

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/73/2021

20th July, 2021

ORDER

In the matter of Mr. Prabhjit Singh Soni, 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.

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/MON/SCN/2021/PSS/297/1684 dated 26th March 2021, issued to Mr. Prabhjit Singh Soni, GG - I/1441C Vikas Puri, Near PVR, New Delhi- 110018 who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00065/2017-18/10143 and is a Professional Member of the ICSI Institute of Insolvency Professionals (ICSI IIP).

Background

1. The SCN has been issued to Mr. Prabhjit Singh Soni, the IP, in respect of his role as Interim Resolution Professional (IRP) / Resolution Professional (RP) while conducting the corporate insolvency resolution process (CIRP) in the matter of JNC Constructions Private Limited, corporate debtor (CD-1), Mariners Buildcon India Limited (CD-2) and Granite Gate Properties Private Limited (CD-3).
2. The Hon'ble National Company Law Tribunal, Principal Bench at New Delhi (AA) admitted an application under section 7 of the Code-
 - (i) for CIRP of CD-1 vide Order dated 30.05.2019 and appointed Mr. Ajay Kumar Jain as IRP and appointed Mr. Soni as the RP vide its Order dated 09.10.2019.
 - (ii) for CIRP of CD-2 vide Order dated 24.08.2017 and appointed Mr. Prabhjit Singh Soni as IRP and appointed Mr. Sood as the RP vide its Order dated 29.01.2018.
 - (iii) for CIRP of CD-3 vide Order dated 10.01.2019 and appointed Mr. Prabhjit Singh Soni as IRP and Mr. Chandra Prakash was appointed as RP vide its Order dated 27.11.2019.
- 2.1 The Disciplinary Committee (DC) of ICSI IIP passed an order dated 14.12.2020 in the disciplinary matter of Mr. Prabhjit Singh Soni, wherein adverse findings were made against Mr. Soni with regard to his actions and conduct while acting as IRP/RP in respect of CIRP of CD-1, CD-2 and CD-3. Thereafter, DC of ICSI IIP vide its order dated 19.01.2021 suspended the registration of Mr. Soni for a period of one year, imposed a monetary penalty of Rs. 2,00,000/- and directed him to undergo 50 hours Pre-registration Education Course. However, on filing of an appeal by Mr. Soni, the Appellate Panel of ICSI IIP vide its Order dated 19.03.2021 set aside the DC Order of ICSI IIP on the ground that the DC had become functus officio and it had no power of review, when it passed the second Order dated 19.01.2021 which is 30 days after the original order was passed on 14.12.2020 and also recorded that the Appellate Panel of ICSI IIP has not gone

into the merits of the case.

- 2.2 The IBBI on 26th March 2021 had issued the SCN to Mr. Prabhjit Singh Soni, on the basis of material available on record including the orders of the DC of ICSI IIP dated 14.12.2020 and 19.01.2021 in respect of his role as IRP/RP in the CIRP of CD-1, CD-2 and CD-3. The SCN alleged contraventions of the sections 28(1)(a), 208(2)(a) and (e) of the Insolvency and Bankruptcy Code, 2016 (Code), regulations 16A(8), 33(4) and 34 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulation 7(2)(a) and (h) of the IP Regulations and clauses 1, 2, 3, 5, 14, 21 and 25 of Code of Conduct as provided under First Schedule of IP Regulations. Mr. Prabhjit Singh Soni replied to the SCN vide letter dated 15th April, 2021 and also provided his additional submissions vide e-mails.
- 2.3 The IBBI referred the SCN, response of Mr. Prabhjit Singh Soni to the SCN, Orders of DC of ICSI IIP, Order of Appellate Panel of ICSI IIP and other material available on record to the DC for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Prabhjit Singh Soni availed an opportunity of personal hearing (e-mode) before the DC on 5th June, 2021 wherein he reiterated the submissions made in his written reply. Thereafter, he made additional submission vide email in support of his submissions made during the course of personal hearing.

3. **CIRP of JNC Constructions Private Limited (CD-1)**

- 3.1 The contraventions alleged in the SCN pertaining to the CIRP of CD-1 and the submissions by Mr. Soni in his reply are summarized as follows.

3.2 **Contraventions Alleged**

- 3.2.1 In the 3rd Committee of Creditors (CoC) meeting held on 22.10.2019 Mr. Soni placed an agenda for raising interim finance due to the fact that there was very less amount left in the accounts of the CD-1. Subsequently, in the 4th CoC meeting held on 14.11.2019, Mr. Soni apprised the members that as CD-1 had no funds in the bank accounts and there is no other source of income, he arranged a sum Rs.5,00,000/- from Sai Electrical Equipment LLP on interest of 15% for meeting urgent expenses towards electricity and running offices. As per Section 28(1)(a), prior approval of CoC is required before raising any interim finance in excess of the amount as may be decided by CoC. However, interim finance from Sai Electrical Equipment LLP was taken without the prior approval of CoC. Mr. Soni clearly disregarded the authority of the CoC and raised the interim finance without the due approval as specified in the section 28 of the Code.

3.3 **Submissions**

- 3.3.1 It has been submitted by Mr. Soni that the appeal preferred by him against the Order dated 19.01.2021 of the DC of ICSI IIP before the Appellate Panel of ICSI IIP has been allowed vide Order dated 19.03.2021 and the Order dated 19.01.2021 of the DC of ICSI IIP (which has been the basis of the present SCN) has already been set aside and the

same was not pending on date of issue of SCN i.e. 26.03.2021. It confirms that DC order on the basis of which IBBI has issued SCN was set aside before the issuance of SCN hence, no penalty or suspension is pending on Mr. Soni and there was no reason for rejection of his Authorisation for Assignment (AFA) on 26.03.2021. Mr. Soni submitted that AFA rules prescribes that there should not be any pending disciplinary proceedings on the date of application and it does not mention the word 'initiation of SCN'. The SCN was initiated on 26.03.2021 at 4:46 PM and at same time Mr. Soni's AFA was rejected by ICSI IIP on the ground of pendency of SCN. Actually, it was initiation of SCN and there were no pending disciplinary proceedings as DC of ICSI IIP was made defunct on 19.03.2021 by Appellate of ICSI IIP. Therefore, it is unequivocally clear that IBBI has not been provided with the aforesaid order dated 19.03.2021 of the Appellate Panel of ICSI IIP which set aside order dated 19.01.2021. Mr. Soni submitted that he has completed 50 Hours online Pre-Registration Educational Course from IPA as per direction in the Order dated 19.03.2021 of the DC of ICSI IIP even though the same was set aside by the Order of Appellate Panel.

