

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/187/2023

11th August, 2023

ORDER

In the matter of Ms. Poonam Basak, Insolvency Professional (IP) under Section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016, and Regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/INSP/2022/139/749/581 dated 08.05.2023, issued to Ms. Poonam Basak (hereinafter referred to as “IRP”) who is a professional member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with registration No. BBI/IPA-001/IP-P01234/2018-2019/11957.

1. **Background**
 - 1.1 The National Company Law Tribunal, Mumbai Bench, (AA) had admitted the application under section 9 of the Code for Corporate Insolvency Resolution Process (CIRP) of M/s Kings Electronics Private Limited (CD) *vide* Order dated 04.11.2019 and Ms. Poonam Basak was appointed as Interim Resolution Professional (IRP) *vide* the same order and later on appointed as RP on 23.12.2019. Mr. Bijendra Jha was appointed as an RP *vide* Order 23.11.2021 passed by the AA, replacing Ms. Poonam Basak.
 - 1.2 The IBBI, in exercise of its powers under section 218 of the Code read with regulations 3(2) and 3(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection and Investigation Regulations), appointed the Inspecting Authority (IA) to conduct the inspection to the CIRP of CD. Thereafter, the IA served a notice of inspection under Regulation 4(1) of Inspection and Investigation and Investigation Regulations on 01.04.2022. In response to the notice, Ms. Poonam Basak submitted the requested documents *vide* e-mail dated 02.05.2022. Subsequently, the IA *vide* e-mail dated 09.06.2022 submitted the Draft Inspection Report (DIR) to the Board and also shared the same with Ms. Poonam Basak. Response of the Ms. Poonam Basak to the DIR was received *vide* e-mail dated 01.07.2022. The IA submitted Inspection Report to IBBI on 05.07.2022.
 - 1.3 The IBBI issued the SCN to Ms. Poonam Basak on 08.05.2023 based on findings in the Inspection Report with respect role of Ms. Poonam Basak as an Interim Resolution Professional/ Resolution Professional of the CD. Ms. Poonam Basak submitted her reply dated 22.05.2023 to the SCN and she also submitted the additional written submission *vide* email dated 23.06.2023.
 - 1.4 The IBBI referred the SCN, the response of the IRP to the SCN and additional written submission, and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. The IRP availed an opportunity for a personal hearing through virtual mode before the DC on 15.06.2023, Mr. Aditya Nayyar, Advocate on behalf of ORTIS Law Offices for the IRP also appeared with the IRP.

2. **Alleged Contraventions, Submissions of IRP, and Findings**

The contraventions alleged in the SCN and submissions & additional submissions by Ms. Poonam Basak are summarized as under:

Contraventions

3. **Irregularity in the voting process**

- 3.1 The Board has observed that in the 6th meeting of the Committee of Creditors (CoC) dated 30.10.2020 an agenda to replace the RP was put for e-voting. The e-voting was conducted from 04.12.2020 to 14.12.2020 and the resolution was not passed, as it received only 56.1 % voting from the CoC. However, two major CoC members i.e. Union Bank of India (18.1% voting share) and Bajaj Finserv Ltd (14.7% voting share) raised concerns that their votes were not included in the 6th CoC meeting's e-voting. Bajaj Finserv Ltd *vide* email dated 15.12.2020 raised an issue regarding the non-counting of its casted vote and the Union Bank of India *vide* e-mail dated 04.12.2020 had sent the name of its authorized representative but Ms. Poonam Basak had refused to update the name of the authorized representative on the ground that voting had already started. In this regard, reply of Ms. Poonam Basak dated 01.07.2022 informed that after receiving complaints from the financial creditors, she coordinated with the e-voting vendor to investigate the matter, and it was informed that regarding Bajaj Finserv Limited, they never exercised the voting during the allotted time for voting and Union Bank of India had authorized a new representative's name whose name was not provided within the set timelines of 02.12.2022. Hence, the e-voting link could not be sent.
- 3.2 This issue was also discussed in the 7th CoC meeting dated 15.12.2020, where the two CoC members again raised the issue that their votes were not included and Ms. Poonam Basak assured them that she had already raised this concern with the e-voting vendor and will update the CoC on the outcome. Further, if possible, voting lines will be re-opened in case there are any technical errors at the vendor's end. However, it is observed that no action was taken by Ms. Poonam Basak to resolve the issue and she subsequently, filed a liquidation application before AA on 16.04.2021 on completion of 270 days without consulting the CoC members or conducting any further CoC meetings allowing the CoC members to exercise their voting in this regard. Therefore, CoC members were constrained to approach the AA and the AA *vide* its Order dated 23.11.2021 replaced Ms. Poonam Basak with Mr. Bijendra Kumar Jha as an RP.
- 3.3 Regulation 26(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) provides that the RP shall provide each member of the committee the means to exercise its vote by either electronic means or through an electronic voting system in accordance with the provisions of this regulation. However, Ms. Poonam Basak failed to provide reasonable access to vote by electronic means to the CoC members and they had to resort to filing an application before the AA to seek the replacement of Ms. Poonam Basak. This shows a clear malafide intention on the part of Ms. Poonam Basak as she obstructed the CoC members from exercising their voting rights.
- 3.4 In view of the above, the Board was of the prima facie view that Ms. Poonam Basak contravened sections 27 and 208(2)(a) & (e) of the Code, regulations 25(3) and 26(1) of CIRP Regulations, regulation 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clauses 1, 3 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Submissions made by Ms. Poonam Basak

