INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/247/2024 20th September 2024

ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI/C/ 2024/01136/879/479 dated 25.07.2024, issued to Mr. Pramod Kumar Sharma who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-002/IP-N00110/2017-18/10258 and a Professional Member of the ICSI Institute of Insolvency Professionals.

Background

1.1. The National Company Law Tribunal, Principal Bench (AA) vide its Order dated 03.08.2018 had admitted the application filed under Section 7 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of the International Recreation and Amusement Limited (Corporate Debtor/CD). The AA *vide* order dated 10.08.2018 appointed Mr. Pramod Kumar Sharma as the IRP and later he was confirmed as the RP vide order dated 05.10.2018.

1.2. The Board received two complaints dated 21.05.2024 and 08.06.2024 against Mr. Pramod Kumar Sharma in the matter of the CD. The allegations in the said complaints were forwarded to Mr. Pramod Kumar Sharma vide email dated 24.06.2024 and 26.06.2024 for submission of reply to the said allegations. Mr. Sharma had sought extension of time for submission of reply and was allowed time till 09.07.2024 to submit the reply. However, the reply was received only on 14.07.2024. The allegations in the complaints were examined by the Board which was considered as investigation under regulation 10A of IBBI (Inspection and Investigation) Regulations, 2016.

1.3. Therefore, based on the findings of the said investigation, the Board issued the SCN to Mr. Pramod Kumar Sharma on 25.07.2024. 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. Pramod Kumar Sharma to the SCN was received by the Board on 27.08.2024.

1.4. The SCN and the response of Mr. Pramod Kumar Sharma to the SCN were referred to the Disciplinary Committee (DC) for disposal of the SCN. The date of personal hearing was fixed on 04.09.2024 by the DC. However, Mr. Pramod Kumar Sharma sought adjournment for the same. Keeping in view, the maxim of natural justice another date was assigned and accordingly the personal hearing was postponed to 12.09.2024. The IP finally availed an opportunity of personal hearing before the DC on 12.09.2024 wherein he appeared along with his advocate Mr. Abhishek Anand. After threadbare discussions on the issues, on behalf of Mr. Pramod Kumar Sharma a request was made for submitting additional submissions, which was granted and additional submissions were received by the Board on 14.09.2024.

2. **Alleged Contraventions, Submissions of Mr. Pramod Kumar Sharma and Findings.**

The contraventions alleged in the SCN, oral and written submissions by the Mr. Pramod Kumar Sharma and findings of the DC are summarized as follows:

Preliminary Objections.

2.1. During the hearing, a question of technical infirmity due to delay in filing complaint was made, and the DC observed that provision as contained in section 218(1) of the Code as quoted below is unambiguously clear:

"Where the Board, on receipt of a complaint under section 217 or has reasonable grounds to believe that any insolvency professional agency or insolvency professional or an information utility has contravened any of the provisions of the Code or the rules or regulations made or directions issued by the Board thereunder, it may, at any time by an order in writing, direct any person or persons to act as an investigating authority to conduct an inspection or investigation of the insolvency professional agency or insolvency professional or an information utility."

Thus, the order of the investigation was as per the provision of the Code. After resolution of the technical issue, hearing on contraventions and related issues commenced, and same is detailed in succeeding paras:

Contravention -I

2.2. **Failure to pay CIRP dues of Haryana Shehri Vikas Pradhikaran (HSVP) Gurugram resulting in sealing of unit of CD**.

2.2.1 It was noted that a Lease Agreement dated 14.06.2011 was executed between the HSVP/ HUDA and the CD for development of a theme park based on an invitation by HSVP/ HUDA. It was been alleged in the SCN that Mr. Pramod Kumar Sharma failed to pay the lease rent in terms of the said agreement for the period from 04.08.2018 to 02.09.2022. In his belated reply to the Board, Mr. Pramod Kumar Sharma did not deny the amount of lease rent payable to HSVP. However, he has *inter alia* cited moratorium under Section 14 of the Code to assail the action of HSVP to seal the premises of the unit of CD on failure to pay the requisite lease rent to HSVP.

2.2.2 It was observed that an Explanation was added to Section 14(l)(d) of the Code w.e.f. 28.12.2019, which states as under:

"Explanation:- For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances

or a similar grant or right during the moratorium period; "

Despite the aforesaid explanation coming into effect w.e.f. 28.12.2019, Mr. Pramod Kumar Sharma failed to pay the requisite lease rent of HSVP resulting in termination of the lease deed and sealing of premises of unit of the CD.

2.2.3 It has also been observed that the AA *vide* order dated 13.03.2024, while setting aside the termination of lease deed by HSVP, had directed Mr. Pramod Kumar Sharma to pay the principal amount on account of lease rent payable to HSVP for the period from 04.08.2018 to 02.09.2022. It has been further observed that the said order of the AA was not complied by Mr. Pramod Kumar Sharma as he has not yet paid the requisite lease rent.

2.2.4 The Board held the prima facie view that the Mr. Pramod Kumar Sharma had contravened Section 208(2)(a) and (e) of the Code, Regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clause 14 of the Code of Conduct for Insolvency Professionals provided under First Schedule to IP Regulations (Code of Conduct).

2.3. **Submissions by Mr. Pramod Kumar Sharma.**

2.3.1 Mr. Pramod Kumar Sharma submitted that the CIRP of the CD commenced *vide* order dated 03.08.2018 whereby moratorium under the Code was also in force in view of Section 14 of the Code. The Section 14(1)(d) as existed prior to 28.12.2019 didn't impose condition of payment of current dues, thus, till 28.12.2019, the HSVP being lessor of the property was prohibited from taking the possession of the property back from the CD in terms of plain reading of Section 14(1)(d) of the Code. The CIRP of the CD in terms of Section 12 of the Code including the exclusion granted by the AA expired on 10.07.2019.

2.3.2 The explanation to Section 14(1)(d) of the Code was inserted w.e.f. wherein a condition of payment of current dues was added for application of prohibition of suspension of license, permit, registration, quota, concession or clearance or similar grant by Central Government and its instrumentalities. A bare perusal of the inserted explanation to Section 14(1)(d) of the Code highlights that the condition of payment of current dues was inserted only *qua* license, permit, registration, quota, concession or clearance or similar grant which doesn't include lease within its purview. HSVP has leased the property to the CD in the present case. Thus, even after amendment, he was not under an obligation to pay lease rent to HSVP in view of Section 14(1)(d) of the Code.

2.3.3 In a similar matter concerning NOIDA, the NOIDA filed an application before the AA for a direction to the RP to make the payment of the amount due and payable towards the outstanding dues which have become due during the CIRP. The AA allowed the said application (IA No. (IB) 1896 (ND)/2019) with following observations in its order dated 12.04.2022:

"17. Admittedly, to enjoy the lease granted by NOIDA Authority to the Corporate Debtor, lease premium and lease rent are to be paid for during the period 11.10.2019 to 30.06.2021 as per the letter dated 04.06.2021, sent by the Applicant to the Resolution Professional. Therefore, even if we accept the contention of the Resolution Professional that the lease rent does not fall

under the categories of supplies to the essential goods and services, but in terms of explanation of Section 14(1) of the IBC 2016 added w.e.f. 28.12.2019, the applicant is entitled to get lease premium amount as well as lease rent arising for the use or continuation of the lease during the moratorium period, failing which the moratorium will not apply for the suspension or termination of lease. In view of the above, as the Resolution Professional has failed to pay the lease premium and lease rent due to the NOIDA Authority, therefore, the respondent is directed to make the payment of the current amount, which is due and payable within 6 months or include the said amount as Insolvency Resolution Process Cost under Regulation 31 of the IBBI (Insolvency Resolution Process of Corporate Person)."