- 3.3.2 Mr. Soni submitted that interim finance was taken after approval of CoC which was passed with 95.52 % votes in the 4th CoC Meeting. Only two Financial Creditors (FC)-HDFC Bank and Suraksha ARC had rejected the resolution for the interim finance with 4.48% voting percentage. Mr. Soni further submitted that he had become the RP on 09.10.2019 and the inspection by ICSI IIP was conducted on 21.11.2019 for the CIRP of CD-1. From the period of 30.05.2019 to 09.10.2019 for duration of 133 days of CIRP, Mr. Ajay Jain, IRP had not prepared Information Memorandum and Form-G as he had no data and also did not pay the electricity bill of CD-1's office.
- 3.3.3 When Mr. Soni was appointed as RP on 09.10.2019 after 135 days of CIRP, there was no electricity, water, telecommunication or IT in CD-1's office, no record/ staff/ tally was available and the homebuyers' records were also out of order due to non-payments. Further, there was no balance left in the account of the CD-1. So, Mr. Soni had to arrange money for these essential items which are part of CIRP cost and without the funds it was difficult to proceed with CIRP. Mr. Soni became RP after 135 days of into CIRP but he got started tally package, electricity, water, phones, internet, IT services and then prepared Information Memorandum, collated data of creditors, collected all assets and published Expression of Interest which received 4 potential resolution plans. A resolution plan was successfully passed by CoC during the Covid-19 pandemic and was put up to the AA for approval in April, 2020. The Resolution Plan was approved by AA after dismissal of all other applications on 4.08.2020. Mr. Soni had to immediately arrange payments for pending electricity bills, water bills, activate Tally and Pinga software package which cost over Rs. 8 Lacs but he could only arrange Rs.5 Lacs on the short notice and the rest was spent from his own pocket. Mr. Soni submitted that in spite of constrains his efforts resulted in restoring essential services of the CD-1, publication of Expression of Interest, receipt of resolution plans and progress in the constructions of the projects and there is no violation of section 28(1)(a) of the Code.
- 3.3.4 Further, the CoC can report to the IBBI under section 28(4) of the Code against the RP for taking necessary actions against him. However, the CoC has made no such complaint to IBBI, rather they accepted the actions of RP. In a good number of cases, CoC is

reluctant to approve interim finance which puts the IRP/RP in a precarious situation, as he is responsible to carry out certain statutory duties under the Code besides managing the CD as a going concern and has to bring some resolution to the CIRP. In such cases the IRP/RP sometimes provide funds from their own pockets as Mr. Soni did in the present matter but it also has limitations as IRP/RP cannot bring themselves to insolvency by break their Fixed Deposits or take Gold loan or sell their house. It is submitted that whether taking Rs.5 Lacs as interim finance is misconduct when the alternative is to putting the CD-1 into liquidation. Hence, Mr Soni expressed that he has committed no default of section 28(1)(a) of the Code as he had taken Interim Finance with CoC approval of 95.52% voting share.

4. CIRP of Mariners Buildcon India Ltd (CD-2):

4.1 The contraventions alleged in the SCN pertaining to the CIRP of CD-2 and the submissions by Mr. Soni in his reply are summarized as follows.

4.2 Contraventions Alleged

4.2.1 As per regulation 34 of CIRP Regulations, fixation of fee of IRP/RP strictly falls within domain of CoC. However, Mr. Soni had entered into an engagement with the applicant of CIRP, wherein he had proposed his fees as RP. In addition, Mr. Soni also mentioned that he will take 5% of recovery of value of assets as insolvency cost while working as RP. It has been observed that engagement letter mentioning the said terms and conditions is available on records. An IP should never enter into commercial terms with the applicant and therefore, he contravened regulation 34 of the CIRP Regulations.

4.3 Submissions

4.3.1 Mr. Soni submitted that CD-2 was his first case which he had undertaken in April 2017 when the Code was still in its infancy with just 4 months from enactment. It is submitted that the scope of inspection was for examination of all assignments of CIRPs handled but this issue exceeds the scope of Inspection into Pre-CIRP data. The letter given to Applicant is not part of CIRP as it was prior to Mr. Soni being approved as the IRP by AA for the CIRP. The first letter was an intimation of the provision of the Code, its regulations and fees etc. The letter contained a brief of possible cost to be incurred by the Applicant and the expenses of 5% of the recovery value mentioned, referred to the liquidation fees as realisation value relates to Liquidation process and only in the eventuality that the CD-2 goes into liquidation the issue of realisable value will arise. The payment would then be done as per waterfall mechanism under section 53 of the Code and Mr. Soni could not take any advantage of this as there must be assets, which should be realised and only then can it be disbursed. Mr. Soni submitted that in the first letter to Applicant he could not have judged the realisable value and quoted fees based on the claim of the Applicant being Rs.8,00,000/-.

4.3.2 From the language of the letter it is clear that, Mr. Soni had acknowledged that in April, 2017 he did not have full working knowledge of the Code, he had explained the duties of IRP and RP and had also mentioned the details of fees which include consent fees for

Form 2, expense of publication, fees of valuers, cost of E-voting, fees of filing petition before AA of Rs.25,000, fees of professionals, consultants, and then RP fees and 5% of realizable value (as per regulation 4 of Liquidation Regulations) and that Mr. Soni could not have known the realizable value without getting the assignment and without seeing the data, also the CD-2 had closed down since 2013 and the ex-directors were behind the bar after taking away money from home buyers. On perusal of the documents of CD-2 it was observed that there was no balance sheet filed since 2013 and the CD-2 was not active. When Mr. Soni gave consent in Form 2, the applicant sought all details of expenses and activity chart. Applicant had only claim of Rs.8,00,000/- and in CoC he had only 5% of the voting share. The Applicant had to incur expenses for the consent fees, application fees, publication expenses etc. with no knowledge of the Code and how to get claim or disbursements mechanism under section 53 of the Code if CD-2 went into liquidation. All these steps were at that time necessary for that first application of insolvency. Moreover, it is pertinent to mention that RP is confirmed by entire CoC and not by a single financial creditor and the Applicant was only one homebuyer that too with only 5% voting share.

4.3.3 It is pertinent to mention that a letter explaining the Code and the possible expenses to be incurred cannot be an agreement and that being read in conjunction with Section 22 of the Code makes it abundantly clear that the decision of appointing Mr. Soni as the RP was completely in the hands of the CoC and hence there was no contravention of the provisions of the Code. Mr. Soni was replaced with new RP in this assignment. The RP appointed in the matter did not even bother to consider the payment to Mr. Soni for his tenure as IRP. The pending fees in the CIRP cost mentioned in the Liquidation order is around Rs.10 Lacs.

5. CIRP of Granite Gate Properties Private Limited (CD-3):

5.1 The contraventions alleged in the SCN pertaining to the CIRP of CD-3 and the submissions by Mr. Soni in his reply are summarized as follows.

