# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# ORDINARY ORIGINAL CIVIL JURISDICTION

## WRIT PETITION (L) NO. 2817 OF 2025

Jitender Kumar Jain ... Petitioner
Versus
Union of India & Ors. ... Respondents

**WITH**

## WRIT PETITION (L) NO. 5263 OF 2025

Edelweiss Asset Reconstruction Company Limited (acting in Capacity as Trustee of EARC Trust SC 233) ... Petitioner
Versus
Insolvency and Bankruptcy Board of India & Ors. ... Respondents

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Mr. Rahul Dev a/w Mr. Arjun Amin and Mr. Pranav Shetty i/by Argus Partners for Petitioner in WPL/2817/2025 and for Respondent No.2 in WPL/5263/2025.
Mr. Bhalchandra Palav a/w Mr. Aniket Dighe and Ms. Pinky Pawar i/by M/s. Bhal and Co. for Petitioner in WPL/5263/2025.
Mr. Vinit Jain a/w Shazia Ansari and Mr. Gaurav Mehta for Respondent No.1-UOI in WPL/2817/2025.
Mr. Pankaj Vijayan a/w Mr. Utsav Mishra for Respondent No.2 in WPL/2817/2025 and for Respondent No.1 in WPL/5263/2025.
Ms. Apeksha Sharma i/by NDB Law for Respondent No.4-Bank of Baroda in WPL/5263/2025.

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**CORAM : MANISH PITALE AND SHREERAM V. SHIRSAT, JJ.**

**RESERVED ON : 7th JULY 2026**
**PRONOUNCED ON : 25th AUGUST 2026**



***Judgment (Per Manish Pitale, J.) :***

. Both these petitions have been filed to challenge order dated

18th December 2024 passed by the Disciplinary Committee of the respondent No.2-Insolvency and Bankruptcy Board of India (hereinafter referred to as 'Board'), whereby the petitioner-Jitender Kumar Jain (petitioner in Writ Petition (Lodging) No. 2817 of 2025) was suspended for a period of three months from performing the role of insolvency professional/liquidator under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) and the Regulations framed thereunder. Additionally, the aforesaid petitioner in Writ Petition (Lodging) No. 2817 of 2025 also challenged the show cause notice dated 9th July 2024, which led to the said impugned order dated 18th December 2024. The petitioner in Writ Petition (Lodging) No. 5263 of 2025 i.e. Edelweiss Asset Reconstruction Company Limited (hereinafter referred to as 'Edelweiss') was one of the secured financial creditor of the corporate debtor in the context of which the petitioner-Jitender Kumar Jain was appointed as liquidator.

2. The corporate debtor i.e. 'Aaj Ka Anand Papers Limited' had availed loan facility and in the light of defaults in repayment thereof, the account of the corporate debtor was declared as a Non-Performing Asset (NPA). The respondent-State Bank of India (SBI) filed a petition under Section 7 of the IBC, which led to initiation of Corporate Insolvency Resolution Process (CIRP). The petition was admitted on 31st March 2022.

3. But, the process of CIRP failed and thereupon, the corporate

debtor was admitted into liquidation by an order dated 12th April 2023 passed by the National Company Law Tribunal (NCLT). The petitioner-Jitender Kumar Jain was appointed as liquidator and he constituted Stakeholders' Consultation Committee (SCC). The SCC included respondent-SBI and other secured creditors i.e. Bank of Baroda and the petitioner-Edelweiss.

4. It is the case of the petitioner-Jitender Kumar Jain that the promoters/ex-directors of the corporate debtor had adopted an obstructionist attitude all through the proceedings of liquidation. According to the said petitioner, they left no stone unturned in derailing the process and also in making false and frivolous allegations against the said petitioner. In the process, the promoters filed applications before NCLT to further delay and derail the process. One such application was dismissed with heavy cost of Rs. 1 lakh. According to the petitioner-Jitender Kumar Jain, despite the said approach of the promoters, he navigated the process of liquidation to the best of his ability and to the satisfaction of the members of the SCC. It is further stated by the petitioner-Jitender Kumar Jain that he was harassed by false and bogus police complaints filed by the promoters of the corporate debtor to such an extent that, at a point in time in August 1993, he had even offered to resign as the liquidator. But, the lenders, including the members of the SCC, unanimously requested him to continue and to fight against such bogus complaints. The aforesaid situation was brought to the notice of this Court in writ petitions

that were filed and pending.

