

## INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

### (Disciplinary Committee)

No. IBBI/DC/289/2025

24<sup>th</sup> June 2025

### ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI/C/2023/00993/910/987 dated 02.12.2024, issued to Mr. Pankaj Ramandas Majithia, 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/Board) with Registration No. IBBI/IPA-001/IP-P00452/2017-2018/10795.

#### 1. Background

- 1.1. The National Company Law Tribunal, Mumbai Bench (AA) had admitted the application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating corporate insolvency resolution process (CIRP) of Shree Ram Urban Infrastructure Private Limited (“Corporate Debtor” / “CD”) *vide* order dated 06.11.2019 and appointed Mr. Srigopal Choudhary as Interim Resolution Professional (IRP) who was later confirmed as Resolution Professional (RP). Subsequently, the AA *vide* order dated 22.12.2022 appointed Mr. Pankaj Ramandas Majithia as RP in the matter.
- 1.2. The Board received a complaint against Mr. Pankaj Ramandas Majithia with regard to his conduct as RP of the CD i.e., Shree Ram Urban Infrastructure Private Limited. The Board, after examining the complaint, ordered investigation under section 218 of the Code read with IBBI read with Regulation 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017 (“Inspection and Investigation Regulations”) and appointed an Investigating Authority (IA) to investigate the conduct of Mr. Pankaj Ramandas Majithia with reference to the allegations raised in the complaint.
- 1.3. The IA served a notice of investigation under regulation 8(1) of the Inspection and Investigation Regulations on 27.09.2023. The IA after examining the *complaint vis-a-vis* the reply of Mr. Pankaj Ramandas Majithia submitted the Investigation Report to the Board.
- 1.4. Based on the findings of the Investigation Report, the Board formed a *prima facie* opinion that Mr. Pankaj Ramandas Majithia has contravened provisions of the Code and Regulations made thereunder and therefore issued SCN to Mr. Pankaj Ramandas Majithia on 02.12.2024.
- 1.5. The SCN and its response by Mr. Pankaj Ramandas Majithia were referred to the Disciplinary Committee (DC) for disposal. Mr. Pankaj Ramandas Majithia availed the opportunity of personal hearing before the DC through virtual mode on 25.03.2025 and 22.05.2025. Mr. Pankaj Ramandas Majithia also submitted his additional written

submissions on 01.04.2025, 28.05.2025 and 09.06.2025.

- 1.6. The DC has considered the SCN, the reply to SCN, oral and written submissions of Mr. Pankaj Ramandas Majithia, and proceeds to dispose of the SCN.

## **2. Alleged Contravention, submissions of Mr. Pankaj Ramandas Majithia and findings of the DC.**

The contravention alleged in the SCN, submissions by Mr Pankaj Ramandas Majithia, analysis and findings of the DC are summarized as follows:

### **Failure to preserve, take custody and protect the assets of the CD.**

- 2.1. A Memorandum of Understanding (MoU) was executed between the CD, Vijay Infrastructure Technology Pvt. Ltd. - a sister concern of the CD and Kalpataru Properties Pvt. Ltd. ("Kalpataru") for sale, transfer, assignment and conveyance of the property admeasuring 20,955.40 sq. mts. situated at Plot No. 5A of Lower Parel Division. Kalpataru had paid a sum of Rs.30 crore to the CD towards the sale consideration for transfer of subject property. On failure on the part of the CD to complete the sale transaction, Kalpataru referred the dispute to arbitration. On 29.08.2016, an award was passed by the Arbitral Tribunal in favour of Kalpataru and the CD was directed to perform the agreement i.e. the CD was directed to sell, transfer and assign the subject property and convey the title to Kalpataru. *Vide* orders of the AA dated 08.10.2021, NCLAT dated 03.01.2023 and Hon'ble Supreme Court dated 14.11.2022, the CD was directed to execute the sale deed in favour of Kalpataru on receipt of balance sale consideration of Rs.75.30 crore.
- 2.2. Pursuant to the above directions of Hon'ble Supreme Court, Kalpataru held the title to Plot No.5A. Therefore, Mr. Pankaj Ramandas Majithia arranged to shift some materials (construction equipment and containers in scrap condition), belonging to the CD, lying on Plot No. 5A, to adjoining plots owned by the CD. Mr. Pankaj Ramandas Majithia submitted that due to budget constraints, the remaining materials could not be shifted and remained in the custody of Kalpataru. Mr. Pankaj Ramandas Majithia also submitted in his response that these materials were not inventoried. Later, the said materials were auctioned by Kalpataru and the sale proceeds amounting to Rs.39.24 lakh (realised from the auction process) were deposited by Kalpataru to the account of CD. It is also submitted that the auction process was conducted by Kalpataru under intimation to Mr. Pankaj Ramandas Majithia. In view of the above facts, the following contraventions have been alleged in the SCN:

