

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
(Disciplinary Committee)

No. IBBI/DC/143/2023  
10<sup>th</sup> January 2023

**Order**

**In the matter of Mr. Subrata Monindranath Maity, Insolvency Professional (IP) under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 13 of the Insolvency and Bankruptcy Board of India (Investigation and Investigation) Regulations, 2017.**

This Order disposes of the two Show Cause Notices (SCN) i.e. SCN-1 No. IBBI/IP(MON)/SM/2022/3523/524 dated 10.05.2022 and SCN-2 No. IBBI/IP/INSP/2022/158 dated 12.08.2022 issued to Mr. Subrata Monindranath Maity, R/o B-202, Jai Gurudeo Complex, Plot 16-19 and 21-25, Sector 17, Kamothe, Navi Mumbai, Maharashtra – 410209 who is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00884/2017- 18/11481.

**1. Background**

- 1.1.** The Hon'ble NCLT, Mumbai Bench (AA-1) vide order dated 14.03.2022, admitted the application under section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) filed by M/s Apaya Capital Services Pvt. Ltd. for initiating Corporate Insolvency Resolution Process (CIRP) of M/s Guardian Homes Pvt. Ltd. (CD-I). The AA appointed Mr. Subrata Monindranath Maity as Interim Resolution Professional.
- 1.2.** The Hon'ble NCLT, Chennai (AA-2) vide order dated 22.05.2019 admitted the application under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating CIRP of M/s. Bhatia Coke and Energy Limited (CD-II). The AA appointed Mr. Motappa Thimmaraya as an Insolvency Resolution Professional (IRP) and who was later replaced by Mr. Subrata Monindranath Maity as the Resolution professional (RP).
- 1.3.** The IBBI, in exercise of its powers under section 219 of the Code read with Regulation 11 of Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 issued SCN-1 on 10.05.2022 to Mr. Subrata Monindranath Maity based on the First Information Report (FIR) registered with Central Bureau of Investigation (CBI), Anti-corruption Branch, Pune for alleged offences involving demand of undue financial advantage with respect to CD-I.
- 1.4.** Further, the IBBI, in exercise of its powers 218 of the Code read with Regulation 7(1) and 7(2) of the ('Inspection Regulations') appointed an Inspecting Authority (IA) to conduct an investigation in the matter of Bhatia Coke and Energy Limited (CD-II) wherein Mr. Subrata Monindranath Maity worked as resolution professional. In terms of Regulation 8(1) of the Inspection and Investigation Regulations, the notice dated 30.06.2022 was issued to Mr. Subrata Monindranath Maity. However, in the absence of specific response or clarification from him within the stipulated time, IA submitted the investigation report on 26.07.2022. It

may be mentioned that Mr. Subrata Monindranath Maity's reply to the investigation notice was belatedly received on 28.07.2022, and the Board has taken the same into account. The IBBI issued the SCN-2 to Mr. Subrata Monindranath Maity on 12.08.2022, based on findings in the inspection report and material available on record. Mr. Subrata Monindranath Maity replied to the SCN on 27.08.2022.

- 1.5. The IBBI referred the SCN-1 and SCN-2, response of Mr. Subrata Monindranath Maity to the SCNs and other material available on record to the Disciplinary Committee (DC) for disposal of the SCNs in accordance with the Code and Regulations made thereunder. Mr. Subrata Monindranath Maity alongwith his advocate Mr. Vikram Hegde, availed an opportunity of e-hearing before the DC on 12.10.2022. Mr. Subrata Monindranath Maity submitted written submissions in addition to the reply vide email dated 20.10.2022. The DC has considered the SCN, the reply to SCN, oral and written submissions of Mr. Subrata Monindranath Maity, other material available on record and proceeds to dispose of the SCN.

