

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/113/2022

13th July, 2022

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2020/56/534/3572 dated 23rd May 2022 issued to Mr. Dilip Kumar Niranjana, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) and regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 (IP Regulations). Mr. Dilip Kumar Niranjana is a Professional Member of ICSI Institute of Insolvency Professionals (ICSI-IIP) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-002/IP-N00552/2017-18/11690.

1. Developments in relation to resolution of the CD

1.1. The Hon'ble NCLT, New Delhi (AA) vide order dated 05.09.2019 admitted the application under section 7 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of Pal Infrastructure & Developers Private Limited (CD). The AA appointed Mr. Dilip Kumar Niranjana as an Interim Resolution Professional (IRP) who was replaced as the Resolution professional (RP) by Mr. Ganga Ram Agarwal vide order dated 26.06.2020.

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

2.1. On having reasonable grounds to believe that Mr. Dilip Kumar Niranjana had contravened certain provisions of the Code, Regulations and Circulars issued thereunder, the Board, in exercise of the powers conferred to it under section 218 of the Code read with the Inspection Regulations, appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Dilip Kumar Niranjana vide order dated 31.12.2020. A draft inspection report (DIR), prepared by the IA, was shared with Mr. Dilip Kumar Niranjana on 31.03.2021, to which Mr. Dilip Kumar Niranjana submitted reply vide email dated 14.04.2021. The IA submitted the Inspection Report to Board on 20.04.2021.

2.2. Based on the material available on record including the Inspection Report, the Board issued the SCN to Mr. Dilip Kumar Niranjana on 23.05.2022. The SCN alleged contravention of section 25A(3A), 208(2)(a), 208(2)(e) of the Code, regulation 17(3) and 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulations 7(2)(a) and 7(2)(h) of IP Regulations, clauses 10, 13 and 25 of Code of Conduct of IP Regulations. Mr. Dilip Kumar Niranjana replied to the SCN on 12.06.2022.

2.3. The Board referred the SCN, written and oral submissions of Mr. Dilip Kumar Niranjana, 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. Dilip Kumar

Niranjan availed an opportunity of personal hearing before DC on 12.07.2022 through virtual mode.

3. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Mr. Dilip Kumar Niranjan's submissions thereof are summarized below:

3.1. Contravention – I with regards to Incorrect application of law for determining voting results

3.1.1 As per section 25A (3A) of Code, the Authorised Representative (AR) shall cast his vote on behalf of all the Financial Creditors (FCs) he represents in accordance with the decision taken by a vote of more than 50% of the voting share of the FCs he represents, who have cast their vote. On perusal of minutes of 1st and 2nd CoC meeting, the Board observed that voting result of creditors in class has not been determined as per section 25A(3A) of the Code. In both the meetings, more than 50% of the creditors in class who took part in voting had voted in favour of resolution regarding appointment of RP in the CIRP of CD. As more than 50% of creditors in class taking part in voting had voted in favour of the resolution, the same should have been treated to have been voted by all the creditors in class. Further, as the creditors in class were having more than 66% of voting share in the CoC, the agenda should have been declared as passed.

3.1.2 However, it has been recorded by Mr. Niranjan in the minutes of the 1st and 2nd CoC that as the appointment of RP under section 22(2) of the Code required majority vote share of 66%, the resolution is not considered to be passed. It is thus evident that Mr. Niranjan has failed to maintain and upgrade his professional knowledge required under clause (10) of Code of Conduct of IP Regulations resulting in incorrect application and interpretation of provisions of Code. In view of the above, the Board is of prima facie view that he *inter alia* violated section 25A(3A), 208(2)(a) and 208(2)(e) of the Code, regulations 7(2)(a), 7(2)(h) of IP Regulations and clause 10 of Code of Conduct of IP Regulations

3.2. Submissions made by the IP

3.2.1 Mr. Niranjan submitted that at the 1st meeting dated 17.10.2019 CoC voted the resolution for his appointment as RP of the CD which happened in following manner.

