

Indian Institute of Insolvency Professionals of ICAI

(Disciplinary Committee)

DC. No. - IIIPI/DC/193/2023-24 & IIIPI/DC/194/2023-24

ORDER

In the matter of Mr. Pankaj Narang (Respondent) under Clause 15(1) of the Disciplinary Policy of IIIPI read with Clause 24(1)(c) 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. Pankaj Narang, 304, Tower Apartment, Swasthya Vihar, New Delhi, National Capital Territory of Delhi, 110092. 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-P01006/2017-2018/11657. The Disciplinary Committee of IIIPI (DC) issued SCN to respondent, based on the reference received from the Grievance Redressal Committee (GRC) of IIIPI pertaining to assignment handled by him as Interim Resolution Professional (IRP)/ Resolution Professional (RP) in the matter of **M/s K V Developers Private Limited** (Corporate Debtor). Respondent submitted his reply to the SCN vide letter dated 23rd February 2024. An opportunity for a personal hearing was provided to the respondent on 21-05-2024 which was later rescheduled to 30-05-2024 due to paucity of time. Respondent appeared before the DC on the rescheduled date and made his oral submission.

2.0 Contravention- The allegation against the respondent was, that in the matter of K V Developers Private Limited, it is noted from the minutes of the 3rd CoC meeting that respondent placed an agenda item for raising Interim Finance amounting to Rs 70 lacs before CoC, wherein respondent apprised the CoC about the following options:

(a) raising finance from external sources; (b) raising by way of contribution from CoC (c) reject the proposal for interim finance.

3.0 It is noted that the above-said resolution was not approved by CoC, in the said meeting.

Later, the same agenda item was again placed by respondent before the CoC in its 4th meeting, wherein CoC approved taking interim finance from external sources by majority of 71.25%. Further, in submissions to GRC respondent mentioned that interim finance was raised from the mother of Mr. Harish Taneja, process advisor. In this connection, DC notes that the respondent did not disclose the material fact of raising the interim finance from relative of the professional appointed during CIRP.

3.1 Submissions by Mr. Pankaj Narang- Respondent in this regard submitted that in the third CoC meeting he informed the members that Interim finance of Rs. 70 Lakh can be raised by way of an unsecured loan which will carry a rate of interest of around 15-20% and it will have first priority in terms of repayment under the Resolution Plan. Hence, following options were given to members:

3.2 to choose Interim Finance from

A) external source;

B) contribution by members of CoC or

C) to reject the proposal for Interim finance.

2.1.1 Respondent further submitted that none of the said resolution was approved by CoC in the 3rd CoC Meeting and therefore the said agenda was again continued in the 4th CoC meeting wherein the following resolution was passed –

“RESOLVED THAT pursuant to provisions of Section 25[2][c] & Section 28[1][a] of IBC, 2016, consent of the CoC members be & is hereby accorded to the Resolution Professional to raise an Interim Finance of Rs 70,00,000/- (Rupees Seventy Lacs only) for the Corporate Insolvency Resolution Process of the Corporate Debtor.

FURTHER RESOLVED THAT consent of CoC members is also accorded to include the Interim Finance of Rs 70,00,000/- (Rupees Seventy Lacs only) as part of CIRP Cost of Corporate Debtor section 5(13) of IBC, 2016.

RESOLVED FURTHER THAT the Interim finance and all expenses incurred for raising finance including interest be and is hereby approved as part of CIRP Cost as defined under section 5(13) of IBC, 2016 and would have priority of payment as prescribed.”

Accordingly, thereafter an agreement was executed and interim finance was raised from Mrs. Raj Rani, mother of Mr. Harish Taneja. Also, Form CIRP 6 in respect of raising of Interim Finance was duly filed with IBBI.

2.1.2 Respondent further submitted that it is to be noted that a conflict of interest means a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity. In the present matter there is no conflict of interest as –

- a. No personal benefit is accruing to RP or his related party(ies);
- b. Interim finance was raised after approval from CoC;
- c. The interest payable on the interim finance has already been ratified by the CoC;
- d. All disclosure has been made to IBBI in CIRP.

