

Indian Institute of Insolvency Professionals of ICAI
(Disciplinary Committee)

DC. No. - IIIPI/DC/192/2023-24

ORDER

In the matter of Mr. Anil Matta (Respondent) under Clause 15(2) of the Disciplinary Policy of IIIPI read with Clause 24(1)(c) and 24 (2) &(f) of IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, (2016).

- 1.0** This order disposes of the Show Cause Notice (SCN) dated 08-02-2024 issued to the respondent Mr. Anil Matta, Matta & Associates, 308, RG Trade Tower, Plot No. B-7, Netaji Subhash place, Pitampura, New Delhi- 110034. Respondent is a professional member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No IBBI/IPA-001/IP-P00223/2017-2018/10422. The Disciplinary Committee of IIIPI (DC) issued SCN to respondent, based on the reference received from the Grievance Redressal Committee (GRC) pertaining to assignment handled by him as Interim Resolution Professional (IRP)/ Resolution Professional (RP) in the matter of **M/s Primrose Infratech Private Limited** (Corporate Debtor). Respondent submitted his contention to the SCN vide letter dated 20th February 2024. An opportunity for a personal hearing was provided to the respondent on 21-05-2024 by the Disciplinary Committee. Respondent chose to be represented by himself before the DC of IIIPI, accordingly respondent appeared before the DC of IIIPI in person, wherein the respondent made oral submissions before the DC.
- 2.0 Contravention-** The first allegation against the respondent was that he had nominated Mr. Navneet Arora as an authorized representative (AR) of home buyers (class of creditors). However, Mr. Navneet Arora is a partner in the 'Aries Corporate Consultant LLP', wherein respondent was also a partner. As per Regulation 4A (2) (a) of CIRP Regulations 2016, an AR for the class of creditors shall not be a related party to IRP/RP as he should be an independent person whereas, in the instant matter it is observed that respondent and Mr. Navneet Arora were partners in same LLP and thus falling under the definition of related party, as per Section 5 (24A) (b) of the Code. Being a related party, the name of Mr. Navneet Arora should not be identified by respondent to be an eligible person to act as AR for home buyers.
- 2.1 Submissions by Mr. Anil Matta-** Respondent in this regard submitted, that in the 1st meeting of CoC dated 04.02.2019, the names of three insolvency Professionals, namely, CA Rabindra Kumar Mintri, CA Rashmi Mintri and CS Navneet Arora were proposed to the homebuyers for selection of one of them as the Authorized Representative (AR") of the class of homebuyers. The homebuyers with voting percentage of 94% opted CS Navneet Arora as their representative. The selection of CS Navneet Arora was subsequently upheld by Ld. AA vide its order dated 04.06.2019. It is stated that from the stage of nomination of names of Insolvency Professionals to the homebuyers till conducting the e-voting as directed by Ld. AA, the respondent has maintained

transparency at all the stages and acted in complete adherence to the provisions of IBC & Regulations therein.

2.1.1 Respondent further submitted that the partnership in question, i.e., Aries Corporate Consultant LLP ("Aries") was formed on 20.11.2009. CS Navneet Arora and the respondent were inducted into Aries by way of supplemental deed dated 25.10.2017. The respondent had no role in the day-to-day operations of Aries or any of its decision-making processes. It is also important to highlight that there was no personal gain or profit derived from this partnership on my part. The respondent states that he strives to maintain a high level of diligence and attention to detail in all aspects of his responsibilities. It is a humane oversight on his part owing to cognitive challenges of old age.

2.1.1 Respondent further submitted that the Ld. Members of Disciplinary Committee may find it noteworthy that as soon as the concern was brought to respondents notice, he resigned from Aries w.e.f. 21.08.2023 and withdrew his partnership and contribution with immediate effect.

2.1.1 Respondent further submitted that no interests of any stakeholder have been harmed due to the selection of CS Navneet Arora by the homebuyers and subsequent confirmation by Ld. AA. The appointment of CS Navneet Arora as AR of the homebuyers did not interfere with his duties and responsibilities as the Resolution Professional of the Corporate Debtor. The respondent has performed all the tasks bestowed upon him in compliance with the provisions of IBC Regulations framed therein, the directions of Ld. AA and the Code of Conduct. Subsequent to the appointment as AR, CS Navneet Arora had also strived to fulfil his duties and has acted in the best interest of the homebuyers.

