

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
(Disciplinary Committee)

No. IBBI/DC/238/2024

06 August 2024

**ORDER**

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/257/2022-IBBI/817/1455 dated 27.10.2023 issued to Mr. Srigopal Choudhary, an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with registration no. IBBI/IPA-001/IP-P01238/2018-2019/11893 who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI (IIIP-ICAI) and having residential address at R/o Flat 7J, Tower 3, South City Residency, 375 Prince Anwar Shah Road, Jodhpur Park, Kolkata, West Bengal-700068.

**1. Background**

- 1.1. The NCLT, Mumbai (AA) *vide* order dated 06.11.2019 admitted the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code), filed by SREI Equipment Finance Limited (Financial Creditor/FC) for initiating Corporate Insolvency Resolution Process (CIRP) against M/s Shree Ram Urban Infrastructure Limited (Corporate Debtor/CD) and Mr. Srigopal Choudhary was appointed as Interim Resolution Professional (IRP). Mr. Srigopal Choudhary was later confirmed as Resolution Professional (RP) by the AA on 06.01.2022. Mr. Srigopal Choudhary was removed as RP by the AA *vide* order dated 28.11.2022 and Mr. Sapan Mohan Garg was appointed as RP. The appointment of Mr. Sapan Mohan Garg as RP was challenged by some financial creditors (FCs) of the CD before the National Company Appellate Law Tribunal (NCLAT) which set aside his appointment *vide* order dated 21.12.2022. Later on, the AA *vide* order dated 22.12.2022 appointed Mr. Pankaj Ramandas Majithia as RP.
- 1.2. The admission order of the AA dated 06.11.2019 was challenged before the NCLAT wherein the NCLAT *vide* order dated 07.02.2020 held the application under Section 7 of Code as “*not-maintainable*”. Subsequently, another application was filed before the NCLAT seeking rectification/clarification of the order dated 07.02.2020 and *vide* its order dated 21.09.2020 the NCLAT held the application as “*maintainable*”. The orders of the NCLAT were challenged before the Hon’ble Supreme Court through Civil Appeal nos. 3422-3424/2020 and 4230-4234/2020. The Hon’ble Supreme Court *vide* its order dated 27.10.2020 in Civil Appeal 3422-3424/2020 ordered that “*there shall be status quo qua the property that is mentioned in prayer (b) at page 251 as also a stay of further proceedings before the National Company Law Tribunal.*” In Civil Appeal 4230-4234/2020 further proceedings before the AA were stayed by the Hon’ble Supreme court on 18.12.2020 and tagged Civil Appeal 3422-3424/2020. Further the Hon’ble Supreme Court dismissed Civil Appeal 3422-3424/2020 as withdrawn on 09.02.2021 and the Civil Appeal 4230-4234/2020 was also dismissed on 01.03.2021 and the interim order was vacated.

- 1.3. The Insolvency and Bankruptcy Board of India (IBBI/ Board) in exercise of its powers conferred under Section 218 of the Code read with Regulation 7(1) and 7(2) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Investigation Regulations), appointed an Investigating Authority (IA) to conduct investigation against Mr. Srigopal Choudhary in the matter of the CD. Accordingly, a notice under Regulation 8(1) of the Investigation Regulations was issued to Mr. Srigopal Choudhary on 19.12.2022 with a request to clarify the observations of the AA in order dated 28.11.2022 and the NCLAT in order dated 10.01.2023. Pursuant to the said notice, Mr. Srigopal Choudhary replied *vide* mail dated 19.01.2023.
- 1.4. On perusal of the investigation report submitted by IA, the IBBI formed a *prima facie* view that Mr. Srigopal Choudhary had contravened provisions of the Code and Regulations made thereunder and issued the SCN to Mr. Srigopal Choudhary on 27.10.2023 in respect of his role as an IRP in the CIRP of CD. He replied to the SCN on 10.11.2023.
- 1.5. The IBBI referred the SCN and reply of Mr. Srigopal Choudhary to the SCN, to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Srigopal Choudhary availed opportunity of personal hearing before the DC on 23.02.2024 through virtual mode, where he appeared along with his Advocate Mr. Kushal Bansal. Thereafter, he provided his additional submissions on 01.03.2024.
- 1.6. The DC has considered the SCN, the reply to SCN, and submissions of Mr. Srigopal Choudhary, and proceeds to dispose of the SCN.

## **2. Alleged Contraventions, Submissions, Analysis and Findings**

The contravention alleged in the SCN and written, and oral submissions thereof by Mr. Srigopal Choudhary are summarized as follows.

### **3. Contravention-I**

#### **Inordinate delay in conduct of the CoC meeting.**

- 3.1. It was observed that there was no stay on constitution of Committee of Creditors (CoC) or conduct of the process of CIRP for the period from 06.11.2019 to 07.02.2020 (93 days) and further from 21.09.2020 to 27.10.2020 (36 days).
- 3.2. It was, however, noted that Mr. Srigopal Choudhary conducted the 1<sup>st</sup> meeting of the CoC on 19.04.2021. Even after dismissal of appeal and vacation of the stay ordered by the Hon'ble Supreme Court *vide* order dated 01.03.2021, Mr. Srigopal Choudhary took 49 days to conduct the 1<sup>st</sup> meeting of the CoC on 19.04.2021. Hence, Mr. Srigopal Choudhary failed to conduct the meeting of the CoC even though there was no bar on the same for 178 days.
- 3.3. It was also noted that prior to initiation of CIRP, Official Liquidator was appointed by the Hon'ble High Court, Bombay and the said Official Liquidator had control and custody of the

assets and records of the CD. It was, however, observed on perusal of the Hon'ble High Court of Bombay order dated 28.11.2019 that Mr. Srigopal Choudhary as IRP was required to deposit amount incurred by Official Liquidator on behalf of company in liquidation and it was only after depositing such money, record of the company in liquidation would have been handed over to him by the Official Liquidator. However, there was no restriction for constitution of the CoC and its meeting as can be observed from the fact that the Hon'ble High Court Bombay in the said order *inter alia* held that:

*"The other directions issued by the NCLT are not affected by this order subject to any stay if obtained by any of the corporate debtors or any party against the said order dated 6<sup>th</sup> November, 2019 passed by the NCLT in the said company petition. ---"*

- 3.4. That there was no bar on constitution of the CoC, was further clarified by the Hon'ble High Court Bombay in its order dated 23.01.2020 stating that:

*"It is made clear that this Court has not prevented the I.R.P to constitute a Committee of the Creditors. As and when the funds are arranged by the I.R.P. to pay the amount as directed by an order passed by this Court on 28<sup>th</sup> November 2019, the same shall be paid for the purpose of return of the records of the respondent company in liquidation."*

- 3.5. It was further noted that the AA in its order dated 28.11.2022, also made the following adverse observations against Mr. Srigopal Choudhary regarding inordinate delay in conducting the 1<sup>st</sup> meeting of the CoC:

*"It is also brought to our attention that the CIRP order was passed on 06.11.2019, 1<sup>st</sup> CoC meeting on 19.04.2021 i.e., after a elapse period of 1 year and 6 months from the date of initiation of CIRP. The CoC mandatorily is required to be constituted within a period of 30 days from the date of initiation however, the Respondent herein has miserably failed to adhere to the timelines stipulated in the Code. Therefore, this action of RP proves that the RP acting on his whims and fancies and brought the CIRP of the Corporate Debtor to stalemate."*

- 3.6. The NCLAT, too, in its order dated 10.01.2023 noted as follows:

*"...Besides hearing the learned counsel for the parties, we have examined the material available on record particularly the impugned order. It is reflected from the impugned order that the CIRP was initiated long back in 2019, however, for more than one and half years, no step was taken by the Appellant/RP for revival of the CD or even for generating funds. There is no order of any 'Stay' regarding the convening of the said 'Meeting' placed before us. The CoC Meeting was delayed for such a long time ...*

*...At the cost of repetition, it is pertinent to mention that the CIRP was initiated vide order dated 06.11.2019 and the first CoC Meeting was conducted on 19.04.2021 after a lapse of one and half years and the Adjudicating Authority has categorically observed that the RP has 'miserably failed to adhere to the timelines stipulated in the Code.'"*

- 3.7. It is, thus, evident that there was unreasonable and inordinate delay in conducting the 1<sup>st</sup> meeting of CoC even though there was no stay or restriction for 178 days after initiation of CIRP. The AA also categorically observed that Mr. Srigopal Choudhary *'miserably failed to adhere to the timelines stipulated in the Code'*.

- 3.8. In view of the above, the Board held the *prima facie* view that Mr. Srigopal Choudhary, *inter alia*, violated Sections 22(1) and 208(2)(a) of the Code, Regulations 7(2)(a) and 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clause 13 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).
- 3.9. **Submissions of Mr. Srigopal Choudhary.**
- 3.10. Mr. Srigopal Choudhary elucidated the history of the CD. He submitted that M/s Action Barter Private Limited filed a petition seeking the winding up of the CD bearing Company Petition No. 1066 of 2015 before the Hon'ble High Court of Judicature at Bombay. Vide a conditional order dated 05.10.2016, the above-mentioned petition was admitted by the Hon'ble Bombay High Court on the failure of the CD to deposit Rs.5.90 crore. The appeal instituted by the CD against this order was dismissed by the Division Bench of the Hon'ble Bombay High Court on 17.01.2017, whereas the appeal instituted by M/s Action Barter Private Limited was allowed *vide* same order and the amount to be deposited by the CD was enhanced from Rs.5.90 crore to Rs.18 crores. The same was challenged before the Hon'ble Supreme Court wherein on 27.02.2017, the CD agreed to deposit Rs.3 crores on the same day and a balance of Rs.15 Crores within six months. However, CD and M/s Action barter Private Limited, later, settled for Rs.15 crores, payable in instalments. Apart from the payment of the first instalment of Rs.25 lakhs, no further instalment was paid, as a result of which the winding up petition stood revived on 24.08.2017. Consequently, on 17.04.2018, the provisional liquidator took over the physical possession of the assets of the CD, which also included all the documents related to the company.
- 3.11. He submitted that there were many other legal cases that were going on between the CD and other parties, however, in the meantime, SREI Equipment Finance Limited filed a petition under Section 7 of the Code before the AA which was admitted on 06.11.2019. Consequently, he was appointed as the IRP and then was confirmed as the RP of the CD. However, he could not take any action as M/s Action Barter Private Limited challenged the order dated 06.11.2019 of the AA before the NCLAT vide CA(AT)(Ins) no. 1434/ND/2019. Pertinently, the custody of assets and all the documents of the CD were still in possession of the Official Liquidator pursuant to order(s) passed by Hon'ble Bombay High Court and due to pendency of reimbursement expenses incurred by Official Liquidator (Rs. 88 lakhs approximately) as per the High Court order (s).
- 3.12. He submitted that the said appeal was dismissed by the NCLAT *vide* its order dated 07.02.2020. However, there was an error in the order. While dismissing the appeal inadvertently mentioned that “...the Application under Section 7 of the I&B code filed by the Respondent – SREI Equipment Finance Limited is not maintainable...” which led to confusion about whether CIRP should continue or not. He, therefore, filed an application bearing I.A. No. 962 of 2020 seeking rectification/clarification and the same was clarified by it on 21.09.2020. Against the said order(s), M/s Action Barter Private Limited filed a Civil Appeal bearing No. 3422-3424/2020 wherein the Hon'ble Supreme Court stayed the proceedings *vide* order dated 27.10.2020.
- 3.13. Mr. Srigopal Choudhary submitted that he filed an application before the Hon'ble Bombay High Court informing it about the CIRP and also seeking documents from the Official Liquidator.

