

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/172/2023

23rd May 2023

ORDER

In the matter of Mr. Ganga Ram Agarwal, Insolvency Professional (IP) under Section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 and Regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No. IBBI/COMP/2022-23/00947IBBI/C/2022/00690/735/505 dated 11th April 2023, issued to Mr. Ganga Ram Agarwal, resident of 14254, A T S One Hamlet, Sector 104, Noida, Gautam Buddha Nagar, Uttar Pradesh-201301 who is a Professional Member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-002/IP-N00874/2019-2020/12777.

1. Background

- 1.1 The Hon'ble National Company Law Tribunal, Allahabad Bench (AA) vide its Order dated 23rd January 2020, admitted the application under Section 9 of the Code for corporate insolvency resolution process (CIRP) of the Ramnath Developers Private Limited (Corporate Debtor / CD). Mr. Ganga Ram Agarwal was appointed as Interim Resolution Professional vide the above-said Order and was later also confirmed as Resolution Professional for the CD.
- 1.2 The IBBI in exercise of its powers under Section 218 of the Code, read with Regulation 7(2) and 7(3) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to conduct investigation in the CIRP of the CD.
- 1.3 Based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the IBBI issued the SCN to Mr. Agarwal on 11th April 2023. The SCN alleged contraventions of several provisions of the Code and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations). The reply of Mr. Agarwal on the SCN was received by the Board on 24th April 2023.
- 1.4 The SCN, response of Mr. Agarwal to the SCN and other material available on record were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Agarwal availed an opportunity of personal hearing before the DC on 17th May 2023 alongwith his advocate Mr. Amar Vivek.

2. Alleged Contraventions, Submissions of Mr. Agarwal and Findings

The contraventions alleged in the SCN, submissions by Mr. Agarwal and findings of the DC are summarized as follows:

2.1 The SCN alleges that Mr. Agarwal in his capacity as IRP and RP has failed to represent the interest of the CD in ongoing cases before the Debt Recovery Tribunal (DRT), Mumbai in OA 139/2014, RP 103 of 2015 filed by HUDCO, one of the financial creditors having the majority voting share for recovery of money due from the CD and interim application filed therein. The SCN observes that Mr. Agarwal did not seek to pursue the matter before DRT and failed to protect the interests of the CD. The SCN alleges that by not representing the interests of the CD before the DRT, Mr. Agarwal has failed to maintain independence and act objectively by keeping the CD unrepresented before DRT. In view of the above, the Board was of the *prima facie* view that Mr. Agarwal has *inter alia* violated Sections 25(2)(b) and 208(2)(a) of the Code and Regulation 7(2)(a) and (h), read with clause 1, 2, 3, 5 and 14 of the Code of Conduct, of the IP Regulations.

Submissions by Mr. Agarwal

2.2 Mr. Agarwal in his response to SCN has sought to clarify that the application (OA 139/2014) was filed by HUDCO against the CD and five others in 2014 in the Hon'ble court of DRT-1 Mumbai for recovery of their debt from the Corporate Debtor, Personal Guarantors and Corporate Guarantors. Out of the five defendants other than the Corporate Debtor in the OA 139/2014, four were personal guarantors/corporate guarantors of the subject debt and the fifth was the Bank maintaining the escrow bank a/c. The promoters of the Corporate Debtor were interested that the cost and efforts of defending this case be shifted to RP, while the impact of the adverse decision, if any, would have been for the personal guarantors and corporate guarantors only.

2.3 Mr. Agarwal has further submitted that that under Section 14 of the Code, since commencement of the CIRP, moratorium is imposed in all the legal suits prohibiting continuation of pending suits or proceedings against the CD including execution of any judgement, decree or order in any court of law, tribunal etc. Accordingly, there was a moratorium against the proceedings/decrees in OA 139/2014. The Hon'ble DRT court was aware about the ongoing CIRP against the CD. The Applicant of the OA 139/2014 is HUDCO, who is also a financial creditor in the CIRP matter. After the commencement of CIRP, the Hon'ble DRT court was advised on 16.03.2021 about the ongoing CIRP against the CD. Mr. Agarwal has brought to attention that no adverse order has been passed against the CD by the DRT so far. Again, even if an adverse decree/order is passed, it cannot be executed against the CD on account of imposition of moratorium under Section 14 of the Code.

2.4 In the above backdrop, Mr. Agarwal has pleaded that non-appearance in the above matter by the IRP/RP could not have jeopardized the interests of the CD in any way. The applicant, HUDCO was aware that no decree for recovery could be executed against the CD on account of imposition of moratorium under Section 14 of the Code. Due to the moratorium imposed, no decree for recovery could have been issued by DRT against the CD. Mr. Agarwal has further stated that the OA 139/2014 was however filed by HUDCO for recovery of dues from CD and hence cannot be considered a case for the benefit of CD. Also, the applicant HUDCO is not a third party. It is a financial creditor with a majority voting share. The continuation of OA 139 could not have helped the CD in any way. Since O.A 139/2014 has been filed prior to the commencement of the CIRP of the Corporate Debtor, its institution could not have been challenged by Mr. Agarwal nor its continuation against the Personal Guarantors and Corporate Guarantors could have been

challenged by RP. Mr. Agarwal has therefore denied any contraventions as mentioned in the SCN.

Findings of the DC

2.5 Section 25(2)(b) of the Code provides that the RP is to 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. Hence, it is the duty of the RP to represent the CD before the Hon'ble Courts/Tribunals and apprise the factual position of the CD. Considering the facts and submissions made by Mr. Agarwal, the DC accepts the submission of Mr. Agarwal.

3. ORDER

3.1 Therefore, 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 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby disposes of the SCN with the advice to diligently perform his functions provided under the Code.

3.2 This Order shall come into force with an immediate effect.

3.3 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Mr. Ganga Ram Agarwal is enrolled as a member.

3.4 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.

3.5 Accordingly, the show cause notice is disposed of.

Sd/-

(Ravi Mital)
Chairperson, IBBI

Dated: 23rd May 2023

Place: New Delhi