

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/216/2024

16 May 2024

ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI/COMP/2022-23/01025(IBBI/C/2022/00752)/748/573 dated 03.05.2023, issued to Mr. Anil Goel, an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-001/IP-P00118/2017-2018/10253, who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and having residential address recorded with IBBI as AAA Insolvency Professionals LLP, Basement, E-10A, Kailash Colony, Near Greater Kailash-1, New Delhi - 110048

1. Background

- 1.1 The National Company Law Tribunal, Indore Bench (AA) vide its Order dated 05.08.2022, admitted the application under Section 9 of the Code, for initiating Corporate Insolvency Resolution Process (CIRP) of AG8 Ventures Limited (“Corporate Debtor / CD”) and Mr. Ishwar Lal Kalantri was appointed as Interim Resolution Professional (IRP) to conduct the CIRP. However, the AA *vide* order dated 11.08.2022 appointed Mr. Anil Goel as IRP substituting Mr. Kalantri and was later confirmed as Resolution Professional (RP).
- 1.2 The IBBI in exercise of its powers under Section 218 of the Code, read with Regulations 7(2) and 7(3) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to conduct investigation in the matter of CIRP of the CD.
- 1.3 Based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the Board formed a *prima-facie* view and decided to issue the SCN to Mr. Anil Goel on 03.05.2023. 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. Anil Goel to the SCN was received by the Board on 17.05.2023.
- 1.4 The SCN and response of Mr. Anil Goel to the SCN were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Anil Goel availed an opportunity of

personal hearing before the DC on 11.10.2023 through virtual mode. Pursuant to the personal hearing, Mr. Anil Goel submitted additional documents on 20.10.2023. Further, Mr. Anil Goel has provided regular updates with respect to pending matters in the Hon'ble High Court of Delhi and National Company Law Tribunal on 31.10.2023, 16.11.2023, 20.11.2023, 27.11.2023, 01.12.2023, 12.12.2023 and 26.12.2023.

2. Alleged Contraventions, Submissions of Mr. Anil Goel and Findings

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

Contravention I

2.1 Contempt of the order of National Company Law Appellate Tribunal (NCLAT)

2.1.1 It was observed that the admission order of the AA was challenged by Real Estate Regulatory Authority, Madhya Pradesh (MP RERA) before the NCLAT on the ground that the CIRP proceedings were collusively initiated. The Hon'ble NCLAT *vide* order dated 30.09.2022 allowed interim stay on the admission order.

2.1.2 That despite the directions in the aforesaid stay order, Mr. Anil Goel continued conducting the CIRP and carried on with claim verification. The NCLAT took an adverse view of Mr. Anil Goel's conduct and *vide* order dated 23.01.2023 observed that a *prima facie* case of contempt against him was made out.

2.1.3 In view of the foregoing, it was observed that despite clear directions of the NCLAT, Mr. Anil Goel continued with the conduct of CIRP by collation and verification of claim which also led to confusion among stakeholders. Therefore, there was a contravention of Section 17(2)(e) of the Code which requires the IRP to comply necessarily on behalf of the CD with requirements under any law for time being in force.

2.1.4 In view of the above, the Board was of the *prima facie* view that Mr. Anil Goel had, *inter alia*, violated Section 208(2)(a) of the Code, Regulation 7(2)(a) & (h) of IP Regulations read with Clauses 1, 2, 3 and 14 of Code of Conduct for IPs under First Schedule of IP Regulations (Code of Conduct).

Submissions by Mr. Anil Goel

2.1.5 Mr. Anil Goel in his response has submitted that the CD is engaged in real estate

development and there are about 9 projects of the CD at different stage of completion. In the first month of the CIRP, claims of more than 2,000 home buyers were received for delayed possession in about 9 projects. Pursuant to the stay imposed by the NCLAT, he took note of the same and did not continue with the CIR process of the CD and had conducted only limited extent of work of verification of claims so received till the date of stay granted by NCLAT at the backend, with the intent that work done by the team at the backend would be used once the stay would be vacated and substantial time could be saved and team members time would be appropriately utilised.

- 2.1.6 Mr. Anil Goel has further submitted that in lieu of the stay imposed by the NCLAT, there was no clarity as to the roles and powers of the Resolution Professional and the status of moratorium under Section 14 of the Code once a stay on the order initiating the CIRP is passed by the NCLAT.
- 2.1.7 Mr. Anil Goel has further submitted that the total claims on which some emails were sent by his team were only 4 in numbers as against total claims received from homebuyers to the tune of 2,159. Also, the total claims on which some email was sent by the team of Mr. Anil Goel was for Rs. 75,28,725 (Rupees seventy five lakhs twenty eight thousand seven hundred twenty five only) as against total claims received from homebuyers to the tune of Rs. 1097,94,62,493 (Rupees one thousand ninety seven crore ninety four lakhs sixty two thousand four hundred ninety three only). Mr. Anil Goel has provided the particulars of emails sent to the claimants. All the claims on which some reply was given, were received prior to the date of the stay order, i.e. 30.09.2022. Some of the emails were sent by PDA system adopted by Mr. Anil Goel, as developed by NeSL. Mr. Anil Goel further submitted that at times his team need to reply to some insisting and pursuing claimants to keep asking for acknowledgment and reason for partial admittance of claim.
- 2.1.8 Mr. Anil Goel has further submitted that the NCLAT has only *prima facie* found the case of contempt against him acting as RP and the same was not conclusively determined by the NCLAT. Further, the NCLAT vide its Order dated 08.12.2023 has quashed the initiation of CIRP against the CD, on ground that the nature of transaction between the CD and applicant – Operational Creditor is not in the nature of ‘operational debt’. The CIRP against the CD stands abated and there was no direction or comment regarding the alleged contempt made by Mr. Anil Goel. The Hon’ble High Court of Delhi also in CM APPL. 55872/2023(for clarification) in W.P.(C) 2771/2023, *vide* order dated 29.11.2023, clarified it’s earlier order 06.03.2023 and held that “It is clarified that the findings of the NCLAT

are that a *prima facie*, 'case of contempt' is made out and not that the Petitioner is *prima facie* 'guilty of contempt'.

Analysis and Findings of the DC

- 2.1.9 The DC notes the submission of Mr. Anil Goel that during the interim stay on the CIRP, granted by the NCLAT, only limited process of verification of claims was being undertaken by the team of Mr. Anil Goel. Further, out of a large number of claimants being around 2,000 in number, the communication with respect to claims was sent only to 4 claimants, in which 1 communication was automatically sent through the PDA system.
- 2.1.10 The DC also notes the submission of Mr. Anil Goel that in its order dated 23.01.2023, the NCLAT had only found '*prima facie*' act of contempt by Mr. Anil Goel. Mr. Anil Goel has submitted Order dated 29.11.2023 of the Hon'ble High Court of Delhi whereby the Hon'ble Court has also clarified its earlier order dated 06.03.2023 that the findings of NCLAT are that *prima facie*, 'case of contempt' is made out and not that the Petitioner (Mr. Anil Goel) is *prima facie* 'guilty of contempt'.
- 2.1.11 The DC further notes the submission of Mr. Anil Goel that *vide* order dated 08.12.2023, the NCLAT had set aside the admission order of the NCLT against the CD and in the said order, no observation was made by the NCLAT regarding the contempt.
- 2.1.12 In view of the foregoing, the DC accepts the submissions of Mr. Anil Goel.

Contravention II

2.2 Non-compliance of directions of Real Estate Regulatory Authority (RERA)

- 2.2.1 In the present matter, it was observed that *vide* letter dated 10.10.2022, the Madhya Pradesh (MP) RERA sought information from Mr. Anil Goel, with respect to various allottees in the project of the CDs as follows:

1. The correspondence made with the allottees before the execution of the agreement for sale,
2. Copy of the agreement for sale executed with the allottees,
3. Date of the agreement for sale and,
4. Copy of the correspondence made for obtaining the amount according to the agreement with the allottee after execution of the agreement for sale.

2.2.2 However, despite the directions of MP RERA, the aforesaid documents were not furnished by Mr. Anil Goel. Pursuant to the non-compliance, the MP RERA issued a Show Cause Notice dated 09.12.2022 to Mr. Anil Goel enquiring as to why the penalty should not be imposed against Mr. Anil Goel under Section 63 read with Section 69 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act) for not furnishing the information and documents to the Authority sought vide order dated 10.10.2022 of the Authority.

2.2.3 Subsequently, the MP RERA was constrained to impose penalty on Mr. Anil Goel vide its order dated 27.12.2022 with finding as follows,

“Not giving such information and documents by the non-applicant Shri Anil Goyal is serious misconduct. Therefore, the penalty of the amount 25 lakh rupees is imposed under Section 63 read with Section 69 of the Act against Shri Anil Goyal.”

2.2.4 In fact, it was observed that there are various orders passed by the MP RERA in regards the other projects of the CD by which the MP RERA had imposed multiple penalties on Mr. Anil Goel for not furnishing information. A summary of these orders are provided below:

PROJECT	ORDER DATE	PENALTY (In Rs.)
Aakriti Aqua City	27.12.2022	25,00,000
Aakriti Kolar City	11.01.2023	10,00,000
Aakriti Highland	10.01.2023	1,00,00,000
Orchid Heights	11.01.2023	5,00,000
Aakriti Business Arcade	11.01.2023	4,00,000
Aakriti Garden Phase-4	11.01.2023	5,00,000

2.2.5 The SCN noted that Section 17(2)(e) requires the IRP to comply necessarily with requirements under any law for time being in force on behalf of the CD. Therefore, Mr. Anil Goel was duty bound to comply with provisions of the MP RERA Act on behalf of the CD and also to provide the information to the MP RERA as per directions.

2.2.6 In view of the above, the Board was of the *prima facie* view that Mr. Anil Goel had, *inter alia*, contravened Section 17(2)(e) and 208(2)(a) of the Code, Regulations 7(2)(a) & (h) of the IP Regulations read with Clauses 1, 2, 3, 5, 12 and 14 of the Code of Conduct as mentioned in the first schedule of IP Regulations.

Submissions by Mr. Anil Goel

2.2.7 Mr. Anil Goel has submitted that inspite of the stay order of the NCLAT, MP RERA

continued its proceedings against the CD and issued Show Cause Notices to the Promoters and Mr. Anil Goel for failure in providing certain information and documents as were sought by the MP RERA. Mr. Anil Goel has submitted that he had replied to the Show Cause Notices apprising the MP RERA about CIRP of the CD and also stating that there is no clarity from the NCLAT as to the effect of stay order, including applicability of moratorium on the CD. Therefore, no documents were provided by Mr. Anil Goel.

2.2.8 Mr. Anil Goel further submitted that the provisions of the Code shall have an overriding effect over the provisions of the MP RERA Act. Once moratorium as mentioned in Section 14 of the Code is imposed vide a CIRP initiation order, the proceedings against the CD before any other Tribunal shall remain stayed.

2.2.9 Mr. Anil Goel further submitted that the MP RERA while failing to recognise Mr. Anil Goel's authority in terms of the stay granted by the NCLAT vide Order dated 30.09.2022, has stated in its orders that in terms of Section 17(2)(e) of the Code, Mr. Anil Goel should have complied with its order wherein certain information with respect to the CD was directed to be provided.

2.2.10 Mr. Anil Goel has also flagged the contradictions in the order of the MP RERA where on the one hand it has been stated that in lieu of the stay imposed by the NCLAT, Mr. Anil Goel has been discharged to manage the affairs of the CD and had further initiated contempt proceedings for sending emails to few home buyers with regard to filing of their claims, post stay granted on 30.09.2022 on CIRP by the NCLAT; and on other hand in view of the non-compliance of the directions passed by the MP RERA, penalty was imposed on Mr. Anil Goel.

2.2.11 Mr. Anil Goel has placed reliance on the NCLAT judgment in the matter of Ashok Kumar Tyagi vs UCO Bank & Ors. (Company Appeal (AT) (Insolvency) No. 2323 of 2022) and submitted that he presumed that he is required to ensure that the control and custody of the CD does not rest with the erstwhile management. Based on such clarification, Mr. Anil Goel has pleaded his inability in acting upon any of the directions of the MP RERA and also any information provided by Mr. Anil Goel to the RERA would be in total contravention of the provisions of the Code and contempt of the order imposing stay on the CIRP.

2.2.12 Mr. Anil Goel further submitted that the authority exercised by the MP RERA in passing order against an Insolvency Professional in his capacity as a Resolution Professional of the

CD is barred by Section 233 of the Code. Further, Mr. Anil Goel has also emphasised that Section 37 of the MP RERA Act does not authorise the MP RERA to pass any directions against an Insolvency Professional as the directions can be issued only against the promoters or allottees or real estate agents. Mr. Anil Goel has therefore asserted that since no directions can be passed by the MP RERA, against an Insolvency Professional there was no violation of Section 17(2)(e) of the Code.

2.2.13 Mr. Anil Goel further submitted that he has challenged the orders of the MP RERA, before Hon'ble High Court of Madhya Pradesh vide Writ Petition no. 9057 of 2023 and vide order dated 27.04.2023, the Hon'ble High Court has ordered for no coercive action against Mr. Anil Goel.

Analysis and Findings of the DC

2.2.14 Section 17 of the Code vests the management of the affairs of the CD in the interim resolution professional and mandates him to comply with the requirements under any law for the time being in force. Section 17 of the Code is as follows:

“17. Management of affairs of corporate debtor by interim resolution professional. –

1) From the date of appointment of the interim resolution professional, -

(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;

(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;

(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;

(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

(2) The interim resolution professional vested with the management of the corporate debtor, shall-

(a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;

(b) take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

(c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d) have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified; and

(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.”

2.2.15 The DC notes that in the present case the CIRP of the CD was initiated on 05.08.2022 and stayed by the NCLAT on 30.09.2022 and during the operation of interim stay on the CIRP of the CD, the MP RERA vide its order dated 10.10.2022 had sought certain information from Mr. Anil Goel.

2.2.16 It is mentioned in the MP RERA Order that the information sought by the MP RERA with respect to certain 34 allottees was very important as the promoter of the project of the CD had allotted the residential units to such 34 allottees years ago, however, no amount has been taken from them, whereas due to paucity of the amount, the orders by the MP RERA for returning the amount to the allottees have not been complied with. The MP RERA, in its order dated 27.12.2022 had acknowledged that the stay was granted by NCLAT and further stated about the conduct of Mr. Anil Goel as IRP as under -:

“10. The directors of the promoter AG8 Ventures Pvt Ltd, Shri Hemant Soni and Shri Rajiv Soni have not furnished the information and documents on the aforesaid points. Although NCLAT passed the stay order vide their order dated 30.09.2022 on the appointment of Shri Anil Goyal, IRP vide order dated 5th August, 2022 read with order dated 11th August, 2022 of NCLT, the charge of the company has not been taken from Shri Anil Goyal, IRP intentionally and in collusion with Shri Anil Goyal, IRP on the pretext of submitting the application to obtain clarification regarding the order of NCLAT, submission of information and documents required by the Authority to the Authority has been refused.

.....

12. Shri Anil Goyal IRP has sent one letter dated 31.10.2022 in reference to the Notice No. 2020/P-BPL-17-732/S-08/F-73/653 dated 10.10.2022 issued by the Authority to the promoter company AG8 Ventures Pvt Ltd to the Secretary of the Authority, in which it has been mentioned that the management of AG8 Ventures is still vested in him and for this reason the letters regarding the aforesaid promoter be directly addressed to him..

.....

22. But the right of Shri Anil Goyal had come to an end from the date of the stay order issued by NCLAT on 30.09.2022 and thereafter he should not have created hinderances in the works of complying with the provisions of the RERA Act by AG8 Ventures Pvt Ltd. If Shri Anil Goyal believes that the rights of management of AG8 Ventures Pvt Ltd are still vested in him even after the stay order of NCLAT, Shri Anil Goyal is bound to comply with the provisions of RERA Act according to Section 17(2) Part (e) of Insolvency and Bankruptcy Code, 2016 but he did not do it and he continued discharging the management works of AG8 Ventures Pvt Ltd illegally violating the order 2022/P-BPL-17-732/S-08/F-73/653 dated 10.10.2022 issued by the Authority. Therefore, Shri Anil Goyal is found to be guilty under Section 63 read with Section 69 of the Act because of violation of Section 37 of RERA Act.”

2.2.17 Therefore, in view of the foregoing facts, the DC finds that since the management of the CD was still vested in Mr. Anil Goel, it was the duty of Mr. Anil Goel to provide information to the MP RERA when it was called for. Mr. Anil Goel being an IRP of the CD was duty bound to provide all the available information pertaining to the CD as was required by the MP RERA.

2.2.18 The DC therefore finds Mr. Anil Goel to be in violation of Section 17(2)(e) and 208(2)(a) of the Code, Regulation 7(2)(a) & (h) of the IP Regulations read with Clauses 1, 2, 3, 5, 12 and 14 of the Code of Conduct.

Contravention III

2.3 Suppression of material facts before the Hon’ble High Court of Delhi

2.3.1 It was observed that Mr. Anil Goel had filed an appeal before the Hon'ble High Court of Delhi, challenging various orders passed by the MP RERA, but later on he requested

permission to withdraw the appeal with liberty to approach the appropriate forum.

2.3.2 However, in the proceedings before the Hon'ble High Court of Delhi, it was also brought to the notice of the Hon'ble High Court by the Ld. Additional Solicitor General that Mr. Anil Goel was *prima facie* found guilty of contempt *vide* order dated 23.01.2023 passed by the NCLAT, New Delhi.

2.3.3 Since, the aforesaid material fact was suppressed by Mr. Anil Goel, the Hon'ble High Court of Delhi made observation regarding Mr. Anil Goel's conduct and passed the following order:

"However, in view of the clear suppression of the above order of the NCLAT, in this petition costs of Rs. 10,000/- shall be deposited with the Delhi High Court Legal Services Committee within four weeks."

2.3.4 Clause 2 of the Code of Conduct as specified in First Schedule under the IP Regulations provides that an IP must not misrepresent any facts or situations and should refrain from being involved in any action that would bring disrepute to the profession. Further, clause 12 of the Code of Conduct also provides that an IP must not conceal any material information or knowingly make a misleading statement to the Board, the AA or any stakeholder, as applicable.

2.3.5 In view of the above, the Board was of the *prima facie* view that Mr. Anil Goel had, *inter alia*, contravened Section 208(2)(a) of the Code, Regulations 7(2)(a) & (h) of the IP Regulations read with Clauses 1, 2, 3, 12 and 14 of the Code of Conduct

Submissions by Mr. Anil Goel

2.3.6 Mr. Anil Goel has submitted that he was not found guilty of contempt as the contempt proceedings had not attained finality. Further, Mr Anil Goel averred that his intention behind preferring Writ Petition before the Hon'ble High Court of Delhi was to challenge the authority exercised by the MP RERA, against him in the capacity of an Insolvency Professional duly regulated by the IBBI and bring the question of applicability of Section 233 of the Code. The contempt proceedings before Hon'ble NCLAT had no direct connections with the averments made in the Writ Petition so preferred.

Analysis and Findings of the DC

2.3.7 The DC finds that on the date of filing the Writ Petition before the Hon'ble High Court of Delhi by Mr. Anil Goel, in the related matter, contempt application against him was

pending before the NCLAT. Hence Mr. Anil Goel should have acted prudently and disclosed this fact in the Writ Petition filed before the Hon'ble High Court of Delhi. Due to non-disclosure of this material fact in the Writ Petition, Hon'ble High Court imposed penalty of an amount of Rs.10,000 (Rupees ten thousand only) on Mr. Anil Goel. Hence the DC holds the contravention in this regard as alleged in the SCN.

Contravention IV

2.4 Appointment of Related Party as Authorized Representative (AR)

2.4.1 Regulation 4A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) provides that for representation of creditors in a class ascertained under sub-regulation (1) in the committee, the IRP shall identify three insolvency professionals who are not his relatives or related parties. Section 21(6A) of the Code provides that the IRP shall make an application to the AA along with the list of all financial creditors, containing the name of an IP, to act as their AR who shall be appointed by the AA prior to the 1st Committee of Creditors (CoC) meeting. Further, Regulation 16A of the CIRP Regulations provides for AR appointment stating that, the IRP shall select the IP as AR, who is the choice of the highest number of financial creditors in the class and the IRP shall apply to the AA for appointment of the AR selected within two days of the verification of claims.

2.4.2 It was observed that in the 1st CoC meeting dated 09.09.2022, Mr. Anil Goel had proposed name of Mr. Piyush Kumar Kapoor as one of the three proposed Authorized Representatives (AR), despite Mr. Piyush Kumar Kapoor being a related party to Mr. Anil Goel in terms of Section 5(24A) (g) of the Code. It was observed that Mr. Piyush Kumar Kapoor had signed a Memorandum of Understanding (MoU) with the AAA Insolvency Professionals LLP (AAAIP) wherein Mr. Anil Goel is the founder and the Chairman and as per the said MoU, Mr. Piyush Kumar Kapoor is an Associated Partner in AAAIP. Hence, Mr. Piyush Kumar Kapoor is a related party to Mr. Anil Goel. Therefore, the choice for appointment of an AR who is a related party to the IRP is in violation of Regulation 4A of the CIRP Regulations.