Sr. No.	Name of FC	Voting in favour	Voting against	Abstained	Total voting share percent in CoC
1	Punjab and Sindh Bank		3.85%		3.85%
2	Class of Creditor – Allottees under Real State Project	32.49%	29.87%	3.47%	96.15%
					100%

- 3.2.2 Mr. Niranjana submitted that for the purpose of calculation of voting result of class of creditor, ie, allottees under real estate project, voting either in favour or against was considered only. Accordingly, voting percentage of class of creditor ie. allottees under real estate project in favour comes to 50.09% whereas voting against the resolution comes to 46.06%. Accordingly, this resolution was voted in following manner; In favour - 50.09% and against – 49.91% (46.06%+3.85%).
- 3.2.3 However, during the 1st COC meeting Mr. Mukul Kumar, AR of creditor in a class (Allottees under the Real Estate Project) submitted that he has received requisition for replacement of IRP from members having more than 33% of voting share. He stated that a formal letter along with percentage of requisitions to move the resolution to replace RP shall be submitted very soon. Then Mr. Niranjana suggested that once a formal letter accompanied by the profile of the proposed RP, financial quotation for fee and requisite consent are received, he would add the agenda item for replacement of IRP in the next meeting of CoC for voting by the member of COC. Mr. Mukul Kumar, AR then stated that he shall obtain the above-mentioned documents and attach the same with formal letter for moving resolution for replacement of RP.
- 3.2.4 On 17.10.2019 Mr. Niranjana received a request from Mukul Kumar (AR) to include agenda item in the meeting of the CoC of CD along with list of requisition comprising 35.95% voting percentage of CoC as on 10.10.2019, i.e., 1st CoC. Further on 21.10.2019, Mr. Niranjana received an email from AR containing consent to work as RP (Form AA), disclosure, affidavit and fee quote from proposed RP Sri Ganga Ram Agarwal except profile of the proposed RP.
- 3.2.5 Meanwhile, Mr. Niranjana further undertook the verification of the claims which were under verification and new claims received by the RP after 25.09.2019 and prepared a list of creditors and re-constituted CoC. A report certifying re-constitution of the CoC as on 25.10.2019 was duly filed with AA on 05.11.2019. Further, notice for the meeting of 2nd CoC was issued on 25.10.2019 which was held on 31.10.2019.
- 3.2.6 At the 2nd CoC meeting, resolution for “Replacement of Resolution Professional” put for discussion and if considered fit to pass the same. At the meeting Representatives of the following members of COC took part in the voting:
- i. Punjab And Sind Bank, having 1.099% voting share in the COC.
 - ii. S.C.S.L Builldwell Private Limited, having 14.845% voting share in the COC.
 - iii. Cosmos Infra Engineering (India) Private Limited, having 11.662 % voting share in the COC.
- 3.2.7 The AR informed the meeting that he has obtained the mandate from the allottees through e-voting held on 29.10.2019 (10.00 AM) to 30.10.2019 (10.00 AM). He Informed the meeting that not all the members of class of creditor have taken part in the e-voting. He further informed the meeting that another window of e-voting would be opened at 8.00 AM to 10.00 PM on 03.11.2019 to complete the process of obtaining the mandate from class of creditor.
- 3.2.8 Mr. Niranjana submitted that consolidated result of e-voting by class of creditor was received by him on 04.11.2019. Accordingly, final voting for resolution – ‘*Replacement of Resolution Professional*’ was as under;

SR.	Name of FC	Voting in Favour (%)	Voting against (%)	Abstained	Did not vote	Total voting share % in CoC
1	Punjab & Sindh Bank	-	1.099	-		1.099
2	SCSL Buildwell Private Limited	-	14.845	-		14.845
3	Cosmos Infra Engineering (India) Private Limited		11.662			11.662
4	Class of Creditor – Allotted under Real Estate Project	38.92	16.59	0.86	16.41	72.394
		38.92	44.196	0.86	16.41	100

3.2.9 Mr. Niranjana submitted that members of CoC comprising voting shares of 83.116 % (38.92 + 44.196) took part in the voting on the proposed resolution and resolution was voted in following manner:

In favour – 46.826% (38.92/83.116*100)

Against – 53.174 (44.196/83.116*100) 20.