5. In this backdrop, when one such Writ Petition bearing No. 10244 of 2023 was taken up for hearing before this Court on 12th October 2023, it was orally submitted that the promoters of the corporate debtor had preferred a complaint against the petitioner-Jitender Kumar Jain. It came to light that such a complaint was submitted on 3rd July 2023, by a promoter / ex-director of the corporate debtor, wherein general allegations were made against the petitioner-Jitender Kumar Jain, as regards violation of provisions of the IBC and Regulations framed thereunder. It was alleged that he was acting *malafide* with ulterior motive and for unethical gains, thereby causing mental and monetary suffering to the said complainant. It was also alleged that the said petitioner had damaged the reputation and credibility of the complainant and his family members, further alleging that he was acting along with the other stakeholders to intentionally cause suffering to the complainant. It was claimed that the cause of action being continuous, the complaint was within limitation.

6. Thereafter, the complainant submitted a further set of grievances in writing. While the first complaint was as per the requisite form under Regulation 3(3) of the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 (hereinafter referred to as 'Grievance Regulations 2017'), the second set of grievances submitted in writing on 10th August 2023 were not in the said

form. It appears that respondent No.2-Board proceeded to treat the second set of grievances submitted in writing on 10th August 2023 also as a complaint and on the basis of the two complaints, reached a conclusion that a *prima facie* case was made out against the petitioner-Jitender Kumar Jain and on that basis, ordered an investigation under Regulation 7(7) of the Grievance Regulations 2017. The investigation was directed to be conducted through respondent No.5 i.e. the Executive Director of the Board, who in turn appointed respondent No.6 i.e. Deputy General Manager of the Board as an Investigating Authority, to investigate into the allegations.

7. Thereafter, on 2nd February 2024, the respondent No.6 served a notice of investigation upon the petitioner-Jitender Kumar Jain under Regulation 8 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (hereinafter referred to as 'Investigation Regulations 2017'). In response, the said petitioner submitted detailed reply on 30th April 2024 refuting all the allegations made in the complaints. On 10th May 2024, the respondent No.6 submitted investigation report to the respondent-Board through its Executive Director i.e. respondent No.5. Thereupon, the respondent-Board through respondent No.8 i.e. another Deputy General Manager of the Board, issued the impugned show cause notice dated 9th July 2024 under Regulations 11 and 12 of the Investigation Regulations 2017 to the petitioner-Jitender Kumar Jain, specifying five aspects

concerning the manner in which the said petitioner had performed his assignment as liquidator of the corporate debtor.

8. There is no dispute about the fact that the five issues raised in the said show cause notice were not concerned with the grievances raised in the complaints, which led to the investigation being conducted. On 30th August 2024, the petitioner-Jitender Kumar Jain submitted a detailed reply to the show cause notice, responding to each of the five issues raised therein. Additionally, the said petitioner referred to the manner in which the promoters of the corporate debtor were obstructing the process of liquidation and the manner in which bogus police complaints were filed against the said petitioner and the proceedings that had to be initiated before this Court on various issues. The petitioner-Jitender Kumar Jain refuted the allegations made in the show cause notice in the context of the five specific issues raised therein.

9. Thereafter, hearing was conducted and the said petitioner further placed written submissions dated 10th October 2024 before the Disciplinary Committee of the respondent-Board. In the said written submissions, the said petitioner further elaborated his stand and also referred to case law in support of his submissions. Thereafter, on 18th December 2024, the Disciplinary Committee of the respondent-Board through respondent No.4 i.e. its whole time member passed the impugned order, inflicting the penalty of suspension of the authorisation for assignment of the said petitioner for a period of three months. Aggrieved by the same,

the petitioner-Jitender Kumar Jain filed Writ Petition (Lodging) No. 2817 of 2025 and petitioner-Edelweiss filed Writ Petition (Lodging) No. 5263 of 2025. Notices were issued in the writ petitions.

