



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Item No. 207

(IB)-1416/ND/2019

IA-2067/2021, IA-2205/2021,

IA-3802/2021, IA-4486/2021, IA-875/2021

IN THE MATTER OF:

(Under Section 9 of IBC, 2016)

Vijaya Purohit

... Applicant/Financial Creditor

Versus

M/s. Trading Engineers

(International) Limited

... Respondent/Corporate Debtor

AND IN THE MATTER OF IA. NO. 2205/ND/2021:

(Under Section: 60(5) of IBC, 2016)

1. Anil Kumar Tyagi

F-196/S2, Dilshad Colony,

New Delhi – 110095

... Applicant No. 1

2. Sandeep

Village – Hathwala, Tehsil-Samalkha,

Dist-Panipat Haryana-132115

... Applicant No. 2

3. Sanjay Kumar

A-226, Durga Enclave,

Street No. 5, Sehatpur

Faridabad – 121003

... Applicant No. 3

4. Deepak Kumar

H. No. 1, Block 114,

Shastri Nagar,

Meerut – 250004

... Applicant No. 4

5. Jatinder Singh

H. No. 216/76-C,

West Rethani Phase-2

Meerut U.P. 250103

... Applicant No. 5

6. Ashwani Pandey

K-49, Bhoot Wali Galia,

Nangloi, Delhi 110049

... Applicant No. 6



7. Satish Kumar

F-3/756, Sangam Vihar,
New Delhi – 110062

... Applicant No. 7

8. Rajeev Tyagi

101, Madhupura,
Muzaffarnagar,
Uttar Pradesh 251002

... Applicant No. 8

9. Satyender Singh

H. No. B-540,
Ganga Nagar Mawana Road,
Meerut, Uttar Pradesh 250001

... Applicant No. 9

Versus

Vivek Raheja

(RP of M/s Trading Engineers (International) Ltd.)
JD, 2C, 2nd Floor,
Pitampura, New Delhi

... Respondent No. 1

AND IN THE MATTER OF IA. NO. 875/ND/2021:

(Under Section: 30(6) of IBC, 2016)

Vivek Raheja

(RP of M/s Trading Engineers (International) Ltd.)
JD, 2C, 2nd Floor,
Pitampura, New Delhi-110034

... Applicant/ RP

Order Delivered on: 14.10.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Sumit Bindal along with Applicant in IA-2205/2021, IA-2067/2021, IA-4486/2021.

For the RP : Adv. Karan Gandhi, Adv. Sikhar Tiwari, Adv. Vivek Parthi

For the SRA : Adv. Prashant Methab, Adv. Raghav Marwaha

Hearing Through: VC and Physical (Hybrid) Mode



ORDER

IA-875/2021 & IA-2205/2021: When IA-875/2021 was preferred by erstwhile RP, namely Mr. Vivek Raheja, for approval of Resolution Plan, IA-2205/2021 could be preferred by one Mr. Anil Kumar Tyagi for rejection of the plan. We have been hearing the Ld. Counsels for the parties in the matter for quite long. On 02.05.2024, after hearing the Ld. Counsels for the parties at length, this Bench had passed the following order:

“IA/2067/2021, I.A-2205/2021, I.A/3802/2021, IA-4486/2021, IA/875/2021: *The counsels for the parties are directed to be remain present physically on 07.05.2024 to advance their submissions on the issues:- i) if the MSME certificate is dated 25.08.2023, then how the CD is entitled to be exempted from application of clause (c) & (h) of Section 29A of IBC, 2016. ii) whether the SRA who joined the party who could submit the expression of interest later could be treated as eligible to submit the plan to whether as per Regulation 39 of IBBI (CIRP) Regulations, 2016 the individual who had not signed the expression of interest could become SRA, iii) the ramification of the order passed by the IBBI, suspending the RP on the ground that he concealed ineligibility of the resolution applicant, CoC. List on 07.05.2024.”*

2. In IA-2205/2021, Mr. Anil Kumar Tyagi has placed the following facts necessary for adjudication of the issues involved on record and the same reads thus: -

5. The brief facts of the case, which is necessary for the final adjudication of the issue involve before this Hon'ble Adjudicating Authority are as under:

a. That in 1972, M/s Trading Engineers International Ltd. (Corporate Debtor) was established under the Companies Act, 1956 and accordingly registered with the Ministry of Corporate Affairs, NCT of Delhi and Haryana. That Corporate Debtor was OEA of Kirloskar Oil Engines Ltd & was/ is in the business of Manufacturing, supply DG Sets and other equipment's for Ministry of Defense (MOD), & other government department. In 2008, the Corporate Debtor expanded its business in TSP / EPC, Transmission.



- b. That the Corporate Debtor was under management and control by the following directors:

DIN	NAME OF DIRECTOR	BEGIN DATE	END DATE
00096666	BALA CHHABRA	22.02.2000	-
00096771	SUSHANT CHHABRA	15.10.2004	-
00146661	MRS NARGIS MALIK	01-10-2006	2019
00827215	SANJEEV KAPOOR	28.03.2019	-

Moreover, the following are/were the shareholder of the Corporate Debtor:

NAME	NO. OF SHARES	% OF SHAREHOLDING
VK CHHABRA	2,96,334	9.81
BALA CHHABRA	3,22,480	10.68
SUSHANT CHHABRA	3,75,654	12.44
RUCHI CHHABRA	2,39,550	7.93
UNITECH MACHINES LTD.	7,08,268	23.45
SAB HOLDINGS (INDIA) PVT. LTD.	3,79,270	12.55
GESSUP LOGISTICS AND FINANCE PVT. LTD.	4,27,772	14.16
TECHNO AUTO COMPOINENTS (INDIA) PVT. LTD.	2,29,500	7.60

Copy of MCA Data is annexed here with and marked as **ANNEXURE A-3.**

- c. During the course of running the Corporate Debtor, the Directors, hired various employees and accordingly, the Applicants started working for the Corporate Debtor. While, the Applicants are employed with the Corporate Debtor, the Corporate Debtor started defaulting in making regular salary and gave false assurances for payment of dues to the Applicant.



- d. That the ex-employees of EPC Division of Corporate Debtor in connivance with the Suspended Board of Directors, opened vendors/companies in the name of their relatives and diverted the funds from the Corporate Debtor. The Applicants regularly intimidated/requested the directors of the Corporate Debtor to take appropriate action against the ex-employees of EPC Division. However, the suspended board of directors, remain mute spectator and did not take any action against the ex-employees. Which leave no room, that the ex-employees of EPC Division were working in connivance with the suspended Board of Directors in order to siphon off the funds from the Corporate Debtor.
- e. That this Hon'ble Adjudicating Authority vide order dated 04.07.2019 was pleased to admit the Captioned Petition i.e. C.P (IB) No. 1416(ND) OF 2019 filed under section 9 of the Insolvency and Bankruptcy Code, 2016 on behalf of Operational creditor i.e. Mrs. Vijay Purohit seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.
- f. Since, then the Resolution Professional is handling the affairs of the Corporate Debtor and managing the operations of the Corporate Debtor in complete violation of the Insolvency & Bankruptcy Code, 2016 and working for the benefit of the Suspended Board of Directors.

3. Though in IA-2205/2021, the Applicant has espoused several grounds to question the plan, but what we find relevant to note is that when originally the Expression of Interest (EoI) was submitted by 'Conquerent Control Systems Private Limited,' subsequent to finalization of list of Resolution Applicants, three more individuals namely Mr. Sushant Chhabra, Mr. Ram Babu Gupta and Mr. Pramod Gupta were allowed to submit a joint resolution plan with Conquerent Control Systems Private Limited, although their name



did not figure in the final list of PRAs. The three persons whose names were subsequently added had not even submitted any Expression of Interest independently. Mr. Vivek Raheja, RP who pressed the IA-875/2021 for approval of Resolution Plan could be placed under suspension by IBBI in terms of the order dated 12.01.2024. Subsequently, the newly appointed RP Mr. Vivek Parthi filed his written submissions espousing thus: -

“22. Suppression of Material Facts

The erstwhile RP filed an Avoidance Application under Section 66 of the IBC against the joint SRA in the CIRP of M/s Unitech Machines Ltd, an associate company of the CD. This application remains pending before the Hon'ble NCLT, Principal Bench. The failure to disclose this critical fact to the CoC during the approval of the resolution plan constitutes a significant omission of erstwhile RP. This lack of disclosure could lead to legal challenges to the CoC's decisions, potentially resulting in the nullification of the resolution plan.

23. Inadequate Financial Assessment of the SRA

The erstwhile RP did not conduct a comprehensive financial assessment of the joint SRA, who failed to provide adequate evidence of liquid assets to support the resolution amount. The financial net worth presented primarily consisted of illiquid assets, raising concerns about the SRA's ability to meet financial commitments. An inadequate financial assessment risks the financial viability of the resolution plan, potentially leading to disputes regarding the SRA's capability to fulfil financial obligations. This lapse could affect the implementation of the resolution plan and undermine the CIRP's overall effectiveness.

The erstwhile RP failed to conduct a thorough evaluation of Mr. Sushant Chhabra's financial capacity as a resolution applicant, leading to the acceptance of a resolution plan without proper scrutiny of his ability to fulfil the required financial obligations. Specifically, Mr. Chhabra was required to infuse Rs. 11.87 crore as his share in the resolution plan. However, as of 31.03.2019, Mr. Chhabra's net worth was Rs. 9.09 crore, with the majority of his assets tied up in group companies. Notably, the valuation of his investment in Unitech Machines Ltd., a group company under CIRP, amounted to Rs. 563.26 lakhs, which erstwhile RP failed to examine adequately. This lapse in financial assessment raises significant concerns regarding the viability of the resolution plan and the applicant's ability to meet the financial commitments, potentially jeopardizing the entire CIRP process.



24. UNAUTHORIZED TRANSFER OF RIGHTS TO THE SRA

The erstwhile RP entered into lease agreements with a Prospective Resolution Applicant (PRA) for periods of 6 months and 11 months, respectively, starting from 09.03.2021 and 18.11.2021 without obtaining the mandatory approval from the CoC in terms of Section 28 of the Code. This action violated established protocols regarding asset management and transfer of rights. Unauthorized transfer of rights undermines the authority of the CoC and violate asset management protocols under the IBC. Such actions could lead to disputes over asset ownership and potential legal challenges.

25. SECTION 19(2) APPLICATION

An application under Section 19(2) of the IBC was filed in January 2020 against Mr. Sushant Chhabra. The previous RP confirmed on March 31, 2022, via email to the IBBI that no avoidance transactions were detected. That the application u/s 19 (2) being LA no. 149/2020 was withdrawn by the counsel of the erstwhile RP on 15.12.2022 while none of the pending information as sought under the said application is seen to have received. Copy of the order dated 15.12.2022 is annexed as ANNEXURE 14.

26. PERFORMANCE GUARANTEE AND FINANCIAL ARRANGEMENTS

The performance guarantee provided by the SRA, partly by way of a bank guarantee for Rs. 50 lakhs and the remainder Rs. 221 lakhs through a direct deposit, was not deposited into an escrow account and was utilized by the CD during the SRA's control of operations. This raises significant concerns regarding the proper management and utilization of the performance guarantee under the resolution plan. That the statement of expenditures after the receipt of Performance Guarantee provides that a substantial amount was paid from the CIRP account to settle the employees, renovation etc which would not have benefitted required given the Corporate Debtor was on the one hand kept as going concern and on the other was incurring losses for the entire CIRP period. Copy of receipt & payment's account of the CD from CIRP till 30.04.2024 is annexed as ANNEXURE 15."

4. The present RP has also enclosed with his written submissions an order dated 12.01.2024 passed by IBBI dealing with the issues raised in IA-2205/2021 only. In para 3.1.6 of the order, it has been specifically noted that it was the duty of the erstwhile RP, Mr. Raheja, to examine each resolution plan and confirm that the plan does not contravene any of the provisions of



the law for the time being in force. Para 3.1.6 to 4.1.4 of the order passed by IBBI reads thus:

“3.1.6 As per section 30 (2) of the Code, it was the duty of Mr. Raheja to examine each resolution plan and confirm that the plan does not contravene any of the provisions of the law for the time being in force. It was, however, observed by the Board that despite CD not being an MSME at the time of commencement of CIRP of the CD, Mr. Raheja allowed submission of the resolution plan by a director of the CD as one of the joint resolution applicants on the premise that CD was a MSME.”

“3.1.7 It further came to the notice of the Board that Mr. Raheja was RP in CIRP of another Corporate Debtor i.e. Unitech Machines Limited also, and Mr. Sushant Chabbra happened to be a director in that Corporate Debtor also. In the CIRP of the said Corporate Debtor, Mr. Raheja had filed an application for avoidance transactions in 2020 during the same time when resolution plan of Conquerent and Mr. Sushant Chabbra was under consideration in CoC of the CD. In the said avoidance application, Mr. Raheja had made Mr. Sushant Chabbra as a respondent. However, the said fact was not discussed with CoC while discussing the eligibility of Mr. Sushant Chabbra as a co-resolution applicant for CD.”

“3.1.8 In view of the above, the Board was of the prima facie view that the IP contravened sections 30(2), 30(3), 208(2)(a) & (e) of the Code, regulation 39(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clauses 1, 2, 12 and 14 of the Code of Conduct. Submissions by the IP”

“3.1.9 Mr. Raheja in his response to the SCN submitted that the status of the CD as an MSME was not considered in proper perspective. Under the Code, an Insolvency Professional is appointed with no prior knowledge of the status, business, operations, assets and working of the CD. As per the scheme envisaged in the Code, the Insolvency Professional relies primarily on the cooperation, assistance and support of the Personnel [as defined in S. 5(23) of the Code] of the CD including the persons involved in management of the CD. With the directors not responding to notices issued, the delay or non-availability of authentic, bonafide and genuine information cannot be attributed to the Resolution Professional.”

“3.1.10 Mr. Raheja submitted that he was able to take into custody partial books of account, records and documents which were either lying at office premises of the CD or were supplied in a piecemeal manner by



the personnel of the CD. In one such instance, one of the directors, namely Mr. Sushant Chhabra, informed the CoC that the CD was registered as MSME since the year 2007. Such a disclosure was made to support his eligibility to become a joint resolution applicant alongwith M/s Conquerent Control System Pvt. Ltd. When questioned by Mr. Raheja and CoC as to the registration of CD as MSME, since there was no document available to this effect in the premises of the CD, the said director handed over the MSME certificate dated 31.10.2017 to Mr. Raheja on 07.08.2020. Mr. Raheja gained knowledge from that certificate that the CD was an MSME since 26.11.2007 with registration number EM-2/050131200184. There was no occasion to doubt the veracity of the said certificate nor there was any reason to suspect the registration. Based on the certificate provided by the said director, Mr. Raheja concluded as to nonapplicability of clauses (c) and (h) of section 29A of the Code due to overriding effect of provisions of section 240A(1) of the Code. The Certificate showed that the CD was a registered MSME as on the date of the insolvency commencement date. Thus, the directors of the CD were found to be eligible to act as the joint Resolution Applicant and there was no hindrance for them to submit resolution plan. Mr. Raheja submitted that in 12th CoC meeting held on 10.09.2020, Mr. Sushant Chhabra was included as Joint Resolution Applicant by Conquerent Controls Systems Pvt. Ltd. with sole objective to maximise the value of the CD and for maintaining the status of CD as a going concern in accordance with the objectives of the Code.”

“3.1.11 Mr. Raheja further submitted that he had conducted due diligence as to the eligibility of the Resolution Applicants under the Code and obtained an undertaking under section 29A of the Code from the Joint Resolution Applicant, as mandated under the Code. Mr. Raheja also engaged an independent process advisor, namely ARCK Advisors LLP to conduct thorough due diligence of the all the Resolution Applicants and connected persons under section 29A of the Code. The report submitted by the independent process advisor found the Resolution Applicants as eligible in all respects.”

“3.1.12 Mr. Raheja argued that there was no suspicion surrounding the Registration Certificate and hence the MSME certificate, coupled with Affidavit of the director and independent due diligence report submitted by ARCK Advisors LLP, he safely presumed the status of the corporate debtor as MSME.”

“3.1.13 Mr. Raheja emphatically submitted that the provisions of the Code encompassing duties and functions of the IRP/RP do not contemplate the Insolvency Professional to wear the hat of an investigator and proceed with suspicion doubting the veracity of each and every



document made available to him unless there is overwhelming evidence on the face of the document or record to suspect it. The role of Insolvency Professional is not that of investigator under the Code. The insolvency professional obtains hundreds of records, data and records and it is simply impossible to verify the authenticity of each such document, record or data. If the Insolvency Professionals appointed as IRP or RP or Liquidator starts doing this, where there is no suspicion, it would be impossible to complete the process within prescribed period. In any case, the person supplying the document has to inform correct information, if known to him, and supply documents which remain valid. In the present case, it was reiterated by Mr. Raheja that he had no reason to doubt that Registration of the CD had been cancelled. The document supplied by the director was neither fraudulent nor false as the Registration Certificate was validly issued.”

