

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/129/2022

12th September, 2022

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2021/88/3830/525 dated 6th July, 2022 issued to Mr. Jayesh Natvarlal Sanghrajka, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) and regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 (IP Regulations). Mr. Jayesh Natvarlal Sanghrajka is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-001/IP-P00216/2017-2018/10416.

1. Developments in relation to resolution of the CD

1.1. The Hon'ble NCLT, Mumbai Bench (AA) vide order dated 20.11.2018 admitted the application under section 7 of the Code filed by Dipco Pvt. Ltd. for initiating Corporate Insolvency Resolution Process (CIRP) of Ariisto Developers Private Limited (CD). The AA appointed Mr. S. Gopalakrishnan as an Interim Resolution Professional (IRP) who was replaced by Mr. Jayesh Natvarlal Sanghrajka, Resolution Professional (RP) by vide order dated 23.01.2019. Thereafter, the resolution plan by Prestige Estates Projects Ltd in the CD was approved by AA vide order dated 23.03.2021.

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

2.1. The Board, in exercise of the powers conferred to it under section 218 of the Code read with the Inspection Regulations, appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Jayesh Natvarlal Sanghrajka vide order dated 12.07.2021 and 18.08.2021. A draft inspection report (DIR), prepared by the IA, was shared with Mr. Jayesh Natvarlal Sanghrajka on 17.10.2021, to which Mr. Jayesh Natvarlal Sanghrajka submitted reply vide email dated 01.11.2021. The IA submitted the Inspection Report to Board on 13.05.2022.

2.2. Based on the material available on record including the Inspection Report, the Board issued the SCN to Mr. Jayesh Natvarlal Sanghrajka on 06.07.2022. The SCN alleged contravention of section 5(13), 208(2)(a) and (e) of the Code, regulation 31 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulations 7(2)(a), (ca) and (h) of IP Regulations, clauses 1, 2, 3, 5, 12, 14 and 25 of Code of Conduct of IP Regulations read with IBBI Circular No. IBBI/IP/013/2018 dated 12.06.2018. Mr. Jayesh Natvarlal Sanghrajka submitted his reply

to SCN vide e-mail dated 27.07.2022.

- 2.3. The Board referred the SCN, written submissions of Mr. Jayesh Natvarlal Sanghrajka, and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Jayesh Natvarlal Sanghrajka availed an opportunity of personal hearing before DC on 06.09.2022 through virtual mode and he along with Advocate Ashish Makhija were present.

3. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Mr. Jayesh Natvarlal Sanghrajka's submissions thereof are summarized below:

3.1. Contravention

Expenses to be borne by CoC included in insolvency resolution process cost (IRPC)

- 3.1.1 It is noted that from the proposal letter dated 16.05.2019, that Rajani Associates, Solicitors were appointed as the legal advisors for the "RP and CoC". Also, it is noted from the IRPC annexure enclosed with the minutes of 13th meeting of Committee of Creditors (CoC) that Rajani Associates, Solicitors has been shown as "CoC legal Advisor". In the same annexure, separate fees under the head of "legal advisors" has also been mentioned.
- 3.1.2 The Code only allows the expenses directly relating to CIRP to be charged to IRPC. The proposal letter and the annexures to the minutes clearly indicate that Rajani Associates, Solicitors were acting as legal advisors to the CoC/RP and not exclusively for Mr. Sanghrajka, RP as the IP has also included fees of Legal Advisors as a separate item in the IRPC as mentioned in the annexure to 13th CoC meeting. As the engagement of Rajani Associates was for CoC, the expenditure incurred on account of this should not have been included in the IRPC. It is the duty of IP to ensure reasonable care and diligence while performing their duties including incurring expenses.
- 3.1.3 In view of the above, the Board is of the *prima facie* view that Mr. Sanghrajka has *inter alia* violated section 5(13) of the Code, regulation 31 of the CIRP Regulations, 7(2)(a) and (h) of the IP Regulations read with clause 1, 2, 3, 5 and 14 of the Code of Conduct.