2.3.4 The Hon'ble Appellate Tribunal while deciding in appeal against above reproduced order dated 12.04.2022 passed in Noida matter set aside the said order as patently illegal in the matter of *Sunil Kumar Agrawal v. New Okhla Industrial Development Authority, Company Appeal (AT)(Ins.) No. 622 of 2022 vide* judgment dated 12.01.2023. The NCLAT while examining the issue of payment of current lease premium during CIRP has held that the said payment is not mandated under Section 14(1)(d) of the Code. The relevant paragraph of the said order is reproduced hereunder:-

"8. The only issue in this case is as to whether the Adjudicating Authority has rightly applied the explanation under Section 14(1)(d) of the Code for the purpose of directing the Appellant to pay the lease premium amount and the lease rent to the Respondent?" "10. Section 14 of the Code deals with the moratorium and Section 14(1)(d) of the Code says that there would be a prohibition from the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor. However, explanation appended to Section 14(1) (d) says that with the prohibition of recovery of any property by an owner or lessor, a license, permit, registration, quota, concession, clearance or a similar grant or right either given by the Central Govt., State Govt. local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency but there would be a condition for its continuation if there is no default in payment of the dues of such license, permit, registration, quota, concession, clearance or a similar grant or right during the moratorium period. The similar grant or right has to be read in respect of the licence, permit, registration, quota, concession, clearance but it cannot be read as the premium amount or lease rent which has been so ordered by the Adjudicating Authority to be paid by the Appellant to the Respondent."

...

11. Thus, in view of the aforesaid facts and circumstances, in our considered opinion, the impugned order is patently illegal and deserves to be set aside. Consequently, the appeal is allowed and the impugned order is set aside though without any order as to costs."

2.3.5 That aggrieved by the aforementioned judgment of the NCLAT, NOIDA filed an appeal before Hon'ble Supreme Court. Hon'ble Supreme Court while issuing notice in appeal against the aforementioned judgment of the Hon'ble Appellate Tribunal has specifically refused to grant stay the operation of the said judgment. The relevant portion of the order dated 17.02.2023 passed in Civil Appeal No.901/2023, New Okhla Industrial Development Authority v. Sunil Kumar Agrawal is reproduced hereunder:-

"Learned senior advocate appearing on behalf of the appellant relies upon Regulation 31 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2018 to urge that the current dues have to be accounted for in the resolution plan . Current dues, he submits, would be the dues payable after/from the date of admission of application and onwards.

Issue notice, returnable in the month of September 2023. Notices will be served by all modes, including dasti.

We clarify that we have not stayed the operation of the order dated 12.01.2023 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi in Company Appeal (AT) (Insolvency) No. 622/2022."

2.3.6 He submitted that in view of the above, no current dues qua lease premium/rent is required to be paid to the Lessor during CIRP period in terms of Section 14 (1)(d) of the Code. The said question of law stands authoritatively pronounced by the NCLAT which has not even been interfered by the Hon'ble Supreme Court. The limited question which is being examined by the Hon'ble Supreme Court is with regard to accounting of the current dues under the Resolution Plan and not payment during CIRP. Thus, the accounting of current dues during CIRP under the Resolution Plan itself suggests that the same is not required to be paid by the RP, if it was ought to have been paid by the RP, the same should not have been required to have been accounted for under the Resolution Plan.

2.3.7 That it is settled principle of law that the law declared by a court will have retrospective effect, if not otherwise stated to be so specifically. The aforementioned judgment of the NCLAT didn't provide that the interpretation of explanation to Section 14(1)(d) of the Code is prospective in nature. Thus, the settled law in this regard in this regard is clear that no current lease rent is payable to the HSVP during CIRP period.

2.3.8 He submitted that SCN records that the lease rent is payable to HSVP w.e.f. 28.12.2019 in view of explanation added to Section 14(1)(d) of the Code. However, the said finding is contrary to the judgment of the NCLAT as well as in contrast to the fact that the said issue is being currently considered by the Hon'ble Supreme Court. As a matter of fact, the issue of lease rent being payable is CIRP cost is pending consideration of Hon'ble Supreme Court in appeal against the judgment dated 12.01.2023 passed the NCLAT in the matter of Sunil Kumar Agrawal v. New Okhla Industrial Development Authority, Company Appeal (AT)(Ins.) No. 622 of 2022 wherein the NCLAT clearly held that no lease rent is payable in terms of explanation to Section 14(1)(d) of the IBC.

2.3.9 That the reliance by the Complainant and in the SCN on selective portion of para-21 of order dated 13.03.2024 of the AA in IA 4474/2022 is misplaced and seems to have been done with malafide intent. The relevant para of the said order is reproduced hereunder:-

"19. On the basis of the decision rendered by the Hon'ble NCLAT, it now transpires that the non-payment of the least rent/premium may not be a ground for cancellation of the lease agreement. However, this issue is still at large before the Hon'ble Supreme Court on an appeal

filed by the New Okhla Industrial Development Authority under Civil Appeal No.901/2023."

…

"21. Hence, for the above stated reasons, we are inclined to interfere in the impugned proceedings and set aside the same. However, before parting with the same, in the course of hearing, we also noticed that the RP had not paid the dues at the relevant point of time when there was no restraint on him; therefore, to ensure that there is bonafide on the part of the RP in the conduct of the affairs of the CD, we asked parties to give chart giving a statement of lease rent payable for the period between 04.08.2018 to 02.09.2022, which was also prepared by the RP and one chart has been prepared by the Respondent/HSVP. The two charts are as follows:……"

"22. In order to balance the equities between the CD and the Respondent/HSVP so as to enable the RP to continue the progress on the running of the CD, we record and direct the RP to pay the principal amount on account of lease payable to Respondent/HSVP for the period from 04.08.2018 to 02.09.2022. This will not include the interest or other charges and it will be determined at the appropriate stage when the issues are resolved by the RP and the CD ."

"23. Mr. Abhishek Anand, Ld. Counsel for the RP pleaded that the waterpark was closed by the District Administration during Covid period for which he seeks and is granted to make an application to the Respondent for consideration of waiver, which shall be considered on its own merits.

24. Mr. Abhishek Anand, Ld. Counsel for the RP further pleads that this amount as determined in the chart as above and should be allowed to be paid in the phased manner considering the fact that the CD has been closed for quite some time, primarily due to the Covid pandemic and post-Covid due to the impugned proceedings. This will also be duly considered by the Respondent/HSVP so that CD has the ability to pay in stages. Such request is to be made to the Respondent/HSVP and they shall consider and grant the benefit of staggered payment over a period of time."

2.3.10 A bare perusal of aforementioned order passed by the AA clarify that the AA has set aside the termination order issued by HSVP *inter alia* for non-payment of lease rent as the same was not payable in accordance with law and the termination order passed by HSVP was illegal. However, the AA directed him to pay the lease rent for a particular period only in order to balance equities which is clearly recorded. Thus, an order passed in view of balancing equities cannot be treated to have been an observation against the conduct of the RP wherein the law as declared by the NCLAT and not interfered to by the Hon'ble Supreme Court to that extent, makes it clear that no lease rent is payable to lessor (herein HSVP) for the CIRP period. Further, the compliance on the part of RP qua payment can only be done once the HSVP first comply with the order of the AA *qua* de-sealing and secondly, disposes of the representation made by RP qua *inter alia* waiver of payment for covid-19 period in terms of the liberty granted under the said order.

2.3.11 He submitted that the direction of the AA *qua* payment of principal lease rent for the period from 04.08.2018 to 02.09.2022 is in the teeth of aforementioned judgment of the NCLAT read with interim order passed by the Hon'ble Supreme Court in Noida matter. Therefore, the said order dated 13.03.2024 is fit case for appeal. However, the Hon'ble Supreme Court in Civil

Appeal Nos. 5985 – 6001 of 2023 in *Regen Power Tech Private Limited vs. Giriraj Enterprises &Anr.* on 25.09.2023 observe that the RP shall have to act in neutral manner. The RP is neutral, but with clear mandate to guard the interest of the CD, that is why he challenged the termination of by HUDA, not doing so would have set the entire CIRP to naught as the impugned land is the only asset belonging to the CD. That the filing of appeal against order dated 13.03.2024 would have unnecessarily delayed the resolution process being the sole asset of the CD. Thus, he didn't challenge the order of the AA *qua* the limited portion wherein it has ordered qua payment of principal lease rent for the period from 04.08.2018 to 02.09.2022 while setting aside the lease termination order issued by HSVP.

