

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
(Disciplinary Committee)

No. IBBI/DC/228/2024

11 July 2024

**ORDER**

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/36/2023-IBBI/810/1441 dated 26.10.2023 issued to Ms. Reshma Mittal, an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with registration No. IBBI/IPA-001/IP-P00297/2017-2018/10541 and is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and having residential address recorded with IBBI as R-4/39, Raj Nagar, Ghaziabad, Uttar Pradesh -201002

**1. Background**

- 1.1. The NCLT, Principal Bench, New Delhi (AA) *vide* order dated 08.04.2019 admitted the application under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code), filed by IVL Finance Limited (Financial Creditor/FC) for initiating Corporate Insolvency Resolution Process (CIRP) against M/s Incom Cables Private Limited (Corporate Debtor/CD) and Mr. Sunil Prakash was appointed as Interim Resolution Professional (IRP). Thereafter, CoC resolved with 90% voting share to appoint Ms. Reshma Mittal as Resolution Professional (RP) and subsequently the AA appointed her as RP on 22.05.2019. The admission order of the AA dated 08.04.2019 was challenged before the NCLAT which was dismissed on 22.04.2019. Subsequently, an appeal was filed before Hon'ble Supreme Court which stayed the operation of admission order on 03.07.2019. The Hon'ble Supreme Court finally dismissed the appeal on 21.04.2022.
- 1.2. The AA *vide* order dated 28.02.2023 referred the matter to IBBI to look into the aspect of reimbursement of CIRP fees paid to RP for the period when the CIRP was stayed by the Hon'ble Supreme Court from 03.07.2019 to 21.04.2022. The Board in exercise of its powers conferred under section 218 of the Code read with Regulation 7(1) and 7(2) of IBBI (Inspection and Investigation), Regulations, 2017 (Investigation Regulations), appointed an Investigating Authority (IA) to conduct investigation against Ms. Reshma Mittal in the matter of Incom Cables Private Limited. Accordingly, a notice under regulation 8(1) of the Investigation Regulations was issued to Ms. Reshma Mittal on 17.04.2023 with a request to clarify the said observations. Pursuant to the said notice, she replied *vide* mail dated 26.04.2023. Thereafter, additional documents were asked from her *vide* email dated 15.06.2023 and 19.06.2023 to which she submitted her reply through email dated 16.06.2023 and 21.06.2023 respectively.
- 1.3. The IBBI, on the basis of investigation report formed a *prima facie* view and issued the SCN to Ms. Reshma Mittal on 26.10.2023. She submitted her reply to the SCN on 16.11.2023.
- 1.4. The IBBI referred the SCN and response of Ms. Reshma Mittal to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Ms. Reshma Mittal availed opportunity of personal hearing before the DC through virtual mode on

23.02.2024 where she was accompanied by her advocate Mr. Lalit Mohan. She made additional submissions vide email dated 25.02.2024.

- 1.5. The DC has considered the SCN, the reply to SCN, submissions of Ms. Reshma Mittal, and proceeds to dispose of the SCN.

## **2. Alleged Contraventions, Submissions, Analysis and Findings.**

The contravention alleged in the SCN and Ms. Reshma Mittal written, and oral submissions thereof by Ms. Reshma Mittal are summarized as follows.

### **3. Contravention-I**

#### **Failure to include the specific agenda of withdrawal of CIRP in the CoC meetings.**

- 3.1. It was observed that after the resumption of CIRP, w.e.f. 21.04.2022, one of the financial creditors (FCs), Canara Bank (having voting share of 94.85%) vide e-mail dated 16.07.2022 informed Ms. Reshma Mittal about having sanctioned OTS (One Time Settlement) in the matter of CD and requested for a meeting regarding discussion on withdrawal of application under section 12A of the Code. However, in the e-mail dated 19.07.2022, she failed to provide any specific reply to Canara Bank regarding the request of Canara Bank for convening a meeting of Committee of Creditors (CoC) for discussing the withdrawal of application under section 12A of the Code.
- 3.2. Subsequently, during the 5<sup>th</sup> CoC meeting conducted on 30.07.2022, Ms. Reshma Mittal failed to include a specific agenda for withdrawal of application under section 12A of the Code. Regulation 18(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) provides that a RP may place a proposal received from members of the CoC in a meeting, if RP considers it necessary and shall place the proposal, if the same is made by members of the CoC representing at least thirty-three per cent of the voting rights. However, it was noted that during the 5<sup>th</sup> CoC meeting held on 30.07.2022, she failed to include a specific agenda on the said issue. It was also observed that the AA vide order dated 28.02.2023 observed her recalcitrance in moving an application under Section 12A of the Code.
- 3.3. In view of the above, the Board held the prima facie view that Ms. Reshma Mittal, *inter alia*, violated Sections 208(2)(a) and 208(2) (e) of the Code, Regulation 18(3) of the CIRP Regulations, Regulations 7(2)(a) and 7(2)(h) of IBBI (Insolvency Professionals Regulations), 2016 (IP Regulations) read with clause 14 of the Code of Conduct (Code of Conduct for Insolvency Professionals) as provided in the First Schedule of IP Regulations.

#### **Submissions of Ms. Reshma Mittal.**

- 3.4. Ms. Reshma Mittal submitted that the Board has initiated the disciplinary process based on the written statement submitted by the Canara Bank and the suspended management of the CD to the AA in the order dated 28.02.2023 which is related to non-inclusion of the specific agenda as requested by the Canara Bank for withdrawal of CIRP in the CoC meetings. She submitted that the issue of non-inclusion of the specific agenda of withdrawal of CIRP in the CoC meetings was submitted by the Canara Bank before the AA. In response to the submission of the Canara Bank,

the Resolution Professional made submission before the AA on 31.08.2022, 02.09.2022, 05.09.2022. Relevant extract of the order was reproduced as under.

*“7. It is submitted that the Applicant No. 1, i.e. Canara Bank vide email dated 16.07.2022, 19.07.2022 and 20.07.2022 had written it to the RP requesting the RP to conduct the CoC meeting, however the RP beyond her powers as enshrined under the code, in email dated 21.07.2022 has stated that she is not available in town to conduct such a meeting for Corporate Debtor.*

*8. It is submitted that while issuing the agenda for the 5<sup>th</sup> CoC meeting of CoC, the RP (Respondent) did not include a specific agenda for withdrawal of CIRP under section 12A of the code and on 19.07.2022 when the captioned petition was listed for hearing, the RP made a statement that they are not aware of the settlement being entered into between the parties contrary to the communication being sent by the Applicant No. 1 to the RP on 16.07.2022 requesting the RP to conduct the CoC meeting with settlement being added as the agenda.”*

- 3.5. She submitted that the AA did not make any concluding remarks on the submission of the Canara Bank in the operative part of the order. This may be evident from the operative part of the order dated 28.02.2023.

*“We find that the ingredients of Section 12A are satisfied in this application i.e. New IA 736/2023. We are of the view that this is a fit case to exercise our inherent powers under Rule 11 of NCLT Rules, 2016 to overcome the recalcitrance of the RP in not following the provisions of CIRP Regulation 30A(3).”*

She further submitted that the AA has carefully used word “recalcitrance” to indicate the resistance of the RP knowing the fact that such resistance of the RP was meritorious which is evident from the para no. 26 of the order dated 28.02.2023 passed by the AA as under:

*“26. To summarise:*

- i. IA-4141/2022 is subsumed in IA-736/2023”*

She stated that the AA has not given any remark, observation or order in case of IA 4141/2022 filed by the Canara Bank jointly with the suspended directors. Only the written statements submitted by them were recorded in the order.

- 3.6. She submitted that she made strong oral submission to the AA stating the reason which were not quoted in the order. She did not make any written submissions. So the AA was very well aware about the reasons for not following provision of regulation 30A(3) of CIRP Regulations and hence, avoided the use of the Regulation 30A(3) of CIRP Regulations and hence, avoided the use of the word “non-compliance” or “contraventions” or “adverse observation on the conduct of the resolution professional.”
- 3.7. The submission mainly revolved around the rational for non-inclusion of withdrawal. She placed the fact before the AA during various hearings that Canara Bank is not an applicant in main case therefore, they could not file the withdrawal application with the AA and IVL Finance Ltd is the original applicant in main case. Secondly Bank Guarantee is required towards the pending main case. Canara Bank was insisting for the refund of the fee paid by erstwhile Syndicate Bank to the RP during stay period. Form FA accompanied with the Bank Guarantee is required to comply

with the regulation 30A(2) of CIRP Regulations which was not being provided by the applicant. The Canara banks submission is partly driven to reduce their commercial burden and attempted to link the legitimate stand of the RP with regard to withdrawal of application.

3.8. Ms. Reshma Mittal submitted that the Board raised three concerns with respect first contravention.

- a) In the email communication made to the Canara Bank by her on 19.07.2022, she failed to provide any specific reply to Canara Bank regarding its request for convening a meeting of CoC for discussing withdrawal of application under Section 12A of the Code.
- b) During the 5<sup>th</sup> CoC meeting held on 30.7.2022, she failed to include a specific agenda for withdrawal of application under section 12A of the Code and
- c) The observation of AA *vide* order dated 28.2.2023 wherein AA mentioned about her recalcitrance in moving an application under section 12A of the Code.

3.9. With regards to first issue, she submitted that on 16.07.2023, the Canara Bank informed that an OTS proposal has been sanctioned and requested for a meeting regarding discussion on withdrawal application. In this regard, prior to sending email communication, the Canara Bank immediately conveyed the same information of OTS over the phone to the RP, but the payment process was not finalized at that time. As the matter is to be taken up with the other FCs, the said email communication dated 16.07.2022 was made by the Canara Bank on her request only. During their discussion, she insisted to submit the relevant documents in support of sanction of OTS proposal and receipt of payment in this regard to initiate the proposal for withdrawal of application under section 12A of the Code.

3.10. However, even after lapse of two days on receipt of intimation, as a prudent practice to bring the matter on documentation, she wrote an e-mail dated 19.07.2022 as a part of follow up of discussion happened at the time of email dated 16.07.2022. The delay in processing payment confirmation was due to closure of the bank on 17.07.2022 on account of Sunday. In this email, she specifically asked Canara Bank to confirm about the payment of claim amount by the ex-directors/CD for processing the agenda for withdrawal application. She submitted that the email dated 19.07.2023 shall not exactly be construed as reply of email but it is followed up email of the various oral communication to confirm the settled amount of Rs. 56.54 crores received by the Canara Bank. As a RP, it would be wrong on her part to put certain agenda in motion without having adequate documents on hand.

3.11. With regards to the second issue, she submitted that after receipt of mail dated 19.07.2023 and confirmation by the counsel of the ex-director before the AA, Canara Bank accepted the fact *vide* email dated 20.07.2022 that they have received the full OTS amount. Thereafter, she has replied *vide* email dated 21.07.2022 that meeting shall be called after she comes back in the city. Notice to call the 5<sup>th</sup> CoC meeting was served to all CoC members on 25.07.2022 and meeting was called on 30.07.2022. The separate agenda for withdrawal was not included as the request from original applicant IVL Finance was not received. IVL Finance informed her that their management is examining the withdrawal proposal received from the Canara Bank. In view of the circumstance, it was pre-decided that since all the creditors would be present in the meeting, the agenda will be taken up with the consent of all the members on the spot and the further, to enable the discussion on withdrawal of application, Agenda No. 10 as "Further Course of Action" was included. This clearly shows her intention as RP for accepting the request of the Canara Bank.

- 3.12. It is further submitted that if the separate agenda is included based on the request of the Canara Bank only and without concurrence or request of other creditor, who initiated the insolvency process especially when the proposal was under examination of the IVL Finance, such move of RP would tantamount to be favouring the Canara bank and may not represent the independent and balancing conduct. Agenda for withdrawal of application proposed by the Canara Bank was well covered in Agenda no. 10 which was in sequence of the process up to which CIRP reached i.e. "Further Course of Action" since Form G had already been published, and it was necessary to conduct the CoC in the sequence of events for the benefit of all CoC members. Relevant extract of Agenda 10 is reproduced hereunder: -

**"Agenda no. 10**

**To discuss about the further course of action**

*RP informed to the CoC that since no resolution plan has been received., CoC has to decide further course of action. She further brought in the notice of CoC that Canara Bank has informed vide emailed it 20.07.2022 that they have sanctioned OTS proposal and full amount has been received by them. RP inquired from Canara Bank about the settlement amount. Canara bank informed that settlement has done in both the companies (Incom Cables Pvt Ltd. and Incom Wires & Cables Ltd.) with an amount of Rs. 63 Crores. RP inquired about the settlement amount in respect of CD only. Canara Bank informed they have received the amount of Rs.56.24 Crores against dues towards CD. Therefore, they are in favour of filing the withdrawal application with Adjudicating authority.*

*RP inquired from Indiabulls Consumer Finance Ltd. about the settlement, if any, done by CD with them. They confirmed that there is no settlement done with them and further informed that if the promoters will offer them settlement, then only they will go ahead otherwise they are not in favour of filing the withdrawal application with Adjudicating authority.*

*RP brought into the notice of CoC the provisions of IBC 2016 in respect of filing of withdrawal application under Section 12A as stated under regulation 30A of Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 and enlighten them about the provisions of code"*

*"RP informed to CoC that in view of above-mentioned provisions withdrawal application u/s 12 A could be filed by Applicant only and Applicant in present case is IVL Finance Ltd {Indiabulls Consumer Finance Ltd.} who had filed application u/s 7 of IBC 2016 to initiate CIRP against CD. Indiabulls Consumer Finance Ltd. agreed with RP that withdrawal application u/s 12A shall be submitted by them only. The application through him or through Canara Bank. Canara Bank was also of the view that application u/s 12A could be filed by them since they are having 94.85%. RP informed them that although Canara Bank is having 94.85% voting rights in respect of approval for filing of application u/s 12A of IBC 2016. However, Application (Form FA) accompanied with Bank Guarantee towards estimated CIRP expenses shall be submitted by Indiabulls Consumer Finance Ltd. only. RP further informed that since EOI has been issued inviting resolution plan, Applicant have to state in application the reasons justifying withdrawal after issue of Expression of Interest",*

- 3.13. She submitted that in view of above agenda for withdrawal of CIRP was duly taken up in the CoC meeting. It is pertinent to note that Canara Bank although was having more than 90% voting share, however they were not the original applicant in the main petition. Therefore, as per regulation 30A (1) of CIRP Regulations, the Canara Bank was not even eligible to submit the application (Form FA) to the RP for withdrawal of CIRP. Further, as far as the issue of withdrawal being introduced in the COC is concerned, she has enquired about the same from the CoC members, however, she did not receive any confirmation regarding the same, neither the Canara bank had confirmed the receipt of amount as proposed for the settlement. It was only on 20.07.2022, that Canara Bank informed the RP about the receipt of the amount as per their private settlement.
- 3.14. She submitted that she included the agenda item as requested by the Canara Bank in best possible manner, in 5<sup>th</sup> CoC meeting held on 30.7.2022 on the said issue i.e. agenda for withdrawal of application under section 12A of the Code. The said move of the RP has served the same results even after inclusion of agenda in the manner as mentioned above. Had it been her intention to not include specific agenda, it would not have been disallowed during the proceeding.
- 3.15. With regards to the third issue, she submitted that as per the settled principle of law the FC cannot settle the dispute privately by excluding the other FCs. Moreover, it was incumbent upon the Canara Bank to keep the RP in the loop while entering into a private settlement with the CD.
- 3.16. She submitted that as RP she received EOI from two Prospective Resolution Applicants (PRA). However, these resolution plans were not received from any PRA. She received a request from one of the PRA to extend the timeline for submitting the resolution plan on 11.07.2022. On the very same day she wrote an email to the CoC including Canara bank for seeking direction in respect of the request made by the PRA followed by reminder emails dated 12.07.2022 and 14.07.2022. But it preferred not to respond to her emails. It would have been better if they would have hinted the RP or to hold the process of communication with PRA for some time. Even while sending email on 16.07.2022, the bank only informed that OTS has been sanctioned and remained silent on receiving of settlement amount by them.
- 3.17. It is evident from para no. 6 of the order dated 28.02.2023 that the suspended board of directors have done private settlement with the Canara Bank on 14.07.2022 itself. Relevant extract of the order dt 28.02.2023 passed by the AA is reproduced as under:
- “6. It is submitted that on 14.07.2022, the suspended board of directors/ Applicant No. 2 via OTS proposal having Ref. No. 18208/SAMB/INCOM/GRE/OTS/CONVEY/2022\_23 dated 14.07.2022 have entered into o settlement agreement and have settled with the Applicant No. 1.”*
- 3.18. She submitted that the CIRP Regulation 30A(3) provides the power to file application of withdrawal to the creditor and the RP both. The RP has first right which was not exercised due to non-compliance of the provisions of regulation 30A(2) by the Financial Creditors, i.e., Non providing the Form FA to the RP along with the Bank Guarantee in respect of pending CIRP cost. So as the right of the RP exist, the application of withdrawal filed by creditors cannot be entertained. The AA was very well aware that there are reasons on hand with the RP for not filing withdrawal application. Therefore, to avoid going into merit for not filing withdrawal application by RP and in order to get the passage for exercising the inherent power, the AA has used word carefully i.e. “recalcitrance” of resolution professional. Otherwise, the AA would not have been

in a position to issue the order for withdrawal without going into the merits of non-filing withdrawal for withdrawal without going into the merits of non-filing withdrawal application by the RP. In view of above submission, it is humbly submitted that the use of word “recalcitrance” was written by the AA in its order to be interpreted in context with the circumstances and facts of the case, and taking conscious view that the AA abstains of and facts of the case, and taking conscious view that the AA abstains using the word “contraventions” or “non-compliance<sup>TM</sup>” or “adverse conduct”.

- 3.19. Ms. Reshma Mittal additionally submitted that the Canara Bank requested discussions on section 12A withdrawal application on 16.07.2022. A similar request was also made by the Canara Bank subsequently *vide* email dated 20.07.2023. Since both the request were not accompanied with the Form FA (withdrawal application) from the original applicant, it may be noted from the email dated 16.07.2022 and 20.07.2022 that Canara bank requested to initiate the discussions on Section 12A withdrawal applications. It may be observed from the above-mentioned email that the Canara Bank has used the word “the discussions” knowing to the fact that there is an absence of the application. It was difficult to include with the specific agenda name, in absence of application, the RP added it with title “To discuss about the further course of Action”.
- 3.20. She further submitted that the copy of notice for 5<sup>th</sup> CoC meeting to be held on 30.07.2022 was circulated by the RP *vide* email dated 25.07.2022 to all the CoC members including Canara Bank wherein the enabling agenda with title “To discuss about the further course of Action” (Agenda no.11/ page no. 28) was included to facilitate the discussion on withdrawal application based on the email request of the Canara Bank. In response of the notice, the Canara Bank acknowledged the same on very same day (copy enclosed) which reads as “*We refer to the trailing email and thanks for calling COC meeting on our request*”. It may be observed from the email that
- i) the Canara bank acknowledged the notice circulated by the RP;
  - ii) the Canara bank also acknowledged that the said meeting was based on their request; and
  - iii) the Canara bank also acknowledged that Resolution Professional included agenda to facilitate their request under the title “To discuss about the further course of Action”. Further, Canara Bank did not raised any objection on Agenda Title.
- 3.21. She submitted that as may be observed from the acknowledgement of the Canara Bank that the Canara Bank was satisfied with the agenda, and they did not raise any objection. Had it been any objection with regard to non-inclusion of their request, they would not have acknowledged but immediately resorted to further request to the Resolution Professional. Further, minutes of 5<sup>th</sup> CoC meeting were confirmed by all the CoC members including the Canara Bank in 6<sup>th</sup> CoC meeting held on 16.09.2022. No Objection was raised at that meeting.
- 3.22. She submitted that the IVL Finance Ltd’s communication dated 23.08.2022 clearly mentioned that “*we shall not be filing the Form FA as no settlement has been entered with us*”. The above subsequent conclusion of the IVL Finance was the outcome of all the previous actions at their end including the management or internal examination of settlement made by the Canara Bank.

## Findings and Analysis

- 3.23. The contravention alleged in the SCN is that the notice for the 5<sup>th</sup> CoC meeting held on 30.07.2022, did not include specific agenda on the issue of withdrawal of application under section 12A of the Code.
- 3.24. The event which seems to have triggered the issue was email dated 16.07.2022 by Canara Bank, having more than 90% voting share in CoC, to Ms. Reshma Mittal stating that *“With reference to the subject account, we wish to inform you that OTS has been sanctioned in the subject account. Hence, please call a meeting for discussions on Section 12A withdrawal application in the matter at the earliest.”*
- 3.25. On 19.07.2022, Ms. Reshma Mittal replied to Canara Bank that *“Today during the course of hearing before Hon’ble NCLT (in case of an application filed by undersigned under sec 19(2) of IBC) counsel of Corporate Debtor had informed to the bench that the CD has paid 94% of the total outstanding which was pending towards Canara Bank. But I’m not aware to this fact. Kindly confirm the same and provide me all the details of settlement and payment made by the CD so that we can proceed according to statutory provisions of the code.”*
- 3.26. The Canara Bank replied that *“Please refer our trailing mail dated 16.07.2022 & 19.07.2022 wherein we have already informed you that our competent authority has sanctioned OTS in the M/s Incom Group accounts & we have received full OTS amount in M/s Incom Cables PVT LTD. So, we request you to call a COC meeting with agenda as under:  
1.) discussions on Section 12A withdrawal application.  
We once again request you to call COC meeting at the earliest.”*
- 3.27. Thereafter, the notice for the 5<sup>th</sup> CoC meeting was circulated by Ms. Reshma Mittal on 25.07.2022 providing as follows:  
  
*“11. To discuss about the further course of action  
CoC has to decide further course of action since no resolution plan has been received. Further Canara Bank has informed vide email dt 20.07.2022 that they have sanctioned OTS proposal and full amount has been received by them.”*
- 3.28. Subsequently, Canara Bank wrote an email dated 25.07.2022 to Ms. Reshma Mittal that *“We refer to trailing email and thanks for calling COC Meeting on our request. We request you to please share the link for attending the meeting as our Higher Authorities from Head Office/Circle Office would also like to attend the meeting with us.”*
- 3.29. The issue of OTS was discussed by the CoC in its 5<sup>th</sup> meeting dated 30.07.2022 under heading *“To discuss about the further course of action”*. Ms. Reshma Mittal enquired from applicant, i.e., Indiabulls Consumer Finance Ltd., regarding settlement who replied in negative but expressed their interest in settlement with promoter and only then they will go ahead. Ms. Reshma Mittal enlightened the CoC about regulation 30A of the CIRP Regulations and informed that withdrawal application could be filed by Applicant only which is IVL Finance Ltd (Indiabulls Consumer Finance Ltd.)
- 3.30. It can be further observed from the minutes of 5<sup>th</sup> CoC meeting as follows:



*“Canara Bank insisted to RP to take the voting on filing of application u/s 12A of IBC to adjudicating authority. RP informed them that in the absence of receiving of any withdrawal application from the applicant (Form FA along with BG) by the CoC, no voting can be done by CoC members as per the provisions made under IBC.”*

- 3.31. Since Form FA was not provided by the applicant and the agenda for withdrawal of CIRP was not voted, further action on part of Ms. Reshma Mittal was not possible. Thereafter, the Canara Bank itself filed application under section 12A of the Code on 29.08.2022 which was heard on 12.09.2022. The AA observed as follows:

*“This is an application filed under Section 12A of the Code by M/s Canara Bank alongwith the Corporate Debtor (Incom Cables Pvt. Ltd.) invoking the provision of Section 12A of the Code. However, the applicant who moved the CIRP proceeding under Section 7, M/s IVL Finance Ltd. (formerly-known as India Bulls) and the RP pleaded that this application should be rejected primarily on the ground that M/s IVL Finance Ltd. has filed the section 7 petition and is not the applicant in the present case. The Counsel for RP states that the 12A application is in violation of the provision of the Code.*

*We also notice that certain settlement has been arrived between the Canara Bank and corporate debtor which is recorded in the minutes of CoC meeting.*

*Be that as it may, a suggestion was made in relation of the claim of respondent M/s IVL Finance Ltd. The CoC will be re convened and the issue will be discussed on the claims of M/s IVL Finance Ltd. and also the claim of the RP for the CIRP cost.*

*The decision of the CoC to be conveyed by way of separate application. Ld. Counsel for the RP states that CoC will be convened at the earliest preferably within 10 days and the decision of CoC will be conveyed on or before 30.09.2022.”*

- 3.32. The issue was further discussed in 6<sup>th</sup> CoC meeting dated 16.09.2022 as follows:

*“To discuss and approve the filing of withdrawal application u/s 12A of IBC*

*RP appraised to CoC that for filing of withdrawal application u/s 12A of IBC with Hon'ble NCLT, Form FA is required along with Bank Guarantee towards pending and estimated future CIRP expenses in compliance to sec 12A of IBC read with regulation 30A of Insolvency and Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016. Dhani loans informed to RP that they shall not provide form FA unless and until they get their outstanding debt amount. Canara Bank and Axis Bank did not offer any comment.”*

The DC notes that the agenda was placed before the CoC in 5<sup>th</sup> meeting for discussion and also before 6<sup>th</sup> meeting, but IVL Finance was not interested in providing application till its dues were settled.

- 3.33. Thereafter, the AA in its order dated 10.01.2023 observed as follows:

*“Accordingly, the Ld. Counsel Mr. Rudreshwar Singh for M/s. IVL Finance Ltd. (M/s. Dhani Loans and Services Ltd.) along with Ld. Counsel Mr. Vikas Sachdeva has informed the Tribunal that M/s. IVL Finance Ltd. head office is agreeable to resolving the issue if the amount of Rs. 25,00,000/- is paid by the Ex-Management of the Corporate Debtor and thereafter M/s. IVL Finance Ltd. (M/s. Dhani Loans and Services Ltd.) is agreeable to give full discharge of its claim on payment of Rs.25,00,000/- in full. M/s. IVL Finance Ltd. (M/s. Dhani Loans and Services Ltd.) also represents they will give consent for the 12A application so that issue can be resolved amicably. The joint memo for settlement as above is to be furnished by tomorrow. On receiving such payment the Ld. Counsel for the M/s. IVL Finance Ltd. (M/s. Dhani Loans and Services Ltd.) or the Authorised Representative will file their consent for the 12A application in IA-4141/2022.”*

- 3.34. On 11.01.2023, it was observed by the AA that *“Today when the matter was taken up, Ld. Counsel Mr. Sunil Fernandes assisted by Ms. Shankari Mishra appeared and submitted three Cheques to the IVL Finance (Dhani), out of which two are post-dated cheques. These cheques are subject to the realisation of money.”*
- 3.35. Subsequently Interlocutory Application no. 736/2023 was filed by the IVL Finance, the original section 7 applicant along with Canara Bank and the suspended board of directors on 01.02.2023. The AA reserved the judgement in main matter on 03.02.2023. On 28.02.2023, the AA noted that IVL Finance received settlement money in instalments on 10.01.2023, 19.01.2023 and 25.01.2023. It was on the Interlocutory Application no. 736/2023 being filed by the applicant IVL Finance along with FC, Canara Bank which satisfied ingredients of regulation 30A of the CIRP Regulations, the AA allowed withdrawal of the CIRP even when the Form FA was not provided by the applicant to the RP and also observed that the RP Ms. Reshma Mittal has not moved application for terminating CIRP and exercised its inherent powers under Rule 11 of NCLT Rules, 2016 to overcome her recalcitrance in not following the provisions of CIRP Regulation 30A(3)
- 3.36. The DC notes the submissions of Ms. Reshma Mittal that she did not include separate agenda for withdrawal of CIRP in the 5<sup>th</sup> CoC meeting as application in Form FA was not received from original applicant IVL Finance. The issue was again discussed in 6<sup>th</sup> meeting of CoC date 16.09.2022 conducted on direction of the AA where the IVL finance refused to provide Form FA until its dues are settled. Thus, Ms. Reshma Mittal could not have filed application or withdrawal of CIRP. Later when dues of IVL finance were settled application no. 736/2023 was filed by IVL Finance with other parties within six days of receipt of money by it which was heard by the AA within a span of two days.
- 3.37. The DC also takes note of the interlocutory application no. 2752/2023 filed by Ms. Reshma Mittal seeking clarification on the observation in the order dated 28.02.2023 *“to overcome the recalcitrance of the RP in not following the provisions of CIRP Regulation 30A(3).”* She submitted in the said application that above *“part of the judgment and has interpreted it in a way where it appears that the Applicant had received the Form FA and deliberately did not file it with the Hon’ble Tribunal which was indeed not the case as evident from the invocation of the inherent power itself.”* This matter is *sub-judice*.

- 3.38. The DC notes that there is no material to suggest that Form FA was provided by the applicant to the RP and even then the RP did not take steps to proceed further with the withdrawal application. On the other hand, agenda in respect of withdrawal of CIRP was included twice in 5<sup>th</sup> and 6<sup>th</sup> meeting of CoC by the RP but the same could not be proceeded further as the applicant refused to provide Form FA. Considering the circumstances, the DC accepts the submission of Ms. Reshma Mittal.

#### **4. Contravention-II**

##### **Misleading statement before AA.**

- 4.1. It is observed that in Ms. Reshma Mittal's statement before AA in paragraph 8 of the order dated 28.02.2023 in IA 4141/2022 filed by Canara Bank for withdrawal of CIRP of the CD, she mentioned that she was not aware about the settlement entered into between Canara Bank and the suspended directors. However, it is noted from the e-mail dated 16.07.2022 from Canara Bank, she was informed about the sanction of OTS by Canara Bank and a request for meeting regarding withdrawal application under Section 12A by Canara Bank was also made *vide* the said mail. Hence, she has misled the AA with the aforementioned statement that she is not aware of the settlement between Canara Bank and suspended director.
- 4.2. In view of the above, the Board held the prima facie view that Ms. Reshma Mitta has *inter alia* violated sections 208(2)(a) and 208(2) (e) of the Code, regulations 7(2)(a) and 7(2)(h) of IP Regulations read with clauses 2 and 12 of the Code of Conduct.

##### **Submissions of Ms. Reshma Mittal**

- 4.3. Ms. Reshma Mittal submitted that the settlement between the parties was a private settlement wherein the amount was transferred from the account of suspended board of directors to the account of Canara bank, and as a matter of fact, none of these accounts were being managed by the RP. Therefore, it was impossible for her to have knowledge of this transaction until and unless the amount was routed through the account of CD. It was only on 20.07.2022 that the Canara Bank for the first time informed about the receipt of amount. The statement in question made by the RP was of 19.07.2022 and on this date the RP was unaware about the said transfer and therefore being the officer of the AA the RP had conveyed to the AA that the amount was not received. Further, it was the duty of the Canara Bank to inform the RP about the receipt of the amount before the matter was taken up by the AA. However, the same was not conveyed to the RP at any juncture before 20.07.2022 due to ulterior motive.
- 4.4. That the AA has just quoted the written submissions of the ex-director and Canara Bank in its order dated 28.02.2023 and not any observation. She had not submitted any written statement in respect of whole event and her written submissions were limited to giving details of the outstanding CIRP expenses as asked by the AA. Otherwise, her counter submissions which were submitted before the AA during the hearing verbally may also get mentioned in the order. Relevant extract of the order dt 28.02.2023 passed by the AA is reproduced as under:  
*"It is submitted that while issuing the agenda for the 5<sup>th</sup> CoC meeting of CoC, the RP (Respondent) did not include a specific agenda for withdrawal of CIRP under section 12A of the*

*code and on 19.07.2022 when the captioned petition was listed for hearing, the RP made a statement that they are not aware of the settlement being entered into between the parties contrary to the communication being sent by applicant no. 1 to the RP on 16.07.2022 requesting the RP to conduct the CoC meeting with settlement being added as the agenda.”*

- 4.5. During the hearing on 19.07.2022, Ms. Reshma Mittal was present before the AA in person along with her counsel where counsel to the suspended director informed that the CD has paid 94% of the total outstanding amount to the Canara Bank. To which AA asked her to personally to confirm the same. However, she was not informed regarding the same by the Canara Bank and it was on 20.07.2022 only that she was informed about the receipt of amount. Therefore, in case she had confirmed the statement of the counsel to the directors, it would have been a false and unconfirmed statement before the AA. In view of above, it is respectfully submitted that she has not violated any provisions of the Code, or Code of Conduct.

### **Findings and Analysis**

- 4.6. The AA in its order dated 28.02.2023 observed that *“the RP made a statement that they are not aware of the settlement being entered into between the parties contrary to the communication being sent by the Applicant No. 1 to the RP on 16.07.2022 requesting the RP to conduct the CoC meeting with settlement being added as the agenda.”*
- 4.7. The DC observes that in email dated 16.07.2022 Canara Bank informed Ms. Reshma Mittal that *“OTS has been sanctioned in the subject account. Hence, please call a meeting for discussions on Section 12A withdrawal application in the matter at the earliest.”* The above communication highlights that Ms. Reshma Mittal was made aware of the settlement by Canara Bank.
- 4.8. The DC notes the submission of Ms. Reshma Mittal that she was unaware about the transfer of amount made by directors of the CD to the Canara Bank and therefore being the officer of the AA, she had conveyed to the AA that the amount was not received. However, it is seen from the order of the AA that RP has made a statement that she was not aware of any settlement entered into between the parties. So there is a difference between her statement as recorded in the order of AA and her submission before the DC. While the order of the AA refers to her knowledge of settlement, her submission before the DC refers to the knowledge of the fulfilment of such settlement. It is also seen that RP had sought a clarification in respect of the order of the AA dated 28.02.2023 regarding the observation about recalcitrant attitude of the RP. However, the RP has not brought whether any clarification or modification has been sought about the difference in her statement about the knowledge of fulfilment of settlement and the statement as recorded by the AA in its order about the knowledge of settlement. In absence of any evidence otherwise, the DC notes that the AA observed that her statement was in respect of her ignorance of the settlement. When the query from the AA was in respect of settlement her reply should have been in respect of settlement and not about fulfilment of settlement. Therefore, it is clear that she is trying to cover her misstatement before the AA by stating that she had stated about not knowing about the fulfilment of settlement and not about knowing of the settlement. Hence, the reply of the RP before the DC that she had informed the AA about her ignorance of non-fulfilment of the terms of the settlement and not about the settlement itself; appears to be an attempt to cover up her misstatement before the AA. Hence the submissions of Ms. Reshma Mittal is not tenable, and the DC holds the above contravention.

## 5. Contravention-III

### Agreement with ex- directors for payment of fees to RP.

- 5.1. It is observed that the AA *vide* order dated 28.02.2023 allowed the application under Section 12A seeking withdrawal of CIRP, jointly filed by IVL Finance Ltd., Canara Bank, and the suspended board of directors of CD. However, even when the said application for withdrawal of CIRP was pending before the AA, RP entered into an agreement dated 15.02.2023 with the ex-director of the CD, Mr. Raghav Sharma. In the said agreement one of clauses, i.e., Clause I(f) of the agreement stipulates that the suspended director would have to pay to Ms. Reshma Mitta an amount of Rs. 65 lakhs by 28.03.2023 to hand over the possession of the factory premises to Mr. Raghav Sharma. However, there is no provision in the Code/Regulations which permits the RP to enter into an agreement with ex-directors of the CD for payment of fees to RP as a condition precedent for handing over the possession of the CD back to the ex-directors.
- 5.2. In view of the above, the Board held the *prima facie* view that Ms. Reshma Mittal has, *inter alia*, violated sections 208(2)(a) and 208(2) (e) of the Code, regulations 7(2)(a) and 7(2)(h) of IP Regulations read with clauses 1, 2, 3 and 9 of the Code of Conduct.

### 5.3. Submissions of Ms. Reshma Mittal

- 5.4. Ms. Reshma Mittal submitted that during the hearings held on 10.01.2023, the AA advised her counsel to do the settlement with respect of outstanding CIRP expenses with the ex-director. IVL Finance Ltd was unable to furnish the Bank Guarantee (BG) towards the outstanding CIRP expenses which was a requirement of Regulation 30A of CIRP Regulations. They were ready to submit the application (Form FA) after getting the full amount of its claim.
- 5.5. Accordingly, settlement agreement was entered into with the ex-director on 15.02.2023. i.e. the date prior to the order dated 28.02.2023 of the AA. After pronouncement of order, the agreement was abandoned since fee matter was referred by the AA to IBBI. Also, the IBBI has resolved the fee issue *vide* order dated 24.04.2023 which was honoured by the FCs.
- 5.6. She submitted that such agreement with ex-director was based on the advice of AA. The RP as a court officer has to comply with written or oral order of the AA in spirit of the law. Thus, the action of agreement with the ex-director should be seen in context with the outcome of the proceeding in the AA and shall not be seen as the decision and action of the RP only. In view of above, she submitted that she has not violated any provisions mentioned in the SCN.
- 5.7. She additional submitted that it was re-affirmed by the ex-directors in settlement deed dated 15.02.2023 executed by him as follows:

