

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/16/2019
17th April, 2019

In the matter of Mr. Sanjay Kumar Ruia, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 read with sub-regulations (7) and (8) of regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

Order

Introduction

1.1 This order disposes of the show cause notice dated 28th July, 2018 (SCN) issued to Mr. Sanjay Kumar Ruia, Vishal House, 1st Floor, Plot No. 33, Sector - 19C, Off Palm Beach Road, Vashi, Navi Mumbai, Maharashtra - 400705, who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-001/IP-P00353/2017-2018/10654.

1.2 The Board had issued the SCN to Mr. Ruia, based on findings of an inspection in respect of his role as an interim resolution professional (IRP) and / or resolution professional (RP) in corporate insolvency resolution processes (CIRPs) of three corporate debtors (CDs), namely, (a) Sanjay Strips Private Ltd., (b) Global Proserv Ltd., and (c) S. N. Plumbing Private Ltd. The SCN alleged contraventions of several provisions of the Insolvency and Bankruptcy Code, 2016 (Code), the IBBI (Insolvency Professionals) Regulations, 2016 (IPR) and the Code of Conduct under regulation 7(2) thereof, and the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Mr. Ruia replied to the SCN vide letter dated 8th August, 2018.

1.3 The Board referred the SCN, response of Mr. Ruia 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. Mr. Ruia availed an opportunity of personal hearing before the DC on 15th October, 2018.

Consideration of SCN

2. The DC has considered the SCN, the oral and written submissions of Mr. Ruia thereon and other material available on record and proceeds to dispose of the SCN.

2.1 Fee for Services as IRP / RP

2.1.1 In the CIRP of Sanjay Strips Private Ltd.:

2.1.1.1 It has been alleged as under:

(a) The Hon'ble Adjudicating Authority (AA), vide order dated 3rd November, 2017, expressed concern on the amount of fee, as per the term sheet signed by Mr. Ruia with the applicant, towards his services as IRP / RP and sought his income tax returns for the last three years. Accordingly, Mr. Ruia submitted income tax returns and also a revised term sheet. The

AA, vide order dated 13th November, 2017, appointed Mr. Ruia as IRP on being satisfied of the fee as per the revised term sheet. The details of the term sheets are as under:

Particulars	Amount (Rs.)		
	Initial Term Sheet	Revised Term Sheet	Approval sought at meetings of the CoC
Consent in Form No.2 by IRP	50,000	0	NA
Amount payable upon filing of petition before Hon'ble NCLT as IRP	10,00,000	1,00,000	NA
Professional Fee for IRP till first CoC meeting	12,50,000	1,00,000	6,00,000
Fee for the subsequent months as IRP/RP on a per month basis	12,50,000	1,00,000	4,00,000

(b) The Board found the fee as per the initial term sheet to be unreasonable in relation to services. Mr. Ruia clarified, vide mail dated 26th January, 2018, that the earlier term sheet was based on information for the year 2014-15 about the CD available in public domain. He revised the term sheet, based on financials of the CD for the year 2016-17. The Board found that not only the fee as per the initial term sheet was unreasonable, but also use of stale information for determination of fee reflected poor professional competence.

(c) After his appointment by the AA as per the revised term sheet, which provided a monthly fee of Rs.1 lakh, Mr. Ruia repeatedly sought approval of the Committee of Creditors (CoC) for a higher fee of Rs.6 lakh as IRP and of Rs.4 lakh per month as RP. Mr. Ruia slashed his fee in the revised term sheet to secure his appointment as RP from the AA, only to increase it after such appointment. The Board found this conduct of Mr. Ruia to be *malafide*.

(d) The revised term sheet provided for Rs.2 lakh towards reimbursement of expenses on travel and hotel stay of Mr. Ruia. In the second meeting of the CoC, however, he claimed Rs.3.25 lakh towards travel expenses, beyond the amount permissible in the revised term sheet.

2.1.1.2 Mr. Ruia has submitted as under:

(a) He has apologised for relying on old financials of the CD for determining fee in the initial term sheet.

(b) He has claimed that '*The charging of Fee is the discretion of the Professional considering the volume of work.*'

(c) After taking over as IRP, he found that the CD has some more creditors and hence he sought approval of CoC for a higher fee.