## 2. Alleged Contraventions, Submissions and Findings

The contravention alleged and Mr. Subrata Monindranath Maity's submissions thereof are summarized as follows:

### SCN-I – In the matter of M/s Guardian Homes Pvt. Ltd.

#### Contravention-I:

- 2.1. It was observed that CBI has registered an FIR bearing number RC/PUNE/2022/A/003 dated 4th May 2022 against Mr. Subrata Monindranath Maity for commission of offences punishable under section 120-B of Indian Penal Code (IPC) and Section 7 of the Prevention of Corruption Act, 1988 as amended in 2018 (PCA).
- 2.2. IBBI grants a certificate of registration to the IP under Regulation 7 of IP Regulations which *inter alia* provides that an IP shall, at all times continue to satisfy the requirements under Regulation 4 of the IP Regulations including the conditions of fit and proper person as stipulated vide regulation 4(g) of IP Regulations. Among others, integrity, reputation and character are considered to be the key determinants of an individual being a fit and proper person. The filing of aforesaid FIR by CBI for the alleged offences involving demand of undue financial advantage while performing his duties under the Code, raises serious questions regarding Mr. Maity being 'fit and proper' to continue as Insolvency Professional.
- 2.3. The Board is, therefore, of the *prima facie* view that Mr. Subrata Monindranath Maity had *inter alia* violated section 208(2)(a) and (e), section 7(2)(a), (b), (h) and (i) of the Code and Clause 1, 2, 3, 9, 14 and 24 of the Code of Conduct as specified in the First Schedule of IP Regulations.

#### Submissions

- 2.4. Mr. Subrata Monindranath Maity has submitted that the said FIR is frivolous and malafide. Even by the narration in the FIR, it is evident that there is no case, much less an offence under PCA, made out against the RP. There has not been any investigation against the RP. No final report has been filed by CBI in respect of this FIR. No charges have been framed against the RP in respect of the FIR. Mr. Subrata Monindranath Maity has further submitted that the alleged offences in the FIR arise out of the acts of the RP in discharge of his official duties as IP. The de facto complaint has resorted to the said policy only to avoid the progress of CIRP. He has not violated any provisions of law, much less than the IBC or any rules or regulations thereunder.

### **Analysis and Finding**

- 2.5. The DC notes that the instant allegations made against Mr. Subrata Monindranath Maity are under investigation by CBI and Mr. Maity has challenged action of CBI before Hon'ble High Court of Bombay. Since the matter is pending adjudication before Hon'ble High Court of Bombay, this DC refrains from intervening in the matter.

### **SCN-II- In the matter of M/s. Bhatia Coke and Energy Limited**

#### **3. Contravention-II:**

- 3.1. It has come to the notice that a plant of the CD-II was handed over to Narayani Resources Private Limited (Narayani) without apprising/seeking approval of Committee of Creditor (CoC). In the reply, received belatedly, to Notice of Investigation issued on June 30, 2022, Mr. Subrata Monindranath Maity has categorically denied that the plant was handed over to Mr. Ankur Agarwal (one of the Resolution Applicants) without the permission of CoC. Mr. Subrata Monindranath Maity has further stated therein that one of the four batteries available in plant was allocated for job work for Narayani and the control of the plant was with the CD-II.
- 3.2. It is noted from the minutes of 18<sup>th</sup> CoC meeting held on April 12, 2021 that Mr. Subrata Monindranath Maity in reply to query raised by Punjab National Bank (PNB) informed CoC that CD-II was not given on lease but some job work was undertaken to run the CD-II as going concern and that the same did not require pre-approval of the CoC.
- 3.3. Credit Agency ICRA's report of Narayani Resources Private Limited *inter alia* stated that "Narayani Resources Private Limited has also started manufacturing of LAM coke in March 2021 for which it has signed a conversion contract with a coke plant located at Gummidipoondi, Tamil Nadu." Location of Plant mentioned in ICRA report is the same as the CD-II's location and it can be safely presumed that it refers to work awarded to Narayani by the CD-II while it was under Mr. Subrata Monindranath Maity's control as RP of CD-II.
- 3.4. The facts and circumstances stated in above indicates that CD-II's major operations were outsourced to Narayani and the same was done without the approval of CoC contrary to Mr. Subrata Monindranath Maity's submission to IA wherein he has categorically denied having handed over plant to Mr. Ankur Agarwal (one of the Resolution Applicants) without the permission of CoC. Clearly, Mr. Subrata Monindranath Maity had handed over one of the plants of the CD-II to Narayani without approval of CoC. Hence his statement in the 18<sup>th</sup> CoC meeting and the submission to IA are contradictory and misleading.
- 3.5. The Board is, therefore, of the *prima facie* view that Mr. Subrata Monindranath Maity had *inter alia* violated Clause 1, 2, 3, 12 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

