

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/142/2022

24 November 2022

ORDER

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

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/R(INSP)/2021-22/14 dated 6th September, 2022, issued to Mr. Anuj Kumar Tiwari, C-147, Raja Ji Puram, Lucknow, Uttar Pradesh- 226017 who is a Professional Member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00811/2019 -2020/12555.

Background

1. Mr. Anuj Kumar Tiwari, IP was appointed as Interim Resolution Professional (IRP) and Resolution Professional (RP) in the corporate insolvency resolution process (CIRP) in the matter of Sparkspell Homes Private Limited (CD-I), Chinttpurni Engineering Work Private Limited (CD-II), Prism Industrial Complex Limited (CD-III) and Diamond Infraland Developers India Limited (CD-IV).
- 1.1 In exercise of its power under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, the IBBI had appointed Inspecting Authority (IA) vide Order dated 17.11.2021 (IA-I) and 21.10.2021 (IA-II) to conduct an inspection of Mr. Tiwari. IAs submitted their respective Inspection Report to IBBI on 04.03.2022 (IA-II) and 15.06.2022 (IA-I).
- 1.2 The IBBI on 6th September 2022 had issued the SCN to Mr. Tiwari, based on findings in the inspection report in respect of his role as IRP/RP in the processes of CDs. The SCN alleged contraventions of several provisions of the Insolvency and Bankruptcy Code, 2016 (Code), IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (CIRP Regulations), the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations), Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) and the Code of Conduct under regulation 7(2) thereof. Mr. Tiwari replied to the SCN vide email dated 21.09.2022.
- 1.3 The IBBI referred the SCN, response of Mr. Tiwari 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. Mr. Tiwari availed an opportunity of personal hearing before the DC on 31st October, 2022 wherein he reiterated the submissions made in his written reply.

Show Cause Notice, Submissions and Findings

2. The contraventions alleged in the SCN and Submissions by Mr. Tiwari are summarized as follows:

3. In the matter of Sparkspell Homes Private Limited (CD-I)

Contravention- I

Failure to submit Information Memorandum (IM) to Committee of Creditors (CoC)

3.1.1 Regulation 36 of CIRP Regulations provides the timeline to be observed by the IP for submission of the IM to each member of the CoC within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date (ICD). Further, in terms of regulation 4(4) of Inspection Regulations, IP is mandated to produce before the IA such records in his custody or control and furnish to the IA such statements and information relating to its activities within such time as the IA may require.

3.1.2 It is noted that the IA-I required Mr. Tiwari to submit various documents as part of process of carrying out inspection of the IP. As part of this process, Mr. Tiwari was required to share IM prepared in the CIRP of the CD-I. However, Mr. Tiwari failed to do so. Further, he was evasive in his reply to DIR-I wherein he stated that he was the third RP in the matter. Even if the IM was not prepared and submitted to CoC by his predecessors, Mr. Tiwari after being appointed as third RP in the CIRP of the CD-I was required to prepare IM and submit the same to each member of CoC to take the CIRP further. However, Mr. Tiwari's evasive reply and not providing a copy of IM to IA-I indicate that the IM in the CIRP of the CD-I has not been prepared.

3.1.3 In view of the above, the Board is of the *prima facie* view that by not preparing IM and sharing with CoC members, Mr. Tiwari has *inter alia* violated regulation 36 of CIRP Regulations. Further, by not replying appropriately and not providing requisite documents to IA-I, Mr. Tiwari has *prima facie* also violated regulation 4(4) and 4(7) of Inspection Regulations read with clause 13, 18 and 19 of the Code of Conduct.

3.2 Submission

3.2.1 Mr. Tiwari submitted that he was the third RP appointed in the matter. He had been appointed as RP in the month of August 2020 when 270 days of CIRP had already elapsed. At the time of taking charge an application under section 19 and exclusion of time was pending. Also, there were several applications of homebuyers (whose claims had been rejected by erstwhile RP merely on ground of delay in filing of claims) were pending before the AA. After taking charge and going through the papers it was observed by Mr. Tiwari that the CoC was constituted on exaggerated Claims. Moreover, two members in the CoC were carrying the entire CIRP at their own whims and fancies. They were more interested in the freezing of their Claims and sending CD-I to Liquidation.