(d) The term sheet provided for Rs.2 lakh as advance towards reimbursement of expenses on travel and hotel stay. It did not limit the amount of expenditure. Further, he claimed reimbursement of Rs.2.25 lakh only, not Rs.3.25 lakh, which is a typographical error.

2.1.1.3 The DC finds as under:

(a) The submission of Mr. Ruia, as at 2.1.1.2(d) above, appears satisfactory. The revised term sheet provides for an advance of Rs.2 lakh towards reimbursement of certain expenses and hence claim of Rs.2.25 lakh is not inconsistent with the term sheet.

(b) However, other submissions by Mr. Ruia do not appear convincing. He has very emphatically claimed that it is his discretion to charge a fee. Discretion is opposite of indiscretion and does not mean action without rhyme and reason. It means responsible conduct, as a reasonably prudent person would, under similar facts and circumstances. It is difficult to appreciate that any amount of fee can be charged by a professional just because he has discretion.

(c) The law [clause 25 of the Code of Conduct for Insolvency Professionals under the First Schedule to the IPR] clearly specifies 'remuneration to be charged as a reasonable reflection of the work necessarily and properly undertaken' by an IP. An IP, who exercises the powers of the Board of Directors, cannot feign inability that he does not understand what is 'reasonable reflection of work' in the circumstances. There are several ways to look at reasonableness. It may be looked at with reference to the compensation payable to the MD & CEO of the CD under CIRP, the fee charged by another IP in case of a similar CIRP, the fee earned by himself in a similar CIRP or even his opportunity cost (value from next best alternative). In fact, the AA approved the appointment of Mr. Ruia, after being convinced with the fee in the revised term sheet in relation to his income reflected in his income tax returns. Unfortunately, Mr. Ruia claims that he slashed his monthly fee from Rs.12.5 lakh to Rs.1 lakh after looking at recent financials of the CD. He does not explain why he used stale financials for fixing fee or how old financials had a bearing on the amount of fee. He slashed the fee to 8% of fee agreed to earlier, not on his own volition, but under compulsion from the AA. Had the AA overlooked the term sheet, Mr. Ruia would have pocketed the entire amount stated in the initial term sheet. This does not demonstrate his *bonafide*. Further, after securing the appointment as IRP/RP, Mr. Ruia attempted to increase IRP fee by 500% from Rs.1 lakh to Rs.6 lakh, and RP fee by 300% from Rs.1 lakh per month to Rs.4 lakh per month, on the pretext that the CD has a few more creditors. Mr. Ruia earlier claimed that the financials are the basis of fee and reduced his fee to 8% based on recent financials. After his appointment, he claims that the number of creditors is the basis of fee and attempted to increase his fee by 500% based on number of creditors. This establishes his *malafide*, particularly when his appointment along with fee was approved by the AA with reference to his income tax returns for the preceding three years.

(d) The DC, therefore, finds that Mr. Ruia attempted to charge abnormally high fee in relation to the services. Besides, he acted malafide by seeking increase of his fee after approval of fee by the AA and displayed professional incompetence by using stale information for decision making. Therefore, Mr. Ruia contravened the provisions of sections 208(2)(a) and (e) of the Code, regulation 33 of the CIRPR and regulations 7 (2) (a) and (h) of the IPR read with clauses 1, 2, 5, 9, 10, 12, 14, 16, 25 and 27 of the Code of Conduct thereof.

2.1.2 In the CIRP of S. N. Plumbing Private Ltd., the Board noted that Mr. Ruia contracted a consolidated professional fee of Rs.50 lakh plus out-of-pocket expenses, with the applicant who had a claim of Rs.13.76 lakh only. It was alleged that this defied logic and indicated intention of Mr. Ruia to inflate expenses. Mr. Ruia has made a bald statement that the amount of fee was clear reflection of work that he has to undertake as an IRP. The analysis in Para 2.1.1.3 above equally applies in case of this CIRP also. The DC is, therefore, of the view that Mr. Ruia contravened provisions of sections 20, 208(2)(a) and (e) of the Code, regulation 33 of the CIRPR and regulations 7 (2) (a) and (h) of the IPR read with clauses 1, 2, 5, 9, 10, 12, 14, 16, 25 and 27 of the Code of Conduct thereof.

