

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/71/2021

9th June, 2021

Order

In the matter of Mr. Rajmal Labhchand Mogra, 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 Professional) 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)2019/20/253/1020 dated 11th November, 2020 issued to Mr. Rajmal Labhchand Mogra, 24, Bombay Mutual Annex BLDG, 3rd Floor, Rustom Sidhwa Marg, Fort, Mumbai City, Maharashtra - 400001 who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-001/IP-P00511/2017-2018/10912.

1. Background

- 1.1 Mr. R. L. Mogra was appointed as an Interim resolution professional (IRP) in the corporate insolvency resolution process (CIRP) of M/s. Dhanashree Tooling System Private Limited *vide* order dated 15.07.2019 and resolution professional (RP) *vide* order 16.08.2019 passed by the Hon'ble NCLT, Mumbai Bench.
- 1.2 The IBBI in exercise of its power under section 196 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017 ('Inspection Regulations'), appointed an Inspecting Authority ('IA') *vide* order dated 03.10.2019 to conduct an inspection of Mr. R. L. Mogra, for the purposes as provided under sub-regulation (4) of regulation (3) of the Inspection Regulations.
- 1.3 The IA observed in its Final Inspection Report dated 06.07.2020 that Mr. R. L. Mogra has violated sections 18(1)(a), 19(2), 20(1), 25(1), 43(1) and 208 (2) (a) of the Insolvency and Bankruptcy Code, 2016 (Code), regulations 10 and 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') 2016, regulation 7(2)(a) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 ('IP Regulations') read with clauses 10 and 14 of the Code of Conduct contained in the First Schedule of the IP Regulations.
- 1.4 The Board had issued the SCN on 11.11.2020 to Mr. R. L. Mogra on the basis of material available on record including Final Inspection Report in respect of his role as IRP and RP in the CIRP of M/s. Dhanashree Tooling System Private Limited.
- 1.5 The Board referred the SCN, reply of Mr. Mogra 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. Mogra availed an opportunity of

personal virtual hearing before the DC on 21.01.2021 wherein he was represented by Advocate Sankalp Anantwar of M/s. SMA Law Partners. Thereafter, Mr. Mogra submitted additional written submissions *via* email dated 26.01.2021.

2. **Alleged Contraventions and Submissions**

Contraventions alleged in the SCN and written and oral submissions of Mr. R. L. Mogra are summarised as follows.

Alleged Contraventions

- 2.1 It has been observed from the minutes of the 3rd CoC meeting dated 19.09.2019 that Mr. Mogra made regular follow up with the suspended Board of Directors for obtaining detailed information, documents, records, financial statements, books of accounts and other relevant documents. However, the same was not provided by the suspended Board of Directors. As per section 19(2) of the Code, IP has to make an application to the Adjudicating Authority (AA) for necessary directions in case of non-assistance from personnel of the Corporate Debtor (CD). In spite of the clear provisions made in the Code, Mr. Mogra failed to file an application on time with the AA for issuance of suitable directions to suspended Board of Directors. The said application was filed by Mr. Mogra only on 16.12.2019, *i.e.*, after 153 days of Insolvency Commencement Date and after 76 days of filing application for initiation of liquidation process when Inspecting Authority pointed out the same. A timely filing of application under section 19 of the Code could have resulted in passing of orders favorable to the CD and the detriment to the CD could have been lessened. In view of the above, the Board is of the *prima facie* view that Mr. Mogra violated sections 19(2) and section 208(2)(a) of the Code, along with 7(2)(a) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 read with clauses 13 and 14 of the Code of Conduct of said regulations.
- 2.2 Regulation 13 of CIRP Regulations requires an IP to verify every claim, as on the insolvency commencement date. Regulation 10 of CIRP Regulations provides that an IP may call for such other evidence or clarification from creditor for substantiating the whole or part of its claim. Verification of claims is a critical activity and claims admitted pursuant to the verification entitle a creditor to participate in the CIRP of a CD. An IP is bound by the Code and regulations to perform the duties entrusted upon him. It was noted that M/s Vittal Deshmukh and Co. and M/s Aeropolis Industries were members of CoC. Both, M/s Vittal Deshmukh and Co. and M/s Aeropolis Industries filed their claims in Form B based on extracts of ledger of the CD and on bills raised respectively. The said claims were accepted on the basis of extracts of ledger of CD and the bills raised by Operational Creditors (OC) respectively as Mr. Mogra was not having the possession of books of accounts of CD and he had accepted their claim only because the same was submitted in applicable format. It was further observed from the minutes of 3rd CoC meeting dated 19.09.2019 that Mr. Mogra had stated that the claims had been admitted on the basis of the affidavits submitted by the claimants and the verification was not possible for want of books of accounts, financial statement, and all the relevant papers. Admittance of the claims of said OCs without proper verification has vested both of them a right to be a CoC member. In view of the same, the Board is of the *prima facie* view that Mr. Mogra violated section

