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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4951/2024 & CM APPL. 20283/2024**

SAVAN GODIAWALA

..... Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. Manmeet Singh, Mr.
Anugrah Robin Fery, Mr.
Yashvardhan Bandi, Mr. Samarth
Sansar, Advocates.

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

..... Respondent

Through: Mr. Madhavi Divan, Senior Advocate
with Mr. Sahil Monga and Mr. Vinay
Pandey, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **22.05.2024**

1. It is stated by learned Senior Counsel for the Petitioner that the order of inspection which has been issued by the AGM instead of the Executive Director is without any authority and that the delegation was without following the procedure prescribed by the IBBI.
2. Since the document authorizing the AGM was filed during the course of the response arguments, the IBBI is directed to file an affidavit indicating as to how the authorization was given to the AGM and in which agenda meeting was authorization given. Let the affidavit be filed within three days from today. Response thereto, if any, be filed within a week thereafter.
3. List on 01.07.2024 at 4:00 PM.



4. It is needless to state that since the matter is in the advanced stage of hearing the penalty will not be recovered till the judgment is pronounced.

MAY 22, 2024
hsk

SUBRAMONIUM PRASAD, J

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/208/2024

4 March, 2024

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/R(INSP)/2021-22/11/3651/550 dated 13.06.2022 issued to Mr. Savan Godiawala, Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-001/IP-00239/2017-2018/10468 and a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIIP-ICAI) having residential address registered with the Board as Deloitte Touche Tohmastu India LLP, 19th Floor, Shapath-V, S.G. Road, Ahmedabad, Gujarat-380015.

1. Brief description of the processes of the CDs

- 1.1. The Show Cause Notice (SCN) issued by the Board includes contraventions of the provisions of the Insolvency and Bankruptcy Code, 2016 (Code) and regulations made thereunder in respect of running the insolvency processes of two corporate debtors (CDs), namely, (i) Lanco Infra Tech Limited and (ii) Shirpur Power Private Limited. As detailed in succeeding paragraphs, the insolvency professional, Mr. Savan Godiawala was Interim Resolution Professional (IRP) /Resolution Professional (RP) /Liquidator for Lanco Infra Tech Ltd. and IRP/RP for Shirpur Power Private Limited.
- 1.2. In the case of Lanco Infra Tech Limited (CD-1), the NCLT, Hyderabad Bench (Adjudicating Authority/AA) *vide* its order dated 07.08.2017 admitted the application filed by IDBI Bank Limited under section 7 of the Code and appointed Mr. Savan Godiawala as an IRP who was later confirmed as the RP. As no resolution plan was approved by the Committee of Creditors (CoC), the CoC passed a resolution for liquidation of the CD-1 which was approved by the AA *vide* order dated 27.08.2018 and Mr. Savan Godiawala was appointed as the liquidator. Mr. Sawan Godiawala filed an application on 19.09.2022 to discharge him as liquidator. Hence the AA *vide* order dated 19.09.2022 discharged Mr. Sawan Godiawala and appointed Shri. Vijay Kumar Garg as liquidator. Later, Mr. Papaiah Sastry Chundury was appointed as liquidator and then Ms. Anuradha Bisani was appointed as liquidator.
- 1.3. In the case of Shirpur Power Private Limited (CD-2), the NCLT, Ahmedabad Bench (Adjudicating Authority/AA) *vide* its order dated 04.03.2020 admitted the application filed by State Bank of India and Bank of Baroda under section 7 of the Code and appointed Mr. Savan Godiawala as an IRP who was later confirmed as the RP. As no resolution plan was approved by the CoC, the CoC passed a resolution for liquidation of the CD-2 which was approved by the AA *vide* order dated 10.03.2021 and Mr. Dushyant Dave was appointed as the liquidator.
- 1.4. The Liquidation value in the matter of Lanco Infra Tech Limited, is estimated at Rs.320 crore whereas in case of Shirpur Power Private Limited, the liquidation value of the assets is estimated as Rs.477.84 crore (Rupees Four hundred seventy seven crore and eighty four lakh

only). In case of Lanco Infratech, the liquidator has realized around Rs.211.41 crore (Rupees Two hundred eleven crore forty one lakh only) till date and out of which, around Rs.56 crore (Rupees Fifty six crore only) has been distributed. The CIRP cost of CD-1 reported by Mr. Savan Godiawala in CIRP Forms comes to Rs.14.71 crore (Rupees Fourteen crore and seventy one lakh only) approximately and estimated liquidation cost as per progress report dated 14.07.2022 comes to Rs.54.64 crore (Rs. Fifty four crore and sixty four lakh only). Further, Rs.319.97 crore (Rs. Three hundred nineteen crore ninety seven lakh only) (approximately) has been realized and Rs.312.57 crore (Rs. Three hundred twelve crores fifty seven lakh only) distributed to creditors in the matter of Shirpur Power Private Limited. Liquidation proceedings are yet to be concluded in both cases.

2. Issuance of Show Cause Notice (SCN) and hearing before Disciplinary Committee(DC)

- 2.1. The Board, in exercise of its powers under section 196 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) appointed an Inspecting Authority (IA) to conduct the inspection *vide* order dated 12.10.2020. The IA under regulation 6(1) of the Inspection Regulations shared the Draft Inspection Report (DIR) with Mr. Savan Godiawala *vide* email dated 11.11.2021, to which Mr. Savan Godiawala submitted reply *vide* email dated 24.12.2021. The IA also submitted the DIR under regulation 6(2) of the Inspection Regulations to the Board on 11.11.2021. The Board had advised IA to resubmit the DIR after considering some observation. Accordingly, the addendum to the DIR was submitted to the Board with respect to the said observation 23.12.2021. Since there were no contravention or adverse observations alleged therein, hence, the addendum was not shared with Mr. Savan Godiawala for comments under regulation 6(1) of the Inspection Regulations. The IA submitted the Inspection Report to the Board on 07.04.2022.
- 2.2. Based on the material available on record including the Inspection Report, the Board issued SCN to Mr. Savan Godiawala on 13.06.2022. The SCN alleged contravention of sections 34(8), 208(2)(a) and 208(2)(e) of the Code, regulation 35A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulations 4(3) and 7(1) of IBBI (Liquidation Process Regulations), 2016 (Liquidation Regulations), regulations 7(2)(a) and 7(2)(h) of IBBI (Insolvency Professional) Regulations, 2016 (IP Regulations) read with clauses 1, 2, 3, 10, 14 and 25 of Code of Conduct as specified under First Schedule of IP Regulations (Code of Conduct) and Board circular no. IBBI/IP/013/2018 dated 12.06.2018. Mr. Savan Godiawala replied to the SCN *vide* email dated 04.07.2022.
- 2.3. The Board referred the SCN, response of Mr. Savan Godiawala to the SCN, to the DC for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Savan Godiawala was given opportunity for personal hearing before the DC which he availed and attended the proceedings along with his advocates Mr. Abhinav Vasisht and Nastassia Khurana on 03.08.2022 through virtual mode.
- 2.4. The DC disposed of the SCN by passing order dated 18.08.2022 disposing of the SCN suspending registration of Mr. Savan Godiawala for a period of three years and imposed a penalty to deposit amount equivalent to payments made to Deloitte Touche Tohmatsu India LLP (DTTILLP) after 23.07.2019 till the date of aforesaid order and deposit the penalty

amount directly to the Consolidated Fund of India (CFI). The aforesaid order was challenged by Mr. Savan Godiawala vide WP(C) 13317/2022 before the Hon'ble High Court of Delhi on 13.09.2022. The Hon'ble High Court of Delhi issued notice to the Board and stayed the direction to deposit the disgorgement amount alone vide order dated 14.09.2022. The aforesaid WP(C) 13317/2022 was finally disposed of by the Hon'ble High Court of Delhi on 11.01.2024 with following direction.

“5. Without going into the question as to whether Regulation 12(5) is directory or mandatory in the facts of the present case, this Court is of the opinion that the matter should be remanded back to the Board with a direction to the Board to supply a copy of the Final Inspection Report to the Petitioner within one week from today. The Petitioner is permitted to file a further or substituted reply to the show cause notice within two weeks thereafter and the Board is directed to decide the matter within four weeks thereafter in accordance with the Regulations. The impugned order is, therefore, set aside.”

2.5. In compliance of the above direction, the copy of final inspection report was given to Mr. Savan Godiawala on 18.01.2024. Mr. Savan Godiawala submitted his substituted response to the SCN on 01.02.2024 and availed opportunity of personal hearing on 19.02.2024 through virtual mode where he appeared along with Mr. Nalin Kohli, Advocate. Mr. Savan Godiawala submitted his additional written submissions on 21.02.2024. He sought another opportunity of personal hearing before the DC to explain his additional written submissions. In the interest of natural justice, the additional personal hearing was also held on 27.02.2024 through virtual mode where he appeared along with his advocate. He further submitted additional information on 28.02.2024.

3. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Mr. Savan Godiawala's substituted oral and written submissions thereof are summarized below:

3.1. Preliminary objections.

(a) The inspection in this matter was initiated by an officer lacking requisite authority.

3.1.1. Mr. Savan Godiawala submitted that the Inspection Order dated 12.10.2020 was issued without requisite authority. In this regard, in terms of the IBBI (Delegation of Powers and Functions) Order, 2017 (Delegation of Power), the power to order an inspection can only be exercised by an officer having the designation of Executive Director. However, the Inspection Order initiating the present proceedings under regulations 3(1) and 3(3) of the Inspection Regulations (and not regulation 3(2) of the inspection Regulations), was passed on the directions of an Assistant General Manager.

Observations of the DC.

3.1.2. The DC observes that as per Delegation of Power, the inspection is to be approved by the officer having designation of Executive Director. The DC notes that the inspection has been approved by an officer having designation of Executive Director while only the

communication has been made by an officer having designation of Assistant General Manager. Hence, the DC finds that there is no infirmity in issuing inspection order.

(b) The SCN was issued without necessary jurisdiction.