2.2 Appointment as RP

2.2.1 In the CIRP of Sanjay Strips Private Ltd.:

2.2.1.1 Mr. Ruia, who is well-versed with the scope of authority of the applicant and of the CoC, knows well that the applicant has no role in the appointment of the RP and in fixation of fee of the RP. Nevertheless, he signed the term sheet with the applicant, who is not legally competent to appoint RP or fix his fee, and thereby attempted to deprive the CoC of its legitimate right to appoint a RP of its choice and fix his fee.

2.2.1.2 Mr Ruia has submitted that he did not conceal anything in this regard. He placed the term sheet, which provides for fee as RP, before the AA.

2.2.1.3 Transparency is welcome. But it cannot be used to override the explicit statutory provisions. No amount of transparency can justify illegal conduct. The fact remains that Mr. Ruia signed a term sheet with the applicant which provided for his appointment as RP and his fee as RP. As an IP, he knows well that a RP is appointed only by the CoC. Yet he contracted with the operational creditor, who is not legally competent to appoint RP, to the effect that he would work as RP and he would work for a professional fee of Rs.12.5 lakh per month. This is an attempt to lock in his appointment as RP before the competent authority, that is, CoC is born and denude the competent authority of its rights to choose an IP of its choice as RP and fix his fees. An agreement with the applicant establishes his collusion, indicating compromise of professional independence. Therefore, Mr. Ruia contravened the provisions of sections 22, 208(2)(a) and (e) of the Code, regulations 33 and 34 of the CIRPR and regulations 7 (2) (a) and (h) of the IPR read with clauses 1, 2, 5, 9, 10, 12, 14 and 27 of the Code of Conduct thereof.

2.2.2 The allegation against Mr. Ruia and explanation by him in CIRP of S. N. Plumbing Private Ltd. are similar to those in CIRP of Sanjay Strips Private Ltd., as explained in Para 2.2.1 above. The DC reiterates its finding as at Para 2.2.1.3 above that Mr. Ruia contravened the provisions of sections 22, 208(2)(a) and (e) of the Code, regulations 33 and 34 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRPR) and regulations 7 (2) (a) and (h) of the IPR read with clauses 1, 2, 5, 9, 10, 12, 14 and 27 of the Code of Conduct thereof.

2.2.3 In the CIRP of Global Proserv Ltd., Mr. Ruia did not provide the term sheet to the Inspection Authority for which an allegation of non-co-operation has been made. However, as observed by the DC in Para 2.3.1 below, Mr. Ruia did similar mischief regarding his appointment as RP, as explained in Para 2.2.1 above and, therefore, contravened the provisions of sections 22, 208(2)(a) and (e) of the Code, regulations 33 and 34 of the CIRPR, regulations 7 (2) (a) and (h) of the IPR read with clauses 1, 2, 5, 9, 10, 12, 14 and 27 of the Code of Conduct thereof.

2.3 Non Co-operation

2.3.1 In the CIRP of Global Proserv Ltd.:

2.3.1.1 The Inspecting Authority sought a copy of the term sheet in respect of Global Proserv Ltd. Mr. Ruia did not provide the same. Therefore, the Board held the view that Mr. Ruia did not co-operate with the inspection.

2.3.1.2 Mr. Ruia has admitted that he failed to submit it. He has now enclosed a copy of the term sheet.

2.3.1.3 The DC finds as under:

(a) Admittedly, Mr. Ruia failed to provide material called upon by the Inspecting Authority. This amounts to non-cooperation with the Authority and hindrance to the work of the Board.

(b) The SCN alleges irregularity in respect of two terms, namely, amount of fee and the appointment as RP, as explained at Para 2.1 (Fee related) and 2.2 (Appointment related), based on term sheets in respect of CIRPs of Sanjay Strips Private Ltd. and S. N. Plumbing Private Ltd. The term sheet now provided by Mr. Ruia in respect of Global Proserv Ltd. does not carry these two specific terms. The term sheet carries the terms of engagement of an IRP / RP. A key term of engagement is the fee payable to him. It is not a term sheet if it does not carry the terms about fee. Refusal to submit term sheet when called upon, coupled with subsequent submission of a term sheet which does not carry the essential terms, creates a suspicion whether the term sheet provided by Mr. Ruia, after receiving the SCN, is genuine.

