

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/87/2022

6th April, 2022

Order

In the matter of Mr. Pawan Kumar Singal, Insolvency Professional (IP) under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 13 of the Insolvency and Bankruptcy Board of India (Investigation and Investigation) Regulations, 2017 and regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/INSP/2021/72/407/2416 dated 14.09.2021 issued to Mr. Pawan Kumar Singal, R/o – MP-114, Pitampura, New Delhi, National Capital Territory of Delhi-110034 who is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P01172/2018- 19/12229.

Background

- 1.1. An application under section 7 of the Code in the matter of Piyush IT Solutions Private Limited, corporate debtor (CD-1) was admitted by Hon'ble NCLT, New Delhi Bench – III at New Delhi (AA-1) *vide* order dated 28.10.2020 and another application was admitted in Arena Superstructures Private Limited (CD-2) by Hon'ble NCLT, Principal Bench at New Delhi (AA-2) *vide* order dated 29.10.2020). In both the matters Mr. Pawan Kumar Singal was appointed as an IRP.
- 1.2. The IBBI, in exercise of its powers under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Pawan Kumar Singal with respect to CIRP of CD-1 *vide* order dated 22.04.2021. Further, scope of said inspection was increased to include CIRP of CD-2 *vide* corrigendum dated 25.05.2021 to inspection order dated 22.04.2021. A draft inspection report (DIR) Part-I with respect to CD-1, prepared by the IA, was shared with Mr. Pawan Kumar Singal on 01.06.2021, to which response was received from Mr. Pawan Kumar Singal *vide* email dated 12.06.2021. IA shared the DIR Part-II pertaining to CD-2 with Mr. Pawan Kumar Singal *vide* email dated 04.07.2021 to which reply was received from him *vide* email dated 12.07.2021. The IA submitted the Final Inspection Report (FIR) to IBBI on 03.08.2021.
- 1.3. The IBBI issued the SCN to Mr. Pawan Kumar Singal on 14.09.2021 based on the material available on record including the inspection report in respect of his role as an IRP in the CIRP of CD-1 and CD-2. The SCN alleged contraventions of sections 208(2)(a) and (e) of the Code, regulation 13(1) and 40A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2017 (CIRP Regulations), regulation 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and clauses 3, 5, 9, 13 and

14 of the Code of Conduct under First Schedule of regulation 7(2) thereof and Circular No. IBBI/IP/013/2018 dated 12.06.2018 which directs that fee payable to IP, fee payable to an Insolvency Professional Entity (IPE), and fee payable to Registered Valuers and other Professionals, and other expenses incurred by an IP during the CIRP are reasonable. Mr. Pawan Kumar Singal replied to the SCN *vide* letter dated 01.10.2021.

1.4. The IBBI referred to the SCN, response of Mr. Pawan Kumar Singal 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. Pawan Kumar Singal availed an opportunity of virtual personal hearing before the DC on 10.12.2021.

2. Alleged Contraventions and Submissions

Contraventions alleged in the SCN and Mr. Singal's submissions thereof are summarized as follows.

Contravention-I

2.1. Regulation 13(1) of CIRP Regulations specifies that the IRP or the resolution professional (RP), as the case may be, shall verify every claim, as on the insolvency commencement date (ICD), within seven days from the last date of the receipt of the claims.

(a) In the matter of CD-1.

2.1.1. As per the list of Financial Creditors (FC) in a class as on 28.12.2020 there were total of 292 claimants in the said class and the claims amounting Rs. 29,39,04,479/- were under verification. All such claims were received on 11.11.2020. As per the list of financial creditors in a class dated 08.03.2021, there were total of 367 claimants in the said class and claims amounting Rs. 4,11,21,403/- were under verification. All such claims were received on 11th November 2020. Further, as per the list of financial creditors in a class dated 10.05.2021, there were total of 374 claimants in the said class and out of the same, claim amounting Rs 1,09,21,079/- was still under verification. All such claims were received on 11.11.2020. There was delay in verification of claims as stated in regulation 13(1) and 40A of CIRP Regulations.

(b) In the matter of CD-2.

2.1.2. The report dated 25.11.2020 filed by the IRP before the Hon'ble Adjudicating Authority certifying constitution of Committee of Creditors stated that there were total 560 claimants in the category of FC in a class and the same were admitted provisionally only. As per the list of financial creditors in a class dated 02.01.2021, there were total of 698 claimants in the said class and claims amounting to Rs. 31,15,85,696/- were under verification as said date. It was observed that all such pending claims were received on 16.11.2020. Further, as per the list of financial creditors in a class dated 12.05.2021, there were total of 803 claimants in the said class and claims amounting to INR 86,26,180/- were still under verification and majority of such pending claims were received on 16.11.2020. There was delay in verification of claims as stated in regulation 13(1) and 40A of CIRP Regulations.

- 2.1.3. In view of the same, the Board was of the view that in both the matters Mr. Singal has prima facie failed to comply with the timeline for verification of claims, as stated under regulation 13(1) and 40A of CIRP Regulations read along with section 208(2)(a) and section 208(2)(e) of the Code and clause 13 of the Code of Conduct specified in First Schedule as stated under regulation 7(2)(h) of IP Regulations.

Submissions

- 2.2. Mr. Singal submitted that the SCN has been issued without considering the nature of business of the CDs, timing of initiation of the CIRPs, number of claims filed by FC in class, background of claimants under FC in class, etc. AA-1 issued order for commencement of CIRP in CD-1 *vide* order dated 28.10.2020 and in CD-2 order for admission of CIRP was issued by AA-2 on 29.10.2020. Both the CDs are real estate companies. After he was appointed as IRP in both the CDs, he received and verified 244 claims of FC in class in CD-1 and 560 claims of FC in a class in CD-2 pursuant to public announcements as per provisions of the Code and CIRP Regulations. Since, most of the aforesaid claims were received from thirteenth & fourteenth day of admission date, Mr. Singal had only 8 to 9 days' time for verification of such a large number of claims. Further, there was no prior information to the Mr. Singal about likely number of claims, therefore, it was very difficult for the him to arrange required infrastructure instantly. Moreover, November being a month of Diwali festival, therefore, manpower was also not easily available. However, despite all constraints, Mr. Singal verified more than 800 claims in such a short span of 8-9 days. Mr. Singal made specific submissions with respect to each CD.
- 2.2.1. With regards to CD-1, Mr. Singal submitted that he published first list of claims on 20.11.2020 and submitted his report certifying constitution of CoC, pursuant to regulation 17 of the CIRP Regulations to AA-1 on 20.11.2020. The first list contains 244 claims of FC in class out of which 225 claims were admitted after verification and balance 19 claims could not admitted as claimants did not substantiate their claim amount. There was no claim under verification.
- 2.2.2. After submission of report certifying constitution of CoC to AA-1 on 20.11.2020, Mr. Singal received a list of defaulters from members of suspended Board of Directors of CD-1. Subsequently, claim amount of few claimants whose name(s) were already in first list was revised and treated as under verification for receipt / verification of further documents, pursuant to regulation 14(2) of the CIRP Regulations, in the second list published on 30.12.2020 also posted on website of IBBI on 16.01.2021. The reasons for keeping such claims under verification were also specified in the said list which itself is a public document. Therefore, list referred in SCN having claims value of Rs 29,39,04,479/- has been wrongly stated as First List while in fact it was Second List of claims only.
- 2.2.3. After issuance of first list of claims on 20.11.2020 for CD-1, all deficiency in claim documents were informed to all the claimants. Further, reasons for keeping the few claims under the head of 'Claims Under verification' was also mentioned in the claim list which was displayed on website of CD. Hence, no claim can be said as 'not verified', even if the claimant's name was appearing under the head of 'Claims Under-verification". In view of above, claims showed in Second List "as under verification" were duly verified and

