

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/200/2024

2nd January, 2024

ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI/COMP/2022-23/00975 (IBBI/C/2022/00709)732/398 dated 06.04.2023 issued to Mr. Ramanahalli Shivanna Dodda Byregowda under section 219 of the Insolvency and Bankruptcy Code, 2016 read with regulation 11 and 12 of the IBBI (Inspection and Investigation) Regulations, 2017. Mr. Ramanahalli Shivanna Dodda Byregowda is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with registration No. IBBI/IPA-002/IP-N00583/2017-2018/11775 and a Professional Member of the ICSI Institute of Insolvency Professionals (ICSI-IIP) having residential address registered with IBBI as No. 350, 1st Cross, Canara Bank Layout, Kodigehalli Vidyaranyapura (PO), Karnataka- 560097.

1. Background

- 1.1. The Hon'ble NCLT, Bengaluru Bench (AA) *vide* order dated 24.11.2021 admitted the application filed under section 10 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating Corporate Insolvency Resolution Process (CIRP) of M/s Steel Hypermart India Private Limited (CD) and appointed Mr. B. Ramana Kumar as Interim Resolution Professional (IRP). Later, Mr. Ramanahalli Shivanna Dodda Byregowda was appointed as the Resolution professional (RP) by the order of AA dated 04.04.2022.
- 1.2. On receipt of a complaint dated 25.07.2022 from Mr. Mahendra Kumar Singhi, who is director of the suspended management of CD, the Board, in exercise of its powers under section 218 of the Code read with regulation 7(2) and 7(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations) appointed an Investigating Authority (IA) to conduct the investigation of Mr. Byregowda. In compliance with regulation 8(1) of Investigation Regulations, IA served notice to Mr. Byregowda on 25.07.2022 seeking reply to the complaint received and certain documents/clarifications. Mr. Byregowda provided his reply on 03.08.2022. Thereafter, IA submitted the investigation report (IR) in accordance with regulation 10(1) of the Investigation Regulations.
- 1.3. The IBBI issued the SCN to Mr. Byregowda on 06.04.2023, based on the findings in the investigation report in respect of his role as RP of CD and material available on record. Mr. Byregowda submitted his reply to SCN *vide* email dated 15.04.2023.
- 1.4. The IBBI referred the SCN, response of Mr. Byregowda 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. Byregowda availed opportunity of personal hearing through virtual mode before the DC on 14.06.2023 where he was represented by Mr. GP Madaan, Advocate. During the personal hearing, Mr. Byregowda was desired to submit additional details in a one month's time. Mr. Byregowda submitted his written submissions through email on 13.07.2023. Meanwhile due to some unavoidable reasons the matter was transferred to this DC for disposal of SCN. Owing to this development and in the interest of principles of natural justice, Mr. Byregowda was given another opportunity of personal hearing on 21.12.2023. Mr. Byregowda availed the opportunity of personal hearing through virtual mode along with his Advocate Mr. GP Madaan, Advocate.

1.5. The DC has considered the SCN, the reply to SCN, oral and written submissions of Mr. Byregowda and other material available on record to dispose of the SCN.

2. Alleged Contraventions, Submissions, Analysis and Findings

The contravention alleged in the SCN and Mr. Byregowda's written and oral submissions thereof are summarized as follows.

3. Contravention

RP authorised former Directors to represent CD and engage advocate.

3.1. In the 2nd CoC meeting dated 28.04.2022, it was informed that Mr. Byregowda had conducted a meeting with former directors on 07.04.2022 and authorised them to represent CD and also allowed the continuation of the engagement of their advocates for the ongoing litigations. The relevant extracts of the minutes of 2nd CoC meeting is as follows:

“5. RP conducted a meeting with former suspended Directors on 07.04.2022 and discussed about the status of the CD and also stages of ongoing litigations. Further RP has authorised the suspended director Mr. Mahindra Kumar Singhi to lead evidence on behalf of Steel Hypermart India Private Limited, in all cases filed by the Company at his costs.