2.2 Findings- DC notes Regulation 4A of the CIRP Regulations provides that none of the choice of authorised representative given by an interim resolution professional should be relative or relative party of the interim resolution professional. The relevant portion of the said regulation is as hereunder:

“4A. Choice of authorised representative

(1)

(2) For representation of creditors in a class ascertained under sub regulation (1) in the committee, the interim resolution professional shall identify three insolvency professionals who are-

(a) not his relatives or related parties;

2.2.1 DC further notes that for the purpose of determining related party, Section 5(24A) is referred to, which provides as follows:

“(24A) “related party”, in relation to an individual, means-

(a) a person who is a relative of the individual or a relative of the spouse of the individual;

(b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;

- (c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;*
- (d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;*
- (e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;*
- (f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;*
- (g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;*
- (h) a person on whose advice, directions or instructions, the individual is accustomed to act;*
- (i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.”*

2.2.1 It is essential to understand the crucial role of Authorised Representative in the decision-making process of the CoC. In order to ensure the effective participation of representatives from different classes of creditors in the CIRP, a provision for the appointment of authorized representatives had been introduced. The purpose of appointing an AR is to guarantee that the creditors' interests are adequately safeguarded and represented as per their mandates and not unduly influenced by any vested interest. Therefore, to discharge effectively the function of Authorised Representative, it is required that Authorised Representative should be independent, impartial and must act with objectivity without any conflict of interest. To ensure the same, Regulation 4A of the CIRP Regulations explicitly provides that none of the choice of authorised representative given by an Interim Resolution Professional should be relative or relative party of the Interim Resolution Professional. In addition to specific obligations and prohibitions under the Code and the regulations made thereunder, an IP must always abide by the Code of Conduct as specified in First Schedule under the IP Regulations. The Code of Conduct requires that an IP must maintain complete independence in its professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences. For example, clause 1 of the Code of Conduct of IP Regulations requires that an IP must maintain the integrity by being honest, straightforward, and forthright in all professional relationships, and clause 3 of the Code of Conduct mandates that an IP must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party. Also, clause 14 of the Code of Conduct states that an IP must not act with malafide or to be negligent while performing his functions and duties under the Code and Clause 23B of the Code of Conduct states that an IP shall not engage or appoint any of his relatives or related parties, for or in connection with any work relating to any of his assignment.

2.2.3 The respondent submitted that the procedure for appointment of AR is transparent and in accordance with the provision of the IBC. He also submitted that as soon as the concern was brought to respondents notice, he resigned from Aries w.e.f. 21.08.2023.

2.2.4 The DC notes that respondent acknowledged the same fact during the personal hearing and in his written submission also. While the respondent has highlighted the transparency of the appointment process, it is evident that the relationship between the respondent and Mr. Arora falls under the definition of a related party and hence respondent should not have been identified the name of Mr. Arora as an eligible person to act as AR for home buyers. The DC further notes that the respondent was well aware of the contravention made by him of the provisions of the Code and hence, he admittedly resigned from the firm. However, stepping down from the firm cannot cure a violation that has been made. If the GRC had not received complaint against the respondent and pointed out the contravention, the respondent would have gone scot free without any repercussions. Thus, by simply stepping down from the firm as a partner, the respondent cannot cover up the contravention. In such a scenario proposing the name of Mr. Arora to act as an AR for the homebuyers is clear violation of Sections 208(2)(a) & (e) of the Code, Regulation 4A (2) (a) of CIRP Regulations 2016, Regulation 7 (2) (a) & (h) of the IBBI (Insolvency Professional) Regulations, 2016 (IP Regulations) read with clause 1,3, 14 and 23B of the Code of Conduct.

3.0 Contravention- Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation,2016 (CIRP Regulations) provide verification of claims which states that: -

“(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.”

Regulation 14 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation,2016 provides the Determination of amount of claim which states that: -

“(1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

(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.”

However, it is observed that Amit Kumar, a homebuyer filed his claim of Rs. 22,29,850 /- out of which Rs 5,48,735/- was admitted by respondent. Later, an e-mail dated 10th May,2023 was sent by respondent to Mr. Amit Kumar stating that *“the total claim received from the Amit Kumar (T-2, A-8) Rs. 22,29,850/-(principal amount) but also claim received from UCO Bank for Rs 16,81,115.00/- for this flat, so that we admitted the claim of Mr. Amit Kumar Rs.5,48,735.00.”*

Further, respondent in his response submitted that “The claim was already admitted for principal amount in full, first claim was received from UCO Bank and then from Sh. Amit Kumar (Homebuyer). On receipt of Resolution Plan Bankers were paid Nil being a Tri party loan and claim of UCO Bank was clubbed with Homebuyers claim”.

In this regard, it is observed that the respondent has clubbed the UCO Bank claim with the claim filed by the homebuyer, because of which the admitted claim amount of Mr. Amit Kumar has been reduced.

3.1 Submissions by Mr. Anil Matta- Respondent in this regard submitted that homebuyer, Mr. Amit Kumar submitted his claim by way of Form CA dated 20.02.2019 for a total amount of Rs. 40, 19,841 /-. Out of the total claimed amount, a sum of Rs. 22,29,850 - was claimed as principal paid to the Corporate Debtor, while interest calculated @18% p.a. amounting to Rs. 17,89,991 /- was claimed till 04.01.2019.

3.1.1 Respondent further submitted that on 27.02.2019, the respondent received a claim in Form CA from the UCO Bank for the same unit for a sum of Rs. 16,81,115 /-, In accordance with the prevailing law at that time, the respondent admitted the claim of UCO Bank in full and the claim of Mr. Amit Kumar was proportionally admitted along with the claim of UCO Bank. On 29.05.2023, the respondent sent an email to Mr. Amit Kumar informing him about the claim of UCO Bank. Thereafter, on 06.02.2020, the CoC held its 8 CoC meeting, wherein, the Resolution Plan of the One City group (“RA”) was approved by the members with 80.84% of voting share. It is also pertinent that Mr. Amit Kumar is also part of the CoC and has also participated in voting for the Resolution Plan.

3.1.2 Respondent further submitted that the principal amount claimed by a bank is put in the homebuyer category, only in cases where a homebuyer is in a tripartite arrangement with a bank and claim for the respective flat has been submitted by the homebuyer. It simply means that the total principal amount claimed by the banks is admitted under the Resolution Plan and the SRA will be providing flats for Homebuyers, only in such cases. Thus, depending on the facts of each case, the claim of such an allottee and such a bank, shall be treated in accordance with the Resolution Plan. Although, the allottee will remain liable to the bank for their payment as per the BBA or renewal agreement. Also, the claims of all the homebuyers who have submitted their claims in accordance with the provisions of IBC have been admitted, irrespective of any arrangement of homebuyers with banks.

3.1.3 The respondent further submitted that the Resolution Plan, as approved by the CoC, does not consider the claims of the bank, who have provided loans to the homebuyers under tripartite agreement, as Financial Debt. Accordingly, in the settlement of outstanding dues, no payment has been envisaged for payment to the claims of the banks.

3.1.4 In view of the above, it is factually wrong to suggest that the claim amount of Mr. Amit Kumar is reduced since it is clubbed with the claim of UCO Bank. Such a stipulation is based on the incorrect understanding of the facts and circumstances. The claim of Mr. Amit Kumar, as submitted on 20.02.2019, has been admitted on principal and the same shall be treated in accordance with terms of the Resolution Plan.

3.2 Findings- The Disciplinary Committee notes the submission of the respondent regarding the treatment of claims under tripartite arrangements between homebuyers, banks, and the corporate debtor in the approved Resolution Plan. DC further notes the respondent's submissions that in the Resolution Plan as approved by COC, the impugned claim of homebuyer has been restored to the original/desired amount. Hence, considering the facts and circumstances of the case, including overall progress of the CIRP resulting in resolution, DC takes a lenient view on the matter.

Order

4.0 In exercise of the powers conferred under Regulation 24(1) (c) and 24 (2) (d) &(f) of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 read with clause 15(2) of the Disciplinary Policy of IIIPI, DC hereby advise the respondent to perform his duties and functions with utmost care and caution and decides to impose a penalty of Rs 50,000/- on the respondent, to be deposited by way of demand draft payable in favour of the Indian Institute of Insolvency Professionals of ICAI (IIPI) within 30 days of the issue of this order. IIIPI shall in turn deposit the said penalty amount in the Insolvency and Bankruptcy Fund. Accordingly, the show cause notice is disposed of.

5.0 This order shall come into force from the date of its issue.

6.0 A copy of this order shall be forwarded to the Insolvency and Bankruptcy Board of India.

Date: 16-07-2024

Place: Delhi

CERTIFIED TRUE COPY

Sd/-

Dr Debashis Mitra (Member)

Mr. Rajvir Singh (Member)

CA. Rahul Madan (Member)

Copy to:

1. Insolvency and Bankruptcy Board of India.

2. Indian Institute of Insolvency Professionals of ICAI- Members Record.