#### **Submissions**

- 3.6. Mr. Subrata Monindranath Maity stated that the plant was not handed over to any third party. As a result of the siphoning of funds and other misdeeds of the erstwhile promoters, there was working capital available to run only two batteries. At the same time, the RP was under a legal obligation under the provisions of the Code and the order of the Hon'ble NCLAT to maintain the CD-II as a going concern. In March 2021, there was a sudden boom in Mineral and Metal cycle. Besides this the Power price at the energy exchange shot up. To capitalize on both the account without infusing any capital and keeping in view the mandate of the Code and the Hon'ble NCLAT to keep the CD-II as a going concern, it was decided by the plant management to do job work. This not only would improve cash flow of CD-II besides earning good profit on sale of power. All this was done in good faith and upon legal advice. It is worth mentioning

that by doing job work, the CD-II (BCEL) earned Rs. 22.64 Crores without any investment in Working Capital.

- 3.7. As accepting order on job work is a routine plant operation, the plant management decided to go ahead with job work. As per section 28 of the Code, prior approval of the CoC is not required for such activities. Mr. Subrata Monindranath Maity submitted that he had also obtained legal opinion from Adv. Vikram Hegde.
- 3.8. Mr. Subrata Monindranath Maity stated that the Job Work Agreement was executed on 24<sup>th</sup> Feb 2021. The Job Work was undertaken as there was opportunities to earn money for the CD-II without investing in working Capital. In fact, there was no working Capital to run third battery as there was a sudden boom in Mineral and Metal cycle. Besides this the Power price at the energy exchange shot up. All this in the backdrop of Covid 2<sup>nd</sup> wave and uncertain market for products produced by CD-II.
- 3.9. During the period of Job Work, the plant was completely under supervision of the employees of CD-II. Mr. Ankur Agarwal was one of the director of one of the member of the consortium of Resolution Applicant, i.e., Earth Element Development company Pvt. Ltd. It is to be noted that the code nowhere debars the resolution applicant of the CD-II nor prohibits a RP from doing business with a company in which one of the directors is a director of the resolution applicant. He submitted that all transactions were done at Arms Length.
- 3.10. The COC was informed of Job Work Agreement in the 18<sup>th</sup> CoC Meeting. Thereafter, regular update on Job Work production and Power sales was given to Members. The CoC (Lenders) represented by Mr. Rakesh Pandey of PNB and Mr. Neelakanthan of SBI visited Plant to verify whether the Plant was under NRPL/ Ankur Agrawal or under the Supervision of the Employees of CD-II. They were satisfied that the plant was under the supervision of employees of CD-II.
- 3.11. Mr. Subrata Monindranath Maity reiterated that as per section 28 of the Code, prior approval of the CoC is not required for such activities. It is to be noted that the code nowhere debars the resolution applicant of the CD-II nor prohibits RP from doing business with a company as a going concern in which one of the director is a director of the resolution applicant. With respect to report of ICRA stating that *“Narayani Resources Private Limited has also started manufacturing of LAM coke in March 2021, for which it has signed a conversion contract with a coke plant located at Gununidipoondi, Tamil Nadu.”* Mr. Maity submitted that what ICRA was wring in their report was not in his control. However, he enquired with Narayani and they had sent a mail to ICRA stating – *“Companies recent foray into the manufacturing of Low Ash Metallurgical (LAM) Coke through conversion contract with a coke plan.”* Nowhere the correspondence with NRPL mentions *“coke plant located at Gununidipoondi, Tamil nadu”*.