6. In order to recover the dues from the Debtors of the CD, suspended directors had initiated the litigations long before against the Debtors in different courts. RP directed the suspended Director (MD) to continue the process of ongoing litigations, steps have been taken to continue the appointment of M/s. SAAKSHA Legal, as legal counsel to appear on behalf of Steel Hypermart India Private Limited (At the cost of Suspended Director), to:

- i. Represent Steel Hypermart India Private Limited and in such capacity, sign and execute all vakalaths, objections, applications, affidavits, or any other documents, including but not limited to Compromise Agreements.*
- ii. Lead evidence, cross-examine and take the matter forward to ensure an expeditious disposal.*
- iii. File Caveat Petitions, Appeals, Reviews and/or Revisions in any Courts in India and to engage any Advocate/s for that purpose.”*

- 3.2. In view of the foregoing, the SCN alleges that Mr. Byregowda relinquished independence and authorised the director of the suspended management to continue to represent the CD and also allowed the advocates engaged by the erstwhile management to continue with the cases.
- 3.3. In view of the above, the Board held the *prima facie* view that Mr. Byregowda has *inter alia* violated sections 25(2)(b) and 208(2)(a) of the Code, regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) regulation 7(2)(a) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clause 1, 3, and 5 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

4. Submissions by IP

- 4.1. Mr. Byregowda submitted that prior to commencement of CIRP of the CD, the suspended management of the CD had initiated several legal proceedings before the Civil and Commercial Courts, Bengaluru, against the sundry debtors of CD for recovery of Rs. Eighty-Five Crores (approx.). Upon his appointment, he conducted a meeting on 07.04.2022 with Mr. Mahindra Kumar Singhi, the director of the suspended management of CD, at the office of the CD wherein he was apprised of the applications filed by certain sundry debtors seeking dismissal of recovery proceedings initiated against them with the plea that the Plaintiff (CD) is under CIRP and the director of the suspended management have no authority to pursue the recovery proceedings and suits are not maintainable. Further director of the suspended management stated that, in these cases (where pleadings were made for dismissal) hearings have got adjourned since December 2021, for the reason that erstwhile IRP was not obliging to implead in these cases, as he was replaced by RP in CoC meeting held on 29.12.2021. Further he added that jurisdictional courts have allowed sufficient time for filing reply if they fail to file replies in few cases by 09.04.2022, proceedings against debtors in such cases would be dismissed. In the said meeting, the director of the suspended management further requested him to authorize him for a single appearance on case to case basis before the presiding judges to prevent the dismissal of cases. On verifying the records showed to him, there were three cases posted for hearing in which 2 to 3 days were left for filing replies with respect to applications filed for dismissal. Under the given situation it was difficult for him to understand the intricacies of each case and prepare applications for impleading RP at short notice. Further it was found that there was no bank balance in the CD's account to meet the legal expenses in above cases. Mr. Byregowda explained to the director of the suspended management about the provisions of the Code and apprised him that, unless appointment of legal professional and cost of legal expenses are allowed by CoC, he cannot allow/ entrust the work to the advocates, whom the management has engaged. In the above instant, the director of the suspended management requested Mr. Byregowda to allow him to appear before the jurisdictional courts as a onetime measure on urgent basis, and he would volunteer to meet the cost of filing Memo (around Rs.2000 to 3000 per case) on reimbursement basis with approval

of CoC in its forthcoming meeting. Subject to the condition of CoC approval for reimbursement of legal expenses and appointment of legal professional, director of the suspended management was allowed to appear in specific cases as a one-time measure and it was not a general authorization.

- 4.2. Mr. Byregowda submitted that a perusal of the minutes of the 2nd meeting of the CoC held on 27.04.2022 shows that the CoC was duly intimated by the RP of the authorization given to the director of the suspended management to continue the process of ongoing litigation. The CoC took note of the said authorization and did not raise any objections regarding the same.
- 4.3. Mr. Byregowda further submitted that in the minutes of the 3rd CoC meeting he had stated that it is the duty of the personnel of the CD, its promoter or any other person associated with the management of the CD to extend cooperation to the RP as may be required by him and accordingly the RP authorized the director of the suspended management to continue the process of ongoing litigations at the behest of the CD. He also stated that the said authorization was only *qua* civil suits and not for any criminal/ quasi criminal cases initiated by the CD. The relevant portion of the minutes of the 3rd meeting of the Committee of Creditors was reproduced as below:

“As per the provisions of IBC,2016 & Regulations of IBBI (CIRP of Corporate Persons) The personnel of corporate Debtor, its promoter or any other person associated 'with the management of the CD shall extend all assistance and co-operation to the RP as may be required by him. Accordingly, I have delegated the authority to the suspended director to file suits or appear before the courts. As far as Quasi criminal cases directors are solely responsible for which RP/IRP shall not be made a party to the proceedings, this is as far as my understanding.”