#### **A. Failure to take custody and control**

- 2.3. Section 25(1) and 25(2)(a) of the Code requires the IP to preserve and protect the assets of the CD and to take immediate custody and control of all assets of the CD. The SCN alleges that Mr. Pankaj Ramandas Majithia neglected to secure CD's assets and left them in the custody of Kalpataru. He also failed to inventorise the materials belonging to the CD, thus

keeping them outside the ambit of valuation of the CD. Hence, *prima facie*, Mr. Pankaj Ramandas Majithia violated the provisions of Sections 25(1) and 25(2)(a) of the Code, Sections 208(2)(a) and (e) of the Code, and Regulation 7(2)(a) and (h) of the IP Regulations read with Clause 14 of the Code of Conduct.

#### **B. Allowing auction without proper process**

- 2.4. Despite being intimated by Kalpataru about the intended auction, Mr. Pankaj Ramandas Majithia failed to take any steps to shift or secure the materials belonging to the CD. This allowed Kalpataru to proceed with the auction without inventorisation or valuation, thus preventing accurate assessment of the material's real value and transparency in the auction process. Hence, it is alleged in the SCN that Mr. Pankaj Ramandas Majithia violated the provisions of Sections 208(2)(a) and (e) of the Code and Regulation 7(2)(h) of the IP Regulations read with Clause 14 of the Code of Conduct.

#### **C. Failure to seek necessary approvals**

- 2.5. The sale of materials (construction equipment and containers in scrap condition), being outside the ordinary business of the CD, required prior approval from the committee of creditors (CoC) as per Regulation 29 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations). Given the stay order of Hon'ble NCLAT on the CoC's actions, Mr. Pankaj Ramandas Majithia should have considered to seek directions of the AA to conduct the auction. Hence, it is alleged in the SCN that Mr. Pankaj Ramandas Majithia violated the provisions of Sections 208(2)(a) and (e) of the Code, Regulation 29 of the CIRP Regulations and Regulation 7(2)(a) and (h) of the IP Regulations read with Clause 14 of the Code of Conduct.
- 2.6. In view of the above, the Board held *prima facie* view that Mr. Pankaj Ramandas Majithia has *inter alia* violated Sections 25(1) and 25(2)(a) of the Code, Sections 208(2)(a) and (e) of the Code, Regulation 29 of the CIRP Regulations, Regulation 7(2)(a) and (h) of the IP Regulations read with Clause 14 of the Code of Conduct.

#### **Submissions by Mr. Pankaj Ramandas Majithia.**

- 2.7. Mr. Pankaj Ramandas Majithia has at the outset submitted that the IIIPI ICAI had already examined the similar complaint filed by the same complainant i.e. the Suspended Management (Mr. Vikas Kasliwal) and had found no actionable material against him. Further, vide letter dated 07.12.2023, the complainant was informed of the closure of grievance.
- 2.8. He further submitted that there was a Plot no 5A which was under dispute between CD and M/s Kalpataru Properties Pvt Ltd since many years (2004 onwards) (much prior to the appointment of Mr. Pankaj Ramandas Majithia as RP). The Hon'ble Supreme Court had directed the erstwhile RP (Mr. Srigopal Choudhary) vide its order dated 14.11.2022 to

convey title in favour of M/s Kalpataru Properties Pvt Ltd, once they cleared pending payment dues as per the agreement. However, even when the payment was made, no action was taken by the erstwhile RP.