However, *vide* order dated 28.11.2019, the Hon'ble Bombay High Court directed him to pay Rs.21,25,510 (Rupees twenty one lakh twenty five thousand five hundred ten only) and Rs.66,42,403 (Rupees sixty six lakh forty two thousand four hundred three only) to the Official Liquidator and only on payment, the documents/records will be handed over to him. The relevant portion is quoted below:

*“The IRP is accordingly directed to pay a sum of Rs.21,25,510/- and Rs.66,42,403/- as incurred by the Official Liquidator within two weeks from the date of communication of the details of the expenses incurred by the Official Liquidator. It is made clear that the Official Liquidator shall handover the records of the company in liquidation along with assets to the IRP within two weeks from the date of receipt of such payment.”*

- 3.14. Further, the appeal filed by M/s Action Barter Private Limited was eventually dismissed by the Hon'ble Supreme Court *vide* order dated 01.03.2021 wherein the Hon'ble Supreme Court categorically recorded that he couldn't get access to assets (which also includes the documents). The relevant portion is quoted below:

*“He also added that, on facts, two orders dated 28.11.2019 and 20.01.2020 of the Bombay High Court would indicate that the Company Court itself had directed the provisional liquidator to hand over the records and assets of SRUIL to the interim resolution professional [“IRP”] that had been appointed in the Section 7 proceeding. Doubtless, such assets had not been handed over because they were only to be handed over two weeks after certain payments had been made by the IRP to the provisional liquidator, which payments have not yet been made.*

- 3.15. He submitted that due to the pendency of appeal before the NCLAT and later on stay by the Hon'ble Supreme Court, he couldn't constitute the CoC. The AA granted an exclusion of 493 days on account of the above stays which resulted in delay of the CIRP Process. Despite the number of appeals made to the CoC members no funds were contributed by the CoC members. The interim finance also could not be raised due to the existence of many litigations scaring away any potential interim finance provider. Consequently, the amount as stipulated by Hon'ble High Court orders could not be paid to the Official Liquidator and as a consequence the custody of assets and records or documents of the CD were not provided by the Official Liquidator to the IRP/RP till his demitting the office in December 2022.
- 3.16. He submitted that he has been a victim of very formidable challenges right since the start of the CIRP as summarized below:
- (i) Complete absence of custody of assets/ records of the CD in the entire tenure as the same was with the Official Liquidator. Even the request for inspection was not considered by the Official Liquidator.
  - (ii) Section 21(6A)(b) of the Code, read with Regulation 16A of the CIRP Regulation, provide a framework for the situations where a CD has at least ten financial creditors in a specific class. In such cases, the IRP must present three IPs as options. A creditor from the same class can then choose one of these professionals to act as their authorized representative.

Moreover, if the financial debt is owed to a larger group of creditors beyond specific categories, the IRP is required to apply to the AA. The AA then appoints IP before the first creditors' committee meeting. After the stay order was lifted by the NCLAT, an application was promptly filed for the '*Appointment of an Authorized Representative (AR)*,' seeking the AA's approval, which was granted on 06.04.2021. Section 21(6A)(b) of Code specifies that – 'AR appointment is a necessary prerequisite' – 'Prior to holding of the First CoC'. Since 'AR APPOINTMENT' is essential and compelling requirement for the 'FIRST COC TO BE HELD'. The approval of 'AR appointment' was granted on 06.04.2021 and the 1<sup>st</sup> CoC held on 19.04.2021.

- (iii) The promoters also never cooperated with him and participated in the CIRP and failed to provide any information. Application under Section 19(2) was filed against them.
- (iv) Complete lack of funding by the members of the CoC despite repeated requests which resulted in spending from his own pocket. Further, being fully aware of the above situation of 'Absolute lack of financial support to the RP, claimants like UPPL kept filing several legal cases across legal forums– which needed to be defended in the interest of the CD by him.
- (v) Plethora of litigation and injunction orders passed by various forums. The CIRP therefore could proceed only for 3 months from 01.03.2021 to 31.05.2021. And, unlike any other CIRP, only 4 CoC meetings could be conducted in absence of custody of assets and documents of the CD.

3.17. He submitted that he faced various challenges in the "claim verifications" and the "composition of CoC" of CD. Such as on 24.08.2017, a winding-up petition was revived. Subsequently, on 17.04.2018, the provisional liquidator assumed physical control of the CD's assets, including all related documents. However, he did not share any documents with the IRP team throughout his tenure. Notably, despite eleven (11) requests and reminders sent by Mr. Srigopal Choudhary to the Official Liquidator seeking access to the records, no cooperation was received. In addition, there was a complete lack of cooperation from the promoters and directors of the CD, compounded by the absence of a functioning CD office. Furthermore, due to the CD's only project being stalled for more than a decade, most homebuyers commenced submitting their claims without detailed calculations or supporting evidence in January 2020. As payment evidence was unavailable and documents were absent, the IRP team had to extensively communicate with each claimant to obtain "Proof of payments" and verify their "Relationship status with the Corporate Debtor."

3.18. This led to the following constraints in timely "Claim verification" and "CoC composition":  
**Homebuyers**

- (a) Every homebuyer had to engage with their individual banks, even reaching out to their head offices, to obtain payment details spanning over ten years or longer. This inherently led to significant delays on the part of the claimants and their banks. Additionally, a specific group of homebuyers requested additional time to furnish information to the Insolvency Professional (IP). It's worth noting that the IP lacks access to the official

email of the Corporate Debtor, making it impossible to provide supporting documentation in this regard.

- (b) Additionally, many homebuyers were related parties of the CD, requiring segregation as non-CoC members. These details were not initially provided to the IRP team and had to be obtained through extensive efforts and difficulty, further contributing to time delays.
- (c) Due to these constraints, initially, "58 Homebuyer Claimants" were onboarded as "CoC members on a provisional/unverified basis" in September 2020. However, through proper Claims verification, including "Proof of Payments" and "Relationship status verification," the number of Homebuyers as CoC members was ultimately reduced from "58 CoC members" to "27 CoC Members" by the time the 1<sup>st</sup> CoC meeting was held in April 2021 (following the removal of the stay by the Hon'ble Supreme Court).

#### **Creditors other than homebuyers**

- (d) In addition to homebuyers, 4 (four) claimants (India Bulls, UPPL, IIRF, and SREI) submitted their claims as FCs, each with claims running into thousands of crores. None of them, however, provided any supporting evidence for their substantial claim amounts. Despite relentless follow-up by him to expedite the time-bound claims verification process, most of these claims remained unsubstantiated and were deemed impossible for collation with respective grounds of claim assessment and rejection. Detailed verification of claims led to the rejection of claims from India Bulls, UPPL, and IIRF, with SREI's Claim reduced from Rs.475 Crores to Rs.142.76 Crores upon verification.

3.19. Given these constraints, considering the circumstances described above, it was impossible to complete the composition of the CoC and hold the CoC meetings by 07.02.2020 (the date of the initial stay by the NCLAT).

3.20. The following mitigation measures were undertaken by RP:

1. **Guidance sought from the Board** - RP appraised the IBBI of the aforementioned challenges via an email dated 13.12.2019. RP received a response from the IBBI, stating, "*Kindly follow the Code, Regulations and please comply accordingly in true letter and spirit*". Regrettably, the response offered no tangible guidance or solutions to address the unique and complex challenges encountered. He had hoped for more specific assistance or insights from the IBBI to navigate the intricacies of the situation effectively. However, the response fell short of providing practical guidance or tailored recommendations, leaving him to grapple with the challenges independently.
2. **Application for deferment of the first CoC meeting filed with the AA**- A petition was also filed with AA to defer the holding of the first CoC meeting.
3. **Condonation of delay caused in the CIRP approved by the AA**- The AA passed order dated 06.04.2021 in IA No. 1674/2020 filed by Mr. Srigopal CHoudhary for the appointment of an AR.
4. **Exclusions approved by the AA** – Subsequent to the passing of the resolution passed in 2<sup>nd</sup> CoC meeting of the CD, IP had preferred an application bearing number IA. 1425/2021

before AA. It passed an order dated 15.09.2021 and approved an exclusion of 493 days. The extract of the CoC agenda approved is reproduced as follows:

*“1. Exclusion of 17 Days (From 6<sup>th</sup> November 2019 to 22<sup>nd</sup> November 2019) The CIRP application was admitted by Hon’ble NCLT on 6<sup>th</sup> November 2021, but the RP was notified on 23<sup>rd</sup> November 2021- Thereby resulting in a delay of 17 days.*

