

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/27/2020
24th August, 2020

Order

In the matter of Mr. Rajneesh Singhvi, Insolvency Professional, under Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 read with section 220 of the Insolvency and Bankruptcy Code, 2016.

Appearance before the Disciplinary Committee on 23rd July 2020

For noticee	Mr. Rajneesh Singhvi, in person Mr. Alok Dhir, Advocate for Mr. Rajneesh Singhvi
For Insolvency and Bankruptcy Board of India	Mr. Sunil Kumar, DGM Mr. Animesh Khandelwal, RA (Law)

Background

This Order disposes of the show cause notice (SCN) No. IBBI/IP/SCN/2020/04, dated 21st May 2020, issued to Mr. Rajneesh Singhvi, 36A, Suraj Nagar (East), Civil Lines, Jaipur, Rajasthan-302006, who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency professional registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-001/IP-N00359/2017-18/11060.

- 1.1 The Board on 21st May 2020 had issued the SCN to Mr. Rajneesh Singhvi, based on material available on record in respect of his role as an interim resolution professional (IRP) and / or resolution professional (RP) in appointing unregistered valuer Mr Abhishek Ahuja in the corporate insolvency resolution process (CIRP) of M/s Arjun Ispat India Private Limited. The SCN alleged contraventions of section 208 (2) (a) & (e) of the Insolvency and Bankruptcy Code, 2016 (Code), regulation 7(2) (a), (h) and (i) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and the Code of Conduct under regulation 7(2) thereof, regulation 27 the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (CIRP Regulations) and IBBI Circular No. IBBI/RV/019/2018 dated 17th October 2018. Mr. Rajneesh Singhvi replied to the SCN vide letter dated 4th June 2020.
- 1.2 The Board referred the SCN, reply of Mr. Singhvi to the SCN and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the provisions of the Code and Regulations made thereunder. Mr Singhvi availed an opportunity of personal hearing (e- mode) before the Disciplinary Committee (DC) on 23rd July 2020 wherein he was represented by Mr. Alok Dhir, Advocate on his behalf. Mr Singhvi through his Advocate Mr Dhir also submitted vide email dated 28th July 2020 written submissions in the matter.

Show Cause Notice

2. The DC notes from the SCN the contraventions alleged therein as follows:
In the matter of Corporate Insolvency Resolution Process (CIRP) of M/s Arjun Ispat India Private Limited (CD), Mr Singhvi was appointed as an Interim Insolvency Professional *vide* Order dated 2nd January 2019. On 2nd March 2019, he appointed Mr. Abhishek Ahuja as one of the valuers who was not registered with the Board under the Companies (Registered Valuers and Valuation) Rules, 2017 (Valuation Rules). Under regulation 27 of the CIRP Regulations, it is the duty of the IP to appoint registered valuers within 7 days of their appointment and not later than forty-seventh day from insolvency commencement date to determine the fair value and liquidation value of the CD. Further, IBBI Circular IBBI/RV/019/2018 dated 17th October 2018 (*w.e.f.* 1st February 2019) specifies that only valuers registered with the IBBI under the Valuation Rules may be appointed by the IP. Therefore, the Board *prima facie* held the view that Mr. Singhvi has violated section 208 (2) (a) & (e) of the Code, regulation 7 (2) (a), (h) & (i) of the IP Regulations read with clauses 10 and 14 of the Code of Conduct contained in the First Schedule of the IP Regulations, regulation 27 of the CIRP Regulations and IBBI Circular IBBI/RV/019/2018 dated 17th October 2018 and issued the SCN to Mr Singhvi on 21.05.2020.