- 2.9. The AA *vide* its order dated 08.10.2021 (when the erstwhile RP was in charge - Mr. Srigopal Choudhary) had passed order by referring to the MOU dated 28 June 2004 and also the Addendum thereto dated 10.12.2004 for sale and transfer of the decreed property in favour of M/s Kalpataru Properties Pvt Ltd, which was also upheld by the Hon'ble Supreme Court. Since the award and decree against the Corporate Debtor was final, complete, indefeasible and the rights were crystallised in favour of M/s. Kalpataru, the Corporate Debtor held the property only in *custodia legis* and was only held in trust by the Corporate Debtor and therefore it was held that moratorium would not apply including the execution proceedings.
- 2.10. Mr. Pankaj Ramandas Majithia further submitted that he was appointed as RP *vide* order dated 22.12.2022, and based on Hon'ble Supreme Court order along with Hon'ble Bombay High Court judgement dated 17.01.2023, he was directed to handover clear and vacant possession of said plot no 5A to M/s Kalpataru Properties Pvt Ltd. Accordingly, after getting possession of the plot from Official Liquidator and after due examination of the conveyance deed the same was executed by him at the sub Registrar's office, Worli, Mumbai.
- 2.11. He further submitted that based on NCLT order dated 08.10.2021 required handing over of clear and vacant possession of plot no 5A to Kalpataru. However, there were certain scrap materials of construction equipment, containers in scrap conditions. So initially he got them shifted to two small vacant plots No 3 & 4 in the adjoining area belonging to the CD and for the balance scrap, he had requested Kalpataru to give him some more time with the hope that if CoC stay could get vacated, he can initiate procedure for auction after the due approval of CoC. However, the stay on CoC continued and till date it continues. He further submitted that Kalpataru had written him time and again to lift the scrap and had also volunteered its vacant site at Thane. Mr. Pankaj Ramandas Majithia submitted that since the CD does not have any alternate site and to comply with the Courts order to vacate the land and hand over the possession to Kalpataru, he agreed to it and accordingly got transport arranged and shifted balance scrap to Kalpataru site which they themselves offered to without charging any rentals since they had a vacant land area.
- 2.12. Subsequently, Kalpataru got approval for development of their Thane site due to which they once again asked him to lift the scrap. After 3 notices dated 03.11.2023 and 01.12.2023 asking him to remove the construction scrap material from the land and again on 12.12.2023 where they had mentioned the steps they will be following prior to the auction and due to unavailability of finding any other alternate site which would again lead to substantial rent, they ultimately decided to auction the scrap and deposited proceeds to bank account operated by the CD.

- 2.13. Mr. Pankaj Ramandas Majithia further submitted that Kalpataru undertook the auction process by inviting tenders and handing over scrap to the highest bidder. The RP was informed about the auction date and was also invited to remain present at the time of opening of tender. Sale invoices were also raised by Kalpataru. The scrap was in brittle condition and it was difficult to compile the data and evaluate the same as had also been stated by the Official liquidator when he was in charge. Mr. Pankaj Ramandas Majithia submitted that since 2015-16, the scrap was lying in open at site which is very near to Worli ocean and was in corroded condition and evaluating each and every item where even OL had not inventorized the scraps and due to paucity of time for giving vacant possession to Kalpataru it was not practical to do these things. Further, to re-shift all scrap, it could have entailed additional labour costs for loading, unloading, Transport costs, rent for some open space, making fencing of open plot gates additional hiring of cranes etc. whereas the scrap value even might not have matched to that.
- 2.14. Mr. Pankaj Ramandas Majithia further submitted that the auction process was conducted in a fair and transparent manner where bids were called from interested party and 3 to 4 such parties showed interest. The bids were received in the range of Rs.30 lakh to Rs.38 lakh from these parties and finally the highest bidder i.e., Aayat Traders offered Rs.39.24 lakh. He has drawn reference to the opinion dated 01.12.2023 sought from Justice Deepak Verma, former Judge of Supreme Court regarding the sale of scrap, wherein he had opined that the RP should not object to auction or sale of scrap, if the process adheres to the due legal procedures, the realized scrap value is reasonable, and the auction process remains transparent, as it minimizes the likelihood of factual disputes.
- 2.15. Mr. Pankaj Ramandas Majithia submitted that he consulted with dealers of scrap and other seniors in order to make a cost-benefit analysis of the situation. To incur additional expenses in shifting the scrap material to another location and then to additionally incur expenses for safe storage of such scrap material without any confirmation from the CoC would have overburdened the CD with exorbitant costs which was more than the value of the scrap material. He further submitted that some of old records are kept in place at parking lot which was site office cum registered office of CD, there is no electricity supply and whenever they have to visit, it requires approval of M/s Honest Shelters Pvt. Ltd. and have to search required documents with the help of torch in closed suffocating environment. When OL handed over the possession he also mentioned that no inventory records are created by them due to no electricity supply and even for scrap lying at Plot No. 5A as it was scattered all open plot. The relevant extract of the minutes is as under:

*“2) There are protective orders for Plot No. 5A passed by the Hon'ble High Court of Bombay vide order dated 13.04.2018 in Chambers Summon No. 169 of 2018 and 17.12.2020 in Interim Application No. 243 of 2021 in Commercial Execution Application No. 134 of 2017 which are still continued.*

.....

8) *All persons present today took a round of Plot No.5A and found some containers, temporary structures, sheds, movables, construction equipment, old ambulance, old generator, pipes and other structural materials (scrap) inside the plot...*”

- 2.16. He submitted that even at that point in time it has been duly noted by the OL that it is nothing else but scarp and even the OL was unable to inventories as there were no records available whatsoever. He has asserted that the scrap lying at CD plot No. 3 & 4 is still intact under the custody of security deployed by RP as part of the CIRP process to ensure that the asset is protected. Once COC stay will be vacated, suitable decision will be taken under COC guidance. No rent is payable for keeping scrap at plot no 3 & 4 being CIRP properties whereas money received from auction of scrap is Rs. 39,24.000/-.
- 2.17. On the queries raised with regard to the “*failure to take custody and control*” and the other query with regards to “*allowing auction without proper process*”, he submitted that that the scrap material is lying on the land of the Corporate Debtor since 2004-05 and due to the subsequent Orders passed by NCLT, NCLAT, Hon’ble Bombay High Court and Hon’ble Supreme Court and in addition to the fact that neither the Official Liquidator appointed by the Hon’ble High Court at the time, nor the erstwhile RP during whose tenure the NCLT had passed necessary orders, undertook any such action to adhere to the orders and in the meantime he was appointed as RP due to allegations against the erstwhile RP. By then the assets were still lying on the land of the CD and he was subsequently compelled to hand over the vacant possession of the land to Kalpataru in compliance with the Orders of various Courts, failing which, contempt application would have been proceeded against him.
- 2.18. Mr. Pankaj Ramandas Majithia has asserted that the asset was in control of him and he had to vacate the land which led to this auction sale in a transparent manner. It is further submitted that none of the CoC members till date have raised any such queries or grievances towards the said sale and hence this itself goes to show the *bonafide* on the part of him. He further submitted that till date, no application is filed before NCLT, either by the complainant or any of the stakeholders challenging the said auction as all money has been deposited into the account of the CD by following due course of action and in terms of transparent auction process.
- 2.19. He submitted that in the peculiar circumstances of the present case, strict compliance to the provision contained in Regulation 29 of the CIRP Regulations would not have been possible since a stay on the actions of CoC was imposed vide Order dated 17.12.2021 of NCLAT. Regulation 29 does not provide that in the absence of approval of CoC, such approval can also be granted by the Hon’ble NCLT. Thus, it cannot be concluded that he acted in contravention of Regulation 29 of the CIRP Regulations. In effect, the compliance of Regulation 29 in the present case could not be completed due to factors beyond the control of Mr. Pankaj Ramandas Majithia.



- 2.20. Further with regard to the query that RP should have approached NCLT, he submitted that time and again NCLT, NCLAT and the Hon'ble Bombay High Court and the Hon'ble Supreme Court have held that the land is to be conveyed to Kalpataru and hence, as a bonafide action and keeping in mind the ongoing, he approached and sought opinion of former Judge of Hon'ble Supreme Court of India, Justice Deepak Verma on exactly this issue alongwith other issues as follows:

***“ QUERY F: Is the Resolution Professional (RP) authorized to raise objections to the auction or sale of scrap by Kalpataru Properties Pvt. Ltd., which has been stored at their Thane site for an extended period?***

*47. Regarding the sale of scrap, it is essential to emphasize that if the process adheres to the due legal procedures, the realized scrap value is reasonable, and the auction process remains transparent, it minimizes the likelihood of factual disputes. Therefore, pursuing this course of action is advisable. Hence, I am of the opinion that the R P should not object to auction or sale of scrap.”*

*In assessing the situation, several material aspects concerning the goods/ scrap at the site should be considered, namely logistical and economical factors. Based on my initial estimates and calculations, given the absence of a readily available site for storing the goods/ scrap and considering the logistics required for transporting the entire cargo from one location to another, it appears that such a move may not be economically viable. In fact, the proceeds from the scrap sale are expected to be equivalent to or marginally less than the costs associated with transportation in most cases. Moreover, the records indicate that the sale of scrap was pursued as a last resort by the auction vendor, given repeated notifications to clear the site and multiple extensions granted upon our request. It is worth noting that issues regarding security charges and the declining value of the scrap further complicate the feasibility of transportation.*

- 2.21. Mr. Pankaj Ramandas Majithia submitted that finally Justice Deepak Verma concluded as under:

*“F. In my answer to Query F, as set out above, I am of the considered opinion that RP should not object to auction or sale of scrap. With respect to sale of scrap, it is essential to emphasize that if the process adheres to the due legal procedures, the realized scrap value is reasonable, and the auction process remains transparent, it minimizes the likelihood of factual disputes. Therefore, pursuing this course of action is advisable.”*

- 2.22. He further referred to the provisions of section 18(1)(f)(ii) considering that these assets were of CD but lying at the site of Kalpataru which has been duly taken note of and the auction process was undertaken under the supervision of the RP. He also referred to the provisions of section 233 of the Code and submitted that all his acts were duly done in a bonafide manner. All money has been deposited into the account of the CD. He also referred to

Regulation 29(1) of the CIRP Regulations and submitted that the said scarp is not a core asset and also the value is far below the 10% threshold of the overall assets of the CD with admitted claims of financial creditors to the tune of Rs. 1,727 crores (Seventeen Hundred Twenty Seven Crore) and hence the same is far below the 10% threshold /and this itself goes to show that the complaint is frivolous in nature and is devoid of any merits.

