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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2901/2025**

SANJAY GARG

.....Petitioner

Through: **Mr. Ashish Dholakia, Sr. Advocate**
along with **Mr. Gaurav Bhatt, Ms. Meghna Jandu** and **Mr. Anuj Malhotra, Advocates.**

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA & ANR.

.....Respondents

Through: **Advocate for R-1 (appearance not given)**
Mr. Ripudaman Bhardwaj, CGSC
along with **Mr. Kushagra Kumar, Mr. Abhinav Bhardwaj** and **Mr. Amit Kumar Rana, Advocates for UOI.**

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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07.03.2025

CM APPL. 13807/2025 (Exemption from filing typed copies etc.)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 2901/2025 & CM APPL. 13806/2025 (Stay)

3. The present petition assails the order dated 16.12.2024 passed by the respondent no.1 (Insolvency and Bankruptcy Board of India). By virtue of the said order, the Disciplinary Committee of the respondent no.1 has issued the following directions :-

“3. Order.

3.1. In view of the foregoing, the DC in exercise of the powers conferred



under section 220 of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby

(a) directs the Board to re-investigate the issues raised in paragraph 2.3.8, 2.6.3 and 2.6.4 above.

(b) suspends the authorisation for assignment of Mr. Sanjay Garg having registration No.IBBI/IPA-001/IP-P-01865/2019-2020/12919 for a period of 3 months for contravening clause 14 of the Code of Conduct.

(c) warns Mr. Sanjay Garg not to misrepresent facts while making submissions before the Board and the DC.”

4. Broadly, three submissions have been made by the learned senior counsel for the petitioner.

5. Firstly, it is stated that the paragraph 2.3.8 of the impugned order goes beyond the allegations made in the show cause notice inasmuch as it renders a finding that the petitioner considered the resolution plan of an entity i.e., United Biotech Private Limited (‘UBPL’) after expiry of the deadline for submission of the resolution plan. The observations made in paragraph 2.3.8 are as under :-

“2.3.8 It is seen from the sequence of events given in paragraph 2.3.1 that resolution plan was received from UBPL on 24.02.2022 when resolution plans received from 4 PRAs had already been presented before the CoC on 27.12.2021. It is seen that Regulation 39(1B) of the CIRP Regulations prohibits CoC from considering any resolution plan received after the time as specified by the committee under regulation 36B. Therefore, the conduct of RP in proposing for consideration of this plan by the CoC is questionable. In fact, the DC finds that the allegation in this regard is present in the complaint dated 06.03.2024 which forms part of the documents forwarded to the DC. Therefore, this allegation needs to be investigated.”

It is submitted that the said allegation does not even form part of the show cause notice dated 26.06.2024 served on the petitioner.

6. Secondly, it is contended that even otherwise, the finding is completely perverse inasmuch as the impugned order itself notices that the petitioner did not accept any resolution plan and instead referred the matter



to the Committee of Creditors ('CoC') to take a view as to whether the resolution plan of UBPL should be accepted or not. The communication addressed by the petitioner to the CoC has been taken note of in paragraph 2.3.3 of the impugned order which reads as under :-

"2.3.3 Thereafter, Mr. Sanjay Garg received an email dated 03.02.2022 from UBPL who expressed its willingness to submit resolution plan after last date of submission of resolution plan and discussion of 4 submitted resolution plan by CoC. Mr. Sanjay Garg informed the UBPL as follows:

"Dear Mr. Ashwani Kumar,

Last date of filing the resolution is already over. As such your Resolution Plan cannot be accepted by me at this hour but I may discuss the same in COC subject to the condition that you submit the EMD amount of Rs 10000000 (Rs One crore only) alongwith Resolution Plan.

Please note that Submission of Resolution Plan along with BID BOND amount is not a guarantee from my side of your inclusion in the process. Your inclusion in the process would be subject to consent of COC and rule and regulations of Insolvency and Bankruptcy Code, 2016."

7. As such, it is contended that it is completely perverse to allege that the petitioner accepted any resolution plan beyond the stipulated deadline.