3.2. Submissions made by the IP

- 3.2.1 Mr. Sanghrajka submitted that the proposal letter dated 16.05.2019 issued by Rajani Associates, as the nomenclature indicates, was merely a proposal from Rajani Associates. It is clarified that Rajani Associates were engaged to represent the Resolution Professional/CD in all legal matters. The minutes of various CoC meetings of 11th, 12th, 14th, 17th, 19th and 20th CoC meetings, show that the representatives of Rajani Associates were present as Legal Advisor to the RP.
- 3.2.2 Mr. Sanghrajka also submitted that the members of the CoC did not engage Rajani

Associates to represent them in any of the proceedings before the AA nor any legal advice was ever obtained by the CoC members from Rajani Associates. The orders of the proceedings before the AA corroborate the fact that the CoC members were represented by their own legal counsels and the details of various attorneys/counsels was also provided.

3.2.3 Mr. Sanghrajka also shared the letter dated 15.07.2022 of Rajani Associates, wherein it has been clarified and confirmed that they have only advised and represented the RP and that they never acted, advised or represented any of the members of the CoC during the CIRP of the CD. Mr. Sanghrajka adds that Rajani Associates shown as CoC legal advisor is a typographical error.

3.3. Findings

3.3.1 The excessive IRPC is an added financial stress on an already distressed CD. Therefore, to ensure a successful resolution it is an essential duty of an IP to ensure that the expenses incurred during the CIRP is reasonable so that the CD, who is already entangled in a web of unsustainable liabilities is not further over-burdened with exorbitantly high IRPC. Therefore, an IP must maintain balance between discharging the duties and responsibilities as an IP and the cost he incurs for doing the same. The Code and the Regulations made thereunder provide that an IP is to take reasonable care and diligence while performing their duties, maintain transparency and integrity.

3.3.2 In this regard, regulation 31 of the CIRP Regulations provides as to what may constitute the IRPC as under:

“31. Insolvency resolution process costs.

“Insolvency resolution process costs” under Section 5(13)(e) shall mean-

(a) amounts due to suppliers of essential goods and services under Regulation 32;

(aa) fee payable to authorised representative under sub-regulation (8) of regulation 16A;

(ab) out of pocket expenses of authorised representative for discharge of his functions under section 25A;

(b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);

(c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;

(d) expenses incurred on or by the resolution professional fixed under Regulation 34; and

(e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.”

3.3.3 The DC observes in the present matter, that the proposal letter dated 16.05.2019 and the minutes of 13th CoC meeting notes that Rajani Associates, Solicitors have been shown as ‘RP/ CoC legal Advisor’ and their expenses are included in the IRPC. Mr. Sanghrajka has, however, submitted that the Rajani Associates being mentioned as CoC legal advisor is a typographical error and to that effect has shared the CoC minutes of 11th, 12th, 14th, 17th, 19th and 20th meetings wherein the attendance of Rajani Associates has been marked as

legal advisors of RP. Further, a letter dated 15.07.2022 of Rajani Associates was also placed on record where it has been clarified that they *never acted, advised or represented any or all members of the CoC in the captioned matter*. On directions of DC, the copy of the appointment letter was produced, and this letter dated 29.07.2019 issued by the RP to Rajani Associates lays down the scope of engagement. From the appointment letter, it is clear that Rajneesh Associates were engaged as ‘Legal Advisor of Mr. Jayesh Natvarlal Sanghrajka, Resolution Professional’. In view of the documents on record the submission of Mr. Sanghrajka is accepted.

4.1 Contravention

Inconsistency in the disclosures filed with the Board and IPA

4.1.1 Regulation 7(2)(ca) of IP Regulations provides that an IP shall pay to the Board, a fee calculated at the rate of 0.25 percent of the professional fee earned for the services rendered by him as an IP in the preceding financial year, on or before the 30th of April every year.

4.1.2 It is observed from the Form III filed belatedly with Insolvency Professional Agency (IPA) on 30.03.2021, that Mr. Sanghrajka disclosed an amount of Rs. 2,83,70,667 as “Fee payable to RP” for the period from 23.01.2019 to 23.03.2021 in terms of IBBI Circular dated 12.06.2018. Further, it is noted from the Form E filed under regulation 7(2)(ca) of IP Regulations for financial years 2018-19, 2019-20 and 2020-21 that Mr. Sanghrajka reported professional fee earned from the instant assignment as ‘Nil’, Rs. 96 lakh, and Rs. 1.12 crore, respectively. Therefore, the total professional fee for three years amounts to Rs. 2.08 crore. Thus, there are inconsistencies in the disclosures filed by the IP with IPA and those with the Board.