2.3.12 In compliance of the said order, he wrote to the HSVP for de-sealing of the property and thereafter the payment has to be made once the HSVP considers his request qua waiver for the covid period. He submitted that he has sent numerous intimations to HSVP for compliance of the said order and also to take a call on the amount payable after due consideration of the liberty granted by the AA qua staggered payment and covid period exemption. However, the HSVP neither complied with the order dated 13.03.2024 nor responded to the request qua payment reliefs/mode as indicated by the AA and thus compelling him to file contempt petition in accordance with Section 425 of the Companies Act vide Contempt Application No. 24/2024. He submitted that the said contempt application is already annexed with the reply which clearly brings out communication between RP and HSVP seeking compliance of order dated 13.03.2024. Thus, it is the HSVP which has not complied with order dated 13.03.2024 and not the other way around.

2.4 Analysis and Findings of the DC.

2.4.1 The DC notes that the matter related to whether or not lease payment is covered by the amendment to Section 14(1)(d) is *sub judice* and refrain from making any observations in this context. However, on point of view of regulatory compliances, connected with the issue, there are several infirmities in the responses received and material placed on record.

2.4.2 In his averments, on the one hand Mr. Pramod Kumar Sharma, citing proceedings of different case, he has presented a viewpoint that lease rent are not payable and are needed to be admitted as claims and on the other, a statement has been made, that in compliance with the AA's directions, he approached HSVP for certain exclusions and segregations for payment of lease dues.

2.4.3 Further, the DC notes that the AA in its order dated 13.03.2024 stated as follows:
"22. In order to balance the equities between the CD and the Respondent/HSVP so as to enable the RP to continue the progress on the running of the CD, we record and direct the RP to pay the principal amount on account of lease payable to Respondent/HSVP for the period from 04.08.2018 to 02.09.2022. This will not include the interest or other charges and it will be determined at the appropriate stage when the issues are resolved by the RP and the CD.
23. Mr. Abhishek Anand, Ld. Counsel for the RP pleaded that the waterpark was closed by the District Administration during Covid period for which he seeks and is granted to make an application to the Respondent for consideration of waiver, which shall be considered on its own merits.

24. Mr. Abhishek Anand, Ld. Counsel for the RP further pleads that this amount as determined in the chart as above and should be allowed to be paid in the phased manner considering the fact that the CD has been closed for quite some time, primarily due to the Covid pandemic and post-Covid due to the impugned proceedings. This will also be duly considered by the Respondent/HSVP so that CD has the ability to pay in stages. Such request is to be made to the Respondent/HSVP and they shall consider and grant the benefit of staggered payment over a period of time."

2.4.4 Though in his submissions he has heavily relied on the pending case with the Hon'ble Supreme Court being having force of law, yet he considered above order of the AA not being fit case for being challenged before the NCLAT on presumption of likely delays. However, fact remains that resolution plan was approved by the CoC on 09.05.2019 and over five years elapsed in between awaiting the final decision. Principles of jurisprudence are not a matter of convenience for being loosely interpreted, however, Mr. Pramod Kumar Sharma has not applied the required due diligence which was so crucial for taking a firm stand on the issue.

2.4.5 The DC notes that the termination letter dated 02.09.2022 issued by 'Office of Administrator, HSVP' refers to notices being served to the CD on various dates:

"In continuation of this Estate Officer-II office memo No 3713 dated 14.06.2021, memo No. 5950-51 dated 19.08.2021, memo No. 5213 dated 29.06.2022 and order u/s 16 of HSVP Act, 1977 issued vide No. 7336 dated 16.08.2022 with regard to Theme park Sectro-29, Gurugram"
...
Whereas you have been issued notices from time to time in the year 2015, 2016, 2017, 2021 & 2022. Lastly notices dated 19.08.21, 29.06.22 and order dated 16.08.2022 were issued to you vide memo No. 5950-51, 5213 and Order No.7336 dated 16.08.2022 respectively.

Vide notice dated 14.06.21, preliminary notice as per Article 18.1.2 of the lease agreement dated 14.06.11 was issued to you stating the violations and outstanding amount. You were granted a period of 30 days to cure the breaches and defaults. IQ

After expiry of 30 days of cure period, Termination Notice was issued as per Article 18.4.2, lease agreement dated 14.06.11 vide memo No, 5950 dated 19.08.21."

The above statements quoted in the lease termination letter issued by HSVP highlights that communications were made to CD under CIRP after appointment of Mr. Pramod Kumar Sharma as IRP/RP on 10.08.2018, i.e., on 14.06.2021, 19.08.2021, 29.06.2022, 16.08.2022. The nature of said notices were aimed at intimation of outstanding amount. At the time of these notices Explanation to Section 14(1) was in force and the order the AA dated 12.04.2022 was also applicable which clarified the implication of Explanation to Section 14(1)(d). Still there were no steps taken by Mr. Pramod Kumar Sharma to at least open regular communication with the HSVP to resolve the issue surrounding lease as the land was the most crucial asset of the CD without which no resolution was possible. The DC notes that adequate effort was not made by Mr. Pramod Kumar Sharma to amicably resolve the issue. More importantly, perusal of minutes of the CoC meetings suggest thar even the CoC was not taken into confidence about

the brewing trouble and actions taken by him to mitigate the same.

2.4.6 The termination letter dated 02.09.2022 also mentions that lease was under risk due to insolvency and there were FIRs registered against the CD for fraudulent allotments. The DC notes that there is no evidence on record to conclusively proof that allotment of land of the CD to various stakeholders were as per the provisions of the lease agreement. It indicate highhandedness on behalf of original promoters, nevertheless while admitting the claims of such allottees, the mandate of due diligence required that such claims were to verified and need not brought under consideration if technically they were unauthorized and in violation to the lease conditions. This specific charge is not part of the SCN and hence needs further investigation.

2.4.7 However, Mr. Pramod Kumar Sharma could not produce any evidence to showcase the actions taken by him to preserve the assets of the CD as going concern and for the same it was important to take steps to save the lease from termination which is the crucial assets of the CD. The above position even points to the lack of due diligence at the time of verification of claims when the lease was an important asset of the CD. While, currently it is not clear that whether or not due diligence on verification of claims submitted by the land parcel allottees was done, however, it is evident that the dues of the HSVP were not verified, collated at the time of collation of claims. The dues could have been verified through perusing and analysing financial statements which mention the dues *"Payable Haryana Urban Development Authority"* under *"Long term borrowing & other long term liabilities".*

2.4.8 In view of above, the DC holds that Mr. Pramod Kumar Sharma specifically contravened Clause 14 of the Code of Conduct for being negligent in handling the affairs of the CD.

Contravention -II

2.5. **Lack of due diligence of Resolution Plan.**

2.5.1 It was observed that the Resolution Applicant, i.e., HGAS-APEX JV was a Joint Venture, which came into existence by way of JV Agreement executed between M/s Hari Global Advisory Service (Hari Global) and M/s Parklane Investment Securities Limited (Park Lane) on 23.01.2019 and had submitted its Resolution plan as one entity for the purpose of the present CIRP. It was alleged that Mr. Pramod Kumar Sharma chose to ignore the defects in the resolution plan as the credentials of one of the joint Resolution Applicant (RA), Park Lane, were defective as the certificate of the auditor and tax advisor validating the balance sheet was given by a fictitious entity called 'Kaushik and Chrysalia'.