- 4.4. Mr. Byregowda further submitted that it is the duty of the suspended management of the CD to assist the RP in the smooth functioning of the CD. He referred following judgements:

The NCLAT vide its order dated 22.02.2018 has held in *Subasri Reality Private Limited v. Mr. N Subramanian and Another, CA (AT) (INS) of 290 of 2017* that:

“To ensure that the Corporate Debtor remains on going concern, all the Director/ employees are required to function and to assist the Resolution Professional who manages the affairs of the Corporate Debtor during the period of moratorium. If one or other officer or employee had the power to sign a cheque on behalf of the corporate debtor prior to the order of moratorium, such power does not stands suspended on suspension of the Board of Directors nor can be taken away by the Resolution Professional. If, the person empowered to sign cheque refuse to function on the direction of the Resolution Professional or misuse the power, in such case it is always open to the Resolution Professional to take away such power after notice to the person concerned.

4.5. Mr. Byregowda submitted that he has acted in compliance with the mandate of the Code, pertinently the following:

- a. Sections 19 (1) which *inter alia* states that the personnel and promoters of the Corporate Debtor shall extend all assistance and co-operation to the Resolution Professional as may be required.
- b. Section 20 (1) & (2) (d) which *inter alia* states that the IRP/RP shall make every endeavour to protect and preserve the value of the property of the Corporate Debtor and that for the same the RP could issue instructions to personnel of CD as maybe necessary for keeping the Corporate Debtor as a going concern.

4.6. Mr. Byregowda further referred Facilitation Letter No.005/2020 dated 13.11.2020 which under item (g) provides for :

"(g) Appointment of professionals: It is the duty of the RP to preserve and protect the assets of the CD, including continuing its business operations. Section 25(2) of the Code empowers an RP to appoint accountants, legal or other professionals for this purpose. Clause 23B of the Code of Conduct under the IP Regulations prohibits an IP from engaging or appointing any of his relatives or related parties for or in connection with any work relating to any of his assignment. An IP is, therefore, required to satisfy himself that there is a need for services of a professional; such services are not available within the CD; the person is qualified to render professional service; the professional to be appointed is suitable for the purpose; the professional is not a relative or related party of the IP; the fee to be paid to the professional is reasonable; etc. He needs to apply his mind to these and other related aspects while appointing a professional. He must not appoint any person who is not a professional, or who is his relative or a related party, or who is choice of a stakeholder. He must not appoint a professional to provide services to a stakeholder, or a professional because a stakeholder wants that professional to be appointed. There are instances where the RP appointed a professional who is the choice of a stakeholder or a person who is not a professional for professional services. This compromises the independence of the IP as well as that of the professionals and imposes avoidable cost on the CD and other stakeholders".

4.7. Mr. Byregowda submitted that before concluding the meeting, he had requested the director of the suspended management to share plaint copies/legal documents of all filed cases pending along with details of debtors of CD containing date of invoices, address of debtors and debtor wise amount outstanding etc. for impleading in the cases filed against debtors of CD.

4.8. Mr. Byregowda submitted that the contents and proceedings of meeting held with director of the suspended management on 07.04.2022 was minutised for discussion in second CoC meeting held on 28.04.2022, covering the authorization of director of the suspended management and advocate to appear in the courts by way of Item no.5 & 6 under agenda 4 in