208(2)(a) of the Code, regulations 10 and 13 of the CIRP Regulations, 2016 along with 7(2)(a) and (h) of IP Regulations read with clause 14 of the Code of Conduct of said regulations.

2.3 It has been observed that tangible assets as per last audited balance sheet available of CD dated 31.03.2017 was Rs. 3,58,64,942. Tangible assets as per tentative balance sheet of CD as on 31.07.2019 was nil. The comparative analysis of the two balance sheets indicates that there was material erosion of tangible assets of CD amounting to Rs. 3,58,64,942. In Mr. Mogra's reply to the said observation in Draft Inspection Report, he had mentioned that "*After lots of effort also the suspended director of the corporate debtor have not provided with the documents which can be referred except only one balance sheet without any annexures and relevant documents to the same. In the above circumstances, I as a Resolution Professional cannot make proper analysis and take Corporate Debtor Company as an active company for resolution process under IBC.*" It is primary responsibility of the IP to protect and preserve the assets of the CD. Even after such non-cooperation from the side of suspended directors, Mr. Mogra failed to take necessary actions against them under section 19(2) of the Code. He also failed to notice material erosion of tangible assets of CD amounting to Rs. 3,58,64,942 and thereby, failed to perform his duty under section 25(1) of the Code to preserve and protect the assets of the CD. Mr. Mogra's failure to exercise diligence and due care had proven detrimental to the CD. He had also failed to identify the presence of preferential transaction and to make necessary actions for avoidance of preferential transactions under section 43(1) of the Code. Therefore, the Board is of the *prima facie* view that Mr. Mogra violated sections 19(2), 20(1), 25(1), 43(1) and 208(2)(a) of the Code along with regulation 7(2)(a) and (h) of the IP Regulations read with clause 14 of the Code of Conduct of said regulations.

2.4 According to section 18(1) of the Code, IP has a duty to collect all information relating to the assets, finances, and operations of the CD for determining the financial position of the CD. Moreover, when there is non-cooperation from the side of suspended Board of the CD, it is the duty of the IP to collect information from other sources. It has been observed that Mr. Mogra has not even requested the banks to provide statements of CD pertaining to pre-CIRP period. The same could have been used to reconstruct financial statements, thereby giving a fair idea about operations of CD for determining the financial position of CD. In view of the same, the Board is of the *prima facie* view that Mr. Mogra violated sections 18(1)(a), 19(2) and section 208(2)(a) of the Code, along with 7(2)(a) and (h) of the IP Regulations read with clause 14 of the Code of Conduct of said regulations.

Submissions

2.5 With respect to the first issue of non-filing of application under section 19(2) of the Code, Mr. Mogra submitted that though it is the duty of the RP to collect relevant information in respect of the CD, it is also the discretion of the RP to assess the situation and then apply to the AA for direction under Section 19(2) of the Code in the event the promoter or any person of the CD is not cooperating with the RP. He submitted that he was appointed as an IRP by an order of the Hon'ble NCLT, Mumbai, pursuant to which he had taken all the steps and reasonable care and diligence while performing his duties and the same has been

recorded in the minutes of the 1st meeting of CoC held on 16.08.2019.