- 3.1.3. Mr. Savan Godiawala submitted that the SCN is issued without jurisdiction and, thus, is not even maintainable. A SCN may only be issued under section 219 of the Code read with regulation 12 of the Inspection Regulations *“upon completion of an inspection or investigation under section 218”*. He submitted that proceedings under section 218 of the Code shall only commence in case (a) a complaint is received under section 217 of the Code; or (b) there are reasonable grounds to believe that the insolvency professional has contravened any provision of the Code. Much to the contrary, in the present case, the inspection had not been directed on the basis of any complaint under section 217 of the Code. There is also nothing in the Inspection Order or even in the DIR, which would suggest that the inspection was directed on the basis of there being any reasonable grounds to believe that he had violated any provision of the Code or regulations thereunder.

Observations of the DC.

- 3.1.4. The inspection order dated 12.10.2020 begins as follows:
“In exercising of its power under section 196 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 3(1) and 3(3) of the IBBI (Inspection and Investigation) Regulations, 2017, the Insolvency and Bankruptcy Board of India (IBBI), hereby directs the Inspecting Authority to conduct an inspection of the insolvency professional,...”
- 3.1.5. The DC observes that the inspection was conducted in accordance with functions of the Board provided under section 196 of the Code. Relevant clauses (f) & (g) of section 196(1) are reproduced below clearly providing for carrying out inspection and investigation:
*“(f) carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;
(g) monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;”*
- 3.1.6. Further, IBBI has framed Inspection Regulations in exercise of the powers conferred under sections 196, 217, 218, 219, 220 read with section 240 of the Code. To carry out the functions under section 196 of the Code, regulation 3(1) & (2) of the Inspection Regulations were framed as follows:
*“(1) The Board shall conduct inspection of such number of service providers every year, as may be decided by the Board from time to time.
(2) Without prejudice to provisions of sub-regulation (1), the Board may conduct inspection of a service provider under section 218.”*

3.1.7. In view of the above, the inspection has been carried as per the mandate of the Code and the Regulations made therein. Further regulation 11(2) of the Inspection Regulations provides for consideration of the inspection report and subsequent action as follows:

“(2) If the Board, after consideration of the report under sub-regulation (1) or on the basis of material otherwise available on record, is of the prima facie opinion that sufficient cause exists to take actions under section 220 or sub-section (2) of section 236, it shall issue a show-cause notice in accordance with regulation 12 to the service provider or an associated person and in any other case, close the inspection or investigation, as the case may be.”

3.1.8. In this case, the Board after consideration of the inspection report was of the prima facie opinion that sufficient cause exists to issue SCN and the SCN was issued accordingly. Since the issue of SCN was as per the provisions of the Code and the regulations made therein, the issue of SCN is within the jurisdiction.

(c) The Addendum to the DIR, despite being a material document, was not provided to the Insolvency Professional

3.1.9. Pursuant to the Final Order of the Hon’ble High Court of Delhi, a copy of the Final Inspection Report was provided to the Insolvency Professional on 18.01.2024. From a perusal of paragraph 5 of the Final Inspection Report, it is evident that the Competent Authority had advised the IA to resubmit the DIR after considering certain observations. It seems that pursuant thereof, the IA submitted the Addendum to DIR (Addendum) to the Board on 23.12.2021. Therefore, a copy of the Addendum was required to be provided to him, in view of the mandatory provisions of the Inspection Regulation as well as in keeping with the basic principles of natural justice. However, the Addendum was only provided to him along with the Final Inspection Report post the directions of the Hon’ble High Court. In fact, it appears that the Addendum was not even provided to the Hon’ble High Court.

Observations of the DC.

3.1.10. The DC observes that the said addendum was submitted by IA under regulation 6(3) & (4) of the Inspection Regulations which provides as follows:

“(3) The Board shall examine the draft inspection report as to whether inspection is complete and satisfactory or requires further inspection and advise the Inspecting Authority accordingly within 15 days of receipt of draft inspection report.

(4) After considering the comments of the service provider and taking into account advice of the Board, the Inspecting Authority shall prepare the inspection report and submit it to the Board.”

3.1.11. Thus, the IA submitted the addendum on advice of the Board. Since in the addendum no new contravention had been made, no prejudice can be said to have been caused by not sharing the said addendum with Mr. Savan Godiawala, and it does not violate principles of natural justice.

(d) The language of the SCN is as if the Board has pre-judged issues against the Insolvency Professional.

3.1.12. The SCN expressly states that *“the above establishes that”* the Insolvency Professional contravened provisions of the Code and regulations as mentioned therein. The SCN in paragraph 5 further states that *“These contraventions are serious in nature making you a person not fit and proper to continue as an IP”*. It, therefore, appears that at the preliminary stage of the SCN itself, the matter stands prejudged in the SCN. Such conclusion gravely prejudices him and his basic right to natural justice and a fair opportunity to respond to the observations in the SCN.

Observations of the DC.

3.1.13. The DC observes that Mr. Savan Godiawala has quoted a selected portion of the SCN to give an impression that an absolute finding has been made. To understand the full context the complete statement needs to be understood and is being reproduced as below:

“These contraventions are serious in nature making you a person not fit and proper to continue as an IP.” It is therefore, proposed to take actions against you as permissible under section 220(2) of the Code, including cancellation of your registration.”

3.1.14. The statement quoted when read in totality clearly points out that it is only an allegation and therefore the action has been proposed to be taken under section 220(2) of the Code wherein only DC can take the action and not the Board. The regulation 12(1)(e) provides that *“the actions or directions that the Board proposes to take or issue, if the allegations are established;”*. In the spirit of the above regulations, it was stated in the SCN that the contraventions, if established, will make an IP not a fit and proper person to act as an IP. Hence the SCN only says that if contraventions are established, what consequences may follow. On the contraventions alleged in the SCN, Mr. Savan Godiawala was given opportunity not only to reply to SCN, but thereafter was given opportunity of personal hearing twice.

In the matter of Lanco Infra Tech limited (CD-1)

3.2. Contravention with regard to withdrawal of excess remuneration as liquidator’s fee:

3.2.1. The fee of liquidator, where the same has not been fixed by the Committee of Creditors (CoC), is governed by regulation 4(3) of Liquidation Regulations, which states as under:

Amount of Realisation / Distribution (In rupees)	Percentage of fee on the amount realised / distributed			
	in the first six months	in the next six months	in the next one year	thereafter
Amount of Realisation (exclusive of liquidation costs)				
On the first 1 crore	5.00	3.75	2.50	1.88
On the next 9 crore	3.75	2.80	1.88	1.41
On the next 40 crore	2.50	1.88	1.25	0.94
On the next 50 crore	1.25	0.94	0.68	0.51

On further sums realized	0.25	0.19	0.13	0.10
	Amount Distributed to Stakeholders			
On the first 1 crore	2.50	1.88	1.25	0.94
On the next 9 crore	1.88	1.40	0.94	0.71
On the next 40 crore	1.25	0.94	0.63	0.47
On the next 50 crore	0.63	0.48	0.34	0.25
On further sums distributed	0.13	0.10	0.06	0.05

- 3.2.2. It is observed that for the period from 27.02.2019 to 27.08.2019, the amount of Rs. one crore has been included in category of “on the first 1 crore” whereas it should have been included in the category of “on the first 9 crore” as in the first six months itself, the realizations have crossed the first one crore category. Accordingly, the slab used in all remaining tables are also inappropriate on similar lines. Mr. Savan Godiawala as liquidator should have been paid an amount of Rs.2,29,65,938 (Rupees Two crore twenty nine lakh sixty five thousand nine hundred and thirty eight) as against an amount of Rs.3,11,98,374 (Rupees Three crore eleven lakh ninety eight thousand three hundred seventy four) received by him as liquidator’s fee. Due to wrong calculation of liquidation fee, he has drawn excess fee of Rs.83,04,764 (Rupees Eighty three lakh four thousand seven hundred and sixty four) in excess of the fees that was payable to him in accordance with the aforesaid regulations.
- 3.2.3. It is Mr. Savan Godiawala’s own admission in reply to DIR that *“Based on the above interpretation, the IA reckons that the fee of liquidator is to be reduced by Rs.83,04,764 ... Without prejudice, the IP wishes to align with the guidance provided by IBBI in this regard and is therefore in the process of reversing the difference to Corporate Debtor.”* In addition, Mr. Savan Godiawala has placed on record a tabulated calculation sheet wherein he had submitted *“the excess amount works out to Rs.85,59,962”*.
- 3.2.4. In view of the above, the Board held the view that Mr. Savan Godiawala had *inter alia* violated section 34(8) of the Code, regulation 4(3) of Liquidation Regulations read with clauses 10, 14 and 25 of the Code of Conduct.
- Submissions of Mr. Savan Godiawala.**
- 3.2.5. Mr. Savan Godiawala submitted that IBBI vide its own clarification dated 28.09.2023 with respect to liquidator’s fee under clause 4(2)(b) of the Liquidation Regulations, itself acknowledged that different interpretations of terms in clause 4(2)(b) were being made by various insolvency professionals. Keeping this in mind, it was directed by the IBBI that *“in cases, where excess liquidator’s fee is returned and distributed on or before 31st October 2023 no disciplinary proceedings will be initiated on the ground that the excess fee was charged and has now been returned”*. Even prior to the issuance of such clarification, he refunded the amount of Rs.92,44,758 (inclusive of taxes) to Lanco on 18.02.2022. Thus, the primary observation raised against him in the SCN now stands resolved in his favour and it is the IBBI’s own clarification that no disciplinary proceedings shall follow therefrom.