*“D. That an application u/s 12A of the Insolvency and Bankruptcy Code, 2016 has been filed by IVL Finance Limited (Currently Known as Dhani Loans and Services) in the Hon’ble NCLT as the First Party has settled the dues of IVL Finance Limited (Currently Known as Dhani Loans and Services), wherein the order with respect to the same has been reserved by the Hon’ble NCLT on 03.02.2023. However, the CIRP cost of Rs.95,81,482.77/- Rupees Ninety Five Lakhs Eighty One Thousand Four Hundred and Eighty Two and Seventy Seven Paise which was incurred*

*during and post stay period remains unpaid. The Hon'ble NCLT was also seized with the aforementioned fact and had suggested the parties to settle the same".*

*Aforementioned deed was duly signed by the ex-director "Sh. Raghav Sharma" and also witnessed by his counsel named "Ms Priyadarshini Dewan" which give evidence that agreement was based on the advice of AA. "*

### **Summary Findings**

- 5.8. The DC notes that the AA's order dated 10.01.2023 mentions only about settlement between IVL Finance Ltd. and directors of the suspended board of CD. There is no mention about the advice given by the AA to Ms. Reshma Mittal regarding settlement of outstanding CIRP expenses.
- 5.9. It is seen that even though the order of the AA does not talk about any such settlement, she has submitted in her reply that the AA advised her counsel to do the settlement with respect of outstanding CIRP expenses with the ex-director.
- 5.10. Now in this backdrop, the DC notes the contents of the letter of advocate Mr. Lalit Mohan, submitted by Ms. Reshma Mittal with the reply to the SCN, which reads as under :-

*"2. It is to clarify that during the proceeding on 28.2.2023, the deficiency and consequences related to the application for withdrawal of Corporate Insolvency Resolution Process u/s 12A of the Insolvency and Bankruptcy Code, 2023 was debated and argued by the parties. Keeping in view the arguments from the both parties the AA has on multiple occasions suggested the Canara Bank and ex-Director to settle the dispute of outstanding fee with the RP and the other financial creditors and only upon the suggestion of the AA during the proceeding, not recorded in the order, the RP had proceeded to settle the outstanding fee with the ex-director as the other FC's had refused to pay her fees as the Regulations is silent about it.*

*3. The above suggestion of the AA was communicated by the undersigned to the RP to take action accordingly and the RP acted accordingly in consonance with the provisions of law."*

It is noted that the above quoted letter is undated and issued to "Whomsoever it may concern". The statement made by the advocate that *"the RP acted accordingly in consonance with the provisions of law"* indicates that this letter has been issued subsequently on her request and not in normal course of correspondence about the proceedings before the AA being intimated to her. Now advertent to the contents of the letter from her counsel, it is noted that the statement of the Advocate Mr. Lalit Mohan does not specify the action advised by the AA which is required to be taken with regards to settlement of outstanding fees. So, the action which could have been taken by her was to persuade the ex-director for settlement of fees and entering into an agreement regarding the same. This does not justify her action of entering into an agreement making handing over of the possession of the assets and records of the CD contingent upon payment of her fees.

- 5.11. The process of the withdrawal of CIRP by the order of the AA takes effect from the order of the AA and its effect cannot be made subservient to the interest of the RP about her fees. Hence her action of entering into an agreement where the handing of the possession of assets of the CD is made contingent upon payment of her fees is not in accordance with the provisions of Code and

regulations and any statement of the advocate in this regard without any justification is untenable. It is also seen that the matter of reimbursement of the fees of the RP was pending before the AA in IA 4790/2022 filed by Canara Bank and therefore her agreement with the ex-directors with such covenant was unlawful.

- 5.12. The DC notes the submissions of Ms. Reshma Mittal that after pronouncement of order dated 28.02.2023, the agreement dated 15.02.2023 was abandoned as the fee matter was referred to IBBI. The DC observes that such reply of Ms. Reshma Mittal about abandoning the agreement after the order of the AA dealing with her fees confirms that this agreement was not appropriate.

## **6. Order**

- 6.1. In view of the forgoing discussion, SCN, reply to the SCN, oral and written submission made by Ms. Reshma Mittal, the DC finds Ms. Reshma Mittal in contravention of sections 208(2)(a) and 208(2) (e) of the Code, regulations 7(2)(a) and 7(2)(h) of IP Regulations read with clauses 1, 2, 3, 9 and 12 of the Code of Conduct.
- 6.2. The DC, in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Ms. Reshma Mittal having registration no. IBBI/IPA-001/IP-P00297/2017-2018/10541 for a period of one year.
- 6.3. This Order shall come into force after 30 days from the date of this order.
- 6.4. A copy of this order shall be sent to the CoC/Stakeholders Consultation Committee (SCC) of all the corporate debtors in which Ms. Reshma Mittal is providing her services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Ms. Reshma Mittal.
- 6.5. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Ms. Reshma Mittal is enrolled as a member.
- 6.6. 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.
- 6.7. Accordingly, the show cause notice is disposed of.

-sd/-  
(Sandip Garg)  
Whole Time Member  
Insolvency and Bankruptcy Board of India

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

Dated: 11 July 2024  
Place: New Delhi