them.
- (b) Mr. Garg stated that the Corporate Debtor had taken huge sum of money from the allottees to the tune of Rs.200 crore approx. The allottees were made to run from pillar to post to get their flats/Plots as their hard-earned money was paid to the Corporate Debtor and they had feared that the amount collected by the Corporate Debtor had been misappropriated.
- (c) Mr. Garg further submitted that there was a complete mistrust between the allottees and the Corporate Debtor and to bridge that mistrust between the Corporate Debtor and the allottees in the operations of the Corporate Debtor by the RP, a continuous independent auditor was appointed to ensure disclosure and greater transparency to the allottees and took the approval in respect of the auditor's fee from the COC. He further added that the appointment of continuous independent auditor instilled transparency and enhanced the confidence of the home buyers in the functioning of the IRP/RP and the entire CIRP of the Corporate Debtor.
- (d) Mr. Garg submitted that, *vide* Resolution passed by the members of CoC in their 1st meeting held on 25.2.2020, M/s Jindal Anil & Associates was appointed as continuous independent auditor at a nominal monthly remuneration of Rs. 35,000.00 only. The relevant extract of the Resolution passed by CoC is reproduced as under:

Resolution No. 7 To approve the appointment of the M/s Jain & Associates, Chartered Accountants as continuous Independent Auditors

"RESOLVE THAT M/s Jain & Associates, Chartered Accountants, Chandigarh be and are hereby appointed as Independent Auditors at a monthly remuneration

of Rs 35000 plus applicable taxes and would submit reports to the Committee of Creditors."

Mr. Garg stated that the objective and intent of the appointment was revival of the Corporate Debtor, keeping Corporate Debtor as a going concern and no adverse inference should be drawn from the appointment of the continuous independent auditor.

- (e) As regards treating the aforesaid cost as CIRP cost, Mr. Garg submitted that the Regulations do not prohibit appointment of an independent auditor for conducting audit on daily basis during the CIRP. As per Regulation 31 (d) of the CIRP Regulations, insolvency resolution process cost means expenses incurred on or by the resolution professional fixed under Regulation 34 of the CIRP Regulations.
- (f) Mr. Garg submitted that as per the explanation to Regulation 34 of the CIRP Regulations, expenses incurred by Resolution Professional include the fee paid to professionals. He submitted that on a conjoint reading of the provisions of Regulation 31 read with Regulation 34, it was clear that fee payable to any professional appointed during the course of CIRP shall form part of the insolvency resolution process cost.
- (g) Mr. Garg further submitted that it may added that the audit of the books of the Corporate Debtor was required to be done so as to have in place a proper internal control system with regard to transparency, collections/expenses during CIRP period and it was also aimed to enhance the confidence of the homebuyers. He further added that the Corporate Debtor was a going concern in terms of sub clause (c) of section 5(13) of the Code, that the cost relating to the continuous independent auditor was an operational cost and should be part of the CIRP cost. Mr. Garg stated that the appointment of auditor was for the enhancement of accountability, transparency etc. He stated that he had taken the approval of audit fee from the CoC to maintain greater transparency.
- (h) Mr. Garg further submitted that the cost of auditor was a miniscule and negligible amount as compared to the CIRP Cost and no prejudice was caused to anyone. On the contrary, it was a step towards enhancement of trust and ensured good governance. That none of the provisions of the Code or Regulations expressly prohibit such an appointment. Based on the approval of CoC which had been implemented by Mr. Garg in the interest of disclosure and transparency and there being no express prohibition, no fault can be found. He further submitted that it was an operational cost and for the benefit of the corporate debtors and all stakeholders and formed part of CIRP cost. Mr. Garg submitted that it may be appreciated that handling anguished allottees was a task in itself and he was able to convince them rather successfully.

2.2.2 Charging fees for legal opinion twice

- (a) As regards the observation that fee of the RP includes legal opinion cost and even fee payable to AMC Law Firm again includes fee of legal opinion which has been charged as CIRP Cost, Mr. Garg submitted that the primarily services of AMC Law Firm were hired to handle legal cases, appearances and drafting. Mr. Garg stated that legal opinion was an additional service provided by AMC Law Firm as

part of their retainerhip and that there was no extra cost of legal opinions that was paid to AMC Law Firm.