- 2.5.1 Mr. Mogra in his reply referred to the minutes of 1st, 2nd, 3rd, 4th and 5th CoC meeting to emphasize the fact that he followed up with the suspended director to obtain necessary co-operation and documents and worked as per the provisions of the Code. Mr. Mogra further submitted that suspended director of the CD was in regular contact with his team and assured him that he would provide him the information sought. However, when Mr. Mogra did not get any information from the suspended director, it was imperative for him to seek directions from the AA for co-operation. Mr. Mogra submitted that he took reasonable care and exercised diligence while performing his duties and thus, therefore, there was no failure on his part in filing application under section 19(2) of the Code.
- 2.6 In respect of the second issue of admittance of claims of operational creditors without proper verification, Mr. Mogra submitted that the claims were accepted by him as he was bound to accept the claims on the basis of data and documents available with the claims submitted by the creditor. He submitted that he accepted the claim on the basis of the affidavit and other documents as there was no data available with the CD and that he simultaneously took steps to obtain the necessary details and information. He further submitted that when he raised queries to one of the operational creditor, *i.e.*, Vithal Deshmukh and Associates and sought explanation for the claim filed by it, the operational creditor withdrew his claim. Mr. Mogra submitted that he followed the steps as required by him under the Code and regulations and always acted with reasonable care and diligence.
- 2.7 With respect to the third issue of failure to notice material erosion of tangible assets of the CD, Mr. Mogra submitted that there was no data available with him so, there was no way he could have identified the tangible assets. Mr. Mogra stated that there was no balance sheet of the previous year approved by the CD so he had to approach to the Registrar of Companies to get information, *i.e.*, the balance sheet and other filing before the ROC.
- 2.7.1 Mr. Mogra further submitted that there was no preferential transaction as the CD was a dormant company and there was no business of the CD. He stated that the bank had confirmed that there was no transaction in the bank account of the CD and that the account of the CD was dormant. He stated that there was no material erosion of the tangible assets of the CD. Mr. Mogra further submitted that he tried to obtain data from various sources, however, as there was no data available, the tangible assets of the CD in provisional balance sheet as on 31.03.2019 had to be mentioned as nil.
- 2.8 With respect to the fourth issue of failure to collect information about the CD from other sources, Mr. Mogra submitted that he approached various departments to obtain financial information of the CD. However, he did not receive any information or a satisfactory response. He collected as much information as he could from the CD, the bank and the ROC. Mr. Mogra stated that for want of information, he could not take any further steps. Mr. Mogra further stated that one of the member of CoC also tried to collect information from the CD and assist him in the CIRP and the same is evident from the CoC minutes.

3. **Analysis and Findings**

After considering the allegations in the SCN and submissions made by Mr. Mogra in light of the provisions of the Code and the regulations, the DC notes and finds as follows.

3.1 The RP plays a key role in resolution process of the CD, he is appointed by the AA to conduct the resolution process and it is the duty of RP to conduct CIRP and to take reasonable care and diligence while performing his duties to ensure integrity and independence. The DC notes that the Code casts strenuous responsibilities on an IRP/ IP under section 20, 23 and 25 to make every endeavor to protect and preserve the value of the property of the CD and to maximize the value of the assets and to run the affairs of the CD in distress as a going concern. Such responsibilities of an IP require the highest level of professional excellence, dexterity and integrity.

3.2 The role of an IP encompasses a wide range of functions and it is incumbent upon an IP, under section 208(2)(a) of the Code, to take reasonable care and diligence while performing his functions and duties. Section 208(2)(a) 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; ...”

3.3 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, clauses (a) and (h) of regulation 7(2) 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;...”

3.4 With respect to the first issue, the DC notes the submission of Mr. Mogra that despite regular follow ups by him, the suspended directors did not provide detailed information, documents, records, financial statements, book of accounts and other relevant documents pertaining to the CD. The DC also notes that it is for the IP to assess the situation and make his best endeavour to seek information from the management of the CD. Section 19 (1) of the Code provides for obligation of the personnel of the CD, its promoters or any other person associated with the management of the CD to extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the CD. In case of non-assistance from personnel of the CD, he may file an application under section 19(2) of the Code. Thus section 19 is an enabling provision which reads as follows:

“19. Personnel to extend co-operation to interim resolution professional. –

(1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.