- 3.2.6. Mr. Savan Godiwala submitted that the observation regarding charging excess fee has become wholly infructuous and stands settled in favour of the Insolvency Professional on account of the IBBI Clarification with respect to liquidator's fee under clause 4(2)(b) of the Liquidation Regulations.
- 3.2.7. The circumstances requiring the IBBI Clarification to be issued in the first place are critical. In this regard, the said clarification was issued by the IBBI because it was acknowledged that there were several instances of misunderstanding and confusion regarding the interpretation of regulation 4 of the Liquidation Regulations by various insolvency professionals. Thus, it was clarified in the IBBI Clarification that in cases where excess fee was returned on or before 31.10.2023, no disciplinary proceedings shall be initiated on the grounds that excess fees was charged by the concerned insolvency professional.
- 3.2.8. He further submitted that he in his Reply to the DIR had, without prejudice to his interpretation of the regulation 4 of the Liquidation Regulations, agreed to align with the interpretation proposed by the IBBI in the DIR and had agreed to refund the purported excess fee basis the interpretation sought to be ascribed by the IBBI in the DIR. Accordingly, on 18.02.2022 (well before the IBBI Clarification), the Insolvency Professional duly refunded an amount of Rs.92,44,758 (Rs. Ninety two lakh forty-four thousand and seven hundred fifty-eight only) (inclusive of taxes) to CD-1, on a without prejudice basis. The Insolvency Professional is fully compliant with the requirements of the IBBI Circular.
- 3.2.9. He submitted that the issue of charging of excess fee was a non-issue in this matter even prior to the issuance of the IBBI Clarification as the excess fee charged was on account of a genuine mistake as he believed that his interpretation for the assessment of the liquidator's fees, at the relevant time, was correct. Moreover, his actions taken in this regard were *bonafide* and in utmost good faith with due disclosures to all relevant authorities and stakeholders.
- 3.2.10. He also submitted that his interpretation of the concerned provision is a reasonable and fair interpretation which, in any event, is one of two plausible interpretations based on a literal reading of the regulation. Furthermore, all assessments, figures, withdrawals, and distributions were duly disclosed by him to the AA-1 in progress reports. The progress report was also submitted to the IBBI as well as to the Indian Institute of Insolvency Professionals of ICAI ("IIIPICAI") on 24.04.2021 along with all relevant documents. Pertinently, despite due disclosures, no objections were raised against the withdrawal of the fees by him as calculated by him.
- 3.2.11. He submitted that the Board in its Final Inspection Report wrongly and unfairly treated the refund of the excess amount which was made expressly on a "without prejudice basis" (as expressly set out in in the Reply to the DIR), somehow to be an admission of the alleged contravention by him. He submitted that it is patently incorrect reading of the Reply to the DIR and also completely ignores the fact that he has constantly maintained that the excess

fee charged was on account of a *bonafide* interpretation and the refund of the same was made expressly on a “without prejudice basis”. It is also pertinent that neither the Final Inspection Report nor the SCN contain any finding that withdrawal of excess fees by the Insolvency Professional and / or his genuine misinterpretation of the regulation was *malafide* or done intentionally.

- 3.2.12. He submitted that the IBBI has taken a markedly considerate view in similar cases based on similar facts involving other insolvency professionals, as evidenced by the following instances, while not affording a similar view to the Insolvency Professional:
- a) Order dated 10.08.2022 passed with reference to Mr. Rakesh Ahuja, Insolvency Professional: Despite allegations of withdrawal of excess amount and incorrect application of rate as per regulation 4(2)(b) of the Liquidation Regulations, the IBBI only cautioned Mr. Ahuja to be more careful in interpreting the provisions of the Code and regulations in future.
 - b) Order dated 05.07.2022 passed with reference to Mr. Avishek Gupta, Insolvency Professional: Despite allegations of withdrawal of excess amount as well as incorrect application of rate as mentioned in regulation 4(2)(b) of the Liquidation Regulations, the IBBI merely cautioned Mr. Gupta to be more careful in interpreting the provisions of the Code and regulations in future.

Summary Findings

- 3.2.13. The DC observes that DIR dated 11.11.2021 highlighted excess fees charged by the liquidator as Rs.83,04,764 (Rupees Eighty three lakh four thousand seven hundred and sixty four). Subsequently, Mr. Savan Godiawala voluntarily refunded liquidators’ fees amounting to Rs.85,59,962 and deposited Rs.92,44,758 (Rs. Ninety two lakh forty four thousand and seven hundred fifty eight only) after adding GST (18%) and deducting TDS (10%) on Rs.85,59,962 (Rs. Eighty five lakhs fifty nine thousand nine hundred sixty two only).
- 3.2.14. The DC also notes that the Board has issued circular dated 28.09.2023 titled as “*Clarification w.r.t. Liquidators’ fee under clause (b) of sub-regulation (2) of Regulation 4 of IBBI (Liquidation Process) Regulations, 2016*”, which states that “*The IPs who are currently handling or have handled in the past any liquidation assignment shall ensure that the fee charged by them under Regulation 4(2)(b) is in accordance with above clarifications and inform the same to the Board electronically on the website of IBBI. In cases, **where excess liquidator’s fee is returned and distributed on or before 31st October 2023 no disciplinary proceedings will be initiated on the ground that the excess fee was charged and has now been returned.***”
- 3.2.15. Mr. Savan Godiawala has relied on the emphasized portion of paragraph 3 of the above circular to contend that it itself lays down that once excess fees are returned, no disciplinary proceedings will be initiated. However, the same is not being read in its context. Pertinent to mention that there is difference in cases where the excess fee is returned without being detected at all by the Board, where the excess fees is returned after a draft inspection report and where the excess fees is returned after receipt of show cause notice. The case of Mr.

Savan Godiawala falls in the category where the excess fee was returned after the draft inspection report.

- 3.2.16. Mr. Savan Godiawala has relied on few cases decided by the DC to hold that in few such cases, considerate view has been taken. It is to be noted that each and every SCN is disposed of based on the facts of respective case and the totality of conduct of an IP in discharging in his duties and entirety of circumstances, which cannot be placed at par with other matters.
- 3.2.17. The DC further notes that IP has to be very careful where an illogical interpretation results in unjustified benefits to him. From the illustration given in paragraph 2.4 of the above circular, it is abundantly clear that the interpretation taken by the IP is leading to an illogical situation where the IP will be getting more fees if he disposes off the assets of Rs.11 crore in one year and less fee if he disposes off the asset of Rs.11 crore in six months which is against the intent and spirit of the Code and its regulations. He should have been aware of such an illogical interpretation and be careful in interpreting it in such a manner to benefit himself.
- 3.2.18. Thus, the return of excess fees back in the account of CD after being pointed out by the IA is a compliance done by Mr. Savan Godiawala to mitigate the effect the contravention already done. Thus, there is contravention of section 34(8) of the Code, regulation 4(3) of Liquidation Regulations read with clauses 10, 14 and 25 of the Code of Conduct.

3.3. Contravention No. II with regard to fee of Deloitte Touche Tohmatsu India LLP (DTTILLP)

- 3.3.1. Regulation 7(1) of Liquidation Regulations provides that a liquidator may appoint professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.
- 3.3.2. It is observed that DTTILLP, where Mr. Savan Godiawala is a partner, was appointed by him vide work order dated 28.08.2018 to assist him in taking control and managing affairs of the CD and other obligations as the liquidator of the CD. Regarding fee to DTTILLP, the work order mentions that "*The cost of services of DTTILLP to liquidator will be as per mutually agreed*". It is, thus, observed that Mr. Savan Godiawala engaged a related entity for helping him in the liquidation process of the CD at vague terms and conditions and without specifying the amount of fee payable to such entity.
- 3.3.3. It is observed that DTTILLP was paid an amount of Rs.3,46,15,000 (Rupees Three crore forty six lakh fifteen thousand only) against an invoice dated 25.10.2019 for services provided by it for the period from 27.08.2018 to 27.08.2019. Hence, the effective monthly fees of DTTILLP comes to Rs.28,84,583 (Rupees Twenty eight lakh eighty four thousand five hundred and eighty three only) per month for this period. Further, DTTILLP was paid an amount of Rs.3,22,58,065 (Rupees Three crore twenty two lakh fifty eight thousand and sixty five only) against an invoice dated 18.01.2020, for services provided by it for the period from 28.08.2019 to 30.12.2020. Thus, the effective monthly fees of DTTILLP comes to Rs.20,16,129 (Rupees twenty lakh sixteen thousand one hundred and twenty nine only) per

month for this period. Furthermore, it is noted that DTTILLP was paid an amount of Rs.80,00,000 (Rupees Eighty lakh only) against an invoice dated 14.07.2021, for services provided by it for the period from 01.01.2021 to 30.06.2021. Thereby, the effective monthly fees of DTTILLP comes to Rs.13,33,333 (Rupees twenty two lakh two thousand one hundred and forty nine only) per month for this period.

Bill date	Period	Deloitte's fees	Effective monthly fees
25.10.2019	27.08.2018 to 27.08.2019	3,46,15,000	28,84,583
18.01.2020	28.08.2019 to 31.12.2020	3,22,58,065	20,16,129
14.07.2021	01.01.2021 to 30.06.2021	80,00,000	13,33,333
Total for the entire period		7,48,73,065	22,02,149

3.3.4. It is, thus, observed that the fee of DTTILLP was later reduced over the months without any change in scope of work, as per Mr. Savan Godiawala's own admission in response to queries raised by the IA vide e-mail dated 27.09.2021. Hence, it is clear that the work which could have been done by DTTILLP for Rs.13 lakh per month (approximately), has been paid initially 28 lakh per month (approximately) and later Rs.20 lakh (approximately) per month by Mr. Savan Godiawala.

3.3.5. As brought out above, DTTILLP was paid three different amounts for three different periods in the liquidation process without any change in scope of work. Further, the amount of fees paid to DTTILLP were more than double of what was paid to Mr. Savan Godiawala as liquidator. Enabling provisions in the Code and regulations allowing appointment of professionals by liquidator are there for the purpose of helping him in managing the process of liquidation. The table indicating percentage of fee on the amount realized/ distributed provided under regulation 4(3) of Liquidation Regulations duly takes into account the role and function of a liquidator in running the liquidation process. Any entity engaged to help a liquidator cannot be expected to be entrusted with responsibilities more than that of liquidator so as to justify higher fees to such entity in comparison to that of liquidator. Hence, engaging a related entity on vague terms and conditions and paying them fee more than double of one's own fee as liquidator is not only unjustified but also *malafide*.