4.1.3 Mr. Sanghrajka’s conduct of disclosing less income to the Board, is an attempt in paying less fees to the Board and, therefore, *prima facie* he has *inter alia* violated regulation 7(2)(ca) of IP Regulations and clauses 1, 2, 12 and 14 of the Code of Conduct.

4.2 Submissions made by the IP

4.2.1 Mr. Sanghrajka submitted that the Form E filed by him with the Board is correct as he received a total professional fee of Rs. 2.08 crores during financial years 2018-19, 2019-20 and 2020-21 as as ‘Nil’, Rs. 96 lakhs, and Rs. 1.12 crore, respectively and a fee of 0.25% on the same was paid to the Board. There is neither any error nor any amount has been unpaid to the Board. The receipt of the professional fee of Rs. 2.08 crores by the RP for 26 months have been duly certified by a Chartered Accountant.

4.2.2 Mr. Sanghrajka submits that on examination of Form III filed by him with the IPA, it is noted that the amount of Rs. 2.83 crores include not only the professional fee of Rs. 2.08 crores of the RP but also includes the professional fee of IRP, GST etc. The reconciliation of the amount stated in Form E and Form III is enumerated hereunder: -

| Additional Items included in Form III | |
|--|---------------|
| Professional Fee of IRP | Rs. 10,66,667 |
| GST on RP Fees | Rs. 37,44,000 |
| Amount mentioned in Form III inadvertently | Rs. 27,60,000 |

4.2.3 On having noticed the inadvertent error in Form III filed with IPA, Mr. Sanghrajka took steps to file a revised Form III to the IPA. The revised Form III was filed with the IPA by the Mr. Sanghrajka on 24.07.2022. The inadvertent error in Form III with the IPA, which was the cause of apparent inconsistency, has been rectified by filing a revised Form III. Mr. Sanghrajka regrets the inconvenience caused to the Board and undertakes to be more careful in future.

4.3 Findings

4.3.1 The regulation 7(2)(ca) of the IP Regulations provides that:

“(ca) pay to the Board, a fee calculated at the rate of 0.25 percent of the professional fee earned for the services rendered by him as an insolvency professional in the preceding financial year, on or before the 30th of April every year, along with a statement in Form E of the Second Schedule;”

4.3.2 The DC notes that the the Form III filed by Mr. Sanghrajka with his IPA as “*Fee payable to RP*” on 30.03.2021, disclosed an amount of Rs. 2,83,70,667 for the period from 23.01.2019 to 23.03.2021 whereas in the Form E filed with the Board for financial years 2018-19, 2019-20 and 2020-21 Mr. Sanghrajka reported professional fee earned as Rs. 2.08 crore. Mr. Sanghrajka in his submission states that in the Form III the heading ‘fees payable to RP’ is inclusive of professional fee of Rs. 2.08 crores along with fee of IRP, GST etc. He further submits that he has filed the rectified Form III with the IPA on 24.07.2022 wherein the fees of IRP and additional amount of Rs. 27,60,000 inadvertently mentioned in previous Form was removed.

4.3.3 The DC notes that discrepancy in reporting the professional fee amount differently to IPA and the Board has been inadvertently done, more so, the errors in Form III with the IPA have been rectified by Mr. Sanghrajka. Hence, the DC notes that no *mala fide* intent or lasting consequences have been made. However, Mr. Sanghrajka is cautioned to be more careful in future while filing disclosure forms.

5.1 Contravention

Charging of success of fees

5.1.1 On perusal of minutes of 1st CoC meeting, it is observed that a monthly fee of Rs. 3 lakh plus taxes and fixed cost of Rs. 5 lakh was fixed for Mr. Sanghrajka’s role as the RP in the CD. The same was also approved by the CoC with requisite majority. It is pertinent to mention that the element of success fees was not discussed or deliberated in this meeting nor in any of the subsequent CoC meetings.