(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist

or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.

(3) The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to cooperate with him in collection of information and management of the corporate debtor.”

- 3.4.1 The DC notes the allegation that inspite of the clear provisions made in the Code, Mr. Mogra failed to file an application in time with the AA for issuance of suitable directions to suspended Board of Directors. The DC notes from the report of IA that the said application under section 19(2) of the Code was filed by Mr. Mogra only on 16.12.2019, *i.e.*, after 153 days of Insolvency Commencement Date and after 76 days from the date of filing application for initiation of liquidation process, when Inspecting Authority pointed out the same. The DC notes the submission of Mr. Mogra that that he was appointed as an IRP by an order of the Hon’ble NCLT, Mumbai, pursuant to which he had taken all the steps and reasonable care and diligence while performing his duties and that the same had been recorded in the minutes of the 1st, 2nd, 3rd, 4th and 5th meeting of CoC. The DC notes the submission made by Mr. Mogra that he and his team was in regular contact with the director of the suspended board of directors of the CD and Mr. Mogra was assured by him that he would provide him the information sought. However, when Mr. Mogra did not get any information from the that director, it became imperative for him to seek directions from the AA for co-operation. Mr. Mogra submitted that he took reasonable care and exercised diligence while performing his duties and, therefore, there was no failure on his part in filing application under section 19(2) of the Code.
- 3.4.2 The DC notes that the CIRP is a time bound process and IP needs to judge from the behaviour of personnel of CD whether they intend to cooperate or not. The cooperation is required, *inter alia*, for verification of claims on the basis of which CoC is to be constituted. Therefore, one cannot wait for long in a time bound process. The DC also notes the submission of Mr Mogra that suspended board of directors of CD was in regular contact with CD and because of assurance given by him, Mr. Mogra provisionally accepted claims on the basis of affidavit. Mr Mogra filed an application under section 19(2) of the Code when required records and documents were not given to him, but DC notes that there was delay in filing such application. However, timely filing of application under section 19 of the Code could have resulted in proper verification of claims and assessment of the financial position of the CD. As an application under section 19(2) of the Code was filed by Mr. Mogra, hence, the DC takes a lenient view in this regard.
- 3.5 In respect of the second issue, the DC notes from his submission that the claim of two OCs, *i.e.*, M/s Vittal Deshmukh and Co. and M/s Aeropolis Industries, was filed in Form B based on extracts of ledger of the CD and on bills raised respectively and the said claims were accepted by Mr. Mogra on the basis of the said documents submitted by the OCs and the affidavit as he was not having the possession of books of accounts of CD. The DC also notes the submission made by Mr. Mogra that the claims have been admitted based on the affidavits submitted by the claimants and the verification was not possible for want of books of accounts, financial statement, and all the relevant papers.
- 3.5.1 The DC notes that one of the core duties of an IP is to receive, collate and verify claims. His conduct have a substantial bearing on the outcome of the processes under the Code, *i.e.*, in resolution or liquidation. He, therefore, is expected to perform his duties with

diligence. In this regard, section 18 (1) (b) of the Code and Regulation 13 of CIRP Regulations provides as follows:

Section 18 (1) (b) reads as under:

“18(1) The interim resolution professional shall perform the following duties, namely: -

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

Further, Regulation 13 (1) of the CIRP Regulations reads as under:

“13. Verification of claims.

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

3.5.2 In this regard, the apex Court in the matter of *Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta &Ors. (Civil Appeal No. 8766-67 of 2019)* also highlighted the role of RP in the revival of the CD. The Hon’ble Court observed as under:

“...Thereafter, under Regulation 13, the resolution professional shall verify each claim as on the insolvency commencement date, and thereupon maintain a list of creditors containing the names of creditors along with the amounts claimed by them, the amounts admitted by him, and the security interest, if any, in respect of such claims, and constantly update the aforesaid list.”

