

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/178/2023

13th June, 2023

ORDER

In the matter of Mr. Raj Kumar Ralhan, Insolvency Professional (IP) under Section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016, and Regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/219/2022-1BB1/741 dated 25.04.2023, issued to Mr. Raj Kumar Ralhan (hereinafter referred to as “IP/ Liquidator”) who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00981/2017-2018/11614.

1. Background

- 1.1 The National Company Law Tribunal, Principal Bench- New-Delhi, (AA) had admitted the application under section 7 of the Code for Corporate Insolvency Resolution Process (CIRP) of M/s Su-Kam Power Systems Limited (CD) vide order dated 05.04.2018 and Mr. Rajeev Chakraborty was appointed as Interim Resolution Professional (IRP) *vide* the same order. The name of Mr. Rajeev Chakraborty was confirmed as a Resolution Professional (RP) on 07.06.2018. The order for liquidation of the CD was passed on 03.04.2019 and Mr. Raj Kumar Ralhan was appointed as liquidator *vide* the same order.
- 1.2 The IBBI, in exercise of its powers under section 218 of the Code read with regulations 3(2) and 3(3) of the IBBI (Inspection and Investigation) Regulations, 2017, appointed an Inspecting Authority (IA-1) to conduct an inspection in all the assignments handled by Mr. Rajkumar Ralhan. The IA-1 served a notice of inspection on 15.10.2020, in response to the notice, Mr. Rajkumar Ralhan provided a reply in multiple tranches *vide* email correspondences in October 2020.
- 1.3 Further, in exercise of the power under section 218 of the Code read with Regulations 7 (2) and 7 (3) of the Inspection and Investigation Regulations, the Board appointed the Investigating Authority (IA-2) to conduct investigation of SU-Kam Power Systems Limited (CD). The IA-2 served a notice of investigation to the Liquidator on 25.07.2022. Pursuant to the said notice, Mr. Raj Kumar Ralhan submitted his reply through email dated 10.08.2022. The IA submitted the Investigation Report dated 16.11.2022 to the IBBI. The IBBI issued the SCN to Mr. Raj Kumar Ralhan on 25.04.2023 based on findings in the Investigation Report in respect of alleged contravenions his role as Liquidator of the CD. Mr. Raj Kumar Ralhan submitted his reply dated 11.05.2023 to the SCNs.

- 1.4 The IBBI referred the SCN, the response of the Liquidator to the SCN, and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. The Liquidator availed the opportunity of personal hearing through virtual mode before the DC on 02.06.2023.

2. Alleged Contraventions, Submissions of IP, and Findings

The contraventions alleged in the SCN and submissions by Mr. Raj Kumar Ralhan are summarized as under:

Contravention-I : Delay in filing Progress Report

- 2.1 The Board has observed that the Liquidation Process of the CD was initiated by the AA vide its order dated 03.04.2019 and Mr. Rajkumar Ralhan was appointed as a Liquidator. In the present matter, it is observed that the 1st Progress Report was filed on 18.11.2019 after a delay of 126 days, and the 2nd Progress Report was filed on 16.01.2020 after a delay of 93 days.
- 2.2 Regulation 15 of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) provides that the Liquidator shall submit Progress Reports, in the format stipulated by the Board, to the AA and the Board for the first Progress Report within fifteen days after the end of the quarter in which he is appointed and for subsequent Progress Report(s) within fifteen days after the end of every quarter during which he acts as liquidator. The liquidator is mandated to make regular reporting to the AA and the Board regarding the status of the liquidation process.
- 2.3 In view of the above, the Board is of the prima facie view that the Liquidator has contravened Regulations 15 and 47 of the Liquidation Regulations read with Clauses 13, 14, and 15 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Submissions made by the Liquidator

- 2.4 The Liquidator has submitted that the first progress report was filed on 18.11.2019 and the second report was filed on 16.01.2020, while filing the progress report the Liquidator prayed to the AA for condonation of delay which was allowed, and the progress report was taken on record.
- 2.5 The Liquidator further submitted that due to following reasons progress reports could not be filed within specified time frame:
- (a) The CD was facing an extreme shortage of cash flows and there were no funds available for making necessary payments in relation to the activities that were required to be carried out for the beneficial liquidation of the CD including inter alia payment for electricity supply at the corporate office, payment for maintaining the Oracle ERP application which is used for arranging the financial information for verification of claims, payment for hiring professionals and consultants for providing support to the

Liquidator in the liquidation process, etc. Further, there were severe technical problems in accessing the ERP which further delayed the preparation of the relevant documents.

- (b) Due to the unavailability of cash flows in the CD resulting in non-payment of dues and salaries to contractors and employees, a state of unrest has arisen at the manufacturing facilities and head office of the Company. The protests had turned aggressive, posing imminent danger and the threat of injury to the liquidator and his team of advisors and the properties of the Company. As a result, the Liquidator wrote to the Superintendent of Police, in Gurugram, Haryana, and sought protection orders in the application filed under Section 144 of the Code of Criminal Procedure 1973.
- (c) Due to the above, there was no proper handover of information and data by employees in the CIRP period to RP and from RP to the liquidator, with complete non-cooperation from employees/senior management of the CD.
- (d) It is submitted that the liquidator was in receipt of a GST refund, which had enabled him to take actions in relation to the liquidation process including the preparation of the progress reports.

2.6 In view of the submissions made above, the Liquidator has requested that the observation made regarding the contravention of Section 35(1) of the Code read with Regulations 15 and 47 of Liquidation Process Regulations read with Clauses 13,14 and 15 of the Code of conduct stipulated in the IP regulations may be withdrawn.

Analysis and Finding

2.7 It is an admitted position that the progress report was filed beyond the period specified under the applicable provisions of the Liquidation Regulations. The excuse taken by Mr. Ralhan for delay in filing progress report cannot be accepted. Usually, the progress report is prepared by the team of the process advisor appointed. In the instant matter, there were two process advisors, namely, Pricewaterhouse Coopers Private Limited (PwC) and Pricewaterhouse Coopers Professional Services LLP (PPSL). These two same process advisors were engaged during CIRP, hence defence of Mr. Ralhan that there was no proper handover the RP to the Liquidator is not tenable. However, since delay is already condoned by the Adjudicating Authority, DC intends to take lenient view on this count.

3. Contravention II: Appointment of Process Advisors

3.1 The Board has observed that the Liquidator in his reply dated 10.08.2022 informed that the process advisors Pricewaterhouse Coopers Private Limited (PwC) and Pricewaterhouse Coopers Professional Services LLP (PPSL) were selected as an advisor for the CIRP proceedings of the CD and subsequently during the 13th CoC meeting dated 19.03.2019, it was decided by the CoC members to continue with the services of the PwC and PPSL and also shortlisted Mr. Rajkumar Ralhan as the liquidator for conducting the liquidation process of the CD.

- 3.2 Section 35(1)(i) of the Code provides that it is the duty of the Liquidator to obtain any professional assistance from any person or appoint any professional, for discharging his duties, obligations, and responsibilities. Further, Regulation 7(1) of the Liquidation Regulations provides that a liquidator may appoint professionals to assist him in the discharge of his duties, obligations, and functions for reasonable remuneration and such remuneration shall form part of the liquidation cost. In view of the foregoing, it is observed that the Liquidator has abdicated his duty in appointing professionals to assist in conducting the liquidation process and allowed the CoC to usurp his authority.
- 3.3 In view of the above, the Board is of the prima facie view that the Liquidator has contravened Section 35(1)(i) of the Code and Regulation 7(1) of the Liquidation Regulations, Regulation 7(2)(a) & (h) of IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clauses 1, 3, 5 and 10 of the Code of Conduct.

Submission of the Liquidator

- 3.4 The Liquidator has submitted that as per the prevailing market practice at that point in time, the CoC members invited competitive bids for the selection of advisors and the liquidator/change of resolution professional (as Mr Rajiv Chakraborty, acting as RP at that point in time, had sought COC's approval for change of RP from various entities. Pursuant to the negotiation held and on rationalization of the fees (the fee was significantly reduced from Rs. 30 lacs per month to Rs. 10 lacs per month to lessen the burden of the CD on basis the of competitive bidding). The Liquidator decided to go ahead with the appointment of PwC and PPSL, considering that being the existing advisors, they will be able to handle the turbulent situation as described above much better than any other entity, who would enter the fray afresh.
- 3.5 The fee of the process advisors and Liquidator was approved by the COC based on the competitive bids invited by the RP as per regulations. It is humbly submitted that the revised fees of the advisors for the remaining CIRP period till the liquidation order was approved by the CoC members in the 13th CoC meeting considering the existing challenges in the assignment which would have been very difficult for any other new advisors to handle. Section 35 (1)(i) provides that the Liquidator has the power and duty to obtain any professional assistance from any person or appoint any professional, discharging his duties, obligations, and responsibilities. The liquidator has availed the services of the existing advisors for professional assistance during the liquidation process, which resulted in the successful sale of the CD as a going concern.
- 3.6 The decision to appoint the process advisors was apprised by the Liquidator to members of the Stakeholders Consultation Committee in the 1st meeting held on 22.04.2019. The liquidator did not abdicate his duty of appointing the professionals; in fact, he exercised his power as the liquidator to take the services of the advisors during the liquidation process which were assisting the resolution professional during the CIRP.
- 3.7 The Liquidator has submitted that there were litigations relating to the brand of the CD going

on which were decided by the Hon'ble Delhi High Court vide order dated 31.10.2019 in favour of the CD by the efforts of the Liquidator and process Advisors, without the brand name, CD could not have sold as a going concern. Apart from the brand litigation various litigations were pending such as avoidance applications, ex-promoters of the CD had filed an application for submission of the scheme to revive the CD under section 230 of the Companies Act, 2013 even though he was not eligible under section 29A (h) of the Code, this litigation eventually went to Supreme Court. Additionally, about 90 active criminal cases were pending in various courts under section 138 of the Negotiable Instrument Act, 1881.

- 3.8 The Liquidator has submitted that in view of the above submission, the observation made regarding contravention of Section 35(1) of the Code read with Regulation 7(1) of Liquidation Process Regulations, Regulation 7 (2) (a and h) of IP regulations and clause 1,3,5,10 of the code of conduct stipulated in the IP regulations may kindly be withdrawn.

Analysis and Finding

- 3.9 The process advisors appointed by the liquidator on the basis of the recommendation and approval in the 13th CoC meetings cannot be said that he has not exercised his power to appoint the professional to discharge his liabilities. If the process advisors appointed during the CIRP be continued/ appointed by the Liquidator during the Liquidation period, it cannot be inferred that the Liquidator has not used his power given under the applicable provisions of the Code and Regulations to appoint the professional for assisting in discharging his duties. Furthermore, perusal of minutes of the first SCC meeting, the agenda to discuss the continuation of professionals was placed for consideration and it is noted that non of the SCC member raised any objection against the issue. Hence, the said contravention is inferential in nature and warrants lenient interpretation.

4. Contravention III: Excessive Liquidation Cost including Liquidator's fees.

- 4.1 The Board has observed that the breakup of the liquidator's fee and fee of process advisors (PwC and PPSL) from the minutes of 13 CoC meetings, and the 1st Stakeholder Consultation Committee (SCC) meeting that out of the total agreed percentage of fees, more than 90% fee was payable to the process advisors (93%, 91% and 90% share in fee for first 6 months, next 6 months and next 12 months, respectively). Hence, it is observed that despite having actually undertaken the assignment, it was pre-decided that the majority share would be payable to the process advisors. Further, it is observed that Liquidator had a partner at PPSL.
- 4.2 The Board has further noted from the reply of the Liquidator that the total amount charged by both the process advisors for their services spanning over a period of 38 months aggregates to Rs. 61.54 lakhs (including GST) whereas the Liquidator had paid an amount of Rs. 5.54 lakhs for the period of liquidation. Any entity engaged to help a liquidator cannot be expected to be entrusted with responsibilities more than those of the liquidator so as to justify such higher fees to such entity in comparison to that of the liquidator.
- 4.3 In view of the above, the Board is of the prima facie view that the Liquidator has inter alia

violated Section 208(2)(a) & (e) of the Code, Regulation 7(1) of the Liquidation Regulations and Regulation 7(2)(h) of IP Regulations read with Clauses 25 and 27 of the Code of Conduct.

Submission of the Liquidator

- 4.4 The Liquidator has submitted that the total fees to be paid to the Liquidator and advisors were decided by the CoC pursuant to the negotiations after multiple quotations received in the competitive bids, against an EOI floated by CoC. Hence it was a well-informed and considered commercial decision of CoC members. The services of advisors were taken on board knowing the challenges and the contentious nature of the assignment and their expertise and capabilities in handling such a complex assignment. The advisors supported the Liquidator in facing all the hurdles during the complex and litigious liquidation process of 38 months including employees unrest, complex litigations, multiple investigations (CBI/ED/Police investigations/Crime branch/EOW, etc.) against the CD pertaining to the Pre-CIRP period which was conducted during the liquidation process.
- 4.5 The Liquidator has further submitted that besides facing huge challenges, the liquidator with the assistance of the advisors was able to run the liquidation process direction a time bound manner and ensured the sale of the Company as a going concern. It is submitted that the dedication and efforts of the advisors cannot be overlooked. It is submitted that the total fee paid to the Liquidator is Rs. 5.64 lakhs and to PwC and PPSL is Rs. 61.54 lakhs (including GST) for providing services for a period of 38 months. The aggregate fee paid is about 1.2% of the realized value. Accordingly, the aggregate fee paid to the advisors i.e., PwC and PPSL come out to around Rs. 1.47 lacs per month (incl GST), for a team of 5 people always supporting the process.
- 4.6 In view of the above submission the observations pertaining to the violation of Section 208(a)(e) of the Code, Regulation 7(1) of Liquidation Process Regulations, Regulation 7 (2) (h) of IP Regulations, and clause 25 and 27 of the code of conduct stipulated in the IP regulations may kindly be withdrawn.

Analysis and Finding

- 4.7 The Liquidator has appointed the Process Advisors (PwC and PPSL) to provide the services during the Liquidation Period and it is an admitted position that the total fee paid to the process advisors was Rs. 61.54 lakhs and the fee paid to the Liquidator of Rs. 5.54 lakhs. The Liquidator during the hearing submitted that the CD was not a going concern during the Liquidation period. The DC notes that if the CD was not going concern during liquidation, what efforts or services were provided by the Process Advisors which required payment of more fee to the process advisors than the fee of the liquidator. It is true that while passing resolution for liquidation of the CD, CoC had decided about the fee of the Liquidator and the process advisors. But after getting appointed as Liquidator, Mr. Ralhan should have examined the requirement of engaging two process advisors, and payment to be made to them in view of the fact that CD was not a going concern and engagement of process advisors and fee payable should have been reviewed accordingly by the Liquidator.

- 4.8 The submission of the Liquidator that because of the support of the process advisors, the Brand litigation of the CD was decided in favor of the CD is not acceptable as for pursuing the litigation for the Brand of the CD separate legal team was appointed.
- 4.9 Hence DC holds that Mr. Ralhan contravened Section 208(a)(e) of the Code, Regulation 7(1) of Liquidation Process Regulations, Regulation 7 (2) (h) of IP Regulations, and clause 25 and 27 of the code of conduct stipulated in the IP regulations

5. Non-disclosure of appointment of Professionals

- 5.1 It is observed by the Board that no Relationship Disclosure regarding the appointment of Firmex International Ltd and M/s Securus Records Management Pvt. Ltd has been submitted by the Liquidator to the Insolvency Professional Agency (IPA) of which the Liquidator is a member as required under Circular No. IP/005/2018 dated 16th January 2018. Further, the appointment/ agreement letter with Adv. Puneet Singh Bindra has not been provided by the Liquidator to IA-1.
- 5.2 In view of the above, the Board is of the prima facie view that the Liquidator has inter alia violated Section 208(2)(e) of the Code, Regulation 4(4) and 4(7) of Inspection and Investigation Regulations and Regulation 7(2)(h) of IP Regulations read with Clauses 8B, 18 and 19 of the Code of Conduct read with Circular No. IP/005/2018 dated 16th January 2018.

Submission of the Liquidator

- 5.3 The Liquidator has submitted that he has disclosed the appointment of professionals to the IIPICAI portal from time to time as per the IBBI circular dated 16.01.2018, which requires disclosure regarding the appointment of professionals by an IP.
- 5.4 The Liquidator has further submitted that M/s Firmex International Ltd and M/s Securus Records Management Pvt. Ltd (“SRM”) are operational service providers in the normal course of business, providing services in relation to the data room and physical record keeping. Hence, the Liquidator was of the view that these appointments do not fall within the preview of “professionals” and are not covered under the purview of the circular dated 16.01.2018.
- 5.5 The Liquidator has also stated that even though disclosure appointments M/s Firmex International Ltd and M/s Securus Records Management Pvt. Ltd (“SRM”) was not made on the basis of the above understanding, for the sake of complete transparency, payments made to these service providers were duly reflected and stated in the quarterly progress report (2nd and 3rd) filed with the AA.
- 5.6 It is also submitted that the appointment of Adv. Puneet Singh Bindra was availed on a single instance where he attended a hearing before Ld. Metropolitan Magistrate, District Saket in a case filed by one of the financial creditors (Hero Fincorp) against the ex-promotor, and the CD was made one of the respondents. Since the Company was not an active party to the matter, the Court granted leave to the CD from becoming a party to the proceedings.

Hence, the services of Mr. Bindra were never availed thereafter. In the 1st Progress report filed before the AA, the Liquidator disclosed the appointment and remuneration paid to Mr. Bindra. Further, the disclosure on the website of IIPICAI was also given by the Liquidator.

Analysis and Finding

5.7 It is an admitted position that M/s Firmex International Ltd and M/s Securus Records Management Pvt. Ltd (“SRM”) was appointed by the Liquidator for providing the services. As per the terms of the agreement with M/s Firmex International Ltd, clause 1 (definition clause) of the Agreement provides that;

*“Services” means the services provided by Firmex pursuant to the agreement including access to the website, encryption, transmission, access and storage of materials in digital form during the course of Transactions, and support, and **professional services**”*

5.8 The Agreement dated 28.05.2019 executed by and between the Liquidator and M/s Securus Records Management Pvt. Ltd (“SRM”) provides that “A. *The Service provider has approached the channel partner and has offered all the necessary infrastructure including trained personal for providing the record management services and channel partner has agreed to accept the offer the service provider on the terms and conditions hereinafter mentioned.*

5.9 Clause (a) sub-section 2 of section 20 and Clause (d) sub-section 2 of section 25 of the Code mandates that the IRP and RP respectively shall appoint for protecting and preserving the value of the property of the CD and managing the operations of the CD as a going concern, accountants, legal or other professionals as may be necessary. Clause 3 and 4 of the Circular dated 16.01.2018 issued by the IBBI also states that the IP shall disclose the relationship of if any, with (i) the Corporate Debtor, (ii) other Professional(s) engaged by him, (iii) Financial Creditor(s), (iv) Interim Finance Provider(s), and (v) Prospective Resolution Applicant(s) to the Insolvency Professional Agency of which he is a member.

5.10 In view of the above, the definition clause of the agreement with M/s Firmex International Ltd clearly mentioned the terms “professional services. The provisions of sections referred to in para 7.7 of this order clearly indicated that services provided by M/s Firmex International Ltd and M/s Securus Records Management Pvt. Ltd (“SRM”) come under the ambit of “other professionals”. Hence, the contention of the Liquidator that both the companies were providing the services to the CD as an Operational Creditor and his understanding about their services not falling the definition of professional services is not tenable.

5.11 Regarding appointment of advocate Mr. Puneet Bindra , nowhere in the Code or Regulations framed thereunder, it has been mentioned that if any professional has been engaged on one occasion, disclosure about such appointment is not required to be made by the IRP/RP/Liquidator. Mr. Ralhan should have followed the disclosure norms stipulated under the Code and Regulations made thereunder rather than imagining incorrect assumption.

6. Order

- 6.1 In view of the aforesaid discussion and material available on record, the DC holds Mr. Rajkumar Ralhan has contravened provisions of the Code and Regulations made thereunder with respect of incurring unreasonable cost during liquidation, and making disclosures with respect to professionals engaged.
- 6.2 Given the fact that Mr Ralhan has already surrendered AFA, which has been accepted by the concerned IPA on 02.11.2022. Further, it is given to understand, his application for withdrawal of IP registration is under consideration. Keeping these facts in mind, the DC under section 220 of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 directs that any fresh application for new IP registration/ AFA as may be submitted by Mr Ralhan in future to work as professional under IBC processes may be kept in abeyance till completion of two years from issue of this order.
- 6.3 This Order shall come into force on expiry of 30 days from the date of its issue.
- 6.4 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Ralhan is providing his services, if any.
- 6.5 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI ,where Mr. Ralhan is enrolled as a member.
- 6.6 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.
- 6.7 Accordingly, the show cause notice is disposed of.

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Dated: 13th June, 2023
Place: New Delhi

(Sudhaker Shukla)
Whole Time Member, IBBI