- 3.5 Ms. Poonam Basak submitted that during the 6th CoC meeting dated 30.10.2020, agenda no. 8

was provided by the members of the CoC, to discuss the replacement of the RP and the legal advisor of CD. Ms. Poonam Basak further submitted that she appraised the members of the CoC to comply with terms of section 27(2) of the Code by providing the name and consent letter of the proposed RP. Further, it was appraised by the team of Ms. Poonam Basak to the CoC that the Code does not provide any rights to the CoC to appoint or replace the legal or other professionals but can only ratify the fees paid to them as it is a part of CIRP Cost.

- 3.6 Ms. Poonam Basak further submitted that in the matter of M/s Vallabh Textiles Company Ltd. Vs. CoC of M/s Vallabh Textiles Company Ltd. bearing Company Appeal (AT) (Insolvency) No. 1037 of 2022, the Hon'ble NCLAT in para 7 of the judgment stated that *"Section 27 requires the CoC to forward the name of proposed Resolution Professional to the Adjudicating Authority and the Adjudicating Authority is required to forward the name of the proposed Resolution Professional to the Board for its confirmation. The scheme of Section 27 does not indicate that Resolution Profession is to be made party and is to be issued notice before taking decision to appoint another Resolution Professional. Looking to the purpose and object of the I&B Code, where timeline is the essential factor to be taken into consideration at all stages, there is no warrant to permit a Lis to be raised by the Resolution Professional challenging his replacement by the CoC. The decision taken by the CoC is a decision by vote of 66% and when the decision is by votes of a collective body, the decision is not easily assailable and replacement is complete as per Scheme of Section 27 when the resolution is passed with requisite 66% voting share."*
- 3.7 Further, in the matter of Committee of Creditors vs. Varun Goel bearing IA No.209/2022 In CP (IB) No.174/ALD/2019 (Order dated 02.03.2023) passed by the Hon'ble NCLT, Allahabad Bench, in para.7 of the judgment stated that *"7. Further, Sub-section (2) of Section 27 provides that the CoC may, at a meeting, by a vote of (66%o) sixty-six percent of voting shares, propose to replace the RP appointed under Section 22 with another RP subject to written consent of the proposed RP. Therefore, from reading of Subsection (1) of Section 27, it is evident that the CoC can resolve to replace the RP and pass an appropriate resolution with the requisite majority for the same. In the present circumstances, in the 7th CoC meeting which was held on 28.06.2022 whereby the CoC approved the replacement of RP by 76.51% voting in favour of the aforementioned agenda and the proposed RP, Sh. Gagan Gulati has also provided his consent on the affidavit which has been filed on 22.08.2022. The said consent of the RP is reflected in the said affidavit at page no. 11. Therefore, the requirement of Section 27 (2) of the I&B Code,2016 is fully met."*
- 3.8 Ms. Poonam Basak submitted that the inordinate delay was made in the process of resolving the appointment of a new RP along with the other resolutions, for which the members of the CoC would collectively be held accountable. Ms. Poonam Basak also stated that upon receipt of the consent from the proposed RP, she, on 27.11.2020 held a conference call with the members of the CoC, agreeing to the resolutions that were to be put in for e-voting that: (1) new timelines for revised Form-G, (2) to ask a further extension of CIRP by 90 days, and (3) replacement of RP along with other matters to be discussed. The IRP sent an email to all CoC members on 30.11.2020 to confirm the details of their authorized representatives for e-voting to be replied by 02.12.2020 (cut-off time), upon receipt of which she on 03.12.2020, submitted the list of authorized representatives of the CoC to the e-voting vendor.
- 3.9 Ms. Poonam Basak stated that on 04.12.2020, the e-voting vendor had shared the e-voting link with all the listed authorized representatives along with the schedule and procedures to complete the voting by 14.12.2020. While the e-voting link was still active, one financial creditor, Union Bank of India (UBI), sent an email dated 04.12.2020 requesting to change the name and details

of its authorized representative. Ms. Poonam Basak in her additional written submission stated that importantly, in the said e-mail, UBI did not state that it had not cast its vote for the e-voting already initiated and/or that the said e-voting link was required to be sent to the e-mail Id of the new authorized representative. On 09.12.2020, Ms. Poonam Basak issued an email to the e-voting vendor enquiring whether new representative of UBI could be added to the voting list, post receiving a specific request from UBI to get the e-voting link sent to a new authorized representative of the UBI. Ms. Poonam Basak further stated that she had no control whatsoever over the electronic mechanism of e-voting.

