

# INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

## (Disciplinary Committee)

No. IBBI/DC/256/2024

17.12.2024

### ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI/C/2023/00913/811/1442 dated 26.10.2023, issued to Mr. Kairav Anil Trivedi, an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-002/IP-N00728/2018-2019/12332, who is a Professional Member of the Insolvency Professional Agency of ICSI Institute of Insolvency Professionals and having residential address recorded with IBBI as 413-414, Shramjevan B 5, Opp Lodha New Cuffe Parade, Wadala East, Mumbai, Maharashtra - 400037.

#### 1. Background

- 1.1 The National Company Law Tribunal, Mumbai Bench (AA) vide its Order dated 09.02.2023, admitted the application filed under Section 7 of the Code by Punjab National Bank (FC) for initiating Corporate Insolvency Resolution Process (CIRP) of M/s. Parenteral Drugs Private Limited (Corporate Debtor / CD). Mr. Kairav Anil Trivedi was appointed as Interim Resolution Professional (IRP) vide the above-said Order. The AA *vide* Order dated 17.10.2023 appointed Mr. Prawincharan Prafulcharan Dwary as the Resolution Professional (RP) of the CD.
- 1.2 The IBBI in exercise of its powers under Section 218 of the Insolvency and Bankruptcy Code, 2016 (Code), read with Regulations 7(1) and 7(2) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to conduct investigation in the CIRP of the CD.
- 1.3 Accordingly, a notice under Regulation 8(1) of the Investigation Regulation was issued to Mr. Kairav Anil Trivedi on 29.05.2023 and 23.06.2023 with a request to provide reply along with relevant documents. Mr. Kairav Anil Trivedi submitted his reply to the investigation notice *vide* emails dated 04.07.2023, 12.07.2023 and 17.07.2023.

- 1.4 Based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the Board formed a, *prima facie*, view that Mr. Kairav Anil Trivedi has contravened several provisions of the Code, the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and issued the SCN to Mr. Kairav Anil Trivedi on 26.10.2023 with a request to furnish reply by 09.11.2023.
- 1.5 However, Mr. Kairav Anil Trivedi failed to furnish reply to the SCN within the timeline given timeline. Accordingly, the SCN was referred to the Disciplinary Committee (DC) for disposal of the SCN. Vide email dated 05.12.2023, Mr. Kairav Anil Trivedi was informed about the personal hearing before the DC through virtual mode on 14.12.2023. However, vide email dated 13.12.2023, Mr. Kairav Anil Trivedi informed that due to some medical emergency in his family, sought time till 15.01.2024 for submission of reply to the SCN and requested to schedule personal hearing thereafter. The reply to the SCN was received from Mr. Kairav Anil Trivedi on 02.02.2024.
- 1.6 Accordingly, the SCN and response dated 02.02.2024 as submitted by Mr. Kairav Anil Trivedi to the SCN were referred to the DC for disposal of the SCN. Vide email dated 24.05.2024, Mr. Kairav Anil Trivedi was informed that personal hearing would take place on 31.05.2024, but Mr. Kairav Anil Trivedi failed to appear before the DC on 31.05.2024. Vide email dated 05.06.2024, Mr. Kairav Anil Trivedi was informed about fixing the personal hearing on 11.06.2024. Vide email dated 10.06.2024, Mr. Kairav Anil Trivedi requested for rescheduling the personal hearing in the first week of July 2024 as his advocate was not available. Thereafter, personal hearing was scheduled on 13.09.2024.
- 1.7 Mr. Kairav Anil Trivedi availed the opportunity of personal hearing before the DC through virtual mode on 13.09.2024 where he was represented by Mr. Partha Sarathy Sarkar, Advocate who made submissions during the e-hearing. Mr. Kairav Anil Trivedi during the hearing submitted that certain documents on which he placed reliance, are in the possession of the present RP of the CD. Accordingly, Mr. Kairav Anil Trivedi vide email dated 16.09.2024 and 05.10.2024 had requested the present RP of the CD to provide certain documents in the given matter. Accordingly, the present RP of the CD had provided certain documents and clarifications vide email dated 19.09.2024,

10.10.2024 and 17.12.2024 with a copy to Mr. Kairav Anil Trivedi. Mr. Kairav Anil Trivedi has also forwarded the same documents *vide* email dated 19.09.2024 and 10.10.2024. Besides, Mr. Kairav Anil Trivedi forwarded additional documents *vide* email dated 25.09.2024.

## **2. Alleged contraventions, submissions of Mr. Kairav Anil Trivedi and findings of DC.**

The contravention alleged in the SCN, submissions by Mr. Kairav Anil Trivedi and findings of the DC are summarized as follows:

### **2.1 Irregularity in entering into an MoU.**

#### **Alleged contravention**

2.1.1 It was observed that the CIRP of the CD was initiated by the AA *vide* its order dated 09.02.2023 and Mr. Kairav Anil Trivedi was appointed as IRP in the CIRP of the CD. It was further observed from Mr. Kairav Anil Trivedi's reply to the IA that he visited the Panwa plant of the CD on 13.02.2023 and on the same day, a contract manufacturing Memorandum of Understanding (MoU) between the CD and Virat Tradecorp Private Limited (Virat) was entered into in respect of pharmaceutical plant of the CD situated at Village -Panwa. District - Khargone, Madhya Pradesh. The first meeting of the Committee of Creditors (CoC) was conducted on 13.03.2023 which was adjourned to 18.04.2023. Hence, it is seen that the MoU with Virat was entered on 13.02.2023 without the knowledge and approval of the CoC. The CoC was informed of the MoU with Virat *vide* email dated 13.03.2023, the day on which first meeting of CoC was held partially.

2.1.2 Section 28(1)(k) provides that prior approval of COC is required for certain actions such as for transferring rights, delegation of authority etc. It was observed from Mr. Kairav Anil Trivedi's reply to IA that Panwa Plant of the CD had closed its operation one year prior to initiation of CIRP of the CD. It is mentioned in the SCN that starting manufacturing operation in a closed plant after commencement of CIRP was an important decision and not a decision in ordinary course of business. Hence, approval of the CoC should have been obtained prior to entering into such MoU.

2.1.3 In addition to the above, its further alleged in the SCN that following actions of Mr. Kairav Anil Trivedi in this matter suggests that Mr. Kairav Anil Trivedi entered into the MOU with Virat in a clandestine manner and his decision in this regard was not an independent one:

- a) The MOU was finalised on the first day of visit to the Panwa Plant, which was on 5<sup>th</sup> day of initiation of CIRP, which shows that it was done in undue haste. The fact that the said MOU was allowed to be signed by Mr. M.L. Gupta, suspended director also on behalf of the CD further suggests that the decision was in collaboration with suspended director.
- b) Mr. Kairav Anil Trivedi denied entry of joint inspection team of the CoC having 100% voting share to Panwa Plant. Denial of entry to the major stakeholders of the CD deprived the CoC team, who were already at the site, of the assessment of the affairs of the CD.

2.1.4 The SCN notes that it is, thus, evident that Mr. Kairav Anil Trivedi not only avoided approval of the CoC for entering into an MoU for starting operations of the plant, but also later took hostile approach by denying entry to joint inspection team of Financial Creditors with 100% voting share to take stock of situation at the plant. Therefore, the Board was of the *prima facie* view that Mr. Kairav Anil Trivedi has *inter alia* violated Section 28(1)(k), Section 208(2)(a) and 208(2)(e) of the Code, Regulation 7(2)(a), and Regulation 7(2)(h) of the IP Regulations read with Clause 1,3,5 and 14 of the Code of Conduct for Insolvency Professionals stipulated in first Schedule to the IP Regulations (Code of Conduct).

**Submissions by Mr. Kairav Anil Trivedi.**

2.1.5 Mr. Kairav Anil Trivedi submitted that entering MOU is pursuant to Section 20(2)(b) of the Code, which mandates the IRP to ensure that the CD remains a going concern and to preserve and protect the assets of the CD. And for this, Section 20(2)(b) of the Code authorises the IRP to enter contracts on behalf of the CD and Section 20(2)(e) of the Code authorises the IRP to take all such actions which are necessary to keep the CD as a going concern.

- 2.1.6. Mr. Kairav Anil Trivedi submitted that Section 28(1)(k) of the Code, which provides for approval of the CoC for certain contracts by the RP, is applicable in case of RP, whereas in the present case he was an IRP. Mr. Kairav Anil Trivedi further submitted that *there* was no CoC in place at the time of entering into the contract.
- 2.1.7. Mr. Kairav Anil Trivedi submitted that there was no malfeasance in entering into the MoU of contract manufacturing. He also submitted that the CoC was appreciative of Mr. Kairav Anil Trivedi's endeavour of taking contract manufacturing initiative which lead to maximization of the value of the assets of the CD, provided employment opportunity and ensured that the CD remains a Going Concern during CIRP.
- 2.1.8. Mr. Kairav Anil Trivedi further submitted that the contract was signed by him and the contract manufacturer, and the suspended director of the CD signed on the contract document as a witness to the arrangement as suspended director is considered to be a more reliable witness in preference to the security guards present at the site.
- 2.1.9. Mr. Kairav Anil Trivedi further submitted that the CoC had further extended/ renewed the said MoU between the CD & Virat, which was extended up to 12.02.2024 vide extension agreement dated 12.08.2023 and further extended up to 12.08.2024 vide extension agreement dated 24.02.2024. The said lease agreement further extended up to 12.02.2025 or till the approval of resolution plan whichever is earlier, vide extension agreement dated 14.09.2024.
- 2.1.10. Mr. Kairav Anil Trivedi submitted that as regards denying entry to the bankers, it was a bona fide mistake by him of their purported status as bankers sought to conduct periodic inspection uncounatenanced in the Code. Had the communication been termed as and by way of the CoC members, there was no occasion for denying entry.

### **Analysis and Findings of the DC.**

- 2.1.11. Section 28(1)(k) of the Code, 2016 reads as follows: -

***“28. Approval of committee of creditors for certain actions –***

*(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely: -*

- a) .....
- k) *transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;*
- m) ..... ”

2.1.12. In the context of the Corporate Insolvency Resolution Process, the Committee of Creditors (CoC) is vested with the authority to oversee and approve critical actions that could impact the Corporate Debtor’s financial health and obligations. One such action requiring the CoC’s prior approval is the transfer of rights or financial or operational debts under material contracts, except when carried out in the ordinary course of business. This provision ensures that the IRP/RP cannot make significant changes to the CD’s financial or contractual arrangements without the informed consent of the creditors.

2.1.13. The DC notes that the true nature of the said MoU was to lease out the CD’s pharmaceutical plant situated at Village Panwa, Khargone district, Madhya Pradesh to Virat on a minimum monthly rental of Rs. 6,00,000/- per month plus taxes. Furthermore, the DC notes that Mr. Kairav Anil Trivedi in his reply to IA as well as in the minutes of the 1<sup>st</sup> CoC Meeting had mentioned that the operation of both the manufacturing plants of the CD had been closed one year prior to initiation of CIRP.

2.1.14. The relevant extract of the 1<sup>st</sup> CoC meeting of CD wherein Mr. Kairav Anil Trivedi had apprised the CoC about the non-operational of the manufacturing plants of the CD is extracted below: -

*“Considering that the plant operation has stopped for over a year, even to restart would be an effort and would consume time and involve huge cost. Further the entire wiring in the plant for the equipment's has been cut purposefully in such a manner that the operations cannot be started. The electrical motors were missing from all the places, also the copper stolen from all the machines. The Electrical equipment of operational unit have also been stolen thereby ensuring that the plant cannot restart immediately. Since the plant was completely closed the damage is being further assessed and will be updated in the FIR to the police as and when discovered after entering and opening the parts required to restart the operations.”*

2.1.15. The DC also notes that the CD was engaged in the business of chemicals and chemical products manufacturing before the CD's operations were closed down, whereas the given MoU is regarding the leasing out of the CD's plant, which in no stretch of imagination can come under the purview of the efforts of keeping the CD as going concern or restarting the CD's business. Therefore, leasing out the closed manufacturing plant of the CD after the commencement of CIRP, is an important decision and not a decision in the ordinary course of business of the CD. Hence, the submission of Mr. Kairav Anil Trivedi that the given act of entering into MoU was under the ordinary course of business of the CD, cannot be accepted by the DC and therefore his action of entering into MOU without the approval of the committee was not in accordance with section 28(1)(k) of the Code.

2.1.16. Further Section 5(27) of the Code, 2016 defines Resolution Professional as follows: -

5 (27) "resolution professional", for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process or the prepackaged insolvency resolution process, as the case may be and includes an interim resolution professional.

2.1.17. On perusal of Section 5(27) of the Code, 2016, it is evident that the reference to the Resolution Professional in Part II of the Code, 2016, also applies to the Interim Resolution Professional. The Interim Resolution Professional is equally obligated to seek prior approval of the CoC for certain actions or is entrusted with such duties as entrusted to the Resolution Professional. Consequently, the DC cannot accept the submission of Mr. Kairav Anil Trivedi that Section 28 of the Code, 2016, which requires the approval of the CoC for specific contracts by the RP, does not apply to him, as he was acting as an IRP of the CD.

2.1.18. The DC also notes Mr. Kairav Anil Trivedi's submission that the MoU dated 13.02.2023 for contract manufacturing executed between the CD and Virat was executed by Mr. Kairav Anil Trivedi on behalf of the CD and Mr. M.L. Gupta, director of the suspended board of the CD, was claimed to have been signed as a witness. The DC had carefully perused the MoU of contract manufacturing dated 13.02.2023 and observed that Mr. M.L. Gupta, director of the suspended board of the CD had simultaneously signed for the CD only, in the MoU and not as witness. In fact, no witness signature appears on the said MoU. Therefore, the submission of Mr. Kairav

Anil Trivedi that the MoU was signed by Mr. M.L. Gupta, director of the suspended board of the CD as witness cannot be accepted.

2.1.19. The DC notes the submission of Mr. Kairav Anil Trivedi that the said MoU executed between the CD and Virat had been further extended by the CoC. The DC had further perused the extension of lease agreement/MoU dated 24.02.2024 and 14.09.2024 and observed that Virat had submitted the additional undertakings to the CoC as per the specific requirements of the CoC and also the monthly lease rental has been increased from Rs. 6 lacs to Rs. 7.5 lacs per month, which constitutes a major change in the terms of the MoU and therefore, the contention of Mr. Kairav Anil Trivedi that the same MoU has been continued by the CoC is not factually correct.

2.1.20. The DC takes note of Mr. Kairav Trivedi submission to the IA that the operations of the CD were stopped since the past one year from the Insolvency Commencement Date and the contract manufacturer was decided by him after discussion with the promoters, legal advisors of the CD as well as with the manufacturer. The DC notes that Mr. Kairav Anil Trivedi had received the intimation of his appointment as IRP of the CD on 10.02.2023, public announcement was made on 11.02.2023, first visit to factory was made on 13.02.2023 and the said MoU was entered on 13.02.2023 on the day of the first visit itself. Considering, the short timeline, the DC finds it strange that Mr. Kairav Anil Trivedi managed, in such a short span of time, to understand the CD's business, contact the contractor, consult with advisors and investors, and make the decision to execute the MoU for contract manufacturing. This sequence of events shows undue haste as well as lack of transparency in selecting the contractor without proper due diligence and without considering any alternatives.

2.1.21. The DC also notes Mr. Kairav Anil Trivedi's submission that denying entry to the CoC Members for the inspection was a *bonafide* mistake. Mr. Kairav Anil Trivedi explained that the CoC members had sought inspection under their purported status as bankers which is not admissible as per the Code., He has argued that had the communication been termed as and by the CoC members, there was no occasion for denying entry. However, the DC finds Mr. Kairav Anil Trivedi's defence baseless and unconvincing. The DC finds that Mr. Kairav Anil Trivedi has not been able to bring out why he



considered the request from lenders and not by CoC members when they are one and the same. As such, the DC does not find submission of Mr. Kairav Anil Trivedi in denying inspection to the CoC Members acceptable.

2.1.22. The DC is of the view that if Mr. Kairav Anil Trivedi entered into the MoU with Virat in the interest of preserving and protecting the CD's assets, this should have been discussed in the CoC meeting and not to be done in a hasty manner. Mr. Kairav Anil Trivedi had failed to substantiate his defence that the MoU was done in the ordinary course of business of the CD. The DC is of the view that the given act of leasing the plant to Virat is the transfer of the right of use and possession of one of the CD's pharmaceutical plant constitutes a material contract, other than in the ordinary course of business of the CD in view of the closure of the CD's plant for over a year from the CIRP commencement date and accordingly, CoC 's approval was a pre-requisite for entering into the said contract.

2.1.23. In light of the above, the DC finds that Mr. Kairav Anil Trivedi has not only failed to take approval of CoC before entering into the said MoU but had also adopted hostile approach by denying entry to the CoC members holding 100% voting rights for joint inspection of the pharmaceutical plant of the CD. Accordingly, Mr. Kairav Anil Trivedi has contravened sections 28(1)(k), 208(2)(a) and 208(2)(e) of the Code, Regulations 7(2)(a), and 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clause 1,3,5 and 14 of the First Schedule to IP Regulation Code of Conduct for Insolvency Professionals (Code of Conduct).

## **2.2 Failure to file insurance claim with regard to stolen property.**

### **Alleged contravention**

2.2.1. It was observed that in less than a month before initiation of CIRP, Police authorities were reported about theft having taken place in the Panwa plant of CD by the suspended Directors and officials of the CD vide letter dated 13.01.2023, 27.01.2023 and 07.02.2023. The Contract Manufacturing MOU at para 14 clearly mentions about theft having taken place at Panwa Plant premises and filing of FIR with Police Authorities. Further, Mr. Kairav Anil Trivedi was also informed by State Bank of India, one of the members of the CoC, vide email dated 15.03.2023 about the theft and it ascertained the

status of insurance claim. It was, thus, evident that Mr. Kairav Anil Trivedi was fully aware about the theft having taken place in the plant premises prior to CIRP for which insurance claim was to be filed. It was, however, observed from Mr. Kairav Anil Trivedi's reply to the IA at para 11 (j) that he had failed to file an insurance claim for the loss caused to the plant due to theft.

2.2.2. Section 20(1) of the Code mandates an Interim Resolution Professional to inter alia make every endeavour to protect and preserve the value of the property of the CD. In the present case, by not filing an insurance claim with the insurance agency for reported theft, Mr. Kairav Anil Trivedi failed in his duty to protect and preserve the value of the CD.

2.2.3. In view of the above, the Board was of the *prima facie* view that Mr. Kairav Anil Trivedi has inter alia violated Section 20(1), Section 208(2)(a) and Section 208(2)(e) of the Code, Regulation 7(2)(h) of the IP Regulations read with Clause 14 of the Code of Conduct.

**Submissions by Mr. Kairav Anil Trivedi.**

2.2.4. Mr. Kairav Anil Trivedi submitted that there is misrepresentation on the part of SBI officials, as the occurrence of theft was prior to the admission date of CIRP, and relevant FIR was already filed. Mr. Kairav Anil Trivedi further submitted that as per the provisions of Chapter XII of the CrPC, the relevant prosecution was by and on behalf of jurisdictional police and Mr. Kairav Anil Trivedi was required to attend Police Authorities under Section 91 of the CrPC.

2.2.5. Mr. Kairav Anil Trivedi further submitted that as regards filing of insurance claim, the policy documents were with the SBI and it was the bank who paid for the insurance premium, and never shared the policy documents and on orally raising the issue with the bank, Mr. Kairav Anil Trivedi was repeatedly assured that SBI would be filing the insurance claim and that they would be liaising with the insurance surveyor since they have a structured process and been routinely doing so. Therefore, the allegation of non-endeavour to protect and preserve the value of the property does not survive, since the subject matter of asset did not exist on the date of commencement of CIRP whose value is sought to be protected and with regard to pursuit of insurance claim.

## **Analysis and Findings of the DC.**

2.2.6. Section 20(1) of the Code reads as under:

### **“20. Management of operations of corporate debtor as going concern. –**

- (1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.”

2.2.7. The DC also notes Mr. Kairav Anil Trivedi's submission that the allegation of non-endeavour to protect and preserve the value of the property does not survive, since the subject matter of asset did not exist on the date of commencement of CIRP. However, the DC notes that that property of the CD might have been stolen and so physical property may not have existed at that time. However, the insurance claim with regard to the property also constitutes an actionable claim which is also a property which Mr. Kairav Anil Trivedi was duty bound to pursue by taking appropriate steps to lodge the insurance claim.

2.2.8. The DC notes Mr. Kairav Anil Trivedi's submission that that SBI would be filing the insurance claim and liaising with the insurance surveyor, as they have a structured process and routinely handle such matters. Mr. Kairav Anil Trivedi stated that he was following up with SBI regarding the insurance claim.

2.2.9. The DC had vide e-mail dated 18.09.2024 had sought copy of mortgage deeds of CD with the bank with the relevant clause with regard to the insurance claim and the copy of any communication with SBI as to the filing of insurance claim made with SBI along with its reply, if any or any other document which can substantiate his claim that SBI would be responsible for filing the insurance claim and liaising with the insurance surveyor. However, the DC vide e-mail dated 19.09.2024 had been provided with the copy of police complaints and First Information Report, which failed to substantiate the submissions of Mr. Kairav Anil Trivedi.

2.2.10. The DC notes that Mr. Kairav Anil Trivedi has failed to provide any documentary evidence of his efforts to communicate with SBI for the filing of the insurance claim. It is important to note that an Insolvency Professional is expected to be diligent and

maintain proper records of correspondence with various stakeholders during the Corporate Insolvency Resolution Process. Mere assertions of Mr. Kairav Anil Trivedi that he had orally raised the issue with the SBI for the insurance claim cannot be relied upon by the DC in absence of any evidence.

2.2.11. To examine whether an insurance policy provides for filing the claim by the bank, the DC reviewed the burglary insurance policy which the CD had entered with SBI General Insurance issued on 04.05.2023, which names the CD as the insured. This policy stipulates that in the event of loss or damage, the insured must immediately notify both the police and the company in writing, providing details of the circumstances. The insured is also required to provide all necessary documentation, such as books, invoices, and vouchers, at their own expense. The DC notes that the given burglary insurance policy entered by the CD with SBI General Insurance, clearly provides that the onus to submit claim notification and proof of loss lies with the insured, i.e., the Corporate Debtor.

2.2.12. The DC notes that FIR was filed by the CD before the initiation of the CIRP proceedings. If insurance claim had not been lodged by the CD before the CIRP commencement, Mr. Kairav Anil Trivedi should have lodged the insurance claim as he was representing the CD after commencement of the CIRP, and fact of theft having taken place was discussed in the 1<sup>st</sup> CoC Meeting. Mr. Kairav Anil Trivedi has only referred to his conversations with SBI wherein he had been promised by SBI that SBI will be filing the claim. However, Mr. Kairav Anil Trivedi has not been able to bring any evidence on record regarding the same. In absence of any evidence, the DC cannot accept that he had followed up with the SBI for filling the claim. Therefore, the DC holds that Mr. Kairav Anil Trivedi failed to exercise due diligence in filing the insurance claim causing loss to the CD.

2.2.13. In light of the above, the DC finds that Mr. Kairav Anil Trivedi has contravened Section 20(1), Section 208(2)(a) and Section 208(2)(e) of the Code, Regulation 7(2)(h) of the IP Regulations read with Clause 14 of the Code of Conduct.

### **2.3. Unreasonable delay in conducting the 1<sup>st</sup> CoC meeting.**

#### **Alleged contravention**

- 2.3.1. It was observed that the 1<sup>st</sup> CoC meeting was scheduled for 10.03.2023, however the same was postponed to 13.03.2023. Since the CoC had queries with regards to the MoU entered with M/s. Virat Tradecorps, Mr. Kairav Anil Trivedi asked for a few days time to provide clarifications and therefore the 1<sup>st</sup> CoC meeting was adjourned to a later date. However, it was observed that even after repeated reminders from the Financial Creditors having 100% voting share, Mr. Kairav Anil Trivedi delayed conduct of the 1<sup>st</sup> CoC meeting which was ultimately held on 18.04.2023, after more than 30 days.
- 2.3.2. Clause 15 of the Code of Conduct provides that an IP must make efforts to ensure that all communication to the stakeholders, whether in the form of notices, reports, updates, directions or clarifications, is made well in advance and in a manner which is simple, clear, and easily understood by the recipients.
- 2.3.3. In view of the above, the Board was of the prima facie view that Mr. Kairav Anil Trivedi have inter alia violated Regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clause 13 and 15 of the Code of Conduct.

#### **Submissions by Mr. Kairav Anil Trivedi.**

- 2.3.4. Mr. Kairav Anil Trivedi submitted that the notice of 1st CoC meeting was issued on 03.03.2023 i.e., within 30 days of receiving the copy of order of the AA on 10.02.2023.
- 2.3.5. Mr. Kairav Anil Trivedi further submitted that the 1st CoC meeting was supposed to be held on 10.03.2023, however as per the request of CoC, it was deferred to 13.03.2023 and therefore, there was no delay in conducting the CoC meeting. Mr. Kairav Anil Trivedi also submitted that it was erroneously observed by the IA that the 1st CoC meeting was held on 18.04.2023 and relevant evidence can be led as and when called upon.

#### **Analysis and Findings of the DC.**

- 2.3.6. The DC notes that the 1st CoC meeting of the CD was scheduled for 10.03.2023, which was deferred to 13.03.2023 and further adjourned to 18.04.2023. The DC notes that a

series of emails were sent by SBI and PNB, members of the CoC which show that multiple requests were made to Mr. Kairav Anil Trivedi, to conduct the adjourned CoC meeting and to address the concerns of the CoC members. On 17.03.2023, SBI requested that points raised by them and by the PNB be addressed and minuted during the ongoing CoC meeting., . Moreover, a reminder was sent on 20.03.2023 to Mr. Kairav Anil Trivedi, and further escalated on 28.03.2023, expressing concern over the delay in concluding the 1st CoC meeting. On 31.03.2023, SBI highlighted that if no action was taken by 03.04.2023, they would escalate the matter to the IBBI/NCLT. Another request followed on 12.04.2023, from SBI, urging for an urgent meeting to be convened under Regulation 18(2) of the CIRP Regulations.

2.3.7. The DC further notes that Mr. Kairav Anil Trivedi failed to reply to any of the emails sent by members of the CoC even after assuring the CoC to conclude the 1st CoC Meeting at the earliest, which is inconsistent with the responsibilities entrusted to him as an IRP. Specifically, Clause 15 of the Code of Conduct emphasizes that an IP must ensure all communication to stakeholders, whether in the form of notices, reports, updates, directions, or clarifications, is made well in advance and presented in a manner that is simple, clear, and easily understood. The lack of response from Mr. Kairav Anil Trivedi constitutes a gross violation of the duties entrusted to him under the Code, 2016 and the Regulations made thereunder.

2.3.8. In light of the above, the DC finds that Mr. Kairav Anil Trivedi had failed to conduct and complete the 1st CoC Meeting within a reasonable time. Accordingly, Mr. Kairav Anil Trivedi has contravened Regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clause 13 and 15 of the Code of Conduct.

#### **2.4. Non-inclusion of the agenda for replacement of IRP in the CoC meeting dated 18.04.2023.**

##### **Alleged contravention**

2.4.1. It is noted that Mr. Kairav Anil Trivedi brought an agenda for his confirmation as RP in the CoC meeting held on 18.04.2023 which was voted against by the CoC. It is observed from the email dated 19.04.2023 and 20.04.2023 from PNB and SBI respectively, that they requested Mr. Kairav Anil Trivedi to put up an agenda in the 1<sup>st</sup> CoC meeting itself for his replacement with another IP, Mr Praveen Kumar Dwary.

Despite request by the CoC members having 100% voting rights, for the replacement of Mr. Kairav Anil Trivedi, Mr. Kairav Anil Trivedi failed to add an agenda for his replacement for discussion and voting.

2.4.2. Reg. 18(3) of the CIRP Regulations provides that a resolution professional may place a proposal received from members of the Committee in a meeting, if he considers it necessary and shall place the proposal if the same is made by members of the committee representing at least thirty-three per cent of the voting rights.

2.4.3. In view of the above, the Board is of the prima facie view that by not including an agenda for Mr. Kairav Anil Trivedi replacement despite request for the same made by CoC members having 100% voting share, Mr. Kairav Anil Trivedi have inter alia violated Section 208(2)(a) and 208(2)(e) of the Code, Regulation 18(3) of the CIRP Regulations, Regulation 7(2)(h) of the IP Regulations read with Clause 1 and 14 of the Code of Conduct.

**Submissions by Mr. Kairav Anil Trivedi.**

2.4.4. Mr. Kairav Anil Trivedi submitted that it is a matter of record that the confirmation of Mr. Kairav Anil Trivedi as RP was in the agenda of the 1st CoC Meeting but not voted by the CoC in favour. Further, the agenda for replacement of Mr. Kairav Anil Trivedi was proposed subsequent to the CoC meeting dated 18.04.2023, wherein the name of the proposed Insolvency Professional with requisite documents as mandated under the Code, 2016 was not provided before the commencement of CoC meeting. Further, Mr. Kairav Anil Trivedi submitted that it is mandatory for the CoC to include the matter of replacing Mr. Kairav Anil Trivedi on the meeting agenda.

2.4.5. Mr. Kairav Anil Trivedi further submitted that the 1st CoC Meeting was concluded on 18.04.2023 and the issue of replacement was communicated post conclusion of the CoC meeting dated 18.04.2023, resultantly, the same couldn't have been included as an agenda in the 1st CoC meeting.

### **Analysis and Findings of the DC.**

2.4.6. Regulation 18(3) of the CIRP Regulations, 2016 is reproduced below:-

*“18(3) A resolution professional may place a proposal received from members of the committee in a meeting, if he considers it necessary and shall place the proposal if the same is made by members of the committee representing at least thirty three per cent of the voting rights.”*

2.4.7. The DC notes the submission of Mr. Kairav Anil Trivedi that the agenda to appoint another person as RP came after the CoC meeting and that the required documents for appointing a new IRP were not submitted before the commencement of the CoC meeting on 18.04.2023. The DC further notes that PNB, one of the CoC member, had sent a letter dated 19.04.2023, wherein it was alleged that resolution for appointment of the new RP was to be finalized in the 1<sup>st</sup> CoC meeting.

2.4.8. The DC notes that PNB had proposed the appointment of Mr. Praveen Kumar Dwary as the new RP, a motion that was supported by State Bank of India (SBI), another CoC member. Despite this, Mr. Kairav Anil Trivedi refused to record this proposal in the 1<sup>st</sup> CoC meeting minutes and informed that the proposal be emailed after the 1<sup>st</sup> CoC meeting. The DC further notes that on perusal of the letter dated 19.04.2023 of PNB, it is evident that there was discussion in the 1<sup>st</sup> CoC meeting with respect to replacement of Mr. Kairav Anil Trivedi which was not minutised. The DC further notes that the contentions raised in letter dated 19.04.2023 of PNB have not been controverted by Mr. Kairav Anil Trivedi.

2.4.9. The DC further notes that as per the records available, Mr. Kairav Anil Trivedi's, logical course of action being the IRP of the CD should be to conduct CoC immediately or as soon as possible, so as to place the agenda for replacement of IRP and appointment of RP. However, Mr. Kairav Anil Trivedi conveniently chose to remain silent on this issue, as evidenced by IA.1874/2023 filed by SBI before the Hon'ble AA, seeking a direction against Mr. Kairav Anil Trivedi to convene the CoC meeting with a specific agenda for the replacement of the IRP.

2.4.10. The DC further notes that the Hon'ble AA, by order dated 12.05.2023, directed Mr. Kairav Anil Trivedi to conduct the CoC meeting immediately, within one week from the date of communication of the order, with the specific agenda of replacing the IRP.



However, DC notes that the meeting of the CoC for replacement of the IRP was not conducted by Mr. Kairav Anil Trivedi within the timelines as given by AA vide order dated 12.05.2023, consequent to which the AA vide order dated 27.09.2023 had directed the CoC to hold the meeting within one week to the replacement of the Resolution Professional. Accordingly, in compliance of AA order dated 27.09.2023, the CoC meeting was finally held on 06.10.2023, and the appointment of Mr. Prawincharan Prafulcharan Dwary as the new RP of the CD was confirmed by the AA in order dated 17.10.2023. The DC notes that for a crucial period of five months, the CIRP of the CD was stalled due to the non-cooperative behaviour and hostile approach towards the creditors and non-compliance with the directions of the AA. This further reflects Mr. Kairav Anil Trivedi's intention of not including the agenda for the replacement of the IRP in the CoC meeting.

2.4.11. In view of the above facts as brought out in letter dated 19.04.2023 of PNB and subsequent events as illustrated above, the DC holds the contravention of not including an agenda of replacement of IRP despite request for the same made by CoC members having 100% voting share in terms of Section 208(2)(a) and 208(2)(e) of the Code, Regulation 18(3) of the CIRP Regulations, Regulation 7(2)(h) of the IP Regulations read with Clause 1 and 14 of the Code of Conduct.

**2.5. Failure to circulate the minutes of the CoC meeting dated 18.04.2023 within the prescribed timeline.**

**Alleged contravention**

- 2.5.1. Reg. 25(5)(a) of the CIRP Regulations provides that IP shall circulate the minutes of the meeting by electronic means to all members of the committee and the authorised representative, if any, within forty-eight hours of the conclusion of the meeting.
- 2.5.2. It is noted that the 1<sup>st</sup> CoC meeting was conducted on 18.04.2023, however the minutes of the meeting were circulated on 08.05.2023 i.e., after 20 days.
- 2.5.3. In view of the above, the Board is of the prima facie view that Mr. Kairav Anil Trivedi has inter alia violated Section 208(2)(a) and 208(2)(e) of the Code, Regulation 25(5)(a)

of the CIRP Regulations, Regulation 7(2)(h) of the IP Regulations read with Clause 13 and 14 of the Code of Conduct.

**Submissions by Mr. Kairav Anil Trivedi.**

- 2.5.4. Mr. Kairav Anil Trivedi submitted that since there being in seriatim exchange of communication between him and the bank officials after conclusion of meeting on 18<sup>th</sup> April, 2023, Mr. Kairav Anil Trivedi was under the impression that he need to circulate a comprehensive minutes of the meeting including clarification arising out of the exchange of mails, thus the same was circulated on 8<sup>th</sup> May, 2023.

**Analysis and Findings of the DC.**

- 2.5.5. Regulation 25(5)(a) of the CIRP Regulations provides as follows:

*“25. Voting by the committee.*

*(4) .....*

*(5) The resolution professional shall-*

*(a) circulate the minutes of the meeting by electronic means to all members of the committee and the authorised representative, if any, within forty-eight hours of the conclusion of the meeting; and*

*(b) ..... ”*

- 2.5.6. The DC notes that there was a delay of twenty days in the circulation of the minutes of the 1<sup>st</sup> CoC meeting, which concluded on 18.04.2023. This delay has been acknowledged by Mr. Kairav Anil Trivedi in his reply.
- 2.5.7. The DC *vide* e-mail dated 18.09.2024 had sought copy of email communication with the financial creditors which led to delay in circulation of minutes of 1<sup>st</sup> CoC meeting which can substantiate his submission. However, the DC had not been provided with the given documents, which can substantiate the submission of Mr. Kairav Anil Trivedi. Further, he has also not been able to substantiate that communications with the CoC members were regarding the inclusion of clarifications in the minutes of meetings, compliance of which delayed the circulation of minutes.
- 2.5.8. In light of the above, the DC finds that Mr. Kairav Anil Trivedi had failed to circulate the minutes of the 1<sup>st</sup> CoC meeting within the prescribed timeline. Accordingly, Mr. Kairav Anil Trivedi has contravened Sections 208(2)(a) and 208(2)(e) of the Code,

Regulation 25(5)(a) of the CIRP Regulations, Regulation 7(2)(h) of the IP Regulations read with Clause 13 and 14 of the Code of Conduct.

## **2.6. Failure to Appear before the Adjudicating Authority.**

### **Alleged contravention**

2.6.1. It was noticed from AA's order dated 11.05.2023 that Mr. Kairav Anil Trivedi failed to appear or be represented before AA in the hearing held in IA No. 1874/2023 in C.P. (IB) 690/2020 despite two calls given by the AA. During the second call, as directed by the AA, Mr. Kairav Anil Trivedi was informed by the applicant to join the hearing through video conferencing, but Mr. Kairav Anil Trivedi refused to join. Another opportunity was given by the AA to Mr. Kairav Anil Trivedi to appear before it on 12.05.2023. SBI vide email dated 11.05.2023 informed Mr. Kairav Anil Trivedi of the direction of the AA requiring him to appear before it on 12.05.2023. However, it is observed from order dated 12.05.2023 that Mr. Kairav Anil Trivedi again failed to appear before the AA which disapproved of his conduct.

2.6.2. In view of the above, the Board is of the prima facie view that Mr. Kairav Anil Trivedi has inter alia violated Section 17(2)(e), Section 208(2)(a) and 208(2)(e) of the Code, Regulation 7(2)(h) of the IP Regulations read with Clause 14 of the Code of Conduct.

### **Submissions by Mr. Kairav Anil Trivedi.**

2.6.3. Mr. Kairav Anil Trivedi submitted that as a professional he is supposed to rely on the statute, that summoning of attendance by the AA is governed under Form NCLT-5 read with NCLT Rule 135 which concerns the issue of commissions for enforcing attendance of any person. therein the provisions of the Orders XVI and XXVI of the Code of Civil Procedure, 1908 (5 of 1908), shall mutatis mutandis apply in the matter of summoning and enforcing attendance of any person.

2.6.4. Mr. Kairav Anil Trivedi further submitted that he has not received summons in terms of the NCLT Rule 135, therefore, he sincerely thought he will be unwittingly setting up a bad precedent due to the noncompliance to the statute. Mr. Kairav Anil Trivedi also submitted that the NCLAT had granted indulgence to file an IA concerning the same and the IA concerning the same remains judicially adjudicated till date.