10. It is to be noted that in the light of the impugned order, suspending the petitioner-Jitender Kumar Jain for a period of three months, he resigned from the role of liquidator of the corporate debtor, but the members of the SCC resolved that the petitioner be requested to withdraw his resignation and accordingly, he withdrew his resignation on 10th January 2025 and he was permitted to continue as liquidator of the corporate debtor. The pleadings in the writ petitions were completed and although, the petitioner-Jitender Kumar Jain appears to have suffered the suspension period, he is keenly pursuing this writ petition in order to clear his name and to demonstrate that the impugned order, rendering findings against him, is unsustainable. Edelweiss, as one of the secured financial creditor and member of the SCC, in its petition has also supported the petitioner-Jitender Kumar Jain and it has highlighted the manner in which the promoters of the corporate debtor had harassed the said petitioner, while he was performing the role of liquidator. The writ petition was contested by respondent No.2-Board through its Counsel, when the petitions were taken up for hearing.

11. Mr. Rahul Dev, learned counsel appearing for the petitioner-Jitender Kumar Jain in Writ Petition (Lodging) No. 2817 of 2025

submitted that in the present case, at the outset, this Court may note that although the impugned order inflicted penalty of suspension of registration for a period of three months, by operation of Clause 23A of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (hereinafter referred to as 'Model Bye-Laws'), the authorisation for assignment of petitioner-Jitender Kumar Jain stood suspended immediately upon initiation of disciplinary proceedings by the Board. As a consequence, the said petitioner suffered suspension not only for the three months period, but also for the period starting from issuance of show cause notice dated 9th July 2024.

12. It was submitted that in the present case, the principles of natural justice were violated with impunity and on that ground alone, the impugned show cause notice as well as the impugned order deserve to be set aside. It was submitted that the documents on record clearly demonstrate that the complaint dated 3rd July 2023 submitted in specific form by one of the promoters of the corporate debtor, was barred by limitation. It was absolutely vague and general allegations were levelled against the petitioner-Jitender Kumar Jain. The second set of grievances raised on 10th August 2023, were not even in the form prescribed under the Grievance Regulations 2017 and yet, it was treated as the second complaint, thereby demonstrating procedural irregularity. It was emphasized that although investigation into the said complaints

was initiated and after delay of eight months, a notice of investigation dated 2nd April 2024 was served upon the petitioner-Jitender Kumar Jain, in the light of the response given by the said petitioner, no substance was found in the allegations levelled in the said complaints. The petitioner-Jitender Kumar Jain asserts the aforesaid fact on the ground that the show cause notice dated 9th July 2024 raised five issues that had nothing to do with the grievances raised in the aforesaid two complaints. It was submitted that on this ground alone, the show cause notice was rendered without jurisdiction and bad in law.

13. In this context, it was submitted that although Section 219 of the IBC as it then stood, stipulated that the respondent-Board could issue show cause notice to a service provider like the said petitioner, upon completion of inspection and investigation under Section 218 thereof, in the present case, the show cause notice was evidently not issued on the basis of the investigation report and it was issued on the basis of material that purportedly came on record. In other words, while the petitioner-Jitender Kumar Jain was issued notice in the context of the investigation, he was never made aware about the 'material' on the basis of which the impugned show cause notice dated 9th April 2024 was issued. This according to the learned counsel for the said petitioner, violated principles of natural justice and therefore, the show cause notice itself stood vitiated. It was also submitted that the copy of the investigation report was not made available to the petitioner-

Jitender Kumar Jain and this also violated the principles of natural justice.

14. In respect of the impugned order dated 18th December 2024, it was submitted that the petitioner-Jitender Kumar Jain was found guilty of having contravened the provisions of the IBC and the Regulations framed thereunder, on the issues of irregular constitution of the SCC, failure to present liquidation costs in SCC meeting and delay in issuance of the first and second auction notices. Upon rendering the said findings, the Disciplinary Committee of the respondent-Board inflicted the penalty of suspension of authorisation for assignment of the petitioner-Jitender Kumar Jain for a period of three months. In this context, it was submitted that even if the findings in the impugned order were to be taken into consideration, it could not be said that the petitioner-Jitender Kumar Jain had indulged in any misconduct. At worst, it could be said to be a situation of negligence or oversight, which would not qualify as misconduct. It was emphasized that none of the members of the SCC or any of the lenders had raised any grievance with regard to the said five issues, on which the said petitioner was found to have contravened the provisions of the IBC and the Regulations framed thereunder.