3.2.10 He submitted that he rejected the said resolution depending on the result of voting by invoking mandatory requirement of section 22 (2) of the Code.

3.2.11 He further submitted that on 08.11.2019, one Pal Garden Allotees Welfare Association chaired by one Mr. Sunil Sharma and few other associations, who were not the parties to the original insolvency proceedings have filed an Interim Application - IA 2504 (PB)/2019 - under section 60(5)(c) and 22(3) (B) & 25A(3A) of the Code for direction seeking removal of the Mr. Niranjana and thereby appoint Mr. Gangaram Agarwal as RP. He submitted that as per the settled law, the aforesaid application ought to be filed by the AR, however without having any locus the aforesaid associations have filed the aforesaid application.

3.2.12 That on 26.06.2020, the AA *vide* its order was pleased to allow the IA No. 2504 of 2019 in CP No. (IB) 755/(PB)/2018, titled as SCSL Buildwell Pvt Ltd versus Pal Infrastructure and Developers Private Limited and others while appointing Mr. Ganga Ram Agarwal as the RP in place of IRP. Further AA made adverse remarks against Mr. Niranjana without receiving any allegation or representation by any of the parties and ignoring the work undertaken by the IRP.

3.2.13 Mr. Niranjana submitted that he had bonafidly and without any prejudice, rejected the appointment of RP in overall scheme of the Code where in it is contemplated that the decisions of the CoC shall arrive through majority or special majority as the case may be. In overall scheme of things, under no circumstance minority should dictate the CoC. He further submitted that as per the provisions of the section 22 (2) of Code

“The Committee of Creditors, may, in the first meeting, by a majority vote of not less than sixty-six per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional”

3.2.14 Section 21 (2) of the Code defines CoC as

“The committee of creditors shall comprise all financial creditors of the corporate debtor”

Accordingly, mandatory requirement of not less than sixty-six percent of the voting share of the FCs for replacement of IRP by CoC must be construed voting by all the members of CoC for the purpose of computation of voting shares. The provisions of section 25A, however, relates to the rights and duties of the AR of the FC in class as to the voting. It is pertinent to mention here and as observed by IA-

“Authorised Representative has not casted his vote as envisaged in section 25A (3A) but only submitted a consolidated result of e-voting by class of creditors to the IP ”

3.2.15 However, provisions of Section 25A of the Code should not have overriding effect of the material and substantive provisions related to the appointment or replacement of the IRP as envisaged under the section 22 of the Code. In the present case, because of giving overriding effect to the provisions of section 25A, mandate of the majority of members of CoC (53.174%) turned as minority and went futile. Moreover, in effect FC, other than a class of FC, shall not have any say in the COC in this matter. It cannot be the intent of the provisions of the Code that decision of the CoC be taken by the minority (38.92%) voting of the CoC disregarding the mandatory requirement of majority voting shares for passing any resolution as is happening in this case. Going by the same logic and interpretation, he submitted that he dismissed his own appointment as RP in the first COC meeting wherein, majority of home buyers (32.49% as against 29.07%) was in favour of confirming the present IRP as RP.

3.2.16 He submitted that he obeyed the decision of the AA and offered the handover of the assignment immediately on receipt or copy of order from the RP. Further, it is submitted that alleged contravention had no adverse effect on the CIRP process neither the IRP earned any unfair advantages or gain.

3.3. Summary Findings

3.3.1 The DC notes that in first CoC meeting dated 17.10.2019 creditors in a class held voting share of 96.15%. Of the total voting members from creditors in a class, more than 50% voted in favour of resolution for appointment of Mr. Niranjana as RP.

3.3.2 During 2nd CoC meeting dated 31.10.2019, the creditors in a class held voting share of 72.394%. Of the total voting by member of creditors in a class, more than 50% voted in favours of resolution for replacement of Mr. Niranjana.