8. It is further submitted that paragraph 2.3.7, again, wrongly records that the petitioner has acquiesced to the request of UBPL to participate in the corporate insolvency resolution process ('CIRP') after the vacation of the stay order by the Supreme Court. It is submitted that the said finding is also completely contrary to the record. In this regard, reference is made to the email addressed by the petitioner to the CoC on 06.04.2023, which is referred to in paragraph 2.3.6 of the impugned order. The same reads as under :-

"2.3.6 Mr. Sanjay Garg forwarded the mail of UBPL to CoC vide email dated 06.04.2023 as follows:

"Dear COC Members



*We have received request from the one of the PRA united Biotech Pvt LTD for refund of the EMD amount received from them against Submission of EOI and Resolution Plan **for the time being** in view of the long pending litigation in Hon'ble Supreme Court which has ordered of Stay on CIRP of Corporate Debtor.*

We will comply accordingly. However, United biotech Pvt Ltd mail mentions that they would be willing to participate once the CIRP resumes on vacation of stay granted.

This is for your information and record.”

9. On the basis of the aforesaid email, it is submitted that the occasion to allow UBPL to participate in the CIRP after vacation of the stay order did not arise at all. All that the petitioner did was to inform the CoC about the request of the UBPL that it be allowed to submit its resolution plan after vacation of the stay in the pending proceedings before the Supreme Court.

10. Lastly, it is submitted that paragraph 2.6.3 of the impugned order castigates the petitioner for charging the corporate debtor twice for the same services. It is implied or suggested in the impugned order that the services being provided by Mr. Surinder Babbar were overlapping with the services provided by IPE Osrik Resolution Private Limited. It is submitted that this was not even an allegation in the show cause notice.

11. It is submitted that even otherwise, factually, there was no overlap between the services provided by Mr. Surinder Babbar and IPE Osrik Resolution Private Limited. It is submitted that the impugned order also renders a factually perverse finding as regards the reimbursement of expenditure to Mr. Varun Mangla from the bank account of the corporate debtor, inasmuch as the same is also contrary to the material available on record.

12. As such, it is contended that the impugned order is completely



perverse. It is further submitted that the impugned order itself warrants that it would be appropriate to re-investigate the issues referred in paragraphs 2.3.8, 2.6.3 and 2.6.4 of the impugned order. As such, pending re-investigation, it is completely unfair to pass a pre-emptory order against the petitioner suspending the authorization of his assignment.

13. Issue notice.

14. Learned counsel, as aforesaid, accept notice on behalf of the respondent nos.1 and 2.

15. Let reply be filed by the respondents within a period of two weeks from today. Rejoinder thereto, if any, be filed within a period of one week thereafter.

16. List on 02.04.2025.

17. In the meantime, considering the aforesaid aspects of the matter, the directions contained in Paragraph 3.1 (b) of the impugned order dated 16.12.2024 shall remain stayed.

18. It is made clear that this Court has not interdicted the Board from re-investigating the matter as directed *vide* paragraph 3.1 (a) of the impugned order dated 16.12.2024.

19. Needless to say, during the process of re-investigation, the respondents shall adhere to the principles of natural justice and take into account the representation of the petitioner dated 26.12.2024.

SACHIN DATTA, J

MARCH 7, 2025/r

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/255/2024

16th December 2024

ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI/C/2024/01052/874/340 dated 26.06.2024, issued to Mr. Sanjay Garg who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) having registration No. IBBI/IPA-001/IP-P-01865/2019-2020/12919 and a Professional Member of ICAI Institute of Insolvency Professionals having address with IBBI as 109 (First Floor), Surya Kiran Building, 19, Kasturba Gandhi Marg, New Delhi-110001, Central, National Capital Territory of Delhi, 110001