- 3.10 Ms. Poonam Basak submitted that on 16.12.2020, she received a response from the e-voting vendor intimating that since the voting had already begun, it was not possible to change the email address of the authorized representative of UBI. In view of the above, it is clear that UBI was at fault for not providing details of its new authorized representative to the RP well within the specified time prior to the commencement of the e-voting, despite the RP having provided abundant and multiple opportunities to do so. She further submitted that even otherwise, the proviso to regulation 21(2) of the CIRP Regulations casts a mandatory obligation on each participant to inform the RP in advance of the meeting, of the identity of the authorized representative who will attend and vote at the meeting on its behalf. For ready reference regulation 21(2) is reproduced as “(2) *The notice of the meeting shall provide that a participant may attend and vote in the meeting either in person or through an authorized representative: Provided that such participant shall inform the resolution professional, in advance of the meeting, of the identity of the authorised representative who will attend and vote at the meeting on its behalf.*”
- 3.11 Ms. Poonam Basak stated that during the entirety of the e-voting process of 10 days, no communication was received from UBI regarding any issues faced by it with respect to e-voting or stating that it is unable to cast its vote. In respect of the allegations raised by Bajaj Finserv Ltd, it was submitted that the allegation that despite casting its vote, the same was not reflected in the e-voting result, is completely incorrect and malafide. When the said issue was raised by Bajaj Finserv Ltd. post conclusion of the e-voting on 14.12.2020, Ms. Poonam Basak, immediately and with the utmost promptness, on 15.12.2020, forwarded the issue raised by Bajaj Finserv Ltd. to the e-voting vendor for confirmation. The report of the e-voting result was in no manner prepared/altered/modified by her. It is an electronically generated report forwarded to Ms. Poonam Basak by the e-voting vendor.
- 3.12 Ms. Poonam Basak further stated that she in good faith, in the 7th CoC meeting, assured Bajaj Finserv Ltd. that she had already raised its concern with the e-voting vendor and was awaiting confirmation. She further, in good faith, assured Bajaj Finserv Ltd. that in case the e-voting vendor finds any technical error at its end due to which the votes could not be cast, the e-voting lines would be reopened. There was no objection raised by any member of the CoC on the said approach being followed by her. However, on 15.12.2020, she received a response from the e-voting vendor intimating that Bajaj Finserv Ltd. never exercised its voting right and no vote was cast by it. Therefore, it is abundantly clear that Bajaj Finserv Ltd. was deliberately and dishonestly misrepresenting by stating that it had cast its vote. Ms. Poonam Basak submitted that in any event, upon conclusion of the e-voting, it is mandatory that the voting portal be blocked, as stipulated in regulation 26(3) of the CIRP Regulations, and therefore, there was no lawful manner through which she could have allowed voting by the two lenders after closing of the voting period. For ready reference regulation 26(3) of the CIRP Regulations is reproduced hereunder; “(3) *At the end of the voting period, the voting portal shall forthwith be blocked.*”

- 3.13 Ms. Poonam Basak further submitted that in fact, since the CIRP period came to an end on 15.12.2020, in as much as no extension had been granted by the AA, and the CoC had thus become functus-officio, there was no time left for her to conduct any further CoC meetings or votings on any agendas. Reliance in this regard was being placed upon the decision of the Hon'ble National Company Law Tribunal, New Delhi passed in *Company Appeal (AT)(Insolvency) No. 772 of 2018 titled as 'ICICI Bank Ltd. v. Mr. Venkataramanarao Nagarajan, RP* wherein it was held as under: *"We find that no 'resolution plan' was approved by the 'committee of creditors' and in the meantime 270 days having lapsed on 5th of September, 2018, the 'Resolution Professional' filed a miscellaneous application for liquidation, which is accepted and order of liquidation has been passed. On such order, as the 'committee of creditors' ceased to exist and become functus officio even if we set aside the impugned order dated 31st October 2018 and remove Mr. V. Nagarajan, the order of liquidation cannot be declared illegal as more than 270 days having passed. For the reason aforesaid no relief can be granted. The appeal is dismissed.*
- 3.14 Ms. Poonam Basak stated that if she could have accepted the vote of Bajaj Finserv Limited and UBI post the expiry of the time granted to do so, or acted any differently than she did, the same may have led to a situation where allegations of collusion with the said lenders or contravention of the provisions of the Code and the regulations framed thereunder might have been cast against her by various other stakeholders. However she on 13.01.2021, by way of extreme and abundant caution, sent an e-mail to both IBBI and IIPI (Insolvency Professional Agency) explaining the entire scenario with respect to the vote of UBI and Bajaj Finserv Limited seeking guidance on the same since there was no precedent available with her dealing with such a scenario. But, no response to this communication was received by her.
- 3.15 Ms. Poonam Basak further submitted that the tabulation depicted below are prima facie results of e-voting concluded on 14.12.2020 and that only 61.19% of the CoC members had exercised their rights to vote for resolutions put forward. These results are achieved on the basis of the parameters mentioned under the Code.

Sr. No	Resolution ID	Voting shares in %			Required voting %	Voting result
		Yes	No	Abstain		
1.	<i>New Timelines for Revised Form – G</i>	59.28	2.34	0.20	51.00	<i>PASSED</i>
2.	<i>To seek further extension of CIRP by 90 days</i>	59.28	2.34	0.20	66.00	<i>FAILED</i>
3.	<i>Replacement of RP</i>	56.10	3.98	1.74	66.00	<i>FAILED</i>

- 3.16 Ms. Poonam Basak submitted that the UBI and Bajaj Finserv Ltd. being allegedly unsatisfied with the e-voting results had asked her to consider their voting sent by email for Resolution-3 i.e., for the "replacement of RP" and ratify the results accordingly. However, there is no such provision in the Code to consider the voting of CoC members via email after the disclosure of e-voting results. Moreover, it was legally not feasible for her to modify /rectify the original results once the e-voting has reached finality.
- 3.17 Ms. Poonam Basak further submitted that in the matter of *Anil Kohli, In re bearing No. IBBI/DC/86 of 2022* (dated 04.04.2022) it has been stated that *"3.3 The responsibilities of the*

IRP/RP under the Code require highest level of standards, caliber and integrity which inspire confidence and trust among the stakeholders and the society. The role of the RP is vital to the efficient operation of the insolvency and bankruptcy resolution process. The IP forms a crucial pillar upon which rests the credibility of the entire resolution process. For that purpose, the Code provides for certain duties, and obligations for undertaking due diligence in the conduct of the insolvency process to establish integrity, independence, objectivity and professional competence in order to ensure credibility of both the process and profession as well. Therefore, it becomes imperative for an IP to perform his duties with utmost care and diligence. Section 208(2) of the Code 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:

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

"3.4 The IP is to maintain integrity, by being honest, straightforward and forthright in all his professional relationships while conducting business during CIRP. His conduct has a substantial bearing on performance and outcome of the processes under the Code. He, therefore, is expected to function with reasonable care and diligence to ensure credibility of the process and at all times abide by the Code, rules, regulations, and guidelines thereunder.

(h) abide by the Code of Conduct specified in the First Schedule to these Regulations."

- 3.18 Ms. Poonam Basak submitted that with regard to the issue of irregularity in the voting process, it was submitted that sections 208(2)(a) and (e) of the Code require an RP to take reasonable care and diligence while discharging his/her duties and to perform his/her functions as specified in the Code. It is further submitted that the IRP had discharged her duties as provided in regulation 7(2)(h) IP Regulations read with clauses 1, 3, and 14 specified in the first schedule of IP Regulations, with full integrity and transparency before the CoC members and other professionals, hence abided by the code of conduct as specified by the Code, rules, regulations and, guidelines.

Analysis and Finding

- 3.19 The DC notes that as per list enclosed in the minutes of 6th CoC meeting dated 30.10.2020, the summarized composition of CoC with their voting shares is as under:

S. No.	Name of the financial creditor	Voting share
1.	Edelweiss Asset Restructuring Company Ltd.	56.1%
2.	Union Bank of India	18.1%
3.	Bajaj Finance Limited	14.7%
4.	State Bank of India	2.3%
5.	Shriram City Union Finance Ltd.	3.4%
6.	Other FCs (clubbed)	5.4%

- 3.20 In the 6th meeting of the Committee of Creditors (CoC) dated 30.10.2020 an agenda to replace the RP was put for e-voting. On perusal of the documents available on record, the DC notes the e-voting was conducted from 04.12.2020 to 14.12.2020 and the resolution was not passed, as it received only 56.1 % voting from the CoC. However, the votes of two major CoC members i.e. Union Bank of India and Bajaj Finserv Ltd having 18.1% and 14.7% voting share respectively were not taken into account.