2.4.3 It was also observed that, Mr. Anil Goel had allowed Mr. Piyush Kumar Kapoor, the proposed AR to participate in the 1st CoC meeting and even allowed him to represent the creditors in a class even when the appointment was yet to be confirmed by the AA, which is against Section 21(6A) of the Code and regulation 16A of the CIRP Regulations.

- 2.4.4 In view of the above, the Board was of the *prima facie* view that Mr. Anil Goel had, *inter alia*, contravened provisions of Sections 21(6A), 208(2)(a) & (e) of the Code, Regulations 4A and 16A of the CIRP Regulations and Regulation 7(2)(a) & (h) of IP Regulations read with Clauses 1, 2, 3, 5 and 14 of the Code of Conduct.

Submissions by Mr. Anil Goel

- 2.4.5 Mr. Anil Goel submitted that he had duly disclosed to the CoC in the first meeting that Mr. Piyush Kumar Kapoor is taking support services in one of his assignments, where he has been appointed as IRP/RP, from AAA Insolvency Professionals LLP based on an MoU with him. Further, it was also confirmed by Mr. Anil Goel that he had no relationship with Mr. Piyush Kumar Kapoor and that he is not a partner, designated partner, employee, retainer, relative or related party to him or to AAA Insolvency Professionals LLP. The CoC was informed of the MoU that was entered into and between AAA Insolvency Professionals LLP and Mr. Piyush Kumar Kapoor.

- 2.4.6 Mr. Anil Goel has submitted that a MoU was entered into and between AAA Insolvency Professionals LLP and Mr. Piyush Kumar Kapoor to introduce Mr. Piyush Kumar Kapoor as Associate Partner in AAA Insolvency Professionals LLP only to avail support services offered by AAA Insolvency Professionals LLP, an IPE. Mr. Anil Goel has provided relevant extract of the MoU as –

“1. That the Second Party is introduced as an Associate Partner in AAA Insolvency Professionals LLP by way of execution of this MoU and he would be entitled to make use of the name and credibility of ‘AAAIP’ for availing support services for the purpose of enhancing the practice of insolvency and bankruptcy.”

- 2.4.7 Mr. Anil Goel further submitted that Mr. Piyush Kumar Kapoor is not a Designated Partner and provided the relevant extract of the MoU as follows-

“2. That the Second Party by effect of this MOU does not become a designated Partner of AAAIP and shall have no entitlement, rights and privileges as defined under the Limited Liability Partnership Act, 2008 in the assets, infrastructure and business of AAAIP. The Second Party vide this MOU may prefer AAAIP for availing support services on revenue sharing basis as an Insolvency Professional whereby he would be getting access to use the infrastructure, goodwill, brand equity, experience and knowledge base of AAAIP and its various teams.

3. That the Second Party explicitly agrees that his/her association with AAAIP is for handling any type of assignment viz. directly or indirectly related to Interim Resolution Professional, Resolution Professional, Liquidation process, Process Advisor, Bankruptcy Trustee and Member of a Monitoring Committee for Corporate Insolvency and/ or Individual Insolvency and Bankruptcy, under the Insolvency and Bankruptcy Code 2016. That during the continuation of this MOU, the Second Party may engage in IBC practice with or without the affiliation and association of AAAIP for availing support services.”

2.4.8 Mr. Anil Goel further submitted that the MoU was merely a marketing effort by AAAIP to remain connected with prospective customers / clients. Further the Indian Contract Act, 1872 only recognizes a present agreement and a concluded agreement whereas the Memorandum of Understanding dated 24.05.2022 is not a present or concluded agreement which creates any rights in favour of any of the parties to the said MoU. Further, Section 5(24A)(b) says that a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner is a related party. However, in the instant case no partnership agreement has been entered between him and Mr. Piyush Kumar Kapoor.

2.4.9 Mr. Anil Goel further submitted that Mr. Piyush Kumar Kapoor was a prospective customer of IPE for taking support services, which he may decide whenever he will get an assignment in his own name and therefore is not a related party.

2.4.10 Mr. Anil Goel further submitted that in the instant case, the application for appointment of AR was pending adjudication before the NCLT whilst the first meeting of the CoC was being convened. In case the intent of legislature is that the AR will not start his role till his appointment is confirmed by AA, then no meetings can take place till the AA pass an order of confirmation of AR and IRP/RP would not be able to hold any meeting of CoC till such appointment and all the timelines provided in the Code and Regulations would be contravened.

Analysis and Findings of the DC

2.4.11 Regulation 4A of the CIRP Regulations provides that none of the choice of authorised representative given by an interim resolution professional should be relative or relative party of the interim resolution professional. The relevant portion of the said regulation is as hereunder:

“4A. Choice of authorised representative

(1)

(2) For representation of creditors in a class ascertained under sub-regulation (1) in the committee, the interim resolution professional shall identify three insolvency professionals who are-

(a) not his relatives or related parties;

.....

2.4.12 For the purpose of determining related party, Section 5(24A) is referred to which provides as follows:

“(24A) “related party”, in relation to an individual, means-

(a) a person who is a relative of the individual or a relative of the spouse of the individual;

(b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;

(c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;

(d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;

(g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;

(h) a person on whose advice, directions or instructions, the individual is accustomed to act;

(i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.”

2.4.13 The DC notes the following features of the Memorandum of Understanding (MoU) between Mr. Piyush Kumar Kapoor and AAAIP:

Clauses in the MoU	
That AAAIP and the Associate Partner would carry on the assignments of Interim Resolution Professional, Resolution Professional, Liquidator, insolvency resolution professional for individuals, Bankruptcy Trustee, etc. with the joint efforts and the existing infrastructure, human resources, goodwill, brand	Clause 5

equity, knowledge and experience of AAAIP would be used for this joint practice.	
Responsibilities and Scope of work of the AAAIP	
To include associate partners name on the website of AAAIP, digital profiles of AAAIP and permission to use AAAIP in the business cards or business stationary of associate partner.	Clause 7(A)(i)
To assist the Associate Partner in making his/her profile for the purpose of making applications for empanelment with banks and other large customers. To assist the associate partner in submission of Expression of Interest for assignments.	Clause 7(A)(v)
To allow the Associate Partner to use the brand equity of AAAIP for the purpose of making applications for empanelment and also to showcase the infrastructure, human resources, knowledge, experience, achievements, capacity and capability of AAAIP while representing himself for taking any assignment or for empanelment.	Clause 7(A)(vi)
To assist the Associate Partner for his/her marketing efforts by sharing experience introduction to relevant persona, sharing Leads and to provide his/her with marketing formats and presentations.	Clause 7(A)(vii)
Responsibilities and Scope of work of the Associate partner:	
To cooperate with the business development and digital marketing team of AAAIP for social media engagements and spreading the campaigns with your contacts, peer groups and personal social media accounts on various platforms.	Clause 7(B)(iii)
To handle all cases assigned in his/her name with due diligence to protect and enhance the brand and goodwill of AAAIP.	Clause 7(B)(vi)
To work as per various organizational policies such as file and folder naming policy, data security, physical filing policy etc. and to assure that there are being adhered to	Clause 7(B)(ix)
Revenue sharing pattern	
AAAIP would be entitled to receive a revenue share (as	Clause 9

mentioned in the table given below) of the 'Fee/Gross Revenue' from the Associate Partner for all those cases in his name irrespective of the efforts made or contacts used for procuring the assignment:			(i)
Scenario	% Share of AAAIP	% Share of Associate Partner	
Cases marketed by Associate Partner after getting brand image/goodwill of AAAIP, after execution of MOU	60 (50)	40 (50)	
Cases allotted by NCLT to Associate Partner, involving no marketing efforts	50 (40)	50 (40)	
Figure in bracket is applicable to the City/place/center where AAAIP is not having its Office and the Associate Partner is having well established business office with adequate staff for attending to routine work of the IBC assignments, thereby entitlement for additional 10% out of share of AAAIP.			
That all the physical and digital records of the case/assignment shall be kept and maintained at the office of AAAIP in the joint custody and would be accessible to both the parties. The Associate Partner may keep duplicate of certain items as per his requirement in physical or digital form. All security documents/valuable papers will be kept by the Second Party and their copies will be retained in the office of AAAIP. The Associate Partner shall take away the physical records from the office of AAAIP and copies of those documents which are required in view of joint responsibilities of IPE under regulation 13(3) of IBBI (Insolvency Professionals) regulations 2016, will be retained by AAAIP.			

2.4.14 Under the terms of the MoU, Mr. Piyush Kumar Kapoor was entitled to make use of the name and credibility of AAAIP for availing support services, was provided with

reasonable office infrastructure and support services from various teams of the AAAIP such as claim verification, preparation of information memorandum, registered valuers, etc., including assistance and guidance of the AAAIP and Mr. Anil Goel, for taking strategic decisions. There was a revenue sharing arrangement reached between Mr. Piyush Kumar Kapoor and the AAAIP for all those cases in his name irrespective of the efforts made or contacts used for procuring the assignment. The fee received by him was to be shared with AAAIP. Mr. Piyush Kumar Kapoor had to abide by various policies of the AAAIP, all their assignments are considered for revenue sharing, and limited independence he had in various activities etc. In view of the forgoing analysis, the DC finds the MOU is drafted in such a fashion that it effectively makes Mr. Piyush Kumar Kapoor a partner of the AAAIP.

2.4.15 Further, Section 21(6A) of the Code provides that the authorised representative shall be appointed by the AA. Relevant portion of the Section is as follows:

“21. Committee of creditors. –

(1).....

.....

(6A) Where a financial debt—

(a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

(b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,

and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.”

2.4.16 The DC notes that Regulation 16A of the CIRP Regulations mandates an IRP to apply to AA for appointment of AR within two days of the verification of claims. In the instant matter, the SCN had alleged that even before the appointment of Mr. Piyush Kumar

Kapoor as AR by the AA, Mr. Anil Goel allowed him to participate in the 1st CoC meeting and allowed him to represent the creditors in class. In this regard, Mr. Anil Goel has submitted that although Mr. Piyush Kumar Kapoor had attended the 1st CoC meeting of the CoC, the decisions were taken by e-voting of each claimant on matter where the CoC approval is required. However, the attendance sheet of 1st CoC meeting and further discussions recorded in the minutes of 1st CoC meeting treats Mr. Piyush Kumar Kapoor as Authorised Representative. Furthermore, the minutes record that when several home buyers had visited the office for attending the meeting, Mr. Anil Goel brought to their knowledge that as per Section 21(6A) of the Code, the authorized representative of the creditors in class shall attend the CoC meetings on behalf of such creditors in class and they were refused from attending the meeting.