*2. Exclusion of ‘228 days’ (7<sup>th</sup> February 2020 to 21<sup>st</sup> September 2020) on account of Following: Effective stay on the CIRP proceedings due to Hon’ble Appellate Authority (NCLAT) order. The order was clarified. on 21<sup>st</sup> September 2020 and the CIRP resumed thereafter:- “Exclusion of the time period which elapsed between ( Stay order of NCLAT dated 7<sup>th</sup> February 2020 and vacation of stay dated 21<sup>st</sup> September 2020).*

*3. Exclusion of ‘17 days’ on Account of delay in appointment of AR (10<sup>th</sup> October 2020 – 26<sup>th</sup> October 2020 -17 days) on Account of AR appointment delay. The application for appointment of AR was made on 10<sup>th</sup> October 2020 but could not be concluded due to stay of Hon’ble Supreme Court on 27<sup>th</sup> October 2020. Thereby resulting in a loss of 17days.*

*4. Exclusion of ‘126 days’ (27<sup>th</sup> October 2020 to 1<sup>st</sup> March 2021) on account of Following: Effective stay on the CIRP proceedings due to Hon’ble Supreme Court order. The stay order was vacated on 1st March 2021 and the CIRP resumed thereafter :-*

*5. Exclusion of ‘35 days’ (2<sup>nd</sup> March 2021 – 6<sup>th</sup> April 2021 – 35 days ) on Account of AR appointment delay The CIRP recommenced on 2<sup>nd</sup> March 2021 by appointment of AR is an essential prerequisite for holding of the First COC of the Corporate Debtor. The appointment of AR was confirmed by Hon’ble NCLT on 6<sup>th</sup> April 2021, thereby resulting in a loss of 35 days.*

*6. Exclusion of ‘70 days’ (7<sup>th</sup> April – 15<sup>th</sup> June 2021 – 70 days) on Account of Pandemic Covid situation The CIRP process could not proceed due to severity of Covid situation prevailing all over the country and particularly in the city of Mumbai and state of Maharashtra.”*

5. **CoC approval obtained regarding the claim verification constraints** - The aforementioned constraints were brought to the attention of the CoC members during the 1<sup>st</sup> CoC meeting. These challenges were comprehensively disclosed in the minutes of the first CoC meeting, where a transparent account of the situation was presented. Subsequently, the necessary acknowledgment was diligently secured from the CoC members, signifying their understanding of the complexities and constraints faced during the Corporate Insolvency Resolution Process. This transparent communication and the subsequent acknowledgment exemplify the commitment to maintaining open lines of dialogue with the CoC members, ensuring that they are well-informed and engaged in the decision-making process. Extract of 1<sup>st</sup> CoC Meeting is reproduced below: “

*NOTE B :- A. 1. IRP Team was unable to verify the Claims with the Records of the Corporate Debtor and was prevented from discharging their duties due to total Non-cooperation by the Erstwhile Directors/ Promoters of the Corporate Debtor.*

*2. Official Liquidator has not handed over Records/ Documents or assets in this possession and shall hand over the custody of Assets of the CD after reimbursement of their dues as per*



*the orders of Hon'ble High Court, Mumbai.*

*3. No details were therefore available with the IRP for verification of claims. Claims shall be verified on availability of CD records and reanalysed and re- Submitted post verification.*

*4. CLAIMS THEREFORE HAVE BEEN ANALYSED AND COMPUTED ON 'PROVISIONAL' BASIS*

*5. The IRP had filed before this Hon'ble Tribunal two separate applications viz. i) one under Section 19(2) of IBC (Non-Cooperation of Promoters) and ii) Another under Rule 11 of the National Company law Tribunal Rules, 2016, praying for deferment of the constitution of the CoC. (M.A. No. 95/2020 and MA 96/2020)*

*NOTE-C- 1. Major part of the Claim of M/S India Bulls Housing Finance Limited consisted of the Guarantees provided by the Corporate Debtor for Loans provided by the Claimant M/S India Bulls Housing Finance Limited to the 'Group companies of the Corporate Debtor'.*

*THE CLAIM HAS BEEEN REASSESSED IN VIEW OF THE RECENT SUPREME COURT JUDGEMENTS ON THE MATTER AND MAY NEED TO BE SUITABLY REVISED / REDUCED FURTHER POST LEGAL VETTING*

*NOTE :D - 1.- Erstwhile Promoters / Directors have recently sent mail advises to the IRP - Informing and stating that the claim Amounts of Two Financial Creditors namely ' M/S India Bulls Housing Finance Limited' and M/S 'SREI Equipment Finance Limited are at a much Lower Level. Their statements cannot be verified now as the necessary documents are in the custody of 'Provisional Liquidator'. (The stated Claim amounts as per the Mail/ Statements are much lower than claimed by both the Financial Creditors and lower then even 'Provisional Assessment' of their Claims by the IRP team.*

*2. BOTH THE CLAIMS FROM FINANCIAL CREDITORS THEREFORE NEED TO BE RE ANALYSED, REASSESSED AND THEN RESUBMITTED TO THE HON'BLE ADJUDICATING AUTHORITY ON EITHER FURTHER EVIDENCE/ DOCUMENTS/INFORMATION OR AVAILABILITY OF RECORDS - NOW IN THE POSSESSION OF THE 'OFFICIAL LIQUIDATOR'.*

*The COC members approved and took note of the same.*

*M/S India Bulls Finance Limited raised their objections on inclusion of 'Homebuyers' as a class in the Committee of Creditors and claimed that the Homebuyers should not have been included in the 'Creditors Committee'. They demanded that post such inclusion the composition of the COC itself is wrong and hence all Agendas to be taken up should not be taken up/ discussed. M/S India Bulls Finance Limited raised their objections on conduct of the COC because of what they termed as major Mistake and their objection on all subsequent Agenda items.*

*The IRP suggested that their objection shall be included in detail in the Minutes of the Meeting but the conduct of the COC should not be stopped. M/S India Bulls Finance Limited also complained that their claim has not been included in full.*

*The IRP asked that though relevant judgements of Respected Supreme Court were provided*

*for 'Non-inclusion of the Non Fund Based part of their Claim' – no satisfactory answer was provided to the IRP team. The IRP also pointed out that about 29 Mails sent by the IRP team remained unresponded by the Claimant M/S India Bulls Finance Limited."*

- 3.21. He submitted that the alleged delay in holding the CoC meeting, in the context of the SCN, it is essential to dissect the delays in convening the first CoC meeting for the CD. These delays can be categorized into three distinct time periods:

**A. The Initial Time Frame (from 06.11.2019 to 07.11.2020)**

In this period, the details of claim assessments for each creditor are presented, focusing on the following cases:

- i. **India Bulls:** Claimants submitted a claim of Rs 1,731 crores without providing comprehensive supporting documentation. Despite a series of 29 emails and phone calls by the IP team, the claimants remained unresponsive. The claim was initially recorded as "Unverified" at Rs 298 Crores. Later, during the moratorium, the claim status shifted to "Payable Amounts to CD" due to the sale of 41 flats by India Bulls. However, the necessary information, including a calculation sheet, was not furnished to him till November 2020. An excerpt of the email dated 08.02.2020 sent by to IP to Indiabulls:

*"Dear Mr Mitra*

*It is a matter of great regret that despite talking to you and sending numerous mail messages, your team has not clarified the calculations. Despite my team asking for the following information, the issues are kept pending from your side.*

*We are unable to constitute the 'Committee of Creditors' and convene the Committee of Creditors in absence of correct calculations and furnishing of information from your side. The following are still pending*

*1) What is foreclosure amount and the figures given remain unexplained as to how arrived at?*

*2) How has the interest been calculated? How calculation has been done for the Interest. Whether it is on the basis of simple or compound?*

*3) The values for every cell have just been directly put in absolutes without any formula and with no selection of range. Please clarify?*

*Despite my team talking to your designated person in your Accounts department. The reply given is " FIGURES ARE CONFIDENTIAL AND CAN NOT BE DISCLOSED?"*

*How then Sir, prey the IRP Team can verify the claim?*

*The pending documents of Guarantees / Loan documents/ debenture deeds also remain pending despite repeated follow up.*

*My earlier query on how the Sale of the property Executed in favour of "Home Shelter Private Limited " - without consultation / clearance from the 'Official Liquidator' remain unanswered.*

*You are aware that On one hand the Co-operation from the Promoters is Non Existent on the other the above " Delay/ lack of co-operation from your side is resulting in delays and unduly deferring of constitution of "Committee of Creditors", which please note and take corrective action immediately."*

Further, since the details remained pending, series of E-Mails were sent soliciting the details from them. An excerpt of the email dated 12.11.2020 sent by to IP to Indiabulls:

*“Dear Mr. Mitra*

*Please refer to our discussion over phone a few days back - where I had requested you to please advise the corrected/ modified claim Amounts.*

*Please refer to my mail dated 17<sup>th</sup> February 2020 wherein the following informations were sought*

*1) Please provide Contact names and numbers of your Accounts team.*

*2) The last reference given by you was of someone named Mr Shrestha and He did not provide any informations as follows*

*a) As per your advise our team had called your Mr Shrestha several times and had a telephonic conversation with Mr. Shrestha.*

*b) Mr Shrestha said that he cannot share confidential information as it is against the company norms.*

*c) Our team repeated to him that what we had asked for was not confidential. We had simply asked for break - ups of the absolute numbers.*

*d) You must realise that " Absolute Numbers" have been inserted directly in the cells of the computation sheet with no indication of how the figures are computed.*

*e) We now require a properly framed computation sheet to verify your claim. Please provide the same at the earliest.*

*f) These delays are causing delay in CIRP and consequently convening of COC*

*We have been receiving many notices/ copies of petitions / Sale Notices from and other legal actions of recoveries by you through your different Lawyer Teams.*

*All of these proceedings (irrespective of whether ultra-vires of the IBC code or not) may have a bearing on the Claim amounts claimed by you.*

*You are aware that the Corporate Debtor 'Shree Ram Urban Infrastructure Limited' is under CIRP- presently stayed.*

*We have been requesting you many times in the past to advise the corrected/ modified amounts of claim for correct reflection in the 'Claim Details' for the CIRP proceedings (Now stayed) but to no avail so far.*

*We take this opportunity to once again remind you to please advise the 'Correct Claim Amounts with up.' ”*