Period	Liquidator's fees	Deloitte's fees	Total	Effective monthly fees
27.08.2018 to 27.08.2019	2,53,85,000	3,46,15,000	6,00,00,000	50,00,000

28.08.2019 to 31.03.2021	61,40,900	3,72,58,065	4,33,98,965	22,84,156
01.04.2021 to 30.06.2021	-	30,00,000	30,00,000	10,00,000
Total for the entire period	3,15,25,900	7,48,73,065	10,63,98,965	31,29,381

- 3.3.6. An IP is obliged under section 208(2)(a) of the Code to take reasonable care and diligence while performing his duties, including incurring expenses. The Board Circular no. IBBI/IP/013/2018 dated 12.06.2018 clearly specifies that not only fee payable to IP is reasonable but also other expenses incurred by him are reasonable.
- 3.3.7. In view of the above, the Board held the view that Mr. Savan Godiawala has inter alia violated regulation 7(1) of Liquidation Regulations, read with clauses 1, 2, 14 and 25 of the Code of Conduct and Board Circular no. IBBI/IP/013/2018 dated 12.06.2018.

Submissions of Mr. Savan Godiawala.

DTTILLP was not engaged on vague terms and conditions but on the basis of the work order.

- 3.3.8. Mr. Savan Godiawala submitted that the Board in its own addendum to DIR, has rightly observed that the IP duly complied with the Circular dated 12.06.2018, relating to “Fee and other Expenses incurred for Corporate Insolvency Resolution Process” and was of the considered opinion that “based on the review of available information and in the knowledge of the members of IA in the said case, no material non-compliance of the said circular is observed”. Despite reaching such conclusion, the SCN erroneously cites an alleged breach of the Circular dated 12.06.2018. Therefore, the SCN is contrary to the IBBI’s own addendum to DIR, and thus to the extent SCN alleges that the IP has contravened the Circular dated 12.06.2018, the said observation needs to be closed in favour of the IP for being contrary to IBBI’s own findings.
- 3.3.9. He further submitted that at the 18th meeting of the CoC held on 02.05.2018, a decision was taken to file an application under section 33(1) of the Code for initiation of liquidation of CD-1. Mr. Savan Godiawala, at the said meeting, proposed to act as the liquidator on same terms as the RP and stated that DTTILLP shall continue to assist him in discharging his duties as the liquidator. Accordingly, an application for liquidation of CD-1 came to be filed in due course and the liquidation order was passed by the AA-1 on 27.08.2018.
- 3.3.10. He submitted that what constitutes “reasonable” cannot be decided on a straitjacket formula and reasonability of the fees would be a fact specific evaluation and would inter alia depend on factors including but not limited to the size of the estate of the CD-1 undergoing CIRP or liquidation, the complexities involved, etc. He submitted that due to his efforts and its professional advisors, he was able to receive and file the acquisition plan dated 22.09.2021 for acquiring CD-1 as a going concern on “as in where is basis” for the approval of the AA-1 and, therefore, the overall success of such process was a direct result of his efforts. During

the course of the liquidation of CD-1, he conducted numerous e-auctions in consultation with the stakeholders of CD-1, to maximise the value realization for the stakeholders in the liquidation process, duly assisted by DTTILLP. Such efforts culminated with the approval of the sale of CD-1 as a going concern to KRS Erectors Private Limited, vide order dated 26.09.2022 of the AA.

- 3.3.11. Mr. Savan Godiawala submitted that the substance of the allegation in the previous Order of DC dated 18.08.2022 (set aside pursuant to the Order of High Court of Delhi dated 11.01.2024), was that the CoC in the 18th meeting only decided the fee of the liquidator and did not decide the fee of the professional advisory firm, DTTILLP, and, therefore, to get his stand vindicated on the need for support services, he worked out an alternative by placing the matter before the SCC, despite being aware that same has only a recommendatory role. Such erroneous conclusion in the Previous IBBI Order was not just wholly presumptuous and entirely unsupported by any finding of facts as to the intent sought to be ascribed to the IP, it also did not take into consideration the applicable law at the relevant time.
- 3.3.12. He submitted that at the time that the CoC of CD-1 took a decision to send the CD into liquidation, there was no requirement under the Code or the regulations for the CoC to approve the fee of the professional advisory firm to be appointed by the proposed liquidator. It was only much later on 25.07.2019 vide notification No. IBBI/2019-20/GN/REG048, that regulation 39B of the CIRP Regulations (which envisages that the CoC may make a best estimate of the amount required to meet liquidation costs in consultation with the Resolution Professional), was inserted in the CIRP Regulations. Therefore, at the relevant time, there was no requirement or entitlement in law for the CoC to approve the cost of the professional advisory firm to the liquidator. Nonetheless, despite there being no requirement, the IP duly informed the CoC that it proposed to appoint DTTILLP in the 18th CoC meeting held on 02.05.2018 in the *bonafide* interests of transparency and forthrightness.
- 3.3.13. He submitted that upon commencement of the liquidation process of CD-1, he now acting as the liquidator, engaged DTTILLP to provide professional advisory services in terms of the work order dated 28.08.2018 issued by him (Work Order). The scope of services provided by DTTILLP was all encompassing except for providing valuation services, e-auction platform related services and legal advisory. DTTILLP was engaged to provide professional advisory services to assist the Insolvency Professional who was managing the affairs of CD-1 and discharging his other functions during the liquidation of CD-1, because of which a comprehensive scope of work (and not at all vague), was stipulated in the Work Order. Also, the reference in the Work Order that the fee will be mutually agreed did not in any manner prejudice the interest of the liquidation estate since the fee which was mutually agreed was transparently disclosed to the Stakeholders Committee. If the Work Order had, in fact, specified a fixed number it would have likely also come in the way of negotiations for reduction of fee as was done from time to time during the liquidation process of Lanco (as elaborated upon in this reply) which reduction benefitted the liquidation estate.
- 3.3.14. It is also submitted that subsequent to the commencement of liquidation of CD-1, the Insolvency Professional provided an update to the SCC at the very first meeting held on

09.10.2018 and specifically disclosed that the appointment of DTTILLP as the professional advisory firm was proposed for a fixed monthly professional fee of Rs.50 lakh (plus expenses and applicable taxes). He submitted that DTTILLP had charged a higher fee during the CIRP, which had been duly approved by the CoC. In this context, the addendum to DIR prepared by the IA of the IBBI specifically notes that there is no material non-compliance by him of the provisions of the circular dated 12.06.2018 which related to the CIRP period. Therefore, the higher fee charged by DTTILLP during the CIRP of CD-1 was found to be reasonable by the IA.

- 3.3.15. He further submitted that a Joint Lenders Meeting (JLM), though not a part of the liquidation process of CD-1, was held on 24.12.2018. He was invited to attend the meeting by the JLM members. In such meeting a request was made by the lenders for the IP to re-negotiate the fee of Rs.50 lakhs per month payable to DTTILLP. Accordingly, while the lenders were discussing other terms of such JLM, the IP and representatives of DTTILLP stepped out and engaged in discussions as a result of which an arrangement was arrived at such that DTTILLP would reduce its monthly professional fee, to the extent of liquidator's professional fee for the corresponding month. Therefore, he charged his fees as per regulation 4 of the Liquidation Regulations and to the extent liquidator was entitled to charge his fee in any given month, such amount was reduced by DTTILLP from its fees. As mentioned above, while fixing the fee was at the sole discretion of the IP and he was not even required to take prior approval from the lenders for the same. We received two versions of the minutes from the lenders.
- 3.3.16. He submitted that during the 12th SCC meeting held on 24.12.2020, on a clarification sought by the representative of Kotak Mahindra Bank, the IP informed that the fee of Deloitte had been reduced significantly to Rs.20 Lakh per month from August 2019, and it was recorded as follows: *"All the stakeholders confirmed the aforesaid total amount and also agreed that IDBI Bank can provide lender wise break up of the expenses to the liquidator for it to be deducted from the amount to be distributed to the relevant stakeholders under the liquidation process"*. From the above SCC meeting minutes, it is clear that the stakeholders were duly kept aware of the fee amount.
- 3.3.17. He submitted that as the liquidation process progressed, the efforts, and consequentially, the quantum of work of DTTILLP in assisting him reduced. In view of such reduction in quantum of work and effort required to discharge the same, the IP renegotiated the rate of DTTILLP downwards which actually benefitted the liquidation estate of CD-1. As such, for the period during 27.08.2018 to 27.08.2019 a monthly fee of Rs.50 Lakhs (with adjustment of liquidator's fee as set out above) was payable to DTTILLP, for the period during 28.08.2019 to 28.02.2021 a monthly fees of Rs.20 Lakhs was payable and from 01.03.2021, a monthly fees of Rs.10 Lakhs was payable to DTTILLP.
- 3.3.18. He further submitted that the IP duly submitted progress reports in terms of regulation 15 of Liquidation Regulations. The fees paid to professionals appointed by the liquidator, including DTTILLP, was duly disclosed in the progress reports in terms of regulation 15(2)(c)(ii) of the Liquidation Regulations. The progress reports were filed before the AA and also

submitted before the IBBI as well as the Indian Institute of Insolvency Professional of ICAI. It is pertinent to state that at no point was any objection raised as to the reasonability of fee being paid to DTTILLP by either IBBI or IIPICAI.

Upon reduction of quantum of work in the liquidation of Lanco, there was also a reduction DTTILLP's fee.