(c) A perusal of the term sheets in respect of the three CIRPs throws more light into this. The term sheets in respect of CIRPs of S. N. Plumbing Private Ltd. and Sanjay Strips Private Ltd. were signed on 31st July, 2017 and 27th September, 2017 respectively. The term sheet in respect of Global Proserv Ltd. was signed on 7th September, 2017, that is, between the two dates when terms sheets of other two CIRPs were signed. One would expect that the terms included in the term sheet signed on 7th September, 2017 would be similar to the terms in the two terms sheets signed by the same person before and after 7th September, 2017. For convenience these three terms sheets are reproduced in Figures 1 - 3.

(d) It is observed from Figures 1 - 3 that these three term sheets are similar, except that the term sheet dated 7th September, 2017 does not have two rows (Sl. Nos. 3 and 4 in Figures 1 and 3) dealing with fee as IRP and RP. Absence of these two rows in Figure 2, which are the essence of a term sheet, establishes that the term sheet dated 7th September, 2017 is not genuine.

Fig 1: S. N. Plumbing Private Ltd.: Term sheet dated 31st July, 2017

Sr	Particulars of Professional Assignments	Amount in INR
1.	Consent in Form 2 by the IRP	50,000/-
2.	Amount payable upon admission of the Petition by the Hon'ble NCLT	2,00,000/-
3.	Professional Fees for Interim Resolution Professional till the First Committee of Creditors Meeting	10,00,000/-
4.	Fees for the subsequent months as IRP / Resolution Professional on a per month basis	7,50,000/-
5.	Cost of Public Announcement (Actuals) in one English and One Local Vernacular Language Newspaper to be paid at the Time of signing of Term Sheet	Actuals payable upon admission of the Petition at Point No. 2
5.	Cost of Valuations by 2 Valuers (as per actuals) <ul style="list-style-type: none"> • Stock Auditors for Inventory • Movable and Immovable Assets 	As per actuals
6.	Fees for representing before the NCLT on each date	25,000/-
7.	Cost of Appointment of Advocates / Solicitors to defend ourselves against any litigation / harassments	As per actuals
8.	Any other Professional services like Forensic Auditors, Consultants, Advisors, etc. in the course of Corporate Insolvency Resolution Process	As per Actuals
9.	Reimbursement of out of Pocket Expenses, Travelling Expenses and Hotel Stay	On actual basis
10.	Legal Cost in case you want us to represent under IBC till the time of Admission (against Vakalatnama)	3,00,000/-

Fig 2: Global Proserv Ltd.: Term sheet dated 7th September, 2017

Sr	Particulars of Professional Assignments	Amount in INR
1.	Consent in Form 2 by the IRP	50,000/-
2.	Amount payable upon admission of the Petition by the Hon'ble NCLT as Interim Resolution Professional	7,00,000/-
3.	Cost of Public Announcement (Actuals) in one English and One Local Vernacular Language Newspaper to be paid at the Time of signing of Term Sheet	Actuals payable upon admission of the Petition at Point No. 2
4.	Cost of Valuations by 2 Valuers (as per actuals) <ul style="list-style-type: none"> • Stock Auditors for Inventory • Movable and Immovable Assets 	As per actuals
5.	Cost of Appointment of Advocates / Solicitors to defend ourselves against any litigation / harassments	As per actuals
6.	Any other Professional services like Forensic Auditors, Consultants, Advisors, etc. in the course of Corporate Insolvency Resolution Process	As per Actuals
7.	Reimbursement of out of Pocket Expenses, Travelling Expenses and Hotel Stay	On actual basis

