

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)**

No. IBBI/DC/227/2024

11th July 2024

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/COMP/2022-23/00966(IBBI/C/2022/00700) dated 30.10.2023 issued to Mr. Narender Kumar Sharma, who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with registration No. IBBI/IPA-002/IP-N00125/2017-2018/10294 and a Professional Member of Insolvency Professional Agency (IPA) of the ICSI Institute of Insolvency Professionals (ICSI-IIP) having residential address registered with IBBI at D-1/2, Welcom Group CGHS, Plot No. 6, Sector-3, Dwarka, South West, National Capital Territory of Delhi, 110078.

1. Developments in relation to resolution/liquidation of the CD.

1.1. The Hon'ble NCLT, New Delhi. Principal Bench (AA) *vide* order dated 22.08.2019 admitted the application filed by Diamond Traexim Private Limited under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating Corporate Insolvency Resolution Process (CIRP) of Indirapuram Habitat Centre Private Limited (CD) and appointed Mr. Pawan Kumar Goyal as the Interim Resolution professional (IRP). Later he was replaced by Mr. Narender Kumar Sharma as Resolution Professional (RP) by the AA on 16.11.2019. The Committee of Creditors (CoC) approved the resolution plan which is pending for approval before the AA.

2. Issuance of Show Cause Notice (SCN) and hearing before DC.

2.1. On receipt of complaints in CIRP of CD on 09.07.2022 and 27.10.2022, the Board, in exercise of the powers conferred to it under section 218 of the Code read with the Investigation Regulations, appointed an Investigating Authority (IA) to conduct the investigation of Mr. Narender Kumar Sharma.

2.2. Based on the findings in the investigation reports, the SCN along with detailed investigating report was issued to Mr. Narender Kumar Sharma on 30.10.2023 with respect to his role as RP in CIRP of CD. The SCN alleged contravention of provisions of the Code and its underlying regulations. Mr. Narender Kumar Sharma replied to the SCN *vide* email dated 14.11.2023.

2.3. The Board referred the SCN and the written submissions of Mr. Narender Kumar Sharma to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder.

- 2.4. Mr. Narender Kumar Sharma availed an opportunity of personal hearing before DC on 02.02.2024 through virtual mode. Mr. Narender Kumar Sharma provided additional submissions on 05.02.2024, 13.06.2024, 05.07.2024 and 09.07.2024.

3. Alleged contraventions and submissions of the IP.

Contraventions alleged in the SCN and Mr. Narender Kumar Sharma's submissions thereof are summarized below:

Contravention-I

3.1. Conflict of interest and lack of transparency during CIRP.

- 3.1.1. It was observed that Mr. Narender Kumar Sharma and his wife are the directors of Daksh Compliance Management Private Limited (DCMPL). As per Form H, the '*Date of Final List of Eligible Prospective Resolution Applicants*' was 29.12.2020. One of the prospective resolution applicants (PRAs) was M/s ESWIN Infra Project Consortium of which M/s SP Construction was one of the consortium members. DCMPL had transferred Rs.12,50,000/- to M/s SP Construction on 01.11.2021.
- 3.1.2. Mr. Narender Kumar Sharma in his reply dated 06.08.2022 to IA submitted that "*...This is a private transaction between two entities so no need to place the transaction before the CoC. Further, this transaction has nothing to do with the Corporate Debtor (CD)*"
- 3.1.3. Thereafter, another query was raised by the IA vide e-mail dated 14.12.2022 to him, as follows -
- "Nature of transaction for Rs. 12,50,000/- between Daksh Compliance Management Pvt Ltd (Daksh) and - SP Construction (one of PRAs). Whether any other transactions with SP Construction (Account with UBI) had taken place either during CIRP or pre-CIRP?"*
- 3.1.4. Later, vide another reply to IA dated 03.01.2023, Mr. Narender Kumar Sharma stated that "*... At the request of a colleague of mine, Mr Sumit Sharma, an amount of Rs. 12,50,000/- was lent to him. However, on his request and at his behest this amount was transferred to M/s SP Construction. As the said financial assistance has not been refunded by M/s SP Construction either to Daksh or to Mr Sumit Sharma despite repeated reminders, Mr Sumit Sharma has filed a criminal complaint against the proprietor of M/s SP Construction for recovery of the financial assistance amount. However, the said amount of Rs. 12,50,000/- which was paid by Daksh stands recovered by Daksh from Mr Sumit Sharma. It is confirmed that no other transaction has been entered into by Daksh with M/s SP Construction either during CIRP or pre CIRP.*"
- 3.1.5. Accordingly, it is clear that during the CIRP, Mr. Narender Kumar Sharma through DCMPL transferred Rs. 12,50,000/- to one of the PRAs. Such a transaction is clearly in conflict of his *bona fide* duty of avoiding conflict of interest and maintaining

transparency in the CIRP. Also, as inferred from his aforesaid reply dated 06.08.2022, he has not informed the CoC about any such transaction. Accordingly, the Board held the *prima facie* opinion that Mr. Narender Kumar Sharma has violated section 208(2)(a) and (e) of the Code, regulation 7(2)(a) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 1, 2, 3, 3A and 14 of the Code of Conduct specified thereunder (Code of Conduct).

3.2. Submissions by Mr. Narender Kumar Sharma.

3.2.1. Mr. Narender Kumar Sharma admitted the transaction and submitted that it was unintentional mistake on his part, being an IP. He submitted that the violation may be condoned.

3.2.2. Mr. Narender Kumar Sharma submitted that chronological list of dates as follows:

Dates	Events
07.11.2020	Second Form-G was published where Expression of Interest (EoI) by resolution applicants was to be submitted till 22.11.2020.
21.11.2020	Thirteen (13) resolution applicants, including M/s. ESWIN Power Infra (M/s SP Construction as one of the members), submitted their Eols to Mr. Narender Kumar Sharma on 21.11.2020, along with Earnest Money Deposit (EMD)
19.12.2020	11 th Committee of Creditors (CoC) was convened and details/Eols of thirteen (13) resolution applicants was submitted/intimated to the CoC, for consideration and deliberation. Provisional list of Prospective Resolution Applicants (PRAs) (including M/s ESWIN Infra) was published.
29.12.2020	After due diligence and scrutiny of documents/Eols submitted by the PRAs, a final list of PRAs (including M/s ESWIN Infra) was published.
01.11.2021	An amount of Rs. 12.50 Lacs was transferred by DCMPL to SP Construction, i.e. almost one year after submission of EOI by SP Construction.