3.2.2 Regarding preparation of IM, Mr. Tiwari submitted that the essential condition is ascertainment of liabilities of CD-I. In the absence of Audited Accounts, it was difficult to get details of liabilities. However, going through the documents it was sufficiently clear that entire CIRP was being carried by only two Claimants whose claims were exaggerated. It is also relevant to mention here that the CoC had consistently denied permission to

appoint Forensic and Transactional Auditors. In absence of Audit reports, it was clear that IM preparation will not state the real position of CD-I.

3.2.3 Therefore, Mr. Tiwari filed an Application before AA for revising the claims of the creditors who held 100% voting share and his prayer was allowed by AA order dated 23.05.2022. Mr. Tiwari humbly submits that without freezing the Claims on reasonable grounds no IM could have been prepared.

3.2.4 Moreover, Mr. Tiwari submits that that the only asset in the CD-I was alleged to be fraudulently transferred by the erstwhile management. Mr. Tiwari had filed a separate Application before the AA for declaring the transactions fraudulent. After the decision on Claims of creditors, Mr. Tiwari had called a CoC meeting to get confidentiality declaration from Creditors. However, they have opined to conduct CIRP only when exclusion of time application is accepted by the AA. Mr. Tiwari also submits that the IM has been prepared and he is awaiting order from AA for carrying on CIRP and publication of Form G.

3.3 Findings

3.3.1 It is observed that the regulation 36 of the CIRP Regulations states as follows:

“36. Information memorandum.

(1) Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to each member of the committee on or before the ninety-fifth day from the insolvency commencement date.”

3.3.2 The DC observes that the CIRP was initiated in the present CD-I on 28.08.2019 and the AA replaced Mr. Sudhir Shukla with Mr. Anuj Kumar Tiwari on 31.08.2020 after a period of 369 days. It has been alleged that no IM has been prepared by the RP as per regulation 36 of the CIRP Regulation which mandates that within 95th day of ICD the IM shall be submitted to the CoC members by the RP. However, Mr. Tiwari submits that the essential conditions for preparation of IM being ascertainment of the liabilities of the CD-I was not completed as the claims of the homebuyers and the CoC members were not finalised which brought the entire CIRP to a standstill as it affected the voting rights of the members of the CoC. He referred to the order of the AA dated 23.05.2022 wherein the AA had made observations about the exaggerated claim amount of the 2 CoC members as follows:

“20. Accordingly, we direct the Ld. Counsel for RP to re-work out claims of respondent No.2 & 3 by applying the above rate of interest and admit their claims accordingly...

..4. One certainly must admire the chutzpah with which the Respondent Nos.2 & 3 did this. Unless there was some vested interest of the suspended board, we do not see how acceptance of such a contract would have been commercially prudent and in the interest of the Corporate Debtor that was then in the hands of the suspended board. The board of the Corporate Debtor either without thinking through, or being involved neck-deep in the proposals, accepted the same at great detriment to the Corporate Debtor, whose interests they were tasked to protect. This should properly be construed as a breach of their fiduciary duties to the Corporate Debtor, and its shareholders. The contracts that are presented on record are simply unconscionable. But that is not the end of the matter.”

3.3.3 In view of the above, the DC notes that as per the regulation 36 of the CIRP Regulations the IM is a confidential document which highlights the key selling propositions and contains all relevant information which serves as a comprehensive document about the CD-I including its assets and liabilities, operations, financial statements, to the prospective resolution applicant. In the instant case, the provisions of the Regulations expressly mandate that IM is to be submitted in the prescribed time-limit, however, in the extraordinary circumstances of the present matter wherein the claims of two Financial Creditors were so exaggerated that the amounted to 100% voting share in CoC and the AA also observed the interest under the contract to be so exorbitant that it shocks the conscience of the Court and found it to be unsustainable in public interest. Further, Mr. Tiwari informs that he has prepared the IM and the same will be proceeded further after extension of time granted by AA. Therefore, the DC accepts the submission of the RP that he could not have prepared the IM with patently wrong information regarding the claims for the prospective resolution applicant. Moreso considering the fact that the IM could not be prepared by the erstwhile RP under whose period the IM was to be prepared as per the model timelines. Also Mr. Tiwari was appointed as RP replacing earlier RP after a period of 369 days. Hence, the DC takes a lenient view in the matter.

4. Contravention-II Non-publication of Form G:

- 4.1.1 Regulation 40A read with regulation 36A of CIRP Regulations provides the model timeline to be observed by the IP for publication of Form G i.e., by seventy-fifth day from the ICD.
- 4.1.2 It is observed that Mr. Tiwari was the third RP in the instant matter, and yet even after the lapse of a substantial period, Form G has not yet been published in terms of regulation 36A of CIRP Regulations. It is also observed that he was evasive in his reply to DIR and did not mention any reason for not publishing Form G by him even if the same was not done by his predecessors.
- 4.1.3 In view of the above, the Board is of the *prima facie* view that Mr. Tiwari has, *inter alia*, violated regulation 40A read with regulation 36A of CIRP Regulations and regulation 4(4) of Inspection Regulations as well as clause 13 of the Code of Conduct.

4.2 Submission

- 4.2.1 Mr. Tiwari submitted that AA vide its order dated 23.05.2022 has revised the Claims of both the creditors who held 100% voting share. He submitted that without freezing the Claims on reasonable grounds no IM could have been prepared by him. Unless the liability of claimants is fixed on reasonable grounds the process comes to a standstill and this has been noted in the Order as well.
- 4.2.2 Mr. Tiwari submitted that FORM G is prepared and can be published once an order from AA excluding certain time periods is received. Since he had been asked to fix date for appearing online to show papers to the authorities, he had sought time due to an ongoing personal issue. He also submits that he has never been evasive in such matters.

4.3 Findings

4.3.1 The regulation 36A of the CIRP Regulations provide as follows:

“36A. *Invitation for expression of interest.*

(1) *The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule-I at the earliest, not later than sixtieth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans...*”

4.3.2 In the present matter it has already been noted by the DC that due to the prevailing extraordinary circumstances wherein the claims of two Financial Creditors were so exaggerated that the RP could not have issued the IM as the claims amounts mentioned would have been blatantly wrong even if it were provisionally issued. Hence, the DC takes a lenient view of the non-issuance of the Form G for Invitation for Expression of Interest as the IM could not have been shared with prospective resolution applicant had they submitted their expression of interest and also that the task was not completed by the previous RPs within whose responsibility it fell as per the model timelines and Mr. Tiwari has informed that Form G will be published after extension of time granted by AA.

5. Contravention-III

Delay in filing CIRP Form 7:

5.1.1 Regulation 40B (1A) provides that when specified activity is not complete within the specified date, the IRP or RP, as the case may be, shall file Form CIRP 7 within three days of the said date, and continue to file Form CIRP 7, every 30 days, until the said activity remains incomplete.

5.1.2 It is noted that the CIRP was initiated on 28.08.2019 and is still under process. As the CIRP was not completed within 180 days, it was required under regulation 40B(1A) to file first Form CIRP 7 within 3 days of completion of 180 days of CIRP and subsequent Form CIRP 7 every 30 days thereafter. It is, however observed that Mr. Tiwari filed CIRP 7 form on 29.03.2021 i.e. almost a year after the ICD. This form further states that CIRP 7 for same event was not filed which suggests that this is the only form CIRP 7 which Mr. Tiwari filed in the CIRP of CD.

5.1.3 In view of the above, the Board is of the *prima facie* view that Mr. Tiwari have, *inter alia*, violated regulation 40B (1A) of CIRP Regulations read with clause 13 of the Code of Conduct.

5.2 Submission

5.2.1 Mr. Tiwari submitted that he was appointed as RP in the matter on 30.08.2020. The relevant form was introduced on 15.03.2021. Therefore, the delay in filing the relevant form was inadvertent which was rectified on the given date of 29.03.2021.

5.3 Findings

5.3.1 The regulation 40B (1A) of the CIRP Regulation provides as follows:

“40B *Filing of Forms.*

(1) The insolvency professional, interim resolution professional or resolution professional, as the case may be, shall file the Forms, along with the enclosures thereto, on an electronic platform of the Board, as per the timelines stipulated against each Form...

..(1A) Where any activity stated in column (2) of table below is not complete by the date specified therein, the interim resolution professional or resolution professional, as the case may be, shall file Form CIRP 7 within three days of the said date, and continue to file Form CIRP 7, every 30 days, until the said activity remains incomplete”

- 5.3.2 The intent behind the regulation 40B of CIRP Regulations is to ensure the timely completion of the CIRP under the Code within a mandatory period of 180 days. The regulation provides for the strict adherence to the timelines for individual process in the CIRP. It is observed that the regulation 40B(1A) of the CIRP regulation introducing the Form CIRP 7 was inserted by notification no. IBBI/2020-21/GN/REG070, dated 15.03.2021 and which came into force from the same date. The Form CIRP 7 was filed on 29.03.2021, however, it is observed that no subsequent filing of the Form CIRP 7 was made thereafter as required by the provisions until the activity is completed. Therefore, the same is a contravention of regulation 40B (1A) of CIRP Regulations read with clause 13 of the Code of Conduct.

6. Contravention-IV Circulation of Notice of CoC meetings

- 6.1.1 Regulation 19 of the CIRP Regulations provide the timeline for circulation of notice and wherein it is stipulated that meeting of CoC shall be called by giving not less than 5 days' notice in writing which may be reduced for a period not less than 24 hours and 48 hours in case of an authorised representative (AR).
- 6.1.2 It is observed that CoC in the 2nd CoC meeting had resolved to reduce the time period for circulation of notice for conducting CoC meeting to three days, but on perusal of notice of the 8th, 9th, 10th CoC meetings, it is observed that the same were issued by Mr. Tiwari giving time period of two, one and two days only, respectively against the decision taken in 2nd CoC meeting and hence the same is in violation of regulation 19 of the CIRP Regulations.
- 6.1.3 In view of the above, the Board is of the *prima facie* view that Mr. Tiwari have, *inter alia*, violated regulation 19 of CIRP Regulations and Clause 13 and 14 of the Code of Conduct.

6.2 Submission

- 6.2.1 Mr. Tiwari submitted that as stated earlier in 8th and 9th CoC meeting, only two committee members constituted 100 % of the CoC. The 8th CoC Notice which happened to be his first CoC after appointment the notice was circulated on 27.10.2020 and meeting was held on 29.10.2020. The attendance of CoC members was 100% and no one in CoC took objection to it and neither were they prejudiced by short notice. In fact it was held on request of CoC members. Mr. Tiwari was not aware that they have reduced time period for three days whereas in normal circumstances it is two days short notice. However, subsequent meetings were held after giving due notice.
- 6.2.2 The 9th CoC meeting was called on 23.11.2020 and notice was issued on 20.11.2020. the 10th CoC meeting notice was issued on 16.12.2020 and it was held on 19.12.2020. It was

initially called for 18.12.2020, however the date was revised for 19.12.2020.

- 6.2.3 Mr. Tiwari further states that the entire CIRP for more than 270 days was carried on by Deepak Gupta, ex-Director and Indu Mittal with *mala fide* intent. The real name of Company was deliberately concealed, homebuyers left away and no appointment of Valuers, Transactional Auditors etc. Mr. Tiwari have taken *bona fide* steps so that rightful creditors are in place who can take commercial decisions for benefit of CD-I.

6.3 Findings

- 6.3.1 With regard to the issue of the delay in circulation of the CoC minutes, the regulation 19 of the CIRP Regulation states that:

“(1) Subject to this Regulation, a meeting of the committee shall be called by giving not less than five days’ notice in writing to every participant, at the address it has provided to the interim resolution professional or the resolution professional, as the case may be, and such notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means in accordance with Regulation 20.

(2) The committee may reduce the notice period from five days to such other period of not less than twenty-four hours, as it deems fit:”.

- 6.3.2 As per the provisions of the regulations it is envisaged that the RP shall circulate the notice of the meeting five days prior to the date of such meeting, it has been provided so as to ensure attendance, sufficient time for reviewing and necessary preparation to be undertaken by the members of the meeting. The notice of the CoC meetings can be reduced from five days to any period not less than 24 hours from the date of said meeting. However, it is observed that the 8th CoC, 9th and 10th CoC meeting notices were circulated on 27.10.2020, 20.11.2020 and 16.12.2020 respectively and meetings were held on 29.10.2020, 23.11.2020 and 19.12.2020 respectively. It is also observed that in the 2nd CoC meeting dated 23.11.2019 the notice period was reduced to 3 days by the approval of the CoC members.

- 6.3.3 In view of the above, the DC find that the notice period was shorter than the approved period. However, the notice period has been provided for ensuring the quorum in the meetings and as Mr. Tiwari submitted that the attendance of CoC meetings was 100 per cent and no objection was raised during the meetings as no party was prejudiced by the short notice. Further, it is observed that the shorter notice was issued as per the request of the CoC members for 9th and 10th CoC Meeting. Hence, the submission of Mr. Tiwari is accepted.

7. In the matter of Chintpurni Engineering Work Private Limited (CD-II) Contravention-V

Non-cooperation with IA in providing requisite documents:

- 7.1.1 According to Regulation 4(4) of the Inspection Regulations, it shall be the duty of the service provider to produce before the IA documents, record, or information in his custody or control and furnish to the IA such statements and information relating to its activities within such time as the IA may require.

7.1.2 It is observed that IA-1 noted failure on Mr. Tiwari's part in submission of details of documents pertaining to the appointment of valuer in terms of regulation 27 of CIRP Regulations, submission of IM to CoC in terms of regulation 36(1) of CIRP Regulations, opinion of preferential and other transactions in terms of regulation 35A of CIRP Regulations, publication of Form G in terms of regulation 36A of CIRP Regulations. In reply to DIR-I, Mr. Tiwari stated that the instant case has been resolved and resolution plan has been filed with AA for approval. While Mr. Tiwari replied stating that all these activities have been done but he did not provide copies of these documents to IA-1 and thereby continued his non-cooperation with IA-1.

7.1.3 In view of the above, the Board is of the *prima facie* view that Mr. Tiwari has, *inter alia*, violated regulation 4(4) and 4(7) of Inspection Regulations read with clause 1, 2, 18 and 19 of the Code of Conduct.

7.2 Submission

7.2.1 Mr. Tiwari submitted that the valuers were appointed as desired in regulation 27 of the CIRP Regulations. The details were filed at the IPA website. However, as requested by the Board in Inspection report the valuers report could not be shared inadvertently due to sudden medical emergency. Mr. Tiwari submitted that he shared the valuation reports.

7.3 Findings

7.3.1 The regulation 4(4) and (7) of the Inspection Regulation provides that,
"4. *Conduct of Inspection.*

...(4) It shall be the duty of the service provider and an associated person to produce before the Inspecting Authority such records in his custody or control and furnish to the Inspecting Authority such statements and information relating to its activities within such time as the Inspecting Authority may require...

(7) It shall be the duty of the service provider and an associated person to give to the Inspecting Authority all assistance which the Inspecting Authority may reasonably require in connection with the inspection."

7.3.2 It is observed that Mr. Tiwari has submitted the Form G published on 28.06.2021, the valuation report on 15.12.2020 and CIRP 8 on 20.09.2022 providing opinion on avoidance transactions. However, IM has not been provided. Hence, there is a contravention of regulation 4(4) and 4(7) of Inspection Regulations read with clause 1, 2, 18 and 19 of the Code of Conduct.

8. Contravention-VI

Non-filing of Forms CIRP 7 and CIRP 8

8.1.1 Regulation 40B (1A) provides that when specified activity is not complete within the specified date, the IRP or RP, as the case may be, shall file Form CIRP 7 within three days of the said date, and continue to file Form CIRP 7, every 30 days, until the said activity remains incomplete.

8.1.2 Further, Board *vide* its circular dated 20.07.2021, introduced Form CIRP 8 that requires the RP to file Form CIRP 8 intimating details of his opinion and determination under

regulation 35A of CIRP Regulations by 140th day of the ICD.

- 8.1.3 It is observed that Form CIRP 7 was first filed on 29.03.2021, followed by on 21.07.2021 and 7.02.2022. CIRP was initiated on 14.02.2020 and in more than 2 years of CIRP, only three CIRP form 7 were filed by Mr. Tiwari while the requirement is to file the first CIRP 7 in three days after completion of 180 days of CIRP if it remains incomplete and thereafter every 30 days. Clearly, Mr. Tiwari have not filed CIRP Form 7 as per the requirement of regulation 40B(1A) of CIRP Regulations.
- 8.1.4 It is also observed that Mr. Tiwari has also not filed CIRP Form 8 intimating about his opinion and determination of avoidance transactions under regulation 35A of CIRP Regulations.
- 8.1.5 In view of the above, the Board is of the *prima facie* view that Mr. Tiwari has, *inter alia*, violated Regulation 40B (1A) of CIRP Regulations and Board Circular dated 20.07.2021 read with clause 13 of the Code of Conduct.

8.2 Submission

- 8.2.1 Mr. Tiwari submitted that he had filed the CIRP 7 on 7.02.2022. Form CIRP 8 has been filed and the same is also shared. The delay was caused due to his son's operation as informed during inspection.

8.3 Findings

- 8.3.1 In the present issue it is observed that Mr. Tiwari filed the CIRP 7 on 7.02.2022 and the CIRP 8 was filed on 20.09.2022. Mr. Tiwari submits that the delay was caused due to his son's operation and the delay was inadvertant. However, it is observed that no subsequent filing of the Form CIRP 7 was made thereafter as required by the provisions until the activity is completed. Therefore, the same is a contravention of regulation 40B (1A) of CIRP Regulations read with clause 13 of the Code of Conduct.

9. In the matter of Prism Industrial Complex Limited (CD-III)

Contravention-VII

Delay in filing CIRP 7:

- 9.1.1 Regulation 40B (1A) provides that when specified activity is not complete within the specified date, the IRP or RP, as the case may be, shall file Form CIRP 7 within three days of the said date, and continue to file Form CIRP 7, every 30 days, until the said activity remains incomplete.
- 9.1.2 It is noted that the CIRP was initiated on 29.01.2020 and is still under process. As the CIRP was not completed within 180 days, Mr. Tiwari was required under regulation 40B(1A) to file first Form CIRP 7 within 3 days of completion of 180 days of CIRP and subsequent Form CIRP 7 every 30 days thereafter. It is, however observed that Mr. Tiwari filed CIRP 7 form on 29.03.2021 i.e. almost a year after the ICD. This form states that CIRP 7 for same event was not filed which suggests that this is the only form CIRP 7 which Mr. Tiwari filed in the CIRP of CD-III.
- 9.1.3 In view of the above, the Board is of the *prima facie* view that Mr. Tiwari has, *inter alia*, violated regulation 40B (1A) of CIRP Regulations read with clause 13 of the Code of Conduct.

9.2 Submission

9.2.1 Mr. Tiwari submitted that he has already filed a report with the Board and the AA. In the instant case Mr. Tiwari has not been appointed as RP till date. Moreover, he has already requested AA to allow withdrawal of this case as it is not a fit case under the Code. The order of AA in the instant case is shared to make the state of affairs clear. The relevant portion of the order is as follows:

“petitioner and the corporate debtor appears to derail the process of execution proceedings which may be filed for realisation of the amount on redeeming the debentures or in making payment to deposit holders. The very question which arises for our consideration is as given under:

Whether insolvency application can be entertained in a case where financial fraud exists? Admittedly the corporate debtor company had raised deposits from retail investors, by instruments purporting to be debentures. The debentures were issued to more than 3000 investors.

In accordance with the provisions of sec. 67 of the Companies Act, 1956, these debentures were deemed to have been issued to public. ----

The debentures were issued in breach of the public issue norms, and therefore, the debentures must be redeemed immediately.

Additionally, some of the debentures were regarded to be "deposits", being unsecured debentures, and orders have been passed by the NCLT for immediate repayment of the said debentures.

Even while the said orders of NCLT are pending for execution, and have not been acted upon, application has been made by some of the financial creditors for insolvency of the Corporate Debtor under sec. 7 of the IBC.

There are two essential reasons why such an application for declaration of insolvency and moratorium under sec. 7 cannot be granted.

*First reason is purely a question of **bonfide reasons for making the application, and the implications of the insolvency declaration and ensuing moratorium.***

There is no doubt that the enactment of the insolvency resolution process under the IBC is a step towards resolution or rectification of an insolvency. There is a company which had run into financial problems; the creditors are proposing to collectively bail the company out. These provisions are intended for repairing a broken house that still can be repaired, and can avoid demolition. The intent of insolvency resolution process cannot be to interfere in cases where there are financial irregularities, illegalities or indications of a financial fraud.”

9.2.2 The Applicants were themselves not cooperating in the instant case. A detailed affidavit in this regard has been filed with AA.

9.3 Findings

9.3.1 The DC observes that in view of the previous observations, it is noted that the regulation 40B(1A) of the CIRP regulation introducing the Form CIRP 7 was inserted by notification no. IBBI/2020-21/GN/REG070, dated 15.03.2021 and which came into force from the same date. The Form CIRP 7 was filed on 29.03.2021, however, it is observed that no

subsequent filing of the Form CIRP 7 was made thereafter as required by the provisions until the activity is completed. Therefore, the same is a contravention of regulation 40B (1A) of CIRP Regulations read with clause 13 of the Code of Conduct.

10. Contravention-VIII

Non-cooperation with IA-II

- 10.1.1 As per Regulation 4(4) of the Inspection Regulations, it shall be the duty of the service provider and an associated person to produce before the IA such records in his custody or control and furnish to the IA such statements and information relating to its activities within such time as the IA may require. As per regulation 4(7) of Inspection Regulation, it shall be the duty of the service provider and an associated person to give to the IA all assistance which the IA may reasonably require in connection with the inspection.
- 10.1.2 It is observed that Mr. Tiwari has not cooperated with the IA all throughout the inspection. The following specific instances of non-cooperation substantiate these observations:
- a. The IA-II vide its email dated 26.10.2021 intimated Mr. Tiwari to provide copies of documents by 09.11.2021. However, Mr. Tiwari vide email dated 08.11.2021 he submitted only some documents and not the complete documents as per the checklist as asked by the IA.
 - b. IA-II again followed with Mr. Tiwari vide email dated 31.12.2021, wherein IA again requested him to provide documents as per the Checklist. He sought extension of time for submission of documents on multiple occasions but he failed to provide the requisite/documents/data as sought by IA.
- 10.1.3 It is, thus, evident that Mr. Tiwari has failed to submit the records/documents within the time prescribed by the IA-II and further has not extended sufficient and appropriate co-operation to the IA-II as may be required to carry out the inspection, which is Mr. Tiwari's duty under Regulation 4(4) of the Inspection Regulations.
- 10.1.4 As Mr. Tiwari has not cooperated with the **IA-II** as explained in para (ii) above, the Board is of the *prima facie* view that he has, *inter alia*, violated regulation 4(4) and 4(7) of Inspection Regulations read with clause 18 and 19 of the Code of Conduct.

10.2 Submission

- 10.2.1 Mr. Tiwari submitted that the CIRP 7 was filed with IBBI on 29.03.2021. There was inadvertent delay in sending details due to personal reasons reported to the Board. However, Mr. Tiwari did send details as desired. A copy of email sent is shared herewith.

10.3 Findings

- 10.3.1 In the present issue it is observed that Mr. Tiwari had informed Board vide his e-mail dated 02.03.2022 that in the 1st CoC meeting held, the CoC members had become hostile when they were updated about the entire CIRP and the expected costs. That there are no recoverable assets in the CD-III since it's a holding Company which was a debenture trustee that has been liquidated. That the Applicants have not returned back to discuss anything whatsoever and have eloped since. That on written notice being sent to them few of them even threatened and court notices sent to them have not been replied for till this date. However, these reasons cannot justify non-cooperation with the IA by Mr. Tiwari.

The DC further notes that Mr. Tiwari had submitted few additional documents in response to the SCN.

11. In the matter of Diamond Infraland Developers India Limited (CD-IV) Contravention-IX

- 11.1.1 Regulation 40B (IA) provides that when specified activity is not complete within the specified date, the IRP or RP, as the case may be, shall file Form CIRP 7 within three days of the said date, and continue to file Form CIRP 7, every 30 days, until the said activity remains incomplete.
- 11.1.2 It is noted that the CIRP was initiated on 16.12.2019 and is still under process. As the CIRP was not completed within 180 days, Mr. Tiwari was required under regulation 40B(1A) to file first Form CIRP 7 within 3 days of completion of 180 days of CIRP and subsequent Form CIRP 7 every 30 days thereafter. It is, however observed that Mr. Tiwari filed CIRP 7 form on 29.03.2021 i.e. almost a year after the ICD. This form states that CIRP 7 for same event was not filed which suggests that this is the only form CIRP 7 which Mr. Tiwari filed in the CIRP of CD.
- 11.1.3 In view of the above, the Board is of the *prima facie* view that Mr. Tiwari has, *inter alia*, violated regulation 40B (1A) of CIRP Regulations read with clause 13 of the Code of Conduct.

11.2 Submission

- 11.2.1 Mr. Tiwari submitted in the present matter he was physically assaulted and attacked by the Creditors, who are too large in numbers. The matter was reported to IBBI, Police Authorities and IPA.
- 11.2.2 In spite of such adverse conditions, Mr. Tiwari has been calling meetings of CoC for taking the CIRP forward. However, the members had not responded in the manner as requested. And hence quorum has never been completed in the instant case. Mr. Tiwari had approached AA for closure of the case, however that application has been rejected. The Creditors are not responding on emails and they are only threatening *vide* phone calls and litigations. The detailed report filed with IBBI is shared. The relevant CIRP 7 form was filed on 29.03.2021. Thereafter, the next Form CIRP 7 has also been filed on 21.09.2022.

11.3 Findings

- 11.3.1 The DC observes that in view of the previous observations, it is noted that the regulation 40B(1A) of the CIRP regulation introducing the Form CIRP 7 was inserted by notification no. IBBI/2020-21/GN/REG070, dated 15.03.2021 and which came into force from the same date. Thereafter, the Form CIRP 7 was filed on 29.03.2021 and the next Form CIRP 7 was also filed on 21.09.2022. However, it is observed that no monthly filing of the Form CIRP 7 was made by Mr. Tiwari as required by the provisions until the activity is completed. Therefore, the same is a contravention of regulation 40B (1A) of CIRP Regulations read with clause 13 of the Code of Conduct.

ORDER

12. In view of the above, the Disciplinary Committee, in exercise of the powers conferred under Section 220 of the Code read with Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017, hereby:-
 - i. Imposes a penalty of Rs. 2,00,000/- (Rs. Two Lakhs only) on Mr. Anuj Kumar Tiwari and directs him to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of “penalty imposed by IBBI” on <https://bharatkosh.gov.in> within 45 days from the date of issue of this order and submit a copy of the transaction receipt to the Insolvency and Bankruptcy Board of India, and
 - ii. Cautions Mr. Anuj Kumar Tiwari to be more careful in future and directs him to strictly comply with the applicable provisions of the Code and its underlying Regulations while performing his duties.
13. This Order shall come into force immediately in view of paragraph 12.
14. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Tiwari is enrolled as a member.
15. 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.
16. Accordingly, the show cause notice is disposed of.

-Sd-

(Jayanti Prasad)

Whole Time Member, IBBI

Dated: 24 November, 2022

Place: New Delhi-