### **Analysis and Findings of the DC**

- 2.23. The DC has gone through the SCN, reply of SCN and oral and written submissions made by Mr. Pankaj Ramandas Majithia in detail. The chronology of relevant events in the matter is tabulated below:

<b>Date</b>	<b>Remarks</b>
28.06.2004	Memorandum of Understanding (MoU) was executed between the CD and Vijay Infrastructure Technology Pvt Ltd (VIT), a sister concern of the CD and Kalpataru Properties Pvt Ltd for sale transfer, assignment and conveyance of the property at a sum of Rs. 75.30 Crs. by Kalpataru. (The CD granted development right to VIT on 27.06.1996 at a consideration of Rs. 86 Cr. CD after discussion with VIT agreed to allow Kalpataru to have the land and it shall be the duty of CD as well as VIT to give right of way and clear title to the developer (Kalpataru))
10.12.2004	Addendum to MoU was executed and amount of Rs.75.30 crores was increased to Rs. 105.30 crores. (Rs. 30 Crores was paid as per the original MoU dated 28.06.2004).
2005 to 2016	CD failed to transfer the said property. Multiple litigations were initiated by the parties to MoU and Kalpataru referred the dispute related to transfer of sale to Arbitration.
29.08.2016	Award passed by Arbitrator and CD and VIT was directed to specifically perform the agreement and transfer & assign the subject property to Kalpataru.
14.07.2017	Appeal filed before HC by CD against the Award and the same was dismissed by Ld. Single Judge.
24.08.2017	The Bombay High Court initiated winding up proceedings and appointed official liquidator of the CD.
11.10.2018	On an appeal filed by CD (through Official Liquidator) against the Award, The Division Bench of the Bombay High Court dismissed the appeal and upheld the Award dated 29.08.2016.
06.11.2019	CIRP initiated and Mr. Sri Gopal Choudhary was appointed as IRP.
16.10.2020	Mr. Vikas Kalsiwal (ex- director of CD) filed an SLP before the Hon'ble SC against the order of Hon'ble High Court dated 11.10.2018. The Hon'ble SC dismissed the SLP.



08.10.2021	On an application filed by Kalpataru, NCLT allowed the application and directed the RP to transfer the said property in consideration of balance sale amount of Rs. 75,30,00,000/-.
28.10.2021	Indiabulls Housing Finance Limited (IHFL) filed an appeal before NCLAT against the order of NCLT dated 08.10.2021. The NCLAT passed an interim order staying the order of NCLT to transfer the property.
06.01.2022	Mr. Srigopal Chaudhary was confirmed by RP <i>vide</i> order of AA.
28.11.2022	Application filed by SREI Equipment Finance Limited; IIRF India Realty XII Ltd. & Anr.; and Indiabulls Housing Finance Ltd before AA to remove the RP i.e., Srigopal Chaudhary. The AA appointed Mr. Sapan Mohan Garg in place of Srigopal Chaudhary.
14.11.2022	Kalpataru filed an appeal before SC against the interim order passed by NCLAT. Indiabulls Housing Finance Ltd who was the appellant before the NCLAT submitted that they would withdraw the appeal on deposit of certain amount by Kalpataru and Hon'ble SC based on the submission, directed Kalpataru to deposit 75.30 Cr and on depositing the said amount, the application before NCLAT will be dismissed as withdrawn and CD shall execute sale deed in favour of Kalpataru.
09.12.2022	SREI Equipment Finance Limited (Intervenor in the NCLAT appeal) filed an application before Hon'ble SC against the order of SC dated 14.11.2022, the Hon'ble SC allowed interventionist for right of hearing before NCLAT and kept their order dated 14.11.2022 at abeyance.
21.12.2022	On an appeal filed by Financial Creditors before NCLAT, the NCLAT set aside the order dated 09.12.2022 and direction was given to AA to pass an order appointing any RP from the eligible Resolution Professional as it deem fit and proper.
22.12.2022	In view of the order of NCLAT, the AA appointed Mr. Pankaj Ramandas Majithia as RP in CIRP of CD <i>vide</i> order of the AA.
03.01.2023	The NCLAT after hearing the interventionist and the appellant, allowed the intervention however no relief was granted and the NCLAT allowed the appellant to withdraw the matter.
04.02.2023	Handover of the Plot 5A to Mr. Pankaj Ramandas Majithia from Official Liquidator.
07.02.2023	Execution of Indenture of Conveyance cum Deemed Assignment between CD and Kalpataru and registration of Plot No 5A at the sub registrar office
07.02.2023	Handover of the Plot No. 5A to Kalpataru and requested <i>vide</i> letter dated 07.02.2023 to keep the construction material for 30 to 60 days.
09.03.2023	Kalpataru requested Mr. Pankaj Ramandas Majithia to remove construction materials from Plot No. 5A.
23.03.2023	Mr. Pankaj Majithia requested Kalpataru to temporarily keep construction materials on Plot No. 5A

