

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/240/2024

09 August 2024

ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/R(INSP)/2021-22/20/4189 dated 21.10.2023, issued to Mr. Nimit Kalsi, an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-002/IP-N00451/2017-2018/11267, who is a Professional Member of the Insolvency Professional Agency of ICSI Institute of Insolvency Professionals and having residential address recorded with IBBI as A-402, Ravechi Heights, Plot No. 25, Sector 7, Kharghar, Navi Mumbai, Maharashtra, 410210.

1. Background

- 1.1 The SCN dated 21.10.2023 deals with the contravention of the provisions of the Insolvency and Bankruptcy Code, 2016 (Code) and regulations made thereunder by Mr. Nimit Kalsi during the period of Corporate Insolvency Resolution Process (CIRP) of the following Corporate Debtors (CDs):-
- a. M/s. D Thakkar Constructions Private Limited (CD-1)
 - b. M/s. Transparent Energy System Private Limited (CD-2)
 - c. M/s. Conglome Technoconstructions Private Limited (CD-3)
 - d. M/s. Krishna Oils & Proteins Private Limited (CD-4)
- 1.2 The National Company Law Tribunal, Mumbai Bench (AA) vide its Order dated 27.03.2019, admitted an application filed by operational creditor M/s. S.K. Ganguli under Section 9 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of M/s. D Thakkar Constructions Private Limited (CD-1) and Mr. Ashish M. Chandak was appointed as Interim Resolution Professional (IRP) of the CD-1. Later on, Mr. Ashish M. Chandak was replaced and Mr. Nimit Kalsi was appointed as the Resolution Professional (RP) of CD-1 and further Mr. Nimit Kalsi was replaced and Mr. Ram Ratan Kanoongo was appointed as the Resolution Professional of CD-1 by the AA order dated 19.03.2020.

- 1.3 The National Company Law Tribunal, Mumbai Bench (AA) vide its Order dated 08.03.2019, admitted the application filed under Section 9 of the Code by M/s. Tractebel Engineering Private Limited for initiating CIRP of M/s. Transparent Energy System Private Limited (CD-2) and appointed Mr. Ashish Vyas as the IRP. Later on, Mr. Ashish Vyas was replaced and Mr. Nimit Kalsi was appointed as the RP. Further Mr. Nimit Kalsi was replaced by Mr. Vijendra Kumar Jain vide the AA order dated 21.02.2020.
- 1.4 The National Company Law Tribunal, Bengaluru Bench (AA) vide its Order dated 21.03.2019, admitted an application filed by financial creditor Mr. Sandeep Arvind Tambekar & Another under Section 7 of the Code for initiating CIRP of M/s. Conglome Techno Constructions Private Limited (CD-3) and Mr. Rajnish Kumar Pandey was appointed as Interim Resolution Professional (IRP) of the CD-3. Later on, Mr. Rajnish Kumar Pandey was replaced, and Mr. Nimit Kalsi was appointed as the Resolution Professional (RP) of CD-3 vide the AA order dated 01.08.2019. The liquidation has been initiated against the CD-3 vide the AA order dated 01.02.2021.
- 1.5 The National Company Law Tribunal, Indore Bench (AA) vide its Order dated 13.03.2020, admitted an application filed by financial creditor Bank of Baroda under Section 7 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of M/s. Krishna Oils & Proteins Private Limited (CD-4) and Mr. Nimit Kalsi was appointed as Interim Resolution Professional (IRP) of the CD-4. Later Mr. Nimit Kalsi was replaced and Mr. Mangesh Vitthal Kekre was appointed as the Resolution Professional (RP) of CD- 4 vide the AA order dated 03.08.2020.
- 1.6 The IBBI in exercise of its powers under Section 218 of the Insolvency and Bankruptcy Code (Code), read with Regulation 3(1) and 3(3) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Inspecting Authority (IA) to conduct inspection of records pertaining to all the assignments handled by Mr. Nimit Kalsi.
- 1.7 Thereafter, a Draft Inspection Report (DIR) under Regulation 6(1) of the Inspection and Investigation Regulation was shared with Mr. Nimit Kalsi vide e-mail dated

13.05.2022 with a request for his response to be submitted on the same within 15 days. However, Mr. Nimit Kalsi failed to submit his comments within the prescribed time limit. Accordingly, the IA submitted inspection report to the Board on 03.06.2022.

1.8 Based on the findings of the inspection as mentioned in the Inspection Report submitted by the IA, the Board formed a *prima facie* view that Mr. Nimit Kalsi had contravened several provisions of the Code, the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and accordingly, issued the SCN to Mr. Nimit Kalsi on 21.10.2022. The reply of Mr. Nimit Kalsi on the SCN was received by the Board on 04.12.2022.

1.9 The SCN and response of Mr Nimit Kalsi to the SCN, were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Nimit Kalsi availed opportunity of personal hearing before the DC through virtual mode three times on various dates viz., 06.07.2023, 12.10.2023 and 15.05.2024 along with his advocate Mr. Vikar Hegde. Pursuant to the personal hearing, Mr. Nimit Kalsi submitted additional written submissions *vide* email dated 05.06.2023 and further on 16.07.2024.