5.2 Contraventions Alleged

5.2.1 Agenda for the appointment of Mr. Anuj Agarwal as advisor for security, project, and office management, etc. was placed in the 1st CoC meeting dated 18.02.2019. The same was noted by the CoC. However, in the 2nd CoC meeting dated 19.03.2019 CoC rejected the agenda to ratify appointment of Mr. Anuj Agarwal as Project Manager. However, it has been observed from the Insolvency Resolution Process Costs (IRPC) sheet submitted by Mr. Soni, that Mr. Anuj Aggarwal has been paid a fee of Rs. 4,00,000/- despite his appointment was rejected by the CoC. This is in violation of regulation 33(4) and 34 of CIRP Regulations which provides that expenses to be incurred on or by the RP shall be part of IRPC and shall be fixed by the CoC.

5.2.2 As per regulation 16A (8) of CIRP Regulations, Authorised Representative (AR) of creditors in a class shall be entitled to receive fee for every meeting of the committee attended by him in the manner as provided in the table therein.

5.2.3 In the said matter, AR had attended only 10 meetings of CoC. As per the regulations, AR

was entitled to only Rs 2,50,000/- as his fees (@ rate of Rs.25,000/- per meeting). However, Mr. Soni had already paid Rs. 6,75,000/- to the AR against his bill for approx Rs.16 Lac.

- 5.2.4 Minutes of CoC, evaluation matrix and request for resolution plans are critical documents which consist of vital information during the CIRP and should be available to concerned stakeholders only. However, it is noted that Mr. Soni uploaded this confidential information on the website of the CD-3. It is further noted from the aforesaid order of ICSI IPA that all confidential documents without any undertaking or login requirements can be easily viewed and only voting tab for home buyers was password protected. As per clause 21 of Code of conduct specified in IP Regulations, an IP must ensure confidentiality of the information relating to the insolvency resolution process at all times. Therefore, putting the confidential documents like minutes of CoC, evaluation matrix and request for resolution plan shows gross negligence.
- 5.2.5 As per Regulation 33(4) of CIRP regulations, only the amount of expense ratified by CoC shall be treated as IRPC. However, Mr. Soni did not get CIRP expenses ratified from CoC. Further, no details of payments made during CIRP process were disclosed to CoC except in 1st CoC meeting.
- 5.2.6 Mr. Soni's above acts and omissions are observed to be in contraventions regulations 16A(8), 33(4) and 34 of CIRP Regulations.
- 5.2.7 When seen in context of role, functions, responsibilities and powers conferred upon an IP, the aforesaid acts and omissions committed by Mr. Soni during the CIRP of the CDs suggest negligence and dereliction of duties on his part. In terms of Section 208(2) (a) of the Code, the IP is required to take reasonable care and diligence while performing his duties. Section 208(2) (e) of the Code further obligates him to perform his functions in the manner and subject to such conditions as specified in the regulations. In terms of Regulation 7(2)(a) and (h) of the IP Regulations, the certificate and registration granted to IP by the IBBI is subject to condition that he shall at all times abide by the Code and the regulations made thereunder and the Code of Conduct specified in First Schedule. Clause 1, 2 and 3 of First Schedule specify the Code of Conduct with regard to integrity and objectivity. Clause 5 mentions about conducting the process independent of external influences. Clause 14 prohibits the IP from being negligent while performing his functions and duties under the Code. Clause 21 puts obligation on IP to maintain confidentiality of the documents pertaining to the process at all times. Clause 25 imposes an obligation that fee charged by the IP should be reasonable and transparent manner. In addition, the same should be consistent with the applicable regulations.

5.3 **Submissions**

- 5.3.1 It has been submitted by Mr. Soni that based on Mr. Anuj Agarwal's complaint, the SCN by the ICSI IIP was issued and he had made the complaint that he was not paid Rs. 8,80,000/- fees for the months of March 2019 to April 2019 in spite of his resigning on 13.03.2019. He was appointed as advisor on full time security, project management etc. and his appointment was placed in 1st CoC meeting dated 18.02.2019 which was duly noted by CoC while he was appointed under section 20 of the Code by Mr. Soni on 10.01.2019. Since, Mr. Agarwal resigned in March 2019 he was paid fees for two

months amounting to Rs 4,00,000/- as per section 20 of the Code and as per minutes of the 1st CoC Meeting. Subsequently, in the 2nd CoC Meeting dated 19.03.2019 his further appointment was not approved hence, he was not paid thereafter. Thus, there is no violation of any law as he has been paid for his two months of work which he had done on full time basis which was also noted by the CoC.

5.3.2 Mr. Soni's DC proceedings before ICSI IIP had started due to Mr. Anuj Agarwal's complaint that he had not paid Mr. Agarwal's bills for the months of March, 2019 to July, 2019 and allegation was under section 20 of the Code and not under regulation 33 and 34 of the CIRP Regulations. Hence, this allegation in SCN of IBBI is different from the allegation of DC of ICSI IIP for which Mr. Soni had already given his reply and has also been set aside by the Appellate Panel of ICSI IIP. Further, as the CoC did not reject Mr. Agarwal's appointment in 1st CoC Meeting, Mr. Soni was liable to pay him till his resignation which was made on 13.03.2019. Hence there is no violation of regulation 33(4) and 34 of CIRP Regulations.

5.3.3 At the outset, it is submitted that regulation 16A (8) of CIRP Regulations provides that the AR is entitled to a fees of Rs. 25,000/- per meeting. In this regard it is submitted that the fee for the AR to attend the meetings was Rs. 25000/- per CoC meeting and pursuant to the 1st CoC Meeting, the IRP had formed the grievance team of 2 homebuyers of each tower (62 towers in total) and the IRP was meeting the Representatives of such Towers regularly till May, 2019 to address their grievances and the AR was also requested by such Representatives of various Towers to attend such meetings. The AR submitted bills of all these meetings for a total amount of Rs. 16,21,500. These bills of expenses of the AR received for all such Meetings were not approved by Mr. Soni and the total amount paid to the AR was Rs.2,50,000 as fees for attending CoC Meetings. Therefore, it is not the case that the AR was wrongly paid, but the AR raised frivolous bills to take wrongful advantage. The conduct of the AR, who himself is an IP (and also a complainant in the present matter to the ICSI IIP), in raising such bogus and inflated bills was itself against the spirit of the Code. The IRP upon realisation of the unprofessional and malicious conduct of the AR, refused to make any more payments to the AR.

5.3.4 It is submitted that the CIRP cost statement detail as recorded by the inspection team is unsigned which also contains wrong typing error and is a raw page taken from Mr. Soni's office by inspecting team without his knowledge. The AR column shows following typing error:

Amt (In Rs.)