26.07.2023	Mr. Pankaj Majithia again requested Kalpataru to continue using Plot No 5A for additional 2 months on account of IA being filed on NCLAT
August 2023	Kalpataru shifted some scrap material to adjacent plot which belong to the CD and requested for some time to shift the remaining scrap material.
03.11.2023	Notice was given by Kalpataru to shift the scrap material from Plot No 5A stating that 2 months' time sought on 26.07.2023 expired on 27.09.2023 and material has not yet been shifted. It also mentioned that on 10.10.2023, Mr. Jasprit Singh Bakshi has informed about the urgency of shifting all construction material from the plot.
25.11.2023	Reply to letter of Kalpataru dated 03.11.2023 was given wherein the RP requested for time till 05.12.2023.
01.12.2023	Notice was given by Kalpataru to shift the scrap material from the land. On the said notice it was mentioned that in case, the RP failed to remove the said material, Kalpataru will conduct an auction on 14.12.2023 of the said material and requested the RP to remain present in the said auction.
02.12.2023	Appointment of evaluation panel for conducting auction comprising of Mr. Selwyn Barreto (Team Lead), Mr. Mahadev Bhosale, Mr. Abhijit Gawade, Mr. Ramesh T and Mr. Arshwinder Singh.
04.12.2023	Invitation was sent to four prospective bidders i.e., M/s Eventbrite, M/s Aayat Traders, M/s Alqama and M/s Hamna Traders.
07.12.2023	Pre-qualification stage for bids to remove construction material and all four prospective bidders were declared qualified.
10.12.2023	Letter sent to prospective bidders for requesting their quote for the scrap material.
11.12.2023	RP sent letter to Kalpataru for postponing the auction process as RP was travelling out of India from 14.12.2023 to 22.12.2023
11.12.2023	Eventbrite quoted Rs.34,80,000 (Rupees thirty four lakh eighty thousand) for the scrap material.
12.12.2023	Notice was given by Kalpataru that request made by RP vide letter dated 11.12.2023 was accepted and date of auction was fixed to 26.12.2023.
12.12.2023 and 13.12.2023	Quotes received from bidders for the scrap material.
26.12.2023	Auction was conducted in the presence of Mr. Pankaj Ramandas Majithia and M/s Aayat Traders revised its bid to Rs. 39,24,000/- (Rupees thirty nine lakh twenty four thousand) and declared as successful bidder.

2.24. In view of the above timelines the DC now proceeds to examine the contraventions mentioned in the SCN as follows:

### **A. Failure to take custody and control**

- 2.25. The SCN alleges that Mr. Pankaj Majithia failed to take custody and control of certain materials belonging to the CD, which were lying on Plot No. 5A and were not inventoried. Subsequently, the materials were auctioned by Kalpataru under intimation to him, and the sale proceeds were deposited into the CD's account.
- 2.26. The DC finds that the defence of Mr. Pankaj Ramandas Majithia that a similar complaint filed by the same complainant, has earlier been dismissed by IIIPI ICAI vide letter dated 07.12.2023 on the ground that there was no actionable material, is not tenable. The DC has gone through the said complaint and above referred disposal letter in detail and notes that while various allegations were indeed raised against Mr. Pankaj Ramandas Majithia in that complaint, the specific contraventions which form the subject matter of the present SCN i.e., failure to take custody and control of assets, allowing auction without due process, and failure to seek necessary approvals were not alleged in the said complaint. Therefore, the dismissal of the earlier complaint does not aid the RP in the present case.
- 2.27. The DC further notes the submission of Mr. Pankaj Ramandas Majithia that the scrap materials lying on Plot No. 5A had remained there before his appointment and were never inventoried by the Official Liquidator or the erstwhile RP and were ultimately required to be removed due to orders passed by various Courts to hand over possession of the plot to Kalpataru. Also that the scrap had been lying in an open, corroded condition near the Worli ocean since 2015–16, and even the Official Liquidator had not inventoried it. Evaluating and relocating the scrap would have incurred significant labour, transport, and storage costs, potentially exceeding its actual value. He has also mentioned that when OL handed over the possession to him no inventory records were created by them due to no electricity supply and even for scrap lying at Plot No. 5A as it was scattered in an open plot.
- 2.28. The DC notes that the judicial order with respect to the handing over of the plot to Kalpataru finally came only after the appointment of Mr. Pankaj Ramandas Majithia as Resolution Professional for the CD. He only had taken the possession of the plot from the OL and handed it over to Kalpataru. The issue of inventory of CD lying on the plot which was now given possession to Kalpataru came up at the time of handing over possession of the plot and became significant after that time. Therefore, inventorisation of the assets which was not done earlier by the OL became important as the items were now lying on a plot which was not that of CD. The DC notes that there was failure on part of Mr. Pankaj Ramandas Majithia in this regard. His failure to inventurise and secure the assets and take any decisive action about their sale or shifting finally led to the auction of assets by Kalpataru which in itself is a proof of failure of Mr. Pankaj Ramandas Majithia in performance of his duties.
- 2.29. In view of the above the DC holds the contravention mentioned in the SCN.