## **Analysis and Findings of the DC.**

2.6.5. Section 17(2)(e) of the Code, 2016 reads as follows: -

*“17. Management of affairs of corporate debtor by interim resolution professional. –*

*(1) From the date of appointment of the interim resolution professional, -*

*(a) .....*

*(b) .....*

*(c) .....*

*(d) .....*

*(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.”*

2.6.6. The AA order dated 12.05.2023 highlights the failure of Mr. Kairav Anil Trivedi, to appear before the AA despite being informed of the direction issued by AA on 11.05.2023. Further, the AA had expressed its displeasure with Mr. Kairav Anil Trivedi's conduct as the IRP of the CD and noted Mr. Kairav Anil Trivedi's repeated disobedience of AA's directions.

2.6.7. The DC further finds it pertinent to note that despite numerous requests from the CoC members to convene a CoC meeting for the replacement of the IRP, Mr. Kairav Anil Trivedi's failure to act in calling the meeting compelled SBI, one of the CoC members, to file IA.1874/2023 on 02.05.2023. As a result, the AA issued a direction to Mr. Kairav Anil Trivedi for his presence, which was duly communicated to him through SBI's counsel. However, DC notes that the meeting of the CoC for replacement of the IRP was not conducted by Mr. Kairav Anil Trivedi within the timelines as given by AA vide order dated 12.05.2023, consequent to which the AA vide order dated 27.09.2023 had directed the CoC to hold the meeting within one week to the replacement of the Resolution Professional. The CoC meeting was finally held on 06.10.2023, and the appointment of Mr. Prawincharan Prafulcharan Dwary as the new RP of the CD was confirmed by the AA in order dated 17.10.2023. The DC notes that for a crucial period of five months, the CIRP of the CD was stalled due to Mr. Kairav Anil Trivedi's non-cooperative behaviour and hostile approach towards the creditors and non-compliance with the directions of the AA. The RP, being the driver of the process under the IBC, is expected to propel the CIRP forward, however, Mr. Kairav Anil Trivedi's actions were

effectively stalling the process during this critical period by non-compliance of the directions of the AA.

2.6.8. The DC notes that it is the duty of the IRP/RP or the Liquidator to assist the AA in the effective resolution of the CD. The Code places significant responsibilities on the IRP/RP, including ensuring transparency in the insolvency process, assisting the AA and complying with the directions of the AA. However, the observation of AA in its order dated 12.05.2023 clearly reflect the negative attitude of Mr. Kairav Anil Trivedi towards the CIRP proceedings of the CD. Mr. Kairav Anil Trivedi's failure to appear before the AA, despite clear directions, and repeated non-compliance with the AA orders, indicate a disregard for the responsibilities and duties assigned to Mr. Kairav Anil Trivedi as the IRP of the CD under the Code. Such conduct undermines the integrity of the insolvency process and hinders the effective resolution of the CD.

2.6.9. The DC also notes that the appeal (Company Appeal (AT) (Insolvency) No. 747 of 2023) filed before the NCLAT challenging the AA order dated 12.05.2023 had been disposed of by the NCLAT vide order dated 01.06.2023 with the observation that, "under Rule 49 of NCLT Rules, 2016, the Appellant is entitled to file an application to recall the said order. As the court has already fixed 22.06.2023, Appellant may file an Application before the Adjudicating Authority within one week from today which may also be taken into consideration on 22.06.2023 which is next date fixed in the matter." Mr. Kairav Anil Trivedi has not brought out whether he has filed any recall application before the AA. Further, the DC has examined the various grounds taken by Mr. Kairav Anil Trivedi and all other surrounding facts and circumstances of the case and finds that defence taken by Mr. Kairav Anil Trivedi of not being issued summons by the AA is hyper technical and reflects poorly on an Insolvency Professional who is required to assist the AA actively. It also shows his intention of stalling the CIRP of the CD instead of concluding it within the time period as envisaged in the Code.

2.6.10. In light of the above, the DC finds that Mr. Kairav Anil Trivedi has contravened Section 17(2)(e), Section 208(2)(a) and 208(2)(e) of the Code, Regulation 7(2)(h) of the IP Regulations read with Clause 14 of the Code of Conduct.

### **3. Order**

3.1. In view of the foregoing, the DC in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the Inspection and Investigation Regulations and Regulation 11 of the IP Regulations hereby suspends the registration of Mr. Kairav Anil Trivedi (Registration No. IBBI/IPA-002/IP-N00728/2018-2019/12332) for a period of two years which shall run consecutive to period of suspension of registration of Mr. Kairav Anil Trivedi by any other DC order whenever the same takes effect.

3.2. This Order shall come into force after expiry of 30 days from the date of its issuance.

3.3. A copy of this order shall be forwarded to the Insolvency Professional Agency of Institute of Company Secretaries of India where Mr. Kairav Anil Trivedi is enrolled as a member.

3.4. A copy of this order shall be sent to the CoC/ Stakeholders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Kairav Anil Trivedi is providing his services, if any, and the respective CoC/SCC, as the case may be, shall seek replacement of Mr. Kairav Anil Trivedi unless the CoC/ SCC records reasons that continuation of Mr. Kairav Anil Trivedi at the current stage of the proceedings is essential even when several contraventions have been held against him by the DC. Mr. Kairav Anil Trivedi will conduct meeting of respective CoC/SCC for this purpose within one week after expiry of 30 days from the date of issuance of the order and take further action, if any as per the decision of CoC/ SCC, within next one week.

3.5. 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.

3.6. Accordingly, the show cause notice is disposed of.

Dated: 17.12.2024  
Place: New Delhi

-sd/-  
(Sandip Garg)  
Whole Time Member  
Insolvency and Bankruptcy Board of India