

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**  
**(Disciplinary Committee)**

No. IBBI/DC/138/2022

3<sup>rd</sup> November, 2022

**ORDER**

**This Order disposes the Show Cause Notice (SCN) No. COMP-11015/72/2022-IBBI/4062/617 dated 21.09.2022 issued to Mr. Prateek Kathuria, Insolvency Professional 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 (Investigation Regulations). Mr. Prateek Kathuria is a Professional Member of Insolvency Professional Agency of the Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with registration No. IBBI/IPA-001/IP-P-02110/2020-21/13278.**

**1. Developments in relation to resolution/liquidation of the CDs**

1.1. The Hon'ble NCLT, New Delhi Bench-IV (AA) *vide* order dated 11.08.2021 admitted the application under section 9 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of India Sports Flashes Private Limited (CD) and Mr. Prateek Kathuria was appointed as the Interim Resolution professional (IRP). Mr. Prateek Kathuria was replaced by Mr. Prabhat Ranjan Singh as IRP *vide* order of AA dated 04.04.2022 who was later confirmed as Resolution Professional (RP) *vide* order of AA dated 25.05.2022. Since, there have been no assets of the CD and business was closed since June 2021, the Committee of Creditors (CoC) in its 5<sup>th</sup> meeting dated 30.06.2022 passed resolution for liquidation of CD and the application for the same is pending before AA.

**2. Issuance of Show Cause Notice (SCN) and hearing before DC**

2.1. The Board, in exercise of the powers conferred to it under section 218 of the Code read with the Investigation Regulations, appointed an Investigating Authority (IA) to conduct the Investigation of Mr. Prateek Kathuria. The notice of investigation was sent to Mr. Prateek Kathuria on 23.06.2022, to which he submitted his reply *vide* email dated 28.06.2022. Thereafter IA submitted the Investigation Report to Board.

2.2. Based on the material available on record including the Investigation Report, the Board issued the SCN to Mr. Prateek Kathuria on 21.09.2022. The SCN alleged contravention of section 23(3), 17(2)(e), 208(2)(a) and 208(2)(e) of the Code read with clauses 1, 2, 12, 13, 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct). Mr. Prateek Kathuria replied to the SCN on 11.10.2022.

- 2.3. The Board referred the SCN, written and oral submissions of Mr. Prateek Kathuria, 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.
- 2.4. Mr. Prateek Kathuria availed an opportunity of personal hearing before DC on 28.10.2022 through virtual mode where he was represented by Mr. Arush Kapoor, Advocate. During the personal hearing, Mr. Prateek Kathuria tendered unconditional apology and requested the DC to take a lenient view as this was his first case and certain contraventions have been made inadvertently. Mr. Prateek Kathuria also tendered his unconditional apology in writing *vide* email dated 31.10.2022.

### **3. Alleged contraventions and submissions of the IP**

Contraventions alleged in the SCN and Mr. Prateek Kathuria's submissions thereof are summarized below:

#### **Contravention**

##### **3.1. Failure to handover the documents**

- 3.1.1. Section 23(3) of the Code provides that in case of any appointment of a resolution professional under sub-sections (4) of section 22, the IRP shall provide all the information, documents and records pertaining to the CD in his possession and knowledge to the resolution professional.
- 3.1.2. The Board noted that Mr. Prateek Kathuria was appointed as IRP by the AA *vide* its order dated 11.08.2021 in CP(IB) 460/ND/2020. Further, AA *vide* order dated 04.04.2022 passed in IA No. 4977 of 2021 replaced him with another IRP with direction to Mr. Prateek Kathuria to deliver all the documents in his possession in respect of CIRP of CD including audit reports etc. to Mr. Prabhat Ranjan Singh, newly appointed IRP within seven days.
- 3.1.3. The Board observed that Mr. Prabhat Ranjan Singh *vide* email dated 06.04.2022 followed by reminder e-mail dated 08.04.2022 requested Mr. Prateek Kathuria to hand over the various records, information, documents as per the directions of AA's order dated 04.04.2022. However, *vide* email dated 09.04.2022 Mr. Prateek Kathuria replied to him that he would not hand over the charge to him unless he will get his fees as well as the reasoning and apology letter in writing from AA for adjourning such crucial insolvency matters and not deciding his fees for such long period and also reasoning for passing two purported wrong orders
- 3.1.4. The Board further observed that upon Mr. Prateek Kathuria's failure to hand over requisite records and documents pertaining to CIRP of the CD, Mr. Prabhat Ranjan Singh filed an application bearing IA No. 1988 of 2022 before the AA seeking directions for taking the

CIRP forward. The said IA was disposed of by the AA vide order dated 29.04.2022 directing Mr. Prateek Kathuria to hand over the documents to Mr. Prabhat Ranjan Singh within a day failing which contempt proceedings would be initiated against him. Mr. Prabhat Ranjan Singh communicated the directions given by AA on 29.04.2022 to Mr. Prateek Kathuria *vide* email dated 29.04.2022 itself.

3.1.5. The Board further noted that in reply to notice of investigation issued to Mr. Prateek Kathuria *vide* email dated 23.06.2022 under regulation 8(1) of Investigation Regulations, Mr. Prateek Kathuria had admitted of having refused to hand over the documents and records pertaining to CIRP of the CD to Mr. Prabhat Ranjan Singh due to non-receipt of his fees as CoC and AA were unable to decide on his fees. The provisions of the code and regulations made thereunder do not prescribe any pre-condition like payment of fees to IRP for handing over records and documents pertaining to CIRP by IRP/RP to newly appointed IRP and refusal to do so is violation of section 23(3) of the Code. However, in this case Mr. Prateek Kathuria's contention that the AA was unable to decide on his fees is factually incorrect as AA in its order dated 04.04.2022 has settled the issue of his fees. Hence, Mr. Prateek Kathuria's reply to IA is misleading.

3.1.6. The Board noted that it is evident that he intentionally and purposefully did not give the documents/records pertaining to CIRP of the CD to the newly appointed IRP Mr. Prabhat Ranjan Singh despite clear and unambiguous directions from the AA. Thus, not only did Mr. Prateek Kathuria failed to provide necessary cooperation in handing over the documents to the newly appointed IRP but also wilfully disobeyed the order of the AA.

3.1.7. Hence, the Board is of the *prima facie* view that he has *inter alia* violated section 23(3), 17(2)(e), 208(2)(a) and 208(2)(e) of the Code read with Clause 1, 2, 12, 13, 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

### **3.2. Submissions made by the IP**

3.2.1. Mr. Prateek Kathuria submitted that it is not disputed that he had received an email dated 06.04.2022 from Mr. Prabhat Ranjan Singh (newly appointed IRP in the subject matter) along with a copy of order dated 04.04.2022, however it is pertinent to mention herein that the said mail was not forwarded to him through any of the official medium of AA. Also, the said order was surprisingly silent on the aspect of his fees for the work already done and being an IRP, he was entitled to his professional fees.

3.2.2. That thereafter, he had discussed the matter pertaining to the payment of his fees with his then legal counsel Mr. Sumit Sinha who had advised him not to forward any document to the new IRP and also filed a petition before the NCLT for the payment of his fees and acting upon the advice of his then legal counsel, he was reluctant to share the demanded documents with the new IRP. He submitted that it was his first assignment ever on the

subject and his conduct as such could also be attributed to mistake on his part, which he had realized later on.

- 3.2.3. He submitted that he had realized that it is not correct on his part to withhold the demanded documents as the same was also against his professional ethics and conscience and realizing so, he had *vide* email dated 28.06.2022 and 01.07.2022, contacted Mr. Mayank Mehta, AGM IBBI and forwarded him all the document(s) in his possession with regard to the CIRP of CD. He had chosen to forward the said documents to Mr. Mayank Mehta and not to the freshly appointed IRP as in his view Mr. Mayank Mehta was an appropriate authority for him.
- 3.2.4. That he had put a quietus to the whole controversy by mailing all the documents in his possession to the AGM Mr. Mayank Mehta on the dates mentioned herein above and with utmost sense of responsibility and sincerely apologized for the delay caused in providing document(s) to the appropriate authority.
- 3.2.5. Mr. Prateek Kathuria tendered his unconditional apology in writing for the acts of omissions attributed to him under the SCN and shall strive to maintain all the professional and ethical standards as mandated by the Board from time to time and shall not indulge in any professional misconduct / untoward behaviour / acts for the times to come. Mr. Prateek Kathuria sought pardon for the acts of omission done by him by mistake. That he shall abide by his undertaking and be highly grateful for the opportunity of reformation which has been granted to him following discussions during personal hearing.

### 3.3. Summary Findings

- 3.3.1. Section 23(3) of the Code clear provides for handing over of documents by IRP to RP. The provision is reproduced as follows:

*“(3) In case of any appointment of a resolution professional under sub-sections (4) of section 22, the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.”*

- 3.3.2. The DC notes that AA has directed Mr. Prateek Kathuria twice. Firstly on 04.04.2022 while replacing him and appointing Mr. Prabhat Ranjan Singh as IRP and secondly on 29.04.2022 when IA 1988/ND/2022 was filed by Mr. Prabhat Ranjan Singh, newly appointed IRP, stating that Mr. Prateek Kathuria has not handed over the documents related to the CD. Mr. Prabhat Ranjan Singh communicated the directions of AA on 29.04.2022 to Mr. Prateek Kathuria *vide* email dated 29.04.2022 itself. The DC notes that Mr. Prateek Kathuria did not comply with the directions of AA and requests from Mr. Prabhat Ranjan Singh.

- 3.3.3. The DC notes that Mr. Prateek Kathuria forwarded the documents to Mr. Prabhat Ranjan Singh on 06.10.2022 which is after issuance of SCN dated 21.09.2022.
- 3.3.4. The DC notes that the fees of Mr. Prateek Kathuria have been fixed by AA *vide* order dated 04.04.2022. Hence the submission of Mr. Prateek Kathuria on the issue is not tenable.
- 3.3.5. In light of above facts, the DC notes that acts of Mr. Prateek Kathuria for non-submission of documents to newly appointed IRP has caused delay in process which could have been avoided. Hence, the DC finds that Mr. Prateek Kathuria has violated section 23(3), 17(2)(e), 208(2)(a) and 208(2)(e) of the Code read with Clause 1, 2, 12, 13, 14 of the Code of Conduct.

#### **4. Order**

- 4.1. The DC notes that handing over the documents with a considerable lag by Mr. Prateek Kathuria is a serious cointervention which should have been avoided at any cost. He should have been careful and vigilant in his conduct as IRP and should have been careful and prompt in forwarding documents of the CD to newly appointed IRP. The delay in transferring documents causes delay in the process and leads to value erosion of CD.
- 4.2. The DC is of the view that the aforesaid contravention was made by Mr. Prateek Kathuria due to unprofessional attitude and wrong understanding of the provisions of the Code and requires sever indictment and suspension. Mr Prateek Kathuria should have applied his mind independently being an insolvency professional and not doing so resulted in utter disregard and disrespect to the order of AA. However, keeping in view of written apology aided by the fact that this was his first case, some leniency is being conceded as a one-time measure.
- 4.3. The DC, in exercise of the powers conferred under section 220 (2) of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby directs Mr. Prateek Kathuria to undergo 50 hours pre-registration educational course. In addition, he will be working as probationer for four months with other experienced IP so nominated by his IPA under which he is registered. Till completion of these actions, the Authorisation for assignment (AFA) of Mr. Prateek Kathuria will remain in suspended animation and he will not undertake any fresh assignment in the capacity of Insolvency Professional.
- 4.4. This Order shall come into force immediately in view of para 4.3 of the order.
- 4.5. A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Prateek Kathuria is providing his services, if any.
- 4.6. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Prateek Kathuria is enrolled as a member.

4.7. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.

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

-sd-

(Sudhaker Shukla)  
Whole Time Member, IBBI

Date: 3<sup>rd</sup> November 2022

Place: New Delhi