3.3.3 Section 25A(3A) of the Code provides as follows:

“(3A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote: Provided that for a vote to be cast in respect of an application under section 12A, the authorised representative shall cast his vote in accordance with the provisions of subsection (3).”

3.3.4 The AA in its order dated 26.06.2020 replaced Mr. Dilip Kumar Niranjana with Mr. Ganga Ram Agarwal as RP observing as follows:

“In support of the aforesaid proposition, the applicant has also relied upon Pioneer Urban Land and Infrastructure Ltd. (supra) in para No. 55 which is as follows:

.....Given the fact that allottees may not be homogenous group, yet there are only two ways in which they can vote on the Committee of Creditors- either to approve or to disapprove o a proposed resolution plan. Sub-section (3A) goes a long way to ironing out any creases that may have been felt in the working of Section 25A in that the authorised representative now cast his vote on behalf of all the financial creditors that he represents.....”

In view of the aforesaid legal proposition and the existing factual situation, we are of the view that no further enquiry is required, therefore we arrive to a conclusion that the resolution passed by the CoC is with more than 66% for approval of the replacement of IRP with RP.”

3.3.5 The DC observes that Mr. Niranjana has confused himself between the application of relevant provision with respect to voting share with respect to creditors in a class. Mr. Niranjana erroneously applied section 22(2) of the Code for calculating voting share of FCs while there is specific provision for calculating voting share in case of creditor in a class ie section 25A(3A) of the Code on which jurisprudence has also been settled by the Hon’ble Supreme Court. Hence DC finds that Mr. Niranjana has violated section 25(3A), 208(2)(a) and (e) of the Code, regulations 7(2)(a), 7(2)(h) of IP Regulations, and clause 10 of the Code of the Conduct of IP Regulations.

3.4. Contravention-II with regards to violation of Timelines

3.4.1 Mr. Niranjana was IRP of CD for 295 days from 05.09.2019 till AA replaced him *vide* order dated 26.06.2020. Despite the prolonged tenure, he did not prepare Information Memorandum (IM) and failed to publish form G. It is also observed that the Registered Valuers (RV) have been appointed only on 19.11.2019 i.e. after 75 days of insolvency commencement date (ICD) as against requirement of within 47 days of ICD. Further, the cost disclosure in form I was submitted to ICSI-IIP, Insolvency Professional Agency (IPA), on 08.03.2021 i.e. after 248 days of demitting office. In view of the above, the Board was of *prima facie* view that Mr. Niranjana *inter alia* violated section 208(2)(a) and 208(2)(e) of Code, regulation 17(3) and 40A of CIRP Regulations, regulation 7(2)(a), 7(2)(h) of IP Regulations and clause 13 of Code of Conduct of IP Regulations.

3.5. Submissions made by the IP

3.5.1 Mr. Niranjana submitted that above compliances are dependent upon the availability of accounting/financial data and records of the CD. The CD was not functional for last almost 7 years before the initiation of CIRP. He could obtain the incomplete and irregular accounting data only upto financial year 2011-2012. He had to fetch the all the banking statements from the respective banks in order to complete the accounting data. In the absence of accounting data, it was difficult to assess and evaluate the requirement of valuation. However, from very first day he started taking steps in the CIRP and at first COC the following resolution for COC's consideration and vote were put including the appointment of valuers:

- a. Authorization for appointment of Auditor for forming opinion as to Preferential Transaction (under Section 43); Undervalued Transaction (under Section 45); Extortionate Credit Transaction (under Section 50) and Fraudulent Transaction (under Section 66).
- b. Authorization for appointment of valuers for ascertaining fair value and liquidation value of the Corporate Debtor (under Regulation 27 of CIRP Regulations).
- c. Authorization for appointment of consultant for ascertaining Cost to Complete of the group housing projects of the Corporate Debtor.
- d. Authorization for appointment, fees and expenses of legal consultant/advisor/counsel during the CIRP tenure.