1. Background

- 1.1 The Hon'ble National Company Law Tribunal, Mumbai Bench (AA) *vide* its order dated 10.05.2021, admitted the application filed by IDBI Bank Limited under Section 7 of the Code for initiating corporate insolvency resolution process (CIRP) of M/s Wizcraft International Entertainment Private Limited (Corporate Debtor/CD). Mr. Parveen Bansal was appointed as Interim Resolution Professional (IRP) who was replaced by Mr. Sanjay Garg as Resolution Professional (RP) on 22.10.2021.
- 1.2 The Board received a complaint against Mr. Sanjay Garg in the matter of CD. The copy of the complaint was shared with Mr. Sanjay Garg *vide* email dated 13.03.2024. He submitted his reply with regard to allegations in the complaint *vide* his email dated 20.03.2024 and 24.05.2024. The allegations in the complaints were examined by the Board which was considered as investigation under regulation 10A of IBBI (Inspection and Investigation) Regulations, 2016 (Investigation Regulations).
- 1.3 Based on the findings of the said investigation, the Board issued the SCN to Mr. Sanjay Garg on 10.07.2024 alleging contravention of several provisions of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and Investigation Regulations. The reply of Mr. Sanjay Garg on SCN was received by the Board on 10.07.2024. He submitted additional documents and submissions on 29.11.2024.
- 1.4 The SCN and response of Mr. Sanjay Garg to the SCN were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Sanjay Garg availed the opportunity of personal hearing before the DC through virtual mode on 14.11.2024.

2. Alleged Contraventions, Submissions of Mr. Sanjay Garg and Findings of DC.

The contravention alleged in the SCN, submissions by Mr. Sanjay Garg, analysis and findings of the DC are summarized as follows:

Contravention-I

2.1 EMD refund in breach of *status quo* order dated 28.02.2022 of Hon'ble Supreme Court.

- 2.1.1 It was observed that during the process, 6 Prospective Resolution Applicant (PRAs) submitted Expression of Interest (EoI), out of which four PRAs submitted resolution plans as on the last date of submission of resolution plans which was on 20.12.2021. It was further noted that on 03.02.2022 much after the last date of submission of resolution plan, Mr. Sanjay Garg received an email from one United Biotech Private Limited (UBPL), one of the abovesaid 6 PRAs seeking permission to submit its resolution plan to which Mr. Sanjay Garg replied by stating that last date for submission of resolution plan was already over, however, desire of UBPL to submit resolution plan was to be discussed with the CoC subject to deposit of EMD of Rs. 1 Crore and inclusion of UBPL would be subject to consent of CoC. That after discussion held in the 9th CoC on 25.02.2022, it was proposed to vote upon the resolution authorizing Mr. Sanjay Garg to accept the resolution plan of UBPL. Subsequently, before voting on the proposed resolution, an order dated 28.02.2022 was passed by the Hon'ble Supreme Court directing to maintain *status quo* in relation to the CIRP of CD.
- 2.1.2 It was noted that despite of the order dated 28.02.2022 directing maintenance of *status quo* in relation to CIRP of CD, on 04.05.2023 Mr. Sanjay Garg proceeded to refund the EMD of UBPL based on the email sent by UBPL dated 31.03.2023 requesting an exit from the fray of resolution applicants. In view of the above, the Board held the *prima facie* view that Mr. Sanjay Garg has contravened clause 14 of the Code of Conduct under Regulation 7(2)(h) of IP Regulations.

2.2 Submissions by Mr. Sanjay Garg.

- 2.2.1 Mr. Sanjay Garg submitted that UBPL had approached him to submit a resolution plan past the last date of submission as stated in Form G, i.e., 20.12.2021. He proposed in the notice of the 9th CoC meeting, a resolution to accept the resolution plan of UBPL who is one of the eligible PRAs. The said resolution could not be voted upon by the CoC members in the wake of the *status quo* order dated 28.02.2022 entered by the Hon'ble Supreme Court in Civil Appeal No. 1568 of 2022. Resultantly, the resolution plan of UBPL had never formed part of the CIRP.
- 2.2.2 He submitted that on 04.05.2023, the EMD, received at the time of submission of EoI and resolution plan, submitted by UBPL was returned, based on the email dated 31.03.2023 of UBPL. Prior to return of the EMD submitted by UBPL, on 06.04.2023, the CoC was apprised of the request email dated 31.03.2023 of the PRA. No observations/objections to the above said mail were received from any of the CoC members and thus, on 04.05.2023, i.e., 27 days after the email of 06.04.2023, the amount was returned to UBPL. The amount returned was Rs.1,00,00,000/-, received at the time of submission of resolution plan.
- 2.2.3 He submitted that when there was no observation of CoC in response to his email dated 06.04.2023, the equity demanded refund of EMD amount to UBPL in terms of email dated 31.03.2023. It was not within his powers to not refund UBPL's money for two main reasons: a) CoC could not decide (because of abandonment of voting lines) on the question - "whether to consider the resolution plan of UBPL or not?", and b) CoC had issued no response to his email dated 06.04.2023.