- 3.21 The DC further notes that Union Bank of India (18.1% voting share) *vide* e-mail dated 04.12.2020 had sent the name of its authorized representative to Ms. Poonam Basak to whom link was to be sent for e-voting. The DC observes that instead on taking prompt action on the said mail, admittedly on 09.12.2012, Ms. Poonam Basak issued an email to the e-voting vendor enquiring whether new representative of UBI could be added to the voting list. Admittedly on 16.12.2020, she received a response from the e-voting vendor intimating that since the voting had already begun, it was not possible to change the email address of the authorized representative of UBI. Hence, it is clearly evident that on the request received from UBI for change of authorized representative for doing the voting, Ms. Poonam Basak failed to take any prompt action and after receipt of e-mail from UBI on 04.12.2020, only on 09.12.2012 simply made query from service provider whether new representative of UBI could be added to the voting list.
- 3.22 Furthermore, with regard to voting of Bajaj Finserv Ltd (14.7% voting share), the DC notes that Bajaj Finserv had sent an email to RP on 14.12.2020 stating that “*We have vote as per E-voting conducted on 4th Dec, 2020. But as per attached report we did not find our name.*” In response to that Mr. Poonam Basak has submitted that on 15.12.2020, she received a response from the e-voting vendor intimating that Bajaj Finserv Ltd. never exercised its voting right and no vote was cast by it.
- 3.23 Thereafter, the two major CoC members i.e. Union Bank of India and Bajaj Finserv Ltd having 18.1% and 14.7% voting share respectively, raised their concerns over E-voting results. The DC notes that in the minutes of 7th CoC meeting dated 15.12.2020, it is mentioned that “Mr. T. Deena Dayal of UBI and Ms. Sonakshi Dekate of Bajaj Finserv Ltd had raised their concern over E-voting results on the resolutions discussed and put for E-voting for previous meetings. Ms. Sonakshi had mentioned that she had cast the vote but was not counted. Mr. T. Deena Dayal mentioned that they were not allowed to vote. RP had assured all the CoC members that she had already raised this concern with E-voting vendor and will update the CoC on the outcome. If possible Voting lines will be re-opened for UBI in case there are any technical errors at vendors ends.” However, it is observed that no action was taken by Ms. Poonam Basak to resolve the issue and she subsequently, filed a liquidation application seeking her appointment as liquidator before AA on 16.04.2021 on completion of 270 days without consulting the CoC members or conducting any further CoC meetings allowing the CoC members to exercise their voting in this regard. On an application filed by CoC members, the AA *vide* its Order dated 23.11.2021 replaced Ms. Poonam Basak with Mr. Bijendra Kumar Jha as an RP.
- 3.24 The DC is of the view that due to technical grounds, votes of CoC members cannot be left uncounted and Mr. Poonam Basak cannot absolve herself of her duty as RP to make all efforts, due diligence and care by mere sending emails to vendor and relying on the same. Moreover, this issue was also discussed in the 7th CoC meeting dated 15.12.2020 and Ms. Poonam Basak assured the CoC to update about it and if possible, to re-open the voting lines in case there are any technical errors at the vendor’s end. However, Ms. Poonam Basak took no step for inclusion of vote of UBI and Bajaj Finserv. It may be noted that the RP is key professional and critical pillar under the Code to conduct the entire resolution process ensuring the credibility, transparency and objectivity in the process. It is duty of the RP to conduct the entire insolvency process with due diligence and utmost care in order to establish integrity, independence, objectivity, and professional competence in order to ensure the credibility of both the process and the profession. In the present case, as the resolution was for replacement of RP and Ms. Poonam Basak had received consent of new RP to be appointed on 27.11.2020, it is then became utmost necessary that the views of all the members of CoC had to be counted for resolution of replacement of RP. Despite the concerns were raised by CoC members, the DC notes that no further effort was made

by Ms. Poonam Basak to ensure that new representative of UBI be added in the voting list and to investigate and resolve the issue of non-inclusion of vote of Bajaj Finserv.

- 3.25 In view of the above, the DC finds that Ms. Poonam Basak has grossly failed to perform her duty to count the votes of all CoC members inter alia for replacement of RP and thus, Ms. Poonam Basak has contravened sections 27 and 208(2)(a) & (e) of the Code, regulations 25(3) and 26(1) of CIRP Regulations, regulation 7(2)(h) of the IP Regulations read with Clauses 1, 3 and 14 of the Code of Conduct.

4. Seeking appointment as liquidator bypassing COC

- 4.1 In the present matter, it is observed that in the 7th CoC meeting, Ms. Poonam Basak had informed that the CIRP period was ending on 15.12.2020 and it would not be advisable to continue with any CoC meeting or make an appointment thereafter. The relevant of the extract is as follows *“RP had also mentioned that period from end of CIRP period which is 15th December 2020 till the date of receipt of Extension order from honorable NCLT may be considered as non CIRP period until Extension is granted. Hence during this period conducting CoC meeting, Appointments and other decision making is not advisable.”*
- 4.2 Thereafter, on 16.04.2021 on completion of 270 days, without consulting the CoC, Ms. Poonam Basak filed a liquidation application, wherein she prayed to AA for confirming her appointment as liquidator. The prayer relating to the appointment of her as a Liquidator is as under *“2. Appoint the present Resolution Professional, Ms. Poonam Basak having registration number IBBI/IPA-001/IP-P01234/2018-2019/11957 as the Liquidator of the Corporate Debtor under Section 34(1) of the Code;”*
- 4.3 In view of the foregoing, it is observed that Ms. Poonam Basak was aware that the CoC was considering replacing her as an RP, hence, she bypassed the commercial wisdom of the CoC and directly filed an application for liquidation seeking her appointment as liquidator against the interest of the stakeholders. It is observed that the 7th CoC meeting was held on 15.12.2020 and the liquidation application was filed on 16.04.2021 despite the passage of 4 months no intimation as to the filing of the liquidation application or regarding the proposal of her appointment as liquidator was given to the CoC. Further, no CoC meeting was also conducted to enable the members to decide on the liquidator’s appointment and her fees. In this regard, regulation 39D of the CIRP Regulations provides that while approving a resolution plan under section 30 or deciding to liquidate the CD under section 33, the CoC may, in consultation with the RP, fix the fee payable to the liquidator, if an order for liquidation is passed under section 33. However, in the present matter the IRP did not provide any opportunity for the CoC to decide on the liquidator’s appointment and her/his fees hence the CoC members were constrained to approach AA wherein the AA allowed the application of the CoC in its order dated 23.11.2021 replaced Ms. Basak as RP.
- 4.4 In view of the above, the Board was of the prima facie view that the IRP has contravened sections 208(2)(a) & (e) of the Code, regulation 39D of CIRP Regulations, regulation 7(2)(h) of the IP Regulations read with Clauses 1, 2, 3 and 14 of the Code of Conduct.