**ii. UPPL Limited:** UPPL submitted a claim of Rs 4,166 Crores, primarily based on a letter dated 07.07.1994. He made several attempts to contact the promoters of the CD (given the unavailability of CD records) but received no response. Finally, on 18.03.2021, the promoters stated that the 07.07.1994 letter was forged. Extract of an E mail dated 18.03.2021 from the promoters is as follows:

*“Dear Sir,*

*The letter enclosed with the mail appears to be a forgery - in any case the “signature” of the Director in that letter is forged and a police complaint needs to be filed against the Utility Premises Pvt Ltd/ Santosh Kumar Bagla. Incidentally, there are other forgery cases against this Utility Premises Pvt Ltd/ Santosh Kumar Bagla pending at Delhi police.”*

**iii. IIRF India Realty XII Ltd.:** IIRF made a claim of Rs.1,486.12 Crores, citing their status as "Option Holders." Due to the lack of CD records and non-cooperation from the promoters', detailed information was requested but remained pending. The claim was initially collated

on a provisional and unverified basis, with qualifications in the 2<sup>nd</sup> CoC minutes. However, it was ultimately rejected due to the absence of proper supporting documents. An extract from 2<sup>nd</sup> CoC meeting is enumerated below:

*“NOTE: CLAIM OF 'IRF INDIA REALTY XII LTD.' IS VERY VOLUMINOUS (Running into Hundreds of Pages). THEIR CLAIM HAS BEEN COMPILED AND INCLUDED ON PROVISIONAL & UNVERIFIED BASIS. THE CLAIM IS SUBJECT TO THOROUGH ANALYSIS AND VERIFICATION LATER AT ANY TIME- " EITHER" ON FURTHER ANALYSIS AND VETTING BY 'IRP TEAM' AND 'LEGAL TEAM OF IRP' AND/ OR "FURTHER POST AVAILABILITY OF THE RECORDS FROM THE OFFICE OF THE 'OFFICIAL LIQUIDATOR" - CORPORATE DEBTORS RECORDS ARE LIKELY TO BE AVAILABLE TO THE 'IRP TEAM' POST REIMBURSEMENT OF THE EXPENSES CLAIMED BY THE 'OFFICIAL LIQUIDATOR'”*

iv. **SREI Claim:** SREI, as applicants to the CIRP, submitted a claim of Rs 427.68 Crores, which was contested by the IRP team. The claim assessment process was extended over time, considering various supporting and grounds provided by the claimant. After a protracted evaluation, the claim was settled at Rs 142.76 Crores in October 2022. This was extensively discussed in the 2<sup>nd</sup> CoC meeting, and SREI's protest against the reduced assessment was noted. The representatives of SREI expressed their desire to formally record their protest regarding the "Reduced Assessment of SREI Claim" and sought an opportunity to discuss the underlying basis for this assessment by the IP team. In response, the IP proceeded to address the issues related to the SREI claim as follows:

- a. Access to Records: The records and documents of the CD remained under the custody of the Official Liquidator, as the CD's office had been seized by the Official Liquidator in 2017. These records were expected to be made available to the IP team, subject to reimbursement of the expenses already incurred, as per the orders of the Hon'ble Bombay High Court.
- b. Explanation of SREI's Claim: The IP provided a comprehensive explanation to the CoC members about SREI's claim. The IP pointed out that, during various exchanges of correspondence with SREI, the company had put forward four grounds to support their claim. Mr. Srigopal Choudhary requested documents and time to examine each ground on its merit before finally admitting the claim of SREI.

v. **Homebuyers:** In the initial phase of CoC in September 2020, the composition included 58 "Homebuyer Claimants" on a provisional and unverified basis. However, after verification, only 27 "Homebuyer Claimants" remained in the CoC. This was due to the need for "Proof of Payments" (POP) made by Homebuyers, which could only be obtained after repeated reminders and follow-ups by the IP team.

The payments had been made to the CD over a decade prior to the CIRP date, making the retrieval of POP documents a time-consuming process. Notably, the necessary details for claim verification and disclosure of the Claimants' relationship status with the CD were not made available until the Hon'ble Supreme Court's order on 01.03.2021. Prior to this order,

there was a prevailing belief among all Claimants and Homebuyers that the CIRP would not progress. It was only post the Supreme Court's order that essential details for claim verification and relationship status were provided, despite persistent reminders and follow-ups.

## **B. WINDOW OF TIME PERIOD BETWEEN 21.09.2020 to 27.10.2020**

- i. In accordance with Section 21(6A)(b) of the Code and the stipulations within Regulations 4A and 16A of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (referred to as "the CIRP Regulations"), he was legally obligated to designate and appoint an authorized representative for the category of creditors, specifically the Homebuyers, before the convening of the 1<sup>st</sup> CoC Meeting.
- ii. Consequently, taking advantage of the timeframe that ranged from 21.09.2020 to 27.10.2020, he diligently submitted an application to the AA on 10.10.2020, to request the formal appointment of an 'Authorized Representative-AR' as mandated by the provisions of the code. Below is an excerpt from the application:

*“13. It is humbly submitted that the Applicant was prevented from discharging his duties due to the aforesaid facts and particularly since no details were available with the Applicant for verification of claims.*

*14. The Official Liquidator attached by the Bombay High Court had not made over all records, documents or assets in this possession to the applicant. The suspended board of directors and promoters of the Corporate Debtor had also failed to cooperate with the applicant. In this regard, the applicant had filed before this Hon'ble Tribunal two separate applications viz. one under Section 19(2) of IBC and the other under Rule 11 of the National Company law Tribunal Rules, 2016, praying for deferment of the constitution of the CoC. The said applications being M.A. No. 95/2020 and MA 96/2020 are pending before this Hon'ble Tribunal. The applicant craves reference to these applications at the time of hearing, if necessary.*

*27. There are no deliberate delays or leaches on the part of the applicant and in any event it is humbly submitted that the delay, if any, be condoned as sufficient cause exists to do so.”.*

- iii. On 06.04.2021, the NCLT granted approval for the appointment of the 'Authorized Representative-AR' in accordance with the code's provisions. Additionally, the NCLT also extended leniency with regard to the delays encountered during the CIRP.
- iv. The NCLT Exclusions of 52 Days Due to Delay in the Appointment of AR: The NCLT has previously allowed an exclusion of a total of 493 days, as per the approval as stated in the 2<sup>nd</sup> CoC's agenda and the application submitted to the NCLT. This total comprises a specific 52-day exclusion directly attributed to the delay in appointing the Authorized Representative (AR). This exclusion can be delineated as follows:
  - a) The CoC's approved agenda encompassed an exclusion of '17 days' as a result of the delay in the appointment of the AR (spanning from 10.10.2020, to 26.10.2020,

constituting 17 days). The application for the AR's appointment was officially filed on 10.10.2020 but faced a delay due to the stay imposed by the Hon'ble Supreme Court on 27.10.2020, leading to the loss of 17 days.

- b) Additionally, another exclusion of '35 days' is attributed to the AR's appointment delay (encompassing the period from 02.03.2021, to 06.04.2021, totalling 35 days). The CIRP recommended on 02.03.2021, and the appointment of the AR was an essential prerequisite for convening the initial CoC meeting of the Corporate Debtor. Confirmation of the AR's appointment by the NCLT on 06.04.2021, resulted in the loss of 35 days.

Considering these exclusions, alongside the specific 52-day exclusion pertaining to the AR's appointment delay, the AA accorded a total exclusion of 493 days.

### **C. WINDOW OF TIME PERIOD BETWEEN 01.03.2021 to 19.04.2021)**

- i. The specifics and substantiating documents for the individual claims made by the claimants, particularly their relationship status, became accessible only after 01.03.2021. This timeline corresponds with the confirmation of the continuity of the CIRP. The watershed judgment by the Hon'ble Supreme Court, which shifted the process from liquidation to CIRP, played a pivotal role in this development.
- ii. The formal appointment of the 'Authorized Representative-AR,' in accordance with the provisions of the Code, occurred on 06.04.2021. This appointment marked a significant milestone, as it granted approval for the facilitation of the CIRP process.
- iii. The AA approved a total exclusion of 493 days, as per the 2<sup>nd</sup> CoC endorsed agenda and the application submitted to the AA. Within this period, a specific 35-day exclusion pertains to the timeframe after 01.03.2021, directly attributable to the delay in the appointment of the AR. This exclusion can be detailed as follows:
  - a. The CoC's approved agenda incorporated a 35-day exclusion, commencing on 02.03.2021, and concluding on 06.04.2021. This time span became significant as it marked the recommencement of the CIRP on 02.03.2021, a development contingent upon the appointment of the AR. Confirmation of the AR's appointment by the AA on 06.04.2021, consequently resulted in the loss of 35 days.
  - b. This 35-day exclusion, combined with the earlier 52-day exclusion due to the delay in appointing the AR, contributed to the total exclusion of 493 days.
  - c. The appeals filed with the NCLAT and the Hon'ble Supreme Court, which subsequently led to stay orders, were in response to the ground breaking transfer of the resolution process from the 'liquidation of the Corporate Debtor' to the 'CIRP process.' The Hon'ble Supreme Court's judgment dated 01.03.2021, is a landmark decision as it unequivocally affirmed the continuation of the CIRP. However, prior to this landmark Hon'ble Supreme Court order, claimants and homebuyers, in general, were not anticipating the continuation of the CIRP and, consequently, were not forthcoming in providing the necessary documentation to support their claims. The Apex Court's order also recorded the fact that the Liquidator had not handed over the records of the

Corporate Debtor. The availability of details and supporting documents for the respective claims by the claimants occurred subsequent to the Apex Court's order on 01.03.2021, ultimately enabling the convening of the Committee of Creditors on 19.04.2021.