#### **4. Contravention -III:**

- 4.1. From the master data obtained from website of the Ministry of Corporate Affairs, it is noted that Mr. Ankur Agarwal is one of the Directors of Narayani as well as of Earth Elements Development Company Private Limited, one of the members of consortium whose resolution plan was approved by CoC and Hon'ble National Company Law Tribunal, Division Bench-II Chennai (AA-2).
- 4.2. It is also noted that discussions around the resolution applicants started around 12<sup>th</sup> CoC meeting held on December 1, 2020. It is also observed from AA-2's order dated June 20th, 2022 that the plan of the resolution applicant viz. consortium of Earth Elements Development Company Limited and Mahavir Coal Washeries Private Limited was approved by CoC in their meeting held on June 2, 2021 by 100% voting share. As per ICRA Report, Narayani was

engaged in March 2021. It is thus obvious that the time when Narayani was engaged for the job work, Mr. Subrata Monindranath Maity must be cognizant of fact about Mr. Ankur Agarwal being Director in both entity, *i.e.*, Narayani and Earth Elements Development Company Private Limited.

- 4.3. Mr. Subrata Monindranath Maity's conduct of not informing the CoC of engaging a related party of one of the resolution applicants, particularly at a stage when plans were being negotiated with CoC, raises reasonable doubt on his conduct of being biased towards one of the applicants.
- 4.4. In view of the above, the Board is of the *prima facie* view that Mr. Subrata Monindranath Maity has *inter alia* violated Clause 2, 3, 12 and 14 of the Code of Conduct.

#### **Submissions**

- 4.5. Mr. Subrata Monindranath Maity submitted that Mr. Ankur Agarwal is one of the Directors of Narayani as well as of Earth Elements Development Company Private Limited, one of the members of consortium whose resolution plan was approved by CoC and Hon'ble National Company Law Tribunal, Division Bench-II Chennai (AA-2).
- 4.6. The entity Narayani Resources Pvt. Ltd was not engaged in operating the Plant. It was a pure business decision to keep the plant running as a going concern and there is no provision in the code that approval of CoC is required for job work. Further, NCLAT in its order dated 1<sup>st</sup> August 2019 vacated its order passed on 31<sup>st</sup> March 2019 and ordered to constitute CoC and asked IRP/RP to keep the Company as a Going Concern. He stated that it was farfetched to say that the Plant was handed over to Narayani as Clause 7 of the agreement clearly contemplates that only plot for storing coking coal is provided to Narayani under the said agreement.
- 4.7. Mr. Subrata Monindranath Maity submitted that the resolution plan submitted by Consortium of Earth Element and Mahavir Coal on 19<sup>th</sup> Feb 2021 before the Job Work Agreement was signed, stated Mr. Ankur Agrawal as director of Earth Element. Hence, it was wrong to conclude that CoC was not informed of who Mr. Ankur Agrawal was. The CoC was aware that Mr. Ankur Agrawal is director of both the entities - EEDCC and NRPL. He submitted that the Resolution Plan was discussed by the bankers with Resolution Applicant at CoC, at JLM and also individually. He submitted that he had no role to play except for informing CoC of the changes made in Resolution Plan.