- (b) Mr. Garg submitted that initially when the amount was quoted by AMC Law Firm, the Scope of work did not include legal opinions. While negotiating, AMC Law Firm agreed to include legal opinions also giving an extra advantage to the CD, thus, there was neither any duplicity of payment nor any loss caused to the CD.
- (c) Mr. Garg further submitted that the legal opinions which formed part of the services of the RP fee consist of the legal consultation/advice/opinion pertaining to day-to-day affairs of the CD, process of registration of conveyance deed and handing over of possession and for providing legal clarification to the allottees. Mr. Garg stated that these legal services including opinion were internal relating to the management of the affairs of the CD. On the other hand, the legal opinion, as part of scope of services by AMC Law Firm, was meant for legal support to the RP in handling of legal cases by or against the CD.
- (d) Mr. Garg submitted that the legal associate mentioned in the scope of work of RP was there to assist with legally analyzing documents and agreements, involvement in CIRP tasks, legal strategy building with the RP, attending CoC meetings, handling day to day RP's/CoC's legal queries. He stated that the services rendered by AMC Law Firm, on the other hand, were primarily for the external litigations, drafting applications, replies, and appearances before Tribunals/Courts. Mr. Garg submitted that they were authorized to give written legal opinion as only an advocate enrolled with Bar Council was authorized to give written legal opinion. That on the contrary, the legal associate working with the RP could never give a written legal opinion as the same would lead to conflict of interest in case RP was seeking the same. He further stated that Mr. Garg during CIRP sought two written legal opinions from the AMC Law Firm and same was part of the record during the CIRP.
- (e) Mr. Garg reiterated that a retainerhip arrangement was made with AMC Law Firm which was cost effective and in the benefit of the CD. He stated that initially, the mandate did not include the legal opinion part, however, the same was later included by AMC Law Firm based on his repeated and continuous efforts. Mr. Garg stated that an effective estimate may be made from the fact that AMC Law Firm services were highly reasonable as the number of cases they attended during the CIRP stood approximately at 60.
- (f) Mr. Garg concluded his submission by stating that though the word legal opinion was common in his mandate and AMC Law Firm mandate, however, the true import and usage of the term was different at both places and should not be seen as a discrepancy in the process conducted and successfully completed by him.

II Contravention

- 2.3 It was observed by the IA that Mr. Garg paid the fee for conducting valuation to a person other than the registered valuer appointed by him and included the same in CIRP cost. Two valuers of Kanti Karamsey and Co (Mr. Kunal Vikamsey and Mr. Dharmesh Trivedi) and three valuers of Adroit Technical Services Private Limited

(Mr. Puneet Tyagi, Mr. Asim Maity and Mr. Gunjan Agarwal) were appointed. Even though the appointment letters were issued in the name of the individual registered valuers (c/o the respective firm), yet the entire valuation fee was made in the bank account of Mr. Kunal Vikamsey and Adroit Technical Services Private Limited. This was in violation of circular dated 13.08.2019 "Appointment of Registered Valuer".

- 2.3.1 IA observed that Mr. Garg in his reply to the DIR stated that "*That as regards violation of circular dated 13.08.2019 is concerned, it is submitted that the same was not applicable under the facts and circumstances of the present case as the registered valuers submitted their report to the Resolution Professional in July 2019, i.e., prior to the date of issue of circular by IBBI. The circular dated 13.8.2019 for not treating the fee paid to unregistered valuer as CIRP cost was issued after the signed valuation report was received and therefore it is submitted that the said circular has no applicability to the facts and circumstances of the present case.*"
- 2.3.2 Mr. Garg in reply to DIR submitted that there has been no violation from his end and the fees had been recovered and remitted to the individual valuers who had signed the report. It was Mr. Garg's admission that the circular dated 13.08.2019 was not applicable in the present case and yet corrective steps were taken by him to recover the fees and remit the same to the individual valuers who had signed the report. The IA observed that the circular dated 13.08.2019 is only clarificatory in nature and noted that Mr. Garg has violated the Regulations by paying the valuation fee to a person other than the registered valuer and including the same in CIRP cost.
- 2.3.3 As to the allegation that Mr. Garg failed to make the relationship disclosure with respect to the appointment of one of the registered valuers namely Mr. Dharmesh Trivedi, he in his reply to the draft inspection report did not respond to the violation. It was noted that the same was in clear violation of Circular dated 16.01.2018.