3.5.2 He submitted that he was facing difficulties in fetching the accounting data and he apprised the member of CoC regarding the same. Extract of the minutes of the 2ndCoC meeting dated 31.10.2019 can be referred to in this regard:

“He also Informed the meeting that he is facing difficulties in fetching accounting data and other records from the members of the suspended board of the Corporate Debtor. He apprised the meeting that members of the suspended board have shown and expressed their inability to fetch and procure the accounting data citing the reason that company is closed for almost 7 years and respective allottees associations were taking care of construction and accounting of the projects.

The Chairman apprised the meeting that based upon the information from Mr. Manav Chandra, he had written an email to Mr. Mahana seeking accounting information related to the Faridabad Sector 89 project. In Reply Mr. Mahana informed the RP that he had submitted all the data with Manav Chandra. Mr. Mahana, however, shared the list of allottees with their payment details.

He further apprised the meeting that without accounting data and project related documents, RP would face difficulties in getting the books of accounts audited and valuation of the Corporate debtor done.

He also informed the meeting that as per Insolvency law he would also be requiring to prepare Information Memorandum (IM) of the Corporate Debtor in order to facilitate the prospective Resolution Applicant in submitting resolution plan. He highlighted that without accounting data and projects related documents IM cannot be prepared.

He stressed the urgent requirement and importance of such data in Insolvency Resolution Process of the Corporate Debtor.

The Chairman then sought help and co-operation from the member of Suspended Board of Corporate Debtor and observers representing allottees under the Real Estate Project of the Corporate Debtor in procuring and/or preparing accounting data and documents for speedy movement of various steps in resolution process viz. valuation, auditing and preparation of IM etc. including verification of claims.

Mr. Manav Chandra (member of the suspended Board) intervening the discussion informed the meeting that unaudited accounting data for the financial year 2012-13 has been prepared. He further apprised that accounting data for the period starting from 2013 to 2019 are being prepared with the help of bank statements procured by the Resolution Professional. He assured the meeting that accounting data so prepared shall be presented and handed over the Resolution professional in couple of days. Mr. Sunil Sharma, President, PGAWA, Sector 89, Faridabad, apprised the meeting that Allottees Association for sector 89 projects had been handling the project from year 2015 to 2017 and also assured that in next 10 days he will submit accounting and other data viz. contractor/vendor payment detail, receivables and other supporting documents related to the Sector 89 project of the Corporate Debtor. Mr. Soham Rastogi added that accounts related to Sector 89 project may be procured from accountants Vinit and Kavita as they were handling accounting of the Corporate Debtor.

Further, Mr. Himanshu Sharma, President, AWA Sector 70A project, Gurgaon also assured to share excel sheet data related to the project. The respective representatives of Faridabad Sector 78 and Gurgaon sector 95 Projects informed the meeting that they do not have any data related to the projects. They further informed that projects related data were maintained by the Corporate Debtor. Hence, the same may be procured from the directors of the Corporate Debtor.

a. Appointment of Registered Valuers/Auditors/Project Consultants:

The Chairman informed the meeting that he is in process of seeking quotations from the Valuers, Auditors and Project Consultants. He further apprised the meeting that in absence of proper accounting and project related data they shall face difficulties in carry out their respective assignment and that will slow down insolvency process which is strictly a time bound process.

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b. "Books of Accounts: The IRP informed the meeting that the corporate debtor had prepared and maintained its books of accounts only up to financial year ending on 31st March 2012, electronic records of which have been procured by the IRP. He further informed that he has also procured some excel and tally data related to the projects of the Corporate Debtor. In order to complete books of accounts, IRP has procured all the bank statements from respective banks. He informed the meeting that, these statements have been handed over to DYC Advisory for account preparation and completion of up-to-date accounting data. However, DYC could only provide accounting tally data which is incomplete with full of discrepancies. Further, DYC could not provide IRP up to date final accounts of the company. Non – cooperation by promoters and DYC Advisory is causing difficulties for IRP, valuers and auditors in discharging their professional duties including preparation of Information Memorandum. He further apprised the meeting that he has filed an application with Hon'ble NCLT seeking appropriate directions against DYC advisory and directors. On enquiry, Mr. Manav Chandra shows inability to get further

accounting data as he has no papers or record as company was not functioning since very long. He further stated that, whatever records or data he was having, have been submitted to the IRP.”