“3.1.14 Mr. Raheja further averred that, at the relevant time, there was no information available in public domain as to registration or cancellation of the MSME certificate. It is evident from the fact that IBBI (an instrumentality of State) sent an internal request to the Government department, which was also replied after few reminders. Even the email from MSME department in response to IBBI states that the corporate debtor was registered with UAM No. UK06B0002251 dated 31/10/2017 and further cancelled/ Marked as Z category by respective GMDIC on dated 22\12\2017 Registered with UDYAM No. UDYAM-DL-08- 0004435 dated 18/10/2020. In any case, he had no occasion to doubt the veracity of continuity of the MSME registration.”

“3.1.15 Mr. Raheja also submitted that the directors, when confronted with this information, have replied that the CD had no intimation as to cancellation/ marked as Z category of the MSME registration certificate. In any case, prior to cancellation/ marking as Z category of the certificate, it was obligatory on the part of the relevant Government department to issue a show cause notice before taking adverse action resulting in change of the registration certificate. No such notice or communication was ever received by the CD, as confirmed by the director. Mr. Raheja concluded that it implied that no cogent reason was there to doubt the veracity of the certificate or continuity of registration of MSME status of the CD.”

“3.1.16 Mr. Raheja informed that he gained knowledge from the emails exchanged between IBBI and the Department that the cancellation is attributed to reason marked as “Z” status. Mr. Raheja submitted that Z status means that the Unit was not found at the address mentioned. It is impossible to believe the authenticity of such a reason as the Unit exists physically at its address. The IP had taken over the custody of all the



units of the CD and hence the purported cancellation for the reason stated lacks authenticity. It is matter of detailed investigation, after obtaining complete records from the Department, as to how such a decision was arrived at.”

“3.1.17 The IP has further submitted that the Code emphasises on the ‘classification’ of the corporate debtor as MSME under section 7 of the MSME Act and does not state that it needs to be registered. The purported cancellation, as stated above, was done for a reason not affecting the ‘classification’ criteria of the corporate debtor. It is reflected from the explanation part of section 240A of the Code that the classification of MSME shall be under section 7(1) of the MSME Act, 2007 and therefore the IP states that the registration of MSME is not mandatory for this purpose.”

“3.1.18 Mr. Raheja further submitted that the present SCN wrongly relied on certain figures to conclude that the corporate debtor was not eligible to be classified based on prescribed classification. He submitted that the Inspecting Authority has completely ignored Notification S.O. 1772(e) dated 05.10.2006 which provided a list of eleven items, the cost of which shall be excluded while calculating the investment in plant and machinery. As per analysis of books of accounts and available information with the IP in his capacity as a Resolution Professional, it was observed that the value of plant and machinery to be counted for maximum threshold limit, after excluding certain items will be less than 10 Crore. However, in the case of CD, due to lack of requisite data and information, Mr. Raheja was unable to check the exact applicability of these exceptions and till date cannot determine with certainty if any of the exceptions can be made applicable for reducing the amount of gross block of investment in plant and machinery.”

“3.1.19 Mr. Raheja also submitted that it is a matter of record that he is a Resolution Professional in Unitech Machines Ltd.(“UML”) and in the said matter, an application for avoidance transactions was filed by him wherein Mr. Sushant Chhabra was also a respondent. It is significant to mention that the said application is pending for adjudication before Hon’ble NCLT and thus, sub judice. It is imperative to mention that there was no order passed by the Adjudicating Authority in an avoidance application at the time of approval of resolution plan by the CoC in respect to the CD. Hence, there was no requirement to disclose the said fact with the CoC until and unless there was an order passed by the Adjudicating authority which would have made Mr. Sushant Chhabra ineligible to submit the resolution plan under section 29A(g) of the Code. In the present matter, it was not required to disclose the uncertain facts to the CoC and affect or divert their decisions based on half-baked premises.”



“3.1.20 Mr. Raheja in his supplementary response submitted that in order to seek clarity on the status of registration of Corporate Debtor as MSME as on the date of commencement of CIRP, he had issued a letter dated 21.08.2023 to the Office of the General Manager, District Industries Centre, Haridwar to confirm the MSME status of the corporate debtor w.e.f. 26.11.2007. The reply to said letter was received from the aforementioned department on 25.08.2023 whereby it is clarified that E.M. Part No. 050131200184 dated 26.11.2007, Udyog Aadhaar Registration No. UKO6B0002251 dated 31.10.2017 and the present Udhyaam Registration No., as per certificate UDHYAM-DL-08-0004435 dated 20.10.2020, the corporate debtor was registered as MSME from 26.11.2007 and continues to be MSME. It has been further stated in the reply received from department that site inspection of the unit was done on 14.02.2023 by the Assistant Manager, District Industries Centre Roorkee and during the inspection the unit was found operational.”

“3.1.21 Mr. Raheja relying on the abovesaid letter submitted that the MSME certificate dated 31.10.2017 which was considered by him as the basis for allowing exemption to Mr. Sushant Chhabra from clause (c) and (h) of section 29A of the Code was not cancelled as the Corporate Debtor was registered as MSME since 26.11.2007 as confirmed by the concerned department vide its letter dated 25.08.2023.”

Analysis and Findings of the DC

“3.1.22 The DC notes that there are various documents on records with regard to the CD to be classified as MSME such as the email from MSME department in response to IBBI which states that the corporate debtor was registered with UAM No. UKO6B0002251 dated 31/10/2017 and further cancelled/ Marked as Z category by respective GMDIC, a letter from District Industries Centre, Haridwar dated 25.08.2023 stating Udyog Aadhaar Registration No. UKO6B0002251 dated 31.10.2017 and the Udhyaam Registration No. UDHYAM-DL-08-0004435 dated 20.10.2020.”

“3.1.23 In view of the aforesaid various documents, the Board is directed to find out the veracity of such documents with regard to the status of the CD classified as MSME and take further action as appropriate in accordance with law.”

“3.1.24 The DC further notes the submission of Mr. Raheja that in the case of CD, due to lack of requisite data and information, he was unable to check the exact applicability of these exceptions and till date cannot determine with certainty if any of the exceptions can be made applicable for reducing the amount of gross block of investment in plant and machinery. This raises a serious concern on the conduct of Mr. Raheja



wherein Mr. Raheja acting as an RP was supposed to perform due diligence for the status of the CD to be classified as MSME. However, Mr. Raheja has submitted that due to non-availability of requisite data and information from director of the suspended Board, he was not able to do so. Despite the fact that requisite data and information were not made available by the director of the suspended Board, Mr. Raheja went ahead to accept Mr. Sushant Chabha as eligible to be joint Resolution applicant.”

“3.1.25 The DC further notes that Mr. Raheja did not present the complete facts before CoC, rather suppressed the material fact from CoC. Mr. Raheja is RP for the CD M/s Unitech Machines Ltd., wherein he has filed avoidance application and one of the respondent in the avoidance application is Mr. Sushant Chhabra. In the resolution plan submitted for the CD Trading Engineers (International) Limited, Mr. Chhabra, director of the suspended board of Trading Engineers (International) Limited, is joint RA with M/s Conquerent Control System Pvt. Ltd. Mr. Raheja suppressed the fact from CoC of Trading Engineers (International) Limited, that against Mr. Chhabra, avoidance application has been filed before AA in the CIRP of M/s Unitech Machines Ltd. Had this fact been informed to CoC of Trading Engineers (International) Limited, it cannot be ruled out that CoC might have decided otherwise. In order to maintain transparency, Mr. Raheja should have presented complete facts before CoC of Trading Engineers (International) Limited. Mr. Raheja kept the CoC of Trading Engineers (International) Limited in dark about the fact that against Mr. Chhabra, avoidance application was filed in the CIRP of Unitech Machines Ltd., by the RP himself. This amounts to gross violation of code of conduct, which is not expected from an Insolvency Professional. This non-disclosure of relevant facts to the CoC does not inspire confidence on the bonafides of Mr. Raheja.”

“4. Issue related to source of fund of Mr. Sushant Chhabra

4.1.1 The SCN stated that it was observed from para 6.3.5 of resolution plan that Mr. Sushant Chhabra had to infuse Rs 9.87 crores (Rupees nine crore eighty seven lakhs only) as his share in the Resolution plan within a year from the date of approval of resolution plan. In addition to above, Mr. Chhabra would introduce funds to the tune of Rs 2 crore (Rupees two crore only) as and when any devolvement of Bank Guarantee happens. Hence, the total contribution which Mr. Sushant Chhabra had to make, as envisaged in the resolution plan, was Rs 11.87 crore.”

