

INSOLVENCY AND BANKRUPTCY BOARD OF
INDIA
(Disciplinary Committee)

No. IBBI/DC/30/2020

18th September, 2020

Order

In the matter of Mr. Dinesh Sood, Insolvency Professional (IP) under Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/SCN/2020/03 dated 21st May, 2020 issued to Mr. Dinesh Sood, B 1001, Media Society, Plot 18 A, Sector 7, Dwarka, New Delhi - 110075, who is a Professional Member of the ICSI Institute of Insolvency Professionals and an IP registered with the Insolvency and Bankruptcy Board of India (Board/ IBBI) with Registration No. IBBI/IPA-002/IP-N00046/2016-2017/10091.

Background

- 1.1 The Board had issued on 21st May, 2020, the SCN to Mr. Dinesh Sood, based on material available on record in respect of his role as the resolution professional (RP) in appointing M/s Crest Capital Group Pvt. Ltd., an unregistered valuer in the corporate insolvency resolution process (CIRP) of M/s BRYS International Pvt. Ltd., Neo Infrastructure Pvt. Ltd. and Ujala Pumps Pvt. Ltd. The SCN alleged contraventions of section 208 (2) (a) & (e) of the Insolvency and Bankruptcy Code, 2016 (Code), regulation 7(2) (a), (h) and (i) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 10 and 14 of the Code of Conduct contained in the First Schedule of the IP Regulations, regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and IBBI Circular No. IBBI/RV/019/2018 dated 17th October 2018. Mr. Dinesh Sood replied to the SCN vide letter dated 10th June, 2020.
- 1.2 The Board referred the SCN, response of Mr. Sood 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 IP availed an opportunity of personal hearing before the DC on 10th September, 2020 wherein he was represented by Mr. Inder Paul Singh Oberoi, Advocate.

Show Cause Notice

2. The contraventions alleged in the SCN are summarized as follows.
Mr Sood has appointed M/s Crest Capital Group Pvt. Ltd. as one of the valuers for valuation of assets in the matter of M/s BRYS International Pvt. Ltd and Neo Infrastructure Pvt. Ltd. on 12.03.2019 and in the matter of Ujala Pumps Pvt. Ltd. on

26.02.2019. M/s Crest Capital Group Pvt. Ltd. is not registered with the IBBI. Therefore, the IBBI *prima facie* held the view that Mr. Sood has violated section 208(2)(a) & (e) of the Code and Regulation 7(2) (a), (h) & (i) of the IP Regulations, read with clauses 10 and 14 of the Code of Conduct as contained in the First Schedule of the IP Regulations and regulation 27 of the CIRP Regulations along with IBBI Circular No. IBBI/ RV/019/2018, dated 17th October 2018.

Submissions by Mr. Dinesh Sood

3. Mr. Sood *vide* reply dated 10th June, 2020 had submitted that the underlying intent of the Circular No. IBBI/ RV/019/2018 is that the assignment of carrying out valuation of assets of CD should be carried out only by ‘registered valuers’ and not by any other valuer who is not registered with IBBI. The pith and substance of the direction is on valuation to be conducted, and appointment of valuers is only a procedural aspect.
- 3.1 Mr. Sood submitted that in the instant matter, it is a matter of fact and record that the valuations have been conducted by registered valuers only and not by any valuer who was not registered with IBBI. The valuation reports duly bear the signatures of the registered valuers who had conducted the valuations. The valuation for M/s Brys International Pvt. Ltd. and Neo Infrastructure Pvt. Ltd. was conducted by Mr. Vijay Vinod Bhatia, registered valuer having IBBI registration No. IBBI/RV/05/2019/11309, even though the appointment letter for valuation dated 12.03.2019 was addressed to M/s Crest Capital Group Pvt. Ltd. Similarly, valuation for M/s Ujala Pumps Pvt. Ltd. was conducted by Mr. Lakshya Malhotra, registered valuer having IBBI registration number IBBI/RV/05/2019/11553, and by Ms. Alpana Harjai, registered valuer having IBBI registration number IBBI/RV/02/2019/11077, even though the appointment letter for valuation dated 26.02.2019 was addressed to M/s Crest Capital Group Pvt Ltd. These three registered valuers are the constituents of M/s Crest Capital Group Pvt. Ltd. and had conducted valuations on its behalf.
- 3.2 Mr. Sood submitted that M/s Crest Capital Group Pvt. Ltd. was appointed as valuers, as it was manned, amongst others, by these three persons registered with IBBI as valuers. Since, M/s Crest Capital Group Pvt. Ltd., which was appointed for carrying out the valuations, were and are manned by registered valuers, it can be said that registered valuers were appointed for valuation work through M/s Crest Capital Group Pvt. Ltd.
- 3.3 Mr. Sood admitted that the appointment of valuers should have been made in the names of three individual valuers who are registered with the IBBI but the same was done in the name of the organization, M/s Crest Capital Group Pvt. Ltd. for ease of convenience. He also apologized the inconvenience/ embarrassment caused because of his inadvertent and unintentional action, which he said is a technical aberration and has not led to any discrepancy in the CIRP process.
- 3.4 Mr. Sood further submitted that even though there may appear to be a contravention of regulation 27 of CIRP Regulations by the manner in which the appointments were made for carrying out the valuation assignment, yet the same can be said to be of technical nature only and there is no violation of the intent and purpose of the said regulation. The violation of the circular is only in semantics and cannot be said to be violation in reality or in intent. Between form and content, it is content that matters.