2.2.4 Mr. Sanjay Garg submitted that prior to the *status quo* order of the Hon'ble Supreme Court, there were 4 PRAs in the final list and post *status quo* order also there were 4 PRAs (as were there prior to the *status quo* order) in the final list. The *status quo* order does not preclude a person from parting with such money, of which he is neither an owner nor a trustee, and more importantly part with the money that never formed part of the CIRP. Till that date, the said amounts were deposited by UBPL, it was not aware if its request to participate in the CIRP would garner the approval of CoC. Further, till the conclusion of the 9th CoC meeting, UBPL was not aware of its status because resolution to whether to allow UBPL to join CIRP was yet to be e-voted upon by CoC. However, since the voting process was abandoned in pursuance of the *status quo* order, voting on the resolution had never happened. Therefore, on the date of the *status quo* order and thereafter, two vital things vis-d-vis UBPL, existed:

- A. On the date of *status quo* order; No confirmation to UBPL that it has a chance to participate in the CIRP; and
- B. Thereafter: No response to email dated 06.04.2023 of the answering RP.

2.2.5 Mr. Sanjay Garg submitted that the amount of EMD is required to be deposited by PRA to show genuineness in resolving the CD. In other words, the Code envisages requirement of EMD amount so that RP and CoC may cogently distinguish between 'Real RAs' and 'Roving RAs'. Till the time CoC has clearly applied its commercial mind on whether to include or dismiss a particular RA, the amounts so deposited by RAs do not form part of the CIRP. It was also submitted that neither RP nor CoC can exercise any control on the amounts of EMD so deposited by a particular RA unless it was clearly known to the RA that his resolution plan would form part of the CIRP, i.e., the resolution plan would be put through the “Negotiation-Mechanism”. At that juncture, it could not be gainsaid that RAs had to deposit the EMD amounts as pre-conditions to submit the EoI and resolution plan respectively. In the present case, till the time of the *status quo* order, inasmuch CoC had not applied its mind (by way of physical/e-voting) to whether include or dismiss UBPL’s participation in the CIRP, the amounts so deposited by UBPL was not forming part of the CIRP and also could not be deemed to have formed a part of the CIRP.

2.3 Analysis and Findings.

2.3.1 The events that transpired are as follows:

Event	Date
Last date for submission of resolution plan.	20.12.2021
Date of 8 th CoC Meeting where resolution plans received from 4 PRAs were presented before the CoC.	27.12.2021
Date on which request for submitting resolution plan was received from UBPL.	03.02.2022
Date of submission of resolution plan by UBPL along with EMD.	24.02.2022
Date of 9 th CoC meeting where email from UBPL for consideration if resolution plan of UBPL was discussed and	25.02.2022

decided for e-voting.	
Date of <i>status quo</i> order by the Hon'ble Supreme Court.	28.02.2022
Date of receiving mail from UBPL for refund of EMD amount.	31.03.2023
Date of refund of EMD amount.	04.05.2023

2.3.2 From the chronology, it is observed that in the 8th CoC meeting held on 27.12.2021, resolution plans were received from 4 PRAs out of the 6 till 20.12.2021, i.e., last date for submission of resolution plan. The 4 submitted resolution plans were presented before the CoC. After the presentation of such resolution plan, it was observed in the 8th CoC meeting that

“Then, the chairman after having presentation of all resolution plans of respective Prospective Resolution Applicants said that he will check & verify all the resolution plans whether all are compliant in respect of the provision of the IBC, and the compliant resolution plan will be placed before the CoC members for approval.

The Chairman apprised to the members of the CoC that as per the provision of IBC, negotiation can be done once only.”