3.5.3 As to the preparation of IM and publication of EOI, Mr. Niranjana submitted that IM primarily contains following.

- a. assets and liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values;
- b. the latest annual financial statements, audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;
- c. list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;
- d. particulars of a debt due from or to the corporate debtor with respect to related parties;
- e. details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;
- f. the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;
- g. details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;
- h. the number of workers and employees and liabilities of the corporate debtor towards them;
- i. other information, which the resolution professional deems relevant.

3.5.4 Above information/data can be prepared only with accounting and financial data of the CD. Mr. Niranjana submitted that he was constrained to perform its function of appointment of valuer, preparation of IM and publication of Form G for want of updated accounting data. He had to file application under section 19(2) against the promoters and accounting firm to pressurize them for the accounting data. He wanted to ensure the compliance of Code and regulation in true spirit instead of words. He also submitted that in between the CIRP commencement date and appointment of valuer, few working days were lost due to demise of his mother.

3.6. Summary Findings

3.6.1 The DC observes that Mr. Niranjana has not acted swiftly in obtaining documents from the suspended directors and filing application section 19(2) of the Code which led to delay in performing his statutory duties as IRP like preparation of IM, publishing of form G. He delayed appointment of registered valuers and gave no reason for delay in filing cost disclosure in form I to IPA. The conduct of Mr. Niranjana for keeping the abovesaid actions pending while he held the office of IRP from 05.09.2019 to 26.06.2020, ie, 295 days shows laxity on his part considering that the Code provides to complete the CIRP within 180 days extendable by 90 days but mandatorily to be completed within a period of 330 days under section 12(3) of the Code. Hence DC finds that Mr. Niranjana has violated section 208(2)(a) and 208(2)(e) of Code, regulation 17(3) and 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulation 7(2)(a), 7(2)(h) of IP Regulations and clause 13 of Code of Conduct of IP Regulations.

3.7. Contravention-III with regards to inflation of professional fee

3.7.1 The Board observed that Mr. Niranjana raised an invoice dated 31.07.2020 for an amount of Rs. 87 lakh (excluding GST) towards services provided by him for 9 months 20 days. This was despite the fact that there was no progress in CIRP for six months which was also observed by Hon'ble AA in its order dated 26.06.2020. The delay in progress of CIRP is attributable to litigation caused by incorrect computation of voting result first for appointment of Mr. Niranjana as RP and later for his replacement with another IP. This delay led to inflation of the fees claimed by him. The fee is unreasonable considering that there was no progress in CIRP for six months out of 9 months 20 days for which Mr. Niranjana worked as IRP and RP as observed by Hon'ble AA. In view of the above, the Board is of prima facie view that Mr. Niranjana inter-alia violated section 208(2)(a), 208(2)(e) of Code, regulation 7(2)(a), 7(2)(e) of IP Regulations, clause 25 of Code of Conduct.

3.8. Submissions made by the IP

3.8.1 Mr. Niranjana submitted that despite none of his claims for his professional fees being approved till date, he has diligently performed his duties. His working in the CIRP has been reflected and discussed at all three CoC meetings convened by him. He carried out CIRP diligently and efficiently through verification of claims, obtaining bank statements for 35 odd banks, getting books of accounts prepared on the basis of those bank statements, appointment of valuers under the Code, appointment of auditors to form opinion on the books of accounts of the CD, obtaining interim audit report, filing application with NCLT for non-corporation under section 19(2), filing application under section 12(2) for extension of time period of CIRP, holding CoC meeting from time to time etc. coordination with DTCP, appearing at RERA and High Court of Delhi, numerous meeting various associations of the homebuyers of the CD. Effort of IRP in furtherance of CIRP may be exemplified by the following work undertaken by him;