Expenses head	Amount of expenses	Amount approved	Amount to be approved	Expenses paid	Amount due
AR	650000	250000	400000	623000	27000

So, it clearly shows typing error. Whereas the actual data states the following

Amt (In Rs.)

Expenses head	Amount of expenses	Amount approved	Amount to be approved	Expenses paid	Amount due

AR	650000	250000	400000	250000	400000
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- 5.3.5 Hence, it shows that Mr. Soni has not paid any extra amount to AR but AR is guilty of giving wrong and inflated bills which were not approved by Mr. Soni. Therefore, no contravention of regulation 16A (8) of CIRP Regulations has been made by Mr. Soni.
- 5.3.6 With regard to the confidential data published on website of CD-3, it is submitted by Mr. Soni that CD-3 had 9000 homebuyers, and all were FC, who were part of the CoC. Since, the website is the only way to inform homebuyers who are scattered in every parts of country and abroad, some being old aged and were already harassed by promoter by taking almost entire payments upto 80-90% and they could not get their houses even after 10 years. All the information published on the website of the CD-3 was published for homebuyers only and handled with due care and protection and the same was not accessible to the public as Mr. Soni had engaged a service provider by the name of "Resolution360" for providing a secured platform and website for publishing information, conducting voting etc. regarding the CIRP of the CD-3 for the stakeholders. The said website was password protected and every user who wanted to register with the website had to register and provide an undertaking for maintaining confidentiality before being allotted unique login credentials. Mr. Soni had explained the same and had also placed on record the FAQs regarding registration of a homebuyer with the website, the undertaking of confidentiality to be provided by every user before being allowed to access any information on the website as well as the proposal submitted by Resolution360 detailing all the services and features being provided on the website. A bare perusal of the said documents abundantly clarifies that no information of the CD-3 was accessible in the public domain nothing was leaked and could not have been accessed by anyone without having the proper login credentials. It was also submitted that the only reason that the Inspecting Authority of ICSI IIP was able to view the website without any login credentials was due to the fact that the said website was accessed by the Inspecting Authority on the Laptop of Mr. Soni, which had the admin access to the portal and would not require any login credentials to be put in.
- 5.3.7 Furthermore, it also submitted that the entire Inspecting Authority, during the inspection dated 21.11.2019 to 23.11.2019 was made on Mr. Soni's laptop. A fees of Rs.80,000 monthly was being paid to Resolution 360 for putting data on website and for E-voting. Due to availability of information to the homebuyers and giving them nearly 600 houses Mr. Soni was able to manage CIRP for 300 days and also brought 2 resolution plans there.
- 5.3.8 Hence, there is no breach of confidentiality as per clause 21 of Code of Conduct instead it was a boon for the 9000 homebuyers who got all news about CIRP and were able to vote properly after studying all data. It was also the duty as IRP/RP to inform about resolutions being done in the CIRP. It also proves from the penalties imposed on Mr. Soni of a fine of Rs.2,00,000, one year suspension after forcibly putting one and half year suspension and to undergo 50 hours training to learn the Code despite bringing 6 Resolution plans in 12 assignments by DC of ICSI IIP, even though the proceedings were fuctus officio. Despite Mr. Soni having made sincere efforts by working day and night during the lockdown it has been demoralising to have AFA rejected for last 2 years

on the basis of pending disciplinary proceedings.

- 5.3.9 With regard to CIRP cost of Granite Gate Mr. Soni submitted that he has passed all the CIRP expenses ie. IRP/RP fees, Forensic Auditors and Transactional Auditors fees, Advocates consultants fees, Website Provider fees, CA accounts work, publication expenses, Valuers, E-voting, etc. in first, second, third and fourth CoC Meeting. Several consultants were not approved by CoC in the 2nd CoC Meeting. In this regard it is submitted that note may be taken of the documents as well as the Minutes of Meetings. The CIRP expenses of the CD- 3 were duly ratified by the CoC in its 1st, 2nd and 3rd Meeting and moreover, the Information Memorandum on the basis of which the 3 Resolution Plans were also received by Mr. Soni specifically mentioned the CIRP Cost and the same could not have formed a part of the Information Memorandum or the Resolution Plans without having been ratified by the CoC. The fees of Forensic Auditors, Valuers, Auditors etc. was pending and their amount of fees was got approved by CoC. Moreover, the CoC meetings were stayed by AA from 30.06.2019 to 19.09.2019 but all the expenses given in CIRP cost was properly approved for fees of IRP, professionals, consultants and other expenses and it has been clearly mentioned what has been approved and what is pending for approval. Hence, there is no violation of regulation 33(4) of CIRP Regulations.

Analysis and findings:

6. The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of Mr. Prabhjit Singh Soni and also the provisions of the Code, rules and the regulations made thereunder finds as follows:

- 6.1 In the present matter it is observed that the DC of ICSI IIP had passed an order dated 14.12.2020 disposing of three SCNs against Mr. Soni in respect of CD-1, CD-2 and CD-3, issued on the basis of inspection by ICSI IIP of the CIRPs of these CDs. On observing various contravention of the provisions of the Code, the DC of ICSI IIP issued the direction that:

“In view of the aforesaid facts, the Disciplinary Committee holds that Mr. Prabhjit Singh Soni is guilty of professional misconduct. DC after considering the seriousness of violations and in its power conferred under Part III 4 (e) of the Disciplinary Policy of ICSI IIP, deems it fit to refer the matter to IBBI for final decision.”

- 6.2 However, the DC of ICSI IIP reconsidered the order as advised by IBBI vide its email dated 25.12.2020 and passed a revised order dated 19.01.2021 directing that:

“4.4 The Disciplinary Committee at its meeting held on 19th January, 2021 reconsidered the order and decided the following in its power conferred under Part III of the Disciplinary Policy of ICSI IIP:

a) Imposed a penalty of Rs. 2,00,000/-(two lakhs only) on Mr. Prabhjit Singh Soni and the same to be deposited by a demand draft payable in favour of the ICSI Institute of Insolvency Professionals within 1 (one) month of the issue of this order. The Agency shall in turn deposit the said penalty amount in the Insolvency and Bankruptcy Fund;

- b) Recovery cost for an amount of Rs. 50,000/- (fifty thousand only) as cost for the proceedings before the Disciplinary Committee of ICSI IIP and the same to be deposited by a demand draft payable in favour of the ICSI Institute of Insolvency Professionals within 1 (one) month of the issue of this order;
- c) Suspended Mr. Prabhjit Singh Soni for a period of 1(one) year from the date of issuance of this order and;
- d) Directed Mr. Prabhjit Singh Soni to undergo 50 hours Pre-registration Education Course.
- e) Mr. Prabhjit Singh Soni shall, however, continue to conduct and complete the assignments/processes he has in hand, if any, as on the date of this order.”