- 2.4.17 It is essential to understand the crucial role of Authorised Representative in the decision making process of the CoC. In order to ensure the effective participation of representatives from different classes of creditors in the CIRP, a provision for the appointment of authorized representatives had been introduced. The purpose of appointing an AR is to guarantee that the creditors' interests are adequately safeguarded and represented as per their mandates and not unduly influenced by any vested interest. Therefore, to discharge effectively the function of Authorised Representative, it is required that Authorised Representative should be independent, impartial and must act with objectivity without any conflict of interest. To ensure the same, Regulation 4A of the CIRP Regulations explicitly provides that none of the choice of authorised representative given by an Interim Resolution Professional should be relative or relative party of the Interim Resolution Professional. In addition to specific obligations and prohibitions under the Code and the regulations made thereunder, an IP must always abide by the Code of Conduct as specified in First Schedule under the IP Regulations. The Code of Conduct requires that an IP must maintain complete independence in its professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences. For example, clause 1 of the Code of Conduct of IP Regulations requires that an IP must maintain the integrity by being honest, straightforward, and forthright in all professional relationships, and clause 3 of the Code of Conduct mandates that an IP must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party. Also, clause 5 of the Code of Conduct states that an IP must maintain complete independence in his professional relationships and should conduct the

insolvency resolution, liquidation, or bankruptcy process, as the case may be, independent of external influences.

2.4.18 From the forgoing discussion, the DC finds that the MoU arrangement between Mr. Piyush Kumar Kapoor and the AAAIP of which Mr. Anil Goel is Chairman and founding partner, was already pre-existing under which, *inter alia*, the AAAIP would assist Mr. Piyush Kumar Kapoor for empanelment and submitting expression of interest and allow Mr. Piyush Kumar Kapoor to utilize the infrastructure facilities of AAAIP, assistance and guidance of AAAIP and Mr. Anil Goel for taking strategic decisions. In return, Mr. Piyush Kumar Kapoor had to share his revenue with AAAIP, assist in enhancing brand and goodwill of AAAIP and work as per various organizational policies etc. In terms of the aforesaid MoU, Mr. Piyush Kumar Kapoor cannot be said to be acting independently from Mr. Anil Goel. The AR is required to protect interest of the financial creditors to represent for whom his appointment is done. He should not be under the influence of the RP. In such a scenario where the interests of Mr. Anil Goel and Mr. Piyush Kumar Kapoor are directly inter-linked, the conduct of Mr. Anil Goel in proposing the name of Mr. Piyush Kumar Kapoor to act as an AR for the CD is violation of Sections 21(6A), 208(2)(a) & (e) of the Code, Regulation 16A of the CIRP Regulations and Regulation 7(2)(a) & (h) of IP Regulations read with Clauses 1, 2, 3, 5 and 14 of the Code of Conduct .

Contravention V

2.5 Lack of transparency in appointment of observers

2.5.1 It was observed from notice dated 04.09.2022 for the 1st CoC meeting that Mr. Anil Goel had proposed an agenda for appointment of a total of 10 Observers who were to be elected for various projects who would be attending the meetings and shall communicate with the IRP and other Creditors on behalf of the other allottees of the said project. It also stated that the same shall be discussed in detail in the meeting.

2.5.2 It was, however, observed on perusal of minutes of 1st CoC meeting that the Observers had already been elected even before discussing the matter in CoC as was proposed in the notice. Not only they had been elected but they had also participated in the meeting of 1st CoC as proposed Observers. It was further observed that appointment of Observers had been done in a non-transparent manner as details of elections held for appointment of Project-wise Observers viz. names of contestants/volunteers for Observers project-wise, number of votes obtained by each of such contestant/volunteer, number of participating

allottees etc. have not been shared and discussed in the CoC meeting. It is also noted that in some cases, there was voting of allottees while in some, it was recommended by the society. Further, in case of Aqua City, all the observers were appointed from one society i.e. Aakriti Aqua City Owner's Association.

- 2.5.3 The following extract of minutes of 1st CoC meeting indicates the confusion and lack of transparency in the selection and appointment of Observers:

“IRP or any of the KMPs of the Corporate Debtor has not influenced the appointment/selection of the observers. It was explained to IRP and other members of the COC that some Resident Welfare Associations (RWA) or Association of Allottees (AOA) and Welfare Committees working at different projects also conducted a voting process on Google and selection has been made as per the results of those voting processes. One Mr. Ojha has sent email to IRP that he has been selected by few allottees and also appeared in the meeting, however, the other representative present in the meeting from the same project explained to IRP and other COC members that he sought his nomination through the process conducted by Allottees and he could not get votes and lost the selection process and few allottees are supporting him and there number is much below than the required number for selection. After hearing from elected observers, IRP asked him to leave the meeting with the concurrence of other members of the meeting.”

- 2.5.4 It was also noted that some of the observers were sharing information in homebuyer's WhatsApp groups and influencing the homebuyers to vote in a particular manner on various agenda items including appointment of Mr. Anil Goel as RP. The SCN noted that there appears to be non-transparency in appointment of the observer as well as misconduct in the e-voting process and also an attempt to influence the homebuyers to vote on various agenda items in a certain manner.
- 2.5.5 The Clause 5 of the Code of Conduct as specified in First Schedule under the IP Regulations states that an IP must maintain complete independence in his professional relationships and should conduct the CIRP proceedings, as the case may be, independent of external influences.
- 2.5.6 In view of the above, the Board was of the *prima facie* view that Mr. Anil Goel had, *inter alia*, violated Section 208(2)(a) of the Code, Regulations 2(1), and 26(1) of the CIRP Regulations and Regulation 7(2)(a) & (h) of IP Regulations read with Clauses 5 and 14 of the Code of Conduct.