**B. Failure to seek necessary approvals**

- 2.30. The SCN alleges that the sale of materials, being outside the ordinary course of business of the CD, required prior approval from the CoC. However, in view of the stay imposed by the Hon'ble NCLAT on the CoC's actions, Mr. Pankaj Ramandas Majithia ought to have sought directions from the AA before proceeding with or permitting the auction.
- 2.31. The DC notes the RP's submission that due to the subsisting stay on the CoC's functioning as per the Hon'ble NCLAT's order dated 17.12.2021, he was unable to obtain approval from the CoC for the sale of scrap lying on Plot No. 5A. In the meantime, to comply with various court directions for handing over vacant possession to Kalpataru, he shifted part of the scrap to adjacent CD-owned plots and sought time from Kalpataru to remove the balance. He further contended that Regulation 29 does not envisage seeking AA's approval in place of CoC and that he acted bonafide by obtaining an opinion from Hon'ble Justice (Retd.) Deepak Verma, who opined that the RP need not object to the sale if it was done transparently and reasonably.
- 2.32. Regulation 29 of the CIRP Regulations provides as follows:

***29. Sale of assets outside the ordinary course of business.***

*(1) The resolution professional may sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business, if he is of the opinion that such a sale is necessary for a better realisation of value under the facts and circumstances of the case:*

*Provided that the book value of all assets sold during corporate insolvency resolution process period in aggregate under this sub-regulation shall not exceed ten percent of the total claims admitted by the interim resolution professional.*

*(2) A sale of assets under this Regulation shall require the approval of the committee by a vote of sixty-six per cent of voting share of the members.*

*(3) A bona fide purchaser of assets sold under this Regulation shall have a free and marketable title to such assets notwithstanding the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature.*

- 2.33. The DC notes the submission of Mr. Pankaj Ramandas Majithia that shifting the scrap material to another location and then to additionally incur expenses for safe storage of such scrap material would have overburdened the CD with exorbitant costs. These circumstances are of the kind envisaged by regulation 29 as sale under these circumstances would have resulted in better realisation to the CD by avoiding erosion in value and saving of costs of shifting and security thereafter. Further, in the present situation, when there was a stay on the further proceedings of CoC, to effectively discharge his duty as Resolution Professional

of preserving and protecting the assets, Mr. Pankaj Ramandas Majithia should have approached AA for necessary directions under section 60(5) which empowers the AA to entertain and dispose of any application arising in relation to the insolvency resolution proceedings of the corporate debtor.

- 2.34. The DC further notes that despite repeated reminders and notices dated 09.03.2023, 03.11.2023 and 01.12.2023 from Kalpataru, Mr. Pankaj Ramandas Majithia failed to remove the materials lying on the plot which was to be handed over to Kalpataru. It is observed that although Mr. Pankaj Ramandas Majithia acknowledged all the letters of Kalpataru and time and again requested additional time to remove the scrap material, despite multiple extensions and continued inaction, at no point did he approach the AA seeking necessary directions or permission to deal with or sell the said assets or at least apprise the AA of the impending difficulty, in view of the subsisting stay on CoC. Finally, after multiple notices, Kalpataru initiated the auction and finally the auction was held on 26.12.2023. It is apparent that the auction was held almost after 9 months from the date of handover of possession of the plot and therefore Mr. Pankaj Ramandas Majithia had ample time and opportunity to act in a diligent manner.
- 2.35. Further, the submission of Mr. Pankaj Ramandas Majithia that he could not proceed with the auction of the scrap material due to a stay by NCLAT is not tenable. The DC observes that even though he approached the NCLAT for vacation of stay he did not take any proactive steps to resolve this situation. The DC has examined the said application and noted that nowhere in the application has the RP mentioned the urgency arising from the fact that the scrap material was lying on the plot that was handed over to Kalpataru. Furthermore, no prayer was made in the application in relation to this specific issue. It reflects that the issue was not given due importance which it deserved as it was not mentioned in the application before NCLAT.
- 2.36. With respect to the submission of Mr. Pankaj Ramandas Majithia regarding opinion of Justice (Retd.) Deepak Verma, it is observed that the opinion was sought on limited aspect of whether to object to the sale of scrap by Kalpataru. It does not deal with the aspect whether Mr. Pankaj Ramandas Majithia should approach AA for necessary directions with regard to sale of scrap material in the event of stay on CoC. Therefore, without going into its merits, the DC finds that the opinion of Justice (Retd.) Deepak Verma is on very limited aspect and does not help the case of Mr. Pankaj Ramandas Majithia.
- 2.37. In light of the above, the DC holds the contravention mentioned in the SCN.

