

**ICSI Institute of Insolvency Professionals**

**(Disciplinary Committee)**

**ICSI IIP/DC/02/2021**

**19<sup>th</sup> January, 2021**

**ORDER**

**(Under Part III of Disciplinary Policy read with Clause 24(2) of Bye Laws of ICSI Institute of Insolvency Professionals)**

**Appearance before Disciplinary Committee on 18<sup>th</sup> September 2020:**

<b>For Noticee</b>	<b>Mr. Prabjit Singh Soni, In person Adv. G. P Madaan, counsel for IP</b>
<b>For Secretariat</b>	<b>Dr. Binoy Joy (in ex-officio capacity of Managing Director, ICSI IIP) CS Poonam Shukla, Company Secretary CS Radhika, Asst. Director (Legal &amp; Compliance) Ms. Mandavi Bhargava, Research Associate</b>

**1. Background**

1.1 This order disposes of the three Show Cause Notices (SCN) with reference number ICSI IIP/02/2020, ICSI IIP/03/2020 and ICSI IIP/04/2020 issued to Mr. Prabhjit Singh Soni, a resident of GG - I/144/C Vikaspuri, Near PVR, New Delhi-110018, a professional member of ICSI Institute of Insolvency Professionals (ICSI IIP) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-002/IP-N00065/2017-18/10143.

1.2 The ICSI Institute of Insolvency Professionals received two grievances/complaints on 6<sup>th</sup> August, 2019 and 5<sup>th</sup> November, 2019 against Mr. Prabhjit Singh Soni from Mr. Anuj Agarwal, Supervisor and Advisor of Granite Gate Properties Private Limited and Mr. Sunil Agarwal, Authorised Representative respectively in the corporate insolvency resolution process (CIRP) of Granite Gate Properties Private Limited for taking necessary action.

- 1.3 The Complaints/grievances, replies of Mr. Prabhjit Singh Soni against Complaints and other documents available on record were placed before the Grievance Redressal Committee of ICSI IIP for consideration.
- 1.4 The Grievance Redressal Committee after detailed deliberations referred the matter to Disciplinary Committee of ICSI IIP for disposal.
- 1.5 The matter was placed before the Disciplinary Committee of ICSI IIP on 17<sup>th</sup> January, 2020. The Disciplinary Committee deliberated upon the matter and based on the complaints received and the documents available on record, directed the Secretariat to issue Show Cause Notice (SCN) to Mr. Prabhjit Singh Soni in both the matters.
- 1.6 Accordingly, Show Cause Notices' dated 22<sup>nd</sup> January, 2020 with reference to number ICSI IIP/02/2020 and ICSI IIP/03/2020 were issued to Mr. Prabhjit Singh Soni on the basis of two complaints received. Mr. Prabhjit Singh Soni replied to the SCN vide letter dated 14<sup>th</sup> February, 2020. The IP availed an opportunity of personal hearing before the DC.
- 1.7 The ICSI Institute of Insolvency Professionals (ICSI IIP) conducted an inspection of all the assignments handled by Mr. Prabhjit Singh Soni under Insolvency and Bankruptcy Code, 2016 from 21<sup>st</sup> November, 2020 to 23<sup>rd</sup> November, 2019 and prepared a final inspection report (after taking into consideration the reply of Mr. Soni) and other material on record which was duly mailed to Mr. Soni on 3<sup>rd</sup> February, 2020. The final Inspection report of ICSI IIP was placed before the Disciplinary Committee (DC). The Disciplinary Committee was of the view that it demands issuance of SCN and directed the Secretariat to issue a show cause notice to Mr. Prabhjit Singh Soni.
- 1.8 The SCNs issued on the basis of complaints received, response of Mr. Soni to SCNs and other material available on record were placed the Disciplinary Committee (DC) on 18<sup>th</sup> March, 2020 for disposal of the SCN in accordance with the Code and Regulations made thereunder. The disciplinary Committee directed the Secretariat to call upon Mr. Soni for an e-hearing opportunity.
- 1.9 As directed by the Disciplinary Committee, Show Cause Notice 09.06.2020, was issued by the Secretariat to Mr. Soni with reference number ICSI IIP/04/2020 based on inspection report and documents available on record.

1.10 Based on all three show cause notice, IP availed an e-hearing opportunity on 25<sup>th</sup> August, 2020 through video conferencing, wherein he was represented by Mr. G. P Madaan, Advocate and Insolvency professional before the Disciplinary Committee and issues were raised on the technicality of the show cause notices issued to Mr. Soni. Further, Mr. Madaan sought for another e-hearing opportunity for his submissions. The disciplinary committee took note of the same and found the show cause notice in order. The Disciplinary Committee further, directed the Secretariat to place the matter before the Disciplinary Committee on 18th September, 2020.

1.11 All three matters pending against Mr. Prabhjit Soni were taken up together by the Disciplinary Committee on 18<sup>th</sup> September, 2020. Mr. Soni appeared for e-hearing with his counsel, Mr G.P Madaan before the Disciplinary Committee for all three matters pending against Mr. Soni.

## 2. **Major allegations, submissions of IP and Observations**

The major allegations levelled against Mr. Prabhjit Singh Soni based on show cause notices issued inter alia includes-

### i. **ICSI IIP/02/2020**

*(SCN issued on the basis of Complaint received from Mr. Anuj Agarwal in the CIRP of Granite Gate Properties Private Limited).*

#### i. **Allegation**

On the basis of documents available on record, it reflects that the CoC in its second meeting did not ratify the appointment of Mr. Anuj Agarwal yet Mr. Soni allowed Mr. Anuj Agarwal to attend the 5th CoC meeting in the capacity of Advisor.

#### **Submission by IP**

Mr. Soni in his reply dated 14.02.2020 to show cause notice dated 22.01.2020, submitted that Mr. Anuj Agarwal attended he 5th CoC meeting as a member of the IRP team and which does not require approval of the CoC as the IRP/RP as per law is empowered to take such actions as he may deem fit to run, organize and operate the CD.

#### **Observation**

As per Section 20(2)(a) of the Insolvency and Bankruptcy Code, 2016 the Interim Resolution Professional has the authority to appoint accountants, legal or other professionals as may be necessary to protect and preserve the value of property of

the corporate debtor and manage the operations of corporate debtor as a going concern.

The appointment letter dated 12th January, 2019 provided to Anuj Kumar Agarwal by Mr. Prabhjit Singh Soni and the resignation e-mail dated 13th March, 2019 by Mr. Anuj Kumar Agarwal are available on record. However, even after receipt of resignation of Mr. Anuj Agarwal the matter was placed before the 2nd meeting of the Committee of Creditors dated 19th March, 2019 stating “*To ratify appointment of Mr. Anuj Agarwal as Project Manager*”. The matter was put to vote and was rejected by CoC. Therefore the contention of Mr. Soni is not correct.

On perusal of the minutes of 5th meeting of the Committee of Creditors, the Committee observed that Mr. Anuj Agarwal had attended the meeting as Advisor.

ii. **Allegation**

RP’s appointment was not confirmed by 66% of votes, yet Mr. Soni continued as IRP. This matter should have been placed before the next CoC meeting and all the consecutive meetings of CoC till appointment of RP was confirmed. However the matter was taken up by Mr. Soni in the 5<sup>th</sup> CoC meeting after 1<sup>st</sup>CoC meeting only.

**Submission by IP**

Mr. Prabhjit Singh Soni in his reply to show cause notice submitted that the agenda item for confirmation was placed before the CoC in its 1st meeting on 18.02.2019 and the resolution got 56% votes in its favour.

Further, in second CoC meeting, the agenda item of approval of interim fee the IRP was placed and the same was resolved with 82% vote which is clearly an acceptance by it for the continuation of the IRP in his work.

In the 3rd meeting also , the CoC approved the fee of IRP as Rs 6,00,000/ per month with 51% votes cannot be understood as negligence or uninformed decision of CoC. Mr. Soni further submitted that it is the duty of the CoC to appoint Resolution Professional and if CoC has failed, any member of CoC should have brought a proposal before CoC meeting to appoint a Resolution Professional.

**Observation**

As per Section 22 of the Insolvency and Bankruptcy Code, 2016 the Committee of Creditors, may, in the first meeting, by a majority of vote of not less than sixty six percent of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

On perusal of the minutes of the 1st meeting of Committee of Creditors held on 18th February, 2019, the Committee found that the matter of confirmation of IRP

as RP was placed before the CoC and it could not be approved. However, the IRP continued to function. The matter was again placed before the 5th meeting of CoC held on 18th June, 2019 and was not approved.

If the matter for appointment of IRP as RP could not be approved in the 1st meeting of CoC meeting, the matter for appointment of another Insolvency Professional as Resolution Professional should have been placed in the 2nd meeting and all the subsequent meetings till appointment of Resolution Professional. However, the IRP placed the matter in the 5th meeting only.

Further, in regard to the submission made by Mr. Soni that it was the duty of CoC to put a proposal for appointment of resolution professional not of the IRP shows his utmost negligence for the compliance of the code and regulations.

As per IBBI circular dated 3<sup>rd</sup> January, 2018, an insolvency professional shall exercise reasonable care and diligence and take all necessary steps to ensure that the corporate person undergoing any process under the Code complies with the applicable laws.

The BLRC also emphasised on the role of IP in its report as:

*“The Insolvency Professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process. ... In administering the resolution outcomes, the role of the IP encompasses a wide range of functions, which include adhering to procedure of the law, as well as accounting and finance related functions.*

In this case, the corporate debtor consisted of majority of home buyers who may not be well versed with the provisions of the Code. Therefore, it was the duty of interim resolution professional to make them aware about the provisions of the code to ensure the compliance of the code in true spirit.

### iii. **Allegation**

As per IBBI Circular dated 16<sup>th</sup> January, 2018, Mr. Soni failed to disclose his relationship with Mr. Anuj Agarwal to ICSI IIP within 3 days of appointment.

### **Submission by IP**

Mr. Prabhjit Singh Soni submitted that in the circular issued by the IBBI dated 16th January 2018, there is no requirement for mandatory disclosure as to appointment of an advisor in a CIRP. There is a mandatory requirement only in case of appointment of professionals like accountants, legal professionals, valuers, etc.

Further Mr. Prabhjit Singh Soni also submitted that Mr. Anuj Agarwal was non co-operative and had failed to furnish certain details like PAN to IRP, which is a

necessary field to be filled while filing relationship disclosure on website of ICSI IIP.

### **Observation**

As per the IBBI Circular dated 16th January, 2018, the IRP is required to disclose his/her relationship with other professionals within 3 days of his appointment. The IRP is to disclose other professional's relationship with all the stakeholders.

Mr. Anuj Agarwal was appointed as Supervisor and Advisor, who was assigned with specific role of security, office management, information technology, public relations, allotment and possession of flats which is covered in the category of other professionals. He was appointed on 12th January, 2019 however the disclosure of his appointment was filed on 1st October, 2019.

- ii. **ICSI IIP/03/2020**  
**(SCN issued on the basis of Complaint received from Mr. Sunil Kumar Agarwal in the CIRP of Granite Gate Properties Private Limited).**

- i. **Allegation**

Mr. Sunil Kumar Agrawal (Complainant/ Authorized Representative of Homebuyers) alleged that Mr. Prabhjit Singh Soni (Interim Resolution Professional) provided incomplete documents in CoC meeting held on 31st October, 2019 to Authorised Representative of class of creditors.

### **Submission of IP**

Mr. Soni in his reply submitted that he has provided documents i.e. duly signed notice, Information Memorandum with enclosures, Evaluation Matrix sheet, CIRP expenses in accordance with the Regulation, 2016 during the course of meeting held on 31st October, 2019 and no other participant has objected the same as incomplete documents. Further, Mr. Prabhjit Singh Soni mentioned that he has already provided IM copy, evaluation matrix, cost of CIRP, Forensic Audit reports, transaction audit reports etc. to Mr. Sunil Kumar Agarwal vide email dated 03<sup>rd</sup> November, 2019. He further submits that even after the receipt of all documentation the AR raised an issue in both 8th and 9th COC meeting of which minutes are annexed with the reply.

Mr. Prabhjit Singh Soni submitted that he agreed to provide another copy of the IM to the AR which was forwarded to him via four emails dated 19th November, 2019. The AR accepted the documents with no further contest and notified the IRP via email dated 22nd November, 2019.

## **Observation**

The Disciplinary Committee observed that on perusal of 8<sup>th</sup> & 9<sup>th</sup> CoC meeting minutes incomplete documents were provided to the Authorised Representative.

### **ii. Allegation**

Some incorrect statements were recorded in the minutes of the 8th meeting of the committee of creditors. It was mentioned in the minutes that details of CIRP expenses were placed before the CoC meeting and were ratified by CoC however the same was not discussed in the meeting. Mr. Sunil Kumar Agarwal suggested changes in the minutes and IRP had made changes.

## **Submission by IP**

Mr. Soni in his written reply submitted that certain points of non-factual nature were amended in the draft of the minutes. No amendments were made once the minutes were circulated to all the stakeholders. Thus, no modifications have been made in the final minutes of the COC, neither have been any changes been made that materially altered the factual description of the proceedings of the meeting.

## **Observation**

The Disciplinary Committee observed that Mr. Prabhjit Singh Soni recorded incorrect statements in the minutes of the meeting and modified the same after raising of the objections by Mr. Sunil Kumar Agarwal, Authorised Representative of the Homebuyers of Granite Gate Properties Private Limited.

Based on the documents available on record, it was observed that in the minutes the details of CIRP expenses were placed before the CoC meeting and were ratified by CoC. However the same was not discussed in the meeting. The same was corrected after Mr. Sunil Agarwal raised an objection.

As per Regulation 23(3)(c) of the IBBI (CIRP) Regulations, 2016, the Resolution Professional shall take due and reasonable care to record the proceedings and prepare the minutes of the meeting.

### **iii. ICSI IIP/04/2020 (SCN issued on the basis of inspection made by inspecting authority of ICSI IIP).**

#### **➤ In the matter of Granite Gate Properties Private Limited**

### **i. Allegation**

Confidential information of the corporate debtor like minutes of Committee of creditors (CoC), evaluation matrix, and request for resolution plan was published on the website of the corporate debtor.

### **Submission by IP**

**The insolvency professional submitted that he created separate website for the corporate debtor and the website provided for an undertaking to be signed by homebuyers before even viewing it.**

He accepted that the confidential documents were uploaded on the website of the Corporate Debtor but were password protected. The website provided for a unique password and ID to any and all stakeholders who registered therein. He also submitted that Inspection team was able to view the documents as they viewed it on the system of IP.

### **Observation**

As per clause 21 of Code of conduct for Insolvency professionals as per IBBI (IP) regulations, an insolvency professional must ensure that confidentiality of the information relating to the insolvency resolution process is maintained at all times.

As per CIRP regulations, only the following documents are required to be uploaded on the website of the corporate debtor as specifically mentioned:

1. Public announcement
2. List of creditors
3. Form G

Further, w.r.t the confidential document, the circulation has been restricted in the regulations only.

Minutes- The resolution professional shall circulate the minutes of the meeting to all participants by electronic means within forty eight hours of the said meeting. (Regulation 24(7) IBBI (CIRP) regulations, 2016)

Evaluation matrix/RFRP etc.- The resolution professional shall issue the IM, EM and RFRP, to - (a) every prospective resolution applicant in the provisional list; and (b) every prospective resolution applicant who has contested the decision of the resolution professional against its non-inclusion in the provisional list. (Regulation 36(B) IBBI (CIRP) regulations, 2016)

The DC of was the view that the inspecting authority viewed all the confidential documents on the website of corporate debtor without any undertaking or login requirements. Only the voting tab for home buyers was password protected, Further, the website was accessed through own laptops only. Accordingly, the DC

is of the view that the website was for public view and the documents uploaded were publically available.

ii. **Allegation**

E-voting was conducted prior to the meeting and did not seek the vote of members after circulation of minutes for those who could not vote at the meeting. The voting at the CoC meeting was not conducted in the manner provided under the code and regulations.

**Submission by IP**

The IP in his written reply submitted that as per Section 25A of the Code, the AR has the right to vote on behalf of FCs with prior voting instructions. The IP proactively decided to get the vote second time for those who could not vote. Then later on, voting only after the meeting was conducted. Therefore, the allegation that the Voting was not conducted as per the provisions of the Code & its regulations is completely wrong and unfounded.

**Observation**

Regulation 16A (9) of the Regulations mandates the authorised representative to circulate the agenda to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.

Regulation 25(6) of the Regulations requires the authorised representative to circulate the minutes of the meeting received under sub-regulation (5) of the said Regulation 25, to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.

Thus, the Regulations enable a creditor in a class to give voting instructions to the authorised representative at two stages, namely, (i) after circulation of agenda and (ii) after circulation of minutes. However, the IP on his own discretion, in first CoC meeting did not get the voting done after the CoC meeting and in some meetings no voting instructions were carried on by authorised representative before CoC.

iii. **Allegation**

Only 14 of 9000 home buyers were allowed to attend the 9th CoC meeting dated 13th November, 2019 along with authorised representative.

**Submission by IP**

IP in his written reply and during the e-hearing opportunity submitted that AR had been causing hindrances in the smooth conduct of the CoC Meetings by bringing advocates and bouncers. It was in the interest of the CoC that other FCs (Homebuyers) were allowed to attend the meeting to ensure the smooth conduct of the CoC Meeting.

### **Observation**

As per Section 21(6A) of the Code, the authorised representative shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

The DC observed that out of 9000 homebuyers only 14 homebuyers were allowed to attend the meeting as observers & the manner, selection criteria etc has not been justified by the insolvency professional.

#### **iv. Allegation**

As per the regulations only Rs 2,50,000/- should be charged by AR for 10 meetings (25K for 10 meetings), whereas the AR raised bills of approx 16 Lac, out of which Rs. 6,75,000/- has already been paid by him.

### **Submission by IP**

Mr. Soni submitted that AR attended numerous meetings home buyers meetings for redressing the grievances. Therefore, it is not the case that the AR was wrongly paid, but the AR raised frivolous bills to take wrongful advantage which were rejected by IP.

### **Observation**

As per Regulation 16(A) (8) of IBBI (CIRP) Regulations, 2016, the authorised representative of creditors in a class shall be entitled to receive fee for every meeting of the committee attended by him in the following manner, namely:

Number of creditors in the class Fee per meeting of the committee (Rs.)

10-100 (Rs 15,000)

101-1000 (Rs 20,000)

More than 1000 (Rs 25000).

Therefore, as per the regulations only 2,50,000/- was required to be paid to him and anything which is over and above the regulations should not be paid without ratification of COC. Further, it is pertinent to note here that resolving grievances was not the domain of Authorised Representative; it was the duty of the resolution professional. The only role of AR was to represent the creditors during the CoC meetings and vote on their behalf.

v. **Allegation**

As per the records available, without preparation of complete information memorandum, expression of interest in Form-G was published by Mr. Soni.

**Submission by IP**

Mr. Soni submitted that the information memorandum (IM) was submitted on 4th march, 2019 via email and then updations upon the same were also submitted. Expression of interest in Form G was published on 26th march, 2019.

**Observation**

The DC observed that Mr. Soni in his reply submitted that the IM was submitted on 4<sup>th</sup> March 2019, however, in the CoC minutes of 2nd meeting dated 19th March, 2019 it was written that IM was being prepared and it will be submitted to CoC members after NDA and after collation of claims.

Therefore, from the CoC minutes itself it is clarified that information memorandum was not prepared.

vi. **Allegation**

The CIRP expenses were not ratified by the committee of creditors. No details of payment made during CIRP process have been disclosed to the CoC except in case of 1<sup>st</sup>CoC meeting.

**Submission by IP**

CIRP cost was given in the plans proposed by the resolution applicants.

**Observation**

As per Regulation 33(4) of CIRP Regulations, the amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

Mere inclusion of CIRP cost by resolution applicants cannot be treated as ratification of CIRP cost.

Accordingly, from the records made available, it can be observed that the insolvency professional did not ratify the CIRP expenses from the committee of creditors.

vii. **Allegation**

As per minutes dated 29th June, 2019, it was informed that three (3) eligible resolution applicants were given evaluation matrix, IM and other data. However, due to court hearings the process could not be completed by 10th June, 2019. Instead of extending the date of receipt of resolution plan, Mr. Soni again issued Form-G and restarted the process.

## **Submission by IP**

The IP in his written reply submitted that an application was filed on 18th May, 2019 on objection to hold CoC meetings and AA vide order dated 19th July, 2019 granted stay. On 17th Sep 2019 the stay was vacated and IP issued form G on 30th September, 2019 which provided for extension of date for submission of resolution plan to 23rd October, 2019.