Submissions made by Ms. Poonam Basak

- 4.5 Ms. Poonam Basak submitted that she has done extra due diligence while conducting the CIRP of the CD, she continued to perform her duties as an RP with meticulous care, at all times. Even upon conclusion of the CIRP period and knowing that certain members of the CoC had filed an application seeking her replacement before the AA, the IRP, instead of merely sitting back, continued issuing communications to Infinitree Infracon LLP (“IIP”) (one of the Prospective

Resolution Applicant who shown interest to acquire the CD) to try and ensure the successful CIRP of the CD. It is only when IIP stopped responding altogether then the IRP filed the liquidation application.

- 4.6 Ms. Poonam Basak further submitted that in view of the interest shown by the IIP, the IRP filed an application for the extension of the CIRP by 90 day and informed the IIP that when the extension order will be passed, she will inform the same to the IIP. The IRP has stated that even after the expiry of the CIRP period continues to follow the IIP with regard to the submission of the resolution plan. The IRP has actively communicated with the IIP regarding the submission of the resolution plan. In the absence of any progress with IIP despite repeated follow-ups by the IRP from November 2020 to March 2021, the IRP, on 16.04.2021, filed a liquidation application under section 33 of the Code before the AA apprising that since the CIRP period had ended, and further since the interested party had failed to come forward and propose any resolution plan, the application seeking extension of CIRP period had thus become infructuous and liquidation ought to be initiated against the CD.
- 4.7 Ms. Poonam Basak further submitted that in the interregnum, the CoC, in January 2021 had filed an application before the AA seeking (a) a replacement of the RP; and (b) an extension of the CIRP period. The AA vide order dated 23.11.2021 allowed the application filed by the CoC and replaced the IRP with one Mr. Bijendra Jha, and also extended the CIRP period by 90 days. Pertinently, the said order categorically records that the counsel for the CoC has agreed to not press any of the allegations against the IRP and is merely seeking her replacement. Ms. Poonam Basak further submitted that even upon the expiry of the CIRP period on 15.12.2020, the IRP in good faith and purely in the interests of the CD, waited for over 3 months for the interested party to submit a resolution plan, and repeatedly followed up with the interested party in this regard. Thus, no mala fide intent can be attributed to the IRP in any manner whatsoever. It is further submitted that Ms. Poonam Basak was statutorily mandated under section 25 of the Code to preserve and protect the assets of the CD. Thus, Ms. Poonam Basak could not have waited endlessly either for the submission of a resolution plan or to be replaced by another RP, more so when the Code specifically provides strict timelines to be followed.
- 4.8 Ms. Poonam Basak has also submitted that she filed the liquidation application as per the timelines prescribed under the Code to ensure that the assets of the CD are preserved and that the matter does not remain in abeyance indefinitely merely at the whims and fancies of the CoC. The IRP has placed reliance in this regard upon the decision of the Hon'ble NCLAT passed in *Company Appeal (AT)(Ins) No. 1402 of 2019 titled 'T Johnson v. St. John Freight Systems Limited and Ors.'* wherein it was held: *"Notwithstanding the fact that 'Resolution of Corporate Insolvency' is meant for survival of a Company as a Going Concern, it cannot be ignored that 'Timely Liquidation' is a palatable/desirable one too over an 'Indefinite Resolution Proceedings'. To put it precisely, when a 'Resolution Plan' was negated by the 'Committee of Creditors' and the time enunciated under Sec. 12 of the Code had come to an end, the time limit prescribed is to be followed in stricto sensu, failing which the aim of 'maximising' the 'value of Assets' of the Company will get defeated.*
- 4.9 Ms. Poonam Basak submitted that it is well-settled law that the timeline of 330 days to complete the CIRP can only be extended (that too only by the AA) in exceptional circumstances, where it is shown that only a short period is left for the completion of the CIRP. In the case at hand, Ms. Poonam Basak was left with no option but to file the liquidation application when the interested party had shown no interest and had not responded for months as also since the CoC had become functus officio. If the IRP could not have moved the application before the AA in a timely

manner, the complainants would have probably filed a complaint against the IRP stating that she kept delaying the CIRP process knowing fully well that there was no resolution forthcoming.