- a. Making Corporate office of the CD functional which were closed for almost 7 years and was in total mess and was like ghost-house. Nobody was there to attend the IRP.
- b. Receiving, collecting & verification of claims of over 800 homebuyers in addition to financial, operational and other Creditors.
- c. Preparation of list of creditors and formation CoC from time to time. Filing reports of COC with NCLT, IBBI and IPA.
- d. Obtaining bank statements for 35 odd banking accounts of the CD.
- e. Getting books of accounts prepared (Still under finalization) on the basis of those bank statements. It is worth mentioning that no books of accounts were prepared since 2012.
- f. Obtaining & processing of quotations and appointment of four Valuers under the Code.
- g. Obtaining & processing of quotations and appointment of renowned auditor Bhatia and Bhatia to form opinion on the books of accounts of the CD with comprehensive audit scope and obtaining Interim Audit Report.
- h. Conducting 3 CoC meetings (physical) from time to time to apprise the CIRP progress to the member of COC and to pass various resolutions. Preparation and Filing minutes of the COC meeting with NCLT, IBBI & IPA from time to time.
- i. Coordination with even management agency for holding COC meetings.
- j. Appointment and coordination with e-voting agency from time to time.
- k. Filing of reports with NCLT, IPA & IBBI from time to time.
- l. Filing application with NCLT for non-corporation under Section 19(2).
- m. Filing Application under Section 12 (2) for extension of time period of CIRP.

- n. Attending NCLT proceedings in matter related to CD.
- o. Coordination with DTCP for licenses and sanction plan of the various projects.
- p. Personally Appearing at RERA and HIGH Court of Delhi.
- q. Holding numerous meetings various associations of the homebuyers of the CD to discuss the progress and way forward.
- r. Holding numerous meetings with promoters to understand the project and seeking documents related thereto.
- s. Holding numerous meetings with DYC advisory for completion of books of accounts, obtaining unverified books of accounts prepared on the basis of all the bank accounts obtained by the IRP.
- t. Meetings with valuers and auditors to take stock the progress and to facilitate smooth conduct of valuation and auditing.
- u. As to the observation of Hon'ble NCLT about the progress of CIRP it is submitted that though remark by Hon'ble NCLT is not the operative portion of the Order in terms of Rule 147 of the National Company Law Tribunal Rules, 2016, it was made under misleading non- contextual arguments by the counsel overlooking the efforts by the IRP in progress of CIRP.

3.8.2 Mr. Niranjana submitted that proposal for fee of IRP for Rs. 87 lacs were never approved by the CoC. He further revised its fee and submitted to the current RP. Even revised proposal for fee of Rs, 58,00,000 (excluding GST) @ Rs. 6,00,000/- per month for a period of 9 months 20 days was also not approved by the CoC. He submitted that in his opinion Rs, 58,00,000 (excluding GST) @ Rs. 6,00,000/- per month for a period of 9 months 20 days is in consonance with the volume of work and effort made by IRP team. At this point it is pertinent to mention here that current RP is charging exorbitant fee in this matter whereas, all the basic work was undertaken by him. Furthermore, CIRP of CD has progressed a little even after almost 23 months of appointment of current RP. Further, it is worth mentioning that the IRP is struggling to even get the expenses reimbursed which were incurred and approved by the COC. Mr. Niranjana submitted that he has received only Rs. 2 Lakh towards his fees along with some out of pocket expenses while the rest of the fees along with out of pocket expenses remains pending to be paid.

3.9. Summary Findings

3.9.1 The DC notes that Mr. Niranjana has held the office of IRP for 295 days where no progress was made in CIRP which is also observed by AA in its order dated 26.06.2020 that due to litigation there was no progress in CIRP for 6 months. Considering the factual position, the fees claimed by Mr. Niranjana is usurious in correlation to the task performed by him and progress in CIRP. If such fees is allowed to be accepted, it will lead to a wrong precedent for the whole profession of IP. Hence DC finds that Mr. Niranjana has violated section 208(2)(a), 208(2)(e) of Code, regulation 7(2)(a), 7(2)(e) of IP Regulations, clause 25 of Code of Conduct.

