

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/252/2024

22 November 2024

ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI/C/2023/00988/838/65 dated 12.02.2024, issued to Mr. Praveen Kumar Agrawal, who is a Professional Member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-002/IP-N00700/2018-2019/12348.

1. Background

- 1.1 The NCLT, Principal Bench, Delhi (AA) vide order dated 30.05.2018, admitted application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) filed by Mr. Tek Chand, Financial Creditor (FC) for initiating Corporate Insolvency Resolution Process (CIRP) of M/s Premia Projects Limited (Corporate Debtor/CD). Mr. Alok Kumar Kuchhal was appointed as Interim Resolution Professional (IRP) of the CD. Later, Mr. Jitender Arora was appointed as Resolution Professional (RP) of the CD vide order dated 26.03.2019 of the AA.
- 1.2 Mr. Manish Agarwal was appointed as the Authorised Representative (AR) for creditors in a class by the AA *vide* order dated 23.07.2019 to represent the homebuyers who are the only financial creditors in the CoC. Subsequently, the AA *vide* order dated 01.07.2022 appointed Mr. Praveen Kumar Agrawal as the AR, since Mr. Manish Agarwal had resigned. After his appointment and before the 9th CoC meeting held on 15.07.2022, a homebuyer *vide* email dated 14.07.2022 pointed to *malafide* conduct of the Resolution Professional in the given matter of which Mr. Praveen Kumar Agrawal, as the AR of the CD was aware and also alleged to be complicit.
- 1.3 Accordingly, the Board in exercise of its powers under Section 218 of the Code, read with Regulations 7(2) and 7(3) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to conduct the investigation of the role of Mr. Praveen Kumar Agrawal as the AR in the CIRP of the CD.

- 1.4 Thereafter, based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the Board formed a *prima facie* view and issued SCN to Mr. Praveen Kumar Agrawal on 12.02.2024. The SCN alleged contraventions of 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). The reply of Mr. Praveen Kumar Agrawal to the SCN was received by the Board on 04.03.2024.
- 1.5 The SCN and response of Mr. Praveen Kumar Agrawal to the SCN were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Praveen Kumar Agrawal availed an opportunity of a personal hearing through virtual mode before the DC on 20.09.2024..

2. Alleged Contraventions, Submissions of Mr. Praveen Kumar Agrawal and Findings of the DC

The contraventions alleged in the SCN, submissions by Mr. Praveen Kumar Agrawal and findings of the DC are summarized as follows:

2.1 Contravention alleged:

- 2.1.1 It was observed that Mr. Praveen Kumar Agrawal was appointed as the AR vide order dated 01.07.2022 of the AA. Before the 9th CoC meeting scheduled on 15.07.2022, a homebuyer vide email dated 14.07.2022, in furtherance of an earlier email dated 31.12.2020, requested Mr. Praveen Kumar Agrawal to put forth the matter of replacement of RP in the 9th CoC meeting to be held next day. Through the said email, Mr. Praveen Kumar Agrawal was informed about the concern of homebuyers regarding *malafide* conduct of the RP and with regard to his replacement. Hence, it was noted that Mr. Praveen Kumar Agrawal was aware of entire situation for the replacement of RP as per the proposal of class of creditors.
- 2.1.2 Mr. Praveen Kumar Agrawal attended the said 9th CoC meeting physically (representing the homebuyers) wherein he and the RP were the only attendees. However, he represented the view that the matter was sub-judice and there being no fresh request from a required number of homebuyers, proposal to replace the RP cannot be taken up in the said CoC meeting. Thereafter, Hon'ble NCLAT vide order dated 07.12.2022 in Company Appeal (AT)(Ins.) No. 323 of 2022 permitted the homebuyers to submit a

fresh request to Mr. Praveen Kumar Agrawal in continuation of their earlier request dated 31.12.2020.

- 2.1.3 Pursuant to the order dated 07.12.2022, homebuyers through Premia Welfare Society again requested Mr. Praveen Kumar Agrawal vide email dated 18.12.2022 for replacement of the RP. However, instead of placing the proposal to RP for bringing agenda for his replacement, Mr. Praveen Kumar Agrawal on 22.12.2022, asked the homebuyers to make individual requests for the same. The agenda for replacement of RP was not included even in the 10th meeting of CoC held on 27.12.2022.
- 2.1.4 Thereafter, a contempt application was filed against Mr. Praveen Kumar Agrawal for non-compliance with the order of the NCLAT order dated 07.12.2022. The NCLAT directed Mr. Praveen Kumar Agrawal vide order dated 15.05.2023, to convene a meeting of homebuyers within 15 days to ascertain the view of the majority homebuyers. Thereafter, Mr. Praveen Kumar Agrawal requested the RP *vide* email dated 05.06.2023 to convene the meeting for the replacement of the RP.
- 2.1.5 In the 13th meeting of the CoC held on 01.07.2023, the RP again did not place the agenda for his replacement before the CoC and Mr. Praveen Kumar Agrawal, representing the homebuyers did not object to the same despite repeated requests of the homebuyers. In the said meeting, the RP informed the CoC (Mr. Praveen Kumar Agrawal, being the only participant other than the RP) that the agenda for his replacement cannot be allowed. As per Regulation 18(3) of the CIRP Regulations, the RP was under duty to place the agenda for his replacement as the requisite percentage of the creditors (having a minimum 33% of the voting rights in CoC) had made such a request. Mr. Praveen Kumar Agrawal, being a registered Insolvency Professional, was aware of such an obligation and as the AR, it was his duty to ensure that the interest of homebuyers was adequately protected.
- 2.1.6 It was noticed from the minutes of the 13th CoC meeting that Mr. Praveen Kumar Agrawal did not raise any objection to such act of the RP and, therefore, failed to adequately represent the interest of the creditors in class. The SCN notes that this also reflects Mr. Praveen Kumar Agrawal's complicity with the RP to delay the discussion and voting on agenda for his replacement.
- 2.1.7 The homebuyers were left with no option but to approach the NCLAT again and the NCLAT vide order dated 18.08.2023 directed the RP to place the agenda of his

replacement in the CoC meeting. Such agenda came to be finally placed for voting before the CoC in the 15th meeting held on 24.08.2023 and the voting on the resolution was concluded on 28.08.2023.

- 2.1.8 In the voting on the agenda, members of the CoC having 67.65% of total voting rights casted their votes. Out of the casted votes, 59.60 % voted in favour of the replacement of the RP. Therefore, effectively, more than 50% of those who participated in the voting, voted in favor of the replacement of RP.
- 2.1.9 As per Section 25A (3A), it was mandatory for Mr. Praveen Kumar Agrawal to cast the vote on behalf of all financial creditors to represent in accordance with the decision taken by a vote of more than fifty percent of the voting share of the financial creditors, who have casted their vote. As more than 50% of votes casted by homebuyers were in favor of the replacement of the RP, Mr. Praveen Kumar Agrawal was mandatorily required to vote in favor of the resolution for the replacement of RP. However, he wrongly interpreted the voting process under the requirements of Section 27 without a reasonable explanation and casted vote against the resolution for the replacement of the RP.
- 2.1.10 In view of the above, the Board formed the *prima facie* view that Mr. Praveen Kumar Agrawal not only failed to safeguard the interest of the homebuyers whom he represented but also in connivance with the RP deliberately casted vote against the replacement of the Resolution Professional and violated Section 25A (3), 25A (3A), 208(2) and (e) and 25A(3) of the Code, Regulation 7(2)(a) and 7(2)(h), clause 1, 2, 5 and 14 of the Code of Conduct of IP Regulations read with Clauses 1,2 and 5 of the Code of Conduct.

Submissions by Mr. Praveen Kumar Agrawal

- 2.1.11 Mr. Praveen Kumar Agrawal in his response to the SCN submitted that the request of homebuyers, which was presented to the earlier AR and then shared with Mr. Praveen Kumar Agrawal on 14.07.2022, to prompt him to place a request with the RP to convene meeting to consider proposal seeking the replacement of RP, lacked relevance, authenticity, and did not comply with the Code and Regulations framed thereunder. Therefore, Mr. Praveen Kumar Agrawal requested the homebuyers to write to him from their respective email IDs as recorded in the admitted claims list to enable him to file a request with the RP to convene a meeting to consider a proposal seeking replacement of

the RP. The underlying idea was to ensure that only genuine homebuyers send the request. Mr. Praveen Kumar Agrawal submitted that only a handful of homebuyers had felt the requirement to send the e-mail as onerous and had therefore preferred a contempt of court petition against him.. He further submitted that the AA vide its order dated 21.02.2022 had come down heavily on these handful of applicant homebuyers for their conduct. The AA, recorded, *inter alia*, in its order that despite the work being done by the RP, a proposal at the behest of the applicants was moved for replacement/removal of the RP. In the 3rd CoC meeting dated 13.11.2020, the resolution for the replacement of the present RP was defeated.

2.1.12 Mr. Praveen Kumar Agrawal further submitted that neither Section 25A of the Code nor does Regulation 16A of the CIRP Regulations cast any duty on the AR or empower him to sit in judgment over the views of the RP. This is the prerogative of the Courts to decide whether the instance taken by the RP was in consonance with the law and jurisprudence on the subject. Further it was submitted by Mr. Praveen Kumar Agrawal that the amended Regulation 16A which casts an obligation on AR to review the contents of minutes prepared by the resolution professional and provide his comments to the resolution professional is effective only from 18.09.2023.

2.1.13 He further submitted that the homebuyers voted on the proposal to replace the RP and did not give him any instructions about the voting. In fact, there was no need to do so as the homebuyers were voting directly on the resolutions and they held 100% voting power.

2.1.14 He further submitted that Section 25(3A) does not deal specifically with the replacement of the RP by the CoC. Whereas Section 27 deals specifically with the issue, the legislatures have prescribed a higher percentage of voting that is 66% as against the majority under Section 25A. The rules of Interpretation, and in particular the rule of harmonious construction suggests that the interpretation should not render any provision useless or use one provision to defeat others unless there is a way to reconcile the differences.

2.1.15 Mr. Praveen Kumar Agrawal further submitted that the homebuyers representing approximately 37.9% of the voting share in the CoC sent a request vide email dated 31.12.2020 for replacement of the RP to Mr. Manish Agrawal. The said request had been made to the erstwhile AR Mr. Manish Agrawal on 31.12.2020, whereas Mr. Praveen Kumar Agrawal took over after a gap of one and half years. Secondly, the same

mail was cited by a homebuyer out of 600 homebuyers, as a basis to write a mail on 14.07.2022 requesting Mr. Praveen Kumar Agrawal for the replacement of the RP in the 9th CoC meeting which was scheduled for the very next day, i.e.15.07.2022. Hence, the request was not acceptable.

2.1.16 Additionally, the homebuyers whose letters were attached with the said mail did not mention their claim amount or voting share. Further, he mentioned that the excel sheet was not signed by anyone, nor supported by any documentary evidence, specifically about the voting share of the respective homebuyers and the letters were attached without any identity proof.

2.1.17 Hence the observation that "Homebuyers representing approx. 37.97% of the voting share in CoC sent a request vide e-mail dated 31.12.2020" is not supported by any legally tenable evidence and lacks substance.

2.1.18 The order passed by the AA, dated 07.12.2022 permitted the homebuyers to submit a fresh request in continuation of their earlier request dated 31.12.2020 to the AR, as there was no fresh request from the minimum number of homebuyers required, no request was placed with the RP to move a proposal for the replacement of the RP.

2.1.19 The mail dated 31.12.2020 of the homebuyers, formed the basis for both the emails, one written by Mr. Kapil on 14.07.2022 and other written by Premia Welfare Society dated 18.12.2022. As per the Code, the Premia Welfare Society is not the authorized body to collectively represent the homebuyers before an authorized representative.

2.1.20 The NCLAT, vide its order dated 15.05.2023, not only dismissed the contempt petition but directed the concerned homebuyers to bear the expenses for gathering the views of the majority of the homebuyers. The Court did not pass any strictures against Mr. Praveen Kumar Agrawal. He submitted that the voting under Section 25(3A) which was to be cast by him in the capacity of the AR was to be based on vote of more than 50% of the voting share of the Financial Creditor in a class but the said provision of Section 25A (3A) was subject to the proviso which created a different voting pattern for Section 12A.

Analysis and Findings of the DC

2.1.21 Section 25A of the Code which deals with the rights and duties of the Authorised Representative provides as follows:

“25A. Rights and duties of authorised representative of financial creditors. –

(1) The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

(2) It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

(3) The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions: Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

(3A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of Section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent of the voting share of the financial creditors he represents, who have cast their vote: Provided that for a vote to be cast in respect of an application under Section 12A, the authorised representative shall cast his vote in accordance with the provisions of sub-section (3).

(4) The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

Explanation.- For the purposes of this section, the “electronic means” shall be such as may be specified.”

2.1.22 The DC notes that in the instant matter, the CoC comprised of only homebuyers and

therefore, the RP and Mr. Praveen Kumar Agrawal (as Authorised Representative of homebuyers) were the only two attendees of the CoC meetings.

2.1.23 The DC observes that the submission of Mr. Praveen Kumar Agrawal that the proposal seeking RP's replacement had lacked evidence and authenticity and did not comply with the Code and Regulations is without any basis and is not backed by any document. Further, on perusal of the communications exchanged between the homebuyers and Mr. Praveen Kumar Agrawal, it is observed that the intention of the homebuyers to replace the RP was clear from the email communication and there was no requirement of any further communication from the homebuyers to ensure their genuineness.

2.1.24 It is pertinent to note that the purpose of appointing an Authorised Representative is to ensure effective communication and transparency within the class of creditors it represents. The Authorised Representative is duty-bound to perform its functions, including voting, strictly in compliance with the Code. The Authorised Representative protects the interests and acts in the best interest of the creditors that it represents. Section 25A clearly lays down the rights and duties of authorized representatives of financial creditors. The provision does not cast any duty or role upon the AR to decide or adjudicate the validity/ intention of such request placed by the class of creditors it is representing.

2.1.25 The DC further observes that Mr. Praveen Kumar Agrawal in the 9th CoC meeting represented the view that the matter was sub-judice and there being no fresh request from a required number of homebuyers, proposal to replace the RP cannot be taken up in the said CoC meeting. Furthermore, the agenda for replacement of RP was not included even in the 10th meeting of the CoC. This clearly shows that AR did not perform his duty and failed to even present and put up the agenda of replacement of the RP before the CoC. In the 13th meeting of the CoC, Mr. Praveen Kumar Agrawal, representing the home buyers did not object to RP's inaction of placing an agenda for his replacement before the CoC. It is further observed that in the 15th meeting, the aforesaid agenda of replacement of the RP was voted and the members of the CoC having 67.65% of total voting rights casted their votes. Out of the casted votes, 59.60 % voted in favour of the replacement of the RP. Therefore, effectively, more than 50% of those who participated in the voting, voted in favor of the replacement of the RP.

2.1.26 With regard to voting of home buyers for passing a resolution, the DC notes that Section 25A(3A) of the Code provides as under -:

“Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote.

Provided that for a vote to be cast in respect of an application under Section 12A, the authorised representative shall cast his vote in accordance with the provisions of subsection (3)”

2.1.27 Thus, Section 25A(3A) of the Code clearly provides that whatever voting is done by more than fifty percent of the creditors in a class, the AR will vote in favour/against of the resolution, for which more than fifty percent of the creditors in a class have voted. There is no scope for any other interpretation of Section 25A(3A), On the contrary, Mr. Praveen Kumar Agrawal casted vote against the resolution for the replacement of the RP inspite of the fact that more than 50% of votes casted by homebuyers were in favor of the replacement of the RP,

2.1.28 It is pertinent to mention that the AR appointed to represent the interest of the class of creditors is an Insolvency Professional only so that he is well versed with provisions of the Code and Regulations made thereunder, ensuring informed and transparent representation. This becomes even more crucial when representing a large number of stakeholders, as comprehensive knowledge of the Code read with Regulations, enables the AR to handle complex scenarios effectively and safeguard the interests of the class of creditors he represents. The DC notes that Mr. Praveen Kumar Agrawal as an AR tried reasons to evade to take up the request of the financial creditors for the replacement of the RP and failed to represent the interest of the financial creditors, which is in violation of Section 25 A of the Code.

2.1.29 In light of the above, the DC finds Mr. Praveen Kumar Agrawal to be in contravention of Sections 25A (3), 25A (3A), 208(2) and (e) and 25A(3) of the Code, Regulations 7(2)(a) and 7(2)(h), clause 1, 2, 5 and 14 of the Code of Conduct of IP Regulations read with Clauses 1,2 and 5 of the Code of Conduct.

3. ORDER

3.1. In view of the foregoing discussion, the DC is of the view that Mr. Praveen Kumar Agrawal failed to cast vote in accordance with Section 25A(3A) of the Code to protect the interest of creditors in a class. 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 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby suspends the registration of Mr. Praveen Kumar Agrawal having Registration No. IBBI/IPA-002/IP-N00700/2018-2019/12348 for a period of one year.

- 3.2. This Order shall come into force on expiry of 30 days from the date of its issue.
- 3.3. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Praveen Kumar Agrawal is enrolled as a member.
- 3.4. A copy of this order shall be sent to the CoC/ Stakeholders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Praveen Kumar Agrawal is providing his services, and the respective CoC/ SCC, as the case may be, will decide about continuation of existing assignment of Mr. Praveen Kumar Agrawal.
- 3.5. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.
- 3.6. Accordingly, the show cause notice is disposed of.

Dated: 22 November 2024
Place: New Delhi

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