2.5.2 It was observed that Mr. Pramod Kumar Sharma failed to verify the credentials of the JV Partner despite aspersion cast on the same. Merely placing an agenda before the CoC for appointment of a professional for undertaking due diligence does not suffice as it is the duty of the RP under Section 30(2) of the Code to examine each resolution plan to confirm that it does not contravene any of the provisions of the law for the time being in force.

2.5.3 The Board held the prima facie view that Mr. Pramod Kumar Sharma had contravened Section

30(2)(e), 208(2)(a) and (e) of the Code, Regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clause 14 of the Code of Conduct.

2.6. **Submissions by Mr. Pramod Kumar Sharma.**

2.6.1 Mr. Pramod Kumar Sharma submitted that the scheme of the Code provides due diligence of the Resolution Plan submitted by the RP *inter alia* including compliance of Section 30(2) and Section 29A of the Code. The contours of duty of the RP qua confirming the compliance of the Resolution Plan *inter alia* in accordance with Section 30(2), Section 29A and Regulations under the Code, has been clearly laid down by the Hon'ble Supreme Court in the matter of *Arcellor Mittal India Pvt. Ltd. v. Satish Kumar Gupta and Ors., Civil Appeal No. 9402-9405 of 2018*, judgment dated 04.10.2018. Whereas the aspect of feasibility and viability vests with the CoC. In view of the above, the content of the allegation is denied and the same is without any merit. He has already conducted legal due diligence *qua inter alia* compliance of Section 29A and 30 on his own as well as through its process advisor. The legal due diligence of all the Resolution Applicants (two Resolution Plan received) was done by M/s. Kesar Dass B & Associates which is a pioneer name in the of insolvency law led by Mr. Sumant Batra as Managing Partner.

2.6.2 Mr. Pramod Kumar Sharma has submitted that IA No. 4464/2020 and IA No. 4563/2020 were filed in 2020 wherein these allegations for the first time came in front whereas the application for approval of the Resolution Plan was filed before the AA on 10.06.2019. It is not the case of the complainant or the board that any additional documents not being subject matter of the said IA's were produced which was not considered by the RP. At that juncture, he could not have done anything as the said allegations were made directly before the AA. Further, the said application *inter alia* alleging perjury, forgery was dismissed by the AA *vide* order dated 30.03.2021 *inter alia* on the ground of being frivolous in nature and the said order has been affirmed by the NCLAT on the ground of maintainability *vide* order dated 04.10.2023. Further, the said allegation was raised for the first time when the Section 30 application was already pending before the AA and at that juncture, the said resolution plan was within the realm of the AA and the RP could not have assumed powers vested with the AA. Further, the order dated 30.03.2021 specifically recorded that the allegations were never placed before the RP and the same was placed for the first time before the AA which was dismissed by it on 30.03.2021 and against which appeal vide Appeal No. 480 of 2021 was filed. Thus, the RP acting in such matters would have amounted to interfering with the judicial proceedings. Accordingly, the allegation *qua* failure of RP to check the credential of JV partner is contrary to the records.

2.6.3 He submitted that the said order dated 30.03.2021 passed by the AA was affirmed by the NCLAT vide judgment dated 04.10.2023. Thus, the SCN issuing authority wrongly sustained contravention against the RP for an allegation which has been dismissed by the AA and the said judgment not having been interfered by the NCLAT. That no appeal against judgment dated 4.10.2023 has been filed before the Hon'ble Supreme Court.

2.6.4 That the RP was only to give a *prima facie* opinion of the Resolution Plan submitted by the Resolution Applicant which doesn't include a forensic examination of the documents submitted along with the Resolution Plan. In so far as prima facie opinion of the RP is concerned, the

same has been duly intimated to the CoC members along with due-diligence report. However, a bare perusal of Section 30(2) of the Code would show that it deals with examining compliance of law *qua* Resolution Plan submitted before the CoC/RP and the same can by no stretch of imagination shall mean examination of genuineness of documents submitted before itself. Even as per above judgment, final call on the report submitted by RP would lie on the CoC as RP has no powers to reject the Resolution Plan even if it is not compliant with law. Under such circumstances, the Code does not put additional obligation on the RP to further examine the Resolution Plan and has to restrict himself in terms of judgment of Hon'ble Supreme Court.

2.6.5 He submitted that the issue raised in the SCN as well as the complaint is about the resolution applicant (joint venture partner) and not much about the resolution plan under Section 30(2). The legality of the resolution applicant and resolution plan are two different things. Even, the Hon'ble Supreme Court in the matter of *Committee of Creditors of Essar Steel India Limited Through Authorised Signatory. Satish Kumar Gupta &Ors. Civil Appeal No. 8766-67 of 2019* held that the date of submission of the resolution plan is the relevant date for consideration of the eligibility of the Resolution Applicant. In the instant case, at the date of submission of the Resolution Plan and even till the date of submission of application in accordance with Section 30(6) of the Code or even till the last date of expiry of CIRP in accordance with Section 12 including exclusion granted by the Hon'ble AA, there was no murmur *qua* credential of the Resolution Applicant. Once an application under Section 30(6) is filed and an aggrieved party makes an application before the AA, it is for the AA to adjudicate upon the compliance of Section 30(2) of the Code and the RP cannot interfere with the matter pending consideration of the AA except as any assistance rendered by the AA.

2.6.6 He further submitted that the SCN recorded that the RP has merely placed the agenda for financial due-diligence by professional, the said prima facie finding is not factually correct as apart from the said agenda, the RP has done legal due diligence of the Resolution Plan on his own as well as by a well reputed firm. Further, the allegations made against the one of JV partner has not been proved till dated wherein there are two concurrent finding of the AA as well as the NCLAT against the said application. Further, RP is not an investigating agency, yet relied on an established firm. RP does not have to be omniscient and do everything by himself. Therefore, the law allows using the services of professionals.

2.6.7 Mr. Pramod Kumar Sharma submitted that due diligence submitted by Mr. Batra team was shared with all the CoC members. The Resolution Plan of successful Resolution Applicant was put to vote only after receipt of opinion from the process advisor *qua* legal compliant of the said resolution plan. The relevant portion of the minutes of 9th CoC meeting dated 09.05.2019 is reproduced hereunder:-

"As soon as the Chairman commenced his discussion on agenda Item No. 8, the team of process Advisor Mr. Sumant Batra joined the meeting.
Ms. Jhanvi Bhasin, team member of process advisor presented their final opinion on the Resolution Plan submitted by M/s Hari Global Apex JV and M/s Unity Buildwell Limited as follows:
1. M/s Hari Global Apex JV: The Plan submitted by M/s HGAS APEX is completely legally compliant in all aspects including the provision of Section 30(2) of Insolvency and Bankruptcy

Code and the rules and regulations made thereunder…"

2.6.8 That a bare perusal of the minutes of the 9th CoC meeting reveals that no objection from any CoC member on the report of the Process Advisor was raised except with regard to conditional nature of Bank Guarantee *qua* other Resolution Applicant which was suitably answered. The minutes of the said meeting is not under challenge. The Process Advisor was appointed in the 6th CoC meeting and their report on the Resolution Plan submitted was placed and deliberated in 7th CoC meeting wherein pursuant to the query raised revised Resolution Plan was submitted on which revised report was submitted by Process Advisor for deliberation in the 8th CoC meeting and finally in 9th CoC meeting. Thus, lack of steps taken by undersigned qua due diligence is contrary to the facts on record.

2.6.9 Regarding financial statement of the one of the partners of the successful resolution applicant, he submitted that some doubts *qua* financial statement was raised in the 8th CoC meeting dated 13.04.2019, he proposed for financial due diligence of the Resolution Plan by reputed chartered accountant firm. Accordingly, in the said meeting itself, the resolution for appointment for chartered accountant firm for financial due diligence was put to vote before the CoC in similar fashion as Mr. Sumant Batra Firm was appointed as process advisor for legal due diligence in the 6th COC meeting. However, the CoC in its commercial wisdom rejected the said proposal whereby 72.43% of casted vote was made against the said proposal. Thus, the CoC commercial wisdom being binding on the RP, he could not have acted in more diligent manner. The relevant portion of minutes of the 8th CoC minutes as well as that of voting result is reproduced as under:-

"3. Financial Due Diligence of Resolution Plan(s): The COC members raised some queries and doubts on the Financial Statements for Resolution Plan more particularly about HGAS-APEX and some members demanded the Financial Due Diligence of the Resolution Plan submitted by the Resolution Applicant whereupon the Resolution Professional advised the COC that the COC members would identify and finalise the person concerned on their own for the said Due Diligence subject to such terms and conditions as the COC members may deem fit in the interest of the Corporate Debtor.
Following Resolution was proposed for the purpose of e-voting:
"RESOLVED THAT the Financial Due Diligence of the Resolution Plan(s) submitted by the Resolution Applicant(s) be and is hereby carried out from reputed Chartered Accountants Firm upon condition that the COC members would identify and finalise the person concerned on their own for the said Due Diligence subject to such terms and conditions as the COC members may deed fit in the interest of the Corporate Debtor."

The resolution was not approved by the CoC. Even otherwise, the NCLAT in the matter of *Rajesh Kumar and Ors. V. Rabindra Kumar Mintri and Anr. Company Appeal (AT) (Insolvency) No.1489 of 2022* held that once Resolution Plan has been approved, it would be presumed that the Resolution Plan was feasible and viable. Thus, neither the CoC commercial wisdom can be faulted with by an individual complainant nor allegation against RP can be sustained *qua* financial due diligence which is in relation to feasibility and viability which falls exclusively in the domain of the CoC.

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

2.7.1 The DC notes that observation made by the AA in its order dated 30.03.2021 refer to technical infirmities without going into merit of the allegation. The Hon'ble Supreme Court Judgement as quoted on duties of the RP too rest the responsibility of making a prima facie view on the plan and the resolution applicant. The op cited judgement also mentions:

"78. *Thus, the importance of the Resolution Professional is to ensure that a resolution plan is complete in all respects, and to conduct a due diligence in order to report to the Committee of Creditors whether or not it is order. Even though it is not necessary for the Resolution Professional to give reasons while submitting a resolution plan to the Committee of Creditors, it would be in fitness of things if he appends the due diligence report carried out by him with respect to each of the resolution plans under consideration, to state briefly as to why it does or does not conform to the law."*

2.7.2 The DC notes the submission of Mr. Pramod Kumar Sharma that these allegations became apparent for the first time when IA No. 4464/2020 and 4563/2020 were filed in 2020 whereas the application for approval of the Resolution Plan was filed on 10.06.2019. The DC observes that such responsibility of due diligence of resolution plan cannot be shrugged off by way of delegating his responsibility to any other professional. A very strange defence was taken by Mr. Pramod Kumar Sharma on the allegation about the fictitious entity, by stating that such issue about one of the partners of the JV was made after submission of the resolution plan before the AA. In fact, as per scheme of the Code, such due diligence is required before the submission of the resolution plan before the CoC without waiting for the complaint to be submitted by anybody about the resolution applicant. Had Mr. Pramod Kumar Sharma done proper due diligence about the all the partners of Resolution Applicant of the JV, it would have taken the sheen away for making such huge allegation by the complainant. Further, after knowing the allegation against one partner of JV SRA has come to light, Mr. Pramod Kumar Sharma, was duty bound to take corrective steps by examining the merits of the allegation and should have conveyed his prima facie view to the CoC and to the AA for assisting them to take appropriate decision on basis of such a report Even after the submission of the resolution plan before the AA for approval, if any material information is received by the RP, about the Resolution Applicant or the Resolution Plan, the RP should brought his prima facie view on the same to the notice of the AA as well as the CoC.

2.7.3 The professionals are for assistance of a RP but it cannot be a shield for not performing his duties and the final responsibility rests with the RP. Mr. Pramod Kumar Sharma did not conduct due diligence of the financial credentials of the resolution plan to assess suitability of the resolution applicant. The allegation becomes of grave nature as subsequently Hari Global Advisory Services itself approached the Hon'ble AA for dropping M/s Parklane Investment and Securities Ltd as JV partner due to possible implications of the allegations. In view above, the DC holds this contravention as onerous responsibility of RP to bring all the facts relevant for decision making by CoC and AA stands compromised.

Contravention-III

2.8. **Failure to conduct the CoC meeting.**

2.8.1 As per the amended Regulation 18(1) of the CIRP Regulations, which came into effect from 15.02.2024, a RP shall convene a meeting of the CoC before lapse of thirty days from the last meeting. Proviso to the said Regulation states that the CoC may decide to extend the interval between such meetings subject to the condition that there shall be at least one meeting in each quarter.

2.8.2 Regulation 18(2) states that a RP may convene a meeting, if he considers it necessary, on a request received from members of the committee and shall convene a meeting if the same is made by members of the committee representing at least thirty-three percent of the voting rights. Explanation to this regulation further states that for the purposes of sub-regulation (2), it is clarified that meeting(s) may be convened under this sub-regulation till the resolution plan is approved under sub-section (1) of Section 31 or order for liquidation is passed under section 33 and decide on matters which do not affect the resolution plan submitted before the AA.

2.8.3 After the aforesaid amendment to the CIRP Regulations came into effect w.e.f. 15.02.2024, Mr. Pramod Kumar Sharma was required to convene the meeting of the CoC every 30 days. However, he failed to conduct any meeting of the CoC after 15.02.2024. In view of the above, the Board held the prima facie view that Mr. Pramod Kumar Sharma had contravened Section 208(2)(a) and (e) of the Code, Regulation 18(1) and (2) of the CIRP Regulations, Regulation 7(2)(a) and (h) of the IP Regulations read with Clause 14 of the Code of Conduct.

2.9. **Submissions by Mr. Pramod Kumar Sharma.**

2.9.1 The Board notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations 2024 (Amendment Regulations) on 15.02.2024 and following has been substituted:
"(1) A resolution professional shall convene a meeting of the committee before lapse of thirty days from the last meeting: Provided that the committee may decide to extend the interval between such meetings subject to the condition that there shall be at least one meeting in each quarter."

2.9.2 Mr. Pramod Kumar Sharma submitted that the aforesaid amendment was made on 15.02.2024 and it has not been clarified to be applicable retrospectively to the cases, where the resolution plan has been approved by CoC and is pending before the AA. Furthermore, Regulation 18(2) and its explanation has neither been amended nor clarified and therefore, it appears that Regulation 18(1) as amended on 15.02.2024 applies prospectively and not retrospectively.

2.9.3 He submitted that it is a settled position of law that an amendment/Act shall be deemed to be prospective unless otherwise it has been specifically mentioned that the said amendment/legislation is retrospective in nature. Further, it is another important principle of law that in the absence of express authorization by the parent legislation, delegated legislation (herein Regulation) cannot operate retrospectively. Hon'ble Supreme Court in the matter of

Assistant Excise Commissioner, Kottayam & Ors. v. Esthappan Cherian and Anr. Civil Appeal No. 5815 of 2009, judgment dated 06.09.2021 held as under with regard to the retrospective effect:-

"14. There is profusion of judicial authority on the proposition that a rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention, to the contrary."