4.10 It is further submitted that her decision to file an application seeking liquidation of the CD is in strict compliance with section 33 of the Code, which lays down that in the absence of submission of any resolution plan before the expiry of the statutory timeline for completion of CIRP, there is no alternative but to initiate liquidation proceedings against the CD. In fact, in a similar case, the Hon'ble NCLAT in *Company Appeal (AT) (Insolvency) No. 276 of 2021 titled 'Dinesh Gupta v. Vikram Bajaj, Liquidator of Best Foods Ltd.'* had observed that where the CIRP period had come to an end, and there was no resolution plan before the AA, the resolution professional has no option but to file for liquidation of the CD in terms of section 33 of the Code. Relevant extracts of the said judgment of the Hon'ble NCLAT are as under: "87. *In the present case, indisputably, the CIRP period came to an end on 15.11.2019, and because of the direction dated 30.10.2019 issued by the 'Adjudicating Authority' the 'Resolution Professional' had no option but to file an IA. No. 412/2020 praying for a 'Liquidation Order' be passed as per Section 33(1)(a) of the Code.*"

4.11 Ms. Poonam Basak further placed reliance upon the decision dated 07.10.2022 of Hon'ble NCLT, New Delhi passed in CP (IB) 1367(PB)/2018 titled '*CICI Bank Limited v. M/s C & C Constructions*' wherein it was held: "9. *On perusal of the 25th CoC Meeting, we found that, a proper resolution for Liquidation of CD was not passed. Only the aspect of Liquidator fees, creation of the corpus to pay the Liquidation expenses etc., were taken up. But the RP has submitted that he has preferred this application under Section 33 "in view of the expiry of CIRP on 17.04.2021" and "in view of the rejection of the resolution plan". BE THAT AS IT MAY, in the background of multiple rounds of appeals and extensions in the instant case, the fact is that already a lot of time has elapsed since the CD has been admitted into CIRP, and the provision of Section 33(1)(a) of the Code is attracted.*

..Since the CIRP period has expired and this Adjudicating authority has not received a resolution plan under Section 30(6), then the Liquidation of the Corporate Debtor has to follow. There is no other alternative, perceivable or viable. We are therefore inclined to ALLOW the present application for Liquidation. "

4.12 In view thereof, Ms. Poonam Basak submitted that she was thus duty-bound to follow the stipulations of the Code and duly apprise the AA that there had been no submission of any resolution plan till date. It is submitted that the act of filing an application before a court of law seeking directions, that too in statutory compliance, cannot be penalised or deemed 'mala fide'. The IRP has also stated that in any event, the liquidation application was evidently subject to the decision of the AA. The AA, while passing its order on 23.11.2021, did not make any remark with respect to the liquidation application, and thus, there was evidently no violation of any provision of the Code.

4.13 Ms. Poonam Basak further submitted that there is no provision under the Code and/or the regulations framed thereunder which require the RP to either intimate the CoC or seek their permission before fulfilling her statutory duty under section 33 of the Code. In fact, section 28 of the Code lays down the list of actions that an RP may not take without prior approval of the CoC and the said provision does not provide that the RP needs to take approval of the CoC prior to filing an application for apprising the AA of the status of CIRP proceedings and seeking initiation of liquidation in terms of section 33 of the Code. Thus, no malafide can be attributed to the IRP for not adhering to a standard created by the CoC for their financial interests, where

the legislature, in its infinite wisdom, refrained from adding any such obligation on the IRP under the Code and/or the rules and regulations thereunder.

- 4.14 Ms. Poonam Basak submitted that even otherwise, there is no provision in the Code to hold a meeting with the CoC to discuss the issue of filing the liquidation application or the fee of the liquidator under regulation 39D of the CIRP Regulations, since the CoC had already become functus-officio upon expiry of the CIRP period, as per the law settled by the Hon'ble NCLAT. It is most respectfully submitted that regulation 39D of the CIRP Regulations is applicable in cases falling under section 33(2) of the Code, where the CoC resolves to liquidate the CD during the CIRP period, and is thus, not applicable to the case at hand which falls under section 33(1) of the Code i.e., where the liquidation proceedings are mandatorily initiated by the AA in the absence of any resolution plan by the time of expiry of CIRP period.
- 4.15 Ms. Poonam Basak further submitted that under Section 34(1) of the Code, the RP only has two alternatives before his/her filing an application seeking initiation of liquidation i.e., either to provide her written consent to act as a liquidator of the CD, or to refrain from providing such consent. There is no third alternative available with the RP to suggest a new name to act as a liquidator. Thus, there is no illegality in the IRP expressing her consent to the AA for acting as liquidator of the CD, which in any event, is obviously subject to the orders of the AA. It is pertinent to note that on the date of filing of the liquidation application, the IRP had not been replaced and was thus duty bound to continue her obligations as the resolution professional of the CD and follow the mandate of the Code.
- 4.16 Ms. Poonam Basak further submitted that the allegation that she sought to bypass her replacement by filing the application seeking liquidation of the CD is also without merit inasmuch as the filing of such an application has no bearing/nexus with her replacement. Reliance in this regard has been placed upon the decision of the **Hon'ble National Company Law Tribunal, New Delhi** passed in *ICICI Bank Ltd. v. Mr. Venkataramanarao Nagarajan, Resolution Professional (supra)* wherein it was held as under “On such order, as the ‘committee of creditors’ ceased to exist and become functus officio even if we set aside the impugned order dated 31st October, 2018 and remove Mr. V. Nagarajan, the order of liquidation cannot be declare illegal as more than 270 days having passed. For the reason aforesaid no relief can be granted. The appeal is dismissed.”
- 4.17 Ms. Poonam Basak submitted that in view of the above, it is clear that there was no violation of any provision of the Code and/or the rules and regulations framed thereunder, inasmuch as (a) it would have been entirely against the law as set down by the Hon'ble NCLAT, for the IRP to have conducted any meetings with the CoC to discuss the fee of the liquidator under Regulation 39D and/or for any other reason during the non-CIRP period i.e. when the CoC was functus officio; and (b) in terms of section 33 read with Section 12 of the Code the IRP was duty bound to apprise the AA of the absence of any resolution plan and/or interest by any interested party at the expiry of CIRP period and to thus file the liquidation application to ensure timely liquidation and preservation of the assets of the CD.

Analysis and Findings

- 4.18 The DC observes that Ms. Poonam Basak was aware that the CoC was considering replacing her as an RP and also for extension of CIRP period as these resolutions were placed in the 6th CoC meeting held on 30.10.2020. The DC further observed that two major CoC members i.e. Union Bank of India (18.1% voting share) and Bajaj Finserv Ltd (14.7% voting share) had raised concerns in the 7th CoC meeting held on 15.12.2020 that their votes were not included in the e-

voting of such resolution. Furthermore, Ms. Poonam Basak had submitted that the CoC, in January 2021 had filed an application before the AA seeking (a) a replacement of the RP; and (b) an extension of the CIRP period. In spite of such knowledge and pending the aforesaid application filed by CoC, Ms. Poonam Basak had filed an application for liquidation without any approval from the CoC and proposed her own name as liquidator. The filing for liquidation of the CD by Mr. Poonam Basak despite the fact the CoC had filed for the extension of the CIRP period is in direct contravention of the objectives of the Code. The prime objective of the Code is resolution and the Code empowers the CoC as a decision making body. The conduct of Ms. Poonam Basak over and above the CoC speaks volume about malafide intention of Ms. Poonam Basak in not resolving the CD and further liquidating the CD and appointing herself as a liquidator. The DC also observes that no opportunity has been provided to the CoC for deciding the appointment of liquidator and her/his fees. The submission of Ms. Poonam Basak that she had done extra due diligence while conducting the CIRP of the CD with meticulous care which led to bypassing the CoC is inconceivable, unjustified and not acceptable.

- 4.19 Under the scheme of the Code, based on the performance of the IP in conducting the affairs of the CD the satisfaction of the CoC is accorded. The creditors represented by a CoC holds the key to the fate of the CD and its stakeholders as it exercises its commercial wisdom in determining how the processes under the Code will be conducted. In view of gross irregularities observed in the e-voting of resolutions and conduct of Ms. Poonam Basak bypassing the CoC, the DC holds that Ms. Poonam Basak has contravened sections 208(2)(a) & (e) of the Code, regulation 39D of CIRP Regulations, regulation 7(2)(h) of the IP Regulations read with Clauses 1, 2, 3 and 14 of the Code of Conduct.

5. Order

- 5.1 In view of the foregoing discussion, the DC finds that Ms. Poonam Basak has contravened provisions of Code and Regulation framed thereunder by not counting the votes of two major CoC members i.e. Union Bank of India and Bajaj Finserv Ltd having 18.1% and 14.7% voting share respectively, for replacement of her as RP. It is to be noted that one of the members of the CoC having 56.1% had voted in favour of replacement of RP. Had the vote of either or both of the CoC member(s) i.e. UBI or Bajaj Finserv Ltd. been counted, Ms. Poonam Basak would have been replaced. The erroneous voting has benefitted Ms. Poonam Basak and served her personal interest. Due to her misconduct, the CoC members were constrained to approach the AA for replacement of RP and extension of CIRP period.
- 5.2 Moreover, Ms. Poonam Basak had bypassed the commercial wisdom of the CoC and directly filed an application for liquidation seeking her appointment as liquidator without approval of the CoC, despite knowing that the application filed by the CoC for extension of CIR period was pending. Consequently, the AA allowed the application of the CoC and replaced Ms. Poonam Basak as RP and appointed a new RP. The CIRP period has been extended by AA. AA had rejected the application filed by Ms. Poonam Basak for liquidation. The DC observes that due to gross irregularities in the conduct of CIRP process with malafide intent of Ms. Poonam Basak, the CIRP process of the CD has been delayed by a year. It is to bear in mind that inordinate delays in the CIRP process destroy the value of assets and make the performing assets non-performing.
- 5.3 In view of the above, the DC holds that Ms. Poonam Basak has grossly failed to act as per the objective and mandate of the Code i.e., resolution and CoC as decision making body. Thus, 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 Ms. Poonam Basak having registration

no. BBI/IPA-001/IP-P01234/2018-2019/11957 for a period of three years.

- 5.4 This Order shall come into force after 30 days from the date of this order.
- 5.5 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Ms. Poonam Basak is providing her services, if any, to take necessary steps for her replacement.
- 5.6 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Ms. Poonam Basak is enrolled as a member.
- 5.7 A copy of this order shall be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.
- 5.8 Accordingly, the show cause notice is disposed of.

Dated: 11th August 2023
Place: New Delhi

Sd/-
(Ravi Mital)
Chairperson, IBBI