2. Alleged Contraventions, Submissions of Mr. Nimit Kalsi and Findings of the DC

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

2.1 Contravention I: Non-Cooperation during the conduct of Inspection

2.1.1 It was observed that a notice of inspection was served on Mr. Nimit Kalsi by the IA on 30.12.2020. *Vide* the said notice, the IA asked Mr. Nimit Kalsi to provide requisite documents with respect to his assignments in the matter of D Thakkar Constructions Pvt Ltd and Transparent Energy System Pvt. Ltd on or before 10.01.2021. Subsequently, the IA *vide* e-mail dated 02.08.2021 requested Mr. Nimit Kalsi to provide documents concerning the CIRP of Conglome Techno Constructions Private Limited. In response to the said emails, Mr. Nimit Kalsi had provided only some documents to the IA in different batches. However, Mr. Nimit Kalsi failed to provide all the documents required by the IA despite repeated follow ups by the IA.

- 2.1.2 On account of Mr. Nimit Kalsi's failure to submit all the requisite documents and information to the IA, the IA had prepared the Draft Inspection Report (DIR) on the basis of documents available on records and shared the same with Mr. Nimit Kalsi for his comments within 15 days in accordance with Regulation 6(1) of the Inspection Regulations. However, Mr. Nimit Kalsi did not provide his comments within prescribed timelines.
- 2.1.3 In view of the above, the Board was of the *prima facie* view that Mr. Nimit Kalsi had *inter-alia* violated Sections 208(2)(a) and 218(3) of the Code, Regulations 4(4) and 4(7) of the Inspection and Investigation Regulations, Regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clauses 1, 2, 12, 13, 14, 15, 18, 19 and 20 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Submissions by Mr. Nimit Kalsi

- 2.1.4 Mr. Nimit Kalsi submitted that the IA did not provide him reasonable time to provide responses or documents and provided him with less than 2 days to respond in some of the communications sent, he had duly cooperated with the inspection process throughout to the extent practicable and have always provided all the necessary documents. Mr. Nimit Kalsi further submitted that he has replied to the inspection reports as well, despite of (i) the presence of the Covid-19 pandemic; (ii) the imposition of strict lockdowns and (iii) his ill-health and co-morbidities, he continued to comply with the law and his duties.
- 2.1.5 Mr. Nimit Kalsi submitted that he had written to the IBBI via email dated 10.01.2021 with a specific request that the relevant authorities take the documents he had supplied on record as it contained a comprehensive response to the queries of the IBBI. Mr. Nimit Kalsi further submitted that he had emailed the IBBI all relevant documents sought for, on 10.01.2021, 11.06.2021, 07.07.2021, 12.08.2021, 30.08.2021, 24.09.2021, 24.01.2022, 16.08.2021, 22.08.2021, 30.08.2021, 10.01.2021, 21.12.2020, 19.11.2020, 26.10.2020, 28.09.2020, 26.08.2020 and 04.07.2022.
- 2.1.6 Mr. Nimit Kalsi also submitted that the Inspection and Investigation Regulations provides that any inspection by the IBBI and / or the Inspecting Authority must cause least burden on or disruption to the service provider. Despite this, the IBBI and the

Inspecting Authority have not taken information and documents shared by him on record and such non-co-operation by the IBBI and the Inspecting Authority directly contravenes the Inspection and Investigation Regulations. If, the IBBI had taken the e-mails sent by him on record or had physically visited his office as was proposed, there would have been no need for the present proceedings and the Show Cause Notice.

Analysis and Findings

- 2.1.7 The DC observed that the notice of inspection was sent to Mr. Nimit Kalsi *vide* email dated 30.12.2020, stating therein to revert on the same by 10.01.2021. The said email communication also provided the list of documents, process-wise, to be provided by Mr. Nimit Kalsi to the IA. Mr. Nimit Kalsi reverted on the same on 10.01.2021 taking objection to the notice on the ground that the inspection notice did not provide any basis for beginning an inspection. Mr. Nimit Kalsi also submitted that the time granted for submission of documents is very less and that the complaint copies are not being provided to him. Mr. Nimit Kalsi submitted that he had already provided his clarification on the complaints raised earlier and forwarded his earlier communications sent to IBBI on certain complaints. However, he did not provide the complete documents as sought by the IA with the inspection notice dated 30.12.2020.
- 2.1.8 The IA sent another communication on 04.06.2021 where it was clarified to Mr. Nimit Kalsi that the power of Board to conduct inspection is not limited only in cases of complaints. The IA again requested Mr. Nimit Kalsi to provide necessary documents, as earlier requested *vide* communication dated 30.12.2020, at the earliest and by 10.06.2021. Mr. Nimit Kalsi replied *vide* email dated 11.06.2021 wherein he reiterated the issues of maintainability of complaint and did not provide the requisite documents. Mr. Nimit Kalsi also took plea of COVID 19 in this regard. The IA further *vide* email dated 30.06.2021 again requested Mr. Nimit Kalsi to provide the documents by 07.07.2021. Consequently, Mr. Nimit Kalsi *vide* his email dated 07.07.2021 expressed his displeasure over the IA for going ahead with the inspection process even in the prevailing COVID 19 situation and provided certain limited documents to the IA.
- 2.1.9 Later, the IA *vide* email dated 02.08.2021 sought documents for two additional CDs viz., Constructions Private Limited and Transparent Energy System Private Limited.