- 3.22. Mr. Srigopal Choudhary submitted that prior to the date of the NCLAT stay, none of the claimants, who had substantial claims amounting to thousands of crores, could have their claims verified. This verification process was hindered by the absence of crucial documents and records of the CD, as well as the lack of proof of payments and supporting documentation from the claimants. Subsequent to the lifting of the stay order by the Hon'ble Supreme Court, he managed to obtain additional details from the claimants. They became more cooperative and forthcoming after the final removal of the Hon'ble Supreme Court's stay. As a result, the first CoC meeting was successfully convened on 19.04.2021.
- 3.23. He submitted that as IRP he faced considerable challenges in fulfilling the duties outlined in Sections 18 and 25 of the Code. According to Section 18(b) of the Code, the IRP was unable to access the necessary information for verifying the claims, many of which were of significant value (amounting to thousands of crores of rupees). This absence of essential data extended to both the Promoters and Directors of the company and the Official Liquidator, who were still awaiting pending payments. Furthermore, the respective claimants failed to provide adequate supporting documentation to substantiate their claims, leading to the rejection of a substantial number of claims.
- 3.24. He submitted that one of the key responsibilities of an IRP is to receive and collate all claims submitted by creditors. This information, once collated and maintained by the IRP, is subsequently included in the Information Memorandum presented by the IRP, as per Regulation 36(2)(d) of the CIRP Regulations. This information serves as the basis for the submission of a resolution plan. The term 'collate,' which encompasses the action of collecting, carefully comparing to verify, and often integrating or arranging in order, inherently entails a duty to 'verify.' Therefore, it is incumbent upon an IRP/RP under Sections 18 and 25 to include the responsibility of 'verifying claims.' This is done to ensure that the claims submitted adhere to the precise definitions outlined in Section 3(6) of the Code. However, due to the unavailability of documents and information, the Applicant IRP filed an application for the deferment of the CoC before the AA, as evidenced by Diary no. 218 on 08.01.2020, and MA no. 96 of 2020.

### 3.25. Findings and Analysis

3.26. The period of CIRP as referred in the SCN can be tabulated as follows:

<b>Period of CIRP as per SCN</b>	<b>Event</b>	<b>Delay</b>
06.11.2019	Insolvency Commencement Date (ICD)	93 days
07.02.2020	CIRP not maintainable as per order of the NCLAT	
21.09.2020	CIRP maintainable as per order of the NCLAT	36 days
27.10.2020	Stay by Hon'ble Supreme Court	
01.03.2021	Stay vacated by Supreme Court and resumption of CIRP	49 days
19.04.2021	First CoC meeting	
	<b>Total</b>	<b>178 days</b>

3.27. Further, the period excluded by the AA with reference to the period mention in the SCN is as follows:

<b>Period of CIRP</b>	<b>Event</b>	<b>Excluded by the AA</b>	<b>Period not excluded by the AA</b>
06.11.2019	ICD	17 days	
23.11.2019	RP was communicated of the admission order		
23.11.2019	RP was communicated of the admission order		76 days
07.02.2020	CIRP not maintainable as per order of the NCLAT		
21.09.2020	CIRP maintainable as per order of the NCLAT		19 days
10.10.2020	Filing application for appointment of Authorised Representative (AR)		
10.10.2020	Filing application for appointment of Authorised Representative (AR)	17 days	
26.10.2020	Last day before stay by Hon'ble Supreme Court		



02.03.2021	Resumption of CIRP after stay vacated by Hon'ble Supreme Court	35 days	
06.04.2021	Appointment of AR by the AA		
06.04.2021	CIRP process could not proceed due to severity of Covid	14 days	
19.04.2021			
	<b>Total</b>	<b>83 days</b>	<b>95 days</b>

3.28. The DC takes note of the period excluded by the AA which is 83 days out of the 178 days alleged in the SCN. With regards to remaining 95 days, the DC takes into account respective submissions of Mr. Srigopal Choudhary.

3.29. After going through the submissions of IP, it is seen that the delay in formation of the CoC was justified by Mr. Srigopal Choudhary on following grounds:-

(a) That though he invited the claims and received them, he was not in a position to verify them with the records of the CD as the same were not available. Further, the claimants while filing claims did not provide sufficient information on the basis of which the claims could have been accepted as such.

(b) The records of CD were not provided by the directors of the suspended board and application for seeking cooperation of the directors was not decided by the AA. The record of the CD under the custody of OL could be accessed after considerable time.

3.30. Regarding ground (a) above, it is observed that the process of claim collation continues for a long time and claims are admitted provisionally by the IRP/RP subject to further verification. Normally the portion of the claim which is found acceptable based on the documents furnished is accepted and remaining claim is kept as pending for verification. It is seen that even in this case, Mr. Srigopal Choudhary has adopted this methodology for few claims and that too at a very late stage; while his priority should have been to conduct the first CoC meeting wherein several crucial decisions are taken. However, in respect of some other claims, he has taken a very rigid stand and has not even accepted the portion of claim which according to him was acceptable. Few instances where he accepted the claim on provisional basis are as follows:

(a) The DC notes that Mr. Srigopal Choudhary collated claims of IIRF India Realty XII Ltd on a provisional and unverified basis with qualifications in the 2<sup>nd</sup> CoC meeting due to the lack of CD records and non-cooperation from the promoters and detailed information remaining pending and he ultimately rejected due to the absence of proper supporting documents.

(b) In case of homebuyers also, he included 58 homebuyers on a provisional and unverified basis in September 2020 and after verification only 27 homebuyers remained in the CoC due to the need for "Proof of Payments" (POP) made by homebuyers which was obtained after repeated reminders and follow-ups by the team of Mr. Srigopal Choudhary.

The above instances highlight the stand taken by Mr. Srigopal Choudhary that he admitted claims on provisional and unverified basis and constituted CoC which were later revised as and when documents were received by him. Hence, the DC does not find the submissions of Mr. Srigopal Choudhary acceptable about not accepting the claims even on provisional basis for such a long time when he himself has admitted some claims on provisional basis and verified them subsequently when records became available.

- 3.31. The DC also notes few instances of considerable delay in responding to the claims. He sent email to Indiabulls only on 08.02.2020 and 12.11.2020, to UPPL Limited on 18.03.2021 while the claims were received by 06.12.2019.
- 3.32. With respect to ground (b) above, it is seen that Mr. Srigopal Choudhary informed the Hon'ble Bombay High Court regarding admission of CD in CIRP on 28.11.2019 which is 5 days after he became aware of his appointment as IRP of the CD, i.e., on 23.11.2019. The DC further notes the following observations from order of Bombay High Court dated 23.01.2020 *"Learned Company Prosecutor states that the Official Liquidator has already offered inspection of the records of the respondent company in liquidation to the I.R.P. Learned counsel for the I.R.P. states that his client would take inspection of the records of the respondent in the office of the Official Liquidator within two weeks from today. The Official Liquidator is directed to provide such inspection as demanded. Parties to co-operate with each other."*

The submissions Mr. Srigopal Choudhary that his request for inspection was not considered by the Official Liquidator is not correct. The above paragraph of the Hon'ble Bombay High Court clearly brings out that Official Liquidator had offered inspection of records and it was only the return of records by Official Liquidator which was conditional on payment of dues to the Official Liquidator.

- 3.33. In such circumstances, Mr. Srigopal Choudhary cannot take the defence of the records being with Official Liquidator as a hurdle in constitution of the CoC. In fact, if Mr. Srigopal Choudhary would have constituted the CoC on basis of provisional admission of claims and discussed the issues arising in obtaining custody of records of the CD with the CoC, expeditious solution could have been found to the issue.
- 3.34. It is seen from the above analysis that during the first 95 days, Mr. Srigopal Choudhary did not take steps to constitute the CoC in the garb of documents not being made available because of non-cooperation by promoter or being with the Official Liquidator; while he later admitted unverified and provisional claims to constitute the CoC. Hence the reasons stated for non-constitution of the CoC are inconsistent and not tenable. Hence the contravention is upheld.

## **2. Contravention-II**

### **Failure to comply with the AA's direction for reconstitution of the CoC.**

- 2.1. It is observed that claim of India Bulls Housing, a Financial Creditor (FC) of the CD was not admitted in full by Mr. Srigopal Choudhary initially. Aggrieved by it, the FC filed an application before the AA seeking to reconstitute the CoC with the updated claim amount. Subsequently, the AA vide its order dated 20.10.2021 allowed the application of the FC and gave directions for the reconstitution of the CoC as follows:
- "23. That the Applicant has been able to bring on record the Loan Agreements and Guarantee Deeds which depicts that the Corporate Debtor has given guarantee with respect to these entities. That in our view the RP at the stage of verifying claims in the presence of all the necessary documents was not justified in rejecting the claim of the Applicant. Therefore, the RP*

*is directed to admit the claim of the Applicant which is arising out of the Corporate Guarantee issued by the Corporate Debtor...*

*25. Therefore, accordingly we direct the RP to admit the claim of the applicant and re-constitute the CoC accordingly.”*

However, despite the aforesaid order of the AA, IRP failed to re-constitute the CoC as per directions and filed an appeal before the NCLAT. The NCLAT *vide* its order dated 17.12.2021 passed direction that:

*“List these Appeals on 10<sup>th</sup> January, 2022.*

*In the meanwhile, the Committee of Creditors shall not take any further steps in the matter.”*

- 2.2. Subsequently, the FCs filed an application before the AA for replacement of RP in which the said issue was raised and the AA in order dated 28.11.2022 made the following observations in this regard:

*“We note that the Resolution Professional has wrongly breached the order passed by the Hon'ble NCLAT dated 17.12.2021 vide which Hon'ble NCLAT had directed to reconstitute the CoC. In addition to the current RP had not complied with the directions passed by this Adjudicating Authority on 20.10.2021 in IA. 925/2021.”*

- 2.3. Section 18(b) of the Code provides that the IRP shall perform the duty of receiving and collating all the claims submitted by creditors to him, pursuant to the public announcement. Section 18(c) of the Code provides that the IRP shall constitute a CoC. Section 25(2)(e) of the Code also provides that it is the duty of the RP to maintain an updated list of claims. Further, Regulation 13 of the CIRP Regulations provides that the IRP/ RP, as the case may be, shall verify every claim, as on the ICD, 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.
- 2.4. It is, thus, observed that even though the AA in its order dated 20.10.2021 directed the IRP Mr. Srigopal Choudhary to admit the claim of the FC and re-constitute the CoC and further even when there was no stay by the NCLAT on re-constitution of CoC, Mr. Srigopal Choudhary failed to admit the claim of FC and re-constitute the CoC as per the directions of the AA. Therefore, he acted in violation of the AA's order dated 20.10.2021.
- 2.5. In view of the above, the Board held the prima facie view that Mr. Srigopal Choudhary had, *inter alia*, violated Sections 18(b) & (c), 25(2)(e), 208(2)(a) and (e) of the Code, Regulation 13 of the CIRP Regulations and Regulation 7(2)(h) of IP Regulations read with Clauses 1, 2 and 14 of the Code of Conduct.