15. It was further submitted that the said issues concerned interpretation of the relevant Regulations and since more than one interpretation was possible, it could not be said that the said petitioner had indulged in misconduct, only because his

interpretation did not find favour with the disciplinary committee of the respondent-Board. On this basis, it was submitted that the impugned order deserved to be set aside. In this context, reliance was placed on judgment of the Supreme Court in the case of *Inspector Prem Chand vs. Government of NCT of Delhi & Ors.,* **(2007) 4 SCC 566** and judgment of this Court in the case of *Abdul Rauf Mohammed Khaja vs. State of Maharashtra, through the Secretary, Revenue Department & Ors.,* **2022 SCC OnLine Bom 3794**.

16. It was further submitted that Regulation 11 of the Investigation Regulations 2017 mandatorily requires the Board to consider the inspection report and after consideration thereof, if it forms a *prima facie* opinion that sufficient cause exists to take action under Section 220(2) of the IBC, only then show cause notice can be issued. It was submitted that the expression 'consider' has to be given its logical meaning. In this context, reliance was placed on the judgment of the Supreme Court in the case of *Chairman, Life Insurance Corporation of India & Ors. vs. A. Masilamani,* **(2013) 6 SCC 530**, to emphasize that the word 'consider' would mean 'to think over', 'to regard as' or 'deem to be'. An attempt was also made on behalf of the petitioner-Jitender Kumar Jain to claim that the entire proceeding was vitiated by bias, as the respondent No.5 i.e. the Executive Director of the respondent-Board was performing multiple functions in the proceeding. It was submitted that in such a situation, the entire

proceeding stood vitiated and hence, the impugned order deserved to be set aside.

17. Mr. Palav, learned counsel appearing for the petitioner-Edelweiss in Writ Petition (Lodging) No. 5263 of 2025, supported the contentions raised on behalf of the petitioner-Jitender Kumar Jain in Writ Petition (Lodging) No. 2817 of 2025. It was submitted that the petitioner-Edelweiss being a member of the SCC had raised no grievance, at any point in time, with regard to the functioning of the petitioner-Jitender Kumar Jain, as the liquidator. It was submitted that all the necessary steps under the provisions of the IBC and the Regulations framed thereunder were properly followed by the petitioner-Jitender Kumar Jain and as a matter of fact, the promoters of the corporate debtor were obstructing the entire process. We had put a question to the learned counsel appearing for the petitioner-Edelweiss, as to how could it be a party aggrieved in the context of the impugned order which imposes penalty on the petitioner-Jitender Kumar Jain, who was functioning as a liquidator, but the learned counsel for the petitioner-Edelweiss was unable to give a satisfactory response. It was indicated that since the petitioner-Edelweiss, as member of the SCC, was interested in proper and efficient completion of the process of the liquidation, it was entitled to approach this Court for challenging the impugned order.

18. On the other hand, Mr. Vijayan, learned counsel appearing for the respondent-Board submitted that this Court, while

exercising writ jurisdiction to consider challenge to the impugned order, necessarily exercises jurisdiction in a very narrow compass. It was submitted that only aspects pertaining to the procedure followed in the present case could be examined and that this Court would not be able to test the merits of the findings rendered in the impugned order.

19. On the question of the show cause notice being issued on aspects that were not directly raised in the complaints filed by the promoters of the corporate debtor, it was submitted that the filing of a complaint opens the doors for investigation under Chapter VI of the IBC, consisting of Sections 217 to 220 thereof. It was submitted that once the doors of investigation stood opened, all the material that came on record by way of such investigation could be taken into consideration for issuing show cause notice to the service provider like the petitioner-Jitender Kumar Jain, as per Section 219 of the IBC. It was submitted that the words used in Section 219 of the IBC as they stood at the relevant time before the latest amendment, cannot be read in such a manner that would denude the respondent-Board from exercising power to even *suo motu* issue show cause notice. It was emphasized that the Board as a regulator is a watchdog and one of its crucial functions is to ensure that the service providers perform their duties in an appropriate manner, maintaining the integrity of the process and in line with the object of enactment of the IBC. On this basis, it was submitted that the ground raised on behalf of the petitioner-

Jitender Kumar Jain, to the effect that the show cause notice was issued without jurisdiction, deserves to be rejected.