- 3.3.19. He submitted that the quantum of DTTILLP's work was much higher during the initial phases of the liquidation and for which naturally, a higher sum was agreed with DTTILLP. While a comprehensive scope was agreed with DTTILLP, however, within such comprehensive scope, the quantum of effort is much more front-ended in a liquidation process. Further, as the process progresses, the quantum required for certain activities, such as assistance for claims collation and verification reduces.
- 3.3.20. Mr. Savan Godiawala submitted that the assistance required from DTTILLP, immediately upon the commencement of the liquidation in various processes, included the following:
- a. Claim verification;
 - b. Planning and strategy for the auction of the Corporate Debtor, businesses, and assets;
 - c. Preparation of liquidation estate and preparation for auction – data collation from various sites, review of assets and their categorization for first auction;
 - d. Coordination and facilitation of valuation of assets;
 - e. Preparation of reports such as preliminary report, asset memorandum, marketing documents, etc.;
 - f. Interactions with the stakeholders, including through conduct of stakeholders' meetings;
 - g. Preparation of process documents for auction of the Corporate Debtor, businesses, and assets;
 - h. Appointment of auction agency;
 - i. Discussion and planning the details of auction process with appointed auction agency;
 - j. Initial marketing thrust and reach out to potential buyers;
 - k. Extensive deliberation with stakeholders on the possible monetization of group entities for the benefit of stakeholders, whether as part of liquidation or outside liquidation process;
 - l. Discussions with SAIL and various stakeholders and efforts towards realizing value from a coal mining contract of CD-1;
 - m. Identifying EPC projects and potential receivables for recovery.
- 3.3.21. Illustratively, the broad activities in the subsequent phases of liquidation entailed inter alia the following activities:
- a) Conducting auctions and private sale of assets;
 - b) Delivery of assets;
 - c) Interactions with the stakeholders, including through conduct of stakeholders' meetings;

- d) Distribution to stakeholders in the process;
- e) Realization of proceeds from other sources; and
- f) Reports and processes as laid down in the regulations.

- 3.3.22. He submitted that as set out above, with the progress of the liquidation process of CD-1, the quantum of work involved progressively reduced, resulting in the amount being charged by DTTILLP being accordingly re-negotiated downwards by him on two occasions. Such reduction of fee of DTTILLP undertaken twice, was on account of reduced quantum of effort required from DTTILLP as the process progressed and such of his action of negotiating reduction two separate occasions actually benefitted the liquidation estate of CD-1. IBBI's reasoning that DTTILLP would have always agreed to work on such reduced fee from the very inception is wholly erroneous, presumptuous, and bereft of logic. A subsequent reduction in quantum of work resulting in fee reduction being re-negotiated by him, in any event, cannot be taken to contend that DTTILLP would have always been willing to work at the reduced fee.
- 3.3.23. However, it was wrongly concluded that the work which could have been done by DTTILLP for Rs.13 lakh per month, he paid an amount of Rs.28 lakh per month and later Rs.20 lakh per month. In arriving at such a conclusion, the IA appears to have ignored that the quantum of work for which Rs.28 lakh per month was paid was much higher than the work for which Rs.13 lakh per month was paid and vice versa.
- 3.3.24. He submitted that even though DTTILLP's quantum of work reduced later, he did not wish to unnecessarily reduce the scope of work in the work order with DTTILLP because in any liquidation process, it is highly plausible that some heads of scope of work may gain relevance again, such as assistance for verification of a delayed claim, which may be permitted by the AA or repeating a bid process already undertaken once. He submitted that in his wisdom and in *bonafide* good faith did not wish to reduce or lessen the scope of work but ensured that the rates were re-negotiated and reduced for the benefit of the company in liquidation. He submitted that keeping the scope constant while reducing the fee, caused absolutely no prejudice to the liquidation estate of CD-1 and was, in fact, was to its benefit.
- 3.3.25. He further submitted that active assistance was required from DTTILLP for facilitation of, inter alia, following key activities with period wise weightage of time and manpower commitment:

Activity	Time-wise weightage		
	0-12 months	12-24 months	24 – 49 months
Claim verification	High	Low	
Planning and strategy for the auction of the Corporate Debtor, businesses, and assets	High	High	Medium

Preparation of liquidation estate and preparation for auction – data collation from various sites, review of assets and their categorization for first auction	High	Medium	Medium
Coordination and facilitation of valuation of assets	High		
Preparation of reports such as preliminary report, asset memorandum, marketing documents, etc.	High	Medium	
Interactions with the stakeholders, including through conduct of stakeholders’ meetings	High	High	High
Preparation of process documents for auction of the Corporate Debtor, businesses, and assets	High	Medium	Low
Appointment of auction agency	High	Low	
Discussion and planning the details of auction process with appointed auction agency	High	Medium	
Initial marketing thrust and reach out to potential buyers	High	Medium	
Deliberation with stakeholders on the possible monetization of group entities for the benefit of stakeholders, whether as part of liquidation or outside liquidation process	High	Medium	Low
Discussions with Steel Authority of India Limited and various stakeholders and efforts towards realizing value from a coal mining contract of Corporate Debtor	High		
Identifying EPC projects and potential receivables for recovery.	High	Medium	
Filing of progress reports and compliances	High	High	High

Fees of DTTILLP was more than double of what was paid to Mr. Savan Godiawala, somehow DTTILLP’s fee was unreasonable

- 3.3.26. Mr. Savan Godiawala submitted that comprehensive scope of work and services provided by DTTILLP has been overlooked. A bare perusal of the indicative scope of work highlights the volume and the complexity of the work required in the liquidation process of Lanco. Thus, it is entirely reasonable that the fees of the professional advisory firm would be higher than that of the liquidator.

- 3.3.27. He submitted that the complexity and magnitude of the assignment has been ignored and no consideration has been paid to the fact that the CoC approved a higher fee for DTTILLP during the CIRP in its commercial wisdom. Moreover, given that the fee paid to DTTILLP during the CIRP of CD-1 was found to be reasonable in the addendum to DIR as the same expressly states that there was no material non-compliance of the circular dated 12.06.2018 and also no objections were raised by the IBBI in the SCN with respect to the CIRP Period, then as a matter of course, the reduced fee paid to DTTILLP during the liquidation of CD-1 cannot at all be considered to be unreasonable, as purported in the SCN or even otherwise.
- 3.3.28. He submitted that the IBBI in its press release dated 30.09.2022 has itself acknowledged the requirement of a multi-disciplinary and concurrent support of various kinds to approve the registration of insolvency professional entities as insolvency professionals. DTTILLP deployed a team comprising of several professionals to support the liquidator as per the comprehensive scope agreed in the work order. Therefore, the reasoning that the fees of DTTILLP was more than double of what was paid to the IP is bereft of logic since the same does not take into consideration the effort and time expended by DTTILLP.
- 3.3.29. He also submitted that there was no *malafide* intent whatsoever on part of the Insolvency Professional in appointment of DTTILLP for providing professional advisory services during liquidation or fixing the scope of the work or negotiating the fees of DTTILLP and due transparency was maintained at all times. That he cannot be said to have violated any provisions of the Code, and regulations thereunder or the Code of Conduct only on account of the fact that the fees charged by DTTILLP was more than the fees charged by Insolvency Professional. Any such finding or inference is wholly arbitrary, incorrect in law and is based on an incorrect appreciation of the provisions and the spirit of the Code. The fees charged by DTTILLP, which is a professional firm and deployed multiple personnel, cannot be compared to the fees charged by an individual acting as an Insolvency Professional

No allegation of any violation of clause 23 B of the Code of Conduct or regulation 7(2) of the Liquidation Regulations.

- 3.3.30. He submitted that as per regulation 12(1)(d) of the Inspection Regulations, the SCN is required to set out the provisions of the Code which have been violated; and the SCN make no reference to either clause 23B of the Code of Conduct or regulation 7(2) of the Liquidation Regulations. However, the Previous IBBI Order dated 18.08.2022 (which has since been set aside pursuant to order of High Court of Delhi dated 11.01.2024), includes references to such provisions.
- 3.3.31. He submitted that at the relevant time of appointment of DTTILLP as the professional advisory firm by him there was no restriction upon the appointment of a related party. Clause 23B of Code of Conduct was, in fact, introduced into the IP Regulations only on 23.07.2019 with effect from 23.07.2019. Moreover, clause 23B, having been inserted without a specific provision for any retrospective application, cannot be applied retrospectively for appointments and engagements made prior to 23.07.2019.

- 3.3.32. That it is a settled position of law as laid down in *Commissioner of Income Tax v. Vatika Township (2015) 1 SCC 1*, that a rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention to the contrary. Even the Board has not provided any guidance whatsoever that the services of any previously appointed party was to be disengaged upon clause 23B being incorporated in the Code of Conduct.
- 3.3.33. It is further submitted that at stage of the DIR itself, the IA examined all the issues in detail and took note of his status as a partner of DTTILLP but did not raise any observations regarding the continuation of DTTILLP as a professional advisory firm to him post the introduction of clause 23B of the Code of Conduct. However, despite the absence of any finding with respect to clause 23B, the same became the basis for imposition of penalty under the Previous IBBI Order dated 18.08.2022. That the IA did not consider such continuation to be in contravention of clause 23B of the Code of Conduct.
- 3.3.34. It is respectfully submitted that the only restriction contained in regulation 7(2) of the Liquidation Regulations is with respect to the appointment of a “relative” or “related party to the Corporate Debtor”. In the present case, however, neither of these two conditions are fulfilled. DTTILLP is neither a relative of Mr. Savan Godiawala nor a related party to the CD-1. Thus, there was no bar at all to the appointment of DTTILLP, including in terms of regulation 7(2) of the Liquidation Regulations.
- 3.3.35. Furthermore, the fact that the Insolvency Professional was a partner with DTTILLP was duly disclosed to the CoC at the time of DTTILLP’s appointment as the professional advisory firm in the CIRP of Lanco. Without prejudice to the above, it is submitted that the fact of appointment of DTTILLP as the professional advisory firm was already known to the Board.
- 3.3.36. He submitted that the fee was paid to DTTILLP for the services rendered by it. In fact, it is not even the case in the SCN that services were not provided by DTTILLP after 23.07.2019 i.e. the date on which clause 23B was inserted into the Code of Conduct. Yet, in the Previous IBBI Order (now set aside), the Board has directed the Insolvency Professional to deposit the entire amount paid to DTTILLP after 23.07.2019 as penalty, without giving any consideration to the actual work undertaken and completed by DTTILLP. This direction apart from being untenable for the reasons stated above, also lost sight of the fact that the Insolvency Professional did not receive this fee and it was received by DTTILLP and, therefore, it is manifestly unjust to direct the Insolvency Professional to pay a penalty equal to such fee. Such direction contained in the Impugned Order was also stayed by the Hon’ble High Court in the very first hearing in the Writ Petition held on 14.09.2022.
- 3.3.37. He submitted that clause 23B of Code of Conduct was introduced into the IP Regulations only on 23.07.2019 with effect from 23.07.2019. Additionally, there was also no guidance from IBBI that clause 23B applies retrospectively. Upon introduction of clause 23B into the Code, it was not incumbent upon him to make the SCC aware of the same, as such provision did not apply to the liquidation process of CD-1 in the first place, having no retrospective application. Therefore, clause 23B has no application in the instant case where the

appointment was made in 2018. It is a settled position of law that a rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention to the contrary. As such, clause 23B, having been inserted without a specific provision for any retrospective application, evidently cannot be applied retrospectively for appointments and engagements made prior to 23.07.2019.