- 3.5 Mr. Sood further submitted that valuations conducted by the three registered valuers cannot be faulted merely because the appointment letters were issued to M/s Crest Capital Group Pvt. Ltd. as the valuation reports have been submitted under the signatures of the three registered valuers. The underlying objective of the Code for maximisation of the value of assets of CD and consequently value for its stakeholders has been achieved by transparent and credible determination of value of the assets to facilitate comparison and informed decision making on the basis of valuations conducted by the three registered valuers.
- 3.6 Mr. Sood also submitted that no loss has been caused or is likely to be caused to any person and also no unlawful gain has been made on account of the aforesaid technical aberration and unintentional/ inconsequential contravention of the circular / regulations in appointment of valuers.
- 3.7 During the personal hearing held on 10.09.2020, Mr. Sood and Inder Paul Singh Oberoi, the counsel on behalf of Mr. Sood appeared before the DC. Mr. Sunil Kumar (DGM), IBBI and Ms. Rashi Gupta (RA), IBBI were also present during the hearing. Mr. Oberoi reiterated the submissions made by Mr. Sood in his written reply to SCN. He further prayed for some leniency since no prejudice has been caused to the process or any stakeholders due to the technical violation committed by the Mr. Sood.

Analysis and finding

4. The DC after considering the SCN, oral and written submissions of Mr. Sood and also the provisions of the Code and the regulations made thereunder proceeds to dispose of the SCN.
- 4.1 An IP plays a vital role in the resolution process and forms a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the resolution process. The BLRC, the recommendations of which has led to the enactment of the Code, in its Final Report, has also laid emphasis on the role of an IP as follows:
“The Insolvency Professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process. In administering the resolution outcomes, the role of the IP encompasses a wide range of functions, which include adhering to procedure of the law, as well as accounting and finance related functions. The latter include the identification of the assets and liabilities of the defaulting debtor, its management during the insolvency proceedings if it is an enterprise, preparation of the resolution proposal, implementation of the solution for individual resolution, the construction, negotiation and mediation of deals as well as distribution of the realisation proceeds under bankruptcy resolution. In performing these tasks, an IP acts as an agent of the adjudicator. In a way the adjudicator depends on the specialized skills and expertise of the IPs to carry out these tasks in an efficient and professional manner... This creates Role of Resolution Professionals in CIRP the positive externality of better utilisation of judicial time.”
- 4.2 The provisions of the Code and regulations are spelt out in a plain and simple language.

There appears to be no ambiguity in understanding the provisions. Section 25(2)(d) of the Code provides that the resolution professional (RP) shall appoint accountants, legal or other professional in the manner as specified by the Board. Regulation 27 of the CIRP Regulations provides as follows:

“27. Appointment of registered valuers.