thereafter, admitted at Nil value on account of reasons specified for respective claim.

2.2.4. Further, in fourth list of claims dated 08.03.2021 of CD-1, there were 34 claims under verification valuing Rs. 4.11,21,403/-. All these claims were verified but not admitted due to reasons given below:

- i) Rs.1,09,21,079/- due to non-availability of name in record of CD-1.
- ii) Rs.45,03,839/- due to non-submission of any document except claim form.
- iii) Rs.2,56,96,485/- due to non-substantiation of claim amount (amount admitted partially to the extent claim substantiated).

The claims were kept under verification to provide further opportunity to homebuyers to substantiate their claims.

2.2.5. Similarly, in fifth list of claims dated 10.05.2021 published on the website of CD-1 on 17.05.2021 and posted on IBBI website on 22.05.2021, complete reasons for keeping 26 claims under verification (virtually claim rejected) were given as detailed under:

- i) Rs.1,09,21,079/- due to non-availability of names in record of CD-1.
- ii) Rs.90,19,102/- due to non-substantiation of claim amount (amount admitted partially to the extent claim substantiated)

2.2.6. Lotus "Arena" Buyers Association (LABA) filed an application before AA-1 on 17.12.2020 on behalf of FC in class, *i.e.*, homebuyers, stating that the Mr. Singal had not verified 66 claims received up to 11.11.2020. Mr. Singal filed status report of said claims before the CD-1 of 02.02.2021. As per status report, there were only 16 missing cases, whose claims were filed before 11.11.2020 and rest were either duplicate cases/already verified cases/claim relating to other project /received after 11.11.2020. Further, all 16 missing claims were verified and included in second list / third list, that is, as soon as same were informed/detected. Accordingly, application was withdrawn by LABA *vide* order dated 16.04.2021 which itself confirm that on said date, all claims received up to 11.11.2020 were verified.

2.2.7. With regards to CD-1, Mr Singal submitted that he published first list of claims dated 23.11.2020 and submitted its report certifying constitution of CoC pursuant to regulation 17 of the CIRP Regulations to AA-2 on 25.11.2020. The list contains 560 claims of class of FC. Out of 560 claims, after verification, 504 claims were admitted and balance 56 claims could not be admitted as the claimants did not substantiate their claim amount. These 56 claims were shown as claims under verification with reasons for not admitting claims and giving nil value to enable homebuyers to afford an opportunity to substantiate their claims. On 27.11.2020, all deficiency in claim documents were informed to all the claimants including claimants whose claims were kept under verification. These 56 claims were duly verified within stipulated time frame.

2.2.8. After submission of report certifying constitution of CoC to Hon'ble NCLT on 25.11.2020, Mr. Singal received a list of defaulters from members of suspended Board of Directors of CD-2, on basis of which claim amount of few claimants whose name were already in first list was revised and treated as under verification pending receipt/verification of further documents, pursuant to regulation 14(2) of the CIRP Regulations, in second list published on 02.01.2021 and posted on IBBI website on 02.01.2021 and reasons for keeping such claims under verification were also specified in the said list. Therefore. First list referred in SCN having claim value of Rs. 31,15,85,696/-

has been wrongly stated as first list while in fact it was second list only. In view of above, claims showed in second list "as under verification" were duly verified and after verification admitted at nil value on account of reasons specified for each claim.

2.2.9. Similarly, in the fourth list dated 12.05.2021, published on the website of CD-2 and uploaded on the IBBI website, there were 8 claims under verification valuing Rs. 6,26,180/-. All these claims were verified but admitted at nil value due to non availability of name in records of CD-2.

2.2.10. LABA filed an application before AA-2 on 17.12.2020 on behalf of homebuyers stating that the Mr. Singal had not verified 151 claims of home buyers received up to 16.11.2020. All missing claims received upto 16.11.2020 were verified and included in second list published on 02.01.2021, that is, as soon as same were informed /detected. Accordingly, application was withdrawn by the applicant during hearing before AA-2 held on 09.03.2021. Withdrawal of aforesaid application, itself confirm that all claims submitted by claimants up to 16.11.2020. had been verified before that date.

2.2.11. Mr. Singal submitted that pursuant to regulation 13(1) of the CIRP Regulations, he verified 244 claims of FC in class in CD-1 and 560 claims of FC in class in CD-2 and published the list on its website on 20.11.2020 and 27.11.2020 respectively. He further constituted CoC and filed application before Hon'ble NCLT on 20.11.2020 and 27.11.2020 respectively. The accidental omission of few claims cannot be termed as delay in verification or any deliberate attempt/negligence/derelection of duty or violation of regulation 13(1) of the CIRP Regulations on his part. He submitted that reasonable care, as detailed under, was taken to ensure that all claims were verified within the stipulated time:

- (a) A software was arranged to facilitate claim filing by the homebuyers. Software has many users friendly features such as automatic calculation of interest, loading of all documents, instant acknowledgement of claim filing, etc.
- (b) To facilitate claim filing and easy traceability of claim papers, a separate dedicated email ID was also provided to homebuyers which was duly informed through Public Announcement to enable them to submit their claims.
- (c) Three tier verification system comprising following:
 - a) feeding of all information/details into software;
 - b) first level verification; and
 - c) final approval of claims

was introduced to avoid error / omission. Mr. Singal submitted that he took all reasonable care such as use of technology, checker maker system etc., as required for verification of the claims within stipulated time.

2.2.12. Mr. Singal submitted that it is the claimants, that is, homebuyers themselves who did not follow procedure suggested in the Public Announcement and preferred to submit claim through email instead of using software, sending claims through designated as well as non-designated emails. If homebuyers had used the software or designated email only for filing claims and sent only one email containing all information instead of numerous emails for same content, the number of emails would have been reduced and consequently, the problem of accidental omission of claims would not have been arisen. Due to large number of claims and limited availability of time, some claims were left out inadvertently and as soon as omission came to the knowledge of Mr. Singal, all left out

claims were verified and admitted accordingly.