- 3.3.38. He further submitted that the members of the SCC being public sector banks and financial institutions are highly sophisticated entities engaged in multiple corporate insolvency resolution / liquidation proceedings that are well aware of the Code and regulations made thereunder. Indeed, at no point did any lender or other stakeholder object to the continuation of DTTILLP as a professional advisory firm in CD-1's liquidation process. In fact, and at the cost of repetition, it was the lenders who had sought that DTTILLP provides professional services in the first place.
- 3.3.39. He further submitted that despite his email dated 01.02.2018 having disclosed its relationship with DTILLP as required by the IBBI Circular dated 16.01.2018, the IIPICAI did not, at any point, raise any concern with regard to the continuation of DTTILLP as professional advisory firm after 23.07.2019. That it is recorded in the minutes of the 18th SCC meeting held on 26.07.2021, DTTILLP was replaced with Deloitte India Insolvency Professionals LLP (DIPE) being a duly registered Insolvency Professional Entity (IPE), with effect from 01.08.2021. It submitted that the explanation to clause 23B introduced into the Code on 23.07.2019 along with clause 23B clearly sets out as follows: *"For the purpose of clauses 23A to 23C, "related party" shall have the same meaning as assigned to it in clause (24A) of section 5, but does not include an insolvency professional entity of which the insolvency professional is a partner or director"*.

Summary Findings

- 3.3.40. The SCN states that *"Enabling provisions in the Code and regulations allowing appointment of professionals by liquidator are there for the purpose of helping him in managing the process of liquidation. The table indicating percentage of fee on the amount realized/ distributed provided under regulation 4(3) of Liquidation Regulations duly takes into account the role and function of a liquidator in running the liquidation process. Any entity engaged to help a liquidator cannot be expected to be entrusted with responsibilities more than that of liquidator so as to justify higher fees to such entity in comparison to that of liquidator. Hence, engaging a related entity which is DTTILLP on vague terms and conditions and paying them fee more than double of his own as liquidator is not only unjustified but also malafide."*
- 3.3.41. Regarding the fees of DTTILLP, the DC observes that fees of RP was fixed as Rs.75 lakh per month during CIRP 1st CoC meeting dated 12.09.2017. These minutes do not talk about payment of any separate fees to DTTILLP for its assistance to the RP. During 18th CoC dated 02.05.2018 where it was decided to file application under section 33(1)(a) of the Code, Mr. Savan Godiawala was proposed to act as liquidator on same terms as RP with DTTILLP to assist him. On insistence by ICICI Bank to follow the fee structure stipulated in the Code, the CoC also insisted for the same. Consequently Mr. Savan Godiawala agreed to act as

liquidator as per suggestions of the CoC. There was no comment by CoC on engagement of DTTILLP. If the objection of ICICI Bank is seen in the context that earlier RP was being paid fee of Rs.75 lakhs per month where he was assisted by DTTILLP, it appears that the liquidator fees have been agreed as per table where in he will be assisted by DTTILLP.

3.3.42. During 1st meeting of SCC dated 09.10.2018, Mr. Savan Godiawala informed the SCC that DTTILLP has been appointed to assist the liquidator at cost of Rs.50 lakh per month plus out of pocket expenses. However, the issue seems to have been not settled as the issue of high fees payable to Deloitte was further raised in meeting of JLM and liquidator was advised to renegotiate. Consequently, it was informed to JLM that monthly retainer of Rs.50 lakhs, if paid to Deloitte, would be adjusted against the fee payable to the liquidator as per the applicable regulations. The DC notes that there are two minutes of JLM for same date and the reason for same was also not in knowledge of Mr. Savan Godiawala. However, what is important to note is that the fees of liquidator and DTTILLP had been an issue of discussion at various forums and was reduced after discussion. Even the amount which had been agreed is not flowing decisively from any minutes or decisions.

3.3.43. Regulation 7(1) of the Liquidation Regulations provides as follows:

7. Appointment of professionals.

*(1) A liquidator may **appoint professionals** to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost. (emphasis supplied)*

As per Liquidation Regulation, a liquidator shall engage services of professionals to assist him in discharge of his duties, obligations and functions. As per regulations, he can take help of professionals for discharge of his duties however, those services should fall within the domain of a professional e.g. accounting professional, auditing professional, marketing professional, valuation professional, legal professional. It does not envisage that the liquidator will seek assistance of professionals for services which are not in domain of another professional but are exclusively in his domain as a liquidator. Services such as claim verification, taking custody or control of assets, evaluating the assets, inviting and settling claims of creditors etc. will fall in these services where the liquidator has the expertise and they do not fall in the domain of another professional. There may be cases however, where even for these services e.g. for evaluation of a complex asset, he may require the services of an expert or professional. However, that would be an exception and he cannot engage services of professional for evaluation of each and every asset of the CD. There may be cases, where for a complicated claim verification, he may seek a legal opinion and therefore engage services of a legal professional, but he cannot be engaging professional assistance for claim verification for each and every claim.

3.3.44. The DC further observes that there is a difference between the charging of fees of RP and liquidator. The fee of RP is negotiated and there is no regulation governing the quantum of fees of RP. Only minimum fee is specified that too after amendment in CIRP Regulations in the year 2022. However, in respect of liquidator, there are two options. Either he can

negotiate the fee with the CoC and get it fixed as per his terms and conditions. Otherwise, the same can be fixed as per regulation 4(3) of Liquidation Regulations. Once, it is fixed as per regulation 4(3), the fee will be charged for all the role and functions of the liquidator which are performed by the liquidator, and which do not fall within the domain of another professional. These duties may be performed by the liquidator himself in a small case. But in a large case like the current CD, the performance of all such duties will require a team. However, the fees will accordingly be higher and will be sufficient to compensate the liquidator team. However, the role and functions of the liquidator will have to be performed by the liquidator and his team for which liquidator is adequately compensated by the fee structure given in regulation 4(3) of Liquidation Regulations. The Code and its regulations do not intend to get these role and functions being performed by another entity and compensate the same to them while claiming the entire fees for himself for the duties to be done by him. Regulation 7(1) only intends that liquidator should seek assistance of professional which fall in the domain of another profession. The professional assistance intended above is in respect of a work which has to be carried out by a professional in his own right and not assistance for some work to be carried out by liquidator and his team members to carry out liquidator's role and functions which do not fall in the realm of any other professional. Hence, the fees paid to Deloitte to the extent they have been paid for performing the role and functions of liquidator cannot be said to be reasonable.

3.3.45. The terms and conditions provided in work order dated 28.08.2018 are described as *“To assist the IP in taking control and managing the operations of Lanco Infratech Limited (“Corporate Debtor”) and his other obligations as Liquidator of the Corporate Debtor under the Insolvency and Bankruptcy Code.”*

3.3.46. The work done by the DTTILLP as submitted by Mr. Savan Godiawala is below:

Sr.	Activity where assistance of DTTILLP was sought	Duty of Liquidator
1	Claim verification	Section 35(1)(a) to verify claims of all the creditors;
2	Planning and strategy for the auction of the CD-1, businesses, and assets	Regulation 33 of Liquidation Regulations
3	Preparation of liquidation estate and preparation for auction – data collation from various sites, review of assets and their categorization for first auction.	Section 36
4	Coordination and facilitation of valuation of assets	Regulation 35 of Liquidation Regulations
5	Preparation of reports such as preliminary report, asset memorandum, marketing documents, etc.	Regulation 34 of the Liquidation Regulations
6	Interactions with the stakeholders, including through conduct of Stakeholders' meetings	Regulation 31A of Liquidation Regulations.
7	Preparation of process documents for auction of the Corporate Debtor, businesses, and assets	Clause 3 Schedule I of Liquidation Regulations
8	Appointment of auction agency	Clause 8 of Schedule I of Liquidation Regulations

9	Discussion and planning the details of auction process with appointed auction agency	Clause 2 of Schedule I of Liquidation Regulations
10	Initial marketing thrust and reach out to potential buyers	With the help of a marketing professional,
11	Deliberation with stakeholders on the possible monetization of group entities for the benefit of stakeholders, whether as part of liquidation or outside liquidation process	Regulation 31A of Liquidation Regulations.
12	Discussions with SAIL and various stakeholders and efforts towards realizing value from a coal mining contract of Corporate Debtor	Regulation 31A of Liquidation Regulations.
13	Identifying EPC projects and potential receivables for recovery.	Section 35(1)(b) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;
14	Bids for sale as a going concern at later stage	Regulation 32 of Liquidation Regulations.
15	Filing of progress reports and compliances	Regulation 15 of the Liquidation Regulations <i>“The liquidator shall submit Progress Reports, in the format stipulated by the Board, to the Adjudicating Authority and the Board”</i>

3.3.47. The above list contains activities performed by DTTILLP as submitted by Mr. Savan Godiawala and correspond to the role and functions of a liquidator provided under provisions of the Code and Liquidation Regulations. On perusal of the above table, it is evident that more than half of the work performed by DTTILLP falls under the duties to be performed by the Liquidator and which do not fall under the domain of another profession.