6.3 Thereafter, Mr. Soni appealed against the order dated 19.01.2021 of the DC of ICSI IIP on the grounds that the DC of ICSI IIP on the date of passing the second order had become functus officio and that DC of ICSI IIP has no power to review its own order. The Appellate Panel of ICSI IIP in its order dated 19.03.2021 set aside the order dated 19.01.2021 of the DC of ICSI IIP on the aforesaid grounds and observed that, “Accordingly, the appeal is allowed by setting aside the order of the DC dated 19th January 2021 on both the preliminary grounds that the DC had become functus officio on that date and that it had no power of review. It is made abundantly clear that the Panel has not gone into the merits of the case.”

In view of the above, it is observed that the Appellate Panel of ICSI IIP had merely set aside the order dated 19.01.2021 of the DC of ICSI IIP on technical grounds and it had not decided the same on merits. Hence, no action has been taken in the matter by ICSI IIP.

6.4 It is further observed that the disciplinary proceeding undertaken by the ICSI IIP is conducted in accordance with the power vested in the Insolvency Professional Agency under para 24 of the Bye-Laws of ICSI Institute of Insolvency Professionals as per the due process prescribed. The DC of ICSI IIP can initiate their own proceedings based on their Bye Laws. The DC proceedings of the IBBI are independent proceedings. The DC of the IBBI is vested with power to conduct proceedings to dispose of SCN based on material otherwise available on record under section 220 of the Code read with regulation 11 of the IP Regulations:

“Disciplinary proceedings.

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

6.5 Hence, the order of the Appellate Panel of ICSI IIP dated 19.03.2021 has no bearings on the DC proceedings before the IBBI.

6.6 Under the Code, the RP plays a crucial role in resolution process of the CD, he is appointed by the AA as an officer of the Court to conduct the process with integrity, transparency and accountability balancing the interests of all the stakeholders and maximising the value of the assets. Therefore, it is the duty of the RP to protect and

preserve the assets of the CD as well as take prior approval of CoC as per the provision of the Code:

“28. Approval of committee of creditors for certain actions. -

(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely: -

(a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;”

6.6.1 It is also important for the RP to perform his duties with utmost care and due diligence. Section 208(2) of the Code also provides that every IP 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.”

6.6.2 Further, the Regulations made under the Code mandate that it is the duty of the IP to repose confidence in the stakeholder through their professional conduct and hence, while granting certificate of registration to an IP they are subjected to follow the Code of Conduct as specified in the First Schedule to the IP Regulations to ascertain that the IP is a fit and proper individual. In this regard, clauses (a) and (h) of regulation 7 (2) of the IP Regulations are relevant which reads as under:

“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;”

6.7 CIRP of JNC Constructions Private Limited (CD-1)

6.7.1 In the matter of CD-1, it has been alleged that Mr. Soni had arranged a sum Rs.5,00,000/- from Sai Electrical Equipment LLP on an interest of 15% for meeting urgent expenses towards electricity and running offices without taking the prior approval of CoC. It is observed that in the various meetings of CoC the agenda item relating to raising of interim finance was deliberated upon and the CoC did not outrightly reject it.

6.7.2 It is observed that in the minutes of 3rd CoC meeting held on 22.10.2019 the agenda item no. 2 related to interim finance the deliberations of which have been recorded in the minutes as follows:

“2. To discuss about raising interim Finance/ Corpus of fund

RP informed that for CIRP purpose, finance is required badly as bank account has only

7000 amount and we have to pay expenses of IRP of around 10 lacs, Pinga Fees of around 6 lacs. Tally software renewal for Rs.20000, and fees of advocate and other day to day expenses. RP advised that home buyers can pay a certain amount and this can be used for CIRP work. No decision could be found. COC requested RP to provide break up of expenses so that some action could be taken. COC noted the same.”

6.7.3 Further, the resolution for arranging interim finance was also put up for voting in the 3rd CoC meeting however, the CoC directed the RP to provide the details of expenses and hence, no decision was taken. The same got reflected in the minutes as follows:

“To get interim finance for keeping the company active and making CIRP smooth for achieving good resolution plan

Item was discussed and coc directed RP to first give details of expenses required for various work in the next meeting and then it will be decided. Hence no voting was done.”

6.7.4 Thereafter, the DC also notes from the minutes of the 4th CoC meeting dated 14.11.2019 that interim finance has already been arranged from Sai Electrical Equipments LLP by Mr. Soni for an amount of Rs.5,00,000/- with an interest of 15% as under:

“8 To discuss about raising interim Finance

As company has no funds in the bank accounts of the company and there is no source of income, we will have get some money. we have arranged Rs.500000/- from Sai Electrical Equipments LLP on interest of 15% for meeting urgent expenses out of which we have paid Rs115824 for electricity expenses and some expenditure for running offices. It was decided that all homebuyers shall pay Rs.5000 into Vijya bank Account for running CIRP expenses. This amount will be adjusted in their receivable at the time of delivery of flat or all this will be CIRP Cost and will be paid on priority by the resolution applicant who will come in January 2020. Item for voting is being put.”

6.7.5 Subsequently, the resolution for getting interim finance was also put up for vote in the 4th CoC meeting even though Rs.5,00,000/- from Sai Electrical Equipments LLP on interest of 15% was already obtained without CoC approval and out of which Rs.1,15,824 was already paid for electricity expenses and other expenditure for running offices. However, the same the CoC voted on the following resolution:

“To get interim finance for keeping the company active and making CIRP smooth for achieving good resolution plan

RESOLVED THAT Rs.5000/- be paid by all homebuyers of both projects in the VIJAYA BANK account NO. 717800301000177, sector 63 Noida IFSC vjib0007178 and Rs. 500000 taken from Sai Electrical Equipments LLP at an interest of 15% for meeting urgent expenses electricity expenses and some expenditure for running offices.”

6.7.6 It is also observed that as per the minutes of 4th CoC meeting, e-voting was to be held from 18.11.2019 to 20.11.2019. As per the voting results the resolution was approved with 95.52% voting share.

