

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/209/2024

03 April, 2024

Order

This order disposes of the Show Cause Notice (SCN) No. IBBI/C/2022/00687/512/736 dated 13.04.2023 issued to Mr. Chetan Patel, an Insolvency Professional, registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-002/IP-N00819/2019-2020/12561, who is a professional member of the ICSI Institute of Insolvency Professionals, having residential address recorded with the Board as 301, Akshar Stadia, Opp. Symphony House, B/h Armieda Cosmetic Center, Bokadev, Ahmadabad, Gujarat-380059.

1. Background

- 1.1. The Hon'ble NCLT, Ahmedabad Bench, (AA) vide order dated 12.03.2021 admitted the application filed under Section 9 of the Code by M/s Mohit Minerals Ltd. for Corporate Insolvency Resolution Process ("CIRP") of Nidhi Impotrade Private Limited, Corporate Debtor ("CD"). Mr. Saurabh Jhaveri was appointed as Interim Resolution Professional (IRP) vide the same order. Later vide order dated 26.04.2021, Mr. Chetan Patel was appointed as the Resolution Professional ("RP").
- 1.2. The IBBI, in exercise of its powers under Section 218(1) of the Code read with regulations 7(2) and 7(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations) appointed an Investigating Authority (IA) to conduct investigation in the matter of CIRP of the CD. Thereafter, the IA served a notice under regulation 8(1) of the Investigation Regulation to Mr. Chetan Patel on 23.06.2022.
- 1.3. Mr. Chetan Patel replied to the investigation notice vide mail dated 02.07.2022. Further clarification was sought from Mr. Chetan Patel on 14.07.2023 and the reply to the same was submitted on 15.07.2022. Further, additional documents were also submitted by

Mr. Chetan Patel on 12.08.2022. The IA submitted the investigation report on 31.12.2023.

- 1.4. Based on the findings in the investigation report, the SCN was issued to Mr. Chetan Patel on 13.04.2023 in respect of his role as RP in the CIRP of the CD. Mr. Chetan Patel submitted his reply to the SCN on 01.05.2023. The SCN and the reply of Mr. Chetan Patel, was referred to the Disciplinary Committee, IBBI (DC) for disposal of the SCN in accordance with Code and regulations made thereunder. Mr. Chetan Patel appeared before the DC for personal hearing on 06.10.2023. Mr. Chetan Patel submitted additional written submission *vide* e-mail dated 12.10.2023.

2. Alleged contraventions and submissions of the IP

The contraventions alleged in the SCN, submissions of Mr. Chetan Patel and findings of the DC thereof are summarized below:

Contravention: Non-inclusion of ex-director in PUFÉ application

- 2.1. It was observed that Mr. Patel had appointed PRYM & Associates to conduct the forensic audit of the CD where certain observations have been made against Mr. Atulbhai Sanghvi, ex-director in its report dated 15.07.2021 as follows:

“(Page 8)Upon a detailed investigation, it has been found that the Company and its directors are liable for prosecution under various provisions of the Indian Penal Code, 1860, Companies Act, 2013 and any other relevant laws ...

Finding No. 2: Siphoning and misappropriation of Funds of the Company to the tune of Rs. 24 Lacs by selling the stock of the company in cash or diverting the stock in other hands and Under Valuation of the Stock Value.

... In case of valve business, the company holds the Godown, and the stock is in possession with company (i.e., in hands of Shri. Atulbhai Sanghvi Managing Valve Business Department).

Qty Details of The Valve Stock for FY 2018-19 also reveals that the valuation of closing stock is taken wrongly. There is closing stock of 6,628 PCS in audit report as on

31/03/2018 where in the books the opening quantity is taken 7,271 Pecs. Due to which the value of closing of valve is calculated wrongly. The stock of valve is lying in Udhna Godown of the Company which is in possession of Director Shri. Atulbhai Singhavi.”

- 2.2. It was further observed that avoidance application filed by Mr. Patel is based on the Forensic Audit report dated 15.07.2021 which contained adverse observations against Mr. Atul Sanghvi, ex-Director of the CD. In fact, the *finding no. 2* mentioned above regarding the siphoning and misappropriation of funds of the CD had been made part of avoidance application and in the said application, Mr. Patel had provided his opinion that the aforesaid transactions fall under the category of undervalued transactions and fraudulent transaction as defined under Sections 45 and 66 of the Code respectively. However, he failed to array Mr. Atul Sanghvi, ex-director as a respondent in the IA no. 609 of 2021 filed for avoidance transactions before AA based on the said forensic audit report.
- 2.3. It was further observed that Ms. Pina Atul Sanghvi (related party being wife of Mr. Atul Sanghvi) is one of the partners in Nibhu Healthcare LLP, the resolution applicant whose plan was approved by the CoC. It is further noted that as per Section 29A (g) and (j) of the Code, a resolution applicant is ineligible for submitting a resolution plan if such person or his connected person has been a promoter or in the management or control of a CD in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the AA under the Code. Hence, by excluding Mr. Atul Sanghvi from being a respondent in the avoidance application, Mr. Patel has made Nibhu Healthcare LLP, the successful resolution applicant escape the ineligibility under Section 29A of the Code.
- 2.4. In view of the above, the Board was of the *prima facie* view that Mr. Chetan Patel has, *inter alia*, violated Sections 25(2)(j) and 208(2)(a) of the Code, Regulation 35A(3) of CIRP Regulations, Regulation 7(2)(a) and (h) read with clauses 1, 2, 3, 5 and 14 of the Code of Conduct of the IP Regulations.