3.5.3 The DC notes that verification of the claims need to be done by the RP within seven days from the last date of receipt of claims as per regulation 13(1) of CIRP Regulations. The DC notes the submission of Mr. Mogra that he accepted the claim on the basis of the affidavit and other documents as there was no data available with the CD and that he simultaneously took steps to obtain the necessary details and information. The DC notes his submission that when Mr. Mogra raised queries to one of the OC, *i.e.*, Vithal Deshmukh and Associates and sought explanation for the claim filed by it, the OC withdrew his claim. Thus he took steps to verify claims. The DC further notes his submission that he followed the steps as required by him under the Code and regulations and acted with reasonable care and diligence. He took due diligence by accepting the claims on the basis of affidavit. The DC also takes into consideration the fact that because of non-cooperation of CD, Mr. Mogra provisionally accepted claims on the basis of affidavit. Hence DC takes a lenient view in this regard.

3.6 In respect of the third issue of failure to notice material erosion of tangible assets of the CD, the DC notes the allegation that Mr. Mogra failed to notice material erosion of tangible assets of the CD to the tune of Rs. 3,58,64,942 and thereby, failed to perform his duty under section 25(1) of the Code to preserve and protect the assets of the CD. Section 25 (1) of the Code provides as under:

“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: -

...(j) file application for avoidance of transactions in accordance with Chapter III, if any;... ”

Section 208 (2)(a) of the Code provides 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;... ”

3.6.1 The DC notes the submission of Mr. Mogra that there was no data available with him, so, there was no way he could have identified the tangible assets. Mr. Mogra stated that there was no balance sheet of the previous year approved by the CD so he had to approach to the Registrar of Companies to get information, *i.e.*, the balance sheet and other filing before the ROC. The DC further notes the submission of Mr. Mogra that there was no preferential transaction as the CD was a dormant company and there was no business of the CD, thus, there was no material erosion of the tangible assets of the CD. The DC notes submission of Mr. Mogra that he tried to obtain data from various sources, however, as there was no data available, the tangible assets of the CD in provisional balance sheet as on 31.03.2019 had to be mentioned as nil. The DC accepts his contention and no contravention is made out in respect of this issue.

3.7 In respect of fourth issue of failure to collect information about the CD from other sources, the DC notes that IP has a duty to collect all information relating to the assets, finances, and operations of the CD for determining the financial position of the CD. The DC notes that in situation when there is non-cooperation from the side of suspended director of the CD, it is the duty of the IP to collect information from other sources. Section 18 of the Code is relevant which provides as under:

“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; ...”*

- 3.7.1 The DC notes that Mr. Mogra as an RP was duty bound to collect all information pertaining to CD’s assets, finances and operations for determining its financial position. The DC also notes that in current peculiar circumstances of non-cooperation from the suspended director of the CD, Mr. Mogra should have tried to collect information from other sources. The DC notes the allegation that Mr. Mogra has not even requested the banks to provide statements of the CD pertaining to pre-CIRP period. The same could have been used to reconstruct financial statements, thereby giving a fair idea about operations of CD for determining the financial position of CD. The DC also notes the submission made by Mr. Mogra that he did approach various departments to obtain financial information of the CD and collected as much information as he could from the CD, the bank and the ROC. However, he did not receive any information or a satisfactory response. The DC notes his submission that one of the member of CoC also tried to collect information from the CD and assist him in the CIRP and the same is evident from the CoC minutes. However, he could not collect any information and was not able to take further steps. Hence, the allegation that Mr. Mogra has not even requested the banks to provide statements of the CD pertaining to pre-CIRP period is not made out.
4. 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 without any directions.
- 4.1 This Order shall come into force with immediate effect as the SCN has been disposed of without any directions.
- 4.2 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. R. L. Mogra is enrolled as a member.
- 4.3 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal for information.
5. Accordingly, the show cause notice is disposed of.

-Sd-

(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Dated: 9th June, 2021
Place: New Delhi