Thus, the IBBI is of the view that Mr. Garg has violated section 208(2)(a) and Section 208(2)(e) of the Code, circular dated 16.01.2018, circular dated 13.08.2019, Regulation 7(2)(h) of the IP Regulations and clause 16, 19 and 20 of the Code of Conduct under regulation 7(2) thereof.

Submission

- 2.4 In respect of the issue of filing of relationship disclosure and irregularity in the payments made to the valuers, Mr. Aashish Makhija Counsel for Mr. Garg, submitted that Mr. Garg had not violated any of the provisions of the Code and Rules and Regulations framed thereunder and that he had filed the relationship disclosure of Dharmesh Lalit Kumar Trivedi. The counsel for Mr. Garg further stated that at the relevant time, there was no clarity over whether a valuation firm can be appointed if their partner/associates are registered valuer of all three types of assets class. Mr. Garg accordingly filed the relationship disclosure of individual registered valuers and also reports were signed by the registered valuers. That this shows the bonafide attempt of Mr. Garg to comply with the circular dated 17.10.2018.

- 2.4.1 Mr. Garg submitted that the circular mandating the payments to only registered valuers was issued on 13.08.2019, however, the work regarding the valuation reports was already completed before the said circular. Thus, that the registered valuers had already issued their invoices and as such no stipulation regarding the mandate of registered valuer was present. To add further, the valuers had also submitted their final reports to Mr. Garg prior to the circular issued. Also, he submitted that the requisite corrective steps had already been taken by Mr. Garg as payments had been made to individual registered valuers.
- 2.4.2 Mr. Garg submitted that the registered valuers (Adroit Technical Services Pvt. Ltd. report dated 12.07.2019 and Kanti Karamsey & Co. report dated 05.07.2019) had submitted their signed valuation reports in July, 2019. Circular dated 13.8.2019 for not treating the fee paid to unregistered valuer as CIRP cost came after the signed valuation report was received and therefore Mr. Garg submitted that the said circular cannot be applied to the facts and circumstances of the present case. Thus, Mr. Garg submitted that no violation had taken place.

III Contravention

- 2.5 The IBBI observed that in the public announcement made on 23.10.2018, choice of three insolvency professionals namely Mr. G Jaishankar, Ms. Anjali Sharma and Mr. Atul Mittal was given to act as the Authorised Representative (AR) to represent the class of Home Buyers. However, the written consent to act as an AR in Form AB was not taken from Ms. Anjali Sharma. Later on, Ms. Anjali Sharma denied to act as AR on the ground that she may have conflict of interest with the CD. Further, a corrigendum to Form A (Public Announcement), was issued by Mr. Garg *vide* a public notice dated 13.12.2018 withdrawing the name of Ms. Anjali Sharma. The IBBI observed negligence on part of Mr. Garg in conducting due diligence while identifying the names of the three insolvency professionals for the appointment as AR and violation on his part of section 208(2)(a) and (e) of the Code, Regulation 7(2)(h) of the IP Regulations and clause 16, 19 and 20 of the Code of Conduct under regulation 7(2) thereof.

Submissions

- 2.6 Mr. Garg submitted that due to shortage of time to comply with the timelines, he identified three Insolvency Professionals and obtained their oral consent to act as Authorized Representative and based on their verbal confirmation, their names were announced in the public announcement. That a conflict of interest aroused between the CD and Ms. Anjali Sharma and based on this unexpected turn of events, Mr. Garg issued a corrigendum dated 13.12.2018 in the newspapers stating that Ms. Anjali Sharma would not be considered for appointment as an Authorized Representative of the creditors in class. Mr. Garg submitted that mentioning of Ms. Anjali Sharma in public announcement did not cause any prejudice to anyone as she received only a handful of votes from class of creditors approving her name as an Authorised Representative. Mr. Garg submitted that he brought the said fact to the knowledge of the Hon'ble National Company Law Tribunal, Principal Bench when the application for confirmation of appointment of the Authorized Representative of class of creditors was considered by the Adjudicating Authority.