6.7.7 The DC also notes the fact that Mr. Soni was appointed as RP after 135 days into the CIRP and the office of CD-1 was not in a functional condition lacking essential services and there was no progress in the CIRP. Despite the constraints Mr. Soni managed to restore essential services of the CD-1 by utilising the interim finance of Rs. 5,00,000/-

provided by Sai Electrical Equipments LLP at the rate of 15%. Even though the same was without the approval of the CoC. However, in the next CoC meeting, Mr. Soni informed the CoC of the arrangement of interim finance as well as the expenses paid out of it and obtained their *ex-post facto* approval with 95.52% voting share. Although as per the section 28(1)(a) of the Code, the approval should have been taken prior to the finalising of the arrangement but considering the urgency of the essential services requirement and the need to continue functioning the CD-1 as a going concern to preserve its value, in the instant matter, such action of RP seems to be justified. Further, Mr. Soni informed and sought approval from the CoC in the next meeting itself reflects good faith on his part while performing his duties under the Code. In view of the aforesaid resolution, the DC finds that the CoC was in favour of getting interim finance for smooth running of CIRP. The CoC validated the interim finance for Rs. 5,00,000/- which was raised and received for meeting urgent expenses of essential services and for running the office and the CoC did not object to the same. In addition, the CoC resolved that every homebuyer will contribute Rs. 5,000/- for running CIRP expenses. In these circumstances the DC is of the view that there appears to be no contravention.

6.8 CIRP of Mariners Buildcon India Ltd (CD-2)

6.8.1 As per the scheme of the Code it is envisaged that the management of the affairs of the CD will be vested in the IRP/RP while the power of the Board of Directors of the CD is suspended. It then becomes the duty of the IRP/RP to continue the CD as a going concern and also to preserve the value of its assets. In order to promote transparency and promote interests of all the stakeholders, the power to appoint RP and ratify the fees of the IRP/RP is vested with the CoC. In this regard the regulation 34 of the CIRP Regulations states that:

“34. Resolution professional costs.

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

Explanation- For the purposes of this Regulation, “expenses” mean the fee to be paid to the resolution professional and other expenses, including the cost of engaging professional advisors, to be incurred by the resolution professional.”

6.8.2 It is observed that in his response to Offer Letter by Applicant, Mr. Soni had stated that: *“Further If we be confirmed as Resolution professional by COC, the fee structure would be as follows which will be approved by the Creditors Committee.*

<u>S.No.</u>	<u>Purpose & Amount</u>	<u>Mode of Payment</u>
1.	2 lacs per month up to the period of submission of resolution plan to NCLT For a period of 180 days	NEFT/CHEQUE /CASH payment
2.	5% of recovery of values of assets as insolvency cost	From realisable value

.”

6.8.3 In view of the aforesaid it is observed that the allegation raised against Mr. Soni is that he had entered into an engagement with the applicant of CIRP, wherein he had proposed

his fees as RP and had also mentioned that he will take 5% of recovery of value of assets as insolvency cost while working as RP. In the response to Offer Letter it is observed that Mr. Soni had indeed proposed his fees of Rs. 2 lakhs per month as RP and 5% of recovery of value of assets from realisable value which Mr. Soni claims is to be paid as per the Liquidation Process Regulations. However, it is also noted that Mr. Soni had clearly mentioned that only if he is appointed as RP then such fees may be charged subjected to the approval of CoC. Hence, it cannot be said that he was securing his appointment as an RP.

6.8.4 Every IP is already from a different stream of practice either as chartered accountant/ company secretary/ cost accountant/ advocate/ in management. In context of any professional service being rendered, it is the prerogative of a professional to quote their standard fees which should be a reasonable reflection of the quantum of work to be undertaken in the assignment wherein it may be negotiated with the prospective client. It cannot be said that an IP quoting their standard fees for taking up assignment as IRP/RP/Liquidator is in contravention of the provisions of the Code or the Regulations made thereunder. Further, it is only on the ratification of the CoC can the cost be charged to the CIRP cost otherwise the IRPC Cost is to be borne by the Applicant. As per clause 25 of the Code of Conduct as provided under First Schedule of IP Regulations, an IP must provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable regulations. It has also been clarified in the IBBI Circular No. IP/004/2018 on "*Fees payable to an insolvency professional and to other professionals appointed by an insolvency professional*" that an IP shall render services for a fee which is a reasonable reflection of his work, raise bills / invoices in his name towards such fees, and such fees shall be paid to his bank account.

6.8.5 In the instant matter, the DC notes the submission of Mr. Soni that from his engagement letter he gave details of activities to be undertaken as an IRP/RP and the break-up of the costs for the same. Mr. Soni has quoted a fee of '*5% of recovery of values of assets as insolvency cost*'. Mr. Soni has mentioned 5% as recovery value which is consistent with the regulation 4 of the Liquidation Regulation. Thus it appears that Mr. Soni has quoted fee for both the CIRP as well as fee if the CD-2 goes into Liquidation. Generally IPs quote fee for the CIRP or fee for 30 days as IRP but in this case IP has gone further to quote fee even for liquidation, which he should not have quoted. It was wrong on his part to quote fee for liquidation without any decision of CoC for liquidation. The process under the Code begins with the CIRP and liquidation takes place only if the CoC resolves to liquidate or there is a failure of CIRP or its implementation. It is noticed that Mr. Soni was aware of the provision of the Code that it is only on the approval of CoC that his fees as RP will be approved hence, the engagement letter noted '*If we be confirmed as Resolution professional by COC, the fee structure would be as follows which will be approved by the Creditors Committee*'. Thus, quoting '*5% of recovery of values of assets as insolvency cost*' was wrong and reflects professional incompetence as per the Code. It appears that he at the outset gave CoC options to make choice of the process in terms of fee which is not the objective of the Code. The RP is appointed for

the CIRP process only. Hence, there is violation of the clauses 2,3 and 10 of Code of Conduct for quoting fee for the liquidation process even before beginning of CIRP.

6.9 CIRP of Granite Gate Properties Private Limited (CD-3):

6.9.1 The Code envisages the role of the IP to be central in conducting the CIRP which requires a right combination of experts and professionals acting under the overall supervision of the IP. The IP is the backbone of the resolution process under the Code and success thereof hinges on the conduct and competence demonstrated by him. Also, a CD undergoing CIRP is a representation of interests of several stakeholders who pin their hopes on the outcome of CIRP. Therefore, during the CIRP it is the utmost responsibility of an IP to run the CD as a going concern while at the same time not bog down the CD which is already overburdened with debt by creating additional IRPC which does not contribute to the maximisation of value of the assets of the CD.

6.9.2 The section 20 of the Code vests power in the IRP to appoint professionals as may be necessary for conducting the CIRP, stating that:

“20. Management of operations of corporate debtor as going concern. -

(1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority-

(a) to appoint accountants, legal or other professionals as may be necessary; ”

6.9.3 However, as per the regulation 33(4) of the CIRP Regulations it has been provided that the amount of expenses including fees to be paid to the professionals is to be ratified by the CoC as follows:

“33. Costs of the interim resolution professional.

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

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

6.9.4 In the regulation 34 of the CIRP Regulations, it has also been provided that:

“34. Resolution professional costs.

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

Explanation- For the purposes of this Regulation, “expenses” mean the fee to be paid to the resolution professional and other expenses, including the cost of engaging professional advisors, to be incurred by the resolution professional.”