2.3.3 Thereafter, Mr. Sanjay Garg received an email dated 03.02.2022 from UBPL who expressed its willingness to submit resolution plan after last date of submission of resolution plan and discussion of 4 submitted resolution plan by CoC. Mr. Sanjay Garg informed the UBPL as follows:

“Dear Mr. Ashwani Kumar,

Last date of filing the resolution is already over. As such your Resolution Plan cannot be accepted by me at this hour but I may discuss the same in COC subject to the condition that you submit the EMD amount of Rs 10000000 (Rs One crore only) alongwith Resolution Plan.

Please note that Submission of Resolution Plan along with BID BOND amount is not a guarantee from my side of your inclusion in the process. Your inclusion in the process would be subject to consent of COC and rule and regulations of Insolvency and Bankruptcy Code, 2016.”

2.3.4 Mr. Sanjay Garg presented the above proposal from UBPL to the CoC in its 9th meeting dated 25.02.2022 where he proposed to take view on allowing or disallowing the resolution plan which was submitted after the last date of submission of resolution plan. The resolution to accept the resolution plan of UBPL was put to voting which could not take place due to *status quo* order passed by the Hon'ble Supreme Court on 28.02.2022.

2.3.5 On 31.03.2023, the UBPL wrote an email to Mr. Sanjay Garg as follows:

“We had submitted resolution plan pursuant to Form G published by you on 17th Sep 2021 with an EMD of Rs.10 Lakhs. Further we submitted our Resolution Plan on 24th Feb 2022 with further EMD of Rs. 100 Lakhs. We understand that CIRP is a time bound process and as per verbal communication received from you and your team we have been informed that the CIRP proceedings have been stayed by an order of supreme court. Despite assurance from your end of an early resolution, process is still on hold and there is no clarity when it will start again. In the

circumstances we request you to please refund our EMD amount of Rs.1.10 Cr.

Further we assure that we are interested in participating in the resolution of the corporate debtor and will be willing to submit EMD once the stay is vacated by Supreme Court.”

2.3.6 Mr. Sanjay Garg forwarded the mail of UBPL to CoC *vide* email dated 06.04.2023 as follows:

“Dear COC Members

*We have received request from the one of the PRA united Biotech Pvt LTD for refund of the EMD amount received from them against Submission of EOI and Resolution Plan **for the time being** in view of the long pending litigation in Hon'ble Supreme Court which has ordered of Stay on CIRP of Corporate Debtor.*

We will comply accordingly. However, United biotech Pvt Ltd mail mentions that they would be willing to participate once the CIRP resumes on vacation of stay granted.

This is for your information and record.”

2.3.7 The DC observes that such leeway being granted to UBPL first to withdraw the EMD amount for the time being and acquiescing to the request of UBPL to allow participation in CIRP after the vacation of stay is discriminatory to other PRAs and amounts bestowing favour to a particular party in preference to others. On being inquired regarding any judicial precedent on scope of *status quo* order, Mr. Sanjay Garg replied that no specific judgement on scope of *status quo* order could be found. Without being clear of the scope of *status quo* order, the conduct of returning EMD to one of the PRAs and allowing its return as PRA on submission of EMD again shows both negligence and favor to a particular party. Hence, the DC holds Mr. Sanjay Garg in contravention of clause 14 of the Code of Conduct.

2.3.8 It is seen from the sequence of events given in paragraph 2.3.1 that resolution plan was received from UBPL on 24.02.2022 when resolution plans received from 4 PRAs had already been presented before the CoC on 27.12.2021. It is seen that Regulation 39(1B) of the CIRP Regulations prohibits CoC from considering any resolution plan received after the time as specified by the committee under regulation 36B. Therefore, the conduct of RP in proposing for consideration of this plan by the CoC is questionable. In fact, the DC finds that the allegation in this regard is present in the complaint dated 06.03.2024 which forms part of the documents forwarded to the DC. Therefore, this allegation needs to be investigated.

Contravention-II

2.4 Unauthorized payment to an appointed professional and non-filing of relationship disclosure.

2.4.1 It was noted that Regulation 34 of the CIRP Regulations provides that the committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.