3.3.48. Further, the list enumerated above is covered under the power and functions of a liquidator provided under section 35 of the Code and elaborated further by Liquidation Regulations. Fees of a liquidator under regulation 4 of the Liquidation Regulations is for compensating the liquidator for the functions of liquidator provided therein. The provision for seeking assistance under regulation 7(1) of the Liquidation Regulations cannot be circumvented to engage a related party and pay it a fee more than what is envisaged for a liquidator under regulation 4 of the Liquidation Regulations. The DTTILLP engaged herein performed the same functions as provided for a liquidator and which do not fall in the domain of another professional and charge fees more than the liquidator itself.

3.3.49. The DC further notes that even after objections and queries raised by the FC in 18th CoC and JLM, Mr. Savan Godiawala could not define the role of DTTILLP apart from duties of a liquidator. The DC notes that the scope provided in the work order is very broad for

adjustments as per convenience of the liquidator. Even though the disclosure regarding fees paid to DTTILLP has been made in progress report submitted to the AA and the Board, however, there is no justification for such reduction of fees. The priority allocated by the liquidator to activities at various phases of liquidation tries to corroborate the reduction in fees of DTTILLP in later stages. It is pertinent to note that there is no documentation and quantification justifying the reduction of fees as per work. There was no clarity of what activity has subsided and what is going on during a phase of liquidation to justify commensurate reduction of fees from 50 lakhs to 20 lakhs or 10 lakhs thereafter. Such discretion and non-transparency in activities points to unreasonableness in terms of fees of DTTILLP, which is related party, besides paying unreasonable fees for activities falling within the domain of fee of liquidator and not requiring any professional assistance.

3.3.50. With regard to submissions of Mr. Savan Godiawala for the Addendum to DIR dated 23.12.2021, which was submitted by IA after queries raised by the Board, which stated that *“Based on the review of available information and in the knowledge of members of IA in the said case, no material non-compliance of the said circular is observed.”*, the DC observes that the said observation in the Addendum to DIR has been made in context of its compliance during period of CIRP.

3.3.51. In view of the above, the DC upholds the charge in the SCN that Mr. Savan Godiawala had engaged DTTILLP on vague terms and conditions and paid unjustified fees without any documentation and quantification. The DC also holds that for carrying out his duties, he engaged assistance of DTTILLP which was not in the nature of appointment of professionals and paying them fees for the work for which he was duly compensated as per regulation 4(3).

In the matter of Shirpur Power Private Limited (CD-2)

3.4. Contravention with regard to failure in filing avoidance application

3.4.1. Regulation 35A(1) of CIRP Regulations provides timelines for forming opinion whether the CD has been subjected to any transaction covered under section 43, 45, 50 or 66 of the Code. Regulation 35A(2) provides timelines for determination of PUF transactions in the CD subsequent to forming opinion and Regulation 35A(3) provides timelines for filing of necessary applications before AA for orders after determination of such transactions.

3.4.2. It is observed that although Mr. Savan Godiawala appointed BDO India LLP vide engagement letter dated 01.07.2020 to conduct Transaction Review Audit (TRA) of the CD-2. However, he failed to initiate action as required under regulation 35A(2) and 35A(3) of CIRP Regulations. In view of the above, the Board held the view that Mr. Savan Godiawala had *inter alia* violated regulation 35A of CIRP Regulations read with clause 1, 2, 3 and 14 of the Code of Conduct.

Submissions of Mr. Savan Godiawala.

3.4.3. Mr. Savan Godiawala submitted that that BDO was appointed to review the suspect transactions of CD-2 during the relevant period in terms of regulation 35A of the CIRP Regulations read with sections 43-50 and 66 of the Code. The appointment of BDO was

necessary due to the sheer size and complexity of the CIRP of CD-2. Indeed, in almost every CIRP of a size such as CD-2, a separate expert agency is required to be appointed, in consultation with the CoC because of the significant time and effort required to complete such exercise.

- 3.4.4. He submitted that the CIRP of CD-2 commenced vide order dated 04.03.2020, which was received by the IP on 20.03.2020 just as the Covid-19 pandemic was taking hold in the country. On 22.03.2020, an announcement was made for imposition of a nation-wide lockdown from 24.03.2020 which was later extended from time to time. Lockdowns were gradually relaxed in phases from 31.05.2020 onwards, however, several restrictions on travel, operation of offices with limited staff, personnel and facilities etc. still remained in force, impacting the timely completion of processes under the Code. Given the unprecedented circumstances, the information required for the Transaction Review Auditor (TRA) was significantly delayed. Following the appointment of BDO, data and information as required for the purposes of the TRA was provided to BDO only from 06.07.2020 onwards.
- 3.4.5. He submitted that the IBBI itself issued a notification dated 20.04.2020 (with effect from 29.03.2020), *inter alia*, incorporating regulation 40C in the CIRP Regulations providing for exclusion of the period during which lockdowns were imposed, for assessing compliance with the timelines under the Code. Regulation 40C reads as under: *“Notwithstanding the timelines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the timeline for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”*
- 3.4.6. That the NCLAT also clarified the exclusion of the above periods from the overall period required for completion of a CIRP under section 12 of the Code vide order dated 30.03.2020, whereby it directed that:
“(1) That the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for ‘Resolution Process’ under Section 12 of the Insolvency and Bankruptcy Code, 2016, in all cases where ‘Corporate Insolvency Resolution Process’ has been initiated and pending before any Bench of the National Company Law Tribunal or in Appeal before this Appellate Tribunal....”
- 3.4.7. Even the Hon’ble Supreme Court took *suo moto* cognizance of the unprecedented circumstances of Covid-19 and difficulties faced in meeting timelines contemplated under the Limitation Act, 1963. Thus, vide order dated 23.03.2020 in *Suo Motu Writ Petition (Civil) No. 3 / 2020*, the Hon’ble Supreme Court passed the following directions:
“To obviate such difficulties and to ensure that lawyers/ litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether

condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.”

- 3.4.8. He submitted that despite the onslaught of Covid-19, in the 6th meeting of the CoC held on 22.10.2020, he informed the CoC that the TRA was near completion and a discussion with the TRA auditor was scheduled the next day. While it appeared that the TRA would be concluded, however, during such subsequent discussions of the IP with the auditor, the auditor asked for considerable additional information / data and clarifications including vide email dated 28.10.2020.
- 3.4.9. He submitted that there was significant delay by the management of CD-2 in providing the requisite information to him, thereby delaying the completion of the TRA. In this regard, he regularly kept the CoC updated with the progress of the TRA, for instance in the 7th CoC meeting held on 01.12.2020, 8th CoC meeting held on 21.12.2020 and 9th CoC meeting held on 29.01.2021.
- 3.4.10. He submitted that the CoC of CD-2 did not seek to extend the CIR period due to Covid-19 and in its 10th meeting held on 03.02.2021 voted to liquidate the company. Accordingly, he filed an application to liquidate CD-2. The final TRA report from BDO had not been received until such time. Thereafter, the AA on 10.03.2021 passed the order for liquidation of SPPL. Pursuant to such order, Mr. Savan Godiawala was no longer in control of SPPL and hence could not continue with the TRA exercise. He handed over all relevant documents to the liquidator to facilitate early completion of the TRA.
- 3.4.11. He submitted that no harm or prejudice has been caused to CD-2 or its creditors or any stakeholder on account of non-filing of the Avoidance Application(s) due to the non-availability of the TRA report given that the scheme of the Code provides that the liquidator also has powers to conduct the TRA and file Avoidance Application(s), if so required.
- 3.4.12. In the Previous IBBI Order (which has since been set aside), it was observed that he is himself a Chartered Accountant and thus he needed no assistance from the audit firm to do the TRA audit. It is humbly submitted that the foregoing observation loses sight of the fact that in any CIRP, a specialized agency is appointed by the insolvency professional for the purposes of undertaking a TRA audit which is disclosed to the CoC and the CoC of SPPL in its commercial wisdom approved the fees payable to such agency. Additionally, it is reiterated that the IBBI is well aware of the complexity and magnitude of work involved in a CIRP and hence, in its Press Release dated 30.09.2022, identified the limitations of an individual insolvency professional in dealing with processes under the Code requiring concurrent efforts and multi-disciplinary expertise.
- 3.4.13. He submitted that the Board in order dated 12.05.2022 passed with reference to Ms. Kalpana G, Insolvency Professional observed that despite alleging contravention of regulation 35(A) of the CIRP Regulations and also observing a 341 days delay in filing the avoidance application, the IBBI only cautioned the Insolvency Professional to be more vigilant in future.

3.4.14. Mr. Savan Godiawala submitted the timelines of events as transpired in the CIRP of CD-2 as below:

Sr. No.	Particulars	Date	Remarks
1.	Commencement of CIRP and receipt of Order	20.03.2020	
2.	First meeting with the management of the Corporate Debtor	20.03.2020	
3.	Announcement of countrywide lockdown due to Covid-19	23.03.2020	
4.	First CoC meeting	29.05.2020	Delay in conducting the first CoC meeting was on account of Covid-19 nationwide lockdown and partial lockdowns in the State of Gujarat and Maharashtra where the Corporate Office, Power Plant and the lenders are stationed.
5.	Appointment of Transaction Review Auditor – BDO India LLP	01.07.2020	
6.	Receipt of first information request from the TRA	02.07.2020	There were multiple information requests from the TRA with more than 20 information request emails. The TRA team could not travel to the Corporate Office of the CD on account of Covid-19 outbreak and the work was performed virtually.
7.	Receipt of first information from the Corporate Debtor for the TRA	17.08.2020	The offices of the CD were operating with minimal staff on account of the Covid-19 outbreak

8.	Multiple emails written by the RP following up on the information required by the TRA	Multiple emails	The RP had written about 15 follow-up emails continuously following up for the pending information required by the TRA
9.	Additional requests from TRA	Multiple emails	The TRA kept on asking for additional information vide multiple emails.
10.	Supply of information in piecemeal from the Corporate Debtor	Multiple emails	The CD was operating with minimal manpower on account of Covid-19 which delayed the process of supplying the information requested by the TRA.
11.	Draft report from TRA	02.02.2021	
12.	Application for Liquidation of CD	08.02.2021	
13.	Order of Liquidation	10.03.2021	Receipt of order on 13.03.2021

3.4.15. Further, the details of emails sent have been given as follows:-

Details and dates of email communications in regard to the Transaction Review Audit

Particulars	Dates of info. request from BDO	Dates of info. request from RP email to management	Dates of supply of documents
Remarks	Some of the emails were directly addressed to the CD team with a copy to the RP	Where RP team has forwarded the requests to the CD team	The information provided by the management has always been partial, which was further provided through subsequent emails
Dates	a) 10.08.2020	a) 03.09.2020	a) 17.08.2020
	b) 24.08.2020	b) 07.09.2020	b) 18.08.2020
	c) 03.09.2020	c) 08.09.2020	c) 31.08.2020
	d) 07.09.2020	d) 11.09.2020	d) 02.09.2020
	e) 11.09.2020	e) 16.09.2020	e) 07.09.2020
	f) 16.09.2020	f) 24.09.2020	f) 08.09.2020
	g) 20.09.2020	g) 05.10.2020	g) 09.09.2020
	h) 07.10.2020	h) 12.10.2020	h) 11.09.2020
	i) 12.10.2020	i) 15.10.2020	i) 14.09.2020

	j) 19.10.2020	j) 19.10.2020	j) 23.09.2020
	k) 20.10.2020	k) 26.11.2020	k) 29.09.2020
	l) 26.11.2020	l) 08.12.2020	l) 05.10.2020
	m) 27.11.2020	m) 09.12.2020	m) 06.10.2020
	n) 20.12.2020	n) 21.12.2020	n) 08.10.2020
	o) 21.12.2020		o) 10.11.2020
	p) 22.12.2020		p) 17.11.2020
	q) 25.12.2020		q) 26.11.2020
	r) 13.01.2021		r) 09.12.2020
	s) 23.01.2021		s) 15.12.2020
	t) 31.01.2021		t) 25.12.2020
	u) 19.03.2021		u) 21.01.2021
			v) 27.02.2021
			w) 15.03.2021

(The email emphasised above were submitted before the DC for perusal.)

Summary Findings

- 3.4.16. The following table gives a glimpse of events that transpired from the 6th CoC meeting till order of liquidation was passed for CD-2.

Date	Event	Happenings
22.10.2020	6 th CoC Meeting	<i>The RP and his team are in continuous follow-up with the Transaction Review Auditors and valuers for completion of the audit as well as valuation exercise. Transaction audit is near to completion and valuation exercise will be completed within 5-7 days. He further briefed the CoC that the transaction audit is completed and a discussion call is scheduled tomorrow.</i>
28.10.2020	Email from TRA	<i>Draft report shared based on data collected on 19th Oct. from the Corporate Debtor's office. PPT version of report for management response.</i>
10.11.2020	Email from TRA	<i>PPT version of the report along with the response received from the CD team sent by TRA</i>

26.11.2020	Email communication with TRA	<i>Further clarification requested by TRA and same were provided by team of Mr. Savan Godiawala</i>
27.11.2020	Email from TRA	<i>Updated draft report with management response and our views on management response at the end of each observation. shared with RP</i>
01.12.2020	7 th CoC Meeting	<i>“The RP and his team are in continuous follow up with the Transaction Review Auditors and valuers for completion of the audit as well as valuation exercise. Transaction audit is near to completion where the final report is expected soon. Valuation exercise is also expected to be completed soon.”</i>
21.12.2020	8 th CoC Meeting	<i>“The RP and his team are in continuous follow up with the Transaction Review Auditors and valuers for completion of the audit as well as valuation exercise. Transaction audit is near to completion where the final report is expected soon.”</i>
13.01.2021	Email from TRA	Updated report with observation wise conclusions and suggested classifications in IBC sections shared with Mr. Savan Godiawala
18.01.2021	Email from TRA	Updated draft report shared
29.01.2021	9 th CoC Meeting	<i>“The RP and his team are in continuous follow up with the Transaction Review Auditors and valuers for completion of the audit as well as valuation exercise. Transaction audit is</i>

		<i>near to completion where the final report is expected soon. Necessary information and discussion are being held with the professionals appointed for earliest completion of the same.”</i>
02.02.2021	Email from TRA	Update draft report shared
03.02.2021	10 th CoC Meeting	Resolution passed for liquidation of CD-2 and appointment of Mr. Dushyant Dave as liquidator.
05.02.2021	Email to TRA from RP	Intimating that pending information in regard to the CWIP has been requested from the management of the CD-2 and will be forwarded once received for next action
27.02.2021	Email to TRA from RP's Team	Additional information shared with TRA
10.03.2021	Liquidation order	Liquidation order of CD-2 was passed by AA and Mr. Dushyant Dave was appointed as liquidator.

3.4.17. The DC observes that Mr. Godiawala had informed the CoC in 6th CoC meeting dated 22.10.2020 that *“the transaction audit is completed and a discussion call is scheduled tomorrow.”* Thereafter he informed the CoC in respective meetings as follows:

7th CoC meeting dated 01.12.2020.

“The RP and his team are in continuous follow up with the Transaction Review Auditors and valuers for completion of the audit as well as valuation exercise. Transaction audit is near to completion where the final report is expected soon. Valuation exercise is also expected to be completed soon.”

8th CoC meeting dated 21.12.2020.

“The RP and his team are in continuous follow up with the Transaction Review Auditors and valuers for completion of the audit as well as valuation exercise. Transaction audit is near to completion where the final report is expected soon. Valuation exercise of one of the valuer is completed whereas the other valuer's analysis is expected to be completed in the fourth week of December 2020.”

9th CoC meeting dated 21.01.2021.

“The RP and his team are in continuous follow up with the Transaction Review Auditors and valuers for completion of the audit as well as valuation exercise. Transaction audit is near to completion where the final report is expected soon. Necessary information and discussion are being held with the professionals appointed for earliest completion of the same. Valuation report from one of the valuer is received whereas the other valuer’s report is expected in 12 days.”

- 3.4.18. The above statements clarifies that even after submitting to the CoC in its 6th CoC meeting that transaction audit is completed, the information requirement was called by TRA which he sought consequently from the management of CD-2, but he did not inform the CoC about non-furnishing of information by the management of CD-2 to the TRA and also did not file any application under section 19(2) of the Code for seeking cooperation of the management of CD-2 when there was continuous delay in receiving information. The DC further notes, from the email exchange given in the table in paragraph 3.4.15 by Mr. Savan Godiawala, that he stopped following up for information from the management of CD-2 from 21.12.2020.
- 3.4.19. The process of receiving information from management of CD cannot be continued forever and some definitive action like filing section 19(2) application and finalising avoidance application mentioning the fact of non-compliance by the management of CD-2 needs to be taken. The delay of more than four months in not finalising the avoidance application from sixth CoC till order of liquidation is not acceptable or justifiable considering the time bound process intended in objective of the Code and therefore there is violation of regulation 35A of CIRP Regulations read with clause 1, 2, 3 and 14 of the Code of Conduct.

4. Order

- 4.1. In view of the forgoing discussions, SCN, substituted reply to the SCN, oral and written submissions made by Mr. Savan Godiawala, the DC finds Mr. Savan Godiawala in contravention of section 34(8), section 208(2)(a), 208(2)(e), regulation 35A of CIRP Regulations, regulation 4(3) and 7(1) of Liquidation Regulations, regulation 7(2)(a), regulation 7(2)(h) of IP Regulations read with clauses 1, 2, 3, 14 and 25 of the Code of Conduct specified thereunder.
- 4.2. In view the above findings, the DC, in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Mr. Savan Godiawala for a period of two years. The period of two years will commence from the date from which the earlier DC order dated 18.08.2022 had become effective (i.e., from 16.09.2022).
- 4.3. As per Liquidation Regulations, the professional assistance may be sought by the liquidator for work falling in a domain for which specialist professional expertise is required and not for the functions which are to be performed by a liquidator and for which no additional professional expertise is required. Further, once the fee of liquidator is fixed as per regulation 4(3), the work relating to duties and functions of liquidator which do not require professional assistance need to be performed by the liquidator and his team and not by DTTILLP. Considering the fact that more than half of the work assigned to DTTILLP for assisting the

liquidator did not require assistance of any professional, penalty of half of the fees paid to DTTILLP is imposed on Mr. Savan Godiawala and he is directed to deposit this amount directly to the Consolidated Fund of India (CFI) under the head of “penalty imposed by IBBI” on <https://bharatkosh.gov.in> within 45 days from the date this order becomes effective and submit a copy of the transaction receipt to the Insolvency and Bankruptcy Board of India.

- 4.4. This Order shall come into force after 30 days from the date of this order.
- 4.5. A copy of this order shall be sent to the CoC/Stake Holders Consultation Committee (SCC) of all the corporate debtors in which Mr. Savan Godiawala is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Savan Godiawala.
- 4.6. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Savan Godiawala is enrolled as a member.
- 4.7. 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.
- 4.8. Accordingly, the show cause notice is disposed of.

-sd-

(Sandip Garg)

Whole time Member

Insolvency and Bankruptcy Board of India

-sd-

(Jayanti Prasad)

Whole time Member

Insolvency and Bankruptcy Board of India

Dated: 4 March, 2024

Place: New Delhi