Mr. Nimit Kalsi responded to this *vide* his email dated 09.08.2021 mentioning the restrictions because of COVID 19 pandemic and questioned the maintainability of the email dated 02.08.2021 by the IA. No documents were provided by Mr. Nimit Kalsi. The IA replied to Mr. Nimit Kalsi clarifying that the documents sought are for the purpose of inspection.

2.1.10 Mr. Nimit Kalsi *vide* his successive emails dated 12.08.2021, 16.08.2021, 22.08.2021, 23.08.2021, 30.08.2021, 01.09.2021 and 05.09.2021 provided certain documents in fragments to the IA. However, the complete documents were still not provided by Mr. Nimit Kalsi to the IA. Thereafter, the IA *vide* mail dated 13.05.2022 shared the draft inspection report with Mr. Nimit Kalsi with a request to provide comments on the draft inspection report by 28.05.2022.

2.1.11 Mr. Nimit Kalsi *vide* his email dated 28.05.2022 sought additional 5 weeks' time to furnish his reply on the draft inspection report. Further, *vide* email dated 04.07.2022 Mr. Nimit Kalsi sought additional 4-5 weeks' time to submit information. However, no reply was received from Mr. Nimit Kalsi by the IA. The IA submitted the final inspection report to the Board on 03.06.2022.

2.1.12 The DC further notes that the IA had at various occasions viz., *vide* email dated 04.06.2021, 30.6.2021, 09.08.2021 had cautioned Mr. Nimit Kalsi that non furnishing of documents and information with the IA shall mean non-cooperation of Mr. Nimit Kalsi with the Board in carrying out the inspection.

2.1.13 The above series of events with respect to the communication between the IA and Mr. Nimit Kalsi reflects that Mr. Nimit Kalsi has time and again tried to evade providing information and document to the IA and Board on one or other ground. On perusal of the reply of Mr. Nimit Kalsi on the complaints made against him as also mentioned in the SCN, it is observed that Mr. Nimit Kalsi has there also tried to evade from giving clarification on the pretext that the complaint itself is not maintainable. Further, even in his reply to the IA, he has continuously evaded providing the documents sought on the ground that the inspection ordered is not maintainable. Further, despite the fact that the IA had specifically provided the list of documents to be provided by Mr. Nimit Kalsi such as notice, agenda and minutes of all the meetings of the CoC, copy of public

announcement, record of due diligence for selecting valuers, copy of disclosure of relationship, fee and expenses, copy of information memorandum, deed, receipts, contracts or any other document executed, etc, still, Mr. Nimit Kalsi provided only limited documents to the IA such as certain agreements entered into by the CD, copy of various applications filed before the AA, presentation on transaction audit, etc. Mr. Nimit Kalsi did not provide aforesaid and other material documents sought by the IA to conduct the inspection. Even when the IA reminded time and again to Mr. Nimit Kalsi to provide complete documents as mentioned in the list provided to him, he did not provide the same. Such an attitude of Mr. Nimit Kalsi raised more suspicion on his conduct in the CIRP. The DC further observes that there were serious allegations on his conduct during the CIRP of the afore mentioned CDs, which is dealt in the later part of this Order.

2.1.14 It is pertinent to refer to Regulation 4 of the Inspection and Investigation Regulations which provides as follows:

“4. Conduct of Inspection. ...

(4) It shall be the duty of the service provider and an associated person to produce before the Inspecting Authority such records in his custody or control and furnish to the Inspecting Authority such statements and information relating to its activities within such time as the Inspecting Authority may require... ..

(7) It shall be the duty of the service provider and an associated person to give to the Inspecting Authority all assistance which the Inspecting Authority may reasonably require in connection with the inspection.”

2.1.15 The DC further notes that the non-cooperating attitude of Mr. Nimit Kalsi was also reflected at the time of personal hearing where he frequently sought adjournments over a long stretch of periods. The first date for personal hearing in the matter was scheduled on 21.04.2023 for which Mr. Nimit Kalsi sought postponement on the ground that advocate was not available. The next date of personal hearing was scheduled for 08.05.2023 on which Mr. Nimit Kalsi again sought postponement on same ground of non-availability of advocate. Further, the next date for personal hearing was scheduled for 06.07.2023 on which Mr. Nimit Kalsi appeared and after arguing at lengths sought another opportunity of personal hearing, which was scheduled on 27.07.2023. However, a day before, i.e. on 26.07.2023, Mr. Nimit Kalsi sought postponement of the hearing, which was accordingly fixed for 25.08.2023. However, even when the DC

was waiting for Mr. Nimit Kalsi, he did not appear for the hearing. After contact was made to him, he expressed his inability to join the hearing and sought next date of hearing after 21.09.2023. The next date of personal hearing was fixed for 12.10.2023 on which Mr. Nimit Kalsi appeared but the hearing could not be completed because of connectivity issues on the side of Mr. Nimit Kalsi, as intimated by him. Further, on a later date of personal hearing scheduled on 17.01.2024, Mr. Nimit Kalsi again requested for postponement. The next date for hearing was then fixed for 20.03.2024 where again Mr. Nimit Kalsi requested for postponement which was then fixed for 15.05.2024.

2.1.16 The abovementioned conduct of Mr. Nimit Kalsi clearly demonstrates his unwillingness to extend the required assistance, provide necessary documents, or assist in concluding the disciplinary proceedings quickly. He has at every stage tried to evade from providing any information/document to the Board and also tried to delay the proceedings.

2.1.17 In view of the above, the DC finds Mr. Nimit Kalsi in contravention of Section 208(2)(a) and 218(3) of the Code, Regulations 4(4) and 4(7) of the Inspection Regulations, Regulation 7(2)(a) and 7(2)(h) of IBBI (Insolvency Professional) Regulations, 2017 (IP Regulations) read with Clauses 1, 2, 12, 13, 14, 15, 18, 19 and 20 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

2.2 **Contravention II: Non- Performance of Duties on the part of the RP**

2.2.1 It was noted that the IA shared the DIR with Mr. Nimit Kalsi *vide* e-mail dated 13.05.2022 for his comments under Regulation 6(1) of the Inspection and Investigation Regulations. The said DIR mentions following allegations against Mr. Nimit Kalsi in respect of the CIRP of D Thakkar Constructions Pvt Ltd, Transparent Energy System Pvt. Ltd and Conglome Techno constructions Private limited.

A) In the matter of CD Thakkar Constructions Private Limited (CD-1):

a. *“Mr. Nimit Kalsi has withdrawn an amount of Rs. 61,36,802/- as IRPC without ratification by the CoC members in any of the 9 CoC meetings conducted by himself.*

Out of the said amount, Mr. Nimit Kalsi have collected Rs. 53,97,302/- towards his own professional fees while Rs. 7,39,500/- has been paid towards legal services, none of which has been ever ratified by the CoC.

b. As soon as replacement order dated 19 March 2020 was received, Mr. Nimit Kalsi (in-spite of vacating the office as "RP" w.e.f. 19 March 2020) proceeded to make another withdrawal towards his own fees of Rs. 4,39,560/- immediately the subsequent day i.e., 20 March 2020.

c. Mr. Nimit Kalsi have appointed multiple professionals as an Industry Expert and invited them for the 2nd CoC meeting held on 21 June 2019 without the knowledge or approval of the CoC members. Mr. Nimit Kalsi also failed to provide any document or engagement letter defining the scope of work, their professional fees and ratification by CoC.

d. Mr. Nimit Kalsi failed to appoint a statutory auditor for closing the books of accounts for the FY 2017-18 and FY 2018-19 inspite of the repeated requests from the CoC to do so.

e. Mr. Nimit Kalsi has never circulated the minutes of the CoC meeting within forty-eight hours from the conclusion of the said meeting As a matter of practice, out of the 9th CoC meeting conducted by the IP, minutes of 7th CoC meetings were circulated belatedly, ranging from 5 days to as much as 19 days from the end of the relevant CoC meeting. Mr. Nimit Kalsi has not even prepared the minutes of the 9th CoC meeting which was scheduled on 31.12.2019.

f. Mr. Nimit Kalsi failed to appoint registered valuers in terms of regulation 27 of CIRP regulations during his entire tenure of almost 8 months.

g. Mr. Nimit Kalsi has informed the CoC that merely because the proposed resolution plan was received after the cut-off delayed by 10 mins hence the resolution plan cannot be considered. However, on the other hand Mr. Nimit Kalsi intimated the Resolution Applicant that the CoC has decided to defer the decision on the resolution plan and that he would intimate the RA about any progress in due course.

h. Mr. Nimit Kalsi did not even open / consider claim forms of 47 financial creditors (class of creditors) with claim approx. more than Rs. 100 crores which were found to be in sealed envelopes when the new RP received documents from you in July 2020."

Allegations raised by Axis Bank in application filed before AA:

- a. *"Mr. Nimit Kalsi initially suggested raising of interim finance of Rs.8 Crores to 10 Crores to keep the corporate debtor a going concern. However, the CD has liquidity of around Rs. 2 Crores, which Mr. Nimit Kalsi was not able to utilize effectively.*
- b. *The CoC members, in every meeting have raised queries like projects getting terminated, factory equipment left unutilized and unguarded, etc. However, Mr. Nimit Kalsi has always deflected the queries and proceeded with the CIRP.*
- c. *Mr. Nimit Kalsi has always been circulating minutes of the COC meetings only after 14-15 days, which is contrary to the provisions of the Code.*
- d. *Mr. Nimit Kalsi has been recording minutes of the meeting on his whims as most of the decisions recorded in the said minutes were not voted upon and were only at a premature stage of discussion. Mr. Nimit Kalsi appointed valuers and transaction auditors, however, voting on the same was not conducted by you. In fact, on the decision of extension of CIRP period by 90 days, Mr. Nimit Kalsi did not conduct voting.*
- e. *Despite repeated requests by the CoC, Mr. Nimit Kalsi has delayed in submitting his monthly expenditure and the same was submitted by him only in the 7th CoC meeting which was held on 06.12.2019. Even after completion of seven months of his tenure sending as the RP who was in charge of the corporate debtor, Mr. Nimit Kalsi did not complete the valuation exercise and transaction audit.*
- f. *Mr. Nimit Kalsi had not verified the claims of the employees as well as the financials for the years 2017-2018 and 2018-2019 till date.*
- g. *Mr. Nimit Kalsi informed the CoC in their 8th meeting that the expression of interest received from Obtain Vincom together with Anuj Badjate has been rejected as the bid bond was submitted after cut-off time and unilaterally recorded in the minutes of the meeting that the CoC decided to reject the bid of the proposed Resolution Applicant. In respect of the other two proposed Resolution Applicants i.e. Invent ARC Private Limited and Om Metal Infra Projects Limited, Mr. Nimit Kalsi informed the CoC in the same meeting that these Resolution Applicants required certain information which was not provided by the suspended Board of*

Directors. It was alleged by the Axis Bank that the data required by the interested Resolution Applicants could be easily provided by him since he was handling the affairs of the corporate debtor for around 7-8 months.”

B) Transparent Energy System Private Limited (CD-2):

- a. Mr. Nimit Kalsi has prioritized his fee over the payments for essential services. The irregular payments resulted in disconnection of water and electricity supply and disruption of security arrangements.*
- b. A fee of Rs. 2.49 lakhs (plus taxes) per month was approved by CoC, however, Mr. Nimit Kalsi had transferred an amount of Rs. 18 lakhs approx. against his fees and Rs. 7 lakhs approx. against expenses, which were not approved by CoC.*
- c. Mr. Nimit Kalsi failed to protect the premise of the corporate debtor leading to theft of assets of corporate debtor.*
- d. Mr. Nimit Kalsi has circulated the Minutes of 5th, 6th, 7th and 8th CoC meeting after 6, 19, 3 and 5 days, respectively from the date of the meeting. No minutes were circulated for the 9th CoC meeting held on January 24, 2020. Also, there was unusual gap of 78 days in the 5th (August 06, 2019) and 6th (October 23, 2019) CoC meeting. No meeting was conducted for approval of issuance of 2nd EOI, Minutes of 6th CoC meeting held on October 23, 2019 were circulated in November 11, 2019 (i.e. after 19 days from the meeting).*
- e. The total claim amount involved in recovery litigations was to the tune of Rs. 97.95 crores approx. as against debt of Rs. 32.50 crores approx. due to FCs. The related documents were provided to Mr. Nimit Kalsi during August 2019, however, Mr. Nimit Kalsi kept on disregarding recovery litigations as fruitless exercise. During CoC meeting held on August 06, 2019, Mr. Nimit Kalsi was directed to invite quotations from advocates. However, even until next CoC meeting held on October 23, 2019, neither any quotation was furnished by him nor any discussion was made to appoint any specific advocate for the said litigations.”*

C) Conglome Technoconstructions Private Limited (CD-3):

- a. *The minutes of the meeting of the CoC was not being circulated in accordance with the extant provisions of law.*
- b. *Mr. Nimit Kalsi has passed resolutions without conducting vote.*
- c. *Mr. Nimit Kalsi has not filed any progress report even when directed by NCLT to file by 21 August 2019.*
- d. *Mr. Nimit Kalsi has not informed the CoC of the status of resolution plans received.*
- e. *There had been no progress in the CIRP, however the corpus fund provided by the Bank of Maharashtra was utilised to the fullest. ”*

2.2.2 It was further noted that taking cognizance of allegations mentioned in the application filed by Axis Bank in the matter of D Thakkar Constructions Private Limited, the AA vide its order dated 19.03.2020 replaced Mr. Nimit Kalsi with another RP *inter-alia* making following observations:

".... We have heard the respondent on other issues also and given him ample opportunity to satisfy this Bench, but we find the respondent is raising these contentions merely to delay the proceeding and nothing else ”

2.2.3 It was also noted that the AA in its Order dated 06.01.2021 had noted the allegations made against Mr. Nimit Kalsi in the matter of Conglome Techno constructions Private Limited and observed that Mr. Nimit Kalsi has failed to discharge his statutory functions. The IA, too, has mentioned about the said observations of the AA in its DIR.

2.2.4 Since Mr. Nimit Kalsi had not submitted specific reply to the allegations mentioned in the DIR and considering adverse observations made by the AA against him, as stated above, Board was of the *prima facie* view that Mr. Nimit Kalsi had *inter-alia* violated Section 18(1)(b), 21(10), 23(3), 25(2)(d), 25(2)(e) 25(2)(i) 208(2){a} and 208(2)(e) of the Code, Regulation 13, 25, 27 and 34 of CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IBBI (Insolvency Professional) Regulations, 2017 {IP Regulations) read with Clause 1,2,3, 5, 12, 13, 14, 15 and 16 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Submissions by Mr. Nimit Kalsi

- 2.2.5 Mr. Nimit Kalsi submitted that his appointment was considered by the CoC and he was unanimously appointed as the Resolution Professional. The minutes of this meeting were also duly circulated. His fees was fixed by State Bank of India, on behalf of the CoC. Therefore, there was no requirement for the ratification of his fees by the CoC. Regulation 34 of the CIRP Regulations provides that the CoC shall fix the expenses to be incurred on or by the Resolution Professional.
- 2.2.6 Mr. Nimit Kalsi further submitted that his fee was fixed by way of bidding process conducted by State Bank of India, member of the CoC having more than 51% voting rights, which was amounting to a monthly fee of Rs. 5.9 Lakh (in addition to applicable taxes, insurance, out of pocket expenses, fees for valuation, fees for engagement of counsel payable at actuals). This fee structure was also approved unanimously in the meeting of the CoC held on 21.06.2019. The fee structure along with out-of-pocket expenses, legal fees, insurance costs, were approved in a meeting of the CoC on 24.07.2019.
- 2.2.7 Mr. Nimit Kalsi further submitted that the legal expenses of Rs. 7,39,500 were incurred in the ordinary course of business, such as defending the CD-1 in writ proceedings, seeking legal opinions on disputes and responding to legal notices. The CoC was involved in meetings with legal counsel. Despite the CoC denying interim finance, he in his capacity as RP had generated cash flows of about Rs. 4.5 Crores under a hostile environment and ensured payments to employees and workmen to the extent possible, despite the initial lack of cooperation and unpaid salaries at the time of his appointment.
- 2.2.8 Mr. Nimit Kalsi further submitted that the withdrawal process of his fee for CD-1 was initiated by him on 15.03.2020, before the alleged demitting date of 19.03.2020. Due to the Covid-19 pandemic, NCLT premises were inaccessible from 15.03.2020, and he was unaware of the matter being listed on 19.03.2020. The HDFC Bank processed the withdrawal on 20.03.2020 and the NCLT order demitting Mr. Nimit Kalsi from office was communicated much later than 20.03.2020, invalidating the allegation of post-demitting withdrawal.

- 2.2.9 Mr. Nimit Kalsi further submitted that he only engaged his team members without making any separate payments to them and they did not represent themselves in any other capacity. In response to the allegation of delays in circulating the CoC meeting minutes, Mr. Nimit Kalsi clarified that he offered to draft minutes and share them instantly on a giant screen. However, the CoC members stated they needed to confirm with competent authorities. His role required visiting multiple sites and offices lacking basic facilities, causing minor delays in circulating minutes. Despite these challenges, he ensured transparency and timely communication during the CIRP. The CoC ceased to exist after the CIRP period ended on 23.12.2022.
- 2.2.10 Mr. Nimit Kalsi further submitted that registered valuers were appointed in accordance with the law and their invoices and reports were shared with the subsequently appointed resolution professional. In response to allegations of rejecting delayed bid bonds, Mr. Nimit Kalsi submitted that he merely communicated to the CoC that bid bonds were fulfilled after the cut-off time, with any decision to reject such bids being the CoC's responsibility.
- 2.2.11 Mr. Nimit Kalsi submitted that the allegations in respect of CD-2, were actions carried out by the CoC of CD-2 and not by him. Mr. Nimit Kalsi further submitted that that Section 53(1)(a) of the IBC prioritizes the cost of the insolvency resolution process and liquidation. Although Mr. Nimit Kalsi was justified in prioritizing fees for his services as a resolution professional, he also prioritized payments for electricity and other expenses, even though they were not essential services, as the CoC refused to provide Interim Finance. Despite the factories and offices being non-functional, Mr. Nimit Kalsi paid for electricity and water, and he continued the services of the existing Security Agency to ensure protection of the premises.
- 2.2.12 Mr. Nimit Kalsi submitted that regarding his fees as the RP of CD-2 from July 2019 to February 2020, his fees for this period amounted to Rs. 17.43 lakh plus GST, with additional CIRP expenses of approximately Rs. 7 lakh was approved by the CoC. The erstwhile promoters of CD-2 were uncooperative, and the disputes arose long before his appointment and the legal matters continued to be handled by previously appointed lawyers, and a significant recovery was made through Desai & Dewanji law firm.

- 2.2.13 Mr. Nimit Kalsi further submitted that in the case of CD-3, he was appointed after a period of 149 days, facing a deadlock due to hostility between the Bank of Maharashtra and the IRP, resulting in no progress in the resolution process. The Bank of Maharashtra did not provide the necessary funds for the CIRP, creating additional challenges for Mr. Nimit Kalsi.
- 2.2.14 Mr. Nimit Kalsi further submitted that there was no EoI received in response to the Form G published and therefore, no RFRP could be issued either. Under the circumstances, there was no status of the resolution plans which could have been communicated to the CoC.

Analysis and Findings

A) In the matter of Thakkar Constructions Private Limited (CD-1):

- 2.2.15 The DC observes that the main issue is not the quantum of fees of Mr. Nimit Kalsi but whether Mr. Nimit Kalsi as IRP/RP withdrew amount towards his fees without the approval or ratification by the CoC. The DC notes the submission of Mr. Nimit Kalsi that his fee was fixed by a financial creditor State Bank of India which was apparently having 51% of the voting share in the CoC. However, the minutes of the meeting of the CoC dated 24.07.2019, as provided by Mr. Nimit Kalsi, reflects that State Bank of India was having only around 42% voting share. Further, as against the assertion of Mr. Nimit Kalsi, the minutes of the said CoC meeting nowhere reflects any discussion or approval of out of pocket expenses, legal fees, insurance costs etc. Also, as against the assertion of Mr. Nimit Kalsi, the copy of screenshot of whatsapp message with Assistant General Manager of SBI, as provided by Mr. Nimit Kalsi, nowhere reflects that the Assistant General Manager of SBI had requested Mr. Nimit Kalsi to confirm the acceptance of fee of Rs. 4.07 lakh. Further, it is incumbent on the Resolution Professional to get the approval of his fee from the CoC and he cannot rely on the stated approval of the same from a single financial creditor. The DC observes that Mr. Nimit Kalsi has tried to mislead this DC by making false assertions.
- 2.2.16 The DC refers to Regulation 24(7) of the CIRP Regulation which states that:
“24. Conduct of meeting.

(7) The resolution professional shall circulate the minutes of the meeting to all participants by electronic means within forty-eight hours of the said meeting.”

- 2.2.17 The DC observes that the option granted by Mr. Nimit Kalsi to the CoC members to share the minutes of the meeting instantly on the screen was not appropriate. The CoC members cannot be compelled to instantly confirm the minutes. The minutes of the meeting forms a crucial document with respect to the CIRP and therefore cannot be handled in such a casual manner. The circulation of the minutes of the meeting within 48 hours of the said meeting, is provided to ensure the consensus and finalization of the facts disclosed, resolution passed, votes taken, names of attendees and other important details by the members of the meeting. The minutes of the CoC meetings serve as the official records of actions undertaken during the CIRP proceedings and prompt receipt of the minutes allows sufficient time for actions to be reviewed before the next meeting, which improves the efficiency of meetings. Further, as mentioned in the complaint, this lapse on part of Mr. Nimit Kalsi was continuous and for all the CoC meetings. Therefore, the contention of Mr. Nimit Kalsi for delay in circulation of minutes of meeting of the CoC is not tenable and cannot be accepted.
- 2.2.18 The DC notes that Axis Bank had raised the serious issue of conduct of Mr. Nimit Kalsi of recording minutes of the meeting on his own whims and the decisions not being voted. Even the appointment of valuers and transaction auditors was not voted upon and also the decision of extension of CIRP period by 90 days, was not put to vote by Mr. Nimit Kalsi. The DC notes the complaint of Axis Bank that Mr. Nimit Kalsi had always tried to deflect the queries of the CoC members for which Mr. Nimit Kalsi has not provided any plausible explanation.
- 2.2.19 The DC further observes the argument of Mr. Nimit Kalsi that he was not under any obligation to open any sealed envelopes in relation to the claims not accepted electronically shows the lack of understanding of objectives of Code by Mr. Nimit Kalsi and the unprofessional manner in which he was handling the CIRP of the CD. Being a resolution Professional, Mr. Nimit Kalsi was under obligation to facilitate the filing of claims in proper manner and take necessary actions for securing the rights of the claimants.

2.2.20 The DC notes that Mr. Nimit Kalsi's failure to implement the provisions of the Code reflects Mr. Nimit Kalsi's lack of understanding of the provisions of the statute and is also bereft of professionalism which IPs are supposed to profess.

B) Transparent Energy System Private Limited (CD-2):

2.2.21 The DC notes that in the instant CD-2 also, there were complaints regarding non conduct of the CoC meetings and delay in circulation of minutes of the CoC meeting in subsequent CoC meetings. Mr. Nimit Kalsi provided same justification which is analysed earlier in Paragraph 2.2.17 of the present order.

2.2.22 The DC further notes that there were complaints regarding failure of Mr. Nimit Kalsi in protecting the premise of CD-2 which led to theft of assets of CD-2. Under Section 18(1) of the Code, the IRP is duty bound to manage the operations of the CD till the RP is appointed by the CoC and monitor the assets of the CD. Further, the IRP, under section 20(1) is under a mandate to protect and preserve the value of property of the CD and manage the operations of the CD as a going concern.

C) Conglome Technoconstructions Private Limited (CD-3):

2.2.23 The DC notes that in the instant CD-3 also, there were complaints regarding non conduct of the CoC meetings and delay in circulation of minutes of the CoC meeting in subsequent CoC meetings. Mr. Nimit Kalsi has not provided any justification for the delay.

2.2.24 The DC is of the view that time is a critical requirement for the processes under the IBC and non-conduct or any lapses in performing the activities prescribed during CIRP, within the stipulated timeframe, results in delaying the whole resolution process, defeating the objectives of the IBC. Thus, an IRP is bound to conduct the CIRP of the CD as per the timelines specified under the Code and Regulations 40A of the CIRP regulations. The contention of Mr. Nimit Kalsi that he had been appointed after a period of 149 days, facing a deadlock due to hostility between the Bank of Maharashtra and the IRP due to which he was prevented from conducting the CIRP Process is not acceptable.

2.2.25 The DC finds Mr. Nimit Kalsi in contravention of Section 18(l)(b), 21(10), 23(3), 25(2)(d), 25(2)(e) 25(2)(i) 208(2){a} and 208(2)(e) of the Code, Regulation 13, 25, 27 and 34 of CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IBBI (Insolvency Professional) Regulations, 2017 {IP Regulations) read with Clause 1,2,3, 5, 12, 13, 14, 15 and 16 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

2.3 **Contravention III: Non-Filing of CIRP Forms**

2.3.1 As per Regulation 40B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2017 (CIRP Regulations), an Insolvency Professional (IP), IRP or RP, as the case may be, shall file the Forms, along with the enclosures thereto, on an electronic platform of the Board, as per the timelines stipulated against each Form.

2.3.2 However, it has been noted that you have not filed any form, prescribed in regulation 40B of the CIRP Regulations, with the Board in respect of the following CDs:

- a) D Thakkar Constructions Private Limited
- b) Transparent Energy System Pvt. Ltd.
- c) Conglome Techno Constructions Private Limited.
- d) Krishna Oils & Proteins Private Limited

2.3.3 In view of the above, the Board was of the *prima facie* view that Mr. Nimit Kalsi has *inter- alia* violated Section 208(2)(a) of the Code, Regulation 7(2)(a) and 7(2)(h) of IBBI (Insolvency Professional) Regulations, 2017 (IP Regulations) read with Clauses 1, 13, 14, 19 and 20 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Submissions by Mr. Nimit Kalsi

2.3.4 Mr. Nimit Kalsi submitted that attention is invited to previous emails dated 16.08.2021, 22.08.2021, 10.01.2021, 21.12.2020, 19.11.2020, 26.10.2020, 28.09.2020, 26.08.2020 sent by him wherein he had already submitted the requisite documents and had also responded to the queries raised therein.

2.3.5 Mr. Nimit Kalsi further submitted that he was only appointed as the IRP and not the RP. The reason for the delay in filing the forms are follows:-

- a) He was appointed after a delay of around 70-149 days. Events triggering the filing of forms occurred prior to his appointment. Due to divergence in professional opinion, some IRPs filed such forms while others had not.
- b) The IRP appointed prior to him did not hand over details regarding the compliance with applicable law during their tenure and for events which had occurred during their tenure;
- c) There was confusion within the industry and legal clarifications had to be sought in light of introduction of new forms. These issues included whether the IRP (as the deemed RP) or the RP appointed subsequently were under an obligation to file the relevant forms; and
- d) While the CIRP process for Conglome Techno Constructions Private Limited commenced around March 2019, the forms in question were introduced later, around September 2019. There were practical difficulties in filing such forms, such as the role of the deemed RP and on whom the obligation to file such forms fell. By the time Mr Nimit Kalsi could seek conceptual clarity, the Covid-19 pandemic and the consequent lockdown had been imposed and caused further administrative delays.

Analysis and Findings

2.3.6 The DC notes that Mr. Nimit Kalsi has not filed any forms listed in Regulation 40B of the CIRP Regulations. The purpose of different forms as provided under Regulation 40B of the CIRP Regulations is to enable IPs to easily comply with the statutory obligation of submission of records relating to the conduct of CIRP and the resolution plan and copy of records of every proceeding under section 208(2)(d) of the Code. They also facilitate the Board to effectively monitor the processes and the performance of IPs.

2.3.7 In light of the above, the DC finds Mr. Nimit Kalsi is in contravention of Section 208(2)(a) of the Code, Regulation 7(2)(a) and 7(2)(h) of IBBI (Insolvency Professional) Regulations, 2017 (IP Regulations) read with Clauses 1, 13, 14, 19 and

20 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

3. ORDER

- 3.1 In view of the foregoing, the DC observes that the manner of conduct of CIRP by Mr. Nimit Kalsi in all the afore-mentioned CDs by him is highly deplorable. Firstly, Mr. Nimit Kalsi has failed to conduct the CIRP in accordance with the provisions of Code and Regulations framed therein. There were serious allegations raised against him by the financial creditors for which Mr. Nimit Kalsi had no plausible explanation. The misconduct of Mr. Nimit Kalsi has been continuing across all the CIRPs handled by him. Therefore, the same cannot be brushed aside as mere procedural lapse.
- 3.2 Secondly, he failed to regularly report the progress of the CIRP to the Board. Mr. Nimit Kalsi has not filed a single reporting form to the Board and therefore tried to run the process in an opaque manner. Thirdly, he did not cooperate with the Board in its inspection process. Mr. Nimit Kalsi tried to evade from his responsibility of cooperating with the Inspecting Authority and even delayed the Disciplinary Committee proceedings by seeking repeated adjournments.
- 3.3 Mr. Nimit Kalsi's non-cooperation to IA is in grave violation of Regulation 4(4), Regulation 4(7), Regulation 8 (4) and Regulation 8(8) of the Inspection and Investigation Regulations; and Clause 18 and Clause 19 of the Code of Conduct. Furthermore, authority of the investigation flows from the Code and on any grounds, the IP is not empowered to withhold relevant information, in case inspection or investigation has been launched.
- 3.4 Therefore, the DC, in exercise of the powers conferred under Section 220(2) of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Mr. Nimit Kalsi (Registration No. IBBI/IPA-002/IP-N00451/2017-2018/11267) for a period of four years.
- 3.5 This Order shall come into force on expiry of 30 days from date of its issue.

- 3.6 A copy of this order shall be sent to the CoC/ Stakeholders Consultation Committee of all the Corporate Debtors in which Mr. Nimit Kalsi is providing his services, if any and the CoC/SCC may decide on the continuation of services of Mr. Nimit Kalsi.
- 3.7 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICSI where Mr. Nimit Kalsi is enrolled as a member for their further necessary action.
- 3.8 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.
- 3.9 Accordingly, the show cause notice is disposed of.

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

Dated: 09 August 2024
Place: New Delhi