Fig 3: Sanjay Strips Private Ltd: Term sheet dated 27th September, 2017

Sr	Particulars of Professional Assignments	Amount in INR
1.	Consent in Form 2 by the IRP	50,000/-
2.	Amount payable upon filing of the Petition before the Hon'ble NCLT as Interim Resolution Professional	10,00,000/-
3.	Professional Fees for Interim Resolution Professional till the First Committee of Creditors Meeting	12,50,000/-
4.	Fees for the subsequent months as IRP / Resolution Professional on a per month basis	12,50,000/-
5.	Cost of Public Announcement (Actuals) in one English and One Local Vernacular Language Newspaper to be paid at the Time of signing of Term Sheet (During Insolvency and during Liquidation)	Actuals payable upon admission of the Petition at Point No. 2
6.	Cost of Valuations by 2 Valuers (as per actuals) <ul style="list-style-type: none"> • Stock Auditors for Inventory • Movable and Immovable Assets 	As per actuals
7.	Cost of Appointment of Advocates / Solicitors to defend ourselves against any litigation / harassments	As per actuals
8.	Any other Professional services like Forensic Auditors, Consultants, Advisors, etc. in the course of Corporate Insolvency Resolution Process	As per Actuals
9.	Reimbursement of out of Pocket Expenses, Travelling Expenses and Hotel Stay	On actual basis

(e) The DC, therefore, finds that Mr. Ruia did not co-operate with the Board, charged unreasonable fee, locked in his appointment as RP by signing an agreement with the applicant, and submitted fabricated documents to defend himself and thereby contravened the provisions of sections 208(2)(a) and (e) of the Code, regulations 33 and 34 of the CIRPR and regulations 7 (2) (a) and (h) of the IPR read with clauses 1, 2, 5, 10, 12, 14, 16, 18, 19, 24, 25 and 27 of the Code of Conduct thereof.

2.3.2 In all three CIRPs, Mr. Ruia, vide e-mail dated 4th May, 2018, had informed the Inspecting Authority that he had appointed other professionals. However, he did not provide expenses incurred on such professionals. Therefore, the Board took the view that Mr. Ruia did not provide complete information. Mr. Ruia has submitted that he had appointed the professionals in the CIRP of Sanjay Strips Private Ltd. However, as he was not confirmed as RP, he did not take services from professionals and hence no payment was made to them. As regards CIRP of Global Proserv Ltd., he has submitted that he had paid a fee of Rs.25,000 for services of professionals. However, it was inadvertently included in the legal fee, in stead of fee to professionals. As regards S. N. Plumbing Private Ltd., he has submitted that the fee was

included in the total cost. The DC does not wish to dwell too much upon this and would prefer to grant benefit of doubt to Mr. Ruia. This allegation, however, could have been avoided if Mr. Ruia had provided complete information at the stage of inspection and classified and reported costs appropriately, which reflects his professionalism.

2.4 Appointment of IRP

2.4.1 Mr. Ruia, as IRP of S. N. Plumbing Pvt. Ltd., filed applications for initiating CIRP of 14 CDs and proposed to appoint his spouse, Ms. Bhavana Ruia as IRP of CIRP of all 14 CDs. Ms. Ruia consented to act as IRP of 15 CIRPs, including these 14, for which applications were filed by a professional, who is her spouse. The Board, therefore, alleges that Mr. Ruia appointed his spouse as IRP, failed to avoid conflict of interest, and act with integrity and independence.

2.4.2 Mr. Ruia has submitted that he proposed the name of his spouse for appointment as IRP because she did not demand any upfront fee for the same while all IPs, he had approached, wanted a signing fee and *'did not agree to fund the expenses for public announcement, checking claims and calling for CoC meetings etc.'* Mr. Ruia has further submitted that he did this to revive the CD.

2.4.3 The DC finds it difficult to agree with the contention of Mr. Ruia that only an IP, who is willing to fund CIRP expenses (expenses for public announcement, checking claims and calling for CoC meetings etc.) should be appointed as IRP. An IP is appointed for his professional competence, not for his ability to fund the CIRP expenses. The DC also finds it difficult to accept Mr' Ruia's submission that if his spouse was not an IP, he would fail to appoint IRPs and, therefore, fail to revive S. N. Plumbing Pvt. Ltd.