20. It was further submitted that while exercising writ jurisdiction, this Court cannot review the findings rendered in the impugned order on merits, to arrive at independent findings on the basis of the material on record. It was submitted that this Court can also not go ino the question of proportionality of the penalty imposed on the petitioner-Jitender Kumar Jain. Even where the penalty is found to be shockingly disproportionate to the nature of the misconduct, after setting aside the order of penalty, as per settled law, the matter is to be left to the disciplinary authority to take a decision afresh in the matter. In this context, reliance was placed on judgments of the Supreme Court in the cases of *Union of India & Ors. vs. P. Gunasekaran*, **(2015) 2 SCC 610** and *Lucknow K. Gramin Bank & Anr. vs. Rajendra Singh*, **(2013) 12 SCC 372**.

21. It was further submitted that although the petitioner-Jitender Kumar Jain raised various grounds to claim that principles of natural justice were violated in the present case, he failed to demonstrate any prejudice caused to him to justify inteference by this Court exercising writ jurisdiction. It was submitted that the petitioner-Jitender Kumar Jain ought to have demonstrated that the alleged violation of the principles of natural justice in the facts of the present case caused any prejudice to him. Since he failed to do so, the said ground of challenge raised on his behalf also

deserves to be rejected. In support of the said proposition, reliance was placed on the judgment of the Supreme Court in the case of *Chief Commercial Manager, South Central Railway, Secunderabad & Ors. vs. G. Ratnam & Ors.*, **(2007) 8 SCC 212**. Reliance was also placed on judgment and order dated 25th October 2024 passed by this Court in **Writ Petition (Lodging) No. 5978 of 2024** (*Naren Sheth vs. Union of India & Ors.*), wherein this Court dismissed a petition filed by a similarly placed insolvency professional. On this basis, it was submitted that the writ petition deserved to be dismissed.

22. Having heard the learned counsel for the rival parties, considering the challenge raised to the impugned show cause notice and the consequential impugned order, the scope of jurisdiction of this Court, while exercising writ jurisdiction, has to be kept in mind. There can be no quarrel with the contention raised on behalf of the respondent-Board that this Court in writ jurisdiction would not sit in appeal over the findings rendered by the Disciplinary Committee of the respondent-Board in the impugned order dated 18th December 2024. The examination to be conducted by this Court would necessarily be limited to the aspects concerning procedure followed by the respondent-Board while passing the impugned order and as to whether the principles of natural justice were properly followed while proceeding against the petitioner-Jitender Kumar Jain. Although the rival parties have relied upon judgements, concerning the nature of jurisdiction

exercised by the Writ Court in the context of service matters, this Court finds that the present case cannot be equated to an *employer - employee relationship* between the respondent-Board and the petitioner-Jitender Kumar Jain i.e. the insolvency professional. But, the role of the respondent-Board as the regulator under the provisions of the IBC and the Regulations framed thereunder needs to be emphasized. There can be no doubt that the respondent-Board, as the regulator, would be well within its powers to ensure that service providers like the petitioner-Jitender Kumar Jain perform their duties in line with the provisions of the IBC and the Regulations framed thereunder. It is in this backdrop that the rival contentions are being analyzed and considered.

23. The action against the petitioner-Jitender Kumar Jain stood triggered on the basis of complaints submitted by the promoter of the corporate debtor. While the first complaint dated 3rd July 2023 was in the form prescribed in the Regulation, the further written document dated 10th August 2023 submitted by the promoter was not in the said form and yet it was treated as a complaint. On the basis of the said complaints, respondent No.5 i.e. the Executive Director of the respondent-Board appointed respondent No.6 i.e. the one of the Deputy General Managers, as an investigating authority, to investigate into the allegations. The process is governed by the Investigation Regulations 2017, particularly Regulations 8 to 10 thereof. The aforesaid process undertaken as

per the Investigation Regulations has to be read with Chapter VI of the IBC. As per Section 219 of the IBC read with Regulation 11 of the Investigation Regulations 2017, the Board is to consider the investigation report and upon forming a *prima facie* opinion that sufficient cause exists to take action under Section 220 of the IBC through the Disciplinary Committee, it can issue show cause notice in the matter.