#### **Analysis and Findings- II and III**

- 4.8. In the instant case, it is observed that the resolution plan submitted by Consortium of Earth Element and Mahavir Coal on 19.02.2021 before the Job Work Agreement was signed, wherein it was stated that Mr. Ankur Agrawal as director of Earth Element. Later, Job Work Agreement was executed on 24.02.2021 between Narayani and the CD-II. The DC noted that Mr. Ankur Agarwal was one of the Directors of Narayani as well as one of the members of consortium of Earth Elements Development Company Private Limited whose resolution plan was approved by CoC and Hon'ble AA-2. From the documents available on the records, the DC observes that Mr. Subrata Monindranath Maity did not inform the CoC of engaging a related party of one of the Resolution applicants for the job work when resolution plans were being negotiated with CoC.
- 4.9. The Code of Conduct specified in the First Schedule of the IP Regulations, *inter alia*, mandates the IP to disclose all material information to the CoC and to act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to

the insolvency proceedings or not. It may also be noted that the adequate and timely disclosures before CoC ensures the transparency in the process.

- 4.10.** In view of the above, the DC finds that Mr. Subrata Monindranath Maity has violated Clause 1, 2, 3, 12 and 14 of the Code of Conduct provided under the IP Regulations by not disclosing the material information with CoC regarding executing a job work agreement between the CD-II and the one of the members of Resolution Applicant, particularly at a stage when resolution plans were being negotiated with CoC.

## **5. Contravention – IV**

- 5.1.** Section 12A of the Code provides that the Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of 90% voting share of the committee of creditors (CoC). Further, Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) provides that an application for withdrawal under section 12A may be made to the AA after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be.
- 5.2.** It is observed from the minutes of the 12<sup>th</sup> CoC meeting held on 01.12.2020 that the issue of withdrawal of CIRP was discussed. The said minutes attribute a statement to Mr. Subrata Monindranath Maity as per which he informed the CoC that an application under Section 12A of the Code was not possible at that stage as per the provisions of the Code.
- 5.3.** Statement attributed to Mr. Subrata Monindranath Maity in the minutes that application under section 12A was not possible at this stage is clearly against Section 12 A of the Code read with Regulation 30A of CIRP Regulations. Mr. Subrata Monindranath Maity's conduct of misrepresenting facts to CoC is *prima facie* in violation of section 208(2) (a) of the code read with Clause 1, 2, 3, 9 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

## **Submissions**

- 5.4.** Mr. Subrata Monindranath Maity stated that his statement had been quoted out of context and the said statement must be read in context to the spirit and preamble of IBC. He submitted that he had informed many times that the Promoters tried 12A proposal four times. The Promoters attempted 12A / Settlement on four occasions: (i) 31.05.2019, (ii) 19.11.2020, (iii) 24.04.2021 and 01.06.2021. That these 12A proposal either could not get 90% vote or the proposal was incomplete or after the resolution plan was put to vote. He stated that the Promoters always tried to stall the CIRP in the pretext of 12A. Thus, hampering the timebound completion of CIRP in a time bound manner. That as there was no 12A proposal the members wanted to discuss the proposal in JLM and not in COC. Mr. Subrata Monindranath Maity submitted that the application under Section 12A filed by the Erstwhile Directors of the Corporate Debtor was incomplete and the procedure regarding the application was not followed as per the law. Therefore, he being the Insolvency Professional informed the board that there was no complete application in terms of Form FA.

## **Analysis and Findings**

- 5.5.** From the minutes of the 12<sup>th</sup> CoC meeting held on 01.12.2020, the DC observes that the issue of withdrawal of CIRP was discussed wherein Mr. Subrata Monindranath Maity as RP informed the CoC that an application under Section 12A of the Code was not possible at that

stage as per the provisions of the Code. However, on the afore-stated issue of withdrawal, CoC in its 12<sup>th</sup> meeting passed the resolution that “*Resolved that in order to negotiate with Resolution Applicants for better realisation besides discussing proposal of Promoters u/s 12A besides giving sufficient time to Financial Creditors to evaluate the Plan before submitting to Hon’ble NCLT for approval of the plan an extension till 31<sup>st</sup> Jan ’21 may be sought*”. Thus, the DC finds that Mr. Subrata Monindranath Maity has misrepresented about the applicability of Section 12A of the Code read with Regulation 30A of CIRP Regulations to the stakeholders. Hence, Mr. Subrata Monindranath Maity has failed to act as per section 208(2)(a) of the Code read with Clause 1, 2, 3, 9 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations.

## **6. Contravention - V**

- 6.1.** Regulation 40B of CIRP Regulations provides that the insolvency professional, Interim resolution professional or resolution professional, as the case may be, shall file the Forms, along with the enclosures thereto, on an electronic platform of the Board, as per the timelines stipulated against each Form. It is noted that CIRP-3 and CIRP-4 was filed with a delay of 21 and 116 days respectively. Mr. Subrata Monindranath Maity’s conduct of filing forms with a substantial delay *prima facie* violates Regulation 40 B of CIRP Regulations, read with clause 2, 12, 13 and 14 of the Code of Conduct.

### **Submissions**

- 6.2.** Mr. Subrata Monindranath Maity submitted that the delay in filing of CIRP-3 was from 13.03.2020 to 30.03.2020. That this was during the first phase of the COVID related lockdown. Mumbai was one of the first cities to be hit by COVID and lockdown was imposed in Mumbai even prior to the national lockdown. The delay in filing was due to the fact that the filing was to be done during the COVID period and it was extremely difficult and inaccessible to get the same done during the same. On the delay of 116 days in filing of the CIRP-4 form, the form was required to be submitted on 22.12.2020, but was submitted on 16.04.2021. Mr. Subrata Monindranath Maity stated that during the same time he had undergone a heart attack on 25.01.2021 and was recovering from the same. As unfortunate as it was, the copy of the Doctor's report disclosing the heart attack was annexed with the reply to the Show Cause Notice. Further, two of the associates of Mr. Subrata Monindranath Maity lost their lives due to COVID and as such the functioning of his office was unexpectedly crippled due to reasons entirely beyond his control.

### **Analysis and Findings**

- 6.3.** The DC has observed that CIRP-3 and CIRP-4 in respect of the CD-II were filed by Mr. Subrata Monindranath Maity with a delay of 21 and 116 days respectively. In this regard, the DC notes the justification adduced by Mr. Subrata Monindranath Maity that delay in filing CIRP-3 was due to Covid induced lockdown during the relevant period. The DC also noted that the other CIRP-4 form was to be filed on 22.12.2020 but was submitted on 16.04.2021, i.e., after a substantial delay of 116 days. The DC noted the submissions of Mr. Subrata Monindranath Maity that he was not well during the period and had a heart attack on 25.01.2021. The DC accepts the submission of Mr. Subrata Monindranath Maity.

## **7. Contravention - VI**

- 7.1.** Clause 12 of the Code of Conduct mandates an IP to not conceal any material information or knowingly make a misleading statement to the Board, the Adjudicating Authority or any stakeholder. It is noted that in the CIRP-4 filed by Mr. Subrata Monindranath Maity with the Board on April 16, 2021, he had stated that "*Number of persons who were ineligible as per Section 29 (A) - 0*". On the contrary it is noted, from the minutes of the 15<sup>th</sup> CoC meeting held on February 11, 2021 that Mr. Subrata Monindranath Maity informed the reasons for disqualification of Plan of RARE ARC as being "29A non-compliant". It is, thus, seen that Mr. Subrata Monindranath Maity had made misleading and contradictory statement about section 29A eligibility in CIRP – Form filed with the Board. Therefore, the Board is of the *prime facie* view that Mr. Subrata Monindranath Maity had *inter alia* violated Clause 2, 12 and 14 of the Code of Conduct.

### **Submissions**

- 7.2.** Mr. Subrata Monindranath Maity submitted that the disqualification of RARE ARC was in the wisdom of COC for reasons as it was non-compliant for various reasons as listed out in various Minutes of meeting - 29A, RFRP, Fraudulent Transactions and hence it was not considered by CoC. Section 29A non-compliance of RARE plan was one of the reasons for COC not to consider the RARE plan. He stated that in CIRP-4, he had included RARE disqualification in others.
- 7.3.** In his written submissions as well, Mr. Subrata Monindranath Maity submitted that in the concerned case, the CD-II was not a borrower in relation to the Resolution Applicant-ARC. Prima facie, there was no information to indicate that the Resolution Applicant had acquired any financial assets in the CD-II and therefore, Rare ARC was not permitted to submit the Resolution Plan. Further, RARE ARC had an avoidable transaction with Green Gold Global which was an Associate Company of the CD-II and the COC asked RARE ARC to explain the said transaction. RARE ARC was unable to explain the transaction. Thus, the CoC in its commercial wisdom chose not to accept the proposal of RARE ARC. The non-acceptance of RARE ARC cannot be attributed to the RP at any rate. The Hon'ble Supreme Court of India in Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar (2019) SCC Online SC 1478 has held that the commercial wisdom of Committee of Creditors is supreme.

### **Analysis and Findings**

- 7.4.** The DC notes that in the CIRP-4 filed by Mr. Subrata Monindranath Maity with the Board on 16.04.2021, he had stated that "*Number of persons who were ineligible as per Section 29 (A) - 0*" whereas in the 15<sup>th</sup> CoC meeting held on 11.02.2021 (prior to submission of CIRP – 4 form), it is mentioned that "RP further informed the members that the basis of disqualification of Plan of RARE ARC was (a) Non Compliance with RFRP (b) 29A Non Compliant (c) Not Providing information on being beneficiary to transaction with Green Gold Global Resources LLP" further, in the minutes of the 18<sup>th</sup> CoC meeting dated 12.04.2021, it is mentioned that "*RP apprised the members that as it has been discussed on various occasions before, the plan submitted by RARE ARC. A legal opinion and the detailed note on non-compliance points of RARE ARC is already submitted to all the CoC members by RP on 08.04.2021. RP had at all occasion shared the plan of RARE ARC with the CoC members despite the plan not being compliant to the Code, Regulations, RFRP and EOI.*" Therefore, the DC is of the view that Mr. Subrata Monindranath Maity has not provided the correct information to the Board about ineligible resolution applicant as per section 29A in the CIRP forms despite the same was



deliberated in the CoC meetings. Hence, the DC finds that Mr. Subrata Monindranath Maity had *inter alia* violated Clause 2, 12 and 14 of the Code of Conduct.

## **8. Order**

- 8.1.** In view of the forgoing discussion, the DC disposes of SCN-1 No. IBBI/IP(MON)/SM/2022/3523/524 without any direction since the matter is pending adjudication before Hon'ble High court of Bombay. The Board will be free to reinstate this matter after the decision of Hon'ble High Court of Bombay.
- 8.2.** For contraventions of SCN-2 No. IBBI/IP/INSP/2022/158, the DC observes that Mr. Subrata Monindranath Maity has not acted as per the provisions of the Code and Regulations made thereunder, in letter and spirit, *inter alia* by not disclosing the material information with CoC regarding executing a job work agreement between the CD-II and the one of the members of Resolution Applicant, particularly at a stage when resolution plans were being negotiated with CoC, The DC, in exercise of the powers conferred under section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017, hereby, suspends the registration of Mr. Subrata Monindranath Maity having Registration No. IBBI/IPA-001/IP-P00884/2017- 18/11481 for a period of one year.
- 8.3.** This Order shall come into force on expiry of 30 days from the date of its issue.
- 8.4.** A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Subrata Monindranath Maity is providing his services, if any. The CoC may decide whether to continue his services or not. In case, CoC decide to discontinue his services, CoC may file an appropriate application before AA.
- 8.5.** A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Subrata Monindranath Maity is enrolled as a member.
- 8.6.** A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi for information.
- 8.7.** Accordingly, the show cause notices i.e. SCN-1 and SCN-2 are disposed of.

-sd-  
(Ravi Mital)  
Chairperson, IBBI

Dated: 10<sup>th</sup> January, 2023

Place: New Delhi