Submission by Mr Singhvi

- 2.1 Mr Singhvi submitted his reply to the Board vide letter dated 4th June 2020, oral submission by Mr Dhir on his Behalf on 23rd July during personal hearing and written submission post hearing through his Advocate vide mail dated 28th July 2020 to this DC which are summarized as follows.
- 2.2 It has been submitted that the CIRP of the CD commenced on 2nd January 2019 and he received the admission order only on 7th January 2020 since his name was recommended from panel of insolvency professionals by NCLT, New Delhi Bench (AA). Presently he is acting as a liquidator in this matter. He further submitted that due to non-cooperation and misguidance of the suspended board of directors, considerable time elapsed. He constituted the Committee of creditors(CoC) and convened the First meeting of CoC on 28.01.2019. In the second meeting of CoC on 14.02.2019, Mr Singhvi placed the agenda for appointment of registered valuers. In compliance with the mandatory condition to appoint registered valuers, he sought quotes from many valuers. However, most of them were not registered valuers and the quotes were very high. Thereafter, he engaged M/s RR & Co. but its appointment was revoked on 25.02.2019 for not having registration with the Board. Similarly, M/s RK & Associates were appointed for valuation but they had to be removed immediately since they could not supply documents of registration with the Board.
- 2.3 Mr. Singhvi submitted that he got reference of Mr. Abhishek Ahuja from a co-professional and appointed him when Mr Ahuja provided him relevant marksheet and certificate of passing of the valuers examination and quoted the fee of Rs. 15000 and represented that he was registered with the Board. The valuer also ensured Mr. Singhvi to provide the certificate of registration at the earliest. The fact that the said valuer was not registered with the Board at the time of his appointment was learnt by Mr Singhvi

later when the said valuer provided him the copy of his registration certificate dated 31st July 2019. The amount of valuer's fee was refunded by the said valuer to the CD and, therefore, no loss occurred to the CD.

- 2.4 It was further submitted by Mr Singhvi that on perusal of the balance sheet of the CD, it was learnt by him that a flat was reflected as an asset of the CD, the details of which were sought from the ex-management. The ex-director, Mr. Rishi Miglani informed that the said flat was sold to Mr. Vikram Garg (buyer) vide registered sale deed dated 7th November 2012 and the buyer is currently in possession of the same. It was informed during the 1st Committee of Creditors (CoC) meeting by the sole member of the CoC being OBC that the said flat was mortgaged to OBC and the sale had taken place without fully paid up consideration and without obtaining NOC from OBC. Further, it has been submitted that Mr. Singhvi engaged into discussions with the buyer and the buyer was ready to settle the issue and pay an amount of Rs. 1 crore, however OBC was not inclined to accept the offer and therefore, Mr Singhvi filed an application under section 66 of the Code before the AA which is pending as on date.
- 2.5 It was further submitted that since the sale of the said flat had taken place, the said asset was not owned by the CD and hence no asset was available with the CD. Therefore, the purpose of appointment of registered valuer does not arise as per regulation 27 of the CIRP Regulations and the liability arising from purported contravention of the said circular dated 17th October 2018 and regulation 27 of regulations may not be fastened upon the IP. Mr Singhvi also submitted that the valuation given by the said valuer is similar to the one given by another registered valuer Mr Anil Kumar Saxena in the CIRP of the CD. He submitted that he always acted bonafidely within the confines of the Code and rules and regulations framed thereunder, however due to the misrepresentation made by the said valuer. Therefore, Mr Singhvi requested for condoning of the lapse on account of unintentional mistake.
- 2.6 During the personal hearing dated 23rd July 2020, Mr. Alok Dhir, the counsel for Mr. Singhvi, reiterated the submissions made by Mr Singhvi in his reply dated 4th June 2019 and submitted that the CD had no business operations since 2017 which continued even during the CIRP. It was further submitted by Mr. Dhir that the CIRP commencement date was 2nd January 2019 and the IBBI Circular mandating appointment of only RVs came into effect on 1st February 2019. At that time, a very limited number of RVs were available and some of them quoted very high fees. Keeping in view that there was no business in the CD and the said flat was not owned by the CD, it was not feasible to appoint valuer of such heavy cost.
- 2.7 Mr. Dhir further submitted that the valuation given by the said valuer is similar to the one given by another registered valuer, Mr Saxena, which denotes that effectively there has been no wrong valuation, hence no loss has been caused to the CD or its value. Further the fee has been refunded back by the valuer. Also, the CD has been liquidated by order dated 18th November 2019 of the AA in pursuance to the decision of the CoC dated 17.06. 2019 to not to invite resolution plans as the CoC foresaw no resolution plan in the instant case. The liquidation was resolved even before the preparation of Information Memorandum. Therefore, the non-receipt of resolution plan and liquidation

in the instant case is not because of the valuation but due to the CoC having decided to do so. It was submitted by him that Mr. Singhvi acted in *bona fide* manner without violation of regulation 27 of CIRP Regulations, while appointing the valuers as an abundant caution, in keeping with the spirit of the said provision, for incurring as low a cost as possible for maximization of value of the assets of the CD. There cannot be any contravention of regulation 27 or the said circular or other provisions of the Code, rules and regulations framed thereunder. Therefore, Mr Dhir prayed for dropping of the charges levied upon Mr Singhvi vide the SCN issued by the Board.

Analysis and findings

3. The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of Mr Singhvi and also the provisions of the Code, rules and the regulations made thereunder as also the circular finds as follows:

3.1 The provisions of the Code and regulations are spelt out in a plain and unambiguous language. The duties of the IRP/RP are provided in various provisions of the Code, e.g., section sections 17,18, 20, 23, 25, 28, 30 and 208. Section 25 (2) (d) of the Code empowers the resolution professional (RP) to appoint accountants, legal or other professional in the manner as specified by the Board. The requirement of appointment of two registered valuers for determination of the fair value and liquidation value of the any corporate debtor and manner of their appointment is provided in regulation 27 of CIRP Regulations which provides as follows:

“27. Appointment of registered valuers.

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

Provided that the following persons shall not be appointed as registered valuers, namely: (a) a relative of the resolution professional; (b) a related party of the corporate debtor; (c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or (d) a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.”

3.2 The credibility of the processes under the Code depends upon the observance of the Code of conduct by the IRP/RP during the process. Section 208(2) of the Code provides that every insolvency professional shall abide by the Code of conduct. It reads as follows:

“ 208. Functions and obligations of insolvency professionals.-

(2) Every insolvency professional shall abide by the following code of conduct: –

(a) to take reasonable care and diligence while performing his duties;

(b) to comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member;

(c) to allow the insolvency professional agency to inspect his records;

(d) to submit a copy of the records of every proceeding before the

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Authority to the Board as well as to the insolvency professional agency of which he is a member; and
(e) to perform his functions in such manner and subject to such conditions as may be specified.”

- 3.3 The certificate of registration granted to an IP is subject to the condition that he should follow at all times the provisions of the Code and Regulations and the bye-laws of Insolvency Professional Agency of which the IP is a member and also follow the Code of Conduct specified in the First Schedule to the IP Regulations. In this regard, clauses(a), (h) and (i) of regulation 7 (2) of the IP Regulations provide as follows:

“7. Certificate of registration.

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

—

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

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

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

Further, the Code of Conduct specified in the First Schedule of the IP regulations enumerates a list of code of conduct for insolvency professionals including maintaining professional competence for rendering professional service (clause 10) and not to act with malafide or with negligence (clause 14).

- 3.4 It is, further observed that the IBBI Circular No. IBBI Circular IBBI/RV/019/2018 dated 17th October 2018 (which came into effect from 1st February 2019) clearly stated that no person other than a RV will be appointed to conduct valuation under the Code, the IP appointed a person who was not registered as an RV as on date of his appointment.

Para 6 of the said circular provides as follows:

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

- 3.5 Thus, from a bare reading of the provisions of the Code and the regulations and circular made thereunder, it is clear that it is the duty of the RP to appoint registered valuers within 7 days of his appointment, but not later than 47th day from the insolvency commencement date to determine the fair value and liquidation value of the corporate debtor. The Board further clarified in explicit terms through the said circular that no insolvency professional shall appoint a person other than a registered valuer to conduct any valuation under the Code or any of the regulations made thereunder.

- 3.6 In the present matter, the DC notes that Mr Singhvi failed to appoint registered valuer by the 47th day of the insolvency commencement date, *i.e.*, by 18th February 2019. Mr. Singhvi engaged Abhishek Ahuja as a valuer in the said CIRP vide engagement letter dated 2nd

March, 2019, on the 58th day of commencement of CIRP. The valuer so engaged was not a registered valuer. It is observed that Mr Singhvi had received the admission order only on 7th January 2020, *i.e.*, after five days of the admission order for commencement of the CIRP of the CD.

- 3.7 Mr Singhvi has submitted that the said valuer represented to have passed the valuation examination and that the fact that the said valuer was not registered with the IBBI at the time of his appointment was learnt by him later when the said valuer provided him a copy of his registration certificate dated 31st July 2019 (effective from 12th July 2019). It was the duty of the Mr Singhvi to confirm the credentials of said valuer before his appointment and admittedly, the said valuer was not a registered valuer on the date of his appointment. The DC also notes that Mr Singhvi, while keeping in mind the requirement of registered valuers in the CIRP, revoked the appointment of two valuers entities, *viz.*, M/S RR & Company and M/S R.K. Associates as they were not registered with the Board. Thus in appointing an unregistered valuer, the Mr Singhvi has contravened clauses (a) and (e) of section 208 (2), clauses (a) and (h) of regulation 7 (2) of IP regulations, clauses 10 and 14 of the Code of Conduct under IP regulations and regulation 27 of CIRP Regulations.
- 3.8 Mr. Singhvi submitted that there was no business in the CD and the only known asset, a flat, was not owned by the CD and it was not feasible to appoint valuer of such heavy cost. This contention cannot be accepted since the Code and the Regulations, thereunder, mandate that only registered valuers can be appointed for conducting valuation during a CIRP. The cost relates to volume of work. In the present matter, there was only single flat given for valuation. Further, the cost can only be seen with respect to registered valuers who are duly registered with the Board. Let us take an example of a patient going to an unregistered doctor as the registered doctor charges more fee. But in such a case what is the authenticity or credibility of the treatment. Hence the contention of the RP as to cost of valuation is not tenable. He has not taken due diligence in appointing the valuer thereby he has contravened clauses (a) and (e) of section 208 (2) and clauses (a) and (h) of regulation 7 (2) of IP regulations.
- 3.8 Mr Singhvi has contended that since the asset to be valued was not owned by the CD, therefore, the purpose of appointment of RV does not arise as per regulation 27 of the CIRP Regulations. This contention cannot be accepted as the valuation report dated 5th April 2019 was submitted by said valuer to the RP for consideration of CoC and the cost of valuation would have been part of insolvency resolution process cost if there would not have been liquidation of the CD. Further, section 66 application had also been filed by the RP. Thus, in view of regulation 27 of the CIRP Regulations is the duty of the IP to appoint registered valuer only. If there were no assets, then the RP should not have appointed valuer in this matter. Thus, he has contravened clauses (a) and (e) of section 208(2), clause (h) of regulation 7 (2) of IP regulations and clause 10 of the Code of Conduct under IP regulations.
- 3.9 It has been submitted that the valuation findings by the said valuer is similar to the one given by the other registered valuer. It has also been submitted that the CD has been liquidated in pursuance to the decision of the CoC to not invite resolution plans as they foresaw no resolution plan and the valuation by the said valuer did not cause any unwanted loss to the CD. It was also submitted that Mr Singhvi acted in *bona fide* manner without violation of regulation 27 of CIRP Regulations, while appointing the valuers as an abundant caution, in keeping with the spirit of the said provision, for incurring as low a cost as possible for maximization of value for the stakeholders. The fact that Mr Singhvi acted in a *bona fide* manner, as the valuation did not cause loss to the CD, cannot be accepted as the appointment

of unregistered valuer is expressly in contravention of regulation 27 of CIRP Regulations.

3.10 As regards the submission of Mr. Singhvi that the CIRP commencement date was 2nd January 2019 and the IBBI Circular mandating appointment of only RVs came into effect on 1st February 2019, this DC notes that requirement of appointment of Registered valuers by IRP is provided under Regulation 27 of the CIRP regulations. The provision was amended in 2018 to provide for appointment of registered valuers by RP within 7 days but not later than 47th day from insolvency commencement date. The said circular emphasized that IP needs to appoint only registered valuer to conduct any valuation under the Code or any of the regulations in view of the provisions of not only regulation 27 of the CIRP Regulations but also in view of the transitional provisions as provided in rule 11 of the Valuers Rules (with effect from 18.10.2017 and amended from time to time) which provided vide latest amendment that unregistered valuers engaged for valuation in CIRP of various CDs, prior to the coming into force of the Valuer rules, can continue up to 31st January 2019 without certificate of registration and complete their valuation and further provided three months more time thereafter where valuers being appointed before 31st January 2019 to complete the valuation. Hence, the submission is untenable.

3.11 An Insolvency Professional has a vital role in the resolution process and forms a crucial pillar upon which rests the credibility of the entire resolution process. The responsibilities of the IRP/RP under the Code require highest level of standing, calibre and integrity which inspire confidence and trust of the stakeholders and the society. For that purpose, the Code provides for certain duties, obligations as well as Code of Conduct for taking due diligence in the conduct of process to establish integrity, independence, objectivity and professional competence in order to ensure credibility of both the process and profession as well.

The BLRC, the recommendations of which has led to the enactment of the Code, in its Final Report, has also laid emphasis on the role of an IP as follows:

“The Insolvency Professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process. ... In administering the resolution outcomes, the role of the IP encompasses a wide range of functions, which include adhering to procedure of the law, as well as accounting and finance related functions. The latter include the identification of the assets and liabilities of the defaulting debtor, its management during the insolvency proceedings if it is an enterprise, preparation of the resolution proposal, implementation of the solution for individual resolution, the construction, negotiation and mediation of deals as well as distribution of the realisation proceeds under bankruptcy resolution. In performing these tasks, an IP acts as an agent of the adjudicator. In a way the adjudicator depends on the specialized skills and expertise of the IPs to carry out these tasks in an efficient and professional manner... This creates Role of Resolution Professionals in CIRP the positive externality of better utilisation of judicial time.”

3.12 Mr Singhvi himself is a registered professional and very well aware about the importance of a registered professional and also about registration certificate. He himself has been appointed as an IRP/RP only after his registration with the Board. A professional means possessing special domain knowledge and skill and observing the Code of conduct in application of such knowledge and skill to lay down the benchmark and to ensure competence and credibility. Under regulation 27 of the CIRP regulations, the RP is required to appoint registered valuer for determination of fair value and liquidation value.

The valuation by an unregistered valuer may adversely affect the credibility of whole CIRP and the resolution based on such valuation. In the instant matter, there is a lapse or negligence on the part of Mr Singhvi in not taking due diligence while appointing a valuer not having registration certificate on the date of his engagement as a valuer which has resulted in contravention of various provisions of the Code, regulations and as also of the said Circular dated 17.10.2018.

ORDER

4. In the aforesaid backdrop and on the basis of analysis and findings in para 3, this DC finds that Mr. Rajneesh Singhvi, the RP, has appointed Mr. Abhishek Ahuja, who was not a registered valuer as on the date of his engagement, as a valuer for valuation of assets of CD. This conduct of Mr. Singhvi is in contravention of the following provisions of the Code and Regulations:-

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- (a) Clause (d) of sections 25 (2) and clauses (a) and (e) of 208 (2) of the Code;
 - (b) Clauses (a),(h) and (i) of regulation 7(2) of the IP Regulations read with clauses 10 and 14 of the Code of Conduct contained in the First Schedule of the IP Regulations;
 - (c) Regulation 27 of the CIRP Regulations.

II Further, Mr Singhvi also did not comply with IBBI Circular IBBI/RV/019/2018 dated 17th October 2018 which provided in para 6 that no insolvency professional shall appoint a person other than a registered valuer to conduct any valuation under the Code or any of the regulations made thereunder.

5. This DC is conscious of the fact that the valuer appointed by Mr. Singhvi had qualified the valuation examination prior to the date of his appointment as a valuer in the CIRP of the CD and the fact that the valuation fee received by the valuer has been refunded back to the CD which may call for leniency.

6. In view of the above, the Disciplinary Committee, in exercise of the powers conferred under section 220 (2) of the Insolvency and Bankruptcy Code, 2016 and in pursuance of sub-regulations (7), (8), (9) and (10) of Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, disposes of the SCN with the following directions:

- (i) Mr. Rajneesh Singhvi shall not seek or accept any process or assignment or render any services under the Code for a period of three months from the date of coming into force of this Order. He shall, however, continue to conduct and complete the assignments / processes he has in hand as on date of this order;
- (ii) This Order shall come into force on expiry of 30 days from the date of its issue.
- (iii) A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Rajneesh Singhvi is enrolled as a member.
- (iv) A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, for information.

7. Accordingly, the show cause notice is disposed of.

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Dated: 24th August 2020

(Dr. Mukulita Vijayawargiya)

Place: New Delhi

Whole Time Member, IBBI