INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/271/2025 24th February 2025

ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/77/2024-IBBI/880/483 dated 25.07.2024, issued to Ms. Rita Gupta, 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-P00149/2017-2018/10313.

Background

1.1. The National Company Law Tribunal, New Delhi 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 Yamuna Infradevelopers Private Limited (CD) *vide* order dated 01.05.2019 and appointed Mr. Rakesh Takyar as Interim Resolution Professional (IRP) who was later confirmed as Resolution Professional (RP). Since no resolution plan was received, the CoC resolved to go for liquidation. Subsequently, the AA *vide* order dated 18.12.2019 ordered liquidation of the CD and appointed Ms. Rita Gupta as the liquidator.

1.2. The Board received a complaint from Income Tax Department against Ms. Rita Gupta. The Board *vide* email dated 18.06.2024 sought response from Ms. Rita Gupta on the allegations raised in the complaint. Ms. Rita Gupta submitted her reply on 08.07.2024.

1.3. The Board examined the allegations in the above *complaint vis-a-vis* the reply filed by the Ms. Rita Gupta and based on such examination, the IBBI formed a *prima facie* view that Ms. Rita Gupta contravened provisions of the Code and Regulations made thereunder and issued the SCN to Ms. Rita Gupta on 25.07.2024. The SCN alleged contraventions of several provisions of the Code, IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations). Ms. Rita Gupta submitted her response to the SCN on 24.08.2024.

1.4. The SCN and its response by Ms. Rita Gupta were referred to the Disciplinary Committee (DC) for disposal. Ms. Rita Gupta availed an opportunity of personal hearing before the DC through virtual mode on 15.01.2025 wherein she appeared along with advocate Mr. Sanjay Bhatt. Ms. Rita Gupta submitted her additional written submissions on 06.02.2025.

1.5. The DC has considered the SCN, the reply to SCN, oral and written submissions of Ms. Rita Gupta, and proceeds to dispose of the SCN.

2. Alleged Contravention, submissions of Ms. Rita Gupta and findings of the DC

The contravention alleged in the SCN, submissions by Ms. Rita Gupta, analysis and findings of the DC are summarized as follows:

2.1. Contravention-I

Approval of CIRP Cost.

2.1.1. The AA *vide* order dated 04.03.2022 directed Ms. Rita Gupta to include the rent of the mining site as CIRP cost. Subsequently, she filed an application for rectification of the order dated 04.03.2022 and the same was dismissed as withdrawn by order dated 13.01.2023 with further direction that if any benefits qua the mining have been derived by the CD, it would be open to the liquidator to recover the same from the suspended board of the CD. Later, she included an amount of Rs.4,21,15,640/- as CIRP Cost. Given the significant impact of the order dated 04.03.2022, directing the liquidator to include mining rent to be included as CIRP cost, on the amount payable to stakeholders, and the opinion expressed by PNB in the (Stakeholder's Consultation Committee) SCC meeting, which indicated the necessity of filing an appeal before the NCLAT, an appeal before the NCLAT should have been filed by her. However, Ms. Rita Gupta chose not to contest the said order of the AA which shows negligent attitude.

2.1.2. Therefore, the Board held *prima facie* view that Ms. Rita Gupta has *inter alia* violated Sections 208(2)(a) and 208(2)(e) of the Code read with Regulations 7(2)(a) and 7(2)(h) of the IP Regulations and Clause 14 of the Code of Conduct as provided under the IP Regulations.

Submissions by Ms. Rita Gupta.

2.1.3. It was submitted by Ms. Rita Gupta that the CD participated in an e-auction held on 10.06.2015 and 11.06.2015 by the State Government of Haryana for grant of mining rights in respect of minor minerals in the District Yamuna Nagar. The CD had made the highest bid of Rs. 10,40,50,000/- per annum for obtaining the Mining Contract of Minor Mineral Mines named as 'Begampur Block/YNR B 37' (hereinafter "Mining Site") for extraction of Boulder, Gravel and sand having tentative area of 39.50 hectares and consequently was granted the Mining Contract dated 11.04.2016 (hereinafter "Mining Contract"). The period of Mining Contract was stated for 8 years which was to commence from the date of environment clearance by the competent authority or on expiry of a period of 12 months from the date of the communication of acceptance of highest bid/issuance of "Letter of Intent", whichever earlier.

2.1.4. It was submitted that the CD commenced mining operation w.e.f. 16.09.2017. During the subsistence of the said Mining Contract, the AA vide its order dated 01.05.2019, initiated CIRP of the CD.