3.2.3. Mr. Narender Kumar Sharma submitted that there is no direct relationship between him and Mr. Shashipal Kumawat, proprietor of M/s. SP Construction. The transaction between DCMPL and M/s SP Construction occurred almost after one year from submission of EoI by M/s SP Construction. Therefore, the said transaction had no bearing on the CIRP of CD. Mr. Sumit Kumar Sharma has been following up with Mr. Kumawat to refund/ return the amount of Rs. 22,50,000/-. Mr. Narender Kumar Sharma submitted an affidavit from Mr. Sumit Kumar Sharma showing the series of events in respect this transaction and consequent legal proceedings initiated by him. On failure of Mr. Kumawat to return the money, Mr. Sumit Kumar Sharma has taken appropriate legal recourse and filed a criminal complaint for recovery of his amount from Mr. Kumawat. On 26.05.2023, an FIR bearing No. 664/2023, had been registered against Mr. Shashipal Kumawat under sections 420, 406, 504, 507 of Indian Penal Code, 1860 at P.S. Indirapuram, Ghaziabad and Non Bailable Warrant (NBW) has been issued by Ghaziabad Police, on a criminal complaint filed by Mr. Sumit Kumar Sharma, against recovery of Rs. 22.50 Lacs. Mr. Shashi Pal

Kumawat is absconding and not traceable. In case of a related party, no such action would have been taken even by Mr. Sumit Sharma.

3.2.4. The sworn affidavit dated 12.06.2024 submitted by Mr. Sumita Kumar Sharma states that around October 2021 Mr. Shashipal Kumawat, Proprietor of M/s. SP Construction, approached him requesting for loan of Rs. 22,50,000/-. He stated that he had spare funds of Rs. 10 lakhs, which he remitted to the account of SP Constructions/ Mr. Kumawat. Keeping in mind the long personal relations with Mr. Kumawat, he arranged the balance amount of Rs. 12,50,000/- from Mr. Narender Kumar Sharma. At his request, Mr. Narender Kumar Sharma remitted a sum of Rs. 12,50,000/- from the account of M/s. Daksh Compliance Management Pvt. Ltd. to the account of M/s. SP Constructions on 01.11.2021. Mr. Sumit Kumar Sharma returned the amount of Rs. 12,50,000/- to Mr. Narender Kumar Sharma/ M/s. Daksh Compliance Management Pvt. Ltd. on 31.12.2022. Thus, the transaction between M/s. Daksh Compliance Management Pvt. Ltd. and Mr. Shashipal Kumawat stands closed, and Mr. Narender Kumar Sharma has no association with Mr. Kumawat. Mr. Sumit Kumar Sharma later filed an FIR bearing No. 664/ 2023, registered against Mr. Shashipal Kumawat under Section 420, 406, 504, 507 of IPC, 1860 at P.S. Indirapuram, Ghaziabad. Mr. Kumawat challenged the registration of FIR before the Hon'ble High Court of Allahabad in Criminal Misc. Writ Petition No. 13488/ 2023, whereby the Hon'ble High Court vide its order dated 25.08.2023, directed that the matter be referred to mediation for settlement. Furthermore, Hon'ble High Court directed that no coercive steps will be taken against Mr. Kumawat, subject to Mr. Kumawat depositing Rs. 50,000/-. Mr. Kumawat failed to appear before Mediation Centre and did not deposit the amount of Rs. 50,000/- as directed by the Hon'ble High Court. On 04.10.2023, learned Counsel for Kumawat withdrew the Writ Petition. Presently, the criminal case is pending against Mr. Kumawat before District Courts, Ghaziabad and the bail granted to Mr. Kumawat has been cancelled and non bailable warrants have been issued against Mr. Kumawat for appearance on 21.06.2024.

3.3. Analysis and Findings.

3.3.1. The DC notes that the sworn affidavit dated 12.06.2024 submitted by Mr. Sumita Kumar Sharma has been produced by Mr. Narender Kumar Sharma before the DC for the first time in support of the circumstance around the transfer of money to M/s SP Constructions. The said transfer of money to M/s SP Constructions when its proprietor was consortium member of PRA whose resolution plan was under consideration of the CoC needs to be further investigated in light of the affidavit of Mr. Sumit Kumar Sharma submitted by the Mr. Narender Kumar Sharma as evidence. These facts were not before IA. Hence IA may further re-investigate the matter. The said relationship may also be examined in light of relationship disclosures required to be made by an IP.

Contravention-II

3.4. Misrepresentation of facts by the RP to the IA.

3.4.1. As per the minutes of the 13th meeting of the CoC held on 22.02.2021, it is mentioned that-
“The Chairman informed that Power Infra Consortium has submitted Bank Guarantees of Rs. 5.00 Crores from the Third Parties as per details as under:

1. B.G. No. 01/21...

2. B.G. No. 02/21, executed by Indian Bank dated 27-01-2021, Guarantee amount Rs.3,90,00,000.00, Applicant Name “PRESIDIUM EDUCATION AND CHARITABLE TRUST”.

The Chairman further informed that Presidium Education and Charitable Trust (PECT) is a related party of the CD and ...”

3.4.2. Later, vide reply to IA dated 03.01.2023, Mr. Narender Kumar Sharma stated the following-

“As per the documents received and the undertakings provided, there does not exist any relation between the SRA and the Presidium Charitable Trust, the SRA and the CD, and the CD and the Presidium Charitable Trust.”

3.4.3. It is observed that there is inconsistency in his statements recorded in 13th CoC meeting and that to the IA. This reflects lack of transparency and misrepresentation of facts on his part to the IA. Accordingly, the Board held the *prima facie* view that Mr. Narender Kumar Sharma have violated section 208(2)(a) and (e) of the Code, regulation 7(2)(a) and (h) of the IP Regulations read with clause 1, 2, 12 and 14 of the Code of Conduct.

3.5. Submissions Mr. Narender Kumar Sharma.

3.5.1. Mr. Narender Kumar Sharma submitted that facts stated in para 3.4.1 of SCN are correct and the words “the CD and the Presidium Charitable Trust” mentioned in para 3.4.2 of SCN is a *bona fide* error, which is regretted and request to be condoned. He submitted that it was a bona fide mistake on his part as in the other part of his submissions before the IA, the relationship has been discussed. Therefore, no purpose is served by wrong statement herein.

3.5.2. Mr. Narender Kumar Sharma submitted that Power Infra Consortium, SRA submitted Bank Guarantee from Presidium Education and Charitable Trust (PECT), a third party to SRA. There is no provision in the RFRP document of the CD, for submission of Bank Guarantee by a third party. These facts were brought to the notice of the CoC in the 13th CoC meeting by Mr. Narender Kumar Sharma himself. The CoC allowed SRA to replace the BG and the same was complied with by the SRA.

3.6. Analysis and Findings.

3.6.1. The DC observes that issue of Bank Guarantee given by Presidium Education and Charitable Trust on behalf of Power Infra Consortium was discussed during 13th CoC meeting dated 22.02.2021 as follows:

“The Chairman further informed that Presidium Education and Charitable Trust (PECT) is a related party of the CD and accordingly RP advised PRA to submit undertaking from these two Entities to the provisions of Section 29A of IBC 2016. However, the PRA declined to submit such undertaking.

Adv. GP Madaan clarified that there is no provision in IBC allowing BG to be submitted by a third party. As such, the PRA may be advised to replace the EMD / BG of Rs. 5.00 Crores from the Consortium Members within a period of 7 days and the CoC unanimously agreed to allow 7 to 10 days-time to replace the BG.

The Chairman further informed that Satnam Singh Sachdeva Consortium has submitted Undertaking under Section 29A on plain paper and not on stamp paper. Accordingly, the PRA was advised to submit the undertaking on stamp paper.”

3.6.2. The DC notes that Mr. Narender Kumar Sharma wrote letter dated 02.03.2021 to Power Infra Consortium and advised to replace the BG on or before 05.03.2021 and that he is discharging the BG by PECT to enable Power Infra Consortium to replace BG. Accordingly, the Bank Guarantee was replaced by Power Infra Consortium on 03.03.2021.

3.6.3. However, the reason for receiving bank guarantee from PECT has not been examined as PECT has business relation with MTPL who is one of the consortium partner of the CD. Further, it is not clear how PECT has been taken as related party of the CD. Therefore, DC is of the opinion that these aspects need to be further investigated.

Contravention-III

3.7. Undertaking actions during CIRP without the approval of CoC

3.7.1. In the minutes of 10th meeting of the CoC dated 31.10.2020, it was noted that - *“The Chairman informed the CoC that GDA has approved OTS application of CD at Rs. 7.52 Crores, against liability of Rs. 67.93 Crores. The Chairman further informed that as clarified during 8th and 9th CoC meetings, the matter will be further examined to contest this OTS claim finalized by the GDA in appropriate Court.”*

3.7.2. In the minutes of 11th meeting of the CoC dated 19.12.2020, it was noted that the following resolution was passed: *“FURTHER RESOLVED that to keep the OTS alive the payment against 1st instalment be paid to GDA subject to legal opinion to be taken from Adv G.P. Madaan, Legal Advisor, regarding various options, including legal options, available to the CD for settlement of dues towards IHC project land.”*

3.7.3. In the minutes of 14th meeting of the CoC dated 01.07.2021, it is stated that *“The Chairman informed that as per the details made available by MTPL, they have deposited two instalments against OTS of GDA dues of Rs. 7.52 Crores, thus avoiding cancellation of OTS Scheme approved by GDA. The Chairman further informed that 81% of the OTS dues*

belongs to IHCPL and the same will be part of CIRP cost. The Chairman further informed that the total OTS dues of Rs. 7.52 Crores have been conveyed to RAs as amount payable to GDA.”

3.7.4. It is noted from the letter dated 11.10.2021 from M/s Madhuvan Tieu Private Limited (MTPL) to Mr. Narender Kumar Sharma that “*GDA and IHC Consortium had entered into an OTS of Rs. 7,79,39,426/-...*”. Further, to protect cancellation of lease deed from Ghaziabad Development Authority (GDA), MTPL has deposited Rs. 7,92,40,944/- against the OTS amount as responsible member of IHC consortium. It is also mentioned that as this amount is paid to maintain going concern status of the CD, MTPL is within its rights to expect this amount to be given a status of ‘Supercharge’. It is also mentioned that it should be part of the insolvency resolution process costs and should be paid in ‘Top Priority’ by successful resolution applicant or from the proceeds of liquidation, as the case may be.

3.7.5. From the above, it is noted that MTPL had provided finance to the CD by clearing its pending dues. Moreover, it resulted in transferring of debts under material contract with GDA. However, no prior approval of the CoC had been sought for taking such finance from MTPL as mandated under section 28(1)(a) and (k) of the Code. Accordingly, the Board held the *prima facie* view that Mr. Narender Kumar Sharma has violated section 28(1)(a) and (k), 208(2)(a) and (e) of the Code, regulation 7(2)(a) and (h) of the IP Regulations read with clauses 1, 2, 3 and 14 of the Code of Conduct.

3.8. Submissions Mr. Narender Kumar Sharma.

3.8.1. Mr. Narender Kumar Sharma submitted that CD, is the asset of SCIPL Consortium, having the following parties as its Members:

Sr.	Name of the Consortium Member	% Share in the Consortium
1.	Indirapuram Habitat Centre Private Limited (IHCPL)	60
2.	Madhuvan Tieu Private Limited (MTPL)	19
3.	Alan Buildcon Private Limited	11
4.	Alluvion Buildcon Private Limited	10
	Total	100

IHCPL (CD) is the Lead Member of the Consortium.

3.8.2. He submitted that as decided by the CoC at its 8th meeting held on 04.09.2020, he filed a Writ Petition No. 730 Of 2021 challenging the OTS Scheme of the Ghaziabad Development Authority [GDA] before the Hon'ble Supreme Court, directing the respondents, more particularly, GDA to restructure the outstanding dues towards lease rental payable, if any, by Indirapuram Habitat Centre Pvt, at the SBI MCLR rate of interest with effect from 01.01.2010 in terms of the directions passed by Hon'ble Supreme Court

in orders dated 10.06.2020 and 10.07.2020 2020 in Amrapali Group of matters (Bikram Chatterjee Vs. Union of India & Ors. Writ Petition (C) No.940 of 2017) read with UP RERA decision dated 31.07.2020. Hon'ble Supreme Court, *vide* order dated 23.07.2021, dismissed the Writ Petition (Civil) No. 730/2021.

3.8.3. He further submitted that meanwhile, *vide* notification dated 28.07.2021, GDA notified OTS Scheme - 05210728680, for settlement of its dues, to be applied for up to 30.09.2021. The CoC at its 8th & 9th meetings decided to file an OTS application of the CD at Rs. 7.52 Crores, against liability of Rs. 67.98 Crores. Members of the consortium are jointly/severally responsible for deposit of OTS amount, in case the scheme is adopted. As per decision of the CoC, an application for adopting OTS Scheme was filed by him and admitted by GDA. MTPL, being one of the SCIPL Consortium, *vide* letter dated 11.10.2021 informed them that they have deposited the amount of Rs. 7,92,40,944.00 against the OTS (including interest due thereon). This action on the part of MTPL was to safeguard their liability towards the portion of land earmarked to them.

3.8.4. He submitted that the facts about deposit of amount by MTPL with GDA, towards the OTS were brought to the notice of the CoC at its 18th meeting held on 16.10.2021 and the CoC took a note of the cost of IRP along with cost of unpaid cost of IRP at Rs. 8,04,46,717.00 as per the amount claimed by MTPL. He submitted that MTPL, being member of SCIPL Consortium have deposited amount with GDA, towards OTS on their own and CD has never approached MTPL to deposit this amount. By deposit of OTS amount, MTPL has saved a liability of Rs. 67.98 Crores. CD does not have funds to meet this liability. The CoC did not allow MTPL any supercharge, however, admitted the amount of OTS deposited by MTPL as Cost of IRP. As MTPL informed CD only after deposit of the OTS amount with GDA, there was no occasion where prior approval of the CoC could have been taken. In view of the above, he submitted that there is no contravention on his part.

3.8.5. Mr. Narender Kumar Sharma additionally submitted following chronological list of dates and events:

Dates	Events
04.09.2020 8 th CoC Meeting	<i>“Regarding OTS Scheme and Compounding of unauthorized construction over and above the 1.32 Compounded FAR, RP had meeting with OSD, GDA. As per discussions held with OSD, we need to apply under OTS Scheme by depositing fee of Rs. 5.10 Lacs (Adjustable in OTS Amount) and then GDA will give complete details of amount payable under OTS and will give complete details about unauthorized construction and compounding cost thereof to regularize such construction. RP is also in touch with Adv M. L. Lahoty, to seek legal remedy to OTS Dues taking appropriate legal remedy in the Supreme Court based on the decision given in the matter of Amarpali and Ace Group. The Hon’ble Apex Court had already ordered NOIDA and Greater NOIDA Authorities to charge 6% simple interest from Home Buyers and UP RERA had already extended this decision of Hon’ble Supreme Court to all Development Authorities</i>

	<i>across UP. CD may save Rs. 8.00 Crores apprx. Liability worked out by GDA on account of OTS. CD already paid 12% simple interest against 6% allowed by the Hon'ble Supreme Court, it may be a case of refund from GDA."</i>
31.10.2020 10 th CoC Meeting	<i>"The Chairman informed CoC that GDA has approved OTS application of CD at Rs. 7.52 Crores, against liability of Rs. 67.93 Crores. The Chairman further informed that as clarified during 8th and 9th CoC meetings, the matter will be further examined to contest this OTS claim finalized by the GDA in appropriate Court."</i>
19.12.2020 11 th CoC Meeting	<p><i>"The Chairman informed the CoC that as per the letter communicating OTS liability, GDA has approved the OTS dues of Rs. 7.52 Crores, against dues of Rs. 67.98 Crores towards cost of land, payable in 4 (quarterly) instalments, commencing from 20/10/2020 The period for payment of first instalment is going to expire on 20.12.2020. OTS approved by GDA under the Scheme may not be available for all times to come. Accordingly, RP advised CoC that it should take a call on the payment of 1st Instalment of Rs.1.82 Crore toward OTS Dues, so that, possibility of cancellation of OTS by GDA can be avoided.</i></p> <p><i>Further, the RP informed the CoC that he had visited office of OSD, GDA to make a submission in the matter and to get details about liability on account of Compounding Charges for regularization of existing structure under FAR 1.92 and cost of purchase of additional FAR of 0.60. During the meeting OSD, GDA informed that the same can be communicated only after the 1st instalment is paid by CD. The RP clarified to the OSD that CD is undergoing CIRP and EOI have already been invited for submission of Resolution Plan from the Prospective Resolution Applicants and any payment towards OTS Dues and Compounding Charges and Cost of FAR of the additional structure will be paid only by the Successful Resolution Applicant as per the terms of Approved Resolution Plan. Accordingly, RP requested the OSD to maintain Status Quo for the approved OTS dues till such time Resolution Plan is approved by the Hon'ble NCLT.</i></p> <p><i>The Chairman further informed the CoC that during the meeting, the OSD, GDA orally conveyed tentative liability on account of Compounding Charges for regularization of existing structure under FAR 1.92 of Rs. 17.50 Crore and under FAR of 2.04 of Rs.25 Crore and cost of purchase of additional FAR of 0.60 of Rs.50 Crore.</i></p> <p><i>The matter regarding the payment of IHC Project land dues have been discussed in detail by the CoC and it has been unanimously decided that an enabling resolution approving payment against 1st Instalment towards OTS dues payable to GDA should be voted upon and the same will be subject to legal opinion given by Adv. G. P. Madaan regarding options including legal options available to the CD in the matter. Accordingly, if Adv. G. P. Madaan advises for the payment of the 1st instalment towards OTS dues, it should be deposited with GDA."</i></p> <p>Decision of CoC:</p>

	<p><i>“RESOLVED THAT the OTS settlement of GDA for an amount of Rs. 7.52 crore be and is hereby noted and taken on record.</i></p> <p><i>FURTHER RESOLVED that to keep the OTS alive the payment against 1st instalment be paid to GDA subject to legal opinion to be taken from Adv G. P. Madaan, Legal Advisor regarding various options, including legal options, available to the CD for settlement of dues towards IHC project land.”</i></p>
01.07.2021 14 th CoC Meeting	<p><i>“The Chairman informed that as per the details made available by MTPL, they have deposited two instalments against OTS of GDA dues of Rs. 7.52 Crores, thus avoiding cancellation of OTS Scheme approved by GDA. The Chairman further informed that 81% of the OTS dues belongs to IHCPL and the same will be part of CIRP cost. The Chairman further informed that the total OTS dues of Rs. 7.52 Crores have been conveyed to RAs as amount payable to GDA.”</i></p>
16.10.2021 18 th CoC Meeting	<p><i>“The Chairman informed the CoC that at its 14th CoC meeting held on 01-07-2021 approved Mall Operation expenses and took note of the cost of IRP for the period upto 28-02-2021.</i></p> <p><i>Details of Mall Operation Expenses as well as Cost of IRP incurred during the period from 01-03-2021 to 30-09-2021 as per Annexure- 1 and Annuexure-2, respectively, of the Agenda were discussed. The CoC took note of Cost of IRP for the period from 01-03-2021 to 30-09-2021 and regarding Mall Operation Expenses, decided to put the resolutions for e-voting.”</i></p>

Mr. Narender Kumar Sharma submitted that OTS introduced by the GDA was having a provision of interest on delayed payment @ 12% per annum. The details of payment made by MTPL to GDA was not final and GDA may raise further demand towards OTS. As per the minutes of the 18th CoC meeting it is very clear that GDA may ask for interest in future. Accordingly, some provision towards interest payable to GDA was worked out, over and above 81% of the total amount paid by MTPL to GDA towards OTS.

- 3.8.6. He submitted that inadvertently an amount of Rs. 1,11,15,671/-, towards the paid up CIRP cost for the period from 01.04.2021 to 30.09.2021 was added for the purpose of working out unpaid CIRP cost. These facts were brought to the notice of the AA while submitting a revised Form II. In view of the above, it is very clear that there is a provision of interest payment to GDA and not to MTPL. Opting for OTS scheme was already approved by the CoC at its 11th meeting held on 19.12.2020. As such there is no interim finance involved in this transaction. Prior approval of the CoC would have been taken, had there been involvement of payment of interest to MTPL. It is also important to note that payment by MTPL to GDA towards OTS has avoided a liability of Rs. 67.93 Crores, payable by CD towards cost of land.

3.8.7. He later submitted that the CoC in its 8th meeting held on 04.09.2020, decided to apply GDA for the OTS scheme. He in compliance of the decision taken by the CoC approached GDA along with payment of Rs. 5.00 lakhs. GDA vide letter No. 1444, dated 23.10.2020, informed IHCPL that MTPL, one of the consortium members, has already applied for OTS *vide* application no. OTS05200819768, dated 19.08.2020 and the same has been approved the application *vide* letter dated 21.09.2020 for an amount of Rs. 7.52 crores (approx.). As per the OTS Scheme, MTPL released the payments as follows:

SR No.	Date	Amount paid by MTPL
1.	29.12.2020	500,000
2.	04.01.2021	2,50,00,000
3.	24.03.2021	2,64,83,944

3.8.8. The fact of payment of two instalments made by MTPL under the OTS Scheme was informed by him in the 14th CoC meeting held on 01.07.2021. As GDA has already approved the OTS Scheme in favor of MTPL there was no question or need of taking any legal opinion.

3.9. Analysis and Findings.

3.9.1. The DC notes that there were total dues of Rs. 67.95 crores to the GDA by the consortium of which CD is the member. The GDA has approved OTS for Rs. 7.52 crores against the total dues. The CoC in its 11th Meeting decided to vote upon the payment of first instalment of the OTS subject to legal opinion of Advocate G P Madaan. The said resolution was passed by the CoC with majority of 93.726%. It is noted that though CoC gave its conditional approval subject to availability of legal advice. Nevertheless, despite repeated requests, Mr. Sharma has not submitted the copy of legal advice received by him and in his communication now he is suggesting that such an advice was not necessary. Therefore, the facts indicate that the CoC resolved to pay first instalment to GDA to keep the OTS alive subject to legal opinion which have not been complied. He later submitted that GDA *vide* letter No. 1444, dated 23.10.2020, informed CD that MTPL has already applied for OTS and same has been approved *vide* letter dated 21.09.2020 for an amount of Rs. 7.52 Crores. The said details of OTS of MTPL have not been clarified in 10th, 11th and 14th CoC meeting submitted above by Mr. Narender Kumar Sharma. The exact details of the scheme of GDA under which OTS has been done and with whom it has been done is not made clear. The issue that legal opinion was not required to be obtained was not discussed with the CoC. The new sequence of facts presented by Mr. Narender Kumar Sharma also need further examination as the benefit of these facts were not available with the IA.

3.9.2. Further, the exact amount of OTS which has been stated as Rupees 7.52 crores, 7.79 crores and 7.92 crores at different places also needs clarity. Moreover, Mr. Narender Kumar Sharma has not stated anything about the nature of dues of GDA which may be admitted as claims and whether there can be any settlement for such claims. Such facts need to be

re-investigated to reach any conclusion before treatment of such payment as interim finance or CIRP Cost or a claim against CD.

Contravention-IV

3.10. Stopping of voting of creditors in class.

3.10.1. An e-mail dated 20.09.2021 was sent by the Authorised Representative, communicating the fact that voting for seeking preliminary views of creditors in class was stopped as per directions of Mr. Narender Kumar Sharma. The e-mail stated as follows –

“Dear Members of the class represented by AR Kamlesh Kumar Gupta,

It is informed to all the members of the class represented by me that voting for seeking preliminary views has been stopped at the request of RP by the service providers.

I further request the members to please send their preliminary views if any through email so that same can be discussed in the coc meeting.

I regret the inconvenience caused.”

3.10.2. Mr. Narender Kumar Sharma submitted in his reply to the IA that the agenda items do not require any voting and the said views can be obtained through email and therefore, the voting agency was directed accordingly.

3.10.3. Seeking preliminary views of creditors in a class is to enable the Authorised Representative to form an informed opinion. Moreover, voting is an effective way of recording choices of the creditors in a class. The stopping of voting process and seeking preliminary views over e-mail is not in spirit of regulation 16(9) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations). Accordingly, the Board is of the *prima facie* opinion that Mr. Narender Kumar Sharma have violated 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.

3.11. Submissions Mr. Narender Kumar Sharma.

3.11.1. Mr. Narender Kumar Sharma submitted that according to the provisions of regulation 16A (9), the AR shall circulate the agenda to creditors in a class and may seek preliminary views on any item in the agenda to enable him to effectively participate in the meeting of the committee. He submitted that he did not stop the AR from seeking preliminary views on agenda items, however, he issued instructions to the voting agency to create a voting link on resolutions to be passed in the CoC meeting.

3.11.2. He submitted that direction to voting agency *vide* email dated 18.09.2021 as well as dated 19.09.2021 were very clear that the link for seeking preliminary view on agenda of 17th CoC meeting to be held on 21.09.2021 by AR may continue, be created and the said link will continue for this purpose. He submitted that he has not given any instruction to the

voting agency to stop the link for preliminary views. Thus, he submitted that he has not committed any violation of the Code, Regulations and the Code of Conduct

3.12. Analysis and Findings.

3.12.1. The DC observes that Mr, Narender Kumar Sharma vide email dated 18.09.2021 informed the voting agency as follows:

“Dear Mr. Prajapati,

As discussed please find attached details of FC in class with email ids. Please be in touch with AR Mr. Kamlesh Kumar Gupta and setup the window for preliminary view on agenda/notice of 17th CoC to be held on 21.09.2021 at 2.15, in the matter of Indirapuram Habitat Centra Pvt Ltd.”

Further by email dated 19.09.2021, he further informed the service provider as follows:

“Kind Attn: Mr. Dixit Prajapati, Link Star

It has come to my notice that Mr. Kamlesh Gupta, Authorised Representative (AR) of Indirapuram Habitat Centre Private Limited (IHCPL) has advised you to create a voting link for seeking preliminary views of Members of IHCPL on agenda of 17th Meeting on 18th September 2021.

It has also come to my notice that subsequently, Mr. Kamlesh Gupta, AR, IHCPL, has advised you to create a voting schedule along with the voting link on resolutions to be passed by the 17th CoC and to share the same with Members of the CoC. Vote is likely to commence on 20th September 12.00 Noon.

In this regard, I would like to inform you that as per IBC 2016, e- voting on resolutions takes place after the CoC meeting, however, AR is duty bound to take preliminary views on the Agenda Items.

The 17th CoC meeting of IHCPL is scheduled to take place on 21st September 2021 and as such e voting on the resolutions to be passed, if any, can not take place before the CoC meeting.

*In view of the above, you are hereby advised to stop the voting schedule / link, if any, designed by you. **However, the link, if any, for seeking preliminary views by AR may continue.** Please take this action immediately and confirm the action taken by you.”*

(emphasis supplied)

However, such emails were not submitted before the IA for examining whether Mr. Narender Kumar Sharma contravened by sending instructions to stop seeking preliminary views by AR. Hence, the IA may re-examine the issue in light of the same.