Submissions by Mr. Anil Goel

- 2.5.7 Mr. Anil Goel has submitted that in his capacity as the IRP he had floated an email to the allottees asking them to elect an observer from each project and inform the same to the IRP. However, the participation of such observer was subject to the approval of the members of the CoC. The choice of Observers from 7 projects was received by Mr. Anil Goel over email from various committees formed for such projects and he presented the choice as received to all the members of the CoC and the allottees backed up by maximum choice of allottees of such project was finalised to be appointed as Observers. The members of CoC with 91.60% passed resolution for appointment of observers. Mr. Anil Goel asserted that the appointment of Observers was validated as per Regulation 2(1)(l) of the CIRP Regulations.
- 2.5.8 Mr. Anil Goel further submitted that the WhatsApp screenshots shared in no way proves that he had anyway influenced the decision of the CoC. The WhatsApp messages clearly show that Observers had recommended allottees to vote 'Yes' on certain resolutions such as appointment of IRP as RP, ratification of CIRP cost, approve delegation of authority, etc; the Observers had also recommended the allottees to vote 'NO' on certain resolutions such as ratification of fee of IRP/RP, ratification of appointment of professionals for handling litigation and accountancy compliance, etc.

Analysis and Findings of the DC

- 2.5.9 Regulation 2(1)(l) of the CIRP Regulations defines the term 'participant' as follows:

“(l) “participant” means a person entitled to attend a meeting of the committee under Section 24 or any other person authorised by the committee to attend the meeting;”

- 2.5.10 The DC notes minutes of first CoC meeting regarding appointment of observers, which reads as

“There are 11 projects of the Corporate Debtor wherein there are huge number of Allottees. For the purpose of maintaining smooth communication and transparency between the allottees and the IRP it has been recommended to appoint 10 observers (in total) who shall be allowed to attend the meeting as the participants to the CoC meetings in the matter of AG8 Ventures Limited.

The role of the observer shall be limited to attending the meeting and participating in the agendas taken up in the meeting. The observer can represent the group which he/she is representing and communicate with the IRP and other participants on behalf of them. The observers shall not have any right to vote on behalf of the allottees and shall only have power to vote as per their admitted claim amount.

The choice of Observers from 7 projects was received by the IRP over email from various committees formed for such projects. The IRP presented the choice as received by the IRP to all the members of the CoC and the allottees backed up by maximum choice of allottees of such project was finalized to be appointed as Observers.”

2.5.11 The DC finds that though the agenda of the appointment of the observer was to be discussed in the 1st CoC meeting, Mr. Anil Goel had appointed such observers beforehand, and even allowed the observers to attend the meeting of the 1st CoC, whereas only after passing of the resolution for appointment of the observers, by the CoC, such observers should have been appointed. It has been mentioned in the 1st CoC meeting that the role of the observers was limited to participate in the CoC meetings and have no right to vote. However, Mr. Anil Goel himself admitted that the Observers had given recommendation on whatsapp group to vote yes/no on certain resolutions. The DC therefore finds that Mr. Anil Goel has failed to act as per Section 208(2)(a) of the Code, Regulations 26(1) of the CIRP Regulations and Regulations 7(2)(a) & (h) of IP Regulations read with Clauses 5 and 14 of the Code of Conduct, as mentioned in the first schedule of IP Regulation.

3. ORDER

3.1.1 In view of the forgoing discussion, SCN, reply to the SCN, oral and written submissions made by Mr. Anil Goel, the DC finds Mr. Anil Goel in violation of the various provisions of the Code and Regulations made thereunder, as:-

- (i) Mr. Anil Goel failed to provide the required information to the MP RERA when control and custody of the CD was with him,
- (ii) Mr. Anil Goel suppressed the material fact about contempt proceedings pending against him before the NCLAT, while challenging the action of the MP RERA before the Hon'ble High Court of Delhi
- (iii) Mr. Anil Goel appointed an evidently related party, Mr. Piyush Kumar Kapoor as AR. The MoU arrangement between Mr. Piyush Kumar Kapoor and the AAAIP of which

Mr. Anil Goel is Chairman and founding partner, was already pre-existing and, *inter alia*, indicated that the AAAIP would assist Mr. Piyush Kumar Kapoor for empanelment and submitting expression of interest and allow Mr. Piyush Kumar Kapoor to utilize the infrastructure facilities of AAAIP, assistance and guidance of AAAIP and Mr. Anil Goel for taking strategic decisions. In return, Mr. Piyush Kumar Kapoor had to share his revenue with AAAIP, assist in enhancing brand and goodwill of AAAIP and work as per various organizational policies etc., and

(iv) Mr. Anil Goel failed to adopt a transparent mechanism for the appointment of observers.

3.1.2 Therefore, the DC, in exercise of the powers conferred under Section 220(2) of the Code read with IBBI (Insolvency Professionals) Regulations, 2016 and the IBBI (Inspection and Investigation) Regulations, 2017, hereby, suspends the registration of Mr. Anil Goel having registration no. IBBI/IPA-001/IP-P00118/2017-2018/10253 for a period of one year.

3.1.3 This Order shall come into force after 30 days from the date of this order.

3.1.4 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Anil Goel is enrolled as a member.

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

3.1.6 A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.

3.1.7 Accordingly, the show cause notice is disposed of.

Sd/-

(Jayanti Prasad)

Dated: 16 May 2024

Whole Time Member

Place: New Delhi

Insolvency And Bankruptcy Board of India