2.1.5. Ms. Rita Gupta further submitted that as the suspended board of directors and statutory auditors of the CD were not providing the financial and statutory information including the Balance Sheet, Statement of Assets and Liabilities and were not cooperating with the RP during the CIRP of the CD, the RP had moved an Application under Section 19(2) of the Code on 05.07.2019 before the AA seeking directions against the suspended board of directors of the CD for cooperation. The AA vide order dated 10.10.2019 had directed the suspended board of directors to provide the remaining documents as sought by the RP, failing which coercive action shall be taken against such suspended directors.

2.1.6. In the third meeting of the CoC held on 03.10.2019, the CoC decided to go for liquidation of the CD and the AA ordered Liquidation vide order dated 18.12.2019 and since the CoC has not proposed the name of any IP for Liquidator, the AA appointed Ms. Rita Gupta from the panel of IP(s) provided by IBBI to act as liquidator in the matter.

2.1.7. It was submitted by Ms. Rita Gupta that since many statutory and other documents were not provided by the erstwhile management, Ms. Rita Gupta filed an application seeking directions from the suspended board of directors to provide necessary documents and extend assistance to the liquidator. The AA vide order dated 05.10.2021 directed the erstwhile management to handover all the information/records/details as required by the liquidator. The AA vide same order dated 05.10.2021 dismissed the application filed by the erstwhile management of the CD under section 230 of Companies Act, 2013 to settle/ compromise the matter with the sole Financial Creditor.

2.1.8. It was submitted that the AA *vide* order dated 13.01.2023, allowed the application filed by Ms. Rita Gupta against the erstwhile management and directed the erstwhile management to handover the complete documents. In the aforesaid order, it was further stated that in case the erstwhile management failed to comply with the directions, she would be at liberty to institute the proceedings against the Respondents in terms of the provisions of Chapter-VII of the Code.

2.1.9. *Vide* mail dated 10.02.2023, the liquidator intimated the order of the AA dated 13.01.2023 to the erstwhile management and requested them to co-operate and also sent reminder emails on 24.03.2023 & 06.04.2023.

2.1.10. Ms. Rita Gupta sent several letters and emails to the Mining Department, including an intimation letter dated 04.01.2020, an intimation email on 09.01.2020, letters and an email dated 11.01.2020, requesting information and documents, as well as a further letter and email to the Mining Officer on 15.01.2020. Additional communication was sent via email on 07.02.2020, and a letter on 10.02.2020, to secure cooperation.

2.1.11. Ms. Rita Gupta submitted that on 17.08.2020, she received a letter dated 13.08.2020 from the Mining Officer, Yamunanagar, regarding the suspension of Mining operations/ productions and dispatch due to non-payment of monthly contract money & contribution to the R&R fund inter alia including show cause for termination of contract, as per the provisions of the State Mining Rules, 2012, in respect of Begampur/ YNR B37 Block. She responded to the suspension order on 17.08.2020 and also emailed on the same date. She mentioned in her letter that in terms of section 33(5) of the code, no suit or legal proceedings shall be initiated by or against the CD during moratorium.

2.1.12. It was further submitted that despite repeated enquiries, communications and several visits to the office of the Mining Department, she was informed that the mining sites are occupied by villagers and subsequently she came to know that vide order dated 26.11.2020 (hereinafter "Termination Order"), the DGMG terminated the Mining Contract on account of non-payment of the outstanding amount of contract money, R&R Fund and TCS by the CD without any notice. The Mining Contract was the only contract of the CD. Termination of the mining contract would result in the virtual corporate death of the CD.

2.1.13. Ms. Rita Gupta further submitted that in view of the alleged termination of the Mining Contract by DGMG, she filed an application before the AA for setting aside of the order dated 26.11.2020 passed by DGMG terminating the Mining Contract entered into with the CD. The AA *vide* order dated 04.03.2022 set aside the Termination Order and directed the liquidator to include the rent of the Mining site to be treated as CIRP cost of the CD. She communicated the order dated 04.03.2022 of the AA to the Mining Department on 07.03.2022 via email and also made representation to the DGMG regarding this on 20.04.2022 requesting for personal hearing. The DGMG heard the matter and stated that they would respond after reviewing it in detail. However, no response was received thereafter.

2.1.14. Ms. Rita Gupta submitted that pursuant to the order dated 04.03.2022 passed by AA, she filed an application bearing IA 1569/2022 seeking rectification of order dated 04.03.2022 as it had been directed the by AA to include the rent of the Mining site as the CIRP cost, when the CoC had not authorized any mining operations to be undertaken during the CIRP. However, IA 1569/2022 was disposed of *vide* order dated 13.01.2023 by the AA with liberty granted to the Liquidator to recover the outstanding dues from the erstwhile management and the suspended board of directors who had illegally conducted the mining operations without any intimation and approval of the RP/CoC.