Contravention-V

3.13. Non-cooperation with the IA.

3.13.1. The IA *vide* letter dated 22.07.2022 had requested Mr. Narender Kumar Sharma for the following –

*“... a) Provide details and the CoC minutes wherein the allocation or tender for advertisements, canopies, rides, advertisement or security agency was assigned.
b) Provide the break up as to where and how was the cost income from the aforesaid was used/appropriated.”*

3.13.2. Mr. Narender Kumar Sharma submitted in his reply dated 06.08.2022 to IA as follows -

*“... 14. a) The action of installation of canopies and display of advertisements had been taken in the ordinary course of business and was at arm's length.
b) All the expenses and revenue of all activities inform to CoC time and again.”*

3.13.3. Thereafter, the IA again sent the request on 14.12.2022 to Mr. Narender Kumar Sharma requesting the following –

“... It is noted that you failed to provide specific response to the earlier notice dated July 22, 2022. The query is reiterated again and you are requested to provide the reply of the following again in detail along with supporting documents.

- Provide details of the advertisements, functions and other commercial activities organised/undertaken in the CD's premises.*
- Copies of the CoC minutes (notice, minutes, voting results) in which these activities as mentioned above has been informed to CoC.*
- Details of the funds collected from these events/activities and CoC meetings wherein the same have been informed to CoC.*
- Provide details and the CoC minutes wherein the allocation or tender for advertisements, canopies, rides, advertisement or security agency was assigned.*
- Provide the breakup as to where and how was the income from the aforesaid was used/appropriated.”*

3.13.4. Mr. Narender Kumar Sharma's reply to the IA dated 03.01.2023 on the same was –

“It is denied that the undersigned did not submit specific response to the earlier notice dated 22.07.2022. All the queries were replied to and all the supporting documents and information were also provided. However, the information as being sought again is resubmitted as under.

A. Details of advertisement, functions and commercial activities organized/undertaken at the CD's premises are as Annexure-18.

B C & D. *The amount received from these events/ activities has been and is being credited to the account of the CD. Periodical revenues from all activities have always been placed before CoC and are part of Minutes of CoC meetings already annexed.*

E. *As mentioned earlier, the income from these activities has been credited to the account of the CD. Please appreciate that because of these canopies, rides, advertisements etc., the footfall in the shopping mall of the CD has increased substantially ultimately culminating into maximization of the value of the assets of the CD which is one of the main objectives of the Code as enshrined in the Preamble of the Code.”*

3.13.5. It is noted that the IA had specifically asked Mr. Narender Kumar Sharma to provide the details and the CoC minutes wherein the allocation or tender for advertisements, canopies, rides or security agency was assigned and to also provide the break-up as to where and how was the income from the aforesaid was used/ appropriated. However, he failed to provide the same. As he has not provided the requested information to the IA, the Board held the *prima facie* view that Mr. Narender Kumar Sharma has violated section 208(2)(a) and (e) of the Code, regulation 7(2)(a) and (h) of the IP Regulations read with clause 18 and 19 of the Code of Conduct.

3.14. Submissions Mr. Narender Kumar Sharma.

3.14.1. Mr. Narender Kumar Sharma submitted that all the agencies for income generating activities, including canopies and rides etc. were engaged by inviting quotations from various vendors. As far as advertisements are concerned, only inhouse outlets are allowed to advertisement, as their promotional activities. Revenue generated from all such activities, was placed before the CoC, as and when meeting took place and the minutes of the CoC, along with audited financial statements, had already been shared with the IA. He furnished following documents.

- I. Certificate dated 01.11.2023 issued by M/s. APNU & CO., chartered accountants, statutory auditors of the CD, certifying the income generated from events (Rs. 4,64,078.00), promotional space (Rs. 44,15,417.00) and kiosk & flea market rent (Rs. 2,42,46,967.00) Total Rs. 2,91,26,462.00), for the period from 22.08.2019 (commencement of CIRP) to 31.03.2023. During this period an expenditure of Rs. 16,45,000.00 was incurred against these activities. Ledger of all these activities attached for records.
- II. Copy of revenue from Flea Market, including quotations received by Mr. Narender Kumar Sharma and necessary approvals from competent authorities,
- III. Copy of event details, footfall report, proposals for brand promotion, ledger of expense account of CD.

3.14.2. He submitted that delay in submission of the above documents was unintentional and may kindly be condoned.

3.14.3. He submitted that he continued the activities, which were going on even prior to the commencement of CIRP at the time of taking over charge as Resolution Professional on 06.11.2019. All activities carried out at the mall premises, were with the approval of all the concerned State Government Agencies. All such activities were carried out by the Promoters, through one of their family-owned company - Optimus Infrapromoters Pvt. Ltd. (Optimus) and income generated out of such activities was in Cash only. The matter was brought to the notice of CoC and the agreement between IHCPL and Optimus was cancelled, and all income was brought under CD, duly documented and payments received in bank account of the CD. All the Revenue generated from Lease Rent / allied activities was placed before the CoC at 8th, 11th, 14th, 18th and 21st meetings.

DETAILS OF COC MEETINGS WITH RESPECT TO CIRP COST

S. No.	CoC Meeting	Date of Meeting	Minutes Item No.	Period of CIRP Cost
1.	8 th	04.09.2020	8	23.08.2019 to 30.06.2020
2.	11 th	19.12.2020	9	01.07.2020 to 30.11.2020
3.	14 th	01.07.2021	5	01.12.2020 to 28.02.2021
4.	18 th	16.10.2021	4	01.03.2021 to 30.09.2021
5.	21 st	21.11.2021	6	01.10.2021 to 17.11.2021
6.	22 nd	20.05.2024	12	01.10.2021 to 30.04.2024

3.14.4. He submitted that in reply to notice of investigation dated 22.07.2022, he vide reply dated 06.08.2022, provided details of events held at mall, periodical income and expenditure statements, along with copies of all statements including Minutes. Minutes of these meeting were again shared with the investigating officer, along with reply dated 03.01.2023. As such, all the information sought by the inquiry officer were provided. There was no clear instruction in the notice of investigation, dated 22.07.2022, as how the required information is to be submitted, however, in reply to the said notice dated 22.07.2022, he had submitted copy of all the CoC Minutes having details of expenses and revenue generated. Later on, all the relevant information, as required under the SCN dated 30.10.2023 and information sought during the personal hearing were submitted. No information was ever hidden from the CoC and the Regulatory Authorities.

3.14.5. He further submitted that details of all the activities carried out in Mall, expenses incurred, and revenue generated from all the activities during the period from 21.11.2021 to 30.04.2024 was placed before the 22nd CoC Meeting of the CoC, held on 20.05.2024. The CoC was apprised about the increase in business operations and revenue generated thereof and all the expenses undertaken by the Resolution Professional, in keeping the Corporate Debtor as a going concern.

3.15. Analysis and Findings.

3.15.1. The DC observes that documents submitted by Mr. Narender Kumar Sharma pertain to income generated in particular head like event income, promotional space charges and

kiosk, flea market rent along with ledger accounts, quotations received from prospective customer and permission sought from police authorities. Mr. Narender Kumar Sharma has also provided the details of minutes where income generated from these activities and expenditure incurred in operation of the mall has been informed to CoC. The DC notes that the information has been provided to the DC and that too in piecemeal by way of reply and submissions to the DC on three occasions. Mr. Narender Kumar Sharma has not been cooperative in providing information to the Board in the format/ manner as required by the IA. Therefore, there appears to be non-cooperation by Mr. Narender Kumar Sharma and hence the contravention is upheld. Further, the information that has been provided by Mr. Narender Kumar Sharma before the DC may be looked into by the IA and the matter may be re-investigated after examining the allegations and information provided. .

Contravention-VI

3.16. Failure to preserve and protect the assets of the CD.

- 3.16.1. Mr. Narender Kumar Sharma submitted in his reply to the IA dated 03.01.2023 that Presidium runs a school at the premises leased out by MTPL and thus, Presidium is a tenant of MTPL. The report of transaction review conducted by Deloitte states the following:

“IHCPL and Presidium Education Institution Private Limited “PEIPL” signed memorandum of understanding “MoU” dated 08 August 2011 whereby IHCPL had leased the land measuring 208,000 Sq. Ft (1.93 hectares) i.e. 38% of total allotted area (5.08 hectares) to PEIPL for running a school. This MoU was signed for 50 years with the clause to review the agreement after every 10 years...”

It was agreed that PEIPL shall pay total consideration in two parts:-

- *INR 30 crore upfront for the creation of infrastructure of the school*
- *20% of gross revenue (including but not limited student fee, sale of school uniform, books, stationary equipment's etc. but excluding transportation fees and refundable security deposit) to be earned by the school established. Such payment was to be made on a monthly basis.”*

- 3.16.2. It has been noted that despite there being observation in the transaction review report on the receivables of the CD from Presidium, Mr. Narender Kumar Sharma has not taken any steps for recovery from Presidium. Further, as observed by the IA in its investigation report, Mr. Narender Kumar Sharma has not provided response to the allegation that IP has failed to take steps to recover money from Presidium. Accordingly, he has failed to take steps to preserve and protect the assets of the CD. The Board, therefore, held *prima facie* view that Mr. Narender Kumar Sharma has violated section 25(1), 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.

3.17. Submissions Mr. Narender Kumar Sharma.

- 3.17.1. Mr. Narender Kumar Sharma submitted that GDA, leased out the land admeasuring 5.08 Hectares (50800 Sq. Mtrs.) on dated 03.02.2006, to SCJPL (Presently IHCPL Consortium). As per the records available there was unregistered MOU dated 08.08.2011, between CD and Presidium Education Institute Private Limited (PEIPL) whereby CD leased out the land measuring 208,000 sq. ft. (1.93 hectares) i.e. 38% of the total allotted area (5.08 hectares) to PEIPL for running a school. A Supplementary Consortium Agreement was executed on 25.07.2013 where CD agreed to transfer 18.36% of its share in the project to MTPL, one of the original members of the IHCPL consortium, on payment of considerable fiscal payment, thereby increasing share of MTPL to 19% in the project. GDA *vide* its letter dated 06.06.2013, approved the shareholding pattern of IHCPL, consortium, having MTPL as 19% partner in IHCPL Project.
- 3.17.2. Subsequently, another MoU was executed on 17.12.2015, where 19% portion of land was delineated to MTPL, for consideration of Rs. 97.97 Crores. As per clause No. 1 (D) of the said MOU, the entire of the MTPL area has been sub leased to the Presidium under Sub Lease Deed dated 14.12.2015 executed by CD being a lead member of the Consortium and on behalf of the Consortium which lease is being attorned in favour of MTPL.
- 3.17.3. The CD executed Attornment Deed dated 01.01.2016 amongst Presidium Educational and Charitable Trust (PECT) and MTPL, being the premises situated on the land demarcated/ earmarked to MTPL, attorn rent payable by PECT in favour of MTPL. The books of accounts of the CD does not have any details about amount recoverable MTPL on this account. He submitted that the premises on which Presidium is running belongs to MTPL, in whose favour rent had been attorned by the CD. As such there was no occasion for initiating recovery of the rent and he has taken all the possible steps to safeguard and protect the assets of the CD.
- 3.17.4. The transaction audit report dated 28.11.2020, clearly provides that MTPL being a member of IHCPL Consortium holds and occupies land to the extent of 19% only. The previous recorded shareholding of 38% was amended vide Memorandum of Understanding dated 17.12.2015, executed between members of IHCPL Consortium, in terms whereof, shareholding/ownership of MTPL was reduced to 19% in lieu of payment of Rs. 97.97 Crores, paid by MTPL to CD.
- 3.17.5. He submitted that as per the registered Supplementary Consortium Agreement, dated 25.07.2013, MTPL is 19% partner in IHCPL Project, and delineated 19% of the land area to MTPL with restricted right to use and occupy that portion of land for running of school. As reported by the Forensic Auditors, an application IA No. 3463 of 2020 has already been filed before the AA regarding undervaluation of the value of 19% land, to the extent of Rs. 64.00 Crores and excess land in unauthorised possession of MTPL. He also submitted that the AA *vide* its order dated 05.07.2023, initiated the CIRP of MTPL. Although, he is conducting the CIRP and has invited EoI, however, the matter to decide the status of MTPL as NBFC is pending before Hon'ble NCLAT.

3.18. Analysis and Findings.

3.18.1. The sequence of events provided by Mr Narender Kumar Sharma is as follows:

Date	Events
12.09.2005	Initial Consortium Agreement.
03.02.2006	GDA, leased out the land admeasuring 5.08 Hectares (50800 Sq. Mtrs.) to SCIPL (Presently IHCPL Consortium).
25.07.2013	In Supplementary Consortium Agreement share of MTPL was 19% in IHCPL Consortium.
30.04.2015	In Supplementary Consortium Agreement share of MTPL was 19% in IHCPL Consortium.
22.08.2015	GDA vide its letter No. 1357/Commercial Unit/2015-16, took on records the IHCPL Consortium agreement dated 30.04.2015
14.12.2015	The CD leased out the premises occupied by MTPL, Member of Consortium, to Presidium Educational and Charitable Trust to run Presidium School at the defined terms and conditions.
17.12.2015	<p>Memorandum of Understanding was executed between member of IHCPL Consortium where three member are on side as 'First Party and MTPL as 'Second Party'. It stated as follows:</p> <p><i>“Unfortunately, a dispute has arisen between the First Party and the Second Party regarding implementation, development and execution of IHPCL Project. For maintaining peace cohesion and harmony amongst each other while implementation, development and execution of IHPCL Project the parties have orally resolved the matter on 03.04.2015 to the satisfaction of both parties wherein it was agreed that the Second Party Area, which is a developed are comprising of a building along with undivided share admeasuring 13451.975 Sq meters in the Land more particularly defined Annexure 10, shall be with the Second Party and the balance area shall be with the First Party and for remembering the terms which have been already agreed between the parties, the parties hereof herby put such understanding into writing so that the written record thereof is kept intact and no disputes may arise in future pertaining to same between parties, their heirs assigns, legatees or any other person acting on their behalf.”</i></p> <p>...</p> <p><i>That the Second Party has 19% share in the Consortium as per Supplementary Consortium Agreement executed on 25.07.2013 which was registered with the office of the Sub-Registrar- IV, Ghaziabad being Bahi No. 1, Jild No. 25444, on page nos 37 to 44 at S. No.: 33755 on 25.07.2013.;</i></p> <p><i>That for the above stated 19% share in the Consortium, the Second Party is to contribute a total of Rs. 97,97,00,000/- (Rupees Ninety Seven Crores and Ninety Seven Lakhs Only) to the Consortium. Out of such contribution the Second Party has already contributed</i></p>