- 2.4.2 It was observed that Mr. Sanjay Garg made a substantial payment amounting to Rs. 37.09 Lakh to one Mr. Surinder Babbar who was admittedly appointed as ‘Accounts Head’ of the CD by the RP, however despite specific request of the investigating authority, Mr. Sanjay Garg had failed to submit details of CoC meetings and minutes thereof wherein said payment was approved by the CoC. Further, no relationship disclosure in respect of the appointment of Mr. Surinder Babbar had been filed with the concerned IPA.
- 2.4.3 It was also observed that Mr. Sanjay Garg admitted having availed himself of the occasional services of Mr. Varun Mangla during the CIRP of the CD. While availing such services, Mr. Mangla might have accessed various vital and confidential information with regard to the CD. It was observed that Mr. Sanjay Garg had not filed relationship disclosure in respect of Mr. Varun Mangla with the concerned IPA and was not available on the website of the concerned IPA as on the date of SCN. By not sharing information with regard to the availing of services of Mr. Varun Mangla with stakeholders of the process, Mr. Sanjay Garg had compromised transparency in the process.
- 2.4.4 In view of the above, the Board held *prima facie* view that Mr. Sanjay Garg has contravened the provisions of Regulation 34 of the CIRP Regulations read with clause 8B, 8C and 8D of the Code of Conduct under Regulation 7(2)(h) of IP Regulations.

2.5 Submissions by Mr. Sanjay Garg.

- 2.5.1 Mr. Sanjay Garg submitted that as per Regulation 34 CIRP Regulations the CoC shall only fix those expenses that formed the part of IRPC. As per Section 5(13)(e) of the code which defines IRPC as any such other cost as may be specified by the Board. He further states that as per sub clause (a) of Clause 8 of the Circular no. IBBI/IP/013/2018 issued by the IBBI on ‘Fee and other Expenses incurred for CIRP’, IRPC would not include any fee or other expenses not directly related to CIRP.
- 2.5.2 Mr. Sanjay Garg submitted that Section 25 of the Code states that the Resolution Professional has the authority to appoint accountants, legal or other professional in manner specified by the Board.
- 2.5.3 Mr. Sanjay Garg submitted that services by Mr. Babbar were not directly related to the CIRP which can be verified from the ‘scope of work’ as reproduced by him:
- a. Bank reconciliation of all the bank accounts of the corporate debtor.
 - b. Preparation of provisional financial statements of the corporate debtor.
 - c. Compliance of Accounting Standards or Indian Accounting Standards as issued by the Institute of Chartered Accountants of India.
 - d. Preparation of final financial statements.
 - e. Preparation of Cash Flow Statements.
 - f. Preparation of pre and post profit and loss account (relevant for events).
 - g. Computation of income under the provisions of Income Tax Act, 1961.
 - h. Filing and management of Income Tax Returns.
 - i. Preparation and filing of Goods and Service Tax returns.
 - j. Supervisory work vis-a-vis preparation, maintenance, & management of taxes,
 - k. Compliances of Tax Deducted at Source (TDS).
 - l. Project related accounting.