2.1.15. It was submitted by Ms. Rita Gupta that she engaged in discussions with Mr. Sumant Batra, strategic advisor, regarding the possibility of challenging the order dated 13.01.2023. After reviewing the matter, Mr. Batra advised her not to challenge the aforesaid order, citing that the liquidator is not considered an aggrieved party in this case. As per legal principles, only an aggrieved party i.e. the financial creditors and other stakeholders who are to receive the distribution under Section 53 of the Code are entitled to challenge the order. Consequently, she decided not to proceed with any legal action in this regard. In the 16th SCC meeting held on 22.08.2023, Punjab National Bank, the financial creditor said that they will see if they can file an application in this regard before the AA.

2.1.16. She submitted that it is a settled position of law that the inclusion of any costs or expenses as CIRP cost and its approval lies in the domain of the CoC/SCC. The CoC/SCC may ratify, modify or may decline to include the cost claimed. Ms. Rita Gupta relied on the judgement of the NCLAT in the matter of Avil Menezes, liquidator of Sunil Hitech Engineers & Anr. Vs Abdul Qudduskhan and Anr. Company Appeal (AT)(Insolvency) 263 of 2024 dated 14.05.2024. The aforesaid judgment in case of Bharat Hotels Ltd. (supra) passed by the NCLAT was also brought to the notice of the SCC members as reflected in the minutes of the 19th SCC meeting held on 14.03.2024.

2.1.17. It was further submitted that while the SCC members previously agreed to dissolve the CD on multiple occasions, they subsequently reversed their position. Currently, there is insufficient amount left in the bank account, no assets remaining for sale, and significant liabilities due to illegal mining activities conducted by the erstwhile directors and unmet financial obligations. Given these circumstances, filing such an application on behalf of the liquidator in this regard and at that juncture was appeared to be not legally permissible having no locus to do so against the order passed by the AA.

2.1.18. It was submitted that in compliance to the directions of the AA, she had booked Rs. 4,21,15,640/- as CIRP cost being mining instalments for the IRP/Liquidation period or till the time it was used by the CD.

2.1.19. The detail of calculation of CIRP Cost of Rs 4,21,15,640 is as under:-

Monthly Installments Unpaid	**Amount (Rs.)**
September 2019 (Rs. 55,73,948.00 paid)	52,64,594.00
October 2019	1,08,38,542.00
November 2019	1,08,38,542.00
December 2019	1,08,38,542.00
Monthly RR Fund Unpaid	
September 2019	10,83,855.00
October 2019	10,83,855.00
November 2019	10,83,855.00
December 2019	10,83,855.00
Total	**4,21,15,640/-**

2.1.20. Ms. Rita Gupta appraised the SCC members that with the permission of the SCC, she may seek appropriate relief during the filing the dissolution application to include the waiver/ extinguishment of the mining dues of Rs. 4,21,15,640/-, as these were never approved as the CIRP costs by the CoC or the SCC. Since, the Income Tax Department was not present, it was decided that she shall make personal endeavour to ensure its presence. These agendas were further put for discussion in the subsequent/20th SCC meeting held on 14.03.2024. In that meeting, the Punjab National Bank, emphasized for treatment of mining instalment of Rs. 4,21,15,640/- as Government Dues rather than CIRP cost, citing Mining Department's status as a Government Entity. Ms. Rita Gupta stated her inability to comply with this request, having already classified it as CIRP cost in accordance with the order dated 04.03.2022 of the AA.

2.1.21. It is stated that subsequently, PNB filed an IA 2375/2024 seeking a directive for the liquidator to treat the amount of Rs. 4,21,15,640/- as mining instalments for the CIRP/liquidation period, or, until it was used by the CD, to be considered government dues under the Haryana Minor Mineral Concession, Stocking, Transportation, and Prevention of Illegal Mining Rules, 2012. The said application is pending before the AA.

2.1.22. It was submitted by Ms. Rita Gupta that she appointed M/s RPMD & Associates, Chartered Accountant on 09.02.2021 to conduct the transaction audit of the corporate debtor for period from 01.05.2017 to 30.04.2019 as per the terms and provisions of the code. M/s RPMD & Associates submitted its report on 29.09.2021. Based on the transaction audit report, Ms. Rita Gupta filed an IA 5653/2021 under section 43,44 and 45 as well as section 66 of the code. In pursuance to the direction of the AA vide its order dated 09.12.2021, Ms. Rita Gupta filed an amended application being IA 5653/2021 to make changes in the prayer only to the extent of section 43 & 44 of the code.

Analysis and Findings of the DC

2.1.23. Chronology of relevant events regarding the matter in hand is tabulated below: -

Date	Remarks
10.06.2015 & 11.06.2015	CD participated in e-auction held by the State Government of Haryana as per the terms and conditions of the Auction Notice for grant of mining rights in respect of minor minerals in the District Yamuna Nagar. The CD had made the highest bid of Rs. 10,40,50,000/- per annum for obtaining the Mining Contract of Minor Mineral Mines or extraction of Boulder, Gravel and sand having tentative area of 39.50 hectares and consequently was granted the Mining Contract dated 11.04.2016 for 8 years from the date of environment clearance by the competent authority.
16.09.2017	The CD commenced mining operations.
01.05.2019	CIRP of the CD admitted and Mr. Rakesh Takyar was appointed as IRP.
27.05.2019	First CoC meeting held wherein the IRP confirmed as RP.
12.06.2019	The AA confirmed the appointment of RP.
05.07.2019	Since the directors of the suspended board were not providing the financial and statutory documents, an application was filed by the RP against suspended management u/s 19(2) of the Code for cooperation.
10.10.2019	The AA directed the directors of the suspended board to provide the

	documents failing which coercive action shall be taken against them.
03.10.2019	Third CoC meeting held wherein the CoC decided to liquidate the CD since no resolution plans were received.
18.12.2019	The AA ordered liquidation of the CD and since the CoC has neither approved the name of the RP as liquidator nor proposed name of any other IP as liquidator, the AA appointed Ms. Rita Gupta from the panel of IPs provided by IBBI to act as liquidator in the matter.
30.12.2019	Liquidator contacted Mr. Inder Pal Singh director of the suspended board of the CD to provide certain information as the documents and information provided by the RP was not sufficient but no information was given.
24.01.2020	The liquidator filed an application against the suspended management u/s 34(3) of the Code.
18.02.2020	Certain documents were handed over by the suspended management to the liquidator.
17.08.2020	Letter dated 13.08.2020 received from Mining Officer regarding suspension of mining operation productions and dispatch due to non-payment of monthly contract money & contribution to the R&R fund inter alia including show cause for termination of contract, as per the provisions of the State Mining Rules, 2012. The liquidator replied on the same date 17.08.2020 vide letter dated 17.08.2020 mentioning that in terms of section 33(5) of the Code, no suit or legal proceedings shall be initiated by or against the CD.
26.11.2020	The Director General Mines & Geology Department, Govt of Haryana (DGMG) terminated the Mining Contract on account of non-payment of the outstanding amount of contract money, R&R Fund and TCS by the CD.
28.11.2020	Liquidator sent a letter to emphasize that the termination order issued was in clear violation of the provisions of the Code and Regulations made thereunder and should be set aside.
09.12.2020	Application filed by liquidator against the mining contract termination order dated 26.11.2020.
09.02.2021	Liquidator appointed M/s RPMD & Associates Chartered Accountant to conduct transaction audit of the CD from 01.05.2017 to 30.04.2019
29.09.2021	Report submitted by Transaction Auditor.
15.11.2021	Consolidated avoidance application was filed u/s 43, 66, 67 of the Code.
09.12.2021	AA vide order dated 09.12.2021 allowed the liquidator to bifurcate the application in two separate applications- one for preferential transaction and other against wrongful/ fraudulent trading.
11.01.2022	The liquidator amended the application in the prayer only to the extent of section 43 & 44 of the Code. In the said application it was stated that as per the Transaction Audit Report, the quantum of preferential transaction under sec 43 of the Code was about Rs.5,27,74,894/-. The liquidator

	prayed to restore back amount of Rs.3,83,45,750. The said application is pending adjudication before the AA.
11.01.2022	The liquidator filed separate application under section 66 of the Code seeking direction from the Respondents to restore back the amount appropriated through fraudulent and wrongful trading from the accounts of the CD. In the said application it is stated that an amount of Rs. 3,96,38,312 and Rs. 11,84,21,555/- was shown as donation in the books of the account of the CD. These were not actually donations but were bribe paid to various officials at the behest of Accountant of the CD. Further it was stated in the application that the liquidator while going through the financial documents of the CD realised that the ex-management adjusted huge amount of sum against the GST, royalty instalments, TCS etc during the CIRP. These adjustments have been carried out post initiation of CIRP and there is no evidence if these were actually paid or paid in advance. Further it is stated that sale of approx. 3.5 Crores were made during the CIRP. In view of these transactions the liquidator has prayed to direct the respondents to restore back the amount of Rs. 23,45,39,447/-. The said application is pending adjudication before the AA.
04.03.2022	The AA set aside mining contract termination order passed by DGMG and directed the liquidator to include the rent of mining site as CIRP Cost.
01.04.2022	Against the direction of AA to include the rent of mining site as CIRP Cost, the liquidator filed an Application before the AA to rectify the order dated 04.03.2022. The ground taken by the liquidator was that there were no mining operations since liquidation and during the CIRP though there were regular production till December 2019 the RP did not authorise these production and the ex-management were mining illegally and these transactions could not form part of CIRP Cost. It was stated in the application that the liquidator had filed preferential and fraudulent transactions application before the AA and till date the erstwhile management has not handed over all the assets/records/details of the CD. In view of the aforesaid facts the liquidator made prayer in the application to remove para 27 in order dated 04.03.2022 which directed the liquidator to include the rent of the mining site as CIRP Cost
13.01.2023	Application filed to rectify order dated 04.03.2022 was dismissed as withdrawn with the direction that if any benefit qua the mining have been derived by the suspended management it would be open for the liquidator to recover the same from the suspended board of the CD.
13.01.2023	The AA directed the suspended management to provide the requisite document as prayed in the application for cooperation from suspended management with the directions that in case the erstwhile management fails to comply with the above directions, the Liquidator will be at liberty to institute the proceedings against the Respondents therein in terms of the provisions of Chapter VII of the Code.

10.02.2023	The Liquidator intimated the order dated 13.01.2023 to the Board sent reminder emails on 24.03.2023 & 06.04.2023.

2.1.24. The DC notes that since the initiation of the CIRP, the ex-management of the CD consistently failed to cooperate. Multiple applications had to be filed by the RP and later by Ms. Rita Gupta to secure the necessary cooperation. It was only after repeated directions from the AA that some documents were eventually provided by the ex-management. Furthermore, from the facts of the case, it is observed that the ex-management continued mining operations without any authority even after the initiation of CIRP. The production reports clearly indicate that since December 2019, mining activities and sales continued, raising serious concerns regarding the conduct of the RP, particularly in relation to his duty to take custody and control of the assets of the CD as mandated under the Code.

2.1.25. As far as the conduct of the Liquidator is concerned, the DC notes that Ms. Rita Gupta was appointed by the AA from the panel of IPs provided by the IBBI. The records indicate that the illegal mining activities took place during the CIRP period and not during the liquidation process. Regarding the issue of challenging the order dated 04.03.2022, the DC observes that the Liquidator had indeed filed an application before the AA seeking the removal of paragraph 27 of the said order, which directed her to include the rent of the mining site as CIRP costs. The said application was dismissed as withdrawn *vide* order dated 13.01.2023 with a direction by the AA that if any benefits qua the mining have been derived by the CD, it would be open to the liquidator to recover the same from the suspended board of the CD. The liquidator took necessary steps by filing two separate avoidance application under Sections 43 and 66 of the Code against the ex-management for preferential and fraudulent transactions. The liquidator has also contended that she had sought legal advice in respect of further legal action wherein she was advised that only an aggrieved party eligible for distribution under Section 53 of the Code could challenge the order. Therefore, based on legal advice, the liquidator ultimately decided not to pursue further legal action.

2.1.26. In view of the above facts, the DC is of the opinion that sufficient steps were taken by the Liquidator, and since there were express directions from the AA to include the dues of the mining department, she had no option but to comply with the said order. Therefore, the DC accepts the submission made by Ms. Rita Gupta.

2.1.27. However, the fact that mining operations continued illegally during the CIRP without the authorization of the RP raises serious concerns regarding the failure of the RP to take charge and secure custody of the CD’s assets. It is very surprising that not only mining activities were carried out by the ex-promoters after the company was admitted into CIRP but also the money was collected from the buyers by ex-promoters, GST returns were filed for these sales and even payments were made by these buyers to the mining department as evident from the avoidance applications filed by the liquidator. Therefore, the IBBI is directed to investigate the conduct of the RP, Mr. Rakesh Takyar having Registration No IBBI/IPA-001/IP-P00160/2017-18/10329 in the matter.

Contravention-II

2.2. **Failure to circulate the SCC Meeting Minutes.**

2.2.1. Regulation 32B of the Liquidation Regulations read with Regulation 24(7) of the CIRP Regulations provide that the minutes of SCC meeting shall be circulated by the IP within 48 hours of the meeting.

2.2.2. It was observed that the minutes of 25th SCC meeting held on 02.07.2024 were not prepared by Ms. Rita Gupta stating that *"There may be a technical issue as one stakeholder left the meeting and did not rejoin. Consequently, the quorum for the Twenty-Fifth Stakeholder's Consultation Committee Meeting of Yamuna Infradevelopers Private Limited (in liquidation) is incomplete. Therefore, the minutes of the meeting will not be recorded."* Therefore, the IBBI held the *prima facie* view that Ms. Rita Gupta has *inter alia* violated Regulations 32B of the Liquidation Regulations read with Regulation 24(7) of the CIRP Regulations.

Submissions by Ms. Rita Gupta.

2.2.3. Ms. Rita Gupta submitted that the 25th SCC meeting was held on 02.07.2024, starting at 11.20 A.M. The Income Tax Department representative left at 11:35. After waiting for 5 minutes, she requested her to rejoin at 11:40 AM. However, when she did not rejoin, due to lack of quorum the meeting was concluded.

2.2.4. Ms. Rita Gupta submitted that the minutes of the 25th SCC meeting was recorded afterward. Ms. Rita Gupta planned to present the minutes of 25th SCC Meeting at a subsequent meeting. In the 26th SCC meeting, no one was present. On 21.08.2024, the 27th SCC meeting was attended by the new incumbent Ms. Mehak Mittal, ACIT holding 68% voting shares. The minutes of the 25th SCC meeting were shared with the stakeholders *vide* email dated 23.08.2024.

2.2.5. She referred Regulation 5(1)(e) of the Liquidation Regulations that the liquidator shall prepare and submit minutes of consultation with stakeholders to the AA in the manner specified under these Regulations. Further according to Regulation 5(3) the liquidator shall make the reports and minutes referred to sub-regulation (1) available to a stakeholder in either electronic or physical form, on receipt of (a) an application in writing; (b) costs of making such reports and minutes available to it;

2.2.6. She additionally submitted that the minutes of the 25th SCC Meeting have been shared with the SCC members *vide* email dated 23.08.2024. She firstly sent the -sd/- copy of the SCC minutes on 23.08.2024, followed by the signed copy on 24.08.2024. On 26.08.2024, she requested the SCC members to sign the SCC minutes via email. In response, she received an email from the Income Tax Department on 31.08.2024, stating as below:

"On perusal of your previous correspondence to this office via email dated 2nd July, 2024, 12.25 PM, it is seen that you have made following comments:

"There may be a technical issue as one stakeholder left the meeting and did not rejoin. Consequently, the quorum for the Twenty-Fifth Stakeholder's Consultation Committee Meeting of Yamuna Infradevelopers Private Limited (in liquidation) is incomplete. Therefore, the minutes of the meeting will not be recorded."

As the quorum of the meeting was not present and the minutes of the meeting could not be recorded, as reiterated by your good self the minutes of the 25th SCC as sent by you dated 23/08/2024, 24/08/2024 and 26/08/2024 are invalid. Further, it is placed on record that no draft of such minutes has been presented to this office by your good self as on date. In the view of the above, your request regarding certifying them with stamp is not acceptable."

2.2.7. She responded to the email on 11.09.2024, confirming that the email on 02.07.2024 was indeed sent under significant pressure at that time. While the minutes indicate no substantial discussions took place, she recorded the minutes during the period when a quorum was present. Regarding the sharing of draft minutes, it was felt that there was no need to do so. It was further stated in the response that if they had a different perspective on the minutes, they might share their views with her. However, no further emails were received from the Income Tax Department regarding this matter.

Analysis and Findings of the DC.

2.2.8. The timeline pertaining to the minutes of 25th SCC meeting is as follows:

Date	Events
02.07.2024	25th SCC meeting
30.07.2024	26th SCC meeting
21.08.2024	27th SCC meeting
23.08.2024	Minutes of 25th SCC meeting shared with the stakeholders.
26.08.2024	Ms Rita Gupta requested the SCC members to sign the SCC minutes via email.

2.2.9. The DC notes that Ms. Rita Gupta, in her email dated 02.07.2024, explicitly stated that the minutes of the 25th SCC meeting would not be recorded due to the lack of quorum following the departure of one stakeholder. However, she later claimed that she intended to present the minutes at a subsequent SCC meeting, creating a clear contradiction in her submissions. Despite this, the minutes were eventually shared with the SCC members on 23.08.2024 (51 days after the meeting).

2.2.10. Furthermore, there are conflicting explanations regarding the reason for not sharing the minutes. The Income Tax Department asserts that its representative was removed from the meeting when inquiries were made about CIRP and liquidation Costs, whereas the liquidator contends that the representative voluntarily left the meeting. Regardless of these differing versions, the DC notes that the meeting proceeded for a certain period while the quorum was present, and discussions took place. Therefore, the proceedings should have been duly recorded, and the minutes should have been circulated within the mandated 48-hour period.

2.2.11. Additionally, Ms. Rita Gupta's inconsistent stance on whether the minutes should be prepared indicates a lack of clarity and understanding on her part regarding her regulatory obligations. The records make it evident that neither draft minutes nor final minutes were shared within the prescribed timeline. Accordingly, the DC holds the contravention.

Contravention-III

2.3. **Failure to present actual Liquidation Cost in SCC Meetings.**

2.3.1. Regulation 31A(6B) of the Liquidation Regulations was amended vide Notification dated 12.02.2024 which provided that the liquidator shall present the actual liquidation cost and consolidated status of all legal proceedings, in every SCC meeting.

2.3.2. It was observed that in the minutes of the 21st SCC and 22nd SCC meetings held on 25.04.2024 and 03.05.2024 respectively, the crucial details such as actual liquidation cost and consolidated status of all legal proceedings were not provided. Therefore, the Board was of the prima facie view that Ms. Rita Gupta, *inter alia,* contravened Regulation 31 A(6B) of the Liquidation Regulations.

Submissions by Ms. Rita Gupta.

2.3.3. Ms. Rita Gupta submitted that the SCC was initially inclined to dissolve the CD. However, the SCC members later decided to make one final attempt to assign the Not Readily Realizable Asset. It was decided that due to time constraint only this will be discussed.

2.3.4. She had no intention to contravene Regulation 31A (6B) of the Liquidation Regulations. She consistently provided detailed breakups of the liquidation costs and updates on all pending litigations in the SCC meetings. Additionally, applications and progress reports were regularly filed before the AA and IBBI.

2.3.5. It was submitted that that the SCC members, in its meeting dated 23rd December 2024, ratified the total liquidation cost of Rs. 32,27,092.25, including the liquidator's fees, with 100% of the votes in favor.

2.3.6. Regarding submission of liquidation cost along with all the supporting documents with the SCC Members before and after 21st and 22nd SCC meeting, she submitted that all the invoices, along with supporting documents detailing the liquidation costs upto 08.05.2024, were shared vide email with the SCC members on 31.05.2024.

2.3.7. She presented the total liquidation cost in both the 19th SCC meeting dated 22.02.2024 and 20th SCC meeting dated 26.03.2024. However, the details of the Liquidation cost mentioned in the 19th SCC meeting, which were shared and presented in the meetings, were not repeated in the 20th SCC meeting minutes.

2.3.8. She further submitted that she conducted the 23rd SCC meeting on 08.05.2024, in which all the SCC members were present. She presented total liquidation cost up to 08.05.2024 to the SCC members.

2.3.9. She submitted that much prior to the amendment, she had provided the total liquidation cost in the SCC meetings from time to time including meetings held on 09.09.2020, 05.01.2021, 11.01.2023, and 22.06.2023. Additionally, details of the total liquidation cost have been included in the quarterly progress reports filed before the AA. She also also submitted that the SCC members, in their meeting dated 23.12.2024, ratified the total liquidation cost of Rs. 32,27,092.25/- including the liquidator's fees, with 100% of the votes in favor.

Analysis and Findings of the DC.

2.3.10. Regulation 31A (6B) of Liquidation Regulations, which came into effect on 12.02.2024, mandates that the liquidator shall present the actual liquidation cost and the consolidated status of all legal proceedings in every SCC meeting. The 21st and 22nd SCC meetings were held subsequently on 25.04.2024 and 03.05.2024, respectively. Upon review of the SCC meeting minutes, it is evident that crucial details such as the actual liquidation cost and the consolidated status of all legal proceedings were not recorded. Regulation 31A(6B) of Liquidation Regulations, which is reproduced below, clearly states that these details must be provided in every SCC meeting: -

31A. Stakeholders' consultation committee.
(6B) ***In every meeting****, the liquidator shall present to the consultation committee:*
(a) the actual liquidation cost along with reasons for exceeding the estimated cost, if any;
(b) the consolidated status of all the legal proceedings; and
(c) the progress made in the process.

2.3.11. The minutes of both meetings do not reflect the presentation of liquidation costs and status of all legal proceedings, which is in violation of the regulatory mandate. Hence, DC find the liquidator in technical violation of Regulation 31A (6B) of the Liquidation Regulations.

Contravention-IV

2.4. **Failure to fix liquidator's fee.**

2.4.1. It was observed that in the 18th SCC Meeting held on 17.11.2023 the fee of the liquidator was fixed at Rs.5 lakh (lumpsum) for the entire liquidation period. Regulation 4 of the Liquidation Regulations provides that if the CoC during CIRP did not fix the fees of the liquidator for liquidation process, then SCC, in its first meeting, may fix such fees. If it were not fixed by SCC in its first meeting, then the liquidator shall be paid fees as a percentage of amount realized and distributed, as per the Table provided in Regulation 4(2)(b). Therefore, the IBBI held the prima facie view that Ms. Rita Gupta, *inter alia,* violated Regulation 4 of the Liquidation Regulations read with Clause 14 of the Code of Conduct.

Submissions by Ms. Rita Gupta.

2.4.2. Ms. Rita Gupta submitted that pursuant to the amendment in Regulation 4 vide notification dated 16.09.2022, the SCC was empowered to fix the liquidator's fees in case no decision was taken by the CoC under regulation 39D of the CIRP Regulations, 2016 regarding fees of the liquidator. In the present case, in absence of the said amendment, which came into effect later, the liquidator's fee was not fixed in the first SCC meeting. However, keeping in view the intent of the amendment and the notification, it can be fixed by the SCC members in any subsequent meetings. The liquidator also discussed this with legal counsel. He suggested that the liquidator can put up her fee issue and discuss the same with the SCC and subject to their concurrence, it can be fixed later as well, if not fixed in first SCC meeting.

2.4.3. She additionally submitted that as no fee was initially determined for her, and basis that no tangible assets were available for sale and realisation, as per the table specified under Regulation 4(2)(b), no fee as such would have been payable for the professional engagement as liquidator for entire liquidation period till dissolution. Therefore, at the request of Punjab National Bank, Ms. Rita Gupta shared the fee proposal with them on 14.07.2023 and with the SCC members on 16.11.2023 via email. Based on consideration of the same, the SCC approved and ratified the lump sum consolidated fee for the liquidator for her professional work.

Analysis and Findings of the DC.

2.4.4. In terms of Regulation 4 of the Liquidation Regulations, the SCC may fix the fee of liquidator in its first meeting only in case no fee is approved by the CoC. Further this provision has come into effect only from 16.09.2022. Whereas, in the present matter, the DC notes that the AA while admitting CD into liquidation *vide* order dated 18.12.2019 stated that the fees of the liquidator shall be as specified under regulation 4(2)(b) of the Liquidation Regulations. Ms Rita Gupta gave her consent and took up the assignment. However, in the 18^{th} SCC meeting held on 17.11.2023, she placed a resolution for a lump sum fee of Rs. 5 lakhs for the entire liquidation process. The DC notes that the rationale for proposing fixed fee was that there were no tangible assets of the CD, prompting her to place such a resolution.

2.4.5. The DC notes that the manner in which the fee of the liquidator can be decided is specifically provided under Regulation 4 of the Liquidation Regulations which cannot be altered or modified by a liquidator to suit his own needs. Even the concurrence of a financial creditor would not allow the liquidator to modify the terms of Regulation 4 of the Liquidation Regulations. There is no discretion with SCC to change fees later.

2.4.6. The DC is of the view that if the fee is not fixed in the first SCC meeting, it must be determined in accordance with Regulation 4(2)(b) of the Liquidation Regulations. In this case, since the AA appointed Ms Rita Gupta as the liquidator and explicitly directed that the fee be determined as per Regulation 4(2)(b). Ms Rita Gupta upon accepting the appointment, had already consented to this framework. The DC notes that if there were any concerns regarding her fees, the appropriate course of action would have been to approach the AA for clarification or modification. Since there is no enabling provision in the Code or Regulations to allow deviation from this requirement, the liquidator cannot place a resolution before SCC for approval that is not in accordance with the Code and Regulations. Accordingly, Ms. Rita Gupta cannot seek refuge of approval of her terms and conditions of fee by SCC. Thus, the DC holds the contravention.

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 hereby:-

(a) suspends the AFA of Ms. Rita Gupta (Registration No. IBBI/IPA-001/IP-P00149/2017-2018/10313) for a period of 6 months.

(b) directs the Board to investigate the conduct of the RP, Mr. Rakesh Takyar having Registration No IBBI/IPA-001/IP-P00160/2017-18/10329 in CIRP of the CD as discussed in paragraph 2.1.27.

3.2. This order shall come into force after 30 days from the date of issuance of this order.

3.3. A copy of this order shall be sent to the CoC/ SCC of all the corporate debtors in which Ms. Rita Gupta is providing her services, and the respective CoC/ SCC, as the case may be, will decide about continuation of existing assignment of Ms. Rita Gupta.

3.4. A copy of this order shall be forwarded to Indian Institute of Insolvency Professionals of ICAI (IIIPI) where Ms. Rita Gupta is enrolled as a member.

3.5. 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.

3.6. Accordingly, the show cause notice is disposed of.

Sd/-
(Sandip Garg)
Whole Time Member
Insolvency and Bankruptcy Board of India

Dated: 24th February 2025
Place: New Delhi