Submissions by Mr. Chetan Patel

- 2.5. Mr. Chetan Patel in reply to the allegations mentioned in the SCN submitted that the statement in page 8 of forensic audit report, as mentioned above, was general in nature and was said for the defaulting director(s), if any, for particular transaction(s), and it cannot be understood to be meant for any particular person. Page No. 8 contains finding in brief/summary only and the detail finding was available from page no. 14 to page no. 34 where in all the suspicious transactions were explained in detail which gave better clarity/understanding of the transaction(s) referred to form an opinion regarding suspicious person responsible. The word directors cannot be construed as ex director Mr. Atul Sanghvi arbitrarily in absence of any express remark against him. Further, in case of valve business, the company held the godown, and the stock was in possession with company (i.e. in hands of Shri. Atulbhai Sanghvi managing Valve Business Department).
- 2.6. Mr. Chetan Patel further submitted that when the IRP took charge of the CD, he was not handed over the charge of coal or valve stock and cash on hand as on date of commencement of CIRP. Hence, Mr. Chetan Patel as RP took over the charge of CD from IRP without stock and cash on hand. Mr. Kandarp Shukla, ex-director assisted in providing possession of the stock of valve lying with the CD as per his knowledge and as available in May 2021 though Mr. Atul Sanghvi had resigned from the CD in October 2018.
- 2.7. Mr. Chetan Patel submitted that it is alleged in the forensic audit report that there was misappropriation of funds of the CD to the tune of Rs.4.96 lakhs on account of suspicious valve stock. The alleged suspicion occurred on account of mismatch of closing and opening stock of valve for the FY 2017-18 and 2018-19. As per submission of Mr. Chetan Patel, Mr. Atulbhai Sanghvi was involved in finalizing the books of account of the CD qua the valve business till FY 2017-18. Mr. Sanghvi was detached from the CD for all practical purposes in April 2018 itself. However, based on mutual understanding between Mr. Sanghvi and Mr. Shukla, Mr. Sanghvi continued to act as the director of the CD till October 2018 only for the limited purpose of disposing the valve stock of the CD and completing the legal compliances of the valve business of CD

till March 2018. During the tenure of Mr. Sanghvi till October 2018, he finalized the books of account of CD qua valve business while Mr. Shukla finalized the books of account of the CD qua the coal business. The finalized accounts of the CD was duly signed by both the then directors of CD and countersigned by the statutory auditor. At this time the closing stock of valve in the audit report of the CD was reflecting as 6,628 pieces. Thereafter, the responsibility to maintain accounts and stock of the CD qua the valve business was on existing Director Mr. Shukla. However, at the time of submission of the accounts of the CD for the FY 2018-19 Mr. Kandarp Shukla mentioned the opening stock of valve as 7,271 pieces. This raised concern for the forensic auditor since the opening stock of valve for the FY 2018-19 and the closing stock of valve for the FY 2017-18 was not matching as per acceptable accounting practice. Invariably since the books of accounts of the CD was being maintained by Mr. Shukla since FY 2018-19 any inflation in the valve stock was attributable to Mr. Shukla. Therefore, Mr. Chetan Patel did not deem it appropriate to include Mr. Sanghvi as a party respondent in the PUFEE application. No adverse remark was found in forensic Audit Report regarding valve stock malfunction by Mr. Atul Sanghvi and Mr. Chetan Patel had also no reason to suspect Mr. Sanghvi hence opined accordingly.

- 2.8. Mr. Patel has further submitted that the resolution applicant had submitted the necessary affidavit regarding eligibility under Section 29A along with the detail of connected persons. It was duly scrutinized in the best possible manner under guidance of legal expert and it was verified whether the resolution applicant was fit to pass Section 29A test or not before placing it at COC meeting. Further as per Section 29A (g) and (j) of the Code, a resolution applicant is ineligible if resolution applicant or its connected person has been held guilty by the Adjudicating Authority for PUFEE transactions. Here in the matter of Nidhi Impotrade Pvt. Ltd, Adjudicating Authority had not held any one guilty for any preferential, undervalued, extortionate credit transaction or fraudulent transactions till resolution plan was placed before CoC/the AA. Hence question of ineligibility qua Nibhu Health Care LLP does not arise. RP being a court officer was bound to accept it and recommend the same to COC.

Analysis and finding

- 2.9. The DC notes that the resolution plan filed by Mr. Chetan Patel before the AA for approval was objected by the ex-director Mr. Kandarp Shukla. The AA has approved the resolution plan *vide* order dated 09.01.2024 and while approving the resolution plan it was observed by AA that *“A declaration by the Resolution Applicant (one of the partners is wife of Ex-Director of the suspended management) has been filed pursuant to Sec 30(1) of the code confirming eligibility under Sec 29A,”*
- 2.10. The DC further notes that on filing of avoidance application and not impleading the ex-director Mr. Atul Sanghvi, in the same as respondent, the AA *vide* order dated 09.01.2024, while passing order approving the resolution plan, observed *“The RP has identified transactions under Sec 43, 45, 50 and 66 before the 150th day and the IAs are pending adjudication against the suspended management (one of the Directors) who has objected to the Resolution Plan, however has not made the Ex-Director Mr Atul Sanghavi party as he was not part of suspended management. The IA NO. 609 of 2021 is still pending adjudication”*

3. Order

- 3.1. In view of the forgoing, and considering the order of AA dated 09.01.224, and the avoidance application filed *vide* IA 609 of 2021, being sub-judice before the AA, the DC disposes the SCN without any directions to Mr. Chetan Patel, at this stage.
- 3.2. The DC further directs the Board to monitor the above IA before the AA and take appropriate action accordingly.
- 3.3. This Order shall come into force immediately in view of paragraph 3.1 of the Order.
- 3.4. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Chetan Patel is enrolled as a member.

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

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

Sd/-

(Jayanti Prasad)

Whole Time Member

Insolvency And Bankruptcy Board of India

Dated: 03 April 2024

Place: New Delhi