



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)
CMA Bhawan, 3 Institutional Area,
Lodhi Road, New Delhi-110003

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DISCIPLINARY DIRECTORATE

Board of Discipline constituted u/s 21 of the Cost Accountants Act, 1959 The Institute of Cost Accountants of India

In the matter of –

Complaint No. Com/21-CA(100)/2020 –

Shri Shiv Shankar Seth -----Complainant

Vs.

Shri Subhash Kumar Kundra (M/4732)-----Respondent

QUORUM

1. Shri P.K. Pujari, IAS (Retd), Presiding Officer
2. CMA (Dr.) Ashish P Thatte, Member

ORDER

FACTS

1. The Disciplinary Directorate was in receipt of a complaint dated 8th October 2020 in Form I from Shiv Shankar Seth (complainant) against Shri Subhash Kumar Kundra (respondent) bearing membership number 4732 together with prescribed complaint fee, containing allegations under Clause 2, Part IV, The First Schedule which are reproduced below in verbatim:
 - (i) Corporate Insolvency Resolution Process ("CIRP") of M/s. Classic Bottle Caps Private Limited (Corporate Debtor) in (IB)- 2144(ND)/2019 commenced on 11.06.2020 in Hon'ble NCLT Principle Bench wherein Mr. Subhash Kumar Kundra who is a director of Primus Insolvency Resolution and Valuation Pvt. Ltd. an Insolvency Professional Entity (IPE) was appointed as Resolution Professional ("RP") vide order dated 11.06.2020.





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- (ii) U/S. 17 of Insolvency & Bankruptcy Code, 2016 ("IBC,2016") upon commencement of the CIRP, the RP is given the control of the management of the CD and is solely responsible for its affairs while the directors are suspended.
- (iii) The Complainant is the Promoter and the suspended director of the Corporate Debtor ("CD").
- (iv) The CD is a manufacturer & Exporter of Aluminium Closures, PVC Shrink Capsules and Flexible Packaging Products producing exclusively for Wines, Sparkling Wines, Liquor, Beverages, Pharmaceuticals & FMCG Products on Job work basis and at the time of commencement of the CIRP was a going concern and in the process of manufacturing goods for M/s. Metalcraft Bottle Seals LLP ("Metalcraft") as per the Job Work agreement dated 01.04.2019. By a mail dated 27.06.2020 (Annexed as Annexure II) it was informed by Complainant to RP about the pending job work of Metalcraft and plan for its implementation by 4-5 July, 2020. The Complaint also requested RP to confirm whether the complainant should accept other orders under job work or not in the name of the CD and sought his guidance for further operations since he is the in-charge of the CD.
- (v) Under S. 23 r/w. S.20 of Insolvency & Bankruptcy Code, 2016 ("IBC, 2016") it is the duty of the RP responsible to make every endeavor to protect and preserve the value of the property of the CD and manage the operations of the CD as a going concern. But in this case, the RP team on 28th June, 2020 stopped the manufacturing process and dispatch of the produced good to the customers of the CD which is a registered MSME with some ulterior & vested motives best known to the them. This conduct of RP by stopping the manufacturing process at factory site and withholding the dispatch of produced goods, has failed to comply with the provision and follow the spirit of the law. His actions have caused the diminution in the value of assets.
- (vi) U/S. 25 of IBC, 2016 it is the duty of RP to preserve and protect the assets of the CD, including the continued business operations of the CD.





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But inversely, RP is keeping the manufacturing site closed and hindering the dispatch of good which has resulted in diminution in values of the machinery and other assets lying the production unit and due to shutting the business activities off of corporate debtor production worker and other managerial staff are idle which is direct failure of RP to preserving and protecting the assets of corporate debtor and continuing the business operation of CD.

- (vii) That in reply of above mail of Complainant, he received a mail dated 29.06.2020 from RP in which it was asked for various information and details of the CD for which the complainant responded via his mail dated 02.07.2020 in which the complaint elaborated that every information asked for by the RP has either already been provided to him or is already in his control under tally data or in factory itself which is under the control of RP.

Further the complainant in his mail dated 02.07.2020 pointed out that hindering the production of the company is endangering the interest of all stakeholders of the company. (Copy of the mail dated 29.06.2020 and 02.07.2020 is annexed herewith as Annexure III)

- (viii) The Complainant via mail dated 03.07.2020 (annexed herewith as Annexure IV) requested the RP to allow the production and dispatch of the good on urgent basis as it is highly required to maintaining the continuity of operation and keeping the CD as going concern. The RP via his mail dated 04.07.2020 (annexed herewith as Annexure V) tried to divert the above request of the complainant, about starting the production and dispatching the manufactured good to Metalcraft and other clients/customers of the corporate debtors by pointing out the unavailability of the sufficient information about the company though the complainant had already answered about his requirement via his mail dated 02.07.2020 (Annexure III).
- (ix) For the purpose of more clarification the complainant is annexing a list herewith as Annexure VI for status of availability and provisioning of information sought by the RP from the complainant.
- (x) The RP through various e-mails claimed that the production was halted due to non-availability of public transport because COVID- 19 pandemic. However, the CD had provided pick & drop services for the workers, which as per the instructions of the RP was stopped. The complainant via his mail dated 06.07.2020 (annexed herewith as Annexure- VII) pointed out the aforementioned issues & requested for completion of pending orders.





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- (xi) Also, it was pointed out the salary of workers and managers was pending for month of June 2020 because which they have stopped to come the office and restricted to the dispatching and production process.
- (xii) That with a malicious intention to deviate the actual matter of concern about dispatching the manufactured good, the RP via his mail dated 11.07.2020 at 10:45 AM requested to provide the information and details already served and under his control and clarified by the complainant in his various mails. In reply of the above mail, the complainant via his mail dated 11.07.2020 at 3:49 PM clarified the availability and provisioning of the details asked for.

Further, the complainant provided the ledgers of receipt and payment regarding the job work orders and again requested to complete the obligation of corporate debtor towards its client and customers. Also, in the absence of receiving any response from the end of RP, the complainant sent a reminder cum request mail dated 15.07.2020 at 09:29 AM and 12:13 PM to allowing the dispatch of goods to Metal craft.

Copy of the mails dated 11.07.2020 at 10:45 PM, 3:49 PM and 15.07.2020 at 09:29 AM and 12:13 PM are annexed herewith and marked as Annexure VIII.

- (xiii) In responses to the above mails dated 11.07.2020 and 15.07.2020 of complainant the RP again raised demand of information in response to which the complainant sent a para-wise reply mail dated 18.07.2020 in which he provided all required data to bring ease in the CIRP of the CD and the complainant requested to protect the goodwill of the company by performing its contractual obligation with the client through timely dispatch of orders received and pending for delivery.

That after providing all the details by the complainant, the RP is trying to create unnecessary delay by repeatedly asking the information already with him. The same was tried in his mail dated 19.07.2020 in reply of which the complainant via his mail dated 25.07.2020 clarified that every information been asked by the RP has always been provided to him and since the whole tally data is under his control, all the details and record he is sougning may obtain from there itself.

Further, the complainant in his above-mentioned mail clarified about the manner of receiving the payments form Metalcraft and others.





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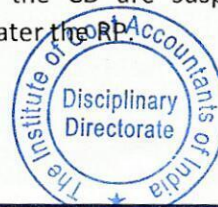
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The complainant reminded of the salary of the workers is due for the months of March, April, May and June which is creating an unreasonable cost to the COC members. It was requested to RP to instruct the further course of action under the business activity of CD.

- (xiv) That even after providing all information, details & support sort by the RP from complainant, the RP via his mail dated 27.07.2020 made baseless allegation about hiding business transactions and diversion of business funds. The complainant in sent a para-wise reply mail dated 03.08.2020 of every contention made by the RP which he stated that all the objections raised are already discussed and answered by the complainant and all these acts of the RP are not acceptable and are causing an unnecessary delay towards business affairs of the CD. Again, the complainant made detailed reply of the para as required in the referred mails. Copy of the mails dated 27.07.2020 and 03.08.2020 are annexed herewith and marked as Annexure X.
- (xv) Under Clause 14 of Code of Conduct specified by IBBI in IBBI (Insolvency Professional) Regulations, 2016 the RP must not act malafide or be negligent while performing his functions and duties under the Code. But the behavior of RP by repeatedly asking for the information already provided by complainant or under his control is malafide and inconsistent with the code of conduct. He has not tried to resolve the issue even once and has rather complicated it.
- (xvi) U/S. 208(2)(a) and (e) of IBC, 2016 the RP is required to take reasonable care and diligence while performing his duties and perform his functions in such manner specified.
- But under the given circumstances the RP has caused considerable loss to the all stakeholders including CD, its employees creditor and other stakeholder of the CD before deciding the lock down of the business operations of CD.
- (xvii) Under Regulation 7(2)(a), (h) and (i) of IBBI (Insolvency Professional) Regulations, 2016 these sub-regulations, the RP is responsible to abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the Insolvency Professional Agency with which he is enrolled, abide by the Code Conduct specified in the First Schedule to these Regulations; and abide by such other conditions as may be imposed by the Board.
- (xviii) That the complainant has fully cooperated with the RP without receiving any cooperation from the RP. Under IBC, 2016 as soon as the CIRP commences and an Interim RP is appointed the directors of the CD are suspended the control and management vests with the Interim RP and later the RP





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Therefore, under the IBC, 2016 and The Cost and Works Accountants Act, 1959 and the Rules & Regulations thereunder RP being a professional, while performing his duties must exercise utmost care and due diligence.

However, as per the aforementioned acts and omissions of the RP it is clear that the RP was negligent in performing his duties which cost the CD to lose its goodwill, customer relation & future business opportunities. The orders of the complainant worth Rs. 52,03,847/- have been affected and also material of complainant given to corporate debtor worth Rs. 40 lakhs approx. for Job work has struck. Also, with closing of operations of the CD, it has costed the jobs and livelihood of the workers and managers working therein.

It has been the objective of the Government of India to maintain the economy especially by revival of MSMEs making it an obligation for all Professionals registered with various Institutes to aim towards this objective. However, it is clear from the acts of RP that they have been derogatory in nature for the CD. Such acts of the RP have brought disrepute to the profession.

The complainant prayed before the Disciplinary Directorate that Mr. Subhash Kumar Kundra, respondent be treated to be guilty of misconduct.

2. On receipt of the complaint in Form I dated 8th October 2020 of the complainant, the instant complaint was registered by the Disciplinary Directorate after it was found to be in order and the same proceeded with in the manner as prescribed in Chapter III of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. A unique complaint number Com/2-/CA(100)/2020 was allotted to the complaint.
3. The complaint was sent to the respondent vide letter Ref No. G/DD/COM-CA(100)/(4732)/1/11/2020 dated 12th November 2020 requesting for his response in the matter by way of a written statement within 21 days from the date of service of the letter.. The respondent, by his letter dated 23rd December 2020 forwarded his written statement in due compliance with Rule 8(3) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 which is reproduced below in verbatim:

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- i. By way of the captioned letter, it has been intimated to the undersigned that the Disciplinary Directorate of the Institute of Cost Accountants of India is in receipt of the Complain dated 8th October, 2020 filed by Mr. Shiv Shankar Seth and the same has been registered as Complaint No. Com/21-CA(101)/2020. In pursuance thereto, the undersigned has been directed to file reply to the said complaint.
- ii. Without going into the merits of the complaint filed by the Complainant, it is hereby stated that Disciplinary Directorate of the Institute of Cost Accountants of India has no jurisdiction to entertain the said complaint against the undersigned, much less register the same or seek a written statement thereto.
- iii. The complaint constitute baseless and unsubstantiated allegations against the undersigned who is merely a director to the Insolvency Professional Entity providing support services with approval of Committee of Creditors to Resolution Professional of the Company, M/s. Classic Bottle Caps Pvt. Ltd. ('Company'). The Complainant is a member of suspended Board of Directors/promoter of the Company. All the allegations made against the undersigned are in relation to alleged misconduct in contravention of, and alleged violations of the provisions of, the Insolvency and Bankruptcy Code, 2016 ('Code') and the Regulations thereof.
- iv. Attention is drawn to Section 63 and Section 231 of the Code which are reproduced hereunder for ready reference –

63. Civil Court not to have jurisdiction –

No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil court not to have jurisdiction.





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231. Bar of jurisdiction. –

No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority or the Board is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority or the Board under this Code.

- v. From perusal of the above provisions of the Code, it is evident that no civil court or authority has jurisdiction in respect of any matter in which the Adjudicating Authority or the Board is empowered to pass an order.
- vi. Further, attention is drawn to Section 60(5) of the Code wherein the complainant has the remedy to approach the Hon'ble Adjudicating Authority in order to seek redressal of his grievances against the undersigned and Mr. Subhash Kumar Kundra, who is discharging his duties as a Resolution Professional.
- vii. In fact, the Complainant has already filed an application before the National Company Law Tribunal, New Delhi Bench under Section 60(5) of the Code wherein identical allegations have been made by the Complainant as made in the complaint filed before this Disciplinary Directorate. The same is pending adjudication as on date.
- viii. Further, attention is drawn to Section 196 of the Code which enumerates the powers and functions of the Insolvency and Bankruptcy Code, 2016 ; Section 204 of the Code which enumerate functions of Insolvency Professional Agencies; Section 217 of the Code which provides for complaints against the insolvency professional; Section 218 of the Code which provides for investigation into complaints against the insolvency professional; Section 219 of the Code which provides for show cause notice; Section 220 of the Code which provides for Disciplinary Committee.





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- provisions of Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional agencies), Regulations, 2016; provisions of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016; and the provisions of Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017.
- ix. The provisions of Code and the Regulations made therein provide for an entire mechanism wherein complaints against the Insolvency Professional can be entertained and adjudicated upon by the Insolvency and Bankruptcy Board of India as well as the Insolvency Professional Agency with which the Insolvency Professional is registered. It is an exhaustive disciplinary mechanism.
- x. The Complainant has the remedy to approach the Insolvency and Bankruptcy Board of India and/or the Insolvency Professional Agency in order to seek redressal of his alleged grievances and the said bodies are empowered to take action and pass orders against the undersigned.
- xi. The complainant and his associates had filed complaints against the undersigned before Insolvency and Bankruptcy Board of India as well as ICSI Institute of Insolvency Professional which is one of the insolvency professional agencies constituted under the provisions of the Code on the identical grounds and facts.
- xii. ICSI Institute of Insolvency Professional has closed the complaint of the complainant finding no merit therein while observing that "The committee observed that the complainant failed to provide any substantive evidence to substantiate the allegations against Mr. Sanjay Gupta. Therefore, the committee decided to close the matter." Further, no action has been taken by Insolvency and Bankruptcy Board of India on the complaint of the complainant. Therefore, the matter stands concluded and nothing incriminating whatsoever has been found against the undersigned.





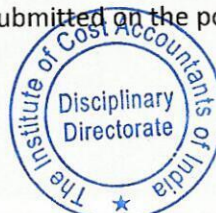
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- xiii. Enclosed herewith are the mails received from ICSI Institute of Insolvency Professionals with the orders passed in the complaint of complainant and its associate marked as Exhibit-1 (colly).
- xiv. In view of the facts and provisions of law stated above, it is reiterated that Disciplinary Directorate of the Institute of Cost Accountants of India has no jurisdiction to entertain the complaint against the undersigned. In fact, law provides for a specific bar on the jurisdiction of the Disciplinary Directorate of the Institute of Cost Accountants of India to entertain the complaint of the Complainant. Since it is settled position of law that Insolvency and Bankruptcy Code is a complete code in itself and the remedies provided by it holistically covers all the matters under it; if the complaint is entertained, the same will be in violation of provisions of law.
- xv. Further, Complainant being a disgruntled member of the suspended Board of Directors of the Company is merely indulging in forum shopping. First, he had approached the NCLT, New Delhi, then IBBI, ICSI Institute of Insolvency Professionals and now the Disciplinary Directorate. It is further brought to the notice of this Disciplinary Directorate that all complaints have been filed on identical allegations after the Resolution Professional of the company reported the issues of diversion of funds and non-cooperation by the complainant to the Hon'ble Adjudicating Authority by filing two interlocutory applications, over which the Hon'ble Adjudicating Authority has taken note of conduct of Complainant. It is a settled law that the practice of forum shopping should be discouraged and condemned. The complaint is liable to be dismissed on this ground itself.
- xvi. The present reply is without prejudice to the response to the allegations of the complainant. Present reply may not be construed as admission of any allegation in the complaint. Since, the Disciplinary Directorate has no jurisdiction at all to entertain the present complaint, the present reply is being submitted on the point of jurisdiction only.





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The complaint cannot be considered on merits by the Disciplinary Directorate of the Institute.

4. The written statement of the respondent was forwarded to the complainant vide letter Ref No. G/DD/Com-C-100/2/1/2021 dated 12th January 2021 for rejoinder of the complainant. No rejoinder, has, however, been received from the complainant.
5. On perusal of the complaint and the written statement of the respondent it is evident that the complainant has already filed an application before the NCLT, New Delhi Bench under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 wherein identical allegations have been made by the complainant as in the complaint filed before the Disciplinary Directorate.

Section 63 of Insolvency and Bankruptcy Code, 2016 which is reproduced below:

"No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil Court not to have jurisdiction"

It may be mentioned that Section 231 of Insolvency and Bankruptcy Code, 2016 also contains similar provisions in this regard. Since NCLT is already having jurisdiction in the matter, the proceedings in this matter may be kept in abeyance.

6. In the 34th meeting of the Board of Discipline, Director (Discipline) apprised the Board members that Section 231 of Insolvency and Bankruptcy Code, 2016 also contains similar provisions in this regard. Since NCLT is already having jurisdiction in the matter, the Board decided to keep the proceedings in this matter abeyance.

It may be mentioned here that the rejoinder has not been forthcoming from the complainant's end, despite repeated reminders. A letter Ref. No G/DD/Com-CA(100)/4/01/2022 dated 24th January 2022 has been sent to the complainant stating that the complainant has already filed an application before the NCLT, New Delhi Bench under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 wherein it appears that identical allegations have been made by the complainant as in the complaint filed before the Disciplinary Directorate. The complainant has been requested to inform the present status of the case filed against the respondent in the NCLT. No response has been received till date from the complainant.

7. In the 47th meeting of the Board of Discipline held on 15th January 2024, the Director (Discipline) apprised the Board that on a similar complaint filed by the complainant against the respondent with the Institute of Insolvency Professionals of the ICSI, the respondent appears to have been acquitted by the IPA of the ICSI.





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The Board directed Director (Discipline) to communicate with the IPA of the ICSI seeking information in the matter together with the present status of such complaint.

8. In accordance with such directives of the Board, letter No. G/DD/Com-CA(100)/ICSI/1/01/2024 dated 30th January 2024 was addressed to the Grievance Redressal Officer, ICSI Institute of Insolvency Professionals requesting the IPA of the ICSI to apprise the Disciplinary Directorate as to the following:
- (1) Whether any complaint was filed by one Shri Shiv Shankar Seth against Shri Subhash Kundra, Insolvency Professional, with the IPA of the ICSI in the CIRP of Classic Bottle Caps Private Ltd?
 - (2) If so, what is the present status thereof?
 - (3) In case, the matter was disposed by the IPA of the ICSI, the relevant decision/order of the IPA be communicated.
 - (4) Has the complainant filed any petition before the NCLT on the same cause of action against the respondent?
 - (5) If so, the details thereof.
9. As no response was forthcoming a reminder by way of letter No. G/DD/Com-CA(100)/ICSI/2/02/2024 dated 16th February 2024 have been sent to the Grievance Redressal Officer, ICSI Institute of Insolvency Professionals requesting for the information sought for at their earliest convenience. The speed post receipt shows that both the letters have reached the office of the IPA of the ICSI
10. The respondent, in the meantime vide email dated 21st February 2024 at or around 12.17AM made the following submissions which is reproduced in verbatim:
- I. The undersigned had received complaint registered by Institute of Cost Accountants of India having reference number G/DD/Com-CA(100)/(4732)/1/11/2020 ('captioned complaint') which has been filed by Promoter/member of suspended Board of Directors of Classic Bottle Caps Private Limited (hereinafter 'Corporate Debtor') on 26.11.2020 and registered as Complaint No. Com./21-CA(100)/2020, inter alia alleging that:





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(xvi) Under Regulation 7(2)(a), (h) and (i) of IBBI (Insolvency Professional) Regulations, 2016 these sub-regulations, the RP is responsible to abide by the Code, Rules, Regulations and guidelines thereunder and the bye-laws of the Insolvency Professional Agency with which he is enrolled, abide by the Code of Conduct specified in the first Schedule to these Regulations, and abide by such other conditions as may be imposed by the Board.”