5.1.2 It is further observed that no success fee amount was mentioned in the chart/ list of CIRP expenses as on 10.11.2019 enclosed with the notice and agenda dated 10.11.2019 for the 20th CoC meeting and only footnote stated that “*Amount of success fees to be decided by the CoC*” was placed. However, in the last CoC meeting i.e the 20th CoC meeting held on 12.11.2019, under the agenda “*to ratify the CIRP cost incurred till date and to approve the budget for further expenses to be incurred and decide way forward fund raise in this connection*” Mr. Sanghrajka got approved the success fee for a sum of Rs. 3 crore by the CoC.

5.1.3 Mr. Sanghrajka’s conduct of charging success fees at the fag end of CIRP *prima facie* appears to be unjustifiable and does not meet the mandates stipulated for an IP to ensure the elements of transparency, reasonableness, consistency with Code read with Regulations and Circulars issued thereunder. Mr. Sanghrajka’s conduct was strongly objected by AA in their order dated 23.03.2021 in I.A. No. 3714 of 2020 holding that “*Therefore, we believe that by disallowing the success fees to the RP, we are not intruding in the commercial wisdom of the CoC. Further, we believe the success fees amounting of Rs.3 Crores is unreasonable. Also, it was only in the last meeting of the CoC that the fees was claimed*”. The said order of AA was also upheld by Hon’ble NCLAT in their order dated 20.09.2021. There is clearly *mala fide* intent in getting success fee discussed and approved in the last CoC meeting when Mr. Sanghrajka is aware about the contours of resolution plan.

5.1.4 An IP is obliged under section 208(2)(a) of the Code to take reasonable care and diligence while performing his duties, including incurring expenses. The IBBI Circular No. IBBI/IP/013/2018 dated 12.06.2018 clearly specifies that not only fee payable to IP is reasonable but also other expenses incurred by him are reasonable.

5.1.5 In view of the above, the Board is of the *prima facie* view that Mr. Sanghrajka has *inter alia* violated clause 1, 2, 12, 14 and 25 of the Code of Conduct read with IBBI Circular No. IBBI/IP/013/2018 dated 12.06.2018.

5.2 Submissions made by the IP

5.2.1 Mr. Sanghrajka submitted that an amount of Rs. 3 lakhs plus taxes along with fixed costs of Rs. 5 lakhs was fixed for his role as the RP and the same was approved by the CoC in the 1st CoC Meeting with requisite majority. Later on, in the 20th CoC meeting, the CoC approved a success fee of Rs. 3 crores in consideration of the excellent work done by Mr. Sanghrajka while resolving the insolvency and bringing resolution plan to fruition. The achievement of the RP in successfully closing the CIRP came to be recognized by the CoC. The minutes of 20th CoC meeting reveal that success fee issue was discussed in detail and the relevant portion of the minutes is reproduced as under: -

“The COC members discussed and deliberated on CIRP Cost incurred till date, budget of expenses and success fee of the RP. After detailed discussion of the COC, it was decided by the COC that Rs. 3 Crores is just, fair and reasonable success fee of the RP in the light

efforts made by the RP in bringing successful Resolution Plan.”

5.2.2 Mr. Sanghrajka submits that the success fee was approved by the CoC with 86.67% majority and he had no role in the manner of voting by the CoC. The CoC is an independent body taking decisions as per their discretion after prudently considering all aspects. The constitution of CoC shows that it included large scale banks and financial institutions such as HDFC Limited, J M Financial Capital Limited, India Bulls Housing Finance Limited, IIFL Trustee Limited, Piramal Capital and Housing Finance Limited amongst others. The CoC was diversified and broad with 61 financial creditors other than the 400 Homebuyers in the CoC. Looking at the diversified list of CoC members, it cannot be presumed that Mr. Sanghrajka as RP had any role in influencing the CoC members.

5.2.3 The decision of the CoC reflects the quality of work done by Mr. Sanghrajka. The real estate cases are the most difficult ones to resolve and the project was stuck for more than 10 years comprising of approximately 400 homebuyers. Mr. Sanghrajka had more than 20 years of experience in Real Estate Advisory Services ranging from negotiation to closure of the deals. That due to specific industry experience and years of dealing with practical issues, a viable resolution plan for revival of the CD could be made. Also Mr. Sanghrajka did not appoint any process advisors for the assignment of CD and thus, no separate fees was charged for any process advisors. During the course of CIRP, claims to the tune of Rs 3046 crores were received out of which claims of Rs 2457.97 crores were admitted. In the resolution plan submitted by Prestige Estates Projects Limited recoveries for various stakeholders ranged from 42% - 100% was made. In the same meeting, the CoC after discussion and deliberation decided and approved for an amount of Rs. 3 Crores as ‘Success Fees’ which was merely 0.18% of the Settlement Amount of Rs. 1,650 Crores. For the sake of clarification, it is also submitted and is matter of record that the RP did not propose amount of Rs. 3 Crores as “Success Fee” and perusal of the notice for the 20th meeting makes it ostensible that it was left at the discretion of CoC to decide and approve the “*Success Fee*”, if they so deem fit.

5.3 Findings

5.3.1 As per Circular no. IBBI/IP/013/2018 dated 12.06.2018 titled “*Fee and other Expenses incurred for Corporate Insolvency Resolution Process*” it has been clarified that the RP is to ensure that the fees payable to him are reasonable. It has been clarified as follows:

“6. Keeping the above in view, the IP is directed to ensure that:-

(a) the fee payable to him, fee payable to an Insolvency Professional Entity, and fee payable to Registered Valuers and other Professionals, and other expenses incurred by him during the CIRP are reasonable;

5.3.2 In the present case it is observed that in the minutes of 1st CoC meeting, a monthly fee of Rs. 3 lakh plus taxes and fixed cost of Rs. 5 lakh was allowed for Mr. Sanghrajka, RP by the CoC with requisite majority. However, it has been alleged that the success fees was not discussed in any of the CoC meetings but Mr. Sanghrajka got approved the success fee for a sum of Rs. 3 Crore by the CoC in the last CoC meeting. The AA in its order dated

23.03.2021 had noted that *“Therefore, we believe that by disallowing the success fees to the RP, we are not intruding in the commercial wisdom of the CoC. Further, we believe the success fees amounting of Rs.3 Crores is unreasonable. Also, it was only in the last meeting of the CoC that the fees was claimed”*. This order of AA was also upheld by Hon’ble NCLAT.

5.3.3 It is important to note that the Code does not have any mention about the possibility of awarding success fee to the resolution professional. May be the remunerations during the process are considered as enough for attracting due services on behalf of the resolution professional. Another consideration could have been to keep the CIRP cost at the bare minimum so net availability to the creditors is maximized. However, in some of the DC orders issued by the Board earlier, success fee has been allowed, hence no deviation is being suggested in this order. The only issue which needs decision is about reasonableness of amount of success fee. On the issue, Mr. Sanghrajka mentioned that the success fee has not been disbursed to him as matter is sub-judice before Hon’ble Supreme Court. Hence,DC does not find it proper to comment on the issue.

6. Order

- 6.1 In view of the above, noting the discrepancy in statements made regarding fee accrued to him, the DC notes that Mr. Sanghrajka should have been more careful and vigilant in conducting the CIRP and though the contravention is of minor in nature it should not be repeated in the future. Furthermore, merits related to the contravention regarding reasonableness of success fee has not been examined as matter is pending with Hon’ble Supreme Court.
- 6.2 In view of the above, the Disciplinary Committee, in exercise of the powers conferred under Section 220 of the Code read with Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017, the SCN is disposed of with caution to Mr. Jayesh Natvarlal Sanghrajka for being more careful in future while handling CIRPs.
- 6.3 The Order shall come into force with immediate effect in view of the directions in para 6.2.
- 6.4 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Sanghrajka is enrolled as a member.
- 6.5 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.
- 6.6 Accordingly, the show cause notice is disposed of.

Dated: 12th September, 2022
Place: New Delhi

-Sd-
(Sudhaker Shukla)
Whole Time Member, IBBI