- 2.5.4 Mr. Sanjay Garg submitted that the payment of fees to Mr. Surinder Babbar were not directly linked to the CIRP as can also be verified from the 'scope of work' reproduced above. He was solely engaged to provide such services which were required to manage day-to-day operations of the CD. It is the duty of the RP to hire services of professionals to manage the operations of the CD. The payments made to Mr. Surinder Babbar were not to be fixed by the CoC before making such payments as required under Regulation 34 of the CIRP Regulations as per the Circular 12.06.2018 of the Board, such fee and expenses will not form part of IRPC which cannot be directly related to the CIRP and as per Regulation 34 only such expenses are to be fixed by CoC that must form part of IRPC. The services that are provided by professionals in managing the day-to-day affairs of the CD cannot be deemed to be such services which are directly related to the CIRP. Some examples of services directly related to the CIRP are: services required to — a) prepare expression of interest; b) prepare information memorandum; c) prepare request for resolution plan d) audit the financial statements of corporate debtor; e) prepare transaction audit report; f) calculation fair value and liquidation value; etc. Since payment to such professional cannot form part of CIRP, he was not required to make any disclosure.
- 2.5.5 Mr. Sanjay submitted that Mr. Varun Mangla had occasionally assisted him in CIRP of the CD for which he had never received any payment. He submitted that vital and/or confidential information/data of the CD was never compromised by taking assistance of Mr. Varun Mangla as he was never made a part of any process which involved exchange of confidential information pertaining to the affairs of the CD or the CIRP of the CD. It was additionally submitted that Mr. Varun Mangla was never a part of any CoC meeting, deliberations over the resolution plans, voting mechanism of the resolution plans or agenda items, etc. which involved disclosure of confidential information. It was also submitted that Mr. Varun Mangla had never interacted with any stakeholder of the CIRP. Further, since Mr. Varun Mangla only assisted Mr. Sanjay Garg in discharge of his duty to keep the CD as a going concern, no disclosure was required to be filed by him.
- 2.5.6 Mr. Sanjay Garg further submitted that the amount payable to Mr. Surinder Babbar as an Advisor (Finance) was directly paid from the account of the CD through which other operational payments were made in the usual course of business. separate accounts were used for payment of business operational expenses (including monthly payments to employees/ consultants engaged in the ordinary course of business of the CD) and CIRP related expenses (including amount payable to professionals engaged by the RP). The payment of CIRP related expenses/cost was made from a separate account maintained with Kotak Bank by the RP. However, the amount of Mr. Surinder Babbar was paid from the account through which business operational payments/ receipts were managed and not from the account from which CIRP expenses were paid. While making payment of amount of Mr. Babbar, the following mechanism was followed: 1. The Finance Team of the CD prepared the payment sheets for disbursement of monthly salary/ fee of employees and other operational expenses. 2. These payment sheets were sent to the RP for confirmation and release of payment. 3. Payments as per payout sheets were made by the RP after deducting applicable taxes from the account maintained for payment of business operational expenses. It is also apt to mention that in contrast to the above, the payment of CIRP expenses were made out of the CIRP Bank Account directly by RP and thereafter, intimation regarding the same was sent to the Finance Department of the CD for incorporating and updating the Financial Statements of the CD.

- 2.5.7 On being enquired about possessing scope of work of Mr. Surinder Babbar, he submitted that there being no direct possession of the scope of work of Mr. Surinder Babbar with a third party, it can safely be submitted that the Finance Head of the CD was well aware of his scope of work and association with CD, and thus, amount payable to him was being routed through the operational bank account of the CD and not from the CIRP bank account of the CD.
- 2.5.8 When Mr. Surinder Babbar was queried about mentioning Mr. Surinder Babbar as associate of RP and belonging to Osrik IPE in the minutes of CoC meeting from 5th to 9th, he submitted that it was an inadvertent and bona fide human error that had occurred in the 5th CoC meeting and continued as is while preparing subsequent minutes. It is trite that human fallibility may be condoned if it is patently a mere error of ‘copy and paste’. He submitted a confirmation signed by directors of Osrik Resolution Private Limited to the effect Mr. Surinder Babbar is not associated with Osrik Resolution Private Limited either directly or indirectly and no pecuniary benefit was derived from IPE.
- 2.5.9 On being asked whether the fees paid to Mr. Surinder Babbar was presented to CoC as part of Cash Flow statement, he submitted that in the 5th CoC meeting, bank balances were discussed and presented. In the 9th CoC meeting, cash flow of operations was presented which reflected inflow and outflow of CD under various heads including ‘Salary’ which contained the amount paid to Mr. Surinder Babbar. In the said Cash Flow Statement, the total amount paid towards “Salary” aggregates to Rs. 4,37,12,519/- out of which the amount paid to Mr. Babbar for 2 months till that date was Rs. 2,25,000/- (after deduction of applicable taxes).
- 2.5.10 Regarding the issue of relationship of Mr. Varun Mangla with Mr. Raman Mangla, director of IPE and confidentiality, he further submitted that Mr. Varun Mangla occasionally assisted the RP in the operational activities of the CD. It was further submitted that relevant information pertaining to operations of the CD was shared with him for assistance in operations. It was also highlighted that CIRP process related information was never shared with him. Mr. Sanjay Garg submitted that Mr. Varun Mangla is the nephew of one of the directors of the IPE, i.e., Mr. Raman Mangla and was only working for knowledge-enhancement and not for monetary benefit.

2.6 Analysis and Findings.

- 2.6.1 The DC notes that the copy of the complaint dated 06.03.2024 received against Mr. Sanjay Garg stated that RP's appointment and remuneration was approved by the CoC for Rs. 1,00,000/- as Resolution Professional and Rs. 1,25,000/- per month to IPE Osrik Resolution Private Limited for providing infrastructure and accounting/ supervision/ execution services. Mr. Sanjay Garg in his reply to complaint dated 20.05.2024 has admitted to the above fact that the IPE Osrik Resolution Private Limited was hired to provide infrastructure and accounting/ supervision/ execution services with regards to the CD for a monthly remuneration of Rs. 1,25,000/-.
- 2.6.2 He also states that Mr. Surinder Babbar was appointed by the answering RP to provide services pertaining to day-to-day operations of the CD vis-a-vis accounting and finance. The appointment of two persons/ entities for identical tasks has not been investigated. Moreover, the representation of Mr. Surinder Babbar as “Associate – Resolution Professional” and name of organisation as “Osrik Resolution Pvt Ltd.” for four continuous CoC meetings cannot be shelved and ignored as

human error. Further, the bank statement and cash flow statement presented before the CoC in 5th and 9th CoC meeting does not reflect any intimation to CoC regarding payment of fees to Mr. Surinder Babbar for providing accounting and finance services when Osrik Resolution Private Limited was also admittedly hired for providing same services.

2.6.3 *Prima facie*, there seems to be an attempt to charge CD twice for same service and passing off the payment to Mr. Surinder Babbar for similar role as expenses for going concern and getting approved at level of RP without intimating the CoC. The issue has not been investigated in that light and therefore the issue may be investigated. Hence, the nature of payment to Mr. Surinder Babbar as CIRP cost may also be further investigated by comparing the scope of work of Osrik Resolution Pvt Ltd with scope of work for Mr. Surender Babbar and relation between them. It may also be investigated whether the payment to Mr. Surender Babbar has been treated as going concern cost to avoid scrutiny by the CoC.

2.6.4 With regards to availing services of Mr. Varun Mangla, the DC notes from the scrutiny of the bank statements of the CD submitted by Mr. Sanjay Garg along with his reply to the IA on 24.05.2024 regarding refund EMD to UBPL that Rs. 39,023/- were paid to Mr. Varun Mangla on 25.01.2023 from the account of CD. The above fact is in contradiction with the submissions of Mr. Sanjay Garg that Mr. Varun Mangla was not working for any monetary benefit. Misrepresentation of the facts before the Board and the DC by Mr. Sanjay Garg is not acceptable. On the issue of breach of confidentiality by Mr. Sanjay Garg for sharing information with Mr. Varun Mangla, no specific instance has been brought out in the SCN. Hence, terms of employment of Mr. Varun Mangla, his remuneration, payments made to him and approval of such cost by CoC need to be further investigated.

3. Order.

3.1. In view of the foregoing, the DC in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby

- (a) directs the Board to re-investigate the issues raised in paragraph 2.3.8, 2.6.3 and 2.6.4 above.
- (b) suspends the authorisation for assignment of Mr. Sanjay Garg having registration No. IBBI/IPA-001/IP-P-01865/2019-2020/12919 for a period of 3 months for contravening clause 14 of the Code of Conduct.
- (c) warns Mr. Sanjay Garg not to misrepresent facts while making submissions before the Board and the DC.

3.2. This Order shall come into force after expiry of 30 days from the date of its issuance.

3.3. A copy of this order shall be forwarded to the Insolvency Professional Agency of Institute of Chartered Accountant of India where Mr. Sanjay Garg is enrolled as a member.

3.4. 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.

3.5. A copy of this order shall be sent to the CoC/ Stakeholders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Sanjay Garg is providing his services, and the respective CoC/ SCC, as the case may be, will decide about continuation of existing assignment of Mr. Sanjay Garg.

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

-sd/-
(Sandip Garg)
Whole Time Member
Insolvency and Bankruptcy Board of India

Dated: 16th December 2024

Place: New Delhi