- II. The undersigned had submitted his response vide letter dated 23rd December 2020
- III. That without prejudice to what is being submitted herein below the undersigned reiterates at the outset that Disciplinary Directorate of the Institute of Cost Accountants of India has no jurisdiction to entertain the said complaint against the undersigned, much less register the same or seek a written statement thereto.
- IV. This may also be taken note of that the Complainants herein had also approached both IPA with which the undersigned is registered as Insolvency Professional i.e. ICSI-IIIP and the IBBI i.e. the authorities having the jurisdiction under the Code to entertain complaints regarding the matters under the Insolvency and Bankruptcy Code, 2016.
- V. As intimated earlier, the ICSI-IIIP had closed the complaint immediately and no step has been taken by the Ld. Board post submission of the reply by the undersigned. These facts in detail are not reiterated for the sake of brevity.





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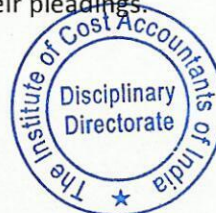
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- VI. The essence of the complaint filed by Mr. Shiv Seth, Promoter of Classic Bottle Caps Private Limited is that the undersigned did not perform the Job Work Agreement dated 01.04.2019 between CD and Metal Craft Bottle LLP and stopped the dispatched of the goods.
- VII. The undersigned however brings to the knowledge of this Ld. Authority that the undersigned had filed an Interlocutory Application being I.A. No. 3316/2020 wherein the undersigned had sought avoidance of a transaction which had been entered into between the Corporate Debtor through Complainant and Metal Craft Bottle Seals LLP (Job Work Provider) before commencement of CIRP; under the garb of which the Complainant and his father received Job Work Charges from Metal Craft Bottle Seals LLP due to the Corporate Debtor in their personal accounts. Pertinent to mention here that the Complainant filed the instant complaint as a counter blast of not allowing him to further defraud the creditors of the Corporate Debtor.
- VIII. The undersigned had also brought this to the knowledge of the Hon'ble NCLT as to how the Complainants herein in connivance of the Metal Craft Bottle Seals LLP carried on the operations of the Corporate Debtor during the period of CIRP when the IRP viz Mr. Rattan Chaudhary was in charge however, not a single penny came to the bank account of the Corporate Debtor. The Hon'ble NCLT was also appraised that the Complainants herein were making illegal requests for dispatch of the goods without giving accounts of the invoices raised and the amounts received against the same. This is to be taken note of that Mr. Shiv Seth, Sanjeev Seth and Metal Craft all were party respondents in the Application being I.A. No. 3316/2020.
- IX. The Complainant herein being Mr. Shiv Seth, Mr. Sanjeev Seth as well as Metal Craft Bottle Seals LLP made the identical allegations during the hearings of the aforesaid IA 3316/2020 and also alleged the same in their pleadings.





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DISCIPLINARY DIRECTORATE

Moreover, Metal Craft Bottle Seals LLP attached one set of complaint with the identical allegations to its reply. The Hon'ble NCLT heard both the parties in the Application in detail and passed a detailed order dated 21.08.2023 running into 61 pages; the operative portion of the order directs as below:

"23. The term 'asset' as referred to in section 45 has not been defined under IBC, however, the term 'property' as referred to in section 45 is defined under Section 3(27) of IBC 2016, which inter alia, includes 'money'. Hence, we conclude that the job work revenue of Rs. 69.93 lakhs of CD, which was deposited by Respondents NO 1, 2 and 4 into their own accounts at the cost of CD and its sole Creditor the City Union Bank, is an undervalued transaction under section 45 and in terms of Section 48(1)(a) of IBC 2016, we allow the prayers (b) and (c) of the applicant with an interest @ 10%, and direct the Respondents No. 2 and 4 to contribute jointly a sum of Rs. 69.93 Lakhs (sixty-nine lakhs ninety-three thousand) only to the CIRP account of Corporate Debtor as to be specified by the Applicant/RP within 30 days from the date of this order.