The resolution professional shall within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35:

Provided that the following persons shall not be appointed as registered valuers, namely:-

- (a) a relative of the resolution professional;*
- (b) a related party of the corporate debtor;*
- (c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or*
- (d) a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.”*

- 4.3 It is further noted that the IBBI Circular No. IBBI/RV/019/2018 dated 17th October 2018 (which came into effect from 1st February 2019) clearly stated that no person other than a registered valuer shall be appointed to conduct valuation under the Code. Para 6 of the said circular provides as follows:

“Every valuation required under the Code or any of the regulations made thereunder is required to be conducted by a ‘registered valuer’, that is, a valuer registered with the IBBI under the Companies (Registered Valuers and Valuation) Rules, 2017. It is hereby directed that with effect from 1st February, 2019, no insolvency professional shall appoint a person other than a registered valuer to conduct any valuation under the Code or any of the regulations made thereunder.”

Thus, the IBBI further clarified by issuing the said Circular that the IP shall only appoint registered valuers to conduct any valuation under the provisions of the Code or any of the regulations.

- 4.4 There are various obligations which the IP needs to perform under the Code. Section 208(2) provides that every insolvency professional shall abide by the Code of conduct. It reads as follows:

“208. Functions and obligations of insolvency professionals.

- (2) Every insolvency professional shall abide by the following code of conduct: –*
- (a) to take reasonable care and diligence while performing his duties;*
 - (b) to comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member;*
 - (c) to allow the insolvency professional agency to inspect his records;*
 - (d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and*
 - (e) to perform his functions in such manner and subject to such conditions as may be specified.”*

4.5 Further, Regulations made under the Code require an IP to follow, at all times, the provisions of the Code and Regulations and the bye-laws of Agency of which the IP is a member. Regulation 7(2)(a), (h) and (i) of the IP Regulations provide as follows:

“7. Certificate of registration.

(2) The registration shall be subject to the conditions that the insolvency professional shall –

(a) at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled;

(h) abide by the Code of Conduct specified in the First Schedule to these Regulations; and

(i) abide by such other conditions as may be imposed by the Board.”

4.6 The DC further notes that it is the responsibility of the RP, registered valuers and the members of the CoC to maintain the confidentiality of the fair value and liquidation value under regulation 35 of the CIRP Regulations. Sub-regulations (2) & (3) of regulation 35 clearly provides as follows:

“(2) After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.

(3) The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value.”

Thus, confidentiality of the fair value and liquidation value is of utmost importance in the whole CIRP to establish its credibility and to prevent unfair market practices.

4.7 In the instant matter, Mr. Sood appointed M/s Crest Capital Group Pvt Ltd., a company which is not registered as a valuer with the IBBI, to conduct valuation in the matter of M/s BRYS International Pvt. Ltd and Neo Infrastructure Pvt. Ltd. *vide* appointment letter dated 12.03.2019, and in the matter of Ujala Pumps Pvt. Ltd. *vide* appointment letter dated 26.02.2019. Thus, in appointing an unregistered valuer, Mr. Sood has contravened regulation 27 of CIRP Regulations and the Circular dated 17th October, 2018.

4.8 As regards the submission of Mr. Sood that the valuation reports submitted on behalf of M/s Crest Capital Group Pvt. Ltd. were signed by the valuers who are registered with IBBI as valuers, the DC notes that that the valuation report in the matter of M/s BRYS International Pvt. Ltd. and Neo Infrastructure Pvt. Ltd. which was submitted in response to appointment letter dated 12.03.2019 was signed by the following two individuals:-

- (i) Mr. Gagan Ghai, who is not registered with IBBI as a valuer; and
- (ii) Mr. Vijay Vinod Bhatia, whose registration as a valuer with IBBI is effective from 15.04.2019.

Thus, as on the date when appointment letter was issued to M/s Crest Capital Group Pvt. Ltd. *i.e.*, 12.03.2019, Mr. Bhatia was not a registered valuer with the IBBI.

4.9 The DC also notes that the valuation report in the matter of Ujala Pumps Pvt. Ltd. which was submitted in response to appointment letter dated 26.02.2019 was signed by the following three individuals: -

- (i) Mr. Gagan Ghai, who is not registered with IBBI as a valuer;
- (ii) Mr. Lakshay Malhotra, whose registration as a valuer with IBBI is effective from 15.05.2019.