6.9.5 It is observed that in the 1st CoC Meeting dated 18.02.2019 of the CD-3 the appointment of Mr. Anuj Kumar Agarwal was noted by the CoC but the same was not put to vote:

“Item No. 6

To take note of the appointment of Mr. Anuj Kumar Agarwal as adviser for security, project and office management information technology public relations, allotment and possession of flats.

The COC noted the same.”

- 6.9.6 However, in the 2nd CoC Meeting dated 19.03.2019 the appointment of Mr. Anuj Agarwal was put to vote and it was not approved, the same is reflected in the minutes as follows:

*“12. TO RATIFY APPOINTMENT OF MR. ANUJ AGARWAL AS PROJECT MANAGER
"RESOLVED THAT Appointment of Mr. Anuj Agarwal be and is hereby confirmed a fees of RS. 200000/- per month as PROJECT MANAGER. "*

On e-voting the resolution got votes in favour 34%, against 64% and 2% abstained.

THIS ITEM WAS NOT APPROVED.”

- 6.9.7 From the CIRP Cost sheet it is noted that a fees of Rs.4,00,000/- has been paid to Mr. Anuj Agarwal even though his appointment was rejected in the 2nd CoC Meeting. Mr. Soni has submitted that payment was made to Mr. Agarwal for his two months of service which was also noted by the CoC in the 1st CoC meeting prior to the rejection of his appointment in the 2nd CoC Meeting.

- 6.9.8 In the present matter, the DC takes reference of the Order dated 01.03.2021 of the Hon'ble NCLT in the matter of Dinesh Sugnomal Kanjani v. Sunil Kumar Agarwal wherein a similar issue was dealt with the valuer being appointed by IRP but the appointment not being approved by CoC. Since, the valuer had already prepared the report, they filed an application before NCLT Ahmedabad bench for payment of their professional fees and the Hon'ble NCLT made the following observation,

“6. We have considered the submissions of all the parties and material available on record. It is not in dispute that the Corporate Insolvency Resolution Process (CIRP) commenced on 07.06.2019 and IRP appointed the Applicant as Valuer on 25.07.2019. It is also not in dispute that, as per the provision of Section 18(c) (d) & (g) r.w. Section 20 (2) (a) the IRP is well within his power to appoint Valuer. It is also not in dispute that there is no requirement under the provisions of the Code to take approval of such appointment by IRP from CoC so far as the present issue is concerned. Further to that as per Section 17 IRP is obliged to manage the affairs of the Corproate debtor. Thus, there is complete authority with IRP to conduct Corporate Insolvency Resolution Process (CIRP) as per the provisions of law and no legal restrictions exist and the post facto approval is also not required in such situation. It is not in dispute that the Valuer has visited site and also done the ground work. Further, from the perusal of the correspondence, we don't find any limitation being created or caution being given by RP to not to proceed with the work for want of approval of appointment by the CoC.

7. It is also noted that even RP is not required to take any approval from the CoC in this regards as RP is competent to do so in terms of provisions of Section 23(2) r.w. Section 25(2) (d) of Insolvency & Bankruptcy Code, 2016 for such appointment no approval is required under Section 28 of the Insolvency & Bankruptcy Code, 2016. RP is to act, in this regard as per the norms of IBBI.

8. *It is most unfortunate that the professional who under service in respect of the Corporate Debtor under CIRP that professional engaged are not paid in this fashion.*

9. *Accordingly, we direct the RP/CoC to make payment to the applicant within seven days from the date of receipt of this order.”*

6.9.9 The DC notes that Mr. Soni engaged Mr. Anuj Agarwal as adviser for security, project and office management, the RP has authority to appoint professional for reasonable fees. It is also expected that CoC would approve fees, if it is reasonable but out rightly rejecting the fee of any professional who has rendered service is incorrect. As per the aforesaid judgement the professional is entitled to receive reasonable fees upto the period the CoC took a decision to reject. Hence, Mr. Anuj Agarwal is entitled to be paid for his service period of two months. In view of the above observations, no contravention could be made out from the conduct of Mr. Soni as he had engaged Mr. Anuj Agarwal as per section 20 (2)(a) of the Code and the same was also informed to the CoC in its 1st CoC Meeting. Mr. Soni made payment to Mr. Agarwal for his service period of two months when the appointment was effective prior to the 2nd CoC Meeting when the resolution for his appointment was rejected.

Fees of Mr. Sunil Kumar Agarwal, AR

6.9.10 The regulation 16A(8) of the CIRP Regulations provides that:

“16A. Authorised representative.

(8) The authorised representative of creditors in a class shall be entitled to receive fee for every meeting of the committee attended by him in the following manner, namely: -

<i>Number of creditors in the class</i>	<i>Fee per meeting of the committee (Rs.)</i>
<i>10-100</i>	<i>15,000</i>
<i>101-1000</i>	<i>20,000</i>
<i>More than 1000</i>	<i>25,000</i>

.”

6.9.11 It has been alleged that the AR had attended only 10 CoC meetings and as per the regulations, AR was entitled to only Rs 2,50,000/- as his fees. However, Mr. Soni had paid Rs. 6,75,000/- to the AR against the bill for about Rs.16 Lacs submitted by the AR. It has been submitted by Mr. Soni that a grievance team of 2 homebuyers of each tower (62 towers in total) was formed and the meetings to address their grievances of homebuyers were conducted with the representatives of such Towers regularly till May, 2019, in which the AR was also requested by such representatives of various Towers to attend such meetings.

6.9.12 In the 1st CoC Meeting held on 18.02.2019 it has been observed that:

“Item No. 4

To take note of the appointment and remuneration (fees) of Mr. Sunil Kumar Agrawal Authorized Representative of Class of Financial Creditors. Home Buyers duly appointed by Hon'ble NCLT Court vide Order dated 12/02/2019 who has to be paid Rs 25000/- per meeting plus applicable taxes and out of pocket expenses as per Regulation 16A of CIRP. The COC noted the same.”