### **Submissions of Mr. Srigopal Choudhary.**

2.6. Mr Srigopal Choudhary submitted that in terms of Section 233 of the Code, he did all acts during his tenure as the resolution professional of the CD in good faith under the provisions of Code.

2.7. He submitted that given the intricacies in the order passed by the NCLT in IA 925, he preferred an appeal before the NCLAT bearing CA 982/2021, CA 983/2021 and CA 984/2021 challenging the order of the AA dated 20.10.2021. Consequently, the contentious matter pertaining to the inclusion of Indiabulls in the CoC of the CD was brought under the legal scrutiny and jurisdiction of the NCLAT. As a result, the status of Indiabulls' participation in the CoC became the subject of ongoing judicial proceedings and was, therefore, *sub-judice* before the NCLAT. Meanwhile, he also preferred an application before the AA seeking stay of the implementation of the order dated 27.10.2021, in view of the appeals filed by the RP before the NCLAT.

2.8. The initial misunderstanding arose from advice received from the legal team engaged by him regarding the NCLAT order dated 17.12.2021, which directed as follows.

*“In the meanwhile, the Committee of Creditors shall not take any further steps in the matter”*

It was interpreted by his legal team as “The order directed that the Committee of Creditors should refrain from taking any further steps, including the reconstitution of the CoC”. This interpretation was based on the context of the AA order in IA 925 concerning India Bulls.

2.9. However, later the issue was finally addressed by the AA in the ‘*Order for replacement of RP*’. The AA interpreted the orders of the NCLAT and clarified that ‘*CoC should have been reconstituted*’. The ambiguity was thereby removed as illustrated by the said orders of the AA. He acknowledged the honest flaw in understanding and interpreting the order and extended a sincere apology for the same. The appeals filed with the NCLAT was based on several grounds as follows:

- The IRP team discovered that IBHFL had sold several properties, including 41 flats, during the CIRP proceedings' moratorium. The team had repeatedly requested IBHFL to adhere to the provisions of Section 14 of the Code, which strictly prohibits the sale of assets belonging to the CD during the moratorium. These requests were ignored by IBHFL, and even the Official Liquidator's warning to IBHFL not to sell the assets of the CD were disregarded.
- The sale of assets of the CD, included 41 flats valued at Rs 2000 crore, during the moratorium period by India Bulls Housing Finance Limited (IBHFL). The RP challenged this as a blatant violation of the IBC code in legal forums. This illegal sale jeopardized the recovery for financial creditors and the completion of homes for homebuyers.
- An appeal was made to the NCLAT to restore the position of homebuyers in the CoC post the orders of the AA.
- IBHFL made multiple attempts to induce the RP to withdraw or resign from CIRP by

offering to pay fees in cash. The RP consistently declined these offers, advising that IBHFL should refund all illegal gains obtained from selling CD assets (41 Flats worth Rs 2000 Crores) during the moratorium back to the CIRP corpus. IBHFL then resorted to threatening the RP and their family. The matter was discussed and recorded in detail in the 4<sup>th</sup> CoC of the CD as–

*“LEGAL CASES – FUNDS CONSTRAINTS AND DELAYS IN CIRP PROCESS - The RP stated that in view of the above litigations and consequent delays, vigorous efforts are being made by the RP team to complete the CIRP process in shortest possible time. However, since valuable time has already been lost so far in the CIRP process, a plea was made to Hon’ble NCLT to request exclusion of Total 493 (Four Hundred and Ninety Three days) from the CIRP period because of unavoidable delays., which has been approved. The RP stated that, however it is imperative to clear the ambiguities caused by illegal Sale of 41 Flats belonging to the CD by IBHFL during Moratorium Period and resulting loss of ‘CD assets value’ at the earliest so that the ‘Resolution Process’ of the CD may appeal to any ‘Prospective Resolution Applicant’ resulting in the CIRP being concluded satisfactorily.*

*The RP stated that M/S IBHFL has undertaken and executed a clear Game plan of thwarting the CIRP process with motive of gains under Liquidation process. One part of that strategy is to drive the Corporate debtor towards Liquidation by initiating number of Legal issues ( Including illegal sale of CD Assets) as it shall enable the Charge Holder IBHFL to retain charge of mortgaged Assets of CD during liquidation. Towards that end with a clear motive to delay/ derail the CIRP process by illegal sale of the " Remaining part of the CD Assets' - which are the only 'CD Assets of Value' for the Resolution Process to succeed.*

*The delay caused on account of legal issues of 'Illegal Sale and its adjudication' are to the advantage of the offending party IBHFL as if the CIRP of CD is delayed - the CD shall inevitably be pushed towards Liquidation. This should particularly be seen in the context of little time left in the CIRP process caused due to legal issues and stay by various Authorities so far. The RP team has therefore made a strong plea “ That Hon’ble Tribunal be pleased to direct IBHFL sale deal to be void ab-initio, illegal, arbitrary and contrary to the law and hence liable to be set aside and overturned and restore status quo ante with respect to 41 flats sold by IBHFL ; and thereby restore the damage caused by IBHFL and Honest shelter Limited to the prospects of a successful Resolution to ensure completion of Unfinished Homes of the Homebuyers” Pending the hearing and final disposal of the Application filed by Resolution Professional, IBHFL be directed to deposit the proceeds illegal gains with the Hon’ble Tribunal to be adjusted with the final award;*

*The RP team regretted to inform that due to the Fund Crisis and lack of infusion of funds by the Financial Creditors so far, the adverse effect has already started to result in loss of advantage gained in the legal cases so far. As a consequence, the order of Hon’ble*

*NCLT dated 23<sup>rd</sup> August with 'Status Quo ante' regarding the Sale deal by India Bulls as detailed in Page 14 is now at the risk of being reviewed. "*

- 2.10. In view of the above CoC direction, the RP legal team firmly opined that the illegal sale must be challenged and set aside in the NCLT/ NCLAT forums. Given that the sale of the 41 flats by IBHFL violated the provisions of the moratorium under the CIRP process and is considered illegal, the gains from this sale were considered illegitimate and asked to be refunded to the rightful owner, the CD. Consequently, the claim of IBHFL had become refundable to the CD. The RP, in light of the misunderstanding surrounding the NCLAT order, diligently pursued actions to rectify the situation and uphold the principles of the IBC. The RP was always committed to ensuring a fair and lawful resolution process that safeguards the interests of all stakeholders.
- 2.11. He further submitted that a creditor of the CD, namely IIRF India Realty XII Ltd, filed Contempt Petition No. 17/2022 and Contempt Petition No. 21/2022 before the NCLAT. These contempt petitions were initiated on the grounds that he admitted the claims of four homebuyers subsequent to the order dated 17.12.2021, and consequently, reconstituted the CoC, thus including them in the CoC. The RP preferred a reply to the applications before the NCLAT. The said contempt applications are pending adjudication, and no order has been passed by the NCLAT as on date.
- 2.12. He submitted that he also preferred an application before the AA seeking stay of the implementation of the order dated 27.10.2021 passed by it in view of the appeals filed by the RP in the NCLAT. As a consequence, the involvement of Indiabulls in the CoC became a matter undergoing continuous judicial scrutiny and was thus *sub judice* before the NCLAT. The *sub judice* status implies that the issue surrounding Indiabulls' participation in the CoC is actively under review and adjudication by the NCLAT. This status denotes that any decision or determination regarding Indiabulls' involvement in the CoC was pending judicial resolution and remained subject to the final verdict of the tribunal.

### **Findings and Analysis**

- 2.13. The issue before DC is that whether Mr. Srigopal Choudhary failed to reconstitute the CoC. The DC notes that the AA on 20.10.2021 directed him to admit the claim of Indiabulls Housing and reconstitute the CoC accordingly. He filed appeal before the NCLAT against the order of the AA, which is pending, where order dated 17.12.2021 was passed that the CoC shall not take any further steps till the matter is heard again. Thereafter, the AA vide order dated 28.11.2022 while hearing application for replacement of RP observed that RP has not reconstituted the CoC as per its order dated 20.10.2021.
- 2.14. Mr. Srigopal Choudhary submitted that initial misunderstanding arose from advice received from his legal team which stated that *"The order directed that the Committee of Creditors should refrain from taking any further steps, including the reconstitution of the CoC."*

- 2.15. The DC notes that such advice or legal opinion received by Mr. Srigopal Choudhary from his legal team was not submitted before the DC for its perusal and understanding. The compliance of the order of the AA is to be carried out by the RP. The reasons for non-compliance of the order cannot be attributed to another party without giving specific details about the same especially when it was the primary duty of the RP to comply with the order of the AA and to reconstitute the CoC.
- 2.16. It is very clear from the language of the order of the NCLT that the CoC was to be reconstituted. The NCLAT only observed that the CoC shall not take any further steps. However, this is only preventing the CoC from taking any further steps. It is not prohibiting the RP to take any steps to comply with the order of the NCLT about reconstitution of the CoC which lies in the domain of RP.
- 2.17. The DC further observes that subsequent to the order of the NCLAT dated 17.12.2021, Mr. Srigopal Choudhary informed the CoC on 23.04.2022 that he admitted the claims of four homebuyers, and consequently, reconstituted the CoC. On 17.06.2022, Mr. Srigopal Choudhary again reconstituted the CoC by rejecting the claim of IIRF India Reality XII Ltd. In his reply to the NCLAT dated 13.03.2023, he admitted that he accepted the claims from such homebuyer and reconstituted the CoC. It is clear from the above that on one hand IP is not reconstituting CoC by accepting the claim of Indiabulls as per order of the AA; on the other hand, he is reconstituting the CoC accepting the claims of four new homebuyers and rejecting the claim of IIRF India Reality XII Ltd. Hence non-compliance of the order of the AA appears to be deliberate and his contention of initial misinterpretation of the order dated 17.12.2021 of the NCLAT is not acceptable. Therefore, this contravention is upheld.

### **3. Contravention-III**

#### **Agenda for replacement of RP.**

- 3.1. It is observed that Mr. Srigopal Choudhary in his reply to notice of investigation stated that the 4<sup>th</sup> CoC meeting was conducted on the advice of SREI having voting share of 6.12 percent. However, subsequently when SREI *vide* email dated 03.10.2021 requested him to conduct the CoC meeting with agenda of “*Replacement of RP*”, he failed to convene the meeting of the CoC.
- 3.2. However, as Mr. Srigopal Choudhary failed to conduct the CoC meeting, its members had to resort to filing application before the AA to seek the replacement of RP. Subsequently, the AA *vide* order dated 28.11.2022 replaced him with Mr. Sapan Mohan Garg as RP. However, the said order was challenged by him before the NCLAT, and it was argued that it is the CoC and not the AA which is vested with the authority to replace him as RP.
- 3.3. Upholding the order of the AA, the NCLAT *vide* its order dated 10.01.2023, made the following adverse observations:

*“In the present case the RP who was expected to convene the CoC Meeting was avoiding convening the 'Meeting' despite a request made by the applicant/respondent herein vide email dated 06.10.2021 for convening the 'Meeting' with agenda to remove the RP. Accordingly, the applicant was left with no option but to approach the Adjudicating Authority and the Adjudicating Authority has rightly exercised its inherent jurisdiction. Moreover, it is settled law that one who appoints can also remove/dismiss the appointee.”*

- 3.4. His conduct of agreeing to conduct the 4<sup>th</sup> meeting of CoC on the advice of SREI having 6.12 percent voting share when agenda for his replacement was not mentioned to him in advance and later refusal to conduct the meeting on the ground of not having requisite voting share when the agenda regarding replacement of RP is known to him in advance indicates that he acted malafidely. Further, on one hand IRP was not conducting the meeting of the CoC for discussion and voting on the agenda for his replacement and on the other hand, he had argued before the NCLAT that the power to replace any RP is vested in the CoC and not in the AA.
- 3.5. Section 27 of the Code provides that where, at any time during the CIRP, the CoC is of the opinion that a RP appointed under Section 22 is required to be replaced, it may replace him with another RP in the manner provided under this Section. Mr. Srigopal Choudhary with malafide intention obstructed the CoC members from exercising their voting rights. In view of the above, the Board held the prima facie view that Mr. Srigopal Choudhary had contravened Sections 27 and 208(2)(a) & (e) of the Code, Regulation 7(2)(h) of IP Regulations read with Clauses 1, 3 and 14 of the Code of Conduct.

### **Submissions of Mr. Srigopal Choudhary**

- 3.6. Regulation 18 of the CIRP Regulations is a critical provision governing the responsibilities of a RP during the CIRP. On 16.04.2021, a clarifying circular was issued by the Board (No. IBBI/CIRP/2021) to expound upon this Regulation, shedding further light on the intricacies of convening meetings of the CoC and the role of CoC members in the decision-making process.
- 3.7. The clarifying circular reiterates the following salient points:
- a. RP's Role in Convening CoC Meetings: Regulation 18 of the CIRP Regulations stipulates that an RP may call for a CoC meeting when they deem it necessary. This is a discretionary power conferred upon the RP to facilitate discussions and decision-making within the CoC. However, the circular underlines that it is not solely the RP's prerogative to convene these meetings; they must respond to specific requests made by the CoC members.
  - b. CoC Members' Right to Request Meetings: Importantly, Regulation 18 also specifies that if members of the CoC representing at least 33% of the voting rights request a meeting, the RP is legally obligated to convene it. This empowers the CoC members to play an



active role in the process and ensures that their requests for meetings on crucial matters are addressed.

- c. Procedural Requirements: To uphold transparency and ensure that the meetings are conducted in a structured manner, the circular references Regulations 19 and 21. Regulation 19 outlines the need for a written notice when summoning a CoC meeting. Regulation 21 elaborates on the contents of this notice, mandating the inclusion of an agenda listing the matters to be discussed and issues for voting, along with copies of relevant documents pertaining to these topics. This emphasis on formal notice and documentation aims to provide the CoC members with the necessary information for informed decision-making.

3.8. The clarifying circular thus unequivocally reinforces the principle that CoC members with a combined voting share of at least 33% have the right to request the RP to convene a CoC meeting. This request should be comprehensive, including a detailed note outlining the matters for discussion and voting, as well as supporting documents. Upon receiving such a request, the RP is bound by law to schedule a CoC meeting to address the proposal put forth by the requesting members.

3.9. In light of these Regulations and the Circular's clarification, the situation at hand was that the initial request made by a CoC member, SREI who held a 6.12% voting share, was indeed honoured, and a CoC meeting was duly convened. This demonstrated adherence to the legal framework and the acknowledgment of the CoC member's rights. However, subsequent to this meeting, SREI, with the same 6.12% voting share, requested another CoC meeting within seven days, with the specific purpose of discussing the "*Replacement of RP.*" In this instance, the request did not meet the regulatory requirement of 33% of the voting share. As per the IBBI Regulations, a request of this nature must represent at least 33% of the voting rights within the CoC to compel the RP to call a meeting. Given that this threshold was not met, the IP had no choice but to adhere to the regulatory framework.

3.10. The IP's decision to not convene another CoC meeting in response to SREI's subsequent request was not an arbitrary choice but a legal obligation rooted in the CIRP Regulations. In sum, the IP's decision aligns with the legal framework in place and prioritizes adherence to regulatory procedures in insolvency resolution processes.

3.11. He further submitted that he has preferred an appeal against order dated 11.01.2023 before Hon'ble Supreme Court vide Diary Number 8485/2023 filed on 25.02.2023. He submitted that though he had filed the appeal before Supreme Court, the RP had not perused the same due to financial constraints.

### **Findings and Analysis**

3.12. It is noted by the DC that Mr. Srigopal Choudhary conducted the 4<sup>th</sup> CoC meeting dated 29.09.2021 on the request dated 22.09.2021 of SREI having 6.12% voting share having agenda

regarding reduction in claims of the FC. However, the same was not concluded and it was cancelled. Thereafter, when the same FC requested *vide* email dated 03.10.2021 to convene a meeting with the agenda for replacement of RP, the same was not convened and no response was given.

- 3.13. Mr. Srigopal Choudhary through his submissions contended that as per the Board's circular dated 16.04.2021 read with Regulation 18, 19 and 20 of CIRP Regulations, CoC members with a combined voting share of at least 33% have the right to request the RP to convene a CoC meeting and upon receiving such a request, the RP is bound by law to schedule a CoC meeting to address the proposal put forth by the requesting members. He submitted that in first instance he accepted request of SREI and conducted the CoC meeting but in second instance he pleaded that it did not meet the regulatory requirement of 33% of the voting share. He submitted that his decision to not convene another CoC meeting in response to SREI's subsequent request was not an arbitrary choice but a legal obligation rooted in the CIRP Regulations and he had no choice but to adhere to the regulatory framework. In this regard the DC notes the Regulation 18 of CIRP Regulations which provides that *"A resolution professional may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to that effect is made by members of the committee representing thirty three per cent of the voting rights."*
- 3.14. It is seen that this Regulation places a legal obligation to conduct a meeting when the same is requested by members of the CoC representing thirty-three per cent of the voting rights. However, there is no legal obligation not to conduct a meeting when the same is requested by members of the CoC representing less than thirty-three per cent of the voting rights. As per the Regulation, an RP has discretion to conduct a meeting when the request is received from a member of CoC not having 33% voting share. However, the discretion is expected to be exercised with care and with adequate reasons.
- 3.15. In this case he did not reply to the FC which made the request for convening a meeting with the agenda for replacement of RP. Further, even before the DC, he has not given any reasons for not convening meeting with the agenda for replacement of RP except quoting the Regulation that too wrongly by giving an interpretation as if it was his legal obligation for not conducting a meeting.
- 3.16. Besides, the first request for meeting by the same FC having the same voting share was accepted by the RP. So, the real reason for rejecting the request second time and accepting it the first time is not the voting share of the creditor requesting the meeting, it was the difference in the agenda of the meeting. When the agenda of the meeting was in conflict with his interest of continuation as RP, he chose to exercise the discretion against calling a meeting.
- 3.17. The Clause 1 of the Code of Conduct requires an IP to maintain integrity by being honest, straightforward, and forthright in all professional relationships. Clause 3 of the code of conduct requires 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. Here the conduct of the IP is clearly biased and shows a biased action in view of conflict of interest. He has also failed to maintain integrity. The DC therefore holds that conduct of Mr. Srigopal Choudhary was unbecoming of an IP being in violation of clause 1 and 3 of the Code of Conduct. Hence, the DC upholds the contravention.

#### 4. Contravention-IV

##### **Delay and failure to conduct various processes of CIRP.**

- 4.1. The Code and the CIRP Regulations mandates that the processes under the CIRP is to be completed in a time bound manner so as to ensure speedy resolution and maximisation of value for the stakeholders. However, it is observed that the CIRP was initiated *vide* the AA order dated 06.11.2019 but there was failure/ delay in undertaking the following processes by Mr. Srigopal Choudhary:

Sl. No.	Process	Date	Delay
1.	Public Announcement (within three days from date of IRP appointment)	24.11.2019	15 days
2.	Constitution of CoC (within two days of the verification of claims)	07.10.2020	336 days
3.	Expression of Interest (EoI) (not later than seventy-fifth day from ICD)	Not published	-
4.	Information Memorandum (IM) (on or before ninety-fifth day from ICD)	Not published	-

- 4.2. In this regard the AA in its order dated 28.11.2022 observed that the CoC mandatorily is required to be constituted within a period of 30 days from the date of initiation and that Mr. Srigopal Choudhary has failed to adhere to the timelines stipulated in the Code.
- 4.3. It is further observed that despite his failure to even constitute and conduct the meeting of first CoC for more than a year and no activity of CIRP undertaken during this period, he charged exorbitant fee of Rs.7,25,000 (Rupees seven lakh twenty five thousand) per month for that period in contravention of IBBI Circular dated 12.06.2018 which requires an IP to ensure that the fee payable to him is reasonable. In view of the above, the Board held the *prima facie* view that Mr. Srigopal Choudhary had contravened Sections 15(2), 29(1) and of the Code, Regulations 6, 17(1), 36, 36A and 40A of the CIRP Regulations read with Clauses 13, 14 and 25 of the Code of Conduct.