2.9.4 He further submitted that, a bare reading of Regulation 18(2) makes it clear that Regulation 18(1) as amended applies to such cases, where resolution plan has not been approved and Regulation 18(2) applies where plan has been approved by the CoC and pending approval before the AA. Further, it is noteworthy that the Board has earlier clarified if an amendment in a particular Regulation is also applicable to the CIRP ongoing on the date of the amendment. Reference in this regard may be made to Regulation 13(2)(ca) which was amended vide amendment dated 13.11.2020. In the said amendment, by inserting a proviso, the Board made it clear that the said clause shall also apply to every CIRP process ongoing as on the date of said amendment. The relevant portion of the said Regulation is reproduced hereunder:

"13(2) (ca) filed on the electronic platform of the Board for dissemination on its website: Provided that this clause shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020;

Inserted by Notification No. IBBI/2020-21/GN/REG066, dated 13th November, 2020"

2.9.5 Mr. Pramod Kumar Sharma submitted that it is clear that the Board has earlier specified if a particular amendment is also applicable to CIRP ongoing as on the date of the said amendment. A bare perusal of amendment dated 15.02.2024 whereby Regulation 18(1) was amended to mandate monthly meeting nowhere specifies that the said amendment shall also apply to the CIRP ongoing on the date of the said amendment (herein present CIRP). Even, as recently as on 28.09.2023, the IBBI has clarified usage of certain terms in Liquidation Process Regulations with retrospective effect, the said matter was subject matter of litigation before Hon'ble Bombay High Court in the matter *of Amit Gupta v. IBBI*. Therefore, in lack of such clarification under the Regulation and looking at the historic context, it is clear that the said amendment shall apply prospectively i.e. to a CIRP initiated after the date of the said amendment. Hence, the said amendment is not applicable to the instant CIRP and accordingly, the RP cannot be faulted for taking a call based on sound legal basis. No clarification till date has been issued by the Board clarifying that the said amendment is retrospective and shall apply where plans are approved by the CoC and pending approval before the AA. Therefore, in the absence of any such clarification and in view of settled jurisprudence *qua* retrospective amendment of legislation in general and delegated legislation in particular, the RP was justified in believing that the said amendment shall not apply to the instant CIRP. Having said that, if the Board is of such an opinion that RP should conduct COC meeting in the present case also, the RP shall accept any direction of the Board in this regard.

2.9.6 Further, after the expiry of the CIRP period, the RP has no duty, including convening meetings of the CoC, after the insolvency resolution period is over. He is, however, required to continue to manage the operations of the CD until the resolution plan is approved by the AA (Proviso to

Section 23(1)). The law does not envisage any role of the CoC in managing the operations of the CD.

2.9.7 He further submitted that the amended regulation shows that a meeting shall be conducted before 30 days from the last meeting. In the present case, the last COC meeting i.e. 9th CoC meeting was conducted on 09.09.2019. Thus, it is not possible to conduct the next meeting within 30 days, the said fact itself suggests that the instant amendment has no applicability in the present CIRP.

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

2.10.1 The DC notes that intention behind the amendment in Regulation 18(1) of CIRP Regulation as provided in the agenda for Governing Board meeting dated 28.12.2023 is as follows:

"B. Monthly CoC meetings
1. The CIRP is conceived to be a swift and time-efficient mechanism, ideally designed to be accomplished within 180 days. This time frame has been instituted to ensure timely resolution, minimizing disruptions and potential value degradation. Observations from some ongoing CIRP cases highlight substantial gaps in the scheduling meetings of CoC. In some instances, there has been a gap of more than six months between two successive CoC meetings. Such significant gaps conflict with the intended agility of the process. CoC meetings are crucial venues for collective decision-making, leading to the resolution of the CD. Prolonged gaps between meetings result in delayed decisions, stalling the momentum of the resolution process. Additionally, this could erode the trust and confidence of stakeholders in the efficacy of the CIRP framework.
2. It seems that the frequency of CoC meetings largely depends on the presence of approval items on the agenda. When there are no such items, CoC meetings tend to be deferred or delayed. This ad-hoc scheduling might be overlooking the larger intent of the CIRP, which emphasizes consistent monitoring and speedy resolution.
3. Establishing a monthly mandate for conducting CoC meetings ensures consistent check-ins, prompt feedback, and a platform for addressing any emerging concerns. Regular meetings also foster a collaborative spirit among stakeholders."

Thus, the above proposal mandates conducting of the CoC meetings monthly irrespective of the status of the CIRP as long it is ongoing. The Regulation does not intend to conduct the CoC meeting before its notification or renders any act or omission of a RP unauthorised due to non-conduct of the CoC meeting. As and when the regulation comes into force, it applies to the all the ongoing and new CIRPs except provided otherwise. Hence, the contravention is upheld. However, considering the Regulation being new, , the DC is inclined to take a lenient view.

Contravention -IV

2.11. **Inaction on part of RP on change in composition of Resolution Applicant**

2.11.1 The CoC approved the Resolution Plan in its 9th CoC meeting held on 09.05.2019, pursuant to which application for approval of the Resolution Plan was filed before the AA on 06.06.2019. It has been observed that while the resolution plan was pending for approval of the AA, one of

the JV partners of the Resolution applicant, Park Lane, withdrew from the JV and in its place, another JV partner was added. Hence, the Resolution Applicant did not remain the same, the plan of whom was approved by the CoC. It has been observed that Mr. Pramod Kumar Sharma failed to take cognizance of the said change in the composition of the resolution applicant and did not take any action in the matter. In view of the above, the Board held the prima facie view that Mr. Pramod Kumar Sharma had not acted as required under the provisions of the Code and Regulations thereunder and contravened Section 208(2)(a) and (e) of the Code, Regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clause 14 and 15 of the Code of Conduct.

2.12. **Submissions by Mr. Pramod Kumar Sharma.**

2.12.1 Mr. Pramod Kumar Sharma submitted by that the CoC approved the Resolution Plan in its 9th CoC meeting dated 09.05.2019 pursuant to which Section 30 for approval of the Resolution Plan was filed before the AA in June, 2019. Subsequently, IA No. 4464/2020 and IA No. 4563/2020 was filed before the AA raising doubt against the account statement of foreign partner. The AA *vide* order dated 30.03.2021 dismissed the said application with a finding that the said application is frivolous in nature. The aggrieved allottees challenged the said order dated 30.03.2021 before the NCLAT *vide* Comp. App. (AT) (Ins) No. 480 of 2021, the appeal against the said order was dismissed vide judgment dated 04.10.2023. However, during the pendency of the appeal, the successful Resolution Applicant by way of reply before the NCLAT brought on record the affidavit (filed before the AA) with regard to removing foreign partner and taking all the responsibility under the Resolution Plan. Pursuant to the said reply, rejoinder was filed by Appellant *inter alia* raising the ground of modification of the Resolution Plan not being permissible. Thus, the said affidavit was for consideration is pending consideration of the AA. The copy of the said affidavit was duly shared with all the financial creditor by him.

2.12.2 He submitted that the said affidavit *qua* alleged change in composition was initially pending consideration before the NCLAT and now being adjudicated by the AA. Once, the RP submits the Resolution Plan before the AA and an affidavit ringing some change in the RA structure has been filed before the AA, it is for the AA to take a decision on the legal contours of the said affidavit. The RP would have no role in the said matter except to the extent to assisting the AA on the legal contours of the said affidavit which is being done by the RP. Regarding taking cognizance of the said affidavit is concerned, the RP has already informed about the same to the members of the CoC and the AA is also seized with the said matter. Thus, no malafide can be alleged on the RP in such an event. The RP has no power to put the said affidavit for the consideration of the CoC once the AA seized with the said issue unless otherwise directed by the AA after adjudication of Section 30 application i.e. CA 1225/2019. He submitted that any interference *inter alia* taking any action on the said matter other than informing the creditors as well as the AA (which has already been done by RP) shall amount to nothing but interfering with judicial proceedings which shall amount to contempt in terms of Contempt of Court Act.

2.12.3 Thus, the RP within the bounds of law, duly interfered with the factum of the partner to the creditors, and the same was duly informed by the Resolution Applicant to the AA as well as the NCLAT. Thus, the RP cannot be said to have taken any action against the said fact once brought to notice. Further, it is not the case that the RP failed to take into cognizance with

regard to any demand raised by the creditors in accordance with law on the aspect of affidavit qua partner filed by the RA.

2.12.4 He further submitted that one of the JV partner was replaced with another JV partner is contrary to the facts. The bare perusal of recital D of the MoU dated 24.09.2021 makes it amply clear that one of the partner of the JV i.e. Hari Global Advisory Services is now taking over project alone. The job of Rapid Buildtech Pvt. Ltd. is only to ensure financial assistance. Further the affidavit dated 23.10.2021 filed by Hari Global Advisory Services before the AA makes it amply clear that Rapid Buildtech Pvt. Ltd. was never introduced as a resolution applicant.

2.12.5 He submitted that the AA while dismissing IA 306 of 2021 *vide* order dated 11.09.2024 clearly held that the allegation of the financial creditor *qua* change in structure of the successful resolution applicant cannot be examined at the behest of creditor. However, the same may be separately examined in accordance with law while according approval to the Resolution Plan by the AA in terms of Section 30 of the Code. That being the position, the priority demands that no observation may be passed on an aspect being considered by the AA, doing so shall prejudice a *sub judice* matter which is impermissible under law.

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

2.13.1 The DC notes that the affidavit dated 23.10.2021 filed by M/s Hari Global Advisory Services (HGAS), remaining partner of the JV, before the AA in application for approval of resolution plan stated that it proposed deletion of name of foreign partner, i.e. Parklane Investment and Securities Pvt. Ltd. and HGAS only will implement the plan without any change in financial term and condition of the resolution plan. The DC further takes note that the HGAS submitted before the AA, a MoU dated 24.09.2021 executed between HGAS and Rapid Buildtech Pvt, Ltd. an associate concern of Paras Buildtech India Pvt. Ltd wherein it was stated that Rapid Buildtech Pvt. Ltd. will take care of the financial support for implementing the plan. However, pursual of the MoU, it is evident that said MoU contains automatic extinguishment date which reads as follows: "*This MoU is valid for a period of 30 days or execution of the Definitive Agreements, whichever is earlier*." On being asked by the DC about being aware about the "definitive agreement", in his reply submitted on 14.09.2024, it was stated by Mr. Pramod Kumar Sharma that "*no copy of such definitive agreement has been provided by the Hari Global Advisory Services nor placed before the Hon'ble Adjudicating Authority*".

2.13.2 The above facts indicate that the MoU dated 24.09.2021 was valid for 30 days only and before expiry of the said 30 days, a definitive agreement was to be signed between HGAS and Rapid Buildtech Pvt. Ltd. However, same was submitted along with an affidavit just at the stroke of its expiry date, being fully aware that on any consideration date of this affidavit by the AA, this document must have reached expiry date. Further, the records available with the Board, do not suggest any revised affidavit before the AA containing a valid "Definitive Agreement" being filed.

2.13.3 The fact remains that Mr. Pramod Kumar Sharma was duty bound to firstly to convene the CoC meeting to apprise *suo moto* intimation received from HGAS a JV partner for removing the another JV partner to quell the raging controversy about it and get directions on further course

of action as statute does not allow any modification of resolution plan which includes changes in status of resolution applicant. after its submission for approval of the AA. In the matter of *Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Ltd. and Anr. (Civil Appeal 3224 of 2020)*, the Hon'ble Supreme Court has observed the following –

"*In the present framework, even if an impermissible understanding of equity is imported through the route of residual powers or the terms of the Resolution Plan are interpreted in a manner that enables the appellants' desired course of action, it is wholly unclear on whether a withdrawal of a CoC-approved Resolution Plan at a later stage of the process would result in the Adjudicating Authority directing mandatory liquidation of the Corporate Debtor. Pertinently, this direction has been otherwise provided in Section 33(1)(b) of the IBC when an Adjudicating Authority rejects a Resolution Plan under Section 31. In this context, we hold that* ***the existing insolvency framework in India provides no scope for effecting further modifications or withdrawals of CoC-approved Resolution Plans, at the behest of the successful Resolution Applicant, once the plan has been submitted to the Adjudicating Authority.*** *A Resolution Applicant, after obtaining the financial information of the Corporate Debtor through the informational utilities and perusing the IM, is assumed to have analyzed the risks in the business of the Corporate Debtor and submitted a considered proposal.* ***A submitted Resolution Plan is binding and irrevocable as between the CoC and the successful Resolution Applicant in terms of the provisions of the IBC and the CIRP Regulations. In the case of Kundan Care, since both, the Resolution Applicant and the CoC, have requested for modification of the Resolution Plan because of the uncertainty over the PPA, cleared by the ruling of this Court in Gujarat Urja (supra), a one-time relief under Article 142 of the Constitution is provided with the conditions prescribed in Section K.2****.*"

Further, the Hon'ble Supreme Court in *M.K. Rajagopalan vs. Dr. Periasamy Palani Gounder & Anr. (Civil Appeal 1682-1683 of 2022)* has observed as follows -

"*Whereafter, whatever be the revision, the plan was only to be presented to CoC and could have been presented to the Adjudicating Authority only after final approval of CoC by the requisite majority.* ***In other words, when the modified resolution plan, even if carrying minor modification / revision was not finally approved by CoC, its presentation to the Adjudicating Authority amounts to a material irregularity and this defect cannot be cured.***"

It may be observed from above, that any modification of resolution plan, howsoever minor it may be, requires due consideration and approval of the CoC.

2.13.4 Secondly, *vide* email dated 24.10.2021, he merely shared the copy of MoU executed between HGAS and Rapid Buildtech Pvt. Ltd. for financial support of the resolution plan without apprising the CoC members about the fact that on date of circulation, the MoU has already expired and also no intimation was made by Mr. Pramod Kumar Sharma that due diligence needed to be carried on the new entrant extending the financial support. Section 29A prohibits a person or any other person acting jointly or in concert with such person, if such persons fall under any category provided under Section 29A. Further, as per regulation 36A(8) of CIRP Regulations, the RP is required to conduct due diligence regarding compliance of section 29A.

Therefore, it is imperative upon the RP to conduct due diligence of all prospective buyers of the CD. Diligence is required to ensure that no person can circumvent the provision of Section 29A. This aspect has been missed by the RP in the case at hand.

2.13.5 Furthermore, even if the RP was not sure about the convening of the meeting of the CoC since the resolution plan was under consideration of AA, at least he should have made efforts to inform the AA that the due diligence of Rapid Buildtech Pvt. Ltd who has come for financial support for executing the resolution plan is required to be done before taking any decision on the affidavit of the HGAS. Further, when it had been mentioned in the MoU dated 24.09.2024 that it was valid for a period of 30 days and a definitive agreement was to be executed, it was the duty of Mr. Pramod Kumar Sharma to find out whether such definitive agreement has been executed or not. If no such definitive agreement has been executed, the application of modification of resolution plan by way of replacement of the old JV partner with a new finance provider, itself becomes null and void. Hence, the contravention is upheld.

Contravention -V

2.14. **Lack of effort on part of RP to press for disposal of application for approval of resolution plan.**

2.14.1 It has been observed that Mr. Pramod Kumar Sharma filed an application for approval of resolution plan before the AA on 06.06.2019. Despite pendency of the aforesaid application before the AA for more than five years, no effective steps were taken by him for expeditious disposal of the said application. In fact, in the order dated 30.04.2024 of the AA, it was stated by the legal counsel that *"there are certain avoidance applications which need to be addressed first before the plan is taken up."*. It has been noted that instead of pressing the application for approval of the resolution plan, Mr. Pramod Kumar Sharma through his legal counsel has attempted to prioritize the disposal of the avoidance application which does not have any direct bearing on the application for approval of the resolution plan. In view of the above, the Board held the *prima facie* view that Mr. Pramod Kumar Sharma had contravened Section 208(2)(a) and (e) of the Code, Regulation 7(2)(a) and (h) of the IP Regulations read with Clause 14 of the Code of Conduct.

2.15. **Submissions by Mr. Pramod Kumar Sharma.**

2.15.1 Mr. Pramod Kumar Sharma submitted that the stance taken seems to be contradictory as at one instance the SCN finds that the RP failed to take any action on the issue of partner, in effect, the suggested action which is other than informing the creditors would have further delayed the disposal of Section 30 application. Whereas at the same time, the SCN is alleging delay in disposal of Section 30 i.e. plan approval application.

2.15.2 He submitted that CA 1225/2019 was filed in June, 2019, despite his efforts, the same could not be disposed of in view of the fact that the Hon'ble President of the AA retired and some temporary arrangements were made. Thereafter, the aforementioned IA No. 4464/2020 and IA No. 4563/2020 was filed before the AA which were dismissed *vide* order dated 30.03.2021. During the interregnum, the Resolution Plan approval application could not be disposed of due

to the excessive number as well as Covid pandemic. After the normalization of Court proceedings after the pandemic, the order dated 30.03.2021 was passed.

2.15.3 Mr. Pramod Kumar Sharma submitted that the aggrieved allottees challenged the said order dated 30.03.2021 before the NCLAT *vide* Comp. App. (AT) (Ins) No. 480 of 2021. During the pendency of the appeal, the NCLAT restrained the AA from taking any decision on the Resolution Plan *vide* order dated 17.01.2022. The said order was vacated in essence only after the dismissal of the appeal vide order dated 04.10.2023. However, during the pendency of the appeal, the HSVP *vide* termination notice dated 02.09.2022 terminated the lease *qua* sole property of the CD which was challenged by him vide IA No. 4474/2022 in view of the fact that any decision in the said IA shall have direct bearing on the Resolution Plan as the Resolution Plan becomes impossible to implement if the said termination order of HSVP was not set aside. The AA finally *vide* order dated 13.03.2024 allowed the said order and set aside the lease termination order issued by HSVP.

2.15.4 Mr. Pramod Kumar Sharma further submitted that immediately after 13.03.2024, the AA *vide* order dated 30.04.2024 directed him to file the list of pending application, the same was duly complied with as recorded in order dated 29.05.2024. However, CA 1225/2019 could not be heard owing to the fact that Regular Bench was not in quorum on the said date instead the matters were taken up by Special Bench. The AA took the chart of pending IA's on record and also segregated Resolution Plan and its ancillary application on 08.07.2024 (June being summer vacation break for the AA) whereas avoidance applications were listed on 22.07.2024. Thereafter, the Resolution Plan and allied applications were listed on 31.07.2024, 21.08.2024, 28.08.2024 and 11.09.2024. On 08.07.2024, almost 35 applications in relation to resolution plan/claim along with application seeking approval of the resolution plan was listed. However, after hearing dated 11.09.2024, along with application seeking approval of the Resolution Plan (CA 1225/2024), only one application objecting to the approval i.e. IA 3093/2024. Now, the said application is listed for 16.10.2024. However, during the said time the avoidance application was listed only on 04.09.2024 after 22.07.2024. Thus, the allegation qua lack of effort by the RP to press for disposal of application seeking approval of Resolution Plan is based on selective reading of facts.

2.15.5 The order dated 30.04.2024 has been interpreted out of context, the intention behind the said order is to segregate avoidance application (also pending since 2018) from resolution plan and its ancillary application. In this context, the said finding qua avoidance application was inadvertently recorded. The RP counsel efforts has now ensured that objection to the Resolution Plan has now been heard on 31.07.2024 and further the objection as well as Resolution Plan shall be taken up on 21.08.2024 and 28.08.2024 whereas the avoidance application shall now be taken up on 04.09.2024.

2.15.6 He submitted that the timeline provided for filing avoidance application is lesser than the time provided under Section 30(6) of the Code. Be that as it may, it is the prerogative of the AA to prioritize one application over another in order to fulfil its statutory obligations and balance equities between the parties. Thus, it is contemptuous to suggest that the AA is being governed by will of the parties.

2.15.7 He further submitted that there was no stay on the avoidance application but a stay on the application for approval of the resolution plan. Excluding the stay period, the avoidance transaction application was pending for a longer time. When stay did not allow disposal of one application, the AA should have disposed of the other application that did not have stay. A request to ask for quick disposal is not a contravention of any law. No law prohibits a RP from following up on any application. It is unfathomable to think that one can press the Hon'ble AA with regard to a particular application and the said conclusion is dehors the understanding of judicial system in our country where the duty of lawyer to merely assist the Court and the Court shall take such assistance to the extent necessary which in no case include being governed by the will of the litigants.

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

2.16.1 The DC notes the timelines and pending applications challenging the resolution plan being filed before the AA and the NCLAT. The issue which concerns the DC is the submissions made before the AA on 30.04.2024 as follows:

"Mr. Abhishek Anand, Ld. Counsel for the RP appeared and stated that there are certain avoidance applications which need to be addressed first before the plan is taken up. Therefore, he seeks and is granted permission to prepare a chart of these IAs."

By no stretch of imagination, it can be said to be that the order dated 30.04.2024 has been interpreted out of context and the intention behind the said order was to segregate avoidance application from resolution plan and its ancillary application. Section 26 of the Code clearly provides that *"The filing of an avoidance application under clause (j) of sub-section (2) of section 25 by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process."* Hence, such submissions made before the AA is not in consonance with the provisions and intention of the Code and the contravention is upheld.

3. Order

3.1. The RP is in a key position to guide the processes in a fair and transparent manner. The Code and regulations framed thereunder accord a critical role to RP for carrying out required due diligence not only on the resolution plan but also on the resolution applicants. As discussed above findings, Mr. Pramod Kumar Sharma has been found wanting in carrying out the required due diligence and thereby the CoC and the AA both were bereft of prima facie opinion of the RP on some very important issues. Not apprising CoC about the developments akin to changing the plan technically is of serious nature. In view of the foregoing, the DC in exercise of the powers conferred under section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby suspends the registration of Mr. Pramod Kumar Sharma for a period of three years.

3.2. In exercise of powers provided to the DC under Regulation 13(6) of the IBBI (Inspection and Investigation) Regulations, 2016, Mr. Pramod Kumar Sharma is not found fit for discharging

his duties related to assignment as RP of the CD and is allowed to continue with this assignment for a maximum period of 30 days from the issuance of this order only to enable the stakeholders for taking appropriate steps for seeking directions of the AA for removal and replacement of the RP.

3.3. The suspension order as enunciated in paragraph 3.1 above shall come into force after a period of 30 days from the date of issue of this order. However, the order as enunciated in paragraph 3.2 would come into force as soon as the AA decides on his replacement. This removal is necessary as resolution plan is at final stages of consideration by the AA and any lack of due diligence at this stage about apprising the AA regarding facts of the matter may jeopardise the interest of the stakeholders.

3.4. The DC notes that Mr. Pramod Kumar Sharma has not filed fees disclosure under Form E for year 2020-21, 2021-22 and 2023 onwards. Hence, the DC directs the Board to investigate the handling of property of the CD as going concern during the CIRP period. The DC also directs the Board to investigate allotment of land of the CD to various stakeholders with respect to the provisions of the lease agreement the nature of allottees as commercial or residential when the CD is registered as sporting and other recreational activities as they are reportedly some pending FIRs for fraudulent transfer of land.

3.5. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals, where Mr. Pramod Kumar Sharma is enrolled as a member.

3.6. A copy of this order shall be sent to the CoC/Stakeholders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Pramod Kumar Sharma is providing his services, if any, and the respective CoC/SCC, as the case may be, may decide about continuation of the other existing assignment of Mr. Pramod Kumar Sharma.

3.7. 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.

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

-sd/-	-sd/-
(Sudhaker Shukla)	(Jayanti Prasad)
Whole Time Member	Whole Time Member
Insolvency and Bankruptcy Board of India	Insolvency and Bankruptcy Board of India

Dated: 20th September 2024
Place: New Delhi