- 2.2.13. Mr. Singal further submitted that few homebuyers filed duplicate claims also which further increased unwarranted workload. Presence of few duplicate claims in first list despite all efforts including use of technology aiming to eliminate the same, demonstrates bonafide intention of the Mr. Singal.
- 2.2.14. That both CD-1 and CD-2 are real estate projects having 588 and 1080 flats respectively. The orders of the AA-1 and AA-2 were received at almost same time in both the CIRP cases, that is, 28.10.2020 and 29.10.2020. Since first half of November, 2020, being Diwali time, it was difficult to ensure availability of requisite manpower also. As there was no prior intimation to Mr. Singal about the likely date of commencement of CIRP cases, he had no opportunity to arrange adequate infrastructure in advance to verify more than 500 claims within 7-8 days. Despite all these constraints, he verified more than 800 claims of FC in class within a short span of 13-14 days.
- 2.2.15. Mr. Singal further submitted that regulation 13(1) of CIRP Regulations merely prescribes 7 days' period for verification of claims irrespective of numbers & type of claims, nature of record keeping by claimants, number of documents in one claim which need verification, etc. Further, there is no exclusion for Gazetted holidays (like festival) or weekly off in the calculation of 7 days also.
- 2.2.16. Mr. Singal submitted that in the SCN, it has been observed that list dated 12.05.2021 and 10.05.2021 also showed claims under verification to the extent of Rs.1,09,21,079/- in CD-1 and Rs. 86,26.180/- in CD-2. He submitted that in lists itself, reasons for non-admission of each claim were mentioned. Hence, all claims included in of Rs.1,09,21,079/- for CD-1 and Rs. 86,26.180/- for CD-2 were duly verified and after verification admitted at 'Nil' value and there was no claim which was pending for verification.
- 2.2.17. Mr. Singal submitted that after the submission of status report by him to AA-1 and AA-2, no complaint from any Regulatory Authority / Hon'ble NCLT was received by him about delay in verification of claim. The withdrawal of complaint by the applicant, i.e., LABA from the AA-1 and AA-2, itself confirms that all accidentally omitted claims were verified before that date.
- 2.2.18. Mr. Singal submitted that regulation 13(1) and regulation 14(2) of the CIRP Regulations are two mutually exclusive regulations. Regulation 13(1) specify time limit in which a claim should be verified (not necessarily admitted). Regulation 14(2), empowers IRP/RP to revise the claim amount when he comes across additional information warranting such revision. Therefore, revision in claim amount in second list based on new information received, *i.e.*, defaulter list, already verified pursuant to regulation 13(1) in first list, cannot be termed as delay in verification of claims. Regulation 13(1) only requires verification and not necessarily admission of claim amount or restricts any revision therein thereafter.
- 2.2.19. Mr. Singal submitted that LABA also filed a grievance to Indian Institute of Insolvency Professionals of ICAI (IIPIICAI) which *vide* its order dated 06.09.2021 informed the following:

"On a perusal of the facts and circumstances of the case and submissions of both the parties, the Committee did not find any material grievance. Accordingly, the grievance stands closed, and the matter has been disposed of.

The orders of AA-1 and AA-2 and IIPICAI have conclusively confirmed that missing claims were accidental only, without any negligent / mala fide intention on the part of Mr. Singal and all the missing claims were verified as soon as the same were detected. Therefore, observation that few claims are still under verification, is in variance with aforesaid order and complainants' own admission before the Hon'ble NCLT.

- 2.2.20. Mr. Singal submitted that confusion has arose on account of claim list filed by the IRP on the IBBI online portal wherein the date of receipt of all claims have been mentioned as 11.11.2020 in CD-1 and 16.11.2020 in CD-2 instead of actual date of receipt of claims. Aforesaid error gave an impression that all claims shown as under verification in second list were received on or before 11.11.2020 in CD-1 and 16.11.2020 in CD-2 but in fact, most of such claims were received after such dates.
- 2.2.21. Mr. Singal submitted the homebuyers not being commercial entities, therefore, were not aware of the exact process of filing claims and therefore, many homebuyers did not send all the requisite documents along with their claim forms. Under this situation, the IRP had two options either to accept claim to the extent substantiated and reject balance amount or to accept claim to the extent claims were substantiated and keep balance claim amount under verification, till balance documents necessary clarification were received from respective homebuyers. Instead of rejecting balance claim amount / virtually rejected claims, as finally rejected claim, the IRP preferred to keep unsubstantiated claims/virtually rejected claims under the head of under-verification to provide an opportunity to homebuyers to send further requisite documents/clarifications. The IRP chose above strategy as any final rejection of claim of homebuyers would have caused them great agony.
- 2.2.22. Mr. Singal submitted that the accidental delay in verification of few claims was unintentional and not under the control of the IRP. Further, there was no impact on the CIRP timelines and process due to delay in claim verification of few claims. Since homebuyers, *i.e.*, FC in a class, enjoyed majority in CoC since first meeting of CoC and creditors in a class vote en masse through the Authorized Representative (AR) only, therefore the passing of resolutions/decisions in CoC meetings were also not affected in any way due to accidental delay in verification of few claims. In fact, it is one of the few real estate projects, where resolution would have been achieved within 270 days and homebuyers would have got their flats through CIRP if Home Buyers had not replaced the IRP as three Resolution Plans were already before the CoC in both the projects, before resolution for replacement of IRP was voted upon. In view of the above, there has been no violation of regulation 13(1) of CIRP Regulations read along with section 208(2)(a) and section 208(2)(e) of the Code, regulation 40A of the CIRP Regulations and clause 13 of the Code of Conduct.

Contravention-II

- 2.3. Code of Conduct for Insolvency Professionals specified in First Schedule as stated under regulation 7(2)(h) of IP Regulations mandates that IP must act with objectivity in his professional dealings by ensuring that his decision are made without the presence of any

bias. IP shall not influence the decision of the CoC so as to make any undue or unlawful gains. Moreover, it also mandates an IP to maintain complete independence in his professional relationships.

- 2.3.1. In the matter of CD-1 the minutes of the first and third meeting of CoC and the e-voting results of the said meeting highlights that the resolution for appointment of IRP as RP was rejected by the CoC. Despite the same, the Mr. Singal proceeded with proposing his name for appointment as RP in the fourth CoC meeting, even though majority of the shareholder in the CoC, *i.e.*, the FC in a Class, did not approve his appointment as RP during first and third CoC meeting.
- 2.3.2. Mr. Singal neglected the demands raised by the FC in the class during the conduct of the CIRP of CD-1 and CD-2 and tried to persuade the CoC to confirm his appointment as RP by repeatedly offering his consent and placing it in the agenda of every meeting. Further, Mr. Singal did not bring up the agenda for replacement of IP before CoC even after receiving numerous emails written by homebuyers requesting the same which is evident from the minutes of the fourth meeting of CoC.
- 2.3.3. Similarly, in the matter of CD-2, Mr. Singal has proceeded with proposing his name for appointment as RP, even though the majority of the voting shareholder in the CoC *i.e.*, the FC in a Class, did not approve his appointment as RP on first and third CoC meeting and he neglected the demands raised by the FC in the class during the CIRP of the CD-1 and the same is evident from the minutes of the fourth meeting of CoC.
- 2.3.4. In view of the same, the Board was of the view that the said conduct of Mr. Singal for non-placement of agenda for replacement of IRP is *prima facie* not in consonance with the clauses 3, 5, 9 and 14 of the Code of Conduct as stated under regulation 7(2)(h) of IP Regulations read along with section 208(2)(a) and section 208(2)(e) of the Code.

Submissions

- 2.4. Mr. Singal submitted that as per section 22(2) of the Code, the CoC may in the first meeting either resolve to appoint the IRP as RP or to replace the IRP by another RP. In the first meeting of CoC, none of the CoC members expressed any intention to replace the IRP.
- 2.4.1. That in first CoC meeting, resolution for confirmation of the IRP as RP could not find favour, therefore, the IRP did not include any agenda item for confirmation of the IRP as RP in the second meeting of CoC meeting of both CD-1 and CD-2. Since, no CoC member proposed any name for replacement of IRP, even after expiry of two months in CD-1 and three months CD-2 from the date of first meeting of CoC when resolution for appointment of IRP as RP did not find favour, therefore, the IRP included relevant agenda item in the agenda of third CoC meeting. In the third meeting of CoC, there were positive indications for the approval of proposed resolution for the appointment of IRP as RP which is apparent from the following:
 - All Resolutions proposed in the third meeting of CoC of both CD-1 and CD-2, including for approval of fee of IRP and its IPE, which were rejected by FC in Class (despite favourable vote by other CoC Members) in first meeting of CoC, were approved

by all members of CoC including FC in Class and only resolution relating to confirmation of IRP as RP did not find favour.

- Further, till the date of circulation of notice alongwith detailed agenda for the fourth meeting of CoC on 07.01.2021 in CD-1 and 11.04.2021 in CD-2, no name was proposed to replace IRP and there was positive indication in third CoC meeting, therefore IRP included agenda item for confirmation of the IRP as RP in the agenda of fourth meeting of CoC.

2.4.2. Mr. Singal submitted that the resolution proposed for confirmation of IRP as RP in all three CoC meetings was favourably voted by all FCs except FC in a Class. As per regulation 16(A)(9) of the CIRP Regulations, AR is required to circulate the agenda to FCs in class and may seek their preliminary views on any agenda to enable him to effectively participate in the meeting of the committee. AR did not express any intention or submitted that FCs in class proposed to change the IRP in any of the meeting of CoC, the IRP had no other means to ascertain views of FCs in Class on any subject except discussion in meeting of CoC and views expressed by the AR in the meeting. After circulation of notice along with detailed agenda for fourth meeting of CoC meeting and less than 24 hours before the scheduled time of meeting, for the first time the AR intimated that the FCs in class proposed to replace the IRP and appoint new person as RP. Till the time, none of the CoC members neither expressed any intention no placed any resolution for replacement of IRP as RP.

2.4.3. That the emails which were sent to the AR prayed for the addition of agenda item for replacement of IRP with another IP to be placed in the fourth meeting of CoC meeting and not to convene a fresh meeting, which is the provision under regulation 18 of the CIRP Regulations. AR confirmed in the CoC meeting that he had neither personally counted number of mails received or voting percentage thereof nor could certify the authenticity of such mails. Further, AR neither sent nor placed any agenda item/note for consideration on the table of the meeting. The emails were sent from the various email IDs by the homebuyers and the veracity of the email IDs was not confirmed by the AR, therefore, it was necessary to verify the authenticity of emails received from home buyers as per records maintained by IRP, in order to ensure fulfilment of requirement of 33% voting share. Since, AR did not forward emails to IRP, therefore, IRP could not verify number of mails sent or their voting percentage, and authenticity thereof which was necessary before placing the agenda item in the fourth meeting of CoC.

2.4.4. Mr. Singal submitted that AR sent email about intention of homebuyers to replace the IRP subsequent to the circulation of notice along with detailed Agenda for fourth meeting of CoC without counting number of actual emails received by him and verifying sender's voting percentage or flat number etc. Further, AR also could not confirm that he had received request from members of the committee representing 33% of voting rights, a requirement under regulation 18 of CIRP Regulations, for requisitioning a meeting of CoC. Therefore, no agenda for appointment of Resolution Professional by replacing IRP was considered in fourth CoC meeting.

2.4.5. He submitted that all other members of CoC were unanimous that replacement of IRP at this stage would only derail or delay the CIRP. That he promptly convened fifth meeting of CoC meeting on 03.05 2021 in CD-1 and on 04.05.2021 in CD-2 as soon as a notice was received by him for appointment of RP to replace IRP.

2.4.6. Mr. Singal submitted that there has been no occasion or decision where he has influenced the decision or the function of the CoC or debtor or other stakeholders so as to make any undue or unlawful gains for himself or his related parties, or cause any undue preference for any other persons for undue or unlawful gains and has not adopted any illegal or improper means to achieve any mala fide objective. The non-approval of proposal for confirmation of IRP as RP in four meetings of CoC and promptly convening fifth meeting of CoC for the appointment of new RP itself confirm that the IRP did not compromise on his independence and acted with objectivity and without any conflict of interest or influence the decision of any CoC member or any party and did not adopt any illegal or improper means to achieve any *malafide* objectives. The above is apparent from the following facts :

- (a) All resolutions proposed in first meeting of CoC meeting were rejected;
- (b) Fees of the IRP and its IPE, a support agency was approved in third meeting of CoC meeting;
- (c) Fees of the IRP and its IPE, a support agency was approved after due discussion and approved amount was lower than the amount proposed by IRP;
- (d) CIRP cost excluding expenses incurred on salary & wages, security charges, is comparatively much lower than other similar sized projects under CIRP.
- (e) Further, the IRP tried to conclude the CIRP within shortest time possible. There were three resolution plans received and shared by IRP with CoC members. Fair value and liquidation value had been shared with CoC members pursuant to regulation 35(2) of the CIRP Regulations. This would have been one of the few real estate projects wherein resolution would have been achieved within 270 days if homebuyers had not replaced the IRP.

2.4.7. Mr. Singal submitted that he maintained complete independence in his professional relationships and conducted CIRP independently from external influences. All the professionals engaged by IRP have no relationship directly or indirectly with the IRP and their fees have been fixed after inviting competitive quotation, due negotiation and proper CoC approval. None of the members of CoC members or other persons influenced the working decision of the IRP.

2.4.8. Agenda item proposed in the fourth meeting of CoC for confirmation of IRP as RP was unlikely and was not intended to impart undue gain/benefit to IRP for following reasons:

- (a) IRP did not propose any change in remuneration and there was merely a change in designation only.
- (b) Pursuant to section 27(2) of the Code, the members of CoC would continue to have a right to replace the RP with the same voting percentage i.e. sixty six percent and, therefore, the confirmation of IRP as RP would not have given any permanent position to the IRP.
- (c) IRP was not required to relinquish office immediately as pursuant to section 16(5) of the Code and term of IRP would have continued till date of appointment of RP under section 22 of the Code.

2.4.9. Mr. Singal submitted that all members of CoC (other than Home Buyers) have already approved the proposal for the appointment of IRP as RP. Further FC in class ie. homebuyers consisted of more than 350 claimants in CD-1 and more than 700 Claimants in CD-2 and all were voting en bloc, therefore, there was no chance of influencing their

decision. Therefore, by proposing his name again the IRP, neither compromised his independence nor influenced the decision of the other creditors or stakeholders. It was not an act done in mala fide or negligent manner.

- 2.4.10. Mr. Singal submitted that the non-approval of proposal for confirmation of IRP as RP in fourth meeting and promptly convening of fifth CoC meeting for the appointment of new RP itself confirm that the Noticee did not compromise on his independence and acted with objectivity and without any conflict of interest or influenced the decision of any CoC member or any party and did not adopt any illegal or improper means to achieve any malafide objective. He never proposed his name as RP after receipt of intimation about intention of Financial Creditors in Class to replace IRP. In light of the above, it is submitted that none of clause(s) 3, 5, 9 and 14 of the Code of Conduct read with section 208(2) (a) & (e) of the Code have been violated and sanctity of the process has been maintained.

Contravention-III

- 2.5. According to regulation 13(1) of CIRP Regulations, IP has to verify the claims submitted before him and accept or reject the same. According to regulation 14(2) of CIRP Regulations, IP shall revise the amounts of claims so admitted when he comes across additional information warranting such revision. But same does not include re-classification of the claimants.

- 2.5.1. IRP has re-classified claimants initially admitted as FC in class to other creditors and has directed them to submit new claim form i.e., Form-F in the CIRP of CD-1 and CD-2. The Board is of the view that the act of re-classifying the FC in class to other creditors is not in consonance with regulation 13(1) and 14(2) of the CIRP Regulations read along with section 208(2)(a) and section 208(2)(e) of the Code and clause 14 of the Code of Conduct as stated under regulation 7(2)(h) of IP Regulations.

Submissions

- 2.6. Mr. Singal submitted that the claimants submitted the Form CA meant for submitting claim for FC in class and claimed interest in accordance with regulation 16(A)(7) of the CIRP Regulations. But the claimants concealed the material facts that RERA (Real Estate Regulatory Authority) Authority had issued decree and submitted false declaration in Point No. 3 of the declaration, in Form CA. Upon admitting claims of aforesaid claimants, Mr. Singal came to know about the receipt of a letter from SDM office enclosing therewith recovery certificate, issued pursuant to RERA Court order and requesting for payment. Thereafter, Mr. Singal searched out the website of RERA and collected all RERA orders and latest status thereof. This warranted the classification those creditors as other creditors instead of FC in Class as other creditors with a view to appropriately classify the claims, which were wrongly classified earlier due to concealment of material facts by the claimant himself/herself and accordingly, aforesaid creditors were requested to resubmit the claim forms in the correct format as they qualified to be other creditors in place of FC in class, as upheld by Hon'ble NCLAT in the matter of *Sushil Ansal Vs. Ashok Tripathi, Company Appeal (AT) (Insolvency) No.552 of 2020*. Due to non-disclosure and non-availability of true facts, there was inadvertent error in classification of claims under FC in class First & Second List.

- 2.6.1. Mr. Singal submitted that since, it was an order of the Court and decree has already been issued, therefore, the IRP had no option but to accept and take note of the RERA decree and admit claims accordingly. It is also important to mention that in RERA decree, the Hon'ble Court has allowed interest ranging from 8-18% and, therefore, the IRP had no option but to allow them interest as per the respective orders of the Court instead of standard 8% as permitted under the regulation 16A (7) of the CIRP Regulations. In this regard, IRP draws attention towards admitted claim amount of RERA decree holders from where it can be observed that in most of the cases, admitted claim amounts are higher than claimed amount because of higher rate of interest. Admission of higher interest was not possible if claims were continued to be classified under FC in class category. If the IRP had not allowed interest as per RERA Court order, he would have committed contempt of Court Order as well as ratio given by Hon'ble NCLAT in the case of *Sushil Ansal Vs Ashok Tripathi* wherein it was held that status of RERA decree holders are other creditors only.
- 2.6.2. Mr. Singal submitted that re-classification/ rectification was necessary to rectify bona fide and inadvertent error caused entirely due to concealment of facts by concerned claimants and not due change of opinion of the IRP. Accordingly, creditors were requested to re-submit the claim forms in the correct format as they qualified to be other creditors in place of FCs in Class. Pursuant to regulation 13(1) of the CIRP Regulations, the claims were verified based on the available information supplied by the claimants and to the extent available from the records of CD-1 and CD-2. Pursuant to regulation 14(2) of the CIRP Regulations, IRP is empowered to revise the admitted claim amount, as soon as may be practicable, when he comes across the additional information warranting such revision.
- 2.6.3. Mr. Singal submitted that he revised the amount of claims as Nil in the category of FC in Class but simultaneously, admitted their claim under class of other creditors. Therefore, the re-classification of the claims post admission of the claims was determined under regulation 14(2) and, therefore, there was no violation of Regulation 13(1) and 14(2) of the CIRP Regulations. There is no explicit provision under Code / regulations prohibiting re-classification of creditor as such.
- 2.6.4. Mr. Singal submitted that there was no material change in the constitution of the CoC due to aforesaid re-classification of creditors, as submitted before AA-1 on 20.11.2020 in CD-1 and before AA-2 on 25.11.2020 in CD-2 because combined total voting percentage of re-classified claimants was only 0.35% in CD-1 & 0.82% in CD-2. Despite re-classification of few claims, the voting share of FCs in Class which was more than 60% but less than 65% continued to remain almost at the same without any impact on voting outcome.
- 2.6.5. In view of the above, Mr. Singal submitted that that he took all reasonable care and exercised due diligence while verifying claims but despite all reasonable care and due diligence, the bonafide error occurred due to non-disclosure of relevant facts by the claimants only. The claims were re-classified only after the facts came to his knowledge and not due to change of any opinion or facts which were already available at that time or due to negligence of IRP. Further, re-classification was necessary to comply with RERA order and in consonance with judgement of Hon'ble NCLAT (*supra*). Hence, there has been no violation of section 208(2)(a) & (e) of the Code read with regulation 13(1) and 14 (2) of the CIRP Regulations and clause 14 of the Code of Conduct.

Contravention-IV

2.7. According to section 208(2)(a) of the Code read along with Circular dated 12th June 2018, an IP is obliged to take reasonable care and diligence while performing his duties, including incurring expenses. He must, therefore, ensure that not only fee payable to him is reasonable, but also other expenses incurred by him are reasonable.

2.7.1. IRP has appointed four advocates for CIRP of CD-1 and in appointment letters of advocates Mr. Vaibhav Sharma, Mr. Abhishek Naik and Mr. Aditya Dewan, there were overlapping scope of work and all of them have been appointed for the entire tenure of the CIRP. It is also observed that Mr. Vaibhav Sharma has been offered a monthly retainership fees of Rupees 1,00,000. Considering the same, the fee paid to these advocates were additional burden on already distressed CD. Hence, it is alleged that IRP has prima-facie failed to take reasonable care and diligence while performing his duties. Therefore, IP's act is prima-facie not in consonance with section 208(2)(a) and 208 (2)(e) of the Code read along with Circular No. IBBI/IP/013/2018 dated 12.06.2018.

Submissions

2.8. Mr. Singal submitted that all advocates except Mr. Vaibhav Sharma, were appointed on assignment basis and therefore, entitled for remuneration / fee, on assignment of work, *i.e.*, if any application is filed / upon their appearance in court only.

2.8.1. Mr. Singal submitted that Mr. Aditya Dewan was appointed *vide* appointment letter dated 08.12.2020, ie, before appointment of Mr. Vaibhav Sharma, for attending two urgent hearings before Hon'ble NCLAT in the matter of CD-1. Mr. Aditya Dewan was offered remuneration on per hearing basis. After the appointment of Mr. Vaibhav Sharma, Mr. Aditya Dewan was neither assigned any work nor paid any fee. The CoC at its meeting held on 12.04.2021 approved his invoice of Rs. 40,000/- and thereafter, no further invoice has been received from Mr. Aditya Dewan.

2.8.2. Mr. Singal submitted that Mr. Sunil Kumar was assigned a small job of issuing civil recovery notices and paid a petty sum of Rs. 7,500/- only. Civil matters such as issuing of recovery letters was neither in the scope of other three Advocates nor such Advocate has expertise. Therefore, all three Advocates refused to take up civil matters and job was assigned to Mr. Sunil Kumar. Thus, there were only two Advocates, Mr. Vaibhav Sharma and Mr. Abhishek Naik to handle the entire CIRP related work.

2.8.3. Mr. Singal submitted that Advocate Abhishek Naik was appointed only for filing regular applications and other works which can be carried out by a junior Advocate. This was done with a purpose to reduce costs. If this work had been assigned to Mr. Vaibhav Sharma, cost would have been much higher. Mr. Vaibhav Sharma was performing the function of legal advisor as well as representing the IRP during CIRP in complex cases before forums like the NCLAT / NCLT. With a view to economize CIRP cost, professional fees of Mr. Vaibhav Sharma was decided in two parts i.e. retainership fee for advisory role and per hearing rate for court appearance/application filing. Engaging two different Advocates, one for advisory role and another for handling complex legal issues or engaging Mr. Vaibhav Sharma for lump sum fee for performing both functions, would have been costly. The invoices of both Mr. Vaibhav Sharma and Mr. Abhishek Naik are

paid only after the due approval of the CoC. Since, the entire cost / invoices were being approved by the CoC before making payment, therefore, there is no violation of the Code of Conduct. Further, both the Advocates have been appointed on arm's length basis considering their experience and CIRP work requirement. There was no overlapping in scope of work of Mr. Vaibhav Sharma and Mr. Abhishek Naik and each Advocate's scope of work was clearly identified & informed to respective advocates through their appointment letters respectively. Mr. Abhishek Naik a relatively junior Advocate was engaged for filing routine applications such as constitution of committee of creditors, progress reports etc. with Hon'ble NCLT and Mr. Vaibhav Sharma - a senior Advocate, was engaged to handle other complex legal issues and advising / vetting CIRP documents such as RFRP etc. Mr. Abhishek Naik was offered remuneration per application / appearance basis only and therefore, he was entitled for remuneration / fee, only when he was assigned any work and not otherwise.

- 2.8.4. Mr. Singal submitted that he had made efforts to minimize CIRP cost by engaging Advocate according to the work requirement. Wherever possible, work was assigned to junior Advocate to economize CIRP cost. Further, in order to economize legal cost. IRP preferred only individual Advocates in place of large legal firm. He incurred Rs 13.19,000/- only towards payment of fees of Advocates for entire CIRP during a period of six months, despite large number of legal cases, due to efficient allocation of work to advocate and strategy of engaging individual Advocate instead of large law firm.
- 2.8.5. Mr. Singal submitted that the words 'reasonable care' and 'diligence' in the Code of Conduct are context specific and are not amenable to precise definition. Mere engagement of 2-3 Advocates does not itself convey that no reasonable care was taken. Further, since all invoices / appointments were approved by CoC, therefore, scope of work of each Advocate was presumably reviewed and deemed to have been approved. It is humbly submitted that all CIRP cost including fees of Advocates was approved unanimously by CoC members including Home Buyers.
- 2.8.6. Mr. Singal submitted that since, CIRP of CD-1 was under progress, therefore, whether IRP exercised reasonable care and diligence while paying advocates fee / legal cost may be viewed meaningfully only by comparing the same with the cost being incurred by present RP post replacement of IRP and not by simply looking into the appointment letter(s) or absolute cost.
- 2.8.7. In the case of *Mr. Jagesh M. Sarghrajka Vs Monitoring Agency nominated by CoC of Ariisto Developers Pvt. Ltd., Company Appeal (AT) Insolvency No.392 of 2021*, Hon'ble NCLAT has observed that:
- (a) Circular dated 12th June,2018 is only a Circular which cannot be equated with rules & regulations prescribed in the provisions of the Code. At the most, the Circular can be treated as mere guidance.
 - (b) What is the reasonable is context specific and is not amenable to precise definition.
 - (c) Further, Para 6 of the above Circular dated 12th June, 2018 states that "fee or other expenses should be determined by RP on arm length basis in consonance with the requirements of integrity and independence and approval of CoC be obtained wherever approval is required".

Therefore, as long as, other expenses are determined on arm's length basis and the same are approved by CoC, subsequently, the same cannot be termed as unreasonable and said to be incurred without due diligence.

- 2.8.8. Mr. Singal submitted that the approval of fee of Advocates / CIRP cost is within the domain of the commercial wisdom of CoC and once the same is approved by CoC after due consideration of scope of work, subsequently, the same cannot be termed as unreasonable / scope of work as overlapping specifically when same was determined on arm's length basis. Both the Advocates Mr. Abhishek Naik and Mr. Vaibhav Sharma were paid fees on assignment basis for work relating to drafting of pleadings /Court appearance and there has been no occasion where both Advocates appeared before the Court simultaneously and charged /paid fees separately. Hence there was no overlapping in scope of work. In view of the above, observation that he has not taken all reasonable care and diligence while performing duties including incurring expense is factually not correct. Accordingly, there has been no violation of section 208(2)(a) and 208(2)(e) of the Code read with Circular No. IBBI/IP/013/2018 dated 12h June, 2018.

3. Analysis and Findings

- 3.1. The DC after considering the allegations in the SCN and submissions made by Mr. Singal in light of the provisions of the Code, regulations and relevant circulars, finds as follows.
- 3.2. The DC notes that under the Code, IP plays a central role in resolution process of the CD, he is appointed by the AA as an officer of the Court to conduct the resolution process and it is the duty of IP to conduct CIRP with integrity and accountability in the process and to take reasonable care and diligence while performing his duties. Therefore, it becomes imperative for an IP to perform his duties with utmost care and diligence. Section 208(2) of the Code provides that every insolvency professional shall abide by the Code of conduct. It reads as follows:

*“208. Functions and obligations of insolvency professionals.
(2) Every insolvency professional shall abide by the following code of conduct: –
(a) to take reasonable care and diligence while performing his duties;
...
(e) to perform his functions in such manner and subject to such conditions as may be specified.”*

- 3.3. The DC notes that in case of a CIRP under the Code, an IP is vested with a whole array of statutory and legal duties and powers. He exercises the powers of the board of directors of the CD under CIRP, manages its operations as a going concern, makes every endeavour to protect and preserve the value of its property and complies with applicable laws in its behalf. He takes important business and financial decisions having substantial bearing on such persons and its stakeholders. The Hon'ble High Court of Bombay in *Jotun India Private Limited and Ors. vs. PSL Limited* (2018) 145 SCL 601(Bom) observed as follows:

“What is, however, of crucial importance is that unlike SICA, once an application filed under IBC either by a financial creditor/ operational creditor is admitted, the Board of Directors of the company are immediately displaced and the management of the company rests in the hands of IRP.”

3.4. The duties of an IRP are enlisted in section 18 of the Code which reads as under:

*“18. Duties of interim resolution professional. –
The interim resolution professional shall perform the following duties, namely: -
(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to –
(i) business operations for the previous two years;
(ii) financial and operational payments for the previous two years;
(iii) list of assets and liabilities as on the initiation date; and
(iv) such other matters as may be specified;
(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;
(c) constitute a committee of creditors;
(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;
(e) file information collected with the information utility, if necessary; and
(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –
(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;
(ii) assets that may or may not be in possession of the corporate debtor;
(iii) tangible assets, whether movable or immovable;
(iv) intangible assets including intellectual property;
(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;
(vi) assets subject to the determination of ownership by a court or authority;
(g) to perform such other duties as may be specified by the Board.”*

3.5. The DC notes that the IP is to maintain integrity, by being honest, straight forward and forthright in all his professional relationships while conducting business during CIRP. His conduct has a substantial bearing on performance and outcome of the processes under the Code. He is, therefore, expected to function with reasonable care and diligence to ensure credibility of the process and) at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled. In this regard, Regulation 7(2)(a) and 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professional), Regulations, 2016 provides as under:

“7. Certificate of Registration:

(1)

(2) *The registration shall be subject to the conditions that the insolvency professional shall*

—
(a) at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled".

...

(h) abide by the Code of Conduct specified in the First Schedule to these Regulations; and..."

Further, clauses 2, 14, 25A and 27 of First Schedule of Code of Conduct for Insolvency Professionals under regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016 states as follows:

Clause 2: An insolvency professional must not misrepresent any facts or situations and should refrain from being involved in any action that would bring disrepute to the profession.

Clause 14: An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code.

Clause 25A: An insolvency professional shall disclose the fee payable to him, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

Clause 27: An insolvency professional shall disclose all costs towards the insolvency resolution process costs, liquidation costs, or costs of the bankruptcy process, as applicable, to all relevant stakeholders, and must endeavour to ensure that such costs are not unreasonable”.

3.6. With regard to issue of delay in verification of claims, regulation 13 of the CIRP Regulation provides as follows:

“13. Verification of claims.

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

Further regulation 14(2) of the CIRP Regulations provides as follows:

“14. Determination of amount of claim.

(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.”

3.7. The DC notes the submission of Mr. Singal that confusion regarding delay has arisen due to list filed by the him on the online portal of IBBI wherein the date of receipt of all claims have been mentioned as 11.11.2020 in CD-1 and 16.11.2020 in CD-2 instead of actual date of receipt of claims which gave an impression that all claims shown as under verification in second list were received on or before 11.11.2020 in CD-1 and 16.11.2020 in CD-2 but in fact, most of such claims were received after such dates. Further from the facts available

on record DC observes that Mr. Singal has verified the claims as received by him in both the CD and admitted the claims which were verifiable. DC notes his submission that claims which were not admitted and kept under verification were due to reasons of non-availability of name of claimants in record of CD's, non-substantiation of claim amount as submitted by claimants, claimant's name in defaulter list and non-submission of any supportive documents except claim form. The claims were admitted after verification at nil or value verified by Mr. Singal. The DC notes that keeping of claims under verification and consequent non-admission does not amount to violation of regulation 13(1) of the CIRP Regulation. Hence there appears to be no contravention in this regard.

- 3.8. With regard to issue of non-placement of agenda for replacement of IRP, the DC notes that section 16(5) of the Code provides continuation of IRP till the appointment of RP under section 22 which provides for appointment of RP by CoC in its first meeting either by confirming IRP as RP or replacing IRP with another IP. The relevant provision is as follows:

“22. Appointment of resolution professional. –

(1) The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

(2) The committee of creditors, may, in the first meeting, by a majority vote of not less than sixty-six per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.”

Further, in cases where RP could not be appointed as per aforesaid provision, the IRP shall perform functions of RP till RP is appointed as per regulation 17(3) of CIRP Regulations reproduced as below.

“17. Constitution of committee.

(3) Where the appointment of resolution professional is delayed, the interim resolution professional shall perform the functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed under section 22.”

- 3.9. In cases where AR represent creditors in a class in CoC, regulation 16A(9) of CIRP Regulation provides the procedure for placing an agenda before CoC

“16A. Authorised representative.

(9) The authorised representative shall circulate the agenda to creditors in a class, and may seek their preliminary views on any item in the agenda to enable him to effectively participate in the meeting of the committee:

Provided that creditors shall have a time window of at least twelve hours to submit their preliminary views, and the said window opens at least twenty-four hours after the authorised representative seeks preliminary views:

Provided further that such preliminary views shall not be considered as voting instructions by the creditors.”

- 3.10. The DC notes the submission of Mr. Singal that in first meeting of CoC, resolution for confirmation of the IRP as RP did not find favour, therefore he did not include any agenda item for confirmation of the IRP as RP in the second meeting of CoC of both CDs. Further, no member of CoC proposed any name for replacement of IRP, even after expiry of two months in CD-1 and three months in CD-2 from the date of first meeting of CoC, therefore, the IRP included the agenda item for confirmation of IRP in third meeting CoC.
- 3.11. The DC further notes from submission of Mr. Singal that the proposal for his confirmation as RP was rejected in first and third meeting of CoC of both CDs. Mr. Singal submitted that there were positive indications in third meeting of CoC, hence he included the same agenda for fourth meeting of CoC of both CDs. After agenda was circulated for fourth meeting of CoC in both CDs, creditors in class in class sent emails to AR for replacement of IRP. From the minutes of fourth meeting of CoC, it is observed that AR in both CDs have submitted that they have not verified the number and authenticity of emails received by them. In CD-1, the agenda item for confirmation of IRP as RP was deferred and in CD-2, the agenda was put for e-voting which was not approved. Mr. Singal submitted that he promptly convened the fifth meeting of CoC in both CD for replacement of IRP with RP.
- 3.12. The DC further notes in this regard the submission of Mr. Singal that as per regulation 16(A)(9) of the CIRP Regulations, AR is to circulate the agenda to creditors in class and may seek their preliminary views on any agenda to enable him to effectively participate in the meeting of CoC. Further, the regulation 16A (9) provides that creditors shall have a time window of at least twelve hours to submit their preliminary views, and the said window opens at least twenty-four hours after the AR seeks preliminary views. Considering the said provision, in the instant matter, DC accepts the submission of Mr. Singal as he convened the 5th CoC meeting in both matters promptly after the decision of the Coc not confirming Mr Singal as RP. This reflects his good faith in convening of fifth meeting of CoC. He continued to act till the appointment of RP as provided under the Code. Therefore, there appears to be no contravention.
- 3.13. With regard to the issue of re-classification of claims of creditors post admission of CIRP, the DC notes the submission of Mr. Singal that homebuyers submitted Form CA and did not disclose that RERA Authority had passed a decree to refund the amount. Subsequently, he received a letter from SDM office enclosing therewith recovery certificate, issued pursuant to RERA Court order and requesting for payment. Thereafter, after searching the website of RERA and collecting latest status, some claims were re-classified / re-categorized as other creditors which were wrongly classified earlier due to concealment of material facts by the claimants himself/herself. Accordingly, aforesaid creditors were requested to resubmit the claim forms in the correct format as they qualified to be other creditors in place of creditors in class, as held by *Hon'ble NCLAT in the matter of Sushil Ansal Vs. Ashok Tripathi, Company Appeal (AT) (Insolvency) No.552 of 2020*. The Hon'ble NCLAT in said judgement, dated 14.08.2020 observed as follows:

“The answer to the question whether a decree-holder would fall within the definition of ‘Financial Creditor’ has to be an emphatic ‘No’ as the amount claimed under the decree is an adjudicated amount and not a debt disbursed against the consideration for the time value of money and does not fall within the ambit of any of the clauses enumerated under Section 5(8) of the ‘I&B Code’.”

“Decree-holder, though included in the definition of ‘Creditor’, does not fall within the

definition of 'Financial Creditor' and cannot seek initiation of Corporate Insolvency Resolution Process as 'Financial Creditor'.”

However, the DC notes that the Hon'ble Supreme Court held in *Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy and Anr*, CA 1650/2020, vide its judgement dated 4.08 2021 as follows:

“...it is clear that a final judgment and/or decree of any Court or Tribunal or any Arbitral Award for payment of money, if not satisfied, would fall within the ambit of a financial debt, enabling the creditor to initiate proceedings under Section 7 of the IBC.”

- 3.14. The DC notes the submission of Mr. Singal that the claims were verified based on the available information supplied by the claimants and to the extent available from the records of CD-1 and CD-2 in accordance with regulation 13(1) of the CIRP Regulations, and he revised the claims as soon as he came across the additional information warranting such revision in accordance with regulation 14(2) of the CIRP Regulations.
- 3.15. The DC notes the submission of Mr. Singal that admission of higher interest was not possible if claims were continued to be classified under FC in class category and since in RERA decree, the Hon'ble Court has allowed interest ranging from 8-18% and, therefore, he had no option but to allow them interest as per the respective orders of the Court instead of standard 8% as permitted under the regulation 16A (7) of the CIRP Regulations.
- 3.16. The DC further notes from the submission of Mr. Singal that revised claim of RERA decree holders became higher than earlier admitted claimed amount because of higher rate of interest provided in the RERA decree. If the IRP had not allowed interest as per RERA Court order, he would have committed contempt of Court Order in terms of ratio given by Hon'ble NCLAT in the said case of *Sushil Ansal Vs Ashok Tripathi*.
- 3.17. Considering the legal position as it existed as per the decision of NCLAT prior to the Supreme Court decision in *Dena Bank* case, the action of Mr Singal was in conformity with said NCLAT order that time. Therefore, there appears to be no contravention.
- 3.18. With regard to the issue of appointment of advocates, the DC notes that submission of Mr. Singal that Mr. Sunil Kumar, advocate was assigned a small job of issuing civil recovery notices and paid a petty sum of Rs. 7,500/- only. Civil matters such as issuing of recovery letters was neither in the scope of other three advocates nor such advocates have expertise. Mr. Abhishek Naik, a relatively junior advocate was engaged for filing routine applications such as constitution of CoC, progress reports etc. with Hon'ble NCLT and was offered remuneration per application/appearance basis only. He was appointed only for filing regular applications and other works which can be carried out by a junior advocate and was done with a purpose to reduce costs. Mr. Vaibhav Sharma, a senior Advocate, was engaged to handle other complex legal issues and advising / vetting CIRP documents such as RFRP etc. The professional fees of Mr. Vaibhav Sharma was decided in two parts retainership fee for advisory role and per hearing rate for court appearance/application filing. The DC notes that there was no overlapping of work assigned to respective advocates and fees of all the advocates formed part of CIRP cost which was approved by CoC in its fourth meeting held on 12.04.2021. The DC accepts the submission of Mr. Singal, hence there appears to be no contravention in this regard.

Order

4. In view of the above, the DC, in exercise of the powers conferred under section 220 (2) of the Code read with sub-regulations (7) and (8) of Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017, hereby disposes of the SCN without any directions.
5. This Order shall come into force with immediate effect in view of para 4 above.
6. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Pawan Kumar Singal is enrolled as a member.
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.
8. Accordingly, the show cause notice is disposed of.

-sd-

(Dr. Mukulita Vijayawargiya)

Whole Time Member, IBBI

Dated: 6th April, 2022

Place: New Delhi