

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/179/2023

19th June 2023

ORDER

In the matter of Mr. Vishal Ghisulal Jain, Insolvency Professional (IP) under Section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with 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/IP/R(INSP)/2021-22/04/742/552 dated 26.04.2023, issued to Mr. Vishal Ghisulal Jain (hereinafter referred to as RP) 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 (IBBI) with Registration No. IBBI/IPA-001/IP-P00419/2017-2018/10742.

1. Background

- 1.1 The National Company Law Tribunal, Mumbai Bench, (AA) had admitted the application under section 7 of the Code for Corporate Insolvency Resolution Process (CIRP) of M/s Wadhwa Buildcon LLP (CD I) vide order dated 28.07.2020 and Mr. Rakesh Kumar Tulsian was appointed as Interim Resolution Professional (IRP) *vide* the same order. Mr. Vishal Ghisulal Jain was recommended to be appointed as an RP in the 1st CoC meeting dated 27.08.2020 and AA confirmed appointment of Mr. Jain as RP vide order dated 14.10.2020.
- 1.2 The AA had admitted the application under section 7 of the Code filed by American Express Banking Corp. for initiating CIRP of M/s Pratibha Krushi Prakriya Ltd. (CD II) vide order dated 04.09.2019 and Ms. Jovita Reema Mathias was appointed as Interim Resolution Professional (IRP) *vide* the same order. Mr. Vishal Ghisulal Jain was recommended to be appointed as an RP in the 1st CoC meeting dated 04.10.2019 and AA confirmed appointment of Mr. Jain as RP vide order dated 22.10.2019. Subsequently liquidation order was passed by AA vide order dated 02.02.2023 and Mr. Jitendra Kumar Jain was appointed as Liquidator.
- 1.3 The IBBI, in exercise of its powers under section 218 of the Code read with Regulation 3(2) and 3(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection and Investigation Regulations), appointed the Inspecting Authority (IA-1) to conduct the inspection of Corporate Insolvency Resolution Process (CIRP) of M/s Wadhwa Buildcon LLP(CD I) , M/s Rajahmundry Godavari Bridge Limited, M/s Pratibha Krushi Prakriya Limited (CD II) , M/s Sterling International Enterprises Limited and M/s S K Wheels Private Limited.
- 1.4 RP replied to the notice of inspection providing some information but it was not

complete. The IA-1 prepared the draft inspection report (DIR) based on material available on record, and, part information provided by RP the same was shared with Mr. Vishal Ghisulal Jain vide email dated 23.05.2022 with the request to submit his comments on the draft report. However, no response to the observations made in the DIR was received from Mr. Vishal Ghisulal Jain.

- 1.5 Further, the Board in exercise of its powers under Section 218 of the Code read with Regulation 7(2) and 7(3) of the Inspection and Investigation Regulations, appointed the Investigating Authority (IA-2) to conduct the investigation in the matter of Wadhwa Buildcon LLP (CD-I). Thereafter, the IA-2 served a notice of investigation under Regulation 8(1) of the Inspection and Investigation Regulations on 09.01.2023. However, no specific response to the allegations raised therein was received from Mr. Vishal Ghisulal Jain. The IBBI issued the SCN to Mr. Vishal Ghisulal Jain on 26.04.2023 based on findings in the Inspection and Investigation Report with respect role of Mr. Vishal Ghisulal Jain as a Resolution Professional of the CD-1 and CD-II. Mr. Vishal Ghisulal Jain submitted his reply dated 10.05.2023 to the SCN.
- 1.6 The IBBI referred the SCN, the response of the RP 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. The RP availed the opportunity of personal hearing through virtual mode before the DC on 02.06.2023.

2. Alleged Contraventions, Submissions of IP, and Findings

The contraventions alleged in the SCN and submissions by Mr. Vishal Ghisulal Jain are summarized as under:

Contraventions

3. Contravention-I: Non-cooperation with the IAs conducting inspection/ investigation.

- 3.1 The Board has noted that the IA-1 served the notice of inspection to Mr. Vishal Ghisulal Jain on 20.08.2021 requesting him to submit the requisite documents and records pertaining to all assignments handled by him (including the completed assignments) as per the list of documents, checklist, and pre-inspection questionnaire. In response, some information was provided by the RP through various emails between 30.08.2021 and 15.10.2021. The DIR was shared with the RP vide email dated 23.05.2022 for his comments. However, despite reminder emails dated 06.07.2022 and 29.07.2022 requesting the RP to provide comments to the DIR, no response has been received from the RP. Since no reply was received to the DIR from RP the IA-1 was constrained to proceed with the submission of the Inspection Report on 22.08.2022 based on the materials available on record.
- 3.2 It is also observed that a notice of investigation was issued on 09.01.2023 by IA-2 requesting the RP to provide response to the allegations raised therein. However, the

RP failed to provide any specific response to the allegations raised therein and challenged the maintainability of the complaint. Despite subsequent reminders through e-mails dated 22.03.2023 and 23.03.2023, no response was received. Hence the IA-2, was constrained to proceed with the submission of the Investigation Report on 29.03.2023.

- 3.3 Regulation 4(4) of the Inspection and Investigation Regulations provides that it shall be the duty of the service provider to produce records in his custody or control and furnish them to the IA. Regulation 4(7) of the Inspection and Investigation Regulations requires the IP to give to the IA all assistance that the IA may reasonably require. The Code of Conduct as specified in the First Schedule of IBBI (Insolvency Professionals) Regulations, 2016 also requires that the IP must cooperate and be available for inspections carried out by the Board. Similar provisions exist in regulations 8(4) and 8(8) of the Inspection and Investigation Regulations with regard to the conduct of the investigation. In view of the foregoing, it is evident that the RP has not cooperated with the IAs in the submission of relevant records and in providing clarification for inspection/ investigation, thereby frustrating the entire process.
- 3.4 In view of the above, the Board held prima facie view that the RP had contravened Section 208(2)(e) of the Code, Regulation 4(4), 4(7), 8(4) and 8(8) of Inspection and Investigation Regulations, Regulation 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clauses 18 and 19 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Submission made by the RP.

- 3.5 The RP admitted that he could not send the reply to the draft inspection report, though it was ready to be reviewed and sent to the Board. Due to turbulence in his life in the year 2022 such as the demise of his mother on 01.05.2022 due to several health issues, his land was trespassed by someone else, and the police were not taking any action thereupon the RP had to file an application before the local court. The RP was just getting stabilized by the start of this year, but in mid of Feb 2023, his two seniormost employees left without giving any notice and also did some damage to his data and goodwill, hence he was temporarily overburdened. While they were still working with the RP, he had booked himself for a much-needed break as repeatedly advised by his doctor for a long but before he could go on a break they had left the organization, so, RP was on break from 15.04.2023 to 28.04.2023.
- 3.6 The RP has further submitted that he had sent email dated 04.08.2022 and 16.08.2022 informing the circumstances which were going on in his life to Shri Ritesh Kavadia, ED, IBBI. The RP has also stated that he has already replied to the allegation vide email dated 25.10.2021 to the IBBI's email dated 18.10.2021.

- 3.7 The RP has further submitted that in compliance with regulation 4(4) of the Inspection and Investigation Regulations, he had submitted the documents in his custody and control as requested by the IA vide the notice of inspection dated 20.08.2021. The Notice of Investigation dated 09.01.2023 is covered by his reply dated 25.10.2021 to IBBI's email dated 18.10.2021. The RP admitted that he missed the opportunity to submit his reply to the DIR and the reminder emails dated 22.03.2023 and 23.03.2023 (which covered the matters already replied vide my email dated 25.10.2021) due to the various reasons as stated above.

Analysis and Finding

- 3.8 On perusal of the records submitted by the RP, it appears that the circumstances were compelling enough and series of tragic events stood in way leading to delays in submitting the requisite documents in time. Moreover, the reply filed by the RP vide email dated 25.10.2021 to the email dated 18.10.2021 sent by the IA covers approximately all the allegations raised in the SCN against the RP. Therefore, DC is inclined to take a lenient view on this count.

4. Contravention-II: Inclusion of Claims of Promoters without Verification (Wadhwa Buildcon LLP – CD I)

- 4.1 The Board had observed that in the 5th CoC meeting dated 09.12.2020, the RP admitted the claim of one homebuyer and re-constituted the CoC thereby reducing the voting share of the Bank of India to 98.37%. Thereafter, in the 6th CoC meeting dated 25.03.2021, the RP informed the CoC members regarding the admission of six additional claims received from landowners (who were co-developers and co-promoters) again re-constituting the CoC. This further reduced the vote share of the Bank of India to 19.97%. It is observed that the RP merely admitted claims from landowners on the basis of allotment of constructed area and not on the basis of any financial debt raised from them which was a prerequisite as per the Code for any person to qualify as Financial Creditors (FC) of the CD-I.
- 4.2 In view of the above, it was observed that disregarding the provisions of the Code and Regulations, the RP admitted the claims of the co-promoters as FC without verification, thereby, effectively altering the composition of the CoC and its voting shares, and adversely affecting the interests of the CD-1 and its stakeholders.
- 4.3 Being aggrieved by the allotment of vote share to landowners, the Bank of India had filed an application before the AA. The said application was disposed of by AA vide order dated 08.09.2021, wherein it was observed that the RP had improperly included the claims of the promoters without verification. The extract of the order dated 08.09.2021 passed by the AA is reproduced hereunder;

“It is clear to this Bench that these 6 Landowners do not satisfy any of these prerequisites of Section 5(8)(f) of the Code for two reasons: first, under the Development Agreement with the Corporate Debtor of these 6 land owners of 23.01.2006, no amount was raised by the Corporate Debtor and no amount was

ever disbursed against the consideration of 'time value of money'. In fact, contrary to it, the land owners received security deposit of Rs.1.75 crore from the Corporate Debtor...

30. This Bench is of the considered view that in the present case, the Promoter of the Project who should not be considered as a Financial Creditor at all have not only been considered as a Financial Creditor but has usurped the CoC as a result of RP wrongly registering their claim as that of a Financial Creditor and thereby making the six land owners part of the CoC with about 80% voting share, reducing the legitimate 98.37% of the Applicant, i.e., Bank of India to 19.97%. This has resulted into handing over the CoC with 80% share to a party who should not be there at all....

31. The Bench is also of the view that RP has arbitrarily admitted the claim of Rs.127.25 crores of the Promoters without proper verification from the Books of Accounts of the Corporate Debtor. In this regard, the Bench notes the contention of the Applicant, i.e., Bank of India, whose shares in the CoC, as a result of arbitrariness of the RP, has been reduced from 98.37% to 20.31%. It is expected of the RP that in case of Real Estate Project having homebuyers, he/she should have a clear understanding of the provisions of RERA and other related issues to distinguish between an "Allottee" and a "Promoter" in a Real Estate Project. ...The Registry to send a copy of this Order to the IBBI for it to take an appropriate view regarding the conduct/ competence of the RP in dealing with this particular case."

- 4.4 Section 21(2) of the Code provides that the CoC shall comprise all FCs of the CD. Section 25(2)(e) of the Code also provides that it is the duty of the RP to maintain an updated list of claims. Further, regulation 13(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) provides that the IRP/ RP, as the case may be, shall verify every claim, as on the insolvency commencement date (ICD), within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it. Further, clause 1 of the Code of Conduct of IP Regulations requires that an IP must maintain the integrity by being honest, straightforward, and forthright in all professional relationships, and clause 3 of the Code of Conduct mandates that an IP must 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. Also, clause 5 of the Code of Conduct states that an IP must maintain complete independence in his professional relationships and should conduct the insolvency resolution, liquidation, or bankruptcy process, as the case may be, independent of external influences.

- 4.5 In view of the above, the Board held prima facie view that the RP had contravened sections 21(2) and 25(2)(e) of the Code, Regulation 13(1) of the CIRP Regulations read with clauses 1, 3 and 5 of the Code of Conduct.

Submission made by the RP.

- 4.6 The RP has submitted that the six additional claims were filed as Home Buyers being allottees in Form CA along with a Letter of Allotment, a Promissory Note dated 09.01.2012 which states that payment of interest @ 24% p.a. on the consideration amount of the flats and commercial allotted in case of delay of possession from the date 01.12.2017. So, it was evident that their claim as Home Buyers may have to be admitted to consequently protect the interests of the final Home Buyers as well. Looking at the unique nature of the claim, the RP had done due diligence by requesting an independent legal opinion from a Law Firm. The law firm after a detailed analysis of the provisions of the Code and RERA and some case laws opined that “the Landlords are ‘Allottees’ as per the RERA in the real estate project, hence six home Buyers shall be treated as the FCs as per section 5(7) of the Code, and that the landlords through its authorized representative can represent the class of FCs i.e., the allottees in the instant case and are entitled to get voting rights as per section 25A of the Code.
- 4.7 The RP has stated that infact, he repeatedly asked the Bank of India to approach the AA by stating that being an RP has a limited duty to discharge as far as the admission of claim is concerned, and if the other CoC member feels aggrieved then the NCLT shall be the right forum to place their grievance and get it resolved. There is no provision in law whereby one FC can direct the RP not to accept the claim of another FC. The RP requested the representative of Bank of India to allow him to continue with the proceedings of the meeting and not to try to disrupt the same and in case they feel aggrieved, they can approach the AA for necessary directions. Moreover, having admitted the claim as a FC in a class, the RP cannot reverse the same or change the category as per settled law.
- 4.8 The RP further stated that the legal head of the Bank of India himself stated that “*the Resolution Professional and Bank of India both have got two different opinions, therefore it cannot be decided in the CoC as the RP has only the administrative jurisdiction and the same shall be decided by the AA,*” having a different opinion does not mean having done it intentionally.
- 4.9 The RP has submitted that it was not a simple matter as the claimants had also filed an intervention application and the AA also took several hearings and detailed lengthy arguments to dispose of the same. Further, once the AA ordered that the said claimants not form part of the CoC, the RP immediately removed them from the CoC and reconstituted it. He could not have done so without the directions of the AA.

- 4.10 However, some of the said claimants approached the Hon'ble NCLAT in appeal, and the Hon'ble NCLAT granted a stay on the order of the AA, stating that "*After due consideration, it is directed that the Impugned Order shall remain stayed till the next date of hearing*" which means that it was prima facie of the view that the decision of the AA may not be correct, and the matter is not a simple one. The Hon'ble NCLAT passed orders after several hearings and detailed lengthy arguments, after almost a year. Hence the RP cannot be held guilty for admitting a claim on the basis of an independent legal opinion, and, for which the AA and NCLAT also took time to decide a contentious issue.
- 4.11 In view of the above contentions, RP has stated that he has not contravened sections 21(2) and 25(2)(e) of the Code, regulation 13(1) of the CIRP Regulations read with clauses 1, 3 and 5 of the Code of Conduct.

Analysis and Finding

- 4.12 The duties of an IRP and a RP have been laid down in Sections 18 and 25 of the Code. According to section 18(1)(b), the duties of an IRP include receiving and collating all claims submitted by creditors to him, after the public announcement made by him. In the same manner, section 25(2)(e) mandates the RP to maintain an updated list of all the claims of the creditors.
- 4.13 Additionally, regulation 13 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (CIRP Regulations) obliged the IRP/ RP to verify every claim as on the insolvency commencement date within seven days from the last date of the receipt of the claims. He is also required to maintain the list of creditors and update the list wherever required. The provision reads as follows :

Regulation 13. Verification of claims.

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

- 4.14 Regulation 13(2)(ca) requires the IRP/ RP to file the list of creditors on the electronic platform of the Board for dissemination on its website. (w.e.f. 13.11.2020).
- 4.15 Regulations 14 of CIRP Regulations specifies that when the amount of claim is not precise, the IRP/ RP shall make the best estimate of the amount based on the available information with him, and he shall revise the amount as soon as he comes across additional information, warranting such revision.

- 4.16 Furthermore, landowners, who have entered into a joint development agreement with a corporate debtor, should not be considered as FC due to the collaborative nature of their relationship and the intent of maintaining an independent composition of the Committee of Creditors (CoC).
- 4.17 The relationship between the landowner and the CD, in the context of a joint development agreement, is fundamentally different from a typical debtor-creditor relationship. It is more of a partnership or collaboration, where the landowner brings the land as a resource and the CD brings construction expertise. There is no financial loan or credit extended from the landowner to the CD, hence, labelling them as 'financial creditors' is fundamentally inconsistent with the nature of their relationship and the specific terminology of the IBC.
- 4.18 According to section 5(8) of the Code, a debt is deemed to be a financial debt if it involves the disbursement against the time value of money. In the context of a joint development agreement, the landowner does not disburse any amount to the Corporate Debtor against the time value of money. Therefore, there is no financial debt created, and consequently, the landowner cannot be construed as a 'financial creditor'.
- 4.19 The CoC is meant to be a collective representation of the various financial creditors of the CD, with each member having a direct financial stake in the resolution process. Including a landowner, who is not a financial creditor, into this mix could potentially skew the dynamics and the decision-making process of the CoC. The inherent role and interests of a landowner (getting a portion of the saleable construction) is inherently different from that of financial creditors (getting their loaned amount recovered). Including landowners in the CoC may lead to decisions that do not best serve the financial interests of the financial creditors, thereby defeating the purpose of an independent and unbiased CoC.
- 4.20 In the CIRP of real estate project, as a part of ordinary prudence, IRP/RP must examine RERA registration details and all the relevant documents in this regard. After being appointed as IRP/RP, Mr. Jain has admitted that he has not examined Form B. This Form B is an important document with respect to RERA registration of Real Estate Project, which is a declaration by promoter. The Form B duly signed by one such landowner, Mr. Parsuram Patil, for the project 'Wadhwa Rodhesia' in the capacity of co-promoter. The landowners on affidavit have stated that they are co-promoters and the same has been uploaded in Maharashtra RERA website, as observed by Hon'ble AA in its order dated 08.09.2021. Moreover in the sixth CoC meeting, there was a specific query from financial creditor Bank of India as to whether landowners can be considered as home buyers and the RP replied that on the basis of legal opinion, the six landowners were treated as allottee or home buyers. Had the RP examined the RERA registration details of the CD, he would have come to know that the alleged six home buyers were actually landowners and co-promoter of the project and not the home buyers by any stretch of imagination. Had RP done proper due diligence in this regard, unnecessary litigation could have been avoided. If RP had any confusion in this regard,

he could have very well approached AA for guidance. Due to inaction of RP in this regard, FC Bank of India had to file IA before AA and just to counter that, land owners also filed another IA. In spite of objection raised by FC Bank of India with respect to treating land owners as home buyers, not doing proper due diligence and not revising the claim, points to the malafide on the part of the RP.

- 4.21 It is pertinent to note that the said six land owners had not contributed any amount towards the development of the project and on the contrary, they had received security deposit of Rs.1.75 crore from the builder. Considering this fact alone, RP should not have treated the land owners as home buyers, and should not have given them any voting rights. The home buyers usually pay money to the builder for completion of the real estate project and the builder does not pay any security deposit to the home buyers. Accepting claim of the land owners as home buyers is gross contravention of the Code and Regulations made thereunder.
- 4.22 In view of above, contravention of Sections 21(2) and 25(2)(e) of the Code, Regulation 13(1) of the CIRP Regulations read with Clauses 1, 3 and 5 of the Code of Conduct stands established.

5. Contravention-III: Reduction in Notice Period for the 8th CoC Meeting

- 5.1 The Board has observed that the notice for the 8th CoC meeting was issued on 15.09.2021 and the meeting was also convened on the same day, thereby, giving a notice of less than 24 hours.
- 5.2 Regulation 19 of the CIRP Regulations provides that the committee may reduce the notice period from five days to another period of not less than twenty-four hours, as it deems fit. The provision intends to allow for the effective participation of members by allowing them adequate time to take note of the agenda of the meeting and prepare accordingly. The IRP/RP is mandated to make suitable arrangements to facilitate the effective participation of CoC members so as to enable prompt decision-making.
- 5.3 In view of the above, the Board held prima facie view that the RP has contravened regulation 19 of the CIRP Regulations read with clauses 13, 14, and 15 of the Code of Conduct.

Submission made by the RP.

- 5.4 The RP has submitted that he had received the order dated 08.09.2021 in IA 1035 of 2021 in CP No. 2946 of 2019 vide Bank of India's email dated 14.09.2021 at 11.40 am. The order was available to the bank on the next date 09.09.2021 but they have purposely served it to the RP on the 6th day, i.e., 14.09.2021, so that the RP defaulted on the directions, and they can file a contempt application against the RP. The AA vide order dated 08.09.2021 directed to reconstitute the CoC within a week from the date of the order, which the RP was not aware of until the Bank of India served the order to the RP i.e., 14.09.2021.

- 5.5 The RP had two options, one to call for the meeting after the minimum 48 hours of the notice which would then be beyond the 7 days time frame as directed by the AA, or the second to call the meeting within the 7 days time frame but with less than 48 hours of notice. If the RP chose the first option, he would have jumped to complain that he has not complied with the AA's order by holding the meeting beyond 7 days. So, the RP chose the second option, with an agenda/option to the CoC to ratify the short notice or to allow him to call a meeting again, with proper notice of a minimum of 48 hours. The CoC then chose to ratify the short notice, instead of convening the meeting again.

Analysis and Finding

- 5.6 On perusal of the record, it is noted that the Bank of India being an applicant to the IA bearing No. 1035 of 2021 had shared the copy of the order dated 08.09.2021 with the RP on 14.09.2021 at 11.40 wherein AA has directed to reconstitute the CoC and convene the meeting within a week from the date of the order. The RP must have remained present when such direction was issued by AA. Hence instead of waiting for the order to be communicated from Bank of India, RP should have proceeded to convene meeting of CoC by giving minimum time as stipulated in regulation 19 of the CIRP Regulations.

6. Contravention-IV: Non-submission of Relationship Disclosure Forms

- 6.1 The Board has observed that no Relationship Disclosure Forms have been submitted by the RP to the Insolvency Professional Agency (IPA) of which the RP is a member as is mandated under Circular No. IP/005/2018 dated 16.01.2018.
- 6.2 In view of the above, the Board held prima facie view that the RP has inter alia violated section 208(2)(e) of the Code and regulation 7(2)(h) of IP Regulations read with Clause 8B of the Code of Conduct also read with circular No. IP/005/2018 dated 16.01.2018.

Submission made by the RP.

- 6.3 The RP has submitted that all the Relationship Disclosure forms have been submitted to the IPA. It was further submitted that for an LLP, the portal does not allow filing online. So, IPs are required to send the same by email. The relationship Disclosure has been duly sent to the IPA and the Board through email.

Analysis and Finding

- 6.4 On perusal of the records, it is noted that the RP has shared the disclosure form with the IPA and Board through various emails. Hence, the contention of the RP to this effect is acceptable.

7. Contravention-V: Delay in submission of Form CIRP - 4 with the Board

- 7.1 The Board has observed that Form CIRP-4 has to be submitted to the Board within 7 days from the date of issue of the Request for Resolution Plan (RFRP) as per regulation 40B of the CIRP Regulations. However, it is observed that the due date for submission

of the Form was 22.12.2020 and it was submitted by the RP on 31.08.2021 after a delay of 252 days.

- 7.2 In view of the above, the Board held prima facie view that the RP has inter alia violated section 208(2)(e) of the Code, regulation 40B of the CIRP Regulations, and Regulation 7(2)(h) of IP Regulations read with Clause 19 of the Code of Conduct.

Submission made by the RP.

- 7.3 The RP has submitted that he was facing some issues in uploading Form CIRP-4 and he had sent an email before the due date on 17.12.2020 in this matter to the Board, even though it could not be resolved.

Analysis and Finding

- 7.4 On perusal of the copy of the email dated 17.12.2020 sent by the RP, it is clearly stated that he has been facing a problem in uploading form-4 for two days, and the last date for filing the CIRP Form-4 is 22.12.2020. The RP also contacted the concerned technical team telephonically, it reveals from the email dated 19.12.2020 sent by the RP to the Board.
- 7.5 Accordingly, the DC is of the considered view that the RP was facing technical issues in filing CIRP Form 4 and hence could not file the form in time. Since the same had been duly addressed to the Board, DC is inclined to take a lenient view on this contravention.

8. Contravention VI: Appointing ex-Partner and PRA to manage day-to-day affairs.

- 8.1 It is observed that in the 5th CoC meeting dated 09.12.2020, the RP had shortlisted Mr. Ankit Wadhwa (a suspended designated partner) as one of the Prospective Resolution Applicants (PRAs) interested in submitting a resolution plan. However, in the same meeting, it is observed that the RP allowed the proposal for the appointment of Mr. Ankit Wadhwa as an Industry Expert and even delegated to him the day-to-day affairs of CD-I. The extract of the 5th CoC meeting is reproduced hereunder;

“The RP informed CoC members about the proposal received from Mr. Ankit Wadhwa who was appointed as Industrial Expert in the 4th meeting of Committee of Creditors. The RP allowed Mr. Ankit Wadhwa to put forward his proposal to which the latter presented his proposal detailing his roles and responsibilities and handling critical matters including labour safety, adverse incidents during construction, damages, handling external undue dominating forces apart from regular day to day operations.”

In view of the foregoing, it is observed that Mr. Ankit Wadhwa who was shortlisted as PRA, was appointed as an Industry Expert, thereby, allowing him to have undue advantage and access to the financial status of CD-I and dismantling the level playing field available to the other PRAs.

- 8.2 In view of the above, the Board is of the prima facie view that the RP has inter alia violated Sections 25(1) and 208(2)(a) of the Code, Regulation 7(2)(a) and (h) of IP Regulations and Clauses 3, 3A, 5 and 14 of Code of Conduct.

Submission made by the RP.

- 8.3 The RP has submitted that it is incorrect to state that he appointed the suspended designated partner Mr. Ankit Wadhwa as an Industry Expert. He had proposed to appoint an external Industrial Expert under section 20 (2) (a) of the code as the CD is a Developer and the RP himself does not carry any special skill to execute and complete the project. On the contrary, the Bank of India had proposed and pushed the name of Mr. Ankit Suresh Wadhwa to act as an Industry Expert and approved the Resolution. Extract of minutes of the 4th CoC meeting wherein the CoC approved the name of Mr. Ankit Wadhwa as an Industry Expert are as under;

“The RP informed the CoC members that real estate industry has its own complexity. To understand every area of the industry and to complete the project in time, the industry expert’s role will be very crucial. The RP asked the members to deliberate on the same. The members said that there is no requirement to appoint any outside industry expert. Rather support from the suspended partners can be taken as they have ensured cooperation, and Mr. Ankit Wadhwa be appointed and designated as Technical Expert.”

- 8.4 The RP has further submitted that as per the provisions of section 19 of the Code, only the powers of the designated partners are suspended, not the duties. Mr. Ankit Wadhwa has not been given any rights or powers, the only authority is delegated to him as per the directions and approval of the CoC as required by section 28(1)(h). In fact, the RP has given him only operational authority and it is not a blanket authority. He referred to clause (8) of the minutes of the 4th meeting which states *“This is being done with the intention of easing the operational part. The RP further informed that after going through the terms of the agreement, he will issue a letter of authority for each sale of flats/units to the suspended partner, and then the suspended partner will execute and sign the agreements. There will not be any blanket letter of authority.”*
- 8.5 Accordingly, based on the letter of authority for each transaction (and not a blanket authority), Mr. Ankit Wadhwa signed and executed the agreement. This arrangement is like an agent being appointed. It is as per the direction and approval of the Bank of India Mr. Ankit Wadhwa was appointed as the Industry Expert, however, the RP had proposed to appoint a third party.

Analysis and Finding

- 8.6 Irrespective of the fact that as per direction of the CoC, suspended director was appointed as “Industry Expert” despite Mr Ankit Wadhwa being the PRA and thereby passing the day to day responsibilities to him is clear contravention of section 25 (1)

which directs that onus of preserving the value of the assets of CD-I including continued business operations rests with the RP.

- 8.7 CoC can't hide behind commercial wisdom to justify its decision to appoint Mr Wadhwa as industry expert, knowing fully well that being PRA he could leverage the information related to CD to his advantage and avail undue competitive advantage. Similarly RP is in no position to hide behind the erroneous mandate of CoC as this action was not tenable as per statute and he was needed to resist it earnestly.

9. Contravention-VII: Non-verification of the Claims of the Homebuyers

- 9.1 The Board has observed that the claims of Rs. 219.72 crores, i.e., the claim of 152 homebuyers have been admitted by the RP without verification. As per the agreement of sanction of term loan dated 29.01.2015 the proceeds received from the homebuyers are to be routed through escrow account only. However, the RP has admitted claims of homebuyers without cross-verifying that the payments received from those homebuyers were credited to the escrow account of CD-1. Further, due to non-cooperation and non-submission of documents by the RP, the names of such homebuyers could not be determined.

- 9.2 In view of the above, the Board held the prima facie view that the RP has inter alia contravened section 25(2)(e) of the Code, regulation 13(1) of the CIRP Regulations read with clauses 1 and 14 of the Code of Conduct.

Submission made by the RP.

- 9.3 The RP has submitted that there is no basis to state that the claim of 152 Home Buyers has been admitted by him without verification. The RP has not been required to check if the proceeds received from Home Buyers are routed through the escrow account. In fact, it is to be checked by the Bank of India after disbursing the loan. The Bank is the FC of the CD, it is on them to cross-tally with their escrow account and raise any red flags, which they have failed to do. The RP has to only collate the claims as per the proof and the books of account, which he has diligently done.

- 9.4 In view of the above, the RP has not contravened above said provisions.

Analysis and Finding

- 9.5 It is not a disputed fact that the claim has not been cross verified by the RP. As a part of due diligence, RP should have crossed checked the claim received from Home Buyers. As per the loan agreement, the amount was to be routed through the escrow account. The plea taken by RP that he is not been required to check whether or not the proceeds received from Home Buyers are routed through the escrow account, cannot be accepted.

10. Contravention-VIII: Not providing of supporting documents with CoC meeting notices

- 10.1 In the present matter, it has been alleged that the RP has failed to provide supporting documents along with the notices of the CoC meetings.
- 10.2 Regulation 21(3) of the CIRP Regulations provides that the notice of the meeting shall contain the following- (i) a list of the matters to be discussed at the meeting; (ii) a list of the issues to be voted upon at the meeting; and (iii) copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting. The provision allows for the RP to make arrangements for facilitating the effective participation of CoC members to enable prompt decision-making. However, by failing to share the supporting documents, the RP has contravened regulation 21(3) of the CIRP Regulations.
- 10.3 In view of the above, the Board held the prima facie view that the RP has inter alia contravened regulation 21(3) of the CIRP Regulations read with clauses 13, 14 and, 15 of the Code of Conduct.

Submission made by the RP.

- 10.4 The RP has submitted that it has been alleged that he has failed to provide supporting documents along with the notices of the CoC meetings, but it is not mentioned which supporting documents and serial number of meetings the documents have not been provided. In fact, the RP provided all supporting documents with all the notices. This is again a baseless and unsubstantiated allegation by the Bank of India.

Analysis and Finding

- 10.5 The DC notes that if there was any confusion in the mind of RP as to which document IA is asking, he should have contacted IA and sought clarification instead of not submitting reply on the ground that it was not clear which documents are sought.

11. Contravention-IX: Non-determination of Avoidance Transactions (Pratibha Krushi Prakriva Ltd. -CD II)

- 11.1 It is observed that in the 2nd CoC meeting, the IRP informed the CoC that he had already appointed a Transaction Auditor to find transactions falling under sections 43, 45, 50 and, 66 of the Code. Thereafter, in the 8th CoC meeting, one of the members asked for the status of the Transaction Audit Report, as in the earlier meeting, the RP was supposed to provide a revised Transaction Audit Report covering all the conclusions, to which the RP replied that the auditor had made changes and he is still in process of updating the same.
- 11.2 In the 10th CoC meeting, the RP informed that he has received the signed Transaction Audit Report and can share the same only along with resolution plan as per regulation 39(2) of the CIRP Regulations. In the 13th CoC meeting dated 03.05.2021, one of the members of the CoC suggested a discussion on Transaction Audit Report. Accordingly,

the RP invited the Transaction Auditor for the discussion. The Transaction Auditor had replied that their office was under a strict containment zone in Pune and was closed and suggested informing him at least 3 working days prior to the meeting for discussion on the Transaction Audit. Finally, in the 14th CoC meeting dated 09.07.2021 i.e., the last meeting, a discussion of the Transaction Audit Report had not taken place.

- 11.3 Therefore, it is found that the RP has violated regulation 35A of CIRP Regulations by not forming an opinion as to whether the CD has been subjected to any transaction covered under sections 43, 45, 50, or 66 of the Code. On the formation of the opinion and its determination, an IP is mandatorily required to file an application before AA for appropriate relief, within the 135th day of the ICD. Also, regulation 40A of the CIRP Regulations provides the model timeline for conducting CIRP.
- 11.4 In view of the above, the Board held the prima facie view that the RP has inter alia contravened regulations 35A and 40A of the CIRP Regulations read with clause 13 of the Code of Conduct.

Submission made by the RP.

- 11.5 The RP has submitted that the act of appointing a Transaction Auditor itself means that he had formed an opinion that the CD may be subjected to any transaction covered under sections 43, 45, 50, or 66. So, there is no default on his part. It is also correct that on forming an opinion, a determination has to be made, and if any transactions are covered under the said sections, an application has to be filed. As per the final Transaction Audit Report, no transactions were found by the auditor to be covered under the said sections. So an avoidance application was not filed. So, again there is no default here. As such there is no violation of regulation 35A of CIRP Regulations.
- 11.6 It is further stated in the SCN, that regulation 40A of the CIRP Regulations provides the model timeline for conducting CIRP. But no allegations have been made of any contravention for the RP to substantiate. So, there is no alleged violation of regulation 40A read with clause 13 of the Code of Conduct has been committed by the RP.

Analysis and Finding

- 11.7 Regulations 35A provides that the Resolution Professional shall form an opinion on whether the CD has been subjected to any transaction covered under sections 43, 45, 50, or 66. If CD has been subjected to any such transaction covered under the aforesaid provisions, he shall apply to the AA for the appropriate relief. In the present matter, it is an admitted fact that the RP has appointed a Transactions Auditor for ascertaining the transactions done under sections 43, 45, 50, or 60 of the Code if any. However, there were no transactions found under the aforesaid section hence no application was filed. A mere discussion not held on the Transaction Audit report in the CoC meeting could not be a ground for violation of Regulations 35A of the CIRP.
- 11.8 Accordingly, the submission of the RP to this effect is tenable.

12. Order

- 12.1 On the basis of foregoing discussion, the DC Finds that Mr. Vishal Ghisulal Jain has contravened provisions of the Code and Regulations made thereunder with respect to verification of claim with supporting documents, constitution of CoC, giving notice for CoC meeting with minimum time, and enclosing supporting documents while sending notice for CoC meetings. In fact non-verification of claim with proper supporting documents resulted in co-promoter getting admitted as home buyers and hijacking the CIRP by the said co-promoter.
- 12.2 The findings are conclusive in indicating serious contravention on several counts. The due diligence at the admission of claims is critically important as that provide the basis for constitution of CoC and assigning the voting rights and any miscalculation or misjudgement on this count could lead to wrong decision making by the members which are not supposed to be part of the CoC. Again, as admittedly, he was nudging the aggrieved CoC member to approach to the AA for decision in this regard, which eventually he did so, but fact remains that the RP can't be a passive spectator and let the CD drift to be controlled by ineligible members. On the issue of claim collation and its verification rests with the professional, it is clear that he failed to discharge his fundamental duty.
- 12.3 In view of above, 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. Vishal Ghisulal Jain having registration No. IBBI/IPA-001/IP-P00419/2017-2018/10742 for a period of two year.
- 12.4 The advice given by the CoC to engage a suspended director as Industry Expert has seemingly provided unfair advantage to Mr. Wadhwa as PRA. It is directed that the matter may be apprised to higher authorities of the Bank of India for dereliction of duty by its representative.
- 12.5 As per fresh facts, which have not constituted part of the SCN, it has emerged finally that on the strength of voting by Home Buyers the plan of Mr. Wadhwa was approved by the CoC in its 15th meeting. I am given to understand that the Bank of India has challenged the approval of the plan by CoC as the SRA is stated to 29A ineligible. This aspect is needed to be investigated by the concerned division of the Board.
- 12.6 This Order shall come into force on expiry of 30 days from the date of its issue.
- 12.7 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Jain is providing his services, if any.
- 12.8 A copy of this order shall be forwarded to The Indian Institute of Insolvency Professionals of ICAI where Mr. Vishal Ghisulal Jain is enrolled as a member.

12.9 A copy of this order shall be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.

12.10 Accordingly, the show cause notice is disposed of.

Dated: 19th June,2023

Place: New Delhi

Sd/-

(Sudhaker Shukla)
Whole Time Member, IBBI