2.1.3 Respondent further submitted that the Interim Finance was gracefully provided by three bodies: Rear Co Private Limited, Hawk Capital Private Limited and from the mother of the Process Advisor, Mr. Harish Taneja. It is submitted that the interim finance was denied by the Committee of Creditors including the biggest creditor, i.e., LIC and thereafter, the RP had to approach several High-Net-Worth Individuals (HNIs), Banks, Financial Institutions etc. but no one was willing to provide finance without a security interest and without any guarantee.

2.1.4 Respondent further submitted that in such a situation, when no one was willing to disburse money despite being fully aware and despite several warnings provided by the Resolution Professional in various CoC meetings that the Corporate Debtor was in dire need of funds for continuation of construction and for continuation of the Corporate Debtor as a going concern, there was no effort by the Committee of Creditors to arrange funds for the Company. In Such a situation, if the Process Advisor stepped forward to provide money, the same should be appreciated as the Process Advisor and the Resolution Professional were the only ones working in the best interest of the Corporate Debtor when all the other stakeholders were willing to relegate the Corporate Debtor into Liquidation.

2.1.5 Respondent further submitted that in such a scenario, action taken by the Resolution Professional should not be looked at in such a light that he acted in a way prejudicial to the interest of the stakeholders in the

CIRP process. That it is submitted that it was the Committee of Creditors which was working prejudicial to the interest of the Corporate Debtor. That however, in the absence of any code of conduct for the Committee of Creditors, the CoC can work in any way.

2.1.6 That it is further submitted that the acts of the Resolution Professional and the Process Advisor fall in the category of defense under legal doctrine of “*quod est necessarium est licitum*” which means ‘That which is necessary is legal. Thus actions of the Resolution Professional were only to preserve the best interest of the Corporate Debtor and to ensure that the Corporate Debtor would be handed over to a Prospective Resolution Applicant as a going concern. It is submitted that the Resolution Professional has showed the highest level of integrity in acting as the insolvency professional of the Corporate Debtor.

3.3 Findings- Insolvency Professional is bestowed with myriad duties. An insolvency professional is expected to exercise due diligence while performing his duties. His diligence should be reflected not only during the corporate insolvency resolution process but also while fulfilling any obligation as a professional member under the Code.

2.2.1 DC notes the submission of the respondent that he worked well within the boundaries of law in the performance of his duties and has not acted in any way prejudicial to the interest of any stakeholder of the Corporate Debtor.

2.2.2 Further, DC also notes the submission of the respondent that all necessary disclosures regarding the involvement of the process advisor’s mother in providing interim finance were made to the Insolvency and Bankruptcy Board of India and had no intention to conceal the said fact from any of the stakeholders. The necessity of securing interim finance was emphasized as crucial for continuing operations and preserving the corporate debtor as a going concern, especially given the reluctance of other creditors, including major stakeholders like LIC, to provide finance. The process advisor’s mother stepped in to support the debtor.

2.2.3 DC takes note of the fact that the above-said resolution was not approved by CoC initially. Later, the same matter was again placed by respondent before the CoC in its 4th meeting, wherein CoC approved the resolution by 71.25% for raising the interim finance from external source. However, the interim finance was sourced from the mother of the process advisor, a fact that was not disclosed by the RP before the CoC.

2.2.3 DC heard the respondent carefully and finds no *mala fide* intention appears on the part of the respondent. Also, DC finds no reason to believe that the respondent intentionally concealed the information with any ill intent or with the motive to achieve any undue gain/benefit for himself or any other person associated with respondent. In view of the challenges faced during the CIRP and the RP’s efforts to secure necessary funding, the DC recognizes that the actions were in the best interest of the corporate debtor and were conducted with integrity. Also looking into overall progress of the CIRP of the CD resulting into resolution, the DC advises the respondent to exercise greater diligence and caution in handling future assignments.

3.0 Accordingly, in exercise of the powers conferred under Regulation 24(1) (c) of the Insolvency and Bankruptcy Board of India (Model Byelaws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 read with clause 15(1) of the Disciplinary Policy of IIPPI, DC pronounces the respondent as non-guilty. However, DC advises the respondent to be diligent and more careful in future

about compliance with regulations and guidelines laid down by IBBI. Accordingly, the show cause notice is disposed of.

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

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

CERTIFIED TRUE COPY

Sd/-

Date: 22-10-2024

Place: New Delhi

Mr. Satish Marathe, (Chairman)

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