(a) In terms of section 17 of the Code, the management of the affairs of the CD vests in the IRP and the powers of the Board of Directors of the CD is exercised by the IRP. For all practical purposes, the IRP is the alter ego of the CD undergoing CIRP. Every decision of the CD and in respect of the CD is taken by the IRP. Mr. Ruia, on behalf of the CD, dealt with Ms. Ruia, his spouse. It requires no rocket science to figure out why Mr. Ruia assigned CIRPs of 15 CDs to one IP, namely, Ms. Ruia, when 2000+ IPs were competing for an assignment in the market. It is not a coincidence that 15 assignments from one source landed on the table of Ms. Ruia, when she did not have a single assignment otherwise. 15 assignments at one go from one source for an IP having absolutely zero experience establishes that the considerations were something other than merits and there was a deep-rooted conspiracy to bleed the ailing CDs for the benefit of Ruia family. If the conspiracy had materialised, the family would have acted as IRP / RP of CIRPs of 15 CDs. Further, as IRP / RP of these 15 CDs, they would initiate CIRP of their debtors and appoint themselves as IRP / RP of those debtor and so on. When relationship triumphs over merits in professional matters, there is no place for independence, integrity and impartiality. A professional must be not only be impartial, but also appear to be impartial. Does a professional appear impartial if he gives 15 professional assignments at one go to his spouse? Any conduct, whether explicitly prohibited in the law or not, is unfair if it impinges on independence, integrity and impartiality of an IP or inconsistent with the reputation of the profession.

(b) Conducting CIRP is a serious responsibility of an IP. Section 20 of the Code obliges the IRP to make every endeavour to protect and preserve the value of the property of the CD and manage the operations of the CD as a going concern. Section 23 of the Code mandates the RP

to conduct the entire CIRP and manage the operations of the CD during the CIRP period. It is inconceivable that an individual (Ms. Ruia) who is a novice in the profession and has not handled a single CIRP till date, would act as IRP / RP in 15 CIRPs simultaneously and exercise the powers of Boards of Directors of 15 CDs. While the Code aims to rescue the ailing CDs, assignment of CIRPs of 15 CDs to an IP ensures just the opposite. That is why the law prohibits an IP from taking too many assignments, if he is unlikely to devote time to each of his assignment. It is not permissible for Mr. Ruia, who is an IP, to give 15 assignments to one IP.

(c) The DC, therefore, finds that Mr. Ruia contravened the provisions of sections 20, 23, 208(2)(a) and (e) of the Code regulations 7(2)(a) and (h) of the IPR and clauses 1, 2, 3, 5, 9, 10, 12, 14, 25, and 27 of the Code of Conduct thereof.

2.5 Misrepresentation

2.5.1 In the CIRP of S. N. Plumbing Private Ltd., Mr. Ruia submitted to the AA in his progress report of 5th CoC meeting that the CoC decided to recuse Mrs. Bhavna Ruia as proposed IRP. However, the Inspecting Authority did not find any such decision in the minutes of the 5th meeting of the CoC. Therefore, the Board has alleged that Mr. Ruia made a misrepresentation to AA. Mr. Ruia has now submitted that he missed to record this decision of the CoC in the minutes by oversight and he has apologised for this oversight. It is difficult to take the words of Mr. Ruia as gospel truth, while ignoring the records.

2.5.2 It is evident from submission of Mr. Ruia that he is often defending himself on pretexts such as typographical error, wrong reporting, wrong classification, mistake, oversight, failure to provide records, reliance on stale information, etc. It is difficult to grant benefit of doubt to him for all such pretexts. If he is an embodiment of all these pretexts, it is doubtful if Mr. Ruia deserves to continue as an IP. Therefore, Mr. Ruia contravened the provisions of section 208(2)(a) and (e) of the Code, regulations 7(2)(a), (b) and (h) of the IPR read with clauses 1, 2, 10, 12, 14 and 16 of the Code of Conduct thereof.