Part-A, to appraise the CoC about the steps taken by RP for preventing the dismissal of cases filed in 2017-18 against the debtors of CD, and also about meeting the legal expenses for recovery of dues from debtors of CD. Further in the same second CoC meeting held on 28.04.2022, some of the Financial Creditors (FCs) (CoC members) present in the meeting expressed that the receivables of CD were of more than 180 days and most of them are doubtful of recovery and expressed that there is no reason to spend good money over bad money. Though the members of CoC consented for authorization of director of the suspended management for appearance in the cases listed for dismissal (specified cases) they were not in favour of approving the reimbursement of legal expenses incurred by the director of the suspended management. Even though CoC did not approve appointment of SAAKSHA Legal, director of the director of the suspended management continued to engage them at his own cost, to prevent suits filed against debtors of CD got dismissed. It is understood by Mr. Byregowda that the courts are giving long dates in view of pendency of CIRP of CD. This aspect of pending cases against debtors of CD is furnished in Information Memorandum provided to PRAs as per the provisions of the Code.

- 4.9. Mr. Byregowda submitted that, in terms of the discussion held in the meeting dated 07.04.2022, followed up with the director of the suspended management *vide* letter dated 03.05.2022 and email dated 21.05.2022 seeking details of the pending cases to take necessary steps thereupon. In response to his email dated 21.05.2022, he received an email from the director of the suspended management dated 21.05.2022 giving a list of pending cases filed by the CD and stated that approximately a sum of Rs. 85 Crores is to be recovered through these proceedings and seeking authorization to continue the process of ongoing litigations. Replying to director of the suspended management's mail on same day, he had reminded him to share the details of debtors of CD and pending writ petitions filed by CD in Madras High Court for his impleadment in all suit filed cases. The director of the suspended management in his e-mail dated 05.06.22 had advised his advocate to share copies of documents of WPs filed in Madras High Court to RP, which were received by him on 07.06.2022. However, details of other suit filed accounts were not submitted as requested in meeting held with the director of the suspended management on 07.04.2022 and in CoC meetings.
- 4.10. Mr. Byregowda submitted that, on impleadment in writ petitions WP. No. 34646/2019 & WMP. No.35397/2019 filed before Hon'ble Madras High Court, Hon'ble Madras High Court in its order dated 27.09.2022 directed him to pursue the relief sought against the GST Authorities with AA. In view of "Status Quo" order passed by AA in CIRP of CD, the same remained pending.
- 4.11. Mr. Byregowda submitted that he took similar steps to protect the assets of CD by filing claim applications in respect of receivables/book debts of CD from following companies which are under CIRP.

- i. M/s. Presscom Products Pt. Ltd for Rs.14,03,01,815.00, as an operational creditor- Participated in latest third CoC held on 22.02.2023 as member of COC.
 - ii. M/s. Singhi Buildtech Pvt. Ltd. — related party of the CD, claimed Rs.9,10,29,350.00 as operational creditor & Rs.9,99,50,000.00 as investor in Equity Shares.- claims are yet to be admitted by RP, as information on invoices raised by M/s. Steel Hypermart are yet to be furnished by director of the suspended management. It is understood. that COC of M/s. Singhi Buildtec Pvt. Ltd has passed a resolution for liquidation of the company.
- 4.12. Mr. Byregowda submitted that, inspite of follow-ups by him and assurances by director of the suspended management in CoC meetings held, director of the suspended management is not co-operating in furnishing the details (address of debtors, case position, documents filed in recovery suits) called for, in sharing information on accounts in "Tally Back-up" and in taking custody of vehicles CoC passed a resolution to file application under section 19(2) in fourth CoC meeting held on 10.06.2022, accordingly he has filed application with AA. In the meantime the director of the suspended management served legal notices to him through his advocate and subsequently filed grievance application with the Board. Further director of the suspended management also filed applications with AA under IA nos. 226 to 228/2022 against RP/CoC as stated above, in which "status quo" order was passed by AA on 01.07.2022. The director of the suspended management failed to submit his replies/rejoinders in the above IAs filed by him, though sufficient time was given by the AA. *Vide* its order dated 04.01.2023, AA permitted Mr. Byregowda to file application for vacating the interim order passed on 01.07.2022.
- 4.13. Mr. Byregowda further submitted that the director of the suspended management voluntarily invoked insolvency of CD. Instead of resolving the CD from insolvency, they are filing frivolous applications in different forum, with a view to delay the CIRP Process.

5. Analysis and Findings.

5.1 The DC noted the submissions of Mr. Byregowda that he was appointed as RP on 04.04.2022. In his meeting with director of the suspended management on 07.04.2022, he was informed that some recovery suits against the debtors of CD are pending. In some cases if reply is not filed by 09.04.2022, proceedings against debtors in such cases would be dismissed. Mr. Byregowda submitted that on verifying the records showed to him, there were three cases posted for hearing in which 2 to 3 days were left for filing replies with respect to applications filed for dismissal. However, a bare perusal of the brief of cases submitted by Mr. Byregowda highlights that none of the matter was listed on 09.04.2022. While going through record or proceedings of respective cases submitted by him, in none of the cases there was requirement for filing reply. Further Mr. Byregowda submitted that he allowed director of the suspended management to appear before the jurisdictional courts as a onetime measure on urgent basis, while the table submitted by him reflects that the director of the suspended management appeared in more than one hearing. Hence, the submissions

of Mr. Byregowda does not match with the factual position submitted by him and amounts to misrepresentation before the DC.

5.2 The DC take notes that in 2nd CoC it was observed that Mr. Byregowda delegated the director of the suspended management to continue the process of ongoing litigations and to continue the appointment of M/s. SAAKSHA Legal, as legal counsel to appear on behalf of the CD at the cost of director of the suspended management to represent CD and in such capacity, sign and execute all vakalats, objections, applications, affidavits, or any other documents, including but not limited to Compromise Agreement.

5.3 The DC further notes of the minutes of 3rd CoC meeting dated 11.05.2022 where the email dated 10.05.2022 by Mr. Mahendra Kumar Singhi, director of the suspended management, was reproduced as follows:

We requested your good self to sign the fresh Vakala Nama to conduct the civil recovery suits and quasi criminal cases filed against dishonoured cheques, but you refused to sign any Vakalatnama for the civil suits and quasi criminal cases. You provided only 9 authorization letters against several pending civil recovery suits but court is not satisfied with authorization letters alone.

Mr. Byregowda brought following clarificatory note before the CoC on above issue -:

The personnel of corporate Debtor, its promoter or any other person associated with the management of the CD shall extend all assistance and co-operation to the RP as may be required by him. Accordingly, I have delegated the authority to the suspended director to file suits or appear before the courts. As far as Quasi criminal cases directors are solely responsible for which RP/IRP shall not be made a party to the proceedings, this is as far as my understanding.

5.4 The use of word ‘delegated the authority to the director of the suspended management to file suits or appear before the courts’ in his communications to the director of the suspended management is not in accordance with section 28(1)(h) of the Code which provides as follows:

28. *Approval of committee of creditors for certain actions. -*

(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely: -

...

(h) delegate its authority to any other person;

Mr. Byregowda has not taken any prior approval of the CoC for delegation of its authority to any other person. However, Mr. Byregowda pleaded guilty for use of such word and tendered apology before the DC during personal hearing. However, the further conduct of Mr. Byregowda reflects continuation of grave mistakes.

5.5 The deliberations of CoC in its 7th meeting dated 04.12.2023 are as follows:

“It is informed to the members that, in the Second COC meeting held on 27.4.2022, COC was not in favour of considering the request of the promoters, to meet the Legal expenses incurred in recovery-suits filed against Debtors of CD, where in suits were filed prior to the initiation of CIRP. Suspended directors had taken steps for recovery of dues from the Debtors of CD at their cost and responsibilities as discussed in Second COC meeting. In response to a follow-up letter dated 3.7.2023 to the suspended directors on recovery of Dues from Debtors of CD (Under copy to all FCs), the suspended directors submitted the following communication/status in their letter dated 10.07.2023 in OS NO.751/2021 addressed to Resolution Professional. Among other things, Abstract of relevant paras are as follow:

‘We write with reference to the captioned letter, in which you have accused us of fraudulently compromising matters on behalf of the Corporate Debtor, thereby allegedly causing a Breach of Trust in handling the Authorization provided to me. In such regard, it is pertinent to draw your attention to the happenings of the II COC Meeting that took place on 06/05/2022, in which Meeting, you have specifically permitted me to recover dues from the Debtors of the Corporate Debtor and continue all suits that were filed prior to the Order of Admission by the Hon’ble National Company Law Tribunal. During the said meeting, I was authorized to do as follows: (Also refer to your authorisation letter dated.07.04.2022 issued for Comm. OS No.751/2021)

- 1. Represent Steel Hypermart India Private Limited and in such capacity, sign and execute all vakalath, objections, applications, affidavits, or any other documents, including but not limited to Compromise Agreements.*
- 2. Lead evidence, cross-examine and take the matter forward to ensure expeditious disposal.*
- 3. File Caveat Petitions, Appeals, Reviews and/or Revisions in any Courts in India and engage any Advocate/s for that purpose.*

The same would clearly disclose that you along with the COC have given me the authority to enter into Compromise Agreements, clearly and explicitly. The same is also evident from the Authorization Letter provided by you.

Despite sharing details of all the cases filed by the Corporate Debtor against its Debtors, you have taken no interest in proceeding with the same and left me responsible for following up on these cases, despite it being your duty, as the Resolution Professional.

The Debts were written off from the books of the Corporate Debtor in the year 2018 itself. Despite the principal outstanding amount being INR. 16,00,569/-only, I have compromised, acting in a genuine and bona fide manner, for an amount of INR. 30,00,000/-. All monies being deposited in the above-mentioned matter are still with the Hon’ble Commercial Court Bengaluru, and I have not withdrawn a single rupee from the said matter. If at all, you are of the opinion that the Compromise entered into is against

the better interest of the Corporate Debtor, you are at liberty to challenge the same in accordance with the law, at your expense and not at my expense”.

Furthermore, I will be collating and sharing with you all the pending invoices of the Legal Counsel who have been appearing in the matters of the Corporate Debtor and call upon you to immediately clear the same.

Further, it is to mention, that you have never taken any pain in enquiring about the progress of the cases either in person or over any modes of communication and I need to be compensated for the time and efforts put in by me in handling the cases.’

In light of the above COC may reconsider its stand taken in meeting the cost of continued engagement of counsels borne by the suspended Director, and the suspended director is yet to hand over all the documents of Suit filed cases, to Resolution Professional to deal further as per the provisions of IBC,2016 and in term of RP letter dated 24.11.2023 (Annexure-2).

The action of Promoters in entering and accepting compromise proposal for Rs. 30,00,000/- , against written off amount of Rs. 16,00,569/- without consent of COC /RP need to be ratified or not by COC.

Accordingly, following resolution for Ratification was moved for e-voting, on discussions in COC meeting.

"Resolved that the action of Promoters/suspended Directors be ratified in accepting and entering in to compromise Agreement for Rs.30,00,000/-, against written off amount of Rs. 16,00,569/- without consent of COC /RP in Comm. OS No.751/2021, filed against one of the Debtors of M/s. Steel Hypermart India Pvt.Ltd. during CIRP period “

The said resolution was dissented by 93.89% by CoC in e-voting.

5.6 The above deliberation highlights that authority given in 2nd CoC meeting, further substantiated by word ‘delegation’ in 3rd CoC meeting was animated in 7th CoC meeting where the debts of the CD was compromised by director of the suspended management of the CD. The above discussions highlight that such compromise was done behind the back of Mr. Byregowda and keeping the CoC in dark. The CoC came to know about such compromise of the debt only when the resolution for ratification of legal expenses was placed before CoC and it was rejected by overwhelming majority therein. Moreover, it is hard to comprehend that that compromise was done for Rs. 30,00,000/-, against written off amount of Rs. 16,00,569/- of the receivables.

5.7 The DC further notes the submission of Mr. Byregowda that CoC passed a resolution to file application under section 19(2) in fourth CoC meeting held on 10.06.2022 and accordingly he had filed application with AA. While the information available on website shows that IA filed by Mr. Byregowda under section 19(2) of the Code for non-cooperation by director of the suspended management was filed in April 2023 only which is nearly after 10 months from resolution passed by CoC. Further, the case status submitted by Mr. Byregowda shows

that even after decision to file application under section 19(2) of the Code, he did not make efforts to represent the CD.

5.8 The act of filing application under section 19(2), 49 and 66 of the Code against director of the suspended management in May, 2023 and allowing them to compromise the receivable, which are an asset of the CD, are in contradictions. Receivables, being vital assets of a company, play a significant role in its financial health. The unauthorized settlement of receivables, particularly without the knowledge or approval of the CoC is against the provisions of the Code. This action primarily violates two critical sections:

(a) Violation under section 14 of the Code which imposes a moratorium on certain actions, including the transfer, encumbrance, or disposal of the company's assets during CIRP. By settling receivables without CoC approval, the promoters have essentially disposed of company assets, breaching this statutory moratorium. The relevant provisions is as follows:

14. Moratorium. -

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

...

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(b) Section 28 mandates that the IP must obtain prior approval from the CoC for actions such as the settlement of receivables. Mr. Byregowda's delegation of this power to the promoters, and their subsequent actions without CoC approval, directly violates this provision.

Such unauthorized and non-transparent settlement of receivables have dire impact on the ongoing CIRP. It can lead to significant undervaluation of the company's assets, adversely affecting the CIRP outcome. This situation not only undermines the legal framework established by the Code but also jeopardizes the interests of creditors and other stakeholders.

5.9 Section 20 of the Code provides that IRP/RP shall make every endeavour to protect and preserve the value of the property of the CD and manage the operations of the CD as a going concern and for this he may to issue instructions personnel of the CD as may be necessary for keeping the CD as a going concern and to take all such actions as are necessary to keep the CD as a going concern. The steps taken by Mr. Byregowda, as per his submissions, in the meeting held on 07.04.2022 with the promoters were taken in the interest of CD. However, his conduct presents a different picture. The actions of Mr. Byregowda were not in accordance with duties of an RP under section 25(2)(b) read with section 25(1) of the Code which provides that it shall be the duty of the RP to preserve and protect the assets of the CD, including the continued business operations of the CD and for that a RP shall represent and act on behalf of the CD with third parties, exercise rights for the benefit of the CD in judicial, quasi-judicial or arbitration proceedings. The power to issue instructions to

personnel of CD cannot be read in terms of delegation of power under section 25(1)(b). Further delegation of power requires approval of CoC as per section 28(1)(h) of the Code. Mr. Byregowda has delegated his duty to represent the CD in judicial, quasi-judicial proceedings on more than one occasion and allowed them to be compromised. Hence the DC upholds the contravention.

6. Order

- 6.1 In view of the forgoing discussion, SCN, reply to the SCN, oral and written submission made by Mr. R S Dodda Byregowda and the other materials made available to the DC, the DC finds Mr. R S Dodda Byregowda has delegated his duty to represent the CD in judicial, quasi-judicial proceedings and finds him in contravention of sections 25(2)(b) and 208(2)(a) of the Code, regulation 27 of the CIRP Regulations, regulation 7(2)(a) and (h) of the IP Regulations read with clause 1, 3, and 5 of the Code of Conduct.
- 6.2 The DC, in exercise of the powers conferred under section 220(2) of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Mr. R S Dodda Byregowda for a period for one year.
- 6.3 The DC directs Board to bring this order to the notice of the headquarters of Indian Bank (which had a dominant share of 78.87%) for its representatives being passive onlooker on apparently serious violations being reported to the CoC on the role subsumed by the director of the suspended management in effectuating a compromise which they were not suppose to enter without the approval of CoC.
- 6.4 The DC further directs the Board to re-investigate the issue of disposal of CD's asset by the director of the suspended management during the course of moratorium. Right now it is not clear what is the nature of compromise unauthorisedly entered by the said director and what is the value of the receivables which have been compromised.
- 6.5 This Order shall come into force on expiry of 30 days from the date of its issue.
- 6.6 A copy of this order shall be sent to the CoC/Stake Holders Consultation Committee (SCC) of all the corporate debtors in which Mr. R S Dodda Byregowda is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. R S Dodda Byregowda.
- 6.7 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. R S Dodda Byregowda is enrolled as a member.

6.8 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.

6.9 Accordingly, the show cause notice is disposed of.

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(Sudhaker Shukla)

Whole-Time Member, IBBI

Date: 2nd January, 2024

Place: New Delhi