24. The application accordingly stands allowed.

The Hon'ble NCLT also observed that the Complainant/Promoters of the Classic Bottle Caps Private Limited was using the Corporate Debtor's facility for their own personal interest during the Corporate Insolvency Resolution Process till the time the undersigned took over the charge as RP and directed that:

25. Lastly, this Adjudicating Authority vide order dated 13.02.2020 initiated the CIR process against the Corporate Debtor and appointed Mr. Rattan Chaudhry IP (IBBI/IIPA-002/IP-N00325/2017-2018/10930) as IRP of the CD. Subsequently, on the recommendation of COC, he was replaced by Mr. Subhash Kumar Kundra as RP vide order dated 11.06.2020 of this Adjudicating authority.





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Mr. Subhash Kumar Kundra/the Applicant herein, who took over the charge of the CD on 18.06.2020, as noted in para 6.3 above, has stated that "during a visit on 18.06.2020, the Applicant/RP observed nearly 70 workmen working at the plant of the Corporate Debtor situated at Palwal. On inquiry about the work being performed at the plant, the Promoters shared a copy of the agreement dated 01.04.2019 between CD and R3 on 22.06.2020 which was unsigned and unstamped. No board resolution could be provided by the Promoters." It is not clear how and under what circumstances, the plant premises of the CD continued to be utilised by the promoters/suspended Directors despite the CD already being into CIRP since 13.02.2020 and under the control of IRP for a period of more than 04 months. Let IBBI enquire into the matter after providing the due opportunity of hearing to the IRP and take action, as deemed appropriate if required.

- X. This is also pertinent to mention here that Complainant served and e-filed an application under Section 60(5) having diary number 0710102090172020 pleading the same allegations. The Complainant's application is pending removal of defects.
- XI. Therefore, the complaint filed with this authority becomes infructuous as the allegations levelled by the Promoters of the Classic Bottle Caps Private Limited became part of the pleadings of I.A. No. 3316/2020 and have been adjudicated upon. The undersigned submits that the complaint be closed accordingly.
- XII. The instant reply is in response to the letter of the dated January 16th 2024 in order to apprise on the status of the matter before the Hon'ble NCLT and is not a reply to the complaint itself. Further, the instant reply is subject to all rights and contentions of the undersigned.





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11. From the above, it appears that the Hon'ble NCL, Delhi Bench has allowed the application filed by the respondent.
12. In the 48th meeting of the Board of Discipline held on 28th February 2024, the Board directed Director (Discipline) to communicate with the Grievance Redressal Officer, ICSI Institute of Insolvency Professionals one final time requesting for the following information:
 - (i) Whether any complaint was filed by Shri Shiv Shankar Seth against Shri Subhash Kundra, Insolvency Professional, with the IPA of the ICSI in the CIRP of Classic Bottle Caps Private Ltd?
 - (ii) If so, what is the present status thereof?
 - (iii) In case the matter has been disposed by the IPA of the ICSI, the relevant decision/order of the IPA.
 - (iv) Has the complainant filed any petition before the NCLT on the same cause of action against the respondent?
 - (v) If so, the details thereof.
13. No response was received. However, the respondent had, in his written statement enclosed a letter ICSI-IIP/GRC/2020/11 dated 3rd December 2020 regarding closure of the complaint by their Grievance Redressal Committee at their 13th meeting held on 17th November 2020. In the said closure letter, it was stated that "In these circumstances, the matter shall be treated as closed".
14. In the 48th meeting of the Board held on 28th February 2024, Director (Discipline) was directed to forward to the complainant a copy of the response dated 21st February 2024 of the respondent. This was duly complied with vide letter No. G/DD/Com-CA(100)/(101)/5/03/2024. The letter has reached the destination on 23rd March 2024 at or around 14.46 hrs.

FINDINGS

15. The Board noted that the NCLT New Delhi Bench (Court II) in the Company Petition No. (IB)-2144 (ND)/2019 vide Order dated 21.08.2023 has decided in favour of the respondent. Accordingly, following the principle of Higher Court, the Board in its 49th Meeting held on 1st May, 2024, decided that the instant complaint be quashed and the proceedings against the respondent be dropped.





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ORDER

16. Accordingly, the proceedings against the respondent are dropped and the matter is closed in accordance with Rule 9(3)(a) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
17. Thus, the matter stands disposed of.

Dated:- October 25, 2024

A.P. Thatte

CMA (Dr.) Ashish Thatte
Member

Shri P.K. Pujari, IAS (Retd.)
PRESIDING OFFICER