## **Submissions of Mr. Srigopal Choudhary.**

### **Delayed Publication of Public Notice:**

- 4.4. The delay in publishing the Public Notice was attributed to a fundamental issue that was beyond the control of the IP. He provided a detailed chronology of events to understand the nature of the delay:
- a. The ICD for the corporate debtor was 06.11.2019.
  - b. He received a copy of the order from the applicant on 22.11.2019, as explicitly mentioned in the Public Announcement.
  - c. This delay in the publication of the Public Notice was a direct result of the delayed uploading of information on the NCLT website. In other words, the IP could only commence the process after receiving the necessary documentation from the applicant, which was, in turn, contingent on the timely upload of information by the NCLT.

### **Exclusion of time granted by AA:**

- 4.5. In light of the delays that were beyond the IP's control, the CoC recognized the need to address the situation. The CoC convened a meeting to discuss the delays and proposed the submission of a petition for the "*Exclusion of Time*" to be presented to the AA. The rationale behind this request was the acknowledgment of the delays, particularly the late notification of the RP, and the resultant impact on the CIRP timeline. To elaborate on the CoC's proposal, the agenda was updated to recommend the exclusion of 17 days, specifically from 06.11.2019, to 22.11.2019. This exclusion was deemed necessary because the CIRP application was admitted by the AA on 06.11.2019, but the RP was only notified on 22.11.2019, which resulted in a delay of 17 days in commencing the CIRP. The CoC also made a broader plea to the AA to request the exclusion of a total of 493 days from the CIRP period due to these unavoidable delays. Remarkably, it granted the CoC's request and approved an exclusion of 493 days. The approval of the exclusion of time is supported by the AA order dated 15.09.2021. This document is a legal confirmation of the validity of the CoC's request and the subsequent exclusion of time.

### **Legal Principles Protecting the IP:**

- 4.6. In the context of the allegations regarding the delay in conducting various CIRP processes, it is crucial to understand the legal principles that safeguard IPs and guide their actions. '*Lex Non Cogit Ad Impossibilia*': This Latin maxim signifies that the law cannot mandate a person to perform an impossible act. In the specific scenario at hand, the IP could not reasonably be expected to make a public announcement when the admission order was not accessible due to delayed uploads on AA's website. The IP's actions are constrained by the availability of necessary information, and this principle upholds their ability to act within the bounds of what is feasible. '*Actus Curiae Neminem Gravabit*': This principle translates to "*an act of the court shall prejudice no one.*" It serves as a foundational legal tenet that ensures individuals should not suffer adverse consequences due to actions or inactions that are beyond their control, especially in situations involving court orders and regulatory procedures. In the case of the IP, they were acting in accordance with the processes established by AA and the Code.

- 4.7. Despite these hurdles, Mr. Srigopal Choudhary has made significant efforts and achieved the following:
- a. IP obtained Committee of Creditors approvals for various actions within a limited window between 01.03.2022, and 31.03.2022, as evident from the minutes of the 2<sup>nd</sup> and 3<sup>rd</sup> CoC meetings. However, these actions remain pending due to stays imposed by the NCLT/NCLAT.
  - b. Despite multiple reminders, no fund was contributed to the CIRP by any CoC members or Financial Creditors in the last 30 months. An application filed by the IP in this regard was pending adjudication by the NCLT.
  - c. IP has been conducting the CIRP for the last 36 months and covered all expenses from personal resources, including 'IP's' fees.
- 4.8. Regarding the fees payable to the RP, the IBBI Press Release (IBBI/PR/2022/35 dated 14.09.2022) specifically define the fee-fixing process for IPs:
- Regulation 33 of the IRP Regulations indicates that the fee for the Insolvency Resolution Professional (IRP) and associated expenses can be fixed by the applicant who initiates the insolvency resolution process. The CoC can agree to ratify and reimburse these fees and expenses, which then become part of the insolvency resolution process costs.
  - Regulation 34 of the IRP Regulations stipulates that the fee for the RP and their associated expenses are to be fixed by the CoC, which also constitutes part of the insolvency resolution process costs.
- 4.9. Initially, the fees for IP were set by the applicant of the CIRP under the Code. Subsequently, these fees were approved through voting with the requisite majority in the 2<sup>nd</sup> and 3<sup>rd</sup> CoC meetings of the CD. However, to date, all fees and 'Reimbursement of Expense' remain pending, even more than a year after he demitted office.
- 4.10. The primacy of commercial decisions of the CoC is reinforced in the latest guideline issued by IBBI, dated 14.09.2022. This guideline allows flexibility in determining fees based on market factors and the complexity of the process.
- 4.11. The rationale for the payment of IRP fees was discussed in detail during the 2<sup>nd</sup> CoC meeting. The discussions highlighted the extensive involvement of the IP and its team in the CIRP process, which included managing a large number of legal cases with potentially significant implications for the assets of the CD and the progress of the CIRP process.

### **Findings and Analysis**

- 4.12. The DC accepts the submission of Mr. Sri Gopal Choudhary that he received a copy of the order from the applicant on 22.11.2019 and the period from 06.11.2019 to 23.11.2019 was excluded by the AA and therefore there is no delay in making public announcement.

- 4.13. With regards to the issue of delay in constitution of CoC, it has been dealt in the foregoing paragraphs where it was held that during the first 95 days Mr. Srigopal Choudhary did not take steps to constitute CoC in the garb of documents not being made available which were under possession of the Official Liquidator and non-cooperation by promoter. While he later admitted unverified and provisional claims to constitute CoC. Hence the reasons stated for non-constitution of the CoC seems an afterthought in light of the facts presents herein which has been discussed in details above while analysing Contravention-I.
- 4.14. Further Mr. Srigopal Choudhary did not provide any plausible reason for not publishing EoI and IM. He submitted that action remained pending due to stay by the AA and the NCLAT but the same cannot justify the non-action on his part. He did not explain the reason for non-publishing the EoI and IM while replying to the SCN. Hence, he failed to take the process forward.
- 4.15. The DC notes that the fees of the IRP/RP was fixed by the CoC in its commercial wisdom with expectation that Mr. Srigopal Choudhary will fulfil his basic duties as an IRP/RP. When the said functions were not being performed by him, the same CoC made effort to remove him on the ground that he failed to prepare IM and EoI first by calling meeting of the CoC. When that could not materialise due to rigid attitude of Mr. Srigopal Choudhary. The FCs filed applications before the AA who replaced Mr. Sripgopal Choudhary as RP of the CD on 28.11.2022 observing that *“the Respondent herein has miserably failed to adhere to the timelines stipulated in the Code. Therefore, this action of RP proves that the RP acting on his whims and fancies and brought the CIRP of the Corporate Debtor to stalemate.”* His replacement was further upheld by The NCLAT in its judgement dated 10.1.2023. So, this is a case where creditors weree dissatisfied with the performance of IP that they had to call for a meeting for his replacement and when their request was not acceded they had to approach the AA for his replacement. His replacement was ordered by the AA and was upheld by the NCLAT. Hence, the DC upholds the contravention.

## **5. Additional submissions.**

- 5.1. Mr. Srigopal Choudhary submitted that the NCLAT in matter of *Srigopal Choudary vs. SREI Equipment Finance Limited, Company Appeal (AT) (Ins) No. 1443 of 2022* referred the matter to IBBI for enquiry and subsequently the Board conducted an enquiry in the affairs and conduct of the RP wherein all the above-mentioned facts were placed before IBBI and IBBI exonerated him. The DC notes that the order dated 12.05.2023 disposed of the SCN dated 27.01.2023 which was based on inspection conducted by the Board *vide* order dated 22.11.2021. Such order of inspection predates the direction of the NCLAT order dated 10.01.2023. Further, the contravention dealt in order of DC dated 12.05.2023 were non-cooperation to the Inspecting Authority and demanding bribe for acceptance of claim of UPPL Projects Private Limited which were totally different from the contravention alleged and upheld in this order. Hence, the plea that he has been exonerated by the Board is not factually correct. Further, the DC order dated 12.05.2023 observed that *“The Adjudication Division of the Board is directed to keep this Order in active record as negative points against him warranting continuous vigil, and follow other cases being handled by him to deter him from making such mistakes repeatedly.”*

## 6. Order

- 6.1. In view of the forgoing discussion, SCN, reply to the SCN, oral and written submission made by Mr. Srigopal Choudhary, the DC finds Mr. Srigopal Choudhary in contravention of Sections 15(2), 18(b) & (c), 25(2)(e), 27, 29(1), 208(2)(a) & (e) of the Code, Regulations 6, 13, 17(1), 17(2), 33, 36, 36A and 40A of CIRP Regulations, Regulation 7(2)(a) & (h) of the IP Regulations read with Clauses 1, 2, 3, 13, 14 and 25 of the Code of Conduct read with IBBI Circular No. IBBI/IP/013/2018 dated 12.06.2018.
- 6.2. Hence, the DC, in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Mr. Srigopal Choudhary having registration No. IBBI/IPA-001/IP-P01238/2018-2019/11893 for a period of three years.
- 6.3. This Order shall come into force on expiry of 30 days from the date of its issue.
- 6.4. A copy of this order shall be sent to the CoC/Stake Holders Consultation Committee (SCC) of all the corporate debtors in which Mr. Srigopal Choudhary is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Srigopal Choudhary.
- 6.5. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Srigopal Choudhary is enrolled as a member.
- 6.6. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.
- 6.7. Accordingly, the show cause notice is disposed of.

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

Sd/-  
(Jayanti Prasad)  
Whole Time Member  
Insolvency and Bankruptcy Board of India

Dated: 06 August 2024  
Place: New Delhi