6.9.13 It is also observed that in the during the e-voting of the 1st CoC Meeting it was resolved

to form grievance team:

“14 TO APPOINT TWO HOME BUYER OF EACH TOWER OF BOTH PROJECTS LOTUS PANACHE AND LOTUS BOULEVARD AS AUTHORISED REPRESENTATIVES OF THEIR TOWER FOR INTERACTION WITH RP. TO MONITOR THE PROGRESS, GRIEVANCE OF EACH TOWER (HOWEVER ANY HOMEBUYER CAN MEET RP ANY TIME WITHOUT REPRESENTATION IN ANY TOWER)

“RESOLVED THAT to appoint two home buyer of each tower of both projects lotus panache and lotus boulevard as authorised representatives of their tower for interaction with RP, to monitor the progress, grievance of each tower (however any homebuyer can meet RP any time without representation in any tower”)

ON EVOTING RESOLUTION GOT 56% IN FAVOUR AND 39% REJECT AND 1% ABSTAIN. HENCE ITEMS WAS PASSED WITH BIG MAJORITY”

6.9.14 It is observed from the signed CIRP cost sheet submitted by Mr. Soni that the AR had submitted bills of Rs. 16,21,500/- which includes AR expenses and advocate appointed by CoC out of which Rs. 2,50,000/- has been paid to him and the balance is pending for CoC approval. Further, the Cost sheet shows that the amount of expenses incurred by the AR is Rs. 6,50,000/- and the amount approved is Rs.2,50,000/- whereby the balance amount of Rs.4,00,000/- is pending approval. Hence, it is observed that Mr. Soni had paid the fees of AR as per the regulation and not as per fees claimed. In view of the above, the submission made by Mr. Soni is acceptable and hence no contravention could be made out.

Confidential Data published on Website of CD-3

6.9.15 The Clause 21 of the Code of Conduct under the First Schedule of IP Regulations provides as follows:

“21. An insolvency professional must ensure that confidentiality of the information relating to the insolvency resolution process, liquidation or bankruptcy process, as the case may be, is maintained at all times. However, this shall not prevent him from disclosing any information with the consent of the relevant parties or required by law.”

6.9.16 It has been alleged that Mr. Soni has uploaded this confidential information in the minutes of CoC, evaluation matrix and request for resolution plans on the website of the CD-3 which are critical documents containing vital information regarding CIRP and should be available to concerned stakeholders only. However, it has been submitted by Mr. Soni that since there were about 9000 home buyers, the website was a platform to inform homebuyers regarding the ongoings in the CIRP of CD-3. All the information published on the website of the CD-3 was not accessible to the public and could only be viewed by homebuyers after providing an undertaking for maintaining confidentiality and on being allotted a unique login credential. Mr. Soni had engaged a service provider by the name of ‘Resolution360’ for providing a secured platform and website for publishing information, conducting voting etc. regarding the CIRP of the CD-3 for the stakeholders. The same is also placed on record in the FAQs regarding registration of a homebuyer in the website, which explains the efforts of Mr. Soni as regards providing

every user access to any information on the website as well as the proposal submitted by Resolution360 detailing all the services and features being provided on the website.

6.9.17 It is observed that in the website of CD-3 at <https://ggppl.cirpsolutions.com/>, the minutes of the meeting, the expression of interest to submit resolution plan and the evaluation matrix have been made available. It is observed that the minutes of the meetings and the evaluation matrix carry information regarding the affairs of the CD-3 and such information should not be disclosed on the website. The RP is required to take undertaking from CoC regarding maintaining confidentiality of the resolution plan. Although Mr. Soni has tried to maintain transparency with the stakeholder but he also has a responsibility to maintain confidentiality, the evaluation of the resolution plan should not be published in the public domain, putting the same on website violates the norms of confidentiality. Even without the login the details of the same can be viewed on the website. Mr. Soni engaged Resolution360 to give login to every user and that he has maintained confidentiality in login in this regard. However, this fact was not found correct and it was found that any member of the public can open the website and access the information. It appears that there is no fault of RP but of IT provider 'Resolution360'. In the instant case, it could have had adverse impact on the resolution process however, the resolution plan has been approved by the CoC as per section 30 of the Code and it is pending for approval with AA. As per Mr. Soni's submission he placed the information on website for all the homebuyers who are members of the CoC to facilitate them in exercising their voting rights. He also submitted that it was done in good faith. Further, the information was placed in website for 2 resolution plans at a time and not one after another therefore, information in one plan did not affect the other. However, keeping in view the interest and convenience of the thousands of homebuyers who have been provided an accessible and verified platform to track updates, the DC takes a lenient view.

CIRP Cost of Granite Gate

6.9.18 The regulation 33(4) of CIRP regulations provides that only the amount of expense ratified by CoC shall be treated as IRPC. It has been alleged that, Mr. Soni did not get any CIRP expenses ratified from CoC and no details of payments made during CIRP were disclosed to CoC except in 1st CoC meeting.

6.9.19 It is submitted by Mr. Soni that he has passed all the CIRP expenses ie. IRP/RP fees, Forensic Auditors and Transactional Auditors fees, Advocates consultants fees, Website Provider fees, CA accounts work, publication expenses, Valuers, E-voting, etc. of the CD- 3 were duly ratified by the CoC in its 1st, 2nd and 3rd CoC Meetings and also, the Information Memorandum on the basis of which the 3 Resolution Plans were also received by Mr. Soni specifically mentioned the CIRP Cost and the same could not have formed a part of the Information Memorandum or the Resolution Plans without having been ratified by the CoC. Several consultants were not approved by CoC in the 2nd CoC Meeting.

6.9.20 It is observed that in the 2nd CoC Meeting the following CIRP costs were put to vote and

approved:

- a) Auditor for Transactional Audit at a fee of Rs. 2,00,000/-
- b) Auditor for Forensic Audit at a fee of Rs. 10,00,000/-
- c) Company Secretary at monthly remuneration of Rs. 40,000/-
- d) CA Firm for accounts preparation for one time fees of Rs. 1,20,000/-
- e) Two Registered Valuers for a fee of Rs. 2,00,000/- each
- f) Fees of Law firm for recent NCLT matter at Rs. 1,20,000/-
- g) Law Firm for confirmation of AR Appointment at Rs. 50,000/-
- h) Publication of Form A- Public Notice for expense of Rs. 38,000/-
- i) Interim Fees of IRP at Rs. 12,00,000/-
- j) Website Provider at Rs. 80,000/- per month.

6.9.21 In view of the above it is observed that CIRP expenses were undertaken with the approval of the CoC in the e-votings. Hence, no lapse could be made out.

ORDER

7. In view of the above, the DC, in exercise of the powers conferred under Section 220 of the Code read with sub-regulations (7), (8), (9) and (10) of Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby issues the following directions:

- (i) Mr. Prabhjit Singh Soni shall not seek or accept any process or assignment or render any services under the Code for a period of 30 days from the date of coming into force of this Order.
- (ii) Mr. Soni should take reasonable care and due diligence while publishing data on the website and also while performing his functions under the Insolvency and Bankruptcy Code, 2016.
- (iii) Mr. Soni shall, however, continue to conduct and complete the assignments / processes he has in hand as on date of this order.

7.1 This Order shall come into force on expiry of 30 days from the date of its issue.

7.2 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Prabhjit Singh Soni is enrolled as a member.

7.3 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.

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

Dated: 20th July, 2021

Place: New Delhi

Sd/-

(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI