

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/202/2024

12th January 2024

ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/74/2023-IBBI/845 dated 20.07.2023, issued to Mr. Vivek Raheja, an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-001/IP-P00055/2017-18/10133, who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and having residential address as recorded with IBBI as, JD 2C, 2nd Floor, Pitampura, New Delhi, Delhi ,110034.

1. Background

- 1.1** The Hon'ble National Company Law Tribunal, New Delhi Bench (AA) vide its Order dated 04.07.2019, admitted the application under section 9 of the Code, filed by Mr. Vijay Purohit, for initiating Corporate Insolvency Resolution Process (CIRP) of the Trading Engineers (International) Limited ("Corporate Debtor / CD") and appointed Mr. Vivek Raheja as Interim Resolution Professional (IRP). He was later confirmed as Resolution Professional (RP) also.
- 1.2** The IBBI in exercise of its powers under section 218 of the Code, read with Regulation 7(2) and 7(3) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to conduct investigation in the CIRP of the CD.
- 1.3** Based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the IBBI issued the SCN to Mr. Vivek Raheja on 20.07.2023. The reply of Mr. Vivek Raheja on the SCN was received by the Board on 12.08.2023. The SCN, response of Mr. Vivek Raheja to the SCN and other materials available on record were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Vivek Raheja availed an opportunity of personal hearing before the DC on 09.10.2023 wherein he appeared with his advocate Mr. Ashish Makhija.

2. Issue of maintainability of Disciplinary Committee proceedings

- 2.1** Mr. Raheja in his reply to SCN challenged the SCN issued to him on the following grounds:
- a) that the *prima facie* opinion formed by the Board before issuance of SCN as mandated under regulation 11 of the Inspection and Investigation Regulations was not shared with the IP, and
- b) the SCN was issued on the basis of a complaint received by the Board, which was filed beyond the prescribed time limit. In the present case, the purported cause of action occurred in 2020 and the complaint is now filed in 2023 which is after a considerable delay.
- 2.2** The DC has examined both the grounds raised by Mr. Vivek Raheja in respect of non-

maintainability of the SCN as follows:

- a) In accordance with regulation 11(2) of the Inspection and Investigation Regulations, the *prima facie* opinion formed by the Board, after considering the investigation report, was communicated to Mr. Vivek Raheja in the form of show cause notice dated 20.07.2023.
- b) However, in terms of section 218 of the Code read with Inspection and Investigation Regulations, the Board is empowered to take into account any material made available to it, regarding any alleged misconduct by the service provider. It should be noted that the Board constituted under section 188 of the Insolvency and Bankruptcy Code, 2016 is entrusted with the duty to ensure effective implementation of the provisions and objectives of the Code. section 196 of the Code bestows various powers and functions on the Board, including that of suspension or cancellation of registration granted to service providers, regulation of working of service providers, carry out inspection and investigation on service providers and pass such orders as may be required for compliance of provisions of the Code and regulations, monitoring of performance of service providers, etc. The conduct of an Insolvency Professional in a CIRP has wide implications and affects the rights and interests of all the stakeholders. Therefore, to effectively discharge its statutorily mandated duties and functions, under the Code, the Board can very well examine the conduct of the IP whenever any information about the conduct related issue is received by the Board.

2.3 Accordingly, the DC finds no infirmity in the issuance of SCN by the Board subsequent to the investigation conducted on grounds of sufficient material found on the basis of investigation report. The DC will now in following paragraphs, examine the allegations made in the SCN.

3. Alleged Contraventions, Submissions of IP and Findings

The contraventions alleged in the SCN, submissions by Mr. Vivek Raheja and findings of the DC are summarized as follows:

3.1 Issue related to eligibility of Shri Sushant Chhabra, as a joint resolution applicant:

- 3.1.1 It was observed by the Board that the Committee of Creditors (CoC) of the CD in its 17th meeting held on 15.02.2021 approved the resolution plan submitted by M/s Conquerent Control System Pvt Ltd (Conquerent) jointly with Mr. Sushant Chhabra. It was observed that Mr. Sushant Chhabra, who is a joint Successful Resolution Applicant (SRA) is a member of the suspended Board of the CD. Mr. Raheja in his reply to IA stated that the CD was registered as a micro, small and medium enterprises (MSME) since 2007 and in support thereof, he attached Udyog Aadhar Registration Certificate dated 31.10.2017. It is the contention of Mr. Raheja that since CD was an MSME, certain ineligibilities under section 29A of the Code were not applicable to Mr. Sushant Chhabra in becoming resolution applicant in terms of section 240A of the Code.
- 3.1.2 It was further noted by the Board that in response to IA's e-mail dated 31.05.2023 seeking to ascertain the veracity of the MSME certificate of CD and its status on the commencement of CIRP, Deputy Director, Office of DC-MSME, Ministry of MSME, Government of India vide email dated 16.06.2023, informed the IA as under:

a. M/s TEIL Earlier Registered with UAM No UK06B0002251 dated 31/10/2017 and further Cancelled/Marked as Z category by respective GMDIC on dated 22/12/2017(Attached as Annexure L).

b. M/s TEIL Registered with UDYAM No. UDYAM-DL-08-0004435 Dated 18/10/2020. Classification has been done by the ITR Detail fetched from CBDT.

3.1.3 The Board found it evident that the MSME certificate dated 31.09.2017 which was considered by Mr. Raheja as the basis for allowing exemption from clause (c) and (h) of section 29A, stood cancelled on 22.12.2017. Thus, CD was not an MSME on the date of commencement of CIRP i.e., 04.07.2019.

3.1.4 It was further noted that as the CIRP of the CD commenced on 04.07.2019, the criteria for classification of MSME will be in accordance with the provisions of Ministry of MSME Office Memorandum (OM) F. No. 12(4)/2017-SME dated 08.03.2017, as per which gross block for investment in plant and machinery as shown in the audited accounts could be taken into account for classification of an enterprise as MSME. The Investment in Plant and Machinery of the CD for the past 3 years prior to CIRP were as follows:

Particulars	31.03.2017 (Audited Balance sheet)	31.03.2018 (Audited Balance sheet)	31.03.2019 (Audited Balance sheet)
Gross block of Investment in plant and machinery (Rs in Crs)	16.78	16.86	16.86

3.1.5 Therefore, the Board observed that the Investment in Plant and Machinery in the three preceding years prior to commencement of CIRP was more than 10 crores. Therefore, in terms of Ministry of MSME OM dated 08.03.2017, the CD was not a MSME based on above criteria.

3.1.6 As per section 30 (2) of the Code, it was the duty of Mr. Raheja to examine each resolution plan and confirm that the plan does not contravene any of the provisions of the law for the time being in force. It was, however, observed by the Board that despite CD not being an MSME at the time of commencement of CIRP of the CD, Mr. Raheja allowed submission of the resolution plan by a director of the CD as one of the joint resolution applicants on the premise that CD was a MSME.

3.1.7 It further came to the notice of the Board that Mr. Raheja was RP in CIRP of another Corporate Debtor i.e. Unitech Machines Limited also, and Mr. Sushant Chhabra happened to be a director in that Corporate Debtor also. In the CIRP of the said Corporate Debtor, Mr. Raheja had filed an application for avoidance transactions in 2020 during the same time when resolution plan of Conquerent and Mr. Sushant Chhabra was under consideration in CoC of the CD. In the said avoidance application, Mr. Raheja had made Mr. Sushant Chhabra as a respondent. However, the said fact was not discussed with CoC while discussing the eligibility of Mr. Sushant Chhabra as a co-resolution applicant for CD.

3.1.8 In view of the above, the Board was of the *prima facie* view that the IP contravened sections 30(2), 30(3), 208(2)(a) & (e) of the Code, regulation 39(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP

Regulations) read with Clauses 1, 2, 12 and 14 of the Code of Conduct

Submissions by the IP

- 3.1.9 Mr. Raheja in his response to the SCN submitted that the status of the CD as an MSME was not considered in proper perspective. Under the Code, an Insolvency Professional is appointed with no prior knowledge of the status, business, operations, assets and working of the CD. As per the scheme envisaged in the Code, the Insolvency Professional relies primarily on the cooperation, assistance and support of the Personnel [as defined in S. 5(23) of the Code] of the CD including the persons involved in management of the CD. With the directors not responding to notices issued, the delay or non-availability of authentic, bonafide and genuine information cannot be attributed to the Resolution Professional.
- 3.1.10 Mr. Raheja submitted that he was able to take into custody partial books of account, records and documents which were either lying at office premises of the CD or were supplied in a piecemeal manner by the personnel of the CD. In one such instance, one of the directors, namely Mr. Sushant Chhabra, informed the CoC that the CD was registered as MSME since the year 2007. Such a disclosure was made to support his eligibility to become a joint resolution applicant alongwith M/s Conquerent Control System Pvt. Ltd. When questioned by Mr. Raheja and CoC as to the registration of CD as MSME, since there was no document available to this effect in the premises of the CD, the said director handed over the MSME certificate dated 31.10.2017 to Mr. Raheja on 07.08.2020. Mr. Raheja gained knowledge from that certificate that the CD was an MSME since 26.11.2007 with registration number EM-2/050131200184. There was no occasion to doubt the veracity of the said certificate nor there was any reason to suspect the registration. Based on the certificate provided by the said director, Mr. Raheja concluded as to non-applicability of clauses (c) and (h) of section 29A of the Code due to overriding effect of provisions of section 240A(1) of the Code. The Certificate showed that the CD was a registered MSME as on the date of the insolvency commencement date. Thus, the directors of the CD were found to be eligible to act as the joint Resolution Applicant and there was no hindrance for them to submit resolution plan. Mr. Raheja submitted that in 12th CoC meeting held on 10.09.2020, Mr. Sushant Chhabra was included as Joint Resolution Applicant by Conquerent Controls Systems Pvt. Ltd. with sole objective to maximise the value of the CD and for maintaining the status of CD as a going concern in accordance with the objectives of the Code.
- 3.1.11 Mr. Raheja further submitted that he had conducted due diligence as to the eligibility of the Resolution Applicants under the Code and obtained an undertaking under section 29A of the Code from the Joint Resolution Applicant, as mandated under the Code. Mr. Raheja also engaged an independent process advisor, namely ARCK Advisors LLP to conduct thorough due diligence of the all the Resolution Applicants and connected persons under section 29A of the Code. The report submitted by the independent process advisor found the Resolution Applicants as eligible in all respects.
- 3.1.12 Mr. Raheja argued that there was no suspicion surrounding the Registration Certificate and hence the MSME certificate, coupled with Affidavit of the director and independent due diligence report submitted by ARCK Advisors LLP, he safely presumed the status of the corporate debtor as MSME.
- 3.1.13 Mr. Raheja emphatically submitted that the provisions of the Code encompassing duties and functions of the IRP/RP do not contemplate the Insolvency Professional to wear the hat of an investigator and proceed with suspicion doubting the veracity of each and every

document made available to him unless there is overwhelming evidence on the face of the document or record to suspect it. The role of Insolvency Professional is not that of investigator under the Code. The insolvency professional obtains hundreds of records, data and records and it is simply impossible to verify the authenticity of each such document, record or data. If the Insolvency Professionals appointed as IRP or RP or Liquidator starts doing this, where there is no suspicion, it would be impossible to complete the process within prescribed period. In any case, the person supplying the document has to inform correct information, if known to him, and supply documents which remain valid. In the present case, it was reiterated by Mr. Raheja that he had no reason to doubt that Registration of the CD had been cancelled. The document supplied by the director was neither fraudulent nor false as the Registration Certificate was validly issued.

- 3.1.14 Mr. Raheja further averred that, at the relevant time, there was no information available in public domain as to registration or cancellation of the MSME certificate. It is evident from the fact that IBBI (an instrumentality of State) sent an internal request to the Government department, which was also replied after few reminders. Even the email from MSME department in response to IBBI states that the corporate debtor was registered with UAM No. UK06B0002251 dated 31/10/2017 and further cancelled/ Marked as Z category by respective GMDIC on dated 22\12\2017 Registered with UDYAM No. UDYAM-DL-08-0004435 dated 18/10/2020. In any case, he had no occasion to doubt the veracity of continuity of the MSME registration.
- 3.1.15 Mr. Raheja also submitted that the directors, when confronted with this information, have replied that the CD had no intimation as to cancellation/ marked as Z category of the MSME registration certificate. In any case, prior to cancellation/ marking as Z category of the certificate, it was obligatory on the part of the relevant Government department to issue a show cause notice before taking adverse action resulting in change of the registration certificate. No such notice or communication was ever received by the CD, as confirmed by the director. Mr. Raheja concluded that it implied that no cogent reason was there to doubt the veracity of the certificate or continuity of registration of MSME status of the CD.
- 3.1.16 Mr. Raheja informed that he gained knowledge from the emails exchanged between IBBI and the Department that the cancellation is attributed to reason marked as “Z” status. Mr. Raheja submitted that Z status means that the Unit was not found at the address mentioned. It is impossible to believe the authenticity of such a reason as the Unit exists physically at its address. The IP had taken over the custody of all the units of the CD and hence the purported cancellation for the reason stated lacks authenticity. It is matter of detailed investigation, after obtaining complete records from the Department, as to how such a decision was arrived at.
- 3.1.17 The IP has further submitted that the Code emphasises on the ‘classification’ of the corporate debtor as MSME under section 7 of the MSME Act and does not state that it needs to be registered. The purported cancellation, as stated above, was done for a reason not affecting the ‘classification’ criteria of the corporate debtor. It is reflected from the explanation part of section 240A of the Code that the classification of MSME shall be under section 7(1) of the MSMED Act, 2007 and therefore the IP states that the registration of MSME is not mandatory for this purpose.
- 3.1.18 Mr. Raheja further submitted that the present SCN wrongly relied on certain figures to conclude that the corporate debtor was not eligible to be classified based on prescribed classification. He submitted that the Inspecting Authority has completely ignored Notification S.O. 1772(e) dated 05.10.2006 which provided a list of eleven items, the cost

of which shall be excluded while calculating the investment in plant and machinery. As per analysis of books of accounts and available information with the IP in his capacity as a Resolution Professional, it was observed that the value of plant and machinery to be counted for maximum threshold limit, after excluding certain items will be less than 10 Crore. However, in the case of CD, due to lack of requisite data and information, Mr. Raheja was unable to check the exact applicability of these exceptions and till date cannot determine with certainty if any of the exceptions can be made applicable for reducing the amount of gross block of investment in plant and machinery.

- 3.1.19 Mr. Raheja also submitted that it is a matter of record that he is a Resolution Professional in Unitech Machines Ltd. (“UML”) and in the said matter, an application for avoidance transactions was filed by him wherein Mr. Sushant Chhabra was also a respondent. It is significant to mention that the said application is pending for adjudication before Hon’ble NCLT and thus, sub judice. It is imperative to mention that there was no order passed by the Adjudicating Authority in an avoidance application at the time of approval of resolution plan by the CoC in respect to the CD. Hence, there was no requirement to disclose the said fact with the CoC until and unless there was an order passed by the Adjudicating authority which would have made Mr. Sushant Chhabra ineligible to submit the resolution plan under section 29A(g) of the Code. In the present matter, it was not required to disclose the uncertain facts to the CoC and affect or divert their decisions based on half-baked premises.
- 3.1.20 Mr. Raheja in his supplementary response submitted that in order to seek clarity on the status of registration of Corporate Debtor as MSME as on the date of commencement of CIRP, he had issued a letter dated 21.08.2023 to the Office of the General Manager, District Industries Centre, Haridwar to confirm the MSME status of the corporate debtor w.e.f. 26.11.2007. The reply to said letter was received from the aforementioned department on 25.08.2023 whereby it is clarified that E.M. Part No. 050131200184 dated 26.11.2007, Udyog Aadhaar Registration No. UKO6B0002251 dated 31.10.2017 and the present Udyam Registration No., as per certificate UDHYAM-DL-08-0004435 dated 20.10.2020, the corporate debtor was registered as MSME from 26.11.2007 and continues to be MSME. It has been further stated in the reply received from department that site inspection of the unit was done on 14.02.2023 by the Assistant Manager, District Industries Centre Roorkee and during the inspection the unit was found operational.
- 3.1.21 Mr. Raheja relying on the abovesaid letter submitted that the MSME certificate dated 31.10.2017 which was considered by him as the basis for allowing exemption to Mr. Sushant Chhabra from clause (c) and (h) of section 29A of the Code was not cancelled as the Corporate Debtor was registered as MSME since 26.11.2007 as confirmed by the concerned department vide its letter dated 25.08.2023.

Analysis and Findings of the DC

- 3.1.22 The DC notes that there are various documents on records with regard to the CD to be classified as MSME such as the email from MSME department in response to IBBI which states that the corporate debtor was registered with UAM No. UK06B0002251 dated 31/10/2017 and further cancelled/ Marked as Z category by respective GMDIC, a letter from District Industries Centre, Haridwar dated 25.08.2023 stating Udyog Aadhaar Registration No. UKO6B0002251 dated 31.10.2017 and the Udyam Registration No. UDHYAM-DL-08-0004435 dated 20.10.2020.
- 3.1.23 In view of the aforesaid various documents, the Board is directed to find out the veracity of such documents with regard to the status of the CD classified as MSME and take further

action as appropriate in accordance with law.

- 3.1.24 The DC further notes the submission of Mr. Raheja that in the case of CD, due to lack of requisite data and information, he was unable to check the exact applicability of these exceptions and till date cannot determine with certainty if any of the exceptions can be made applicable for reducing the amount of gross block of investment in plant and machinery. This raises a serious concern on the conduct of Mr. Raheja wherein Mr. Raheja acting as an RP was supposed to perform due diligence for the status of the CD to be classified as MSME. However, Mr. Raheja has submitted that due to non-availability of requisite data and information from director of the suspended Board, he was not able to do so. Despite the fact that requisite data and information were not made available by the director of the suspended Board, Mr. Raheja went ahead to accept Mr. Sushant Chhabra as eligible to be joint Resolution applicant.
- 3.1.25 The DC further notes that Mr. Raheja did not present the complete facts before CoC, rather suppressed the material fact from CoC. Mr. Raheja is RP for the CD M/s Unitech Machines Ltd., wherein he has filed avoidance application and one of the respondent in the avoidance application is Mr. Sushant Chhabra. In the resolution plan submitted for the CD Trading Engineers (International) Limited, Mr. Chhabra, director of the suspended board of Trading Engineers (International) Limited, is joint RA with M/s Conquerent Control System Pvt. Ltd. Mr. Raheja suppressed the fact from CoC of Trading Engineers (International) Limited, that against Mr. Chhabra, avoidance application has been filed before AA in the CIRP of M/s Unitech Machines Ltd. Had this fact been informed to CoC of Trading Engineers (International) Limited, it cannot be ruled out that CoC might have decided otherwise. In order to maintain transparency, Mr. Raheja should have presented complete facts before CoC of Trading Engineers (International) Limited. Mr. Raheja kept the CoC of Trading Engineers (International) Limited in dark about the fact that against Mr. Chhabra, avoidance application was filed in the CIRP of Unitech Machines Ltd., by the RP himself. This amounts to gross violation of code of conduct, which is not expected from an Insolvency Professional. This non-disclosure of relevant facts to the CoC does not inspire confidence on the *bonafides* of Mr. Raheja.

4. Issue related to source of fund of Mr. Sushant Chhabra

- 4.1.1 The SCN stated that it was observed from para 6.3.5 of resolution plan that Mr. Sushant Chhabra had to infuse Rs 9.87 crores (Rupees nine crore eighty seven lakhs only) as his share in the Resolution plan within a year from the date of approval of resolution plan. In addition to above, Mr. Chhabra would introduce funds to the tune of Rs 2 crore (Rupees two crore only) as and when any devolvement of Bank Guarantee happens. Hence, the total contribution which Mr. Sushant Chhabra had to make, as envisaged in the resolution plan, was Rs 11.87 crore.
- 4.1.2 Mr. Raheja in his reply to the IA submitted that the sources of funds of SRA was ascertained based on sources of funds as detailed in para 6.5 of the Resolution plan and net worth certificates of SRA's. The following was noted from the net worth certificate dated 31.03.2019 of Mr. Sushant Chhabra:

Particular	Value (Rs in lacs)
Value of Immoveable Property (a)	420.21
Value of Moveable Property (b)	28.45
Investment mostly in Group companies (c)	1118.18
Loan and Advances (d)	25.83

Total Assets-I (a+b+c+d)	1592.67
Current Liability-II	683.60
Net Worth as on 31.03.2019 (I-II)	909.07

4.1.3 It was observed from the above that Mr. Sushant Chabbra was not having sufficient liquid/realisable assets and also that most of his assets were blocked as investment in group companies, realisation of which was unlikely. For instance, investment of Mr. Chabbra in one of the group companies namely Unitech Machines Ltd has been shown to the tune of Rs 563.26 lakhs (Rupees five hundred sixty three lakhs twenty six thousand only). However, Unitech Machines Ltd was already under CIRP when the resolution plan in the CIRP of the CD was being considered. Hence, realisation of this investment to the extent mentioned in net worth certificate was unlikely. The SCN alleged that the IP did not consider the above facts while assessing financial capabilities of Mr. Sushant Chabbra and that too, when he was also the RP of M/s Unitech Machines Ltd.

4.1.4 In view of the above, the Board was of the *prima facie* view that the IP has contravened section 208(2)(a) & (e) of the Code, regulation 38(3) of the CIRP Regulations, regulation 7(2)(a) & (h) of the IP Regulations read with Clauses 1, 2, 12 and 14 of the Code of Conduct.

Submissions by Mr. Raheja

4.1.5 Mr. Raheja submitted that in the present matter, the CoC had set out the eligibility criteria in terms of section 25(2)(h) of the Code for the Private/Public Limited Company/Limited Liability Partnership (“LLP”)/Body Corporate/ any other Potential Resolution Applicant as follows:

a) Minimum Tangible Net Worth / Net Owned Funds of INR 1 Crore and Turnover of INR 10 crore respectively in the immediately preceding completed financial year as per latest audited financial statements along with a declaration that the net worth has not eroded below the minimum eligibility criteria in the intervening period after date of financial statements.

b) Positive Profit after Tax (PAT) in the immediately preceding financial year.

c) Tangible Net Worth / Net Owned Funds shall be computed as aggregate value of paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, and does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.

4.1.6 The Successful Resolution Applicant had duly submitted its net worth certificate wherein the net worth of Conquerent was Rs. 3.88 crore and turnover of Rs. 50.84 crore, whereas net worth of Mr. Sushant Chabbra was reflecting as 9.09 crore. Mr. Raheja has therefore submitted that the SRA met the eligibility criteria set out by the CoC and there was no occasion for him to further examine the financial capability of the SRA.

4.1.7 Mr. Raheja further submitted that the CoC approves or disapproves a resolution plan only after considering its financial feasibility and viability as also provided under section 30(4) of the Code and affirmed by the NCLT, NCLAT and the Supreme Court. Also, the supremacy of commercial wisdom of the CoC to approve a resolution plan has also been reaffirmed, time and again, in a catena of decisions.

Analysis and Findings of the DC

- 4.1.8 The DC notes the submission of Mr. Raheja wherein it has been stated that the Successful Resolution Applicant had duly submitted its net worth certificate wherein the net worth of Conquerent was Rs. 3.88 crore and of Mr. Sushant Chhabra was reflecting as 9.09 crore. However, the net worth of Mr. Raheja shown is with respect to the investment in the company namely Unitech Machines Ltd which was under the CIRP and wherein Mr. Raheja is a RP. Mr. Raheja, in the present case, being resolution professional in the CIRP of a different company namely Unitech Machines Ltd, was even in an advantageous position where he was aware that the major chunk of the financial resource of Mr. Chhabra was stuck in the company, Unitech Machines Ltd as investment. Thus, the DC views that the RP has accepted the meeting of the eligibility criteria mechanically without application of mind, reasonable care and due diligence. Mr. Raheja is not expected to be oblivious of the facts, in his knowledge.
- 4.1.9 The DC notes the contention of Mr. Raheja that the eligibility criteria for the prospective resolution applicants was approved by the CoC in terms of section 28(2)(h) of the Code. However, it is to be noted that once the IP is in possession of the resolution plans from the prospective resolution applicants, he has the duty under section 30 of the Code to examine that such resolution plans are in conformity with the provisions of the Code and regulations framed thereunder.
- 4.1.10 The role of a resolution professional under the Code is very critical and the overall effective outcome of the insolvency resolution process hinges on the diligent conduct by the resolution professional. He has to ensure that the insolvency resolution process is conducted in accordance with the provisions of the Code and regulations framed thereunder. Being a professional, the stakeholders of the insolvency resolution process trust on the advice of the resolution professional. Therefore, although the fate of the resolution plan depends on the commercial wisdom of the CoC, it is the duty of the RP to present all relevant and necessary facts to the CoC to facilitate their decision-making process. The IP cannot take refuge under the fact that bare minimum eligibility condition prescribed by the CoC is fulfilled by the resolution applicant. The due diligence of the IP extends to examination of the resolution plan so as to ensure that it complies with the regulation 38(3) of the CIRP regulations.
- 4.1.11 In view of the above, the DC is of the view that Mr. Raheja is in violation of section 208(2)(a) & (e) of the Code read with regulation 38(3) of the CIRP Regulations, regulation 7(2)(a) & (h) of the IP Regulations read with Clauses 1, 2, 12 and 14 of the Code of Conduct.

4.2 Issue related to handing over of the CD to Prospective Resolution Applicant (PRA) even before approval of Resolution Plan

- 4.2.1 It is observed from the minutes of 17th CoC meeting dated 15.02.2021 that there was a request from the Prospective Resolution Applicant (“PRA”) to allow him to do the maintenance and overhauling of the plant which was objected by the representative of Bank of Baroda. In response to the objection of Bank of Baroda, Mr. Raheja had stated that “*PRA has only made a request and as Plant is non-operational since long and moreover PRA also understands the plant, he can start the maintenance & revival of plant under supervision of RP.*” The minutes further states that CoC members took note of the same and there was no other objection from the CoC members. However, no voting was done on this issue.

- 4.2.2 Subsequently, Mr. Raheja entered into the lease agreements with PRA for the period of 6 months on 09.03.2021. Another lease agreement was entered with PRA on 18.11.2021 for a period of 11 months. By entering into such lease agreements, Mr. Raheja had created a right in favour of PRA for a certain period even before the plan was approved by the AA.
- 4.2.3 Section 28 (1) (k) of the Code mandates a Resolution Professional to take prior approval of the committee of creditors before transferring rights or financial debts or operational debts under material contracts otherwise other than in the ordinary course of business. However, it was observed that the above lease agreements which created a right in favour of PRA, were entered into by Mr. Raheja with PRA without complying with the provisions of section 28(1)(k) of the Code read with Regulation 25(3) and (4) of the CIRP Regulations.
- 4.2.4 In view of the above, the Board was of the *prima facie* view that the IP has contravened section 28 (1)(k), 208(2)(a) & (e) of the Code, Regulation 25(3) and (4) of the CIRP Regulations, Regulation 7(2)(a) & (h) of the IP Regulations read with Clauses 1, 2 and 14 of the Code of Conduct.

Submissions by Mr. Raheja

- 4.2.5 Mr. Raheja submitted that the CD was engaged in the business of manufacturing and selling Diesel Gensets to the Defence Ministry and at the time of his appointment as Resolution Professional, the CD was not operational. He made all endeavours to restart the operations of the CD. Accordingly, in the 17th CoC meeting held on 15.02.2021, the request for maintenance of the plant and its overhauling was discussed. The CoC was apprised regarding the request of Conquerent to allow them to do the maintenance and overhauling of the plant. This fact was presented to the CoC by Mr. Raheja in light of the fact that the plant was non-operational since long and that Conquerent could start maintenance and revival of the plant under the supervision of the RP. The same was noted by the CoC as well. In the above circumstances, Mr. Raheja considered it appropriate to enter into a lease agreement with Conquerent for 6 months on 09.03.2021 which was effective from 15.03.2021. A copy of the lease agreement was also shared with the members of the CoC and none of the CoC members objected to the same. Thereafter, the 2nd wave of COVID hit the country in April-May 2021 and consequently, a nationwide lockdown was imposed. Subsequently, Conquerent, through email dated 14.07.2021 raised the concern regarding the sealed machines and Mr. Raheja apprised him of all the efforts made for de-sealing. During the period of lease, the Tehsildar also sealed the premises. Aggrieved by this, Conquerent again wrote an email on 20.09.2021 and made many verbal communications wherein they requested Mr. Raheja to get the machines de-sealed on an urgent basis as they had a big order in hand. Keeping in mind the possibility of revival of the CD and generation of revenue as a going concern, another lease agreement was signed with Conquerent on 18.11.2021.
- 4.2.6 Mr. Raheja submitted that the lease agreement was entered in the ordinary course of business to manage the operations of the CD under the authority and supervision of the RP. It is pertinent to mention that Mr. Raheja also informed the CoC members regarding the execution of the lease agreement vide email dated 10.03.2021.
- 4.2.7 Mr. Raheja further stated that both the lease agreements were never effective, and no rights ever existed in favour of the PRA since the GST Department and Tehsildar sealed the machinery/plant of the CD way back in 2018 and the Electricity Department disconnected the electricity at the plant of the CD on 28.12.2018. Resultantly, the two impugned lease agreements, even though signed, never came into effect as no rights were held by the PRA

under those agreements.

- 4.2.8 Mr. Raheja emphasized that the product manufactured by the CD was such that only a few people having requisite knowledge and technical expertise in carrying similar business could run the plant successfully, and accordingly, the scope of job work was also limited. Further, all the work done on a job-work basis was performed under the authority and supervision of the RP. Mr. Raheja averred that in any manner, it is unconceivable that the running of the plant on a job-work basis under the control of the RP shall be considered to be an activity which is carried beyond the purview of 'ordinary course of business'.

Analysis and Findings of the DC

- 4.2.9 The DC notes the submission of Mr. Raheja that the CD was in the business of manufacturing and selling of diesel gensets to the Defence Ministry and the manufacturing plant was non-operational for long. Even the plant was sealed by the GST Department and Tehsildar in 2018 and the electricity connection was disconnected on 28.12.2018. In such circumstances, it is beyond comprehension to accept the reason behind entering lease agreement with the PRA. Therefore, the contention of Mr. Raheja that the lease agreement was entered into 'ordinary course of business' is not tenable.
- 4.2.10 Further, Mr. Raheja tried to explain that the lease agreement was in the interest of the CD. However, Mr. Raheja himself submitted that he was being pressurised by the PRA namely Conquerent to take active steps for de-sealing of the plant on urgent basis as they had "big order in hand". These contradictory submissions create a doubt on the *bonafides* of Mr. Raheja.
- 4.2.11 It is pertinent to note that entering into a lease agreement on behalf of the CD, with another company results in the creation of rights of that company on the resources of the CD and the IP is mandated to take explicit approval of the CoC for entering into such contracts. However, in the instant matter, Mr. Raheja entered into the lease agreement with another company/PRA without taking approval of the CoC. Thus, the DC is of the view that mere providing information to the CoC does not suffice the requirements under the law. Therefore, the DC finds Mr. Raheja in contravention of section 28 (1)(k), 208(2)(a) & (e) of the Code, Regulation 25(3) and (4) of the CIRP Regulations, Regulation 7(2)(a) & (h) of the IP Regulations read with Clauses 1, 2 and 14 of the Code of Conduct

4.3 Issue of selling of scrap and DG Set without approval of CoC

- 4.3.1 The minutes of 18th meeting of CoC dated 06.04.2023 stated that that Mr. Raheja sought approval of the CoC for the sale of old stock of Kirloskar Gensets Lying in Bhagwanpur, Unit. In the said proposal it was submitted that:

"The Corporate Debtor is having some Gensets and engines lying at Bhagwanpur plant. All these Gensets are quite old, CPCB II compliant & are already out of guarantee/warranty of the manufacturer which is one year from the date of supply of equipment. Presently, the Gensets are already out of warranty/ guarantee. As per new pollution norms, all Gensets have to be CPCB IV compliant whereas our stock is CPCB II compliant & if the pollution norms are further revised, the sale value which is available today may further deteriorate to a very low value. Therefore, keeping in view of the new pollution norms, these stocks should be liquidated/sold as soon as possible in order to avoid any further losses."

- 4.3.2 The CoC Members raised the queries as to whether the sale of all these old scrap is allowed

or not and further opined that the legal provisions for granting such approvals must be checked before taking the decision on the agenda. The team of Mr. Raheja read out Explanation to Regulation 18(2) of the CIRP regulations wherein CoC can take certain decisions after plan approval and is reproduced as below:

“Explanation: For the purposes of sub- regulation (2) it is clarified that meeting (s) may be convened under this sub-regulation till the resolution plan is approved under sub-section (1) of section 31 or order for liquidation is passed under section 33 and decide on matters which do not affect the resolution plan submitted before the Adjudicating Authority.”

After detailed discussion and deliberation and on request of the CoC, Mr. Raheja deferred the proposed resolution to next CoC Meeting.

4.3.3 The Board, however, observed from the invoices submitted by Mr. Raheja to the IA that Mr. Raheja had already sold various scraps and DG sets in 2022 itself, much before the 18th CoC meeting that held on 06.04.2023. The details of invoices evidencing the sale of scraps and DG sets prior to 18th CoC meeting are as under;

S. No	Invoice date	Buyers	Items particulars	Amount (In Rs.)
1.	20.06.2022	Plus One Management Services Pvt Ltd	DG Set	2,47,800.00
2.	04.08.2022	Universal Power Equipment	Old DG Set	7,50,480.00
3.	18.08.2022	Sandeep Soni	GI Angle	7,32,868.50
4.	19.08.2022	Sandeep Soni	GI Angle	3,95,769.17
5.	19.08.2022	Sandeep Soni	Aluminium Wire Scrap	4,63,386.00
6.	30.09.2022	Shiv Shakti Textiles	GI Angle	8,29,681.60
7.	01.10.2022	Shiv Shakti Textiles	GI Angle	3,61,363.20
8.	01.10.2022	Shiv Shakti Textiles	Gi Angle	13,86,783.20
9.	08.10.2022	Universal Power Equipment	DG Set	2,83,200.00
10.	10.10.2022	Universal Power Equipment	Old DG Set	1,53,400.00
11.	10.10.2022	Universal Power Equipment	Old DG Set	1,53,400.00
Total				57,58,131.67

4.3.4 Regulation 29 of the CIRP Regulations provides as under:

Sale of assets outside the ordinary course of business.

(1) The resolution professional may sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business, if he is of the opinion that such a sale is necessary for a better realisation of value under the facts and circumstances of the case:

Provided that the book value of all assets sold during corporate insolvency resolution process period in aggregate under this sub-regulation shall not exceed ten percent of the total claims admitted by the interim resolution professional.

(2) A sale of assets under this Regulation shall require the approval of the committee by a vote of sixty-six per cent of voting share of the members.

4.3.5 It was thus stated in the SCN that Mr. Raheja had already sold the scraps and DG Sets without taking approval of the CoC as required under Regulation 29(2) of the CIRP Regulations. Further, Mr. Raheja did not inform the CoC that post facto approval was

being sought for sale of scraps and DG sets already undertaken by him in 2022. Thus, placing an agenda in the 18th CoC meeting for this purpose was only to mislead the CoC.

- 4.3.6 In view of the above, the Board was of the *prima facie* view that the IP has contravened section 208(2)(a) & (e) of the Code, regulation 29(2) of the CIRP Regulations, Regulation 7(2)(a) & (h) of the IP Regulations read with Clauses 1, 2, 12 and 14 of the Code of Conduct.

Submissions of the IP

- 4.3.7 Mr. Raheja submitted that the CD was engaged in the business of manufacturing and selling Diesel Generator sets to the Defence Ministry and in the usual course of business raised invoices related to sale of DG sets including repairs. The IP made all endeavour to keep the CD as a going concern and sold scrap and DG sets (unused inventory) to generate revenue for the CD. Mr. Raheja submitted that the sale of old DG sets, scrap etc. was carried out in order to preserve the value of the goods since the goods were on the road to become obsolete and there were attempts of theft at the places where they were lying. No fixed assets belonging to the corporate debtor which formed an essential part of the business of the corporate debtor were sold.
- 4.3.8 Mr. Raheja further submitted that with respect to the table of invoices provided in the SCN for items sold in the period from 20.06.2022 till 10.10.2022, it may be observed that in case of item at Sr. No. 1, the invoice was later cancelled, and the DG set was actually sold as per invoice at Sr. No. 9. Therefore, in effect, only one DG set was sold on 08.10.2022. Although this DG set was sold post the amendment to the CIRP Regulations, no CoC meeting was called since the DG set had already been committed to the buyer prior to 16.09.2022 (the effective date of the amendment). Further, with respect to the items at Sr. Nos. 2, 10 & 11, it may be observed that these were old DG sets which were given as trial units to the Defence Ministry for orders given by them and when it came to his knowledge, he took immediate steps to take possession and as they were lying at different geographical location they were sold from their respective destinations in order to reduce transportation costs as well as to ensure that they do not become completely obsolete in due course. Additionally, the items at Sr. Nos. 6, 7 & 8 were GI Angles which were sold as scrap and for items at Sr. Nos. 3, 4 & 5, the CD was unable to pay the rent, the landlord threatened to confiscate the goods, thus, the (scrap) was sold directly from the godown at different geographical location.
- 4.3.9 Mr. Raheja further stated that by sale of the aforesaid scrap and DG sets, no prejudice was caused to the CD. Instead of one type of asset, cash and bank balances were generated. In any case, no asset which is fundamental to the running of the business of the CD was sold. The cost for maintaining, securing or transporting these assets would have been higher than its recovery. The value of these assets was declining fast and it was in the best interest of the CD to dispose off these assets. There is no loss that has been caused to the CD. The Code permits sale of assets in the ordinary course of business of the CD.
- 4.3.10 Mr. Raheja further submitted that after amendment in the CIRP Regulations, he found it prudent to take approval of the CoC for sale of the old stock of Kirloskar Gensets lying at the Bhagwanpur Unit. It may be noted that the scraps, DG sets sold prior to the 18th CoC meeting were not the ones for which approval was sought in the said meeting. Therefore, it would be incorrect to say that the IP misled the CoC by seeking post facto approval for scraps, DG sets already sold earlier.
- 4.3.11 Mr. Raheja reiterated that the entire sale of one DG set, old Trial DG sets, scrap

made/committed in 2022 was done in the 'ordinary course of business' and was made/committed prior to the amendment on 16.09.2022. Therefore, there was no occasion to call for a CoC meeting prior to the same. However, Mr. Raheja, as a prudent person convened CoC meetings post 16.09.2022 for discussion on sale of the DG sets which were not already sold in 2022 and were still lying at the Bhagwanpur plant. Mr. Raheja submitted that there was never any intent whatsoever on his part to breach any provision of the Code or regulations thereto. All the funds realised from the sale was used for payment of essential payments such as statutory dues, employees etc.

Analysis and Findings of the DC

- 4.3.12 The DC notes the submission of Mr. Raheja that the sale of old DG sets, scrap etc. was carried out in order to preserve the value of the goods since the goods were on the road to become obsolete and there were attempts of theft at the places where they were lying. No fixed assets belonging to the CD which formed an essential part of the business of the corporate debtor were sold. Entire sale of one DG set, old Trial DG sets, scrap made/committed in 2022 was done in the 'ordinary course of business'. It is to be noted that Regulation 29(2) of the CIRP Regulations mandates the RP to take the approval of the CoC for selling the assets of the CD. In the instant matter, the DC notes that Mr. Raheja had sold certain assets of the CD such as scraps and old DG sets in 2022, for which no approval of the CoC was taken. The DC finds that Mr. Raheja, by not taking approval of the CoC, did not follow the statutorily mandated procedure in selling of the assets of the CD and now taking shield of selling the assets of the CD in the 'ordinary course of the business'. The DC finds submissions of Mr. Raheja as vague and contradictory.
- 4.3.13 In view of the above, the DC finds Mr. Raheja in contravention of section 208(2)(a) & (e) of the Code, regulation 29(2) of the CIRP Regulations, Regulation 7(2)(a) & (h) of the IP Regulations read with Clauses 1, 2, 12 and 14 of the Code of Conduct.

5. ORDER

- 5.1.1 In view of the foregoing discussion, the DC finds that Mr. Vivek Raheja has contravened the provisions of the Code and Regulations made thereunder with respect to (i) suppression of relevant facts from CoC, (ii) examining financial capability of the Mr. Sushant Chhabra for meeting eligibility criteria of PRA, (iii) disposal of the assets of CD without the approval of CoC, and (iv) executing lease agreement with the PRA with respect to assets of CD without the approval of CoC.
- 5.1.2 The DC, in exercise of the powers conferred under section 220(2) of the Code read with IBBI (Insolvency Professionals) Regulations, 2016 and the IBBI (Inspection and Investigation) Regulations, 2017, hereby, suspends the registration of Mr. Vivek Raheja having registration no. IBBI/IPA-001/IP-P00055/2017-18/10133 for a period of two years.
- 5.1.3 This Order shall come into force after 30 days from the date of this order.
- 5.1.4 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Vivek Raheja is enrolled as a member.
- 5.1.5 A copy of this order shall be sent to the CoC/ Stake Holders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Vivek Raheja is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Vivek Raheja.

- 5.1.6 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.
- 5.1.7 Further, the Board is directed to verify the veracity of different MSME certificates as mentioned in paragraph 3.1.22 of this order and take appropriate action in accordance with law.
- 5.1.8 Accordingly, the show cause notice is disposed of.

Sd/-
(Jayanti Prasad)
Whole Time Member, IBBI

Dated: 12th January 2024
Place: New Delhi