2.5.3 In CIRPs of all three CDs, Mr. Ruia broke one substantive resolution into two resolutions and sought approval for two resolutions separately. For example, he sought approval for two resolutions, namely, (a) appointment of self as RP, and (b) the amount of fee to be paid to him as RP. Resolution (a) was approved, while resolution (b) was not. Consequently, there was no decision and repeated meetings and waste of resources. If only one resolution proposing Mr. X as RP along with fee was submitted, the CoC would have either approved or rejected it. Therefore, the Board took a view that Mr. Ruia wasted resources and frustrated timelines for CIRP. Mr. Ruia has submitted that there was no precedent at the relevant time, and he felt it better to have debates in the CoC on two different aspects of a proposal. The DC does not wish to get into merits of this allegation. It would leave this to market practice, though it would not encourage breaking a substantive resolution into many resolutions which has the potential to create indecision, delay and wastage of resources.

2.6 Liquidation

2.6.1 It has been alleged that in the CIRP of Sanjay Strips Ltd., Mr. Ruia suggested liquidation in the first meeting of the CoC while ruling out an attempt for resolution. In

response, Mr. Ruia has submitted that the South Indian Bank, the largest financial creditor, vide email dated 19th January, 2018, had suggested that the only way forward was liquidation. The financial creditors resolved in favour of liquidation in the reconvened 1st meeting of the CoC and he had no role therein. The DC, however, finds that Mr. Ruia issued notice on 12th January, 2018 scheduling the reconvened 1st meeting of the CoC at 2.30 PM on 19th January, 2018. The notice listed the issues to be voted in the said meeting. The list included voting on: “9 (ix) (a) *Future Course of Action on CIRP; or (b) Liquidation.*” The mail dated 19th January, 2018 of the South Indian Bank, which forms the basis of liquidation, as claimed by Mr. Ruia, was mailed at 2.52PM, while the meeting commenced at 2.30PM. If Mr. Ruia is to be believed, the notice dated 12th January, 2018 for the first meeting of the CoC listed liquidation for voting, based on the mail at 2.52PM dated 19th January, 2018!

2.6.2 On perusal of minutes of the 1st meeting of the CoC (not the reconvened first meeting) of Sanjay Strips Ltd. held on 27th December, 2017, the DC finds that item 8 of the minutes of said meeting records that the South Indian Bank wanted to go for liquidation and they shall vote against every matter. In view of this, the DC does not find merit in the allegation that Mr. Ruia suggested liquidation from his side.

2.7 Other Allegations

There are several other allegations about deficiency in services such as issue of public announcement, appointment of valuers, preparation and supply of information memorandum, convening meeting, conduct of meetings of CoC, computation of voting, etc. in contravention of the provisions of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Some of these are serious. Most of these, however, could be attributed to inexperience and there were not many precedents at the relevant time. The DC would like to take a lenient view in case of these deficiencies.

3. Order

3.1 In view of the above, the DC finds that Mr. Ruia has contravened the provisions of sections 20, 22, 23, 208(2)(a) and (e) of the Insolvency and Bankruptcy Code, 2016, regulations 33 and 34 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and regulations 7(2)(a), (b) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 read with clauses 1, 2, 5, 9, 10, 12, 14, 16, 18, 19, 24, 25 and 27 of the Code of Conduct thereof.

3.2 Therefore, the Disciplinary Committee, in exercise of the powers conferred under section 220 (2) of the Code read with sub-regulations (7) and (8) of regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016, issues the following directions:

(i) The registration of Mr. Sanjay Ruia as an Insolvency Professional, having Registration No. IBBI/IPA-001/IP-P00353/2017-2018/10654, shall be suspended for two years;

(ii) Mr. Ruia shall not seek or accept any process or assignment or render any services under the Code during the period of suspension. He shall, however, continue to conduct and complete the assignments / processes he has in hand as on date of this order; and

(iii) Mr. Ruia shall (i) undergo the pre-registration educational course specified under regulation 5(b) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals)

Regulations, 2016 from his Insolvency Professional Agency, and (ii) work for at least six months as an intern with a senior insolvency professional, at any time during the period of suspension, to improve his understanding of the Code and the regulations made thereunder.

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

3.4 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Ruia is enrolled as a professional member for monitoring implementation of Order.

3.5 A copy of this order shall be forwarded to the Secretary, National Company Law Tribunal, New Delhi for information.

Sd/-
(Dr. M. S. Sahoo)
Chairperson, IBBI

Sd/-
(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Date: 17th April, 2019
Place: New Delhi