“4.1.2 Mr. Raheja in his reply to the IA submitted that the sources of funds of SRA was ascertained based on sources of funds as detailed in para 6.5 of the Resolution plan and net worth certificates of SRA's. The



following was noted from the net worth certificate dated 31.03.2019 of Mr. Sushant Chabbra:

Particular	Value (Rs in lacs)
Value of Immoveable Property (a)	420.21
Value of Moveable Property (b)	28.45
Investment mostly in Group companies (c)	1118.18
Loan and Advances (d)	25.83
Total Assets-I (a+b+c+d)	1592.67
Current Liability-II	683.60
Net Worth as on 31.03.2019 (I-II)	909.07

“4.1.3 It was observed from the above that Mr. Sushant Chabbra was not having sufficient liquid/realisable assets and also that most of his assets were blocked as investment in group companies, realisation of which was unlikely. For instance, investment of Mr. Chabbra in one of the group companies namely Unitech Machines Ltd has been shown to the tune of Rs 563.26 lakhs (Rupees five hundred sixty three lakhs twenty six thousand only). However, Unitech Machines Ltd was already under CIRP when the resolution plan in the CIRP of the CD was being considered. Hence, realisation of this investment to the extent mentioned in net worth certificate was unlikely. The SCN alleged that the IP did not consider the above facts while assessing financial capabilities of Mr. Sushant Chabbra and that too, when he was also the RP of M/s Unitech Machines Ltd.”

“4.1.4 In view of the above, the Board was of the prima facie view that the IP has contravened section 208(2)(a) & (e) of the Code, regulation 38(3) of the CIRP Regulations, regulation 7(2)(a) & (h) of the IP Regulations read with Clauses 1, 2, 12 and 14 of the Code of Conduct.”

5. In para 5.1.1 of the order, the IBBI specifically concluded that Mr. Vivek Raheja has contravened the provisions of the Code and Regulations made thereunder with respect to examining financial capability of Mr. Sushant Chabbra for meeting eligibility criteria of PRA. The para 5.1.1 to 5.1.8 reads thus: -

“5.1.1 In view of the foregoing discussion, the DC finds that Mr. Vivek Raheja has contravened the provisions of the Code and Regulations made thereunder with respect to (i) suppression of relevant facts from CoC, (ii) examining financial capability of the Mr. Sushant Chhabra for meeting eligibility criteria of PRA, (iii) disposal of the assets of the CD without the approval of the CoC, and (iv) executing lease agreement with the PRA with respect to assets of CD without the approval of CoC.



5.1.2 *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. Vivek Raheja having registration no. IBBI/IPA-001/IP-P00055/2017-18/10133 for a period of two years.*

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

5.1.4 *A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Vivek Raheja is enrolled as a member.*

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

5.1.6 *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.*

5.1.7 *Further, the Board is directed to verify the veracity of different MSME certificates as mentioned in paragraph 3.1.22 of this order and take appropriate action in accordance with law.*

5.1.8 *Accordingly, the show cause notice is disposed of.”*

6. From the aforementioned, it is clear that it was for the reason that the erstwhile RP could not ensure that the Resolution Plan met the requirement of law in the present case only that he was placed under suspension. Mr. Karan Gandhi, Ld. Counsel for the current RP, submitted that the erstwhile RP did not even bring it to the notice of CoC that three more individuals who had not submitted any independent Expression of Interest earlier, were jointly added as PRAs with one of the PRA who had actually expressed interest, i.e., Conquerent Control Systems Private Limited, after preparation of final list of PRAs. It is the case of the current RP itself that the Resolution Plan for



approval, for which IA-875/2021 has been preferred, does not meet the requirement of law and suffers from several infirmities.

7. As can be seen from Section 30(1) of IBC, 2016, it is the Resolution Applicant who needs to submit a Resolution Plan (along with an affidavit of eligibility under Section 29A) prepared on the basis of the information memorandum to the Resolution Professional. Thereafter, the RP needs to examine each Resolution Plan received by him to confirm that each plan meets the requirements indicated in Section 30(2) (a to f) of the plan. It is seen from Section 30(3) of the Code that it is for Resolution Professional to present to the Committee of Creditors the Resolution Plan for its approval, which confirm the conditions referred to in Section 30(2) (ibid). The Section 30(6) further provides that it is the Resolution Professional who submit the Resolution Plan, as approved by the Committee of Creditors, to the Adjudicating Authority. The expression submission of plan would include the presentation of plan for approval. In the present case, when the Ld. Counsel for Resolution Professional himself is of the view that the Resolution Plan, as presented along with IA-875/2021, does not meet the requirements of various provisions of law and procedure, it may not be feasible and possible for us to approve the same.