Mr. Garg stated that it is evident that he did not act in a negligent or *malafide* manner. There was no violation of Clause 14 by Mr. Garg as it was only on the assurance given by Ms. Anjali Sharma, he had put her name in the public announcement.

Analysis and Findings

3. After considering the allegations in the SCN and submissions made by Mr. Garg in light of the provisions of the Code, regulations and the relevant circulars, the DC finds as follows.

Under the Code, RP plays a central role in resolution process of the CD, he is appointed by the Adjudicating Authority as an officer of the Court to conduct the resolution process and it is the duty of RP to conduct CIRP with integrity and accountability in the process and to take reasonable care and diligence while performing his duties. Therefore, it becomes imperative for an IP to perform his duties with utmost care and diligence. Section 208(2) of the Code provides that every insolvency professional shall abide by the Code of conduct. It reads as follows:

“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.”

Section 25 of the Code enumerates duties of RP. It reads as follows:

“25. Duties of resolution professional. –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

(c) raise interim finances subject to the approval of the committee of creditors under section 28;

(d) appoint accountants, legal or other professionals in the manner as specified by Board;

(e) maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;

(g) prepare the information memorandum in accordance with section 29;”

- 3.1 The IP is to maintain integrity, by being honest, straight forward and forthright in all his professional relationships while conducting business during CIRP. His conduct has a substantial bearing on performance and outcome of the processes under the Code. He, therefore, is expected to function with reasonable care and

diligence to ensure credibility of the process.

Regulation 7(2)(a) and 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professional), Regulations, 2016 provides as under:

“7. Certificate of Registration:

(1)

(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;

and...”

Clauses 2, 14, 25A and 27 of First Schedule of Code of Conduct for Insolvency Professionals under Regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016 states as follows:

Clause 2: An insolvency professional must not misrepresent any facts or situations and should refrain from being involved in any action that would bring disrepute to the profession.

Clause 14: An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code.

Clause 25A: An insolvency professional shall disclose the fee payable to him, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

Clause 27: An insolvency professional shall disclose all costs towards the insolvency resolution process costs, liquidation costs, or costs of the bankruptcy process, as applicable, to all relevant stakeholders, and must endeavour to ensure that such costs are not unreasonable”.

- 3.1.1 As envisaged under section 53 (1)(a) of the Code, insolvency resolution process costs and the Liquidation cost is the first priority and is to be paid in full. With respect to CIRP cost, section 5 (13) of the Code and Regulation 31 of CIRP Regulations provides as follows:

Section 5(13) of the Code reads as under:

“5(13) "insolvency resolution process costs" means -

(a) the amount of any interim finance and the costs incurred in raising such finance,

(b) the fees payable to any person acting as a resolution professional;
(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;

(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and

(e) any other costs as may be specified by the Board”.

Further, Regulation 31 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides as under:

“Insolvency resolution process costs” under Section 5(13)(e) shall mean

(a) amounts due to suppliers of essential goods and services under Regulation 32;
(aa) fee payable to authorised representative under sub-regulation (8) of regulation 16A;

(ab) out of pocket expenses of authorised representative for discharge of his functions under section 25A;

(b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);

(c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;

(d) expenses incurred on or by the resolution professional fixed under Regulation 34; and

(e) other costs directly relating to the corporate insolvency resolution process and approved by the committee”.

3.1.2 The DC notes the submission of Mr. Garg as to the allegation of charging the fee of the independent auditors to CIRP cost that there was a complete mistrust between the allottees & the Corporate Debtor. To bridge that mistrust between the Corporate Debtor & the allottees and for ensuring disclosure and greater transparency in the operations of the Corporate Debtor by the RP, Mr. Garg appointed a continuous independent auditor and took the approval in respect of the auditor’s fee from the CoC. The DC notes the submission of Mr. Garg that one should not lose sight of the background of the Corporate Debtor that it was a real estate company involved in the business of developing real estate projects and there were over 800 allottees as on the insolvency commencement date. The DC further notes his submission that the CIRP Regulations do not prohibit appointment of an independent auditor for conducting audit on daily basis during the CIRP. The DC also noted his submissions that on a conjoint reading of the provisions of Regulation 31 read with Regulation 34 of the CIRP Regulations, it was clear that fee payable to any professional appointed during the course of CIRP shall form part of the insolvency resolution process cost. The DC finds that transparency in the process brings credibility to the process, hence, there appears to be no contravention in appointment of continuous internal auditor for ensuring transparency in the process.

3.1.3 In respect of the issue of charging fee for legal opinion twice, the DC notes the submission of Mr. Garg that the legal opinions which formed part of the services of the RP fee consist of the legal consultation/advice/opinion pertaining to day-to-day

affairs of the CD, process of registration of conveyance deed and handing over of possession and for providing legal clarification to the allottees. The DC accepts the submission of Mr. Garg that these legal services including opinion were internal relating to the management of the affairs of the CD, on the other hand, the legal opinion, as part of scope of services by AMC Law Firm, was meant for legal support to Mr. Garg in handling of legal cases by or against the CD. Hence, there appears to be no contravention.

- 3.2 In respect of the issue of filing of relationship disclosure and irregularity in payment made to the valuers, the DC notes that the key objective of the Code is maximization of the value of assets of certain persons and consequently value for its stakeholders. A critical element towards achieving this objective is transparent and credible determination of value of the assets to facilitate informed decision making. The Code read with regulations made thereunder assign this responsibility to 'Registered Valuers'. The regulations made under the Code specify requirements of valuation to be conducted by registered valuers.

In this regard Regulation 27(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides as follows:

Regulation 27 (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."

Para (6) of the Circular dated 17.10.2018 regarding Valuation under the Code states as follows:

"6. In view of the above, every valuation required under the Code or any of the regulations made thereunder is required to be conducted by a registered valuer, that is, a valuer registered with the IBBI under the Companies (Registered Valuers and Valuation) Rules, 2017. It is hereby directed that with effect from 1st February, 2019, no insolvency professional shall appoint a person other than a registered valuer to conduct any valuation under the Code or any of the regulations made thereunder".

It was further emphasised in Circular dated 13.08.2019 regarding Valuation, Para (2) of which states as follows:

"(2) It is reiterated that-

- (i) appointment of any person, other than a registered valuer, that is, a valuer registered with the IBBI under the Companies (Registered Valuers and Valuation) Rules, 2017, on or after 1st February, 2019, to conduct any valuation required under the Insolvency and Bankruptcy Code, 2016, or any regulations made thereunder, including the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016, and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. is illegal and amounts to violation of the Circular aforesaid; and*
- (ii) payment, whether as fee or otherwise, to any person, other than a 'registered*

valuer' for any valuation referred to in paragraph (1). shall not form part of the insolvency resolution process costs or liquidation cost.”

Relevant portion of Para (3) of the Circular dated 16.01.2018 regarding disclosures by Insolvency Professionals and other professionals appointed by Insolvency Professionals conducting resolution processes states as follows:

“3. An insolvency professional shall disclose his relationship, if any, with (i) the Corporate Debtor, (i) other Professional(s) engaged by him, (ii) Financial Creditor(s), (iv) interim Finance Provider(s), and (v) Prospective Resolution Applicant(s) to the Insolvency Professional Agency of which he is a member, within the time specified as under:

<i>Relationship of the Insolvency Professional with</i>	<i>Disclosure to be made within three days of</i>
<i>Corporate Debtor</i>	<i>His appointment.</i>
<i>Other Professionals Registered appointment of the other Professional Valuer(s) Accountant(s) Legal Professional(s)/Other Professional(s)]appointed by him</i>	<i>appointment of the other Professional</i>

.....”