24. It is crucial to note that Section 219 of the IBC, as it stood at the relevant point in time, prior to the latest amendment, was as follows:-

> "***219. Show cause notice to insolvency professional agency or its member or information utility***
>
> *The Board may, upon completion of an inspection or investigation under section 218, issue a show cause notice to such insolvency professional agency or insolvency professional or information utility, and carry out inspection of such insolvency professional agency or insolvency professional or information utility in such manner, giving such time for giving reply, as may be specified by regulations.*"

25. It is also crucial to note that subsequently by recent amendment dated 6th April 2026, the words 'or on the basis of material available on record' have been added to Section 219. Thus, prior to the amendment, Section 219 empowered the Board to issue show cause notice under Section 219 of the IBC upon completion of the investigation under Section 218 thereof and under Regulation 11 of the Investigation Regulations 2017, after consideration of such report if the Board formed the *prima facie*

opinion that sufficient cause existed, show cause notice could be issued. This aspect is crucial in the facts of the present case.

26. It is an admitted position that in the present case, in pursuance of the aforesaid two complaints lodged by the promoter of the corporate debtor, investigation was initiated culminating in the investigation report. We find substance in the contention raised on behalf of the petitioner that the grievances raised in the two complaints by the promoter of the corporate debtor were vague, general and without specifications. It is to be appreciated that the said complaints were lodged in the backdrop of the said promoter and other promoters / ex-directors of the corporate debtor taking a series of obstructionists steps during the process of CIRP and liquidation, as also lodging a series of police complaints against the petitioner-Jitender Kumar Jain i.e. the liquidator. In respect of some of such steps taken by the promoters / ex-directors of the corporate debtor in writ petitions filed before this Court, certain observations have been made against such tactics adopted by the promoters / ex-directors. Even the NCLT had dismissed one such frivolous application filed by the promoter of the corporate debtor with cost of Rs.1 lakh, wherein not only the petitioner-Jitender Kumar Jain but the members of the SCC had highlighted such conduct of the promoters / ex-directors.

27. It is also an admitted position on facts that the respondent-Board did not find any substance in the allegations made in the

complaint lodged by the promoter of the corporate debtor. Thus, applying Section 219 of the IBC, as it then stood, read with Regulation 11 of the Investigation Regulations 2017, upon consideration of the investigation report, the respondent Board did not find any material against the petitioner. Hence, the impugned show cause notice dated 09.07.2024 was not at all based on the investigation report as the findings therein were admittedly not adverse to the petitioner. It is to be noted that after the investigation was initiated, it took a long period of almost 8 months for the respondent No.6 to serve notice dated 2nd April 2024 on the petitioner-Jitender Kumar Jain under Regulation 8 of the Investigation Regulations 2017 to respond to the allegations. The petitioner submitted his detailed reply / response and thereupon, the investigation report did not find any substance in the allegations levelled by the promoter of the corporate debtor. In such a situation, we find substance in the contention of the petitioner that the impugned show cause notice dated 9th July 2024 was based on material extraneous to the investigation report. It is crucial to note that the respondent No.6 - Deputy General Manager of the respondent Board categorically recorded in the investigation report dated 10th May 2024 that there was no actionable material found against the petitioner-Jitender Kumar Jain.

28. In this backdrop, when the impugned show cause notice dated 9th July 2024 is perused, it refers to the investigation report

dated 10th May 2024 and annexes a copy thereof. Thereupon, even though the investigation report categorically recorded that no actionable material was found against the petitioner, the respondent No.8, another Deputy General Manager of the respondent Board, who signed the show cause notice, stated that certain aspects in respect of the assignment of the petitioner-Jitender Kumar Jain as liquidator were observed. Then the show cause notice proceeded to highlight five issues to reach a conclusion that *prima facie* certain contraventions of the provisions of the IBC and its Regulations were found. The petitioner-Jitender Kumar Jain was then called upon to respond to the five issues.

29. We find substance in the contention raised on behalf of the petitioner that the show cause notice was based on material extraneous to the investigation report. The petitioner-Jitender Kumar Jain had specifically responded to the notice dated 2nd April 2024 issued during the course of investigation and he had given his detailed response to allegations made against him. The investigating officer was satisfied with the responses and no actionable material was found against the said petitioner. Yet, the impugned show cause notice was issued on aspects completely foreign to the complaints and the allegations that triggered the investigation. This is found to be a procedural irregularity committed by the respondent-Board and its officials while proceeding against the said petitioner as a service provider. Once

the statutory provisions under the IBC and the Regulations framed thereunder prescribe a particular procedure, it ought to be followed.

