

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/205/2024

16th February 2024

ORDER

This Order disposes the Show Cause Notice (SCN) No. COMP-11011/54/2022-IBBI/804/1422 dated 13.10.2023 issued to Mr. Alok Kumar Kuchhal, Insolvency Professional under section 219 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 11 and 12 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Investigation Regulations). Mr. Alok Kumar Kuchhal is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with registration No. IBBI/IPA-002/IP-N00114/2017-2018/10284 and a Professional Member of Insolvency Professional Agency (IPA) of the ICSI Institute of Insolvency Professionals (ICSI-IIP) having residential address registered with IBBI at C-154, Sector-51, Noida, Uttar Pradesh-201301.

1. Developments in relation to resolution/liquidation of the CD.

1.1. The Hon'ble NCLT, Allahabad Bench (AA) *vide* order dated 16.04.2019 admitted the application filed under section 7 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of Ratandeeep Infrastructure Private Limited (CD). Mr. Alok Kumar Kuchhal was appointed as the Interim Resolution professional (IRP) on the same day and was later confirmed as Resolution Professional (RP) by AA on 11.06.2020. Since CoC did not find any possible way of resolving CD, it recommended for liquidation with 100% voting share and the liquidation of CD was approved by AA on 31.01.2022 and Mr. Alok Kumar Kuchhal was appointed as liquidator.

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

2.1. On receipt of complaint, the Board, in exercise of the powers conferred to it under section 218 of the Code read with the Investigation Regulations, appointed an Investigating Authority (IA) to conduct the investigation of Mr. Alok Kumar Kuchhal. The investigation notice was issued to Mr. Alok Kumar Kuchhal by IA on 23.11.2022. Mr. Alok Kumar Kuchhal submitted his reply to investigation notice *vide* email dated 02.12.2022. Thereafter, the IA submitted the investigation report to the Board.

2.2. Based on the material available on record including the investigation report, the SCN was issued to Mr. Alok Kumar Kuchhal on 13.10.2023. The SCN alleged contravention of provision of the Code and its underlying regulations. Mr. Alok Kumar Kuchhal replied to the SCN *vide* email dated 25.10.2023.

2.3. The Board referred the SCN, written submissions of Mr. Alok Kumar Kuchhal, 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.

2.4. Mr. Alok Kumar Kuchhal availed an opportunity of personal hearing before DC on 23.11.2023 through virtual mode. Mr. Alok Kumar Kuchhal was given liberty to submit any further written submissions in 10 days from date of hearing. However, no further written submissions was sent by Mr. Kuchhal even after expiry of 10 days from the date of personal hearing.

3. Alleged contraventions and submissions of the IP.

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

Contravention

3.1. Issue regarding constituting the CoC with related party.

3.1.1. It was observed from the copy of MCA Master Data submitted by the complainant that Mr. Alok Kumar Kuchhal was appointed as director in Tirupati Balaji Fibers Private Limited and Silvertan Papers Limited. Further, in the reply dated 06.01.2023 submitted to the IA, Mr. Kuchhal provided the details of companies/LLPs wherein he have/had been appointed as director / additional director. As per the said details, he was appointed as director of Tirupati Balaji Fibers Private Limited and Silvertan Papers Limited w.e.f. 02.04.2020 and 30.09.2020, respectively, i.e., during the currency of CIRP of CD.

3.1.2. It was observed from the Annexure-G to Information Memorandum (IM) that one of the shareholders of the CD, Mr. Prasoan Agarwal, holding 10% share in the CD, was also one of the directors in Silvertan Papers Limited wherein Mr. Alok Kumar Kuchhal has been appointed as one of the directors after initiation of CIRP. Therefore, his action of accepting directorship of a company wherein a shareholder having substantial shareholding of the CD is also a director, is against the Code of Conduct for IPs.

3.1.3. In view of the above, the Board held the *prima facie* view that Mr. Alok Kumar Kuchhal has contravened section 208(2)(a) & (e) of the Code, regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clauses 1, 2, 3 and 5 of the Code of Conduct specified thereunder.

3.2. Submissions made by the IP

3.2.1. Mr. Alok Kumar Kuchhal submitted, it has come to his attention that Mr. D.S. Solanki, the complainant, has formally retracted all previously made allegation(s), complaint(s), FIR(s) filed. Also, it transpired that the actual intent behind the complainant's action of

filing a complaint before the Board was rooted in a dispute with the former management of the CD, which has now been resolved between the involved parties. He submitted that the facts may be verified directly from Mr. Solanki. He further submitted that the concerns/ issues raised by the IA in its investigation report, have undergone thorough examination, argumentation, and adjudication at each judicial tier, including the Hon'ble NCLAT, Hon'ble Supreme Court, and most recently the AA. Thus, on the premise of the above facts and considering that the concerns raised against him have already passed the appropriate judicial litmus test, the fundamental purpose of the entire investigation is rendered obsolete as on date. Further, moving ahead in this investigation would in a way tantamount to questioning and reviewing the judicial orders, and would also be barred by the principle of *res judicata*.

3.2.2. He submitted that the Hon'ble NCLAT *vide* its order dated 06.12.2022 in Company Appeal (AT) Ins No. 718/2022 has already adjudicated upon the concerns raised by the Board. Hon'ble NCLAT acknowledged and upheld the conduct of the liquidator in accordance with the provisions of the Code and Liquidation Process Regulations and having acted in consonance with the provisions of law. The relevant extract of the NCLAT order is reproduced below:

“35. In view of the above-stated situation and the turn of events, we are of the clear opinion that the Liquidator, being duty-bound to proceed in accordance with the provisions of IBC and Liquidation Process Regulations when the purported scheme was not submitted in three weeks, acted quite appropriately and in consonance with the provisions of law.”

3.2.3. He submitted that the allegation with respect to his directorship in the Company Silvertan Papers Limited while serving as IRP/RP during the CIRP of the CD was specifically raised before the Hon'ble Apex Court in I.A. No. 26569/2023 filed by a group of home buyers led by Mr. Surender Agarwal, erstwhile director of the CD (who is the same person with whom his relationship is alleged), wherein during the course of arguments, Hon'ble Justice Sanjay Kishan Kaul had specifically asked the Counsel representing I.A. 26569/2023 that *“did you come to know about your relationship now”* and *“what benefit did the Liquidator extend to you moreover if you're alleging against him here that means no benefit/ favor has been extended to you”*. Thereafter the same was argued and categorically dismissed by the Hon'ble Apex Court *vide* order dated 07.02.2023 in I.A. 26569/2023 and Civil Appeal No. 125/2023 with the observation that *“once the process is followed, such kind of endeavours are bound to happen and will only prolong the matter and go contrary to the very objective of the Code.”*

3.2.4. Mr. Alok Kumar Kuchhal further submitted that the applications (namely I.A. 177/2022, I.A. 348/2022, I.A. 247/2022 & I.A. 228/2023) were filed by Mr. Prince Jain supported by the flat buyers and erstwhile management of the CD wherein serious allegations regarding his eligibility to hold the position as liquidator due to alleged directorship in Silvertan Papers Limited and Tirupati Baalaji Fiberr Private Limited along with various claims of

non-compliance(s) of regulations were raised. Notably, since the subject matter of the said applications involved allegations against the Liquidator, the AA dedicated substantial time to hear arguments on these applications at length for two weeks. Only after thorough and meticulous hearings, the AA dismissed I.A. 177/2022 and the other applications, wherein, the AA not only rejected the objection raised against the liquidator challenging his appointment as liquidator, on the ground that no relationship exists between the liquidator or any of the ex-Director(s) of the CD but also dismissed allegations of non-compliance of regulations, with the observation that the liquidator has conducted the entire process strictly in accordance with the law. The relevant finding of the AA *vide* its order dated 21.09.2023 in I.A. 177/2022 is reproduced hereinbelow:

39. The Applicant has alleged that since Mr. Prasoon Agarwal was former Director of the Corporate Debtor and also served as Director of the Silverton Papers Limited wherein Prasoon Agarwal, Pankaj Agarwal, Surendra Agarwal (Father of Mr. Prasoon Agarwal) B.G Freight Shoppe India Pvt. Ltd (COC Member/Financial Creditor) were shareholders.

40. The Liquidator was holding the post of Independent Director in Silverstone Private Limited from 30.09.2020 to 26.03.2021 and is eligible to be appointed as Independent Director on the Board of the Corporate Debtor in terms of the aforesaid provision since liquidator is not related to any serving Directors and Promoters of Silverstone Private Limited. Moreover, the liquidator did not have any pecuniary relationship with the company or its director or promoters. Therefore, objection raised by the applicant challenging the eligibility of the respondent to be appointed as liquidator is rejected.

3.3. Analysis and Findings,

- 3.3.1. The DC notes that the facts dealt by Hon'ble NCLAT in Company Appeal (AT) Ins No. 718/2022 *vide* its order dated 06.12.2022 are different from the facts stated in the SCN and has no connection with the issues raised in the SCN and being dealt by this DC. The entire order of Hon'ble NCLAT has been studied. The appellant in aforesaid appeal prayed for consideration of its scheme of compromise and arrangement and stay on auction notice dated 19.05.2022 till the scheme proposed by it is considered by the creditors. The appellant alleged unreasonable functioning of the Liquidator in moving forward with the auction.
- 3.3.2. The appellant had made the same prayer before the AA which was denied. Hence the appellant filed the aforesaid appeal before Hon'ble NCLAT which considered the submissions and facts of the case and held that the Liquidator acted in fairness, natural justice and in consonance with objectives of the Code. It observed that since such scheme was not submitted in time, he acted appropriately in issuing the auction notice. So, the observation made by Hon'ble NCLAT regarding the conduct of liquidator in para 35 can be said to regarding upholding the action of liquidator in not accepting scheme of compromise and arrangement and issuing auction notice. However, since in the appeal, there is no allegation of conduct unbecoming of an IP by way of compromising his

independence which has been made in the SCN, the Hon'ble NCLAT did not have any occasion to examine the same. Hence, it is not correct on the part of the liquidator to state that the same matter has been dealt by the Hon'ble NCLAT and hence is not covered by the principle of *res judicata*. Hence, the statement of the liquidator in this regard is misleading.

3.3.3. Regarding proceedings before Hon'ble Supreme Court, the DC notes that I.A. No. 26569/2023 was filed by few home-buyers of the CD against the order dated 06.12.2022 passed by the Hon'ble NCLAT, New Delhi in Company Appeal (AT) (Insolvency) No. 718 of 2022 whereby the Hon'ble NCLAT, New Delhi upheld the order dated 01.06.2022 passed by AA allowing the liquidator to proceed with the e-auction without any consideration of the scheme proposed under section 230 of the Companies Act, 2013. The applicants alleged that the e-auction process initiated on 01.06.2022 carried out at the behest of the liquidator was not performed in an ethical or transparent manner, to the extent that M/s AKJ Real Tech Pvt. Ltd. was the only successful bidder in the auction and the liquidator accepted an amount of Rs. 7.45 crores. The applicants alleged that the present market value of the asset is about Rs. 12-15 crores and the same has been offered by them who was willing to pay an amount of Rs. 11.48 crores. Hence, the entire auction process is *mala fide* and a colourable exercise of power & is liable to be set aside on this factum alone.

3.3.4. Applicants have made several allegations in the application made before the Hon'ble Supreme Court in para 8 to 15. The allegations have been made regarding the conduct of liquidator on various counts like unilaterally deciding to auction the assets and dissolve the CD, not acting in ethical/transparent manner, conducting resolution and e-auction in prejudicial manner, contravening provision of Code and its underlying regulations etc. One of the allegations raised in the aforesaid application was that Mr. Alok Kumar Kuchhal and his associate Chanchal Yadav took charge as the directors in Silvertoan Papers Limited during the CIRP of the CD. It was alleged that the said action is in contravention of regulation 3(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) which prohibits an IP from being appointed as a RP of a corporate debtor if he is not independent of the corporate debtor.

3.3.5. The aforesaid application was dismissed by Hon'ble Supreme Court on 07.02.2023 observing that *"Once the process is followed, such kind of endeavours will only prolong the matter and go contrary to the very objective of the Insolvency and Bankruptcy Code, 2016"* It was further observed that *"Learned counsel for the appellant states that the appellant not been able to raise the amount of Rs.12.48 crores but has got a draft of Rs.3,00,00,000/- Despite this we have heard learned counsel for the appellant. The bottom line is that 12.48 crores haven not been brought as assured on the last date."* After making above observations, the appeal and application was dismissed. Hon'ble Supreme Court has dismissed the application on account of the fact that the bidder has not been able to show his seriousness even before Hon'ble Supreme Court even at this late stage. Hon'ble

Supreme Court has not gone into the allegations of misconducts alleged against the liquidator. Therefore, it is incorrect for the liquidator to plead on the basis of this order that his conduct has been found above board by Hon'ble Supreme Court. After studying the order of Hon'ble Supreme Court, it would be correct to say that Hon'ble Supreme Court did not make findings on merit on the issue of acceptance of directorship of Silvertoan Papers Limited by Mr. Alok Kumar Kuchhal while being RP of CD and therefore the matter is not covered by the principle of *res judicata*.

3.3.6. The AA in its order dated 21.09.2023 dealt with the issue of eligibility of Mr. Alok Kumar Kuchhal for appointment as liquidator of CD. The AA held that he is eligible to be appointed as independent director on the board of the CD since he is not related to any serving directors and promoters of Silvertoan Private Limited. Moreover, he did not have any pecuniary relationship with the CD or its director or promoters. Hence, objection raised regarding challenge to the eligibility of Mr. Alok Kumar Kuchhal to be appointed as liquidator was rejected. The AA dealt with respect to appointment of Mr. Alok Kumar Kuchhal as liquidator of the CD. However, it did not comment with regards to independence of Mr. Alok Kumar Kuchhal while performing his duties as RP of CD and conduct of the RP with regards to taking appointment as director of Silvertoan Papers Limited after commencement of CIRP of the CD.

3.3.7. The SCN herein alleges contravention of Code of Conduct for accepting directorship of Silvertoan Papers Limited during CIRP of CD. Mr. Prasoon Agarwal (son of Mr. Surendra Agarwal) was holding 10% shareholding in the CD and was one of the directors of Silvertoan Papers Limited. Also, Mr. Surendra Agarwal (father of Mr. Prasoon Agarwal) was one of the directors of the CD and held 5.79% shareholding in Silvertoan Papers Limited. So, the companies were clearly inter-related. The RP is supposed to file applications under section 66 against directors in the case of wrongful trading and insolvent trading. The same gets seriously compromised once he accepts a position in a company where such inter-relations exist. Hence, his independence and impartiality will be affected once he becomes one of the directors and sits on the same table with these inter-related directors on the Board of Directors of another company. The conduct of the liquidator should be above board, and he should not give any scope while working as insolvency professional to create any doubt about his integrity. Accepting post of director in a company where director is a shareholder of the CD and shareholder in the company is director of the CD is amounting to a situation where IP cannot be said to have complete independence in its professional relationship in terms clause 5 of the Code of Conduct. The fact that Mr. Alok Kumar Kuchhal resigned from the post of director after six months, indicates that Mr. Alok Kumar Kuchhal realised that there may be some conduct issue on his part and accordingly he tendered resignation from the post of directorship. Hence, the conduct of Mr. Alok Kumar Kuchhal cannot qualify to be above the board and creates doubt about his independence in professional conduct.

Order

- 4.1. In view of the submission made by Mr. Alok Kumar Kuchhal, and materials available on record, DC notes that Mr. Alok Kumar Kuchhal compromised his independence as Resolution Professional by accepting the directorship of Silvertan Papers Limited, director of which was having substantial shareholding in the CD and one director of the CD was having shareholding in Silvertan Papers Limited. This is against the Code of Conduct prescribed by the Board for IPs.
- 4.2. Keeping in view the facts recorded in the summary findings, the Disciplinary Committee, in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the Investigation Regulations hereby suspends the registration of Mr. Alok Kumar Kuchhal for 3 months.
- 4.3. This Order shall come into force after expiry of 30 days from the date of this order.
- 4.4. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Alok Kumar Kuchhal is enrolled as a member.
- 4.5. A copy of this order shall be sent to the CoC/Stake Holders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Alok Kumar Kuchhal is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Alok Kumar Kuchhal.
- 4.6. 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.
- 4.7. Accordingly, the show cause notice is disposed of.

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(Sandip Garg)
Whole Time Member, IBBI

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(Sudhaker Shukla)
Whole Time Member, IBBI

Date: 16th February, 2024
Place: New Delhi