Regulation 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professional), Regulations, 2016 provides as under:

“The registration shall be subject to the conditions that the insolvency professional shall

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

Clauses 10, 13 and 14 of First Schedule of Code of Conduct for Insolvency Professionals under Regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016 states as follows:

“Clause 10: An insolvency professional must maintain and upgrade his professional knowledge and skills to render competent professional service.

Clause 13: An insolvency professional must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan his actions, and promptly communicate with all stakeholders involved for the timely discharge of his duties.

Clause 14: An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code.”

- 3.2.1 As to the allegation of valuation fee, the DC notes the submission of Mr. Garg that that since the valuers submitted their report in July 2019, *i.e.*, prior to the date of issue of IBBI's circular on 13.08.2019, the said circular was not applicable in this case. In this regard, the DC finds that though the circular was issued on 13.08.2019, the same is only clarificatory in nature. The DC notes the submission of Mr. Garg that the requisite corrective steps had already been taken by him as payments had been recovered and remitted to individual registered valuers.
- 3.2.2 Further, in respect of the issue that no relationship disclosure was submitted by Mr. Garg with respect to appointment of one of the registered valuers, namely, Mr. Dharmesh Trivedi as per the Circular dated 16.01.2018, the DC notes the submission of Mr. Garg that he had not violated any of the provisions of the Code, Rules and Regulations framed thereunder and that he had filed the relationship disclosure of Dharmesh Lalit Kumar Trivedi. The DC accepts the same.
- 3.3 In respect of the third issue of identification of Authorized Representative (AR) to represent the class of Homebuyers, the DC notes that Mr. Garg had given the names of three insolvency professionals to act as AR in the public announcement, however, he failed to take the written consent of Ms. Anjali Sharma in Form AB to act as AR in this matter. The DC notes that as per Regulation 4A of CIRP Regulations, an IP has to identify the names of three insolvency professionals who are eligible to be an insolvency professional under Regulation 3.

Regulation 4A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides as under:

(1) On an examination of books of account and other relevant records of the corporate debtor, the interim resolution professional shall ascertain class(es) of creditors if any.

(2) For representation of creditors in a class ascertained under sub-regulation (1) in the committee, the interim resolution professional shall identify three insolvency professionals who are-

(a) not his relatives or related parties;

(aa) having their addresses, as registered with the Board, in the State or Union Territory, as the case may be, which has the highest number of creditors in the class as per their addresses in the records of the corporate debtor:

Provided that where such State or Union Territory does not have adequate number of insolvency professionals, the insolvency professionals having addresses in a nearby State or Union Territory, as the case may be, shall be considered;

(b) eligible to be insolvency professionals under regulation 3; and

(c) willing to act as authorised representative of creditors in the class.

(3) The interim resolution professional shall obtain the consent of each insolvency professional identified under sub-regulation (2) to act as the authorised representative of creditors in the class in Form AB of the Schedule''.

- 3.3.1 The DC notes the submission of Mr. Garg that due to paucity of time, the consent of Ms. Anjali Sharma was taken orally over the phone but later on, it was informed to him that Ms. Anjali Sharma was willing to withdraw her name from being appointed as AR due to conflict of interest between her and the CD. This fact of conflict of interest was brought to the notice of all by issuing a corrigendum to Form A (public announcement) *vide* public notice dated 13.12.2018 and was also brought to the knowledge of Hon'ble NCLT. The DC accepts his submission, however, Mr. Garg should have announced the names of the AR only after receipt of the written consent of the IPs to act as an AR.

Order

4. In view of the above, the DC, in exercise of the powers conferred under section 220 (2) of the Code read with sub-regulations (7) and (8) of Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017, disposes of the SCN without any direction against Mr. Pawan Kumar Garg.
5. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Pawan Kumar Garg is enrolled as a member.
6. 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.
7. Accordingly, the show cause notice is disposed of.

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(Dr. Mukulita Vijayawargiya)

Whole Time Member, IBBI

Dated: 25th November, 2021

Place: New Delhi