30. In this context, it becomes crucial that Section 219, as it then stood, did not use the words ‘or on the basis of material available on record’, which have been added by way of amendment dated 6th April 2026. In other words, the procedure, as it then stood, provided for complaints to be lodged by any aggrieved person against the service providers like the petitioner under Section 217 of the IBC, which could lead to an investigation under Section 218 thereof and if the Board was satisfied upon completion of the investigation under Section 218 that *prima facie* sufficient cause existed to take action, a show cause notice could be issued.

31. In the present case, the impugned show cause notice dated 9th July 2024 has not been issued in pursuance of the said procedure. It has been issued on material extraneous to the investigation. In order to respond to the said contention raised on behalf of the said petitioner, the respondent-Board contended that it always has *suo motu* power, as a regulator, to issue such show cause notice on any material that comes to its notice and which in its opinion, warrants action against the service provider like the said petitioner. If the role of the Board as the regulator under the IBC and the Regulations framed thereunder is appreciated in the correct perspective, there can be no doubt that the Board would

be well within its powers to take action against the service providers when it is warranted. But, before exercising such inherent power, the Board would certainly be required to allude to the material that led to its *prima facie* conclusion about necessity to take action against the service provider.

32. In the present case, the material that came to the fore in the form of the investigation report was admittedly in favour of the said petitioner as a service provider and yet, the Board chose to issue show cause notice purportedly under Section 219 of the IBC as it then stood. We are of the opinion that the said procedure adopted by the respondent Board was procedurally irregular and to that extent, the show cause notice stood vitiated. The said petitioner was at least entitled to being provided the material on the basis of which the show cause notice was issued.

32. Since this Court, while exercising writ jurisdiction, has the power to interfere with the impugned order dated 18th December 2024 in a narrow compass, being conscious of the said position, the impugned order is being examined.

33. A perusal of the impugned order shows that although the aforementioned issues were raised against the petitioner-Jitender Kumar Jain for having contravened the provisions of the IBC and the Regulations framed thereunder, he was found guilty of only three contraventions. Firstly, it was found that the said petitioner, as the liquidator and the service provider, had irregularly

constituted the SCC. Secondly, it was found that the said petitioner had failed to present liquidation costs before the SCC in the 4th, 5th and 6th meetings; and thirdly, that the said petitioner had caused delay in issuing notices for conducting the first and second auctions.

34. A perusal of the impugned order shows that, while arriving at findings with regard to the aforementioned three issues, the Disciplinary Committee of the respondent-Board stated the issues in brief, then the response of the said petitioner and eventually the analysis and findings thereon. At first blush, it does appear that the respondent-Board, through its Disciplinary Committee, while passing the impugned order, considered the material on record while reaching its findings. But, a closer analysis shows that while the said petitioner in his reply to the show cause notice and also in his written submissions tendered after personal hearing, had raised a number of concerns and issues, the respondent-Board does not appear to have considered the same in the proper perspective. In this regard, it would be appropriate to refer to the detailed reply to the show cause notice submitted by the said petitioner. A perusal of the same shows the manner in which the said petitioner stated the chronology of events from the point in time when liquidation was initiated in respect of the corporate debtor. The conduct of the promoters / ex-directors including the promoter, who had submitted the said complaints, was highlighted and in that context, reference was made to their fraudulent conduct. The

obstructionist attitude of the promoters / ex-directors of the corporate debtor was also placed on record, due to which a number of applications had to be filed before the adjudicatory authority i.e. the NCLT and even writ petitions had to be filed before this Court.

35. One such Writ Petition No.10244 of 2023 had to be filed by the said petitioner seeking directions to the police to provide assistance to clear the illegal occupation by the said promoters / ex-directors and third parties in the premises owned by the corporate debtor. This Court, in its order passed in the said writ petition, recorded that the liquidator i.e. the petitioner-Jitender Kumar Jain was being browbeaten and threatened by the promoters and ex-directors of the corporate debtor in a most illegal manner and that, bogus and frivolous complaints were also being lodged against him. The said petitioner brought on record material as to the manner in which the promoters / ex-directors were causing news-items to be published in the print media, levelling wild and baseless allegations against the said petitioner. It is to be noted that the corporate debtor, itself, was a newspaper house run by the said promoters / ex-directors.

36. Thereupon, the said petitioner responded to each of the issues flagged by the Board in the said show cause notice. We are of the opinion that the entire background placed by the said petