

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/42/2020

13th November, 2020

Order

In the matter of Mr. Kamalesh Kumar Singhania, Insolvency Professional (IP) under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 and regulation 13 of the the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/MON/2019/39 dated 19th May, 2020 issued to Mr. Kamalesh Kumar Singhania R/o - Bajarang Kunj, Room no. 412 & 413, 2b Grant Lane, 4th Floor, Kolkata, West Bengal-700012 who is a Professional Member of ICSI Institute of Insolvency Professionals and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00023/2016-17/10050.

Background

The Hon'ble NCLT, Kolkata Bench (AA) vide order dated 20th September, 2017 admitted the application under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating Corporate Insolvency Resolution Process (CIRP) of M/s Mintri Tea Company Private Limited (CD). In this matter, CoC comprised of only Punjab National Bank (PNB). The resolution plan was approved by CoC on 31st May, 2018 and CIRP was completed within 270 days. Later on, PNB filed an application for withdrawal under section 12A before the AA, however, the same was rejected by the AA vide its order dated 03rd August, 2018. This order of AA was set aside by the Hon'ble NCLAT vide order dated 27th February, 2019 wherein the application filed by the PNB for withdrawal of application under section 7 of the Code was allowed and the CD was restored to its old position.

- 1.1. The IBBI had issued the SCN to Mr. Kamalesh Kumar Singhania on 19th May, 2020 based on material available on record including Inspection Report dated 7th December, 2019 in respect of his role as a Resolution Professional (RP) in CIRP of M/s Mintri Tea Company Private Limited (CD). The SCN alleged contraventions of section 208(2)(a) and (e) of the Insolvency and Bankruptcy Code, 2016 (Code), Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2017 (CIRP Regulations) and Regulation 7(2)(a) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and clause 1, 2, 3, 10 and 14 of the Code of Conduct under regulation 7(2) thereof. Mr. Kamalesh Kumar Singhania replied to the SCN vide letter dated 15th June, 2020.

1.2. The IBBI referred the SCN, response of Mr. Kamalesh Kumar Singhania 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. Kamalesh Kumar Singhania availed an opportunity of virtual personal hearing before the DC on 9th September, 2020 wherein he was represented by his counsel, Mr. Pranay Agarwal, Advocate. Mr. Singhania reiterated the submissions made in his written reply and also submitted additional documents via email dated 9th September, 2020 in the matter.

2. Alleged Contraventions and Submissions

Contraventions alleged in the SCN and Mr. Kamalesh Kumar Singhania's written and oral submissions thereof are summarized as follows.

I Contravention

2.1. CIRP of the M/s Mintri Tea Company Private Limited commenced on 20th September, 2017. Its financial creditor (FC), i.e., the PNB filed a claim in Form 'C' dated 3rd October, 2017 for the amount of Rs. 10,37,69,840/- and interest and other charges to be calculated till actual realization. The amount stated was the amount outstanding as on 31st May, 2017. The said claim was admitted by the Mr. Singhania and voting share was given to PNB on the basis of said claim. During CIRP, on 21st April, 2018, PNB filed a revised claim in Form C to the RP. The revision was on account of repayment by guarantors of CD of certain portion of total outstanding amount. PNB submitted the revised claim of Rs. 1,27,74,287.80 (as on 10th April, 2018) which included interest for the period of 20th September 2017 to 10th April, 2018 (i.e. for post CIRP commencement period). This revised claim and revised voting share of PNB was accepted by Mr. Singhania in the meeting of Committee of Creditors and the same was also recorded in the minutes of 7th CoC meetings dated 7th May, 2018.

2.1.1. As per regulation 13(1) of the CIRP regulations, RP is required to verify every claim as on the insolvency commencement date. The Form C in the schedule of CIRP regulations provides that the claim of the FC would be the total amount of claim including any interest as on the Insolvency commencement date. Thus, the revised claim admitted by Mr. Singhania after including interest amount from 20th September, 2017 to 10th April, 2018 (post CIRP commencement period) is in contravention of regulation 13(1) of the CIRP regulations. Due to this admission of additional claim on 21st April, 2018, PNB got additional voting share in CoC (79.62%). Thus, the IBBI is of the prima facie view that Mr. Singhania have violated section 208(2)(a) and (e) of the Insolvency and Bankruptcy Code, 2016 (Code), Regulation 13 of the CIRP Regulations and Regulation 7(2)(a) and (h) of the IP Regulations and clause 1, 2, 3, 10 and 14 of the Code of Conduct under regulation 7(2) thereof.

Submission

- 2.2. Mr. Singhania stated in his reply that during the CIRP, it was informed by PNB vide e-mail dated 17th April, 2018 and 18th April, 2018 that they have received a payment of Rs. 9,53,24,405.00 and Rs. 72,98,539.00 aggregating to Rs 10,26,22,944.00 from the guarantors of Mintri Tea Co. Pvt. Ltd. It was also mentioned in the e-mail that total dues of the CD upto date of payment is Rs 11,53,97,231.80. The new claim of Rs. 1.27 crore was submitted by the PNB after getting payment of Rs. 10.26 crore by the guarantors of the CD. The new claim consisted of interest from 1st June, 2017 till 20th September, 2017, i.e., date of commencement of CIRP and further interest upto the date of payment of claim amount by the CD's guarantors. Mr. Singhania submitted that he, while accepting the claim, has considered the following facts:
- (a) The original claim of PNB was short claim in respect of interest from 1st June, 2017 to 20th September, 2017 which would have been admissible.
 - (b) For claim after commencement of CIRP, Mr. Singhania relied upon the proviso to section 29A(c) of the Code.
- 2.2.1. It was submitted by Mr. Singhania that the said claim of PNB was lower to the extent of interest due from 1st June, 2017 to 20th September, 2017. However, he had to admit the same as per claim amount. For the claim after commencement of CIRP, Mr. Singhania submitted that the revised claim of PNB in respect of interest from 1st June, 2017 to 20th September, 2017 is admissible irrespective of the amount of claim and for further period, he relied upon the proviso to section 29A of the Code and Regulations 12(2), 13(1) and 14 of the CIRP Regulations. During virtual personal hearing, it was submitted by the counsel of Mr. Singhania, Mr. Pranay Agarwal that no extra voting rights were given to the PNB by Mr. Singhania for accepting the revised claim.
- 2.2.2. After making payment to PNB, the guarantors of CD with their advocates came to attend the 7th adjourned CoC meeting held on 7th May, 2018 and submitted that as per law of contract, they have stepped into the shoes of PNB by way of subrogation. Mr Singhania requested the guarantors to submit an affidavit in support of their claim. The said affidavit was submitted by the guarantor on 9th May, 2018. Original affidavit was submitted to the IBBI on 13th April, 2019 by Mr. Singhania, when he was called to the IBBI's office to discuss certain issues in this matter in connection with filing prosecution petition against the directors and PNB.
- 2.2.3. Mr. Singhania informed the guarantors at re-adjourned 7th CoC meeting held on 16th May 2018, that they cannot be admitted as members of CoC. As two of the guarantors were directors of CD and other two were daughters of the Directors, they were falling within the definition of related party under the provisions section 5(24) of the Code. As per section 21(2) of the Code, a related party cannot be admitted as a member of COC. In the instant case, all the guarantors became financial creditor of the CD by virtue of law of subrogation although were not admitted as a member of CoC by the RP due to operation of section 21(2) of the Code. In this situation, where the guarantors have claimed to step into the shoes of original claimant, the existence of debt was always there under the law and he could not consider that the debt had extinguished. In fact, only the names of the claimant were changed as per the law of subrogation. Mr. Singhania placed reliance on section 29A of the Code to submit that the dues of a creditor even after the date of commencement of CIRP

is recognized under the Code and he took a decision to admit the fresh claim of PNB.

II Contravention

- 2.3. The PNB filed a claim in Form C dated 3rd October, 2017 of Rs. 10,37,69,840.00 plus interest and other charges to be calculated till actual realisation. As per the 9th progress report upto 1st May, 2018 submitted before AA, Mr. Singhania mentioned that directors and guarantors of CD deposited an amount of Rs. 10,26,22,944/- with PNB on 17th April, 2018 and Mr. Singhania also mentioned in the said progress report that PNB has further submitted a revised claim of Rs. 1,27,74,287.80 which included interest upto the period of 10th April 2018. During the 9th CoC meeting dated 31st May, 2018, a resolution plan submitted by M/s Terai Tea Co. Ltd. (TTCL) was presented by Mr. Singhania before the CoC, wherein it was proposed to pay Rs. 10.38 Cr. to PNB as against its claim of Rs. 1,27,74,287/-. As per the plan, amount to be paid to PNB was approximately 8 times of the claimed amount by PNB. As per the clause 3 of the Code of Conduct provided in the first schedule of IP Regulations, RP must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias or undue influence of any party. And that the said action for providing an amount of Rs. 10.38 Cr. to PNB as against the claimed amount of Rs. 1,27,74,287/- indicate bias in favour of Mr. Singhania towards one stakeholder.

Thus, the IBBI is of the prima facie view that Mr. Singhania have violated section 208(2)(a) of the Code, Regulation 7(2)(a) and (h) of the IP Regulations and clause 1, 2, 3, 10 and 14 of the Code of Conduct under regulation 7(2) thereof.

Submission

- 2.4. With respect to the second issue raised in the SCN, it was submitted by Mr. Singhania that after the receipt of the revised claims, Resolution Applicants (RA) were appraised of the facts of repayment of original claim of PNB during CoC meeting. Information about fresh claims admitted were also provided and on that basis offers were finally revised by the RAs in respect of payment of the secured FCs. The fact is that apart from PNB, there were five other claims received after 7th May, 2018 from the following persons:

1. Federal Bank – Rs. 43.07 lakh.
2. Jubilant Marketing Pvt Ltd - Rs. 10.90 lakh
3. Espee Cookies Pvt Ltd - Rs. 10.90 lakh
4. Dharamraj Properties & Merchandise Pvt Ltd. - Rs. 5.45 lakh
5. Angela Holdings Pvt Ltd. - Rs. 5.45 lakh

- 2.4.1. A Writ Petition was filed before the Hon'ble High Court at Calcutta by the guarantors wherein it was stated by them that the claims of four unsecured FCs have been paid by them. Federal Bank Ltd. had informed Mr. Singhania that their dues have been repaid and they had withdrawn their claim. Thus, Mr. Singhania submitted that in this situation, there would have been only one claimant left, namely, PNB with 100% voting rights irrespective of the quantum of claim admitted. As there was no information with him about the payment to four unsecured FCs, Mr. Singhania continued with the CIRP and the plan was approved by CoC on 31st May, 2018.

III Contravention

- 2.5. As per minutes of 4th CoC meeting dated 9th February, 2018, it was proposed that advertisement for invitation of EoI will be published in the newspapers on 13th February, 2018 and the last date for submission of EoI to be kept at 28th February, 2018. During the meeting Mr. Mintri, promoter of the CD, requested Mr. Singhanian to defer the date of publication of EOI as he had submitted a proposal to PNB to settle and pay the outstanding dues of the Bank. Thus, it was decided that, if the said proposal of settlement is not accepted by the Bank by 20th February, 2018, the advertisement shall be published on 23rd February, 2018 and the last date of submission of EOI would be 10th March, 2018. The Code envisages resolution of a CD in a time bound manner for maximisation of value of its assets. Thus, Mr. Singhanian deferred the publication of EOI for the outcome of settlement proposal submitted by the promoter of the CD. The same promoter was accused by Mr. Singhanian for non-cooperation.

Thus, the IBBI is of the *prima facie* view that Mr. Singhanian have violated section 208(2)(a) of the Code, Regulation 7(2)(a) and (h) of the IP Regulations and clause 1, 3, 5 and 14 of the Code of Conduct under regulation 7(2) thereof.

Submissions

- 2.6. Mr. Singhanian has submitted in his reply that the decision to defer publication of EoI after 23rd February, 2018 was taken at the meeting by the CoC and not by him. It was submitted that as the proposal of one time settlement (OTS) was pending with PNB who was the sole CoC member, therefore, CoC considered to defer the publication of EoI. That just by taking a decision to defer the publication of EoI, it cannot be construed that the CIRP was being carried in a manner otherwise than provided in the Code. He submitted that the CIRP was completed within 270 day period as provided in the Code. It was stated that the CIRP was carried on by Mr. Singhanian in a time bound manner as per the provisions of the Code and the value of the CD was maximised in the process and the livelihood of more than 1400 staff and workers were saved.
- 2.6.1. Mr. Singhanian submitted that the non-cooperation by the CD and its KMP is an established fact in the case and stated that the directors of the CD failed to cooperate in the CIRP since beginning and did not provide any information as evident from the minutes of CoC meeting held on 9th February, 2018. Despite specific orders by the AA to cooperate with RP, there was no compliance by the key managerial personnel (KMP) of the CD. Direction given by the AA to handover the management to RP, Mr. Singhanian within 15 days vide order dated 25th September, 2018 was not complied with. Even the direction given by the AA to handover the management to RP vide order dated 5th October, 2018 was not complied with. CoC failed to provide necessary interim finance to RP, which was crucial to run the tea garden of CD where wages and salaries of 1400 workers and staff alongwith bonus were not paid for more than 3 months and could have resulted in serious problems. He submitted that CoC even ignored the direction of Hon'ble NCLT vide order dated 25th September, 2018 to consider providing interim finance required to takeover the management and

run the business of CD.

IV Contravention

- 2.7. Information Memorandum (IM) is a critical document during CIRP and preparation of the same is one of the primary duties of the IP as per section 25(2)(g) of the Code. There were following discrepancies in the IM prepared by Mr. Singhanian.
- (a) The IM mentioned that lease of the land on which the company's tea estate is situated and operating has expired in 2000 and the same has not been renewed or extended by the Government. However, as per the notes forming the integral part of the balance sheet dated 31st March, 2016, the land of tea estate was shown as fixed asset of the CD and also, the same was considered as an asset during the valuation conducted during the CIRP.
 - (b) In the IM, at page no. 13 of total liabilities of the CD, the total dues payable to workers and employees of the CD were mentioned to be Rs 1.72 Cr. However, at page no. 17 of the same IM, while mentioning the claim of the workers, the dues payable to them were recorded as Rs. 2.20 Cr.

Thus, the IBBI is of the prima facie view that Mr. Singhanian have violated section 208(2)(a) of the Code, Regulation 7(2)(a) and (h) of the IP Regulations and clause 2 and 14 of the Code of Conduct under regulation 7(2) thereof.

Submission

- 2.8. As regards the lease of land, Mr. Singhanian submitted that all the tea gardens in the country are owned by State and then are given on long term lease to persons interested in operating the same. The lease deed is required to be renewed by the State as and when it expires. However, a substantial time is taken by the State at the time of granting renewal. During this period existing lease holder continues to operate the tea garden and generally garden renewal is done in favour of existing operator. As such, in IM factual position is stated. Similarly, as regards treatment of land in Balance Sheet as at 31st March, 2016, land has been shown as an asset. And that in the previous years since 2000, same treatment was given to land in the balance Sheet of CD pending approval of application for renewal by the appropriate authorities. Valuation of assets were done by independent valuers as per provisions of the Code.
- 2.8.1. Mr. Singhanian submitted that despite the Directors of CD not cooperating in CIRP which is evident from the records, Mr. Singhanian tried his best for resolution of the CD which would have otherwise gone into liquidation. Keeping these factors in mind, Mr. Singhanian had gone ahead with Resolution by convincing CoC for seeking extension of CIRP period, which finally resulted in successful resolution of the CD.
- 2.8.2. As regards the dues payable to workers and employees, Mr. Singhanian submitted that the figures of worker's dues were taken as per information gathered from various mails of the directors of CD, wherein they always asked to provide funds for payment of various dues. The figures of Rs. 1.72 Cr. as shown in page no. 13 was as per information received from CD. Based on the information gathered during

interaction with CD's directors during CoC meetings, dues payable to staff and workers was estimated at Rs. 2.20 crore. This figure has been shown in page 17 of the Information Memorandum as dues payable to workers.

V Contravention

- 2.9. Regulation 6(2)(b) of the CIRP Regulations provides that the public announcement to be published in one English and one regional language newspaper with wide circulation at the location of the Registered office and Principal office, if any, of the CD. Mr. Singhania made the Public announcement of initiation of CIRP and called for submission of claims on 20th September, 2017 at the location of registered office, i.e., in Kolkata Editions of Financial express and Dainik Statesman newspaper. That the CD was engaged in production and manufacturing of processed tea and their tea gardens were situated in Darjeeling. Also, as per IM, the principal place of Business of the CD was Darjeeling, West Bengal. Even in the appointment letter issued to valuers, the principal place of business was Darjeeling only. Since the principal office of the CD was in Darjeeling, the public announcement should have been made at the place of principal office also. Further, Form A (Public Announcement) also provides for the address of the principal office (if any). However, Mr. Singhania failed to provide the details of principal office in the Public announcement.

Thus, the IBBI is of the prima facie view that Mr. Singhania have violated section 208(2)(a) of the Code, Regulation 6(2)(b) of the CIRP Regulations, Regulation 7(2)(a) and (h) of the IP Regulations and clause 2 and 14 of the Code of Conduct under regulation 7(2) thereof.

Submission

- 2.10. Mr. Singhania submitted that he was informed by the Advertising Agency that the Financial Express and Dainik Statesman (Vernacular Daily) are circulated across West Bengal including Siliguri, where tea garden is situated. That Gaya Ganga Tea Estate (Tea Garden of CD) is situated at 9-10 kms from Bagdogra Airport, Siliguri and Siliguri falls under Darjeeling District in West Bengal. In view of the above and as per the information available with Mr. Singhania on the date of publication of Form A, publication of public announcement in the Financial Express and Dainik Statesman was done. He has attached a letter dated 18th November, 2019 from the Financial Express stating that the Newspaper is circulated all over West Bengal. He had also attached Report of audit bureau of circulations for July to December 2017 certifying publication of the Dainik Statesmen in Kolkata and Siliguri. During personal e-hearing, it was submitted by Mr. Pranay Agarwal, Counsel for Mr. Singhania that Public announcement in Form A was in compliance of section 13(2) of the code and Regulation 6 of CIRP regulations of the IBBI.

VI Contravention

- 2.11. Regulation 27 of the CIRP provides for appointment of two registered valuers to determine the fair value and the liquidation value of the CD. Accordingly, Mr. Singhania appointed two valuers, viz., M/s Adroit Tech Services Private Ltd. and Mr. K.K. Kharga for valuation of CD. M/s Adroit Tech Services Private Ltd.

reported that in the absence of details pertaining to the Land & Building and Plant & Machinery we haven't added any such value to the valuation. On the other hand, Mr. K.K. Kharga conducted valuation considering the detailed asset wise information and physical verification of all assets of the CD. As the details of the Land and Building and plant and Machinery was available to Mr. K. K. Kharga, the same should have been provided to M/s Adroit Tech Services Pvt. Ltd. In addition, M/s Adroit Tech Services Pvt. Ltd. also does not provide the asset-wise liquidation value, still, the same valuation report was accepted by the IP.

Thus, the IBBI is of the prima facie view that Mr. Singhania have violated section 208(2)(a) of the Code, Regulation 7(2)(a) and (h) of the IP Regulations and clause 14 of the Code of Conduct under regulation 7(2) thereof.

Submission

- 2.12. With regard to the issue of valuation by valuers, Mr. Singhania submitted that as per law, valuation should be done by two independent valuers who shall compute the estimate of the liquidation value in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the CD. That, in the instant case, the two valuers had adopted two different approaches while ascertaining the liquidation value of CD. He submitted that following valuation methods were adopted by the Valuers:
 - a. Adroit Technical Services Pvt Ltd – Direct Income Capitalization or Capitalization of Earning method of Income approach. (Liquidation Value – Rs. 16,09,28,704.00 given on 16th April, 2018).
 - b. Mr. K.K. Kharga – Prevalent Market Rates and depreciation in their cost. (Liquidation Value – Rs. 16,00,00,000.00 given on 24th April, 2018).
- 2.12.1. Mr. Singhania submitted that KMPs/Directors of CD never cooperated during CIRP and as such no details of individual assets were available with RP. Mr Singhania further submitted that as independent professionals, their reports were based on internationally accepted valuation standards. He stated that as there was no specific provision in the Code or regulation as to which method should be adopted for valuation, he had accepted both the reports and since there were no significant variation in the two reports, liquidation value was placed before the CoC which also accepted the same. Mr. Pranay Agarwal, Counsel for Mr. Singhania, referred to the Regulation 27 and Regulation 35 of the CIRP regulations and submitted that the appointment of the valuers was done in terms of the above stated regulation.
- 2.12.2. In addition to the aforesaid submission, Mr. Singhania stated that the AA vide order dated 25th September, 2018, directed to handover to Mr. Singhania the assets of the CD which were then in possession of the suspended directors. Despite the directions of the AA and Mr. Singhania seeking police assistance to get possession of assets, they were not handed over. An application under section 12A of the Code for withdrawal of the CIRP was filed by PNB but the same was dismissed vide order dated 3rd August, 2018. One of the directors of the CD filed an appeal before Hon'ble NCLAT which passed an order dated 16th August, 2018 directing the AA not to pass any order under section 31 of the Code. The AA directed the CD to

handover the assets within 15 days failing which Mr. Singhania can take assistance from police. It further directed PNB to consider the request of the RP for the grant of interim fund so as to continue the process till approval or rejection of the plan. NCLAT vide order dated 5th October, 2018, directed the suspended Board of Directors to handover the assets of the CD to the RP as required under the law. Thus, DC also takes on record the fact of non-cooperation.

- 2.12.3. Mr. Singhania further submitted that an application for withdrawal of the CIRP was filed under section 12A of the Code by the PNB which was dismissed by the AA. However, an appeal was filed by against this order before the appellate tribunal whereby by order dated 27th February, 2019 passed by the Hon'ble NCLAT, the application was allowed and the order of the AA was set aside with a direction that AA not to approve the plan under section 31. The CD and its directors were reinstated in their original position. The appellate tribunal held as follows.

“9. For the reasons aforesaid, we set aside the impugned order dated 3rd August, 2018, allow the application filed by the Punjab National Bank for withdrawal of the application under section 7 and dismiss the Company Petition C. P. (I.B.) No. 421/KB/2017, the parties having settled the claim.

10. The Corporate Debtor is restored to its original position. In effect, order passed by the Adjudicating Authority appointing ‘Resolution Professional’, declaring moratorium, freezing of accounts, and all other orders passed pursuant to impugned order and action taken by the Resolution Professional, including the advertisement published in the newspaper calling for applications and actions are declared illegal and are set aside. The CD is released from the rigor of law and is allowed to function independently through its Board of Directors from immediate effect.”

Finding and Analysis

3. After considering the allegations in the SCN and submissions made by Mr. Singhania in light of the provisions of the Code, regulations and the relevant circulars, the DC finds as follows.
- 3.1. In respect of the first and second issue regarding claims and admission of PNB's revised claim by Mr. Singhania during CIRP, the DC notes that one of the core duties of the IP is to receive, collate and verify claims. His conduct have a substantial bearing on his performance and outcome of the processes under the Code, i.e., in resolution or liquidation. He, therefore, is expected to function with diligence. In this regard, section 18 (1)(b) of the Code and Regulation 13 of CIRP Regulations provides as follows:

Section 18 (1)(b) reads as under:

“18(1) The interim resolution professional shall perform the following duties, namely: -

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;”

Further, Regulation 13 (1) of the CIRP Regulations reads as under:

“13. Verification of claims.

(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.”

3.1.1. In this regard, the Apex Court in the matter of ***Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta &Ors. (Civil Appeal No. 8766-67 of 2019)*** also highlighted the role of RP in the revival of the corporate debtor. The Hon’ble Court observed as under:

“...Thereafter, under Regulation 13, the resolution professional shall verify each claim as on the insolvency commencement date, and thereupon maintain a list of creditors containing the names of creditors along with the amounts claimed by them, the amounts admitted by him, and the security interest, if any, in respect of such claims, and constantly update the aforesaid list.”

The DC notes the submission of Mr. Singhania that for claim after the commencement of CIRP, he relied upon the proviso to section 29A of the Code and that under the Code applicable at that time, guarantors had the option to submit the resolution plan after making payment of overdues and interest thereon. However, DC is of the opinion that this submission of Mr. Singhania still does not explain the rationale behind accepting the interest post CIRP commencement period as revised claim. Claims can be accepted only as on insolvency commencement date.

3.1.2. Regarding the allegation of providing amount of Rs. 10.38 crore to PNB as against the revised claim of Rs. 1.27 crore, the DC noted that the revised claim was a new claim for the interest amount from 1st June, 2017 to 10th April, 2018. However, Mr. Singhania did not give extra voting rights to PNB on account of new claim. Therefore, DC finds that acceptance of claim in respect of the interest for the period from 1st June, 2017 to 20th September, 2017 is as per Regulation 13 of the CIRP regulations. However, acceptance of any claim for the post CIRP period i.e. 21st September, 2017 to 10th April, 2018 is in violation of Regulation 13 of the CIRP Regulation.

3.2. Regarding the third issue, with respect to the deferment of publication of EoI by Mr. Singhania, the DC notes that the provisions of section 208(2), 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.

Section 208 of the Code reads as under:

“208. (2) Every insolvency professional shall abide by the following code of conduct:—

- (a) to take reasonable care and diligence while performing his duties;*
- (e) to perform his functions in such manner and subject to such conditions as may be specified.”*

Regulation 7(2)(a) and (h) of the IP Regulations provides 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;”

Further, Clause 13 and 14 of First Schedule of Code of Conduct for Insolvency Professionals under Regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016 provide as under:

“13. An insolvency professional must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan his actions, and promptly communicate with all stakeholders involved for the timely discharge of his duties.

14. An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code.”

3.2.1. In the present matter, the DC notes that the submission of Mr. Singhania in his reply that in the 4th CoC meeting dated 9th February, 2018, it was proposed by him that the advertisement inviting EOI be published in the newspapers by 13th February, 2018 and the last date of submission be kept at 28th February, 2018. During this meeting, CD/Mr. Mintri has submitted a proposal to Punjab National Bank to settle and pay outstanding dues of the Bank, Mr. Mintri has requested to defer the date of publication. In the meeting, it was decided that if Mr. Mintri’s proposal for OTS is not accepted by the Bank within 20th February, 2018, the advertisement shall be published on 23rd February, 2018 and the last date of submission of EoI shall be 10th March, 2018. DC further notes the submissions of Mr. Singhania that the decision to defer publication of EoI after 23rd February, 2018 was taken at the 4th meeting by CoC and not by Mr. Singhania and that too in the context of limited purpose of the outcome of settlement proposal submitted by the promoter of the CD. Therefore, regarding deferring of the publication of EoI in that context, the DC is of the opinion that lenient view may be taken.

3.3. As far as the Fourth issue of incorrect statements made by Mr. Singhania in the

Information Memorandum is concerned, the Code has clearly outlined the duties which must be performed by RP during the insolvency resolution process. One of the key functions of RP with respect to conduct of CIRP include preparation of IM. An IM is a very crucial document and provides a financial position about the Corporate Debtor. Section 25(2)(g) of the Code clearly provides that the resolution professional shall prepare the information memorandum in accordance with section 29. Section 29 of the Code provides that the resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.

Regulation 36 of the CIRP Regulations provides as under:

“36. Information memorandum.

(1) Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier.

(2) The information memorandum shall contain the following details of the corporate debtor-

(a) assets and liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values.

Explanation: ‘Description’ includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, and any other relevant details.

(b) the latest annual financial statements;

(c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;

(d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;

(e) particulars of a debt due from or to the corporate debtor with respect to related parties;

(f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;

(g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;

(h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;

(i) the number of workers and employees and liabilities of the corporate debtor towards them; ...”

3.3.2. It is RP’s duty to provide an updated and verified IM to all resolution applicants. In this regard, DC takes on record the submission of Mr. Singhanian that he had not suppressed any material information and that the error in the date mentioned in page no. 17 as on 20th September, 2017 is an inadvertent typographical error. He acted in the interest of the CD to save it from going into liquidation. The DC notes that the non-cooperation from the KMPs of the CD is evident from the orders of AA in that regard. Hence, DC takes a lenient view.

3.4. Regarding the Fifth issue of making public announcement of initiation of CIRP at the place of principal office, the DC notes that when a corporate debtor undergoes corporate insolvency resolution process, an IP is vested with the management of its affairs and he manages its operations as a going concern. He complies with the applicable laws on behalf of the corporate debtor. He conducts the entire CIRP. Such responsibilities of an IP require the highest level of professional excellence and integrity. Section 15(2) of the Code provides for the Public announcement of corporate insolvency resolution process to be made in such manner as may be specified.

Regulation 6 (2) of the CIRP Regulations provides as follows:

“(2) The public announcement referred to in sub-regulation (1) shall:

(a) be in Form A of the Schedule;

(b) be published-

(i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the interim resolution professional, the corporate debtor conducts material business operations;

(ii) on the website, if any, of the corporate debtor; and

(iii) on the website, if any, designated by the Board for the purpose...”

3.4.1. In the present matter, the DC notes that the submission of Mr. Singhanian who acted on the information of the Advertisement agency that the Financial express and Dainik Statesman (vernacular daily) were circulated across West Bengal including Siliguri, where the corporate office is located. Mr. Singhanian has also produced the report of the Audit Bureau of Circulations for July to December, 2017 certifying publication of the Dainik statesman in Kolkata and Siliguri. Thus, the DC notes that the Public Announcement in Form A was in compliance to section 13(2) of the Code.

- 3.5. With respect to the sixth and last issue, i.e., failure to provide details of Land and Building etc. to the one of the Registered valuers. The DC notes that regulation 27 of the CIRP regulations provides that the resolution professional shall appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35.

Regulation 35 of the CIRP regulations provides as under.

“The two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor...”

- 3.5.1. In the instant matter, the DC has noted that Mr. Singhania accepted the Report of M/s Adroit Tech Services Pvt. Ltd. with the limitation that in the absence of the details pertaining to the Land and Building and Plant and Machinery we haven't added any such value to the valuation. This shows that Mr. Singhania has not taken care of the observations made by the valuer. However, Mr. Singhania has clarified that the Reports of valuers were based on internationally accepted valuation standards and the promoter directors did not cooperate with him in providing the details of the assets.
- 3.5.2. DC notes that since there being no significant variation in the two reports, it appears that the limited details as available with Mr. Singhania were provided to both the valuers. Mr. Singhania should have made some more efforts to get the details of the assets. However, in view of his submissions that due to non-cooperation of the directors of the CD, the details of individual assets were not available with Mr. Singhania. Therefore, the clarification given by Mr. Singhania is accepted.

Order

4. In view of above, the DC finds that Mr. Kamallesh Kumar Singhania, as an RP, has contravened section 208(2)(a) and (e) of the Code read with Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2017 and Regulation 7(2)(a) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016, and clause 1, 2, 3, 10 and 14 of the Code of Conduct under regulation 7(2) thereof.
5. The DC, therefore, 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 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and disposes of the SCN with the following directions:
- (i) Mr. Kamallesh Kumar Singhania shall undergo pre-registration educational course from the IPA of which he is a member.
 - (ii) Mr. Kamlesh Kumar Singhania shall not take any new assignment/ process under the Code without compliance of the above direction.
 - (iii) Mr. Kamlesh Kumar Singhania shall, however, continue to conduct and complete the assignments/processes he has in hand, if any, as on the date of this order.
 - (iv) This order shall come into force on expiry of 30 days from the date of its issue.

- (v) A copy of this order shall be forwarded to the ICSI institute of Insolvency Professionals where Mr. Kamalesh Kumar Singhania is enrolled as a member.
- (vi) 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. Accordingly, the show cause notice is disposed of.

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(Dr. Mukulita Vijayawargiya)

Whole Time Member, IBBI

Dated: 13th November, 2020

Place: New Delhi