4. Order

4.1. In view of the submission made by Mr. Dilip Kumar Niranjana, and materials available on record, DC notes that Mr. Dilip Kumar Niranjana should have been more careful and vigilant in conducting the CIRP and should have been cautious and prompt in discharging his duties as an IRP of the CD.

- 4.2. The Code, like any other economic law is evolving over period. The jurisprudence around home buyers is also being fortified on continuous basis. Therefore, it is professional's duty to keep oneself updated on the changes in the code, regulations and also case-laws. He has no discretion to apply the provisions selectively.
- 4.3. The deficiencies as noticed and conceded by Mr. Dilip Kumar Niranjana are of serious a nature. Acts and omissions due to non-proper understanding of provisions of Code and Regulations made thereunder reflect poorly on the work undertaken by Mr. Dilip Kumar Niranjana as IRP of the CD. The matter related to wrong calculation of voting share was discussed in detail in the order dated 26.06.2020 in IA 2504 of 2019 & IA 2056 of 2020 in CP(IB) 755(PB)/2018 in which AA observed as follows:
“On looking at this factual scenario against the legal proposition envisaged under the Code, it is evident that if a class of creditors represented by Authorized Representative voted for more than 50% on a resolution, such voting is to be considered as 100% by the respective class of creditors in the resolution passed by the CoC. In this case, for the class of creditors were present in the meeting voted for more than 50% for replacement of IRP with the RP, such approval with more than 50% shall be treated as 100% on behalf of the Homebuyers to the resolution passed by the CoC as contemplated under Section 25A (3A) of the Code”
...
“In view of the aforesaid legal proposition and the existing factual situation, we are of the view that no further enquiry is required, therefore we arrive to a conclusion that the resolution passed by the CoC is with more than 66% for approval of the replacement of IRP with RP, hence this application is hereby allowed for replacement of Mr. Dilip Kumar Niranjana (IRP) with Mr. Ganga Ram Agarwal as RP. Accordingly this I.A. No. 2504 of 2019 is hereby allowed by appointing Mr. Ganga Ram Agarwal as RP.”
- 4.4. In view of DC, contravention is a contravention whether committed knowingly or unknowingly. Therefore, the considerations that this was first case of Mr. Dilip Kumar Niranjana to deal with the CIRP and hence the mistakes were bonafide in nature is simply not tenable. Further, progress of CIRP and relevant milestones considerably missed the timeline.
- 4.5. Keeping in view the submissions of Mr. Dilip Kumar Niranjana that for his services only token fee has been given to him and decision on remaining amount is still pending with RP/CoC, DC directs that Mr. Dilip Kumar Niranjana shall not be paid remaining fee as it stands forfeited. Any unpaid fee of Mr. Dilip Kumar Niranjana, if and when approved by CoC shall be deposited by the present RP Mr. Ganga Ram Agarwal directly to the Consolidated Fund of India (CFI) under the head of “penalty imposed by IBBI” on <https://bharatkosh.gov.in> and submit a copy of transaction receipt to the IBBI and Mr. Niranjana. However, the token advance given to Mr. Niranjana can be retained by him for the services rendered as an IRP.
- 4.6. Further, DC directs that Mr. Dilip Kumar Niranjana shall (i) undergo pre-registration educational course specified under regulation 5(b) of the IP Regulations from the IPA where he is registered and (ii) work for at least six months as an intern with a senior

insolvency professional. Mr. Niranjan's AFA will remain in suspended animation till completion of pre-registration education course and internship as directed above and during this period he can't take any assignment under the Code.

4.7. This Order shall come into force immediately in view of para 4.5 and 4.6.

4.8. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Dilip Kumar Niranjan is enrolled as a member.

4.9. 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 and present RP Mr. Ganga Ram Agarwal.

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

-sd-

(Sudhaker Shukla)

Whole Time Member, IBBI

Dated: 13th July, 2022

Place: New Delhi