8. During the course of hearing, Mr. Sumit Bindal, Ld. Counsel for the Applicant in IA-2205/2021, produced before us the relevant excerpt from IBC, 2016 & IBBI (CIRP) Regulations, 2016 viz. Regulation 39(1) and submitted that a prospective Resolution Applicant in the final list may submit a Resolution Plan or plans prepared in accordance with the Code and these



regulations to the Resolution Professional electronically within the time given in the request for Resolution Plans under Regulations 36B along with the documents referred to in the sub-regulation. According to him, in terms of the aforementioned regulation, only such PRA whose name is included in the final list may submit the Resolution Plan. Having drawn our attention to sub-regulation (1A) to IBBI (CIRP) Regulations, 2016, the Ld. Counsel emphasized that a Resolution Plan which does not comply with the provisions of sub-regulation (1) should be rejected. The Regulation 39(1) and (1A) are reads thus: -

“39. Approval of resolution plan.

(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with

(a) an affidavit stating that it is eligible under section 29A to submit resolution plans;

*[***]*

(c) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.

(1A) A resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected.”

9. Mr. Prashant Methab, Ld. Counsel for the SRA, submitted that the SRA has already incurred a substantial expense to meet CIRP cost and that further Regulation 39(1) provides that a prospective Resolution Applicant in the final list may submit Resolution Plan, thus the use of expression ‘may’ in sub-regulation (1) need to be understood in the sense that the name of a party might or might not be in the final list, still it could submit the Resolution Plan.



In our view such reading of Regulation 39(1) (ibid) would be misconceived. The proper reading of the expression 'may' used in the regulation is that a Prospective Resolution Applicant whose name exists in the final list may or may not submit the Resolution Plan. In other words, if the uncertainty attested to the expression 'may' need to be understood for any purpose, the same may be for the purpose that a PRA whose name is included in final list may not be forced to submit a Resolution Plan.

10. To appreciate the final list, we made a reference to sub-regulation (10), (11) & (12) of Regulation 36A of IBBI (CIRP) Regulations, 2016. The sub-regulation (10) provides that the RP shall issue a provisional list of eligible prospective Resolution Applicants within ten days of the last date for submission of Expression of Interest to the committee and to all prospective Resolution Applicants who submitted the expression of interest. In terms of sub-regulation 11 (ibid), any objection to inclusion or exclusion of prospective Resolution Applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list. Thereafter, in terms of sub-regulation (12), on considering the objections received under sub-regulation (11), the Resolution Professional shall issue the final list of the Prospective Resolution Applicants within ten days of the last date for receipt of objections, to the committee. From this, it is clear that the IBBI (CIRP) Regulations, 2016 provide a detailed mechanism for preparation of final list of PRAs. For convenient reference, the sub-regulations (10), (11) and (12) (ibid) are reproduced below:-



“(10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.

(11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list.

(12) On considering the objections received under sub-regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.”

11. On the face of the aforementioned provisions of the Regulation, if name of any individual is casually allowed to be added as partner or associate with any PRA, the sanctity of the Regulations would be defeated.

12. In our considered view, the addition of three individuals whose name was included in final list in terms of sub-regulation (12) above as PRAs is in violation of Regulation 36A (10 to 12) as also Regulation 39(1). Any person who is not mentioned in final list of PRAs could not be allowed to join any PRA, subsequent to finalization of the list to submit Resolution Plan. In the circumstances, we are unable to approve the Resolution Plan, particularly for the reason that the application for approval of the plan is not even pressed by the current RP. **The application is accordingly rejected. The IA-2205/2021 also stands disposed of, accordingly.**

13. It would be open to the RP to invite fresh Expression of Interest (EoI) within 2 weeks. On such invitation, it would be open to members of SRA to submit their Expression of Interest either individually/separately/jointly. In



any case, the RP would examine and verify the eligibility of each Applicant/PRA who express their interest with due deference to the provisions of IBC, 2016 and IBBI (CIRP) Regulations, 2016. He will also keep in view the other instructions issued on the subject by IBBI from time to time. In the wake, the period of CIRP is extended by 90 days.

IA-2067/2021, IA-3802/2021, IA-4486/2021: In view of the order passed in IA-875/2021 & IA-2205/2021, **the applications have become infructuous and are accordingly disposed of.**

**Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)**

**Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**

UPASANA/ ATUL RAJ