### **C. Allowing auction without proper process**

- 2.38. The SCN alleged that despite being intimated by Kalpataru about the proposed auction of materials belonging to the CD, Mr. Pankaj Ramandas Majithia failed to take any steps to shift, secure, or inventorise the said materials. This inaction enabled Kalpataru to conduct

the auction without proper valuation or transparency, thereby hindering an accurate assessment of the material's actual value.

- 2.39. The DC notes the submission of Mr. Pankaj Ramandas Majithia on this issue that he was duly informed about the intended auction by Kalpataru. He also highlighted that multiple bids were received and that the auction was conducted fairly.
- 2.40. The DC while taking note of the submissions of Mr. Pankaj Ramandas Majithia is of the view that being an Insolvency Professional and also well versed with the provisions related to the processes under the Code, he could have taken appropriate steps to ensure that the auction sale process was more transparent and ensured value maximisation.
- 2.41. Two main pillars of the transparent process of sale under liquidation regulations are public auction and fixing a reserve price. Public auction ensures maximum participation besides total transparency. Fixation of reserve price ensures that if a minimum value up to reserve price is not received, auction is called off. Another auction is scheduled for which reserve price can be decreased only by a certain percentage. Mr. Pankaj Ramandas Majithia did not get the valuation of the items of inventory done which would have inventoried the items and given him a reserve price. It is pertinent to mention that in terms of Regulation 27 of the CIRP Regulations, the appointment of Registered Valuers is the duty of the Resolution Professional and no prior approval of CoC is required for the same.
- 2.42. It is clear from the emails of Kalpataru that Kalpataru was open to suggestions regarding the process through which the auction was to be conducted. However, no such suggestions regarding making the auction public by making a public advertisement and carrying out a public auction process were made to Kalpataru even when several correspondences were made by him repeatedly to request for postponement of the auction. The DC finds lack of effort from Mr. Pankaj Ramandas Majithia for making the process transparent and to maximise the value of assets being auctioned.
- 2.43. In view of the above, the DC holds the contravention mentioned in the SCN.

### **3. Order.**

- 3.1. In view of the foregoing, the DC in the exercise of the powers conferred under section 220 of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and considering the fact that Mr. Pankaj Ramandas Majithia has already attained the age of 70 years, hereby imposes a penalty of 30% of the total fees payable (both paid and pending for payment) to Mr. Pankaj Ramandas Majithia for his assignment as the Resolution Professional in the matter, and directs him to deposit the penalty amount directly into the Consolidated Fund of India (CFI) under the head "Penalty imposed by IBBI" on <https://bharatkosh.gov.in>, within 45 days from the date this order takes effect. For the fees that is yet to be received by him, the penalty amount on such fee amount shall be deposited by him within 7 days from the date of receipt of the payment. He shall also submit a copy



of the transaction receipt to the Insolvency and Bankruptcy Board of India.

- 3.2. This order shall come into force immediately in view of para 3.1 of the order.
- 3.3. A copy of this order shall be sent to the CoC/ SCC of all the corporate debtors in which Mr. Pankaj Ramandas Majithia is providing his services, and the respective CoC/ SCC, as the case may be, will decide about continuation of existing assignment of Mr. Pankaj Ramandas Majithia.
- 3.4. Mr. Pankaj Ramandas Majithia shall also place a copy of this Order before the National Company Law Tribunal, Mumbai Bench, where the proceedings related to the CIRP of the CD is pending, for necessary directions.
- 3.5. A copy of this order shall be forwarded to Indian Institute of Insolvency Professionals of ICAI (IIPI) where Mr. Pankaj Ramandas Majithia is enrolled as a member.
- 3.6. 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.
- 3.7. Accordingly, the show cause notice is disposed of.

-sd/-

(Sandip Garg)

Whole Time Member

Insolvency and Bankruptcy Board of India

Dated: 24<sup>th</sup> June 2025

Place: New Delhi