Thus, as on the date when appointment letter was issued to M/s Crest Capital Group Pvt Ltd., *i.e.*, 26.02.2019, Mr. Malhotra was not a registered valuer with the IBBI.

- (iii) Ms. Alpna Harjai, whose registration as a valuer with IBBI is effective from 27.03.2019.

Thus, as on the date when appointment letter was issued to M/s Crest Capital Group Pvt Ltd., *i.e.*, 26.02.2019, Mrs. Harjai was not a registered valuer with the IBBI.

4.10 As regards the submission of Mr. Sood that no prejudice has been caused to the process or any stakeholders due to the technical violation committed by him cannot be accepted as the same is in express violation of regulation 27 and 35 (3) of CIRP Regulations. Mr. Sood did not take due diligence prior to appointment of Crest Capital Pvt. Ltd. as a valuer during the CIRP and also for maintaining confidentiality of the valuation reports. Even if valuers signing the report on behalf of Crest Capital Pvt. Ltd. are registered with the IBBI, but the report reflects the name of Crest Capital Pvt. Ltd. on right side of top of every page of the valuation report and all the reports were also signed by one Mr. Gagan Ghai who is not a registered valuer. In consequence, obligation of registered valuers for maintaining of strict confidentiality which was also mentioned in the appointment letter dated 12.03.2019 and 26.02.2019 issued by Mr. Sood was not observed and it merely became a formality.

4.11 The responsibilities of the IRP/RP under the Code require highest level of standing, calibre and integrity which inspire confidence and trust of the stakeholders and the society. A professional is said to act professionally when he follows the code of conduct laid down by the authority with which he is registered and thereby establishes the credibility of the process. For that purpose, the Code provides for certain duties, obligations as well as Code of Conduct for taking due diligence in the conduct of process read with integrity, objectivity and professional competence as discussed in the foregoing paragraphs. Mr. Sood himself is a registered professional and very well aware of the sanctity of registration certificate. Registration carries with it numerous responsibilities. He himself has been appointed as an IRP/RP only after his registration with the Board. The IPs are required to observe the code of conduct provided under section 208 (2) (a) & (e) of the Code and regulation 7 (2) (a), (h) & (i) of the IP Regulations read with Code of Conduct contained in Schedule 1 of the IP Regulations.

4.12 In this matter, Mr. Sood appointed Crest Capital Pvt. Ltd. which was not a registered valuer. Hence, there is lapse or negligence on the part of Mr. Sood in not taking due diligence while appointing a valuer not having registration certificate. Therefore, he has contravened section 208 (2) (a) and (e) of the Code, regulation 7 (2)(a), (h) & (i) of the

IP Regulations and clauses 10 and 14 of the Code of Conduct under Schedule 1 of the IP Regulations and also regulations 27 and 35(3) of the CIRP regulations.

Order

5. In view of the above, this DC finds that Mr. Dinesh Sood, the RP, has appointed M/s Crest Capital Group Pvt. Ltd., a company which was not a registered valuer, as a valuer for valuation of assets of three CDs, namely M/s BRYS International Pvt. Ltd., Neo Infrastructure Pvt. Ltd. and Ujala Pumps Pvt. Ltd. This conduct of Mr. Sood is in contravention of the following provisions of the Code and Regulations: -
- (i) section 208 (2) (a) & (e) of the Code;
 - (ii) Regulations 7 (2) (a), (h) & (i) of the IP Regulations read with clauses 10 and 14 of the Code of Conduct contained in the First Schedule of the IP Regulations;
 - (iii) Regulation 27 and 35(3) of the CIRP Regulations.

Further, Mr. Sood also did not follow the guidance provided under para 6 of the IBBI Circular IBBI/RV/019/2018 dated 17th October 2018.

- 5.1 Accordingly, the Disciplinary Committee, in exercise of the powers conferred under Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016, disposes of the SCN with the following directions:

Mr. Dinesh Sood shall not seek or accept any process or assignment or render any services under the Code for a period of three months from the date of coming into force of this Order. He shall, however, continue to conduct and complete the assignments / processes he has in hand as on date of this order.

- 5.2 This Order shall come into force on expiry of 30 days from the date of its issue.
- 5.3 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Dinesh Sood is enrolled as a member.
- 5.4 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, for information.

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(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Dated: 18th September, 2020
Place: New Delhi