## **Observation**

The DC observed that as per Regulation 36B (3) of CIRP regulations, the RFRP shall allow prospective resolution applicants a minimum of thirty days to submit the resolution plan(s), wherein Mr. Soni issued Form G on 30<sup>th</sup> September, 2019 with last date of submission as 23<sup>rd</sup> October, 2019.

Also, there was no need to go for another round of Form G as Mr. Soni already had eligible applicants. There was only status quo on proceedings. Mr. Soni could have saved the time and cost.

### **➤ In the matter of Mariners Buildcon India Limited**

#### **i. Allegation**

Mr. Soni entered into an engagement with the applicant, wherein he proposed the fees as Resolution Professional (RP). Thus, tried to protect his appointment as RP in the instant matter. In his proposal, he also mentioned that he will take 5% of recovery of values of assets as insolvency cost while working as RP.

## **Submission by IP**

Mr. Soni submitted that Law was at nascent stage .No agreement was made, only invoice was raised for fees showing possible expenses. 5% recovery cost means if the company goes into liquidation. Invoice is not an agreement and decision to appoint RP is only in hands of CoC.

## **Observation**

As per IBBI order dated 21.02.2019 in the matter of Ms. Bhavna Ruia, wherein IBBI cancelled the registration of Mr. Bhavna Ruia on various observations, one of the major allegation was as follow:

*‘she entered into contracts to act as RPs of 15 CIRPs with the parties who are not competent to engage her as RP and thereby pre-empted the committee of creditors (CoC) of their legitimate rights to appoint an IP of their choice as RP and fix the fees of the RP.’*

The DC observed that not only invoice, proper engagement letter was found in records. An insolvency professional should not enter into commercial terms with the applicant. It is against the true spirit of the law.

ii. **Allegation**

In meeting dated 7th December, 2017 interim finance was raised to meet the CIRP expenses which is primarily for paying off the fees of IRP/RP and other professionals since the company was an inactive company at rate of interest not exceeding 36% per annum.

**Submission by IP**

The IP submitted that the CoC was in favour of liquidation from the beginning. CoC showed its inability to pay off the debts.

**Observation**

As per section 20(2)(c) of the Code, IP can raise interim finance to keep the company as going concern.

The objective behind raising interim finance is to keep the company going concern but IP took it to pay off the fees only which is against the purpose as mentioned in the code.

Agenda no 4 was to raise interim finance where the IP mentioned that it will be paid at the time of liquidation. However, agenda no 5 was future course of action where it was decided to liquidate the company.

The fee must be paid through the corporate debtor or the CoC members which will eventually be included in the CIRP cost.

➤ **In the matter of JNC Constructions Private Limited**

i. **Allegation**

Only draft information memorandum (IM) was prepared. No supporting document i.e. copy of IM, proof of circulation was provided regarding issuance of IM to CoC members.

**Submission by IP**

IP submitted that the Interim IM was circulated amongst the members of the CoC in the 3<sup>rd</sup> CoC Meeting and was duly mentioned in the Minutes of Meeting. Furthermore, the complete IM was given to all CoC members and it has been duly mentioned in minutes of 4<sup>th</sup>CoC Meeting. A Copy of the Minutes of the 4th CoC Meeting was also submitted.

**Observation**

The DC accepted the records made available in the reply and took note of the same.

ii. **Allegation**

Interim finance from a LLP was taken without the approval of CoC.

**Submission by IP**

IP submitted that the Resolution pertaining to the raising of Interim Finance was duly recorded and approved in 4<sup>th</sup>CoC meeting

**Observation**

Section 28-Approval of COC for Certain Actions-RP, during CIRP, shall not take any of the action regarding raising any Interim Finance in excess of the amount as may be decided by the COC in their meeting without the prior approval of the COC.

The DC observed that in the 3rd COC meeting held on 22nd October, 2019 (Agenda No. 12), the RP placed an agenda for raising interim finance due to the fact that there was very less amount left in the accounts of the CD. The COC noted the fact.

Subsequently, in the 4th CoC meeting held on 14th November, 2019 (Agenda No. 8), the RP apprised the members that as CD has no funds in the bank accounts and there is no other source of income, he has arranged a sum Rs.5,00,000/- from Sai Electrical Equipments LLP on interest of 15% for meeting urgent expenses towards electricity and running offices. The RP proposed for passing of resolution in this respect. However, no E voting results have been found.

From minutes of 3rd & 4th COC meetings, it appears that no approval nor deliberations were made by the members regarding the T&C for raising interim finance and its interest payments neither any agenda placed by the IP in this respect specifically.

RP apprised the members subsequent to the arrangement of funds only and also has not given any information about the credentials of the company, Sai Equipment.

**3. Analysis**

3.1 An IP plays a vital role in the resolution process and forms a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the resolution process. A corporate insolvency resolution process rests on the shoulders of an IP. He is duty bound to preserve and protect the assets of the corporate debtor as well as run the CD as a going concern.

3.2 There are various obligations which the IP needs to perform under the Code. Section 208(2) provides that every insolvency professional shall abide by the Code of conduct. It reads as follows:

*“208. Functions and obligations of insolvency professionals.*

*(2) Every insolvency professional shall abide by the following code of conduct: –*

*(a) to take reasonable care and diligence while performing his duties;*

*(b) to comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member;*

*(c) to allow the insolvency professional agency to inspect his records;*

*(d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and*

*(e) to perform his functions in such manner and subject to such conditions as may be specified.”*

3.3 Mr. Anuj Agarwal also alleged that RP appointed him as a professional and took services from him during the CIRP of Granite Gate Pvt. Ltd and failed to pay his fee after the month of March. The Disciplinary Committee observed that this does not fall within the ambit of the Committee to decide upon.

#### **4. Order**

4.1 On perusal of documents and information on record, the Disciplinary Committee finds that Mr. Prabhjit Singh Soni, Insolvency Professional (IBBI/IPA-002/IP-N00065/2017-18/10143) has contravened Sections 21(6)(a), 20(2)(a), 28(1)(a) and 208 (2) of the Code, Regulation 16A, 33(4), 36(1), 36(B)(3), 36(B)(4), 36(4) of IBBI (CIRP) Regulations, 2016 and Regulation 7(2)(h) of the Regulations read with clauses 1, 2, 5, 13, 14 and 21 of the code of conduct of the IP Regulations.

4.2 In view of the aforesaid facts, the Disciplinary Committee holds that Mr. Prabhjit Singh Soni is guilty of professional misconduct. DC after considering the seriousness of violations and in its power conferred under Part III 4 (e) of the Disciplinary Policy of ICSI IIP and *vide* order dated 14<sup>th</sup> December, 2020 referred the matter to IBBI for final decision.

4.3 Whereas, IBBI vide email dated 25<sup>th</sup> December, 2020 requested ICSI IIP to reconsider the order. The matter was then placed by the Secretariat

before the Disciplinary Committee on 5<sup>th</sup> January, 2021 and 19<sup>th</sup> January, 2021.

4.4 The Disciplinary Committee at its meeting held on 19<sup>th</sup> January, 2021 reconsidered the order and decided the following in its power conferred under Part III of the Disciplinary Policy of ICSI IIP:

- a) Imposed a penalty of Rs. 2,00,000/- (two lakhs only) on Mr. Prabhjit Singh Soni and the same to be deposited by a demand draft payable in favour of the ICSI Institute of Insolvency Professionals within 1 (one) month of the issue of this order. The Agency shall in turn deposit the said penalty amount in the Insolvency and Bankruptcy Fund;
- b) Recovery cost for an amount of Rs. 50,000/- (fifty thousand only) as cost for the proceedings before the Disciplinary Committee of ICSI IIP and the same to be deposited by a demand draft payable in favour of the ICSI Institute of Insolvency Professionals within 1 (one) month of the issue of this order;
- c) Suspended Mr. Prabhjit Singh Soni for a period of 1(one) year from the date of issuance of this order and;
- d) Directed Mr. Prabhjit Singh Soni to undergo 50 hours Pre-registration Education Course.
- e) Mr. Prabhjit Singh Soni shall, however, continue to conduct and complete the assignments/processes he has in hand, if any, as on the date of this order.

In case of failure to comply with the abovementioned directions within stipulated time, period of suspension will be extended to by another one year.

4.5 This order shall come into force from the date of its issue.

4.6 A copy of this order shall be forwarded to the Insolvency and Bankruptcy Board of India.

CERTIFIED COPY

Sd/-  
GOPAL KRISHAN AGARWAL  
(CHAIRPERSON)

Sd/-  
S. P NARANG  
(MEMBER)