	<i>a sum of Rs. 68,50,00,000/- (Rupees Sixty Eight Crores and Fifty Lakhs Only) and balance payment of Rs. 29,47,00,000/- (Rupees Twenty Nine Crores and Forty Seven Laksh Only) shall be contributed in the manner stated in Annexure 11 hereof.”</i>
01.01.2016	The CD executed Attornment Deed amongst PECT and MTPL, being the premises situated on the land demarcated / earmarked to MTPL, attorn rent payable by PECT in favour of MTPL.

3.18.2. The DC observes that the share of MTPL in the consortium was 19% since supplementary consortium agreement dated 25.07.2013 and it was acknowledged by GDA also. The rent payable by PECT in lieu of Presidium School situated on that area was attorned to MTPL as per agreement dated 01.01.2016. Hence, the revenue has been earmarked to Presidium School and not to the CD. The Transaction Review Report noted as below regarding agreement dated 17.12.2015:

- *“The sub-lease deed between IHCPL and PEIPL had undergone a revision on 14 December 2015. (The revised deed (if any) was not made available to us for our review)*
- *Members of IHCPL consortium holding 81% share namely IHCPL, Alluvion and Alan agreed to transfer to MTPL the whole building which constituted a school run by PEIPL along with undivided rights to the land, on which such school is established measuring 13,541 sq.meters (1.35 hectare) “Presidium Area”. Further, it is to noted that MTPL was entitled to exclusively use, utilize, operate, convey, sale, transfer, manage and further develop the Presidium area through this MoU.*
- *MTPL had to pay 97.97 crore for 19% share in the consortium. It also mentioned that as on the date of MOU, MTPL had already paid INR 65 crores and balance INR 33 crores shall be paid as per MOU. Based on review of books of account of IHCPL, we noted that MTPL had started making the payments from 2013 onwards. Such payment was recorded as advance from MTPL under the ledger “Advance against School Space” as on 22 August 2019. The details of the same is given in Table 11.”*

3.18.3. The TRA also mentioned chronology of agreements wherein subsequent agreements have altered the previous consortium agreements. The SCN has relied on the part of the report which has been superseded by subsequent agreements and the observation regarding final agreement dated 17.12.2015 has been given above. As per prevailing agreement, the rent from PECT was attorned to MTPL. However, the issue of insufficient consideration for such transfer of rent from PECT by CD and its other consortium member to MTPL has been highlighted in the TRA.

3.18.4. The TRA observes that consideration paid by MTPL appears to be less than potential market value. The DC further desires that following observation in the Transaction Review Report as follows also be examined afresh specially on the aspect of potential loss inflicted on the CD through transactions with MTPL:

The transaction review report finally observed as follows:

“Considering the facts that:

- *the land under Presidium Area was transferred which appears to be not in adherence to the Terms & Conditions of the lease deed between GDA and IHPCL consortium as it falls under socio-cultural zone;*
- *MTPL was a potentially connected entity and member of IHCPL consortium and subsequently, PEIPL along with its potentially connected entities acquired shareholding in MTPL;*
- *the consideration paid by MTPL i.e, INR 97.97 crore appears to be lesser than its potential market value derived based on unitary method of calculation applied using MoUs dated 17 December 2015;*
- *supporting documents i.e., Somani and Kapsons space buyer agreement and related cancellation documents and revised lease deed between IHCPL and PEIPL were not made available to us,*
the transaction i.e, transfer of land IHCPL to Madhuban Tieup Private Limited appears to be questionable in nature.”

3.18.5. The DC notes IA 3463/2020 being filed by Mr. Narender Kumar Sharma also took note of the final observation of the transaction review report and stated that *“The aforesaid conclusion by the Forensic Auditor makes it inevitable that the land transferred to MTPL is a project land, which IHPCL attempts to shield from CIRP.”* It states that *“For the success of any Resolution Process the whole Project needs to be taken over by the Applicant for "Consolidated Resolution Plan" including the entire piece of land admeasuring 5.08 Hectares (50,800 sq. meters) allotted by Ghaziabad Development.*

3.18.6. The aspect of excess land in unauthorised possession of MTPL is unclear. Also, there is lack of clarity regarding the dealing of CD with MTPL. Hence, The Board may re-investigate whether Mr. Narender Kumar Sharma has filed appropriate applications for securing the interest of the CD by filing avoidance application before the AA in respect of its dealing with MTPL.

3.18.7. Also, Mr Narender Kumar Sharma states in his reply dated 05.02.2024 that *“The previous recorded shareholding of 38% was amended vide Memorandum of Understanding dated 17.12.2015, executed between members of IHCPL Consortium, in terms whereof, shareholding/ownership of MTPL was reduced to 19% in lieu of payment of Rs. 97.97 Crores, paid by MTPL to Corporate Debtor.”* However, these submissions do not match with the documents which show that prior to MoU dated 17.12.2015, shareholding of MTPL was 0.64 % and the same was increased to 19% on consideration of Rs. 97.97 crores. This aspect also needs to be investigated by the IA.

4. Order

4.1. In view of the foregoing discussion, the DC, in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the Investigation Regulations hereby: -

- a) imposes a penalty of Rupees Two Lakhs (Rs.2,00,000) on Mr. Narender Kumar Sharma for his failure to fully cooperate with the IA and directs him to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of “penalty imposed by IBBI” on <https://bharatkosh.gov.in> within 45 days from the date of issue of this order and submit a copy of the transaction receipt to IBBI,
- b) refers back the matter to the Board for re-investigation, and
- c) strictly warns and cautions Mr. Narender Kumar Sharma to be careful and to extend all necessary support to the IA during the investigation process and avoid making inconsistent and partial submissions.

4.2. This Order shall come into force immediately in view of paragraph 4.1.

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

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

4.5. 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.

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

-sd/-
(Sandip Garg)
Whole Time Member, IBBI

-sd/-
(Sudhaker Shukla)
Whole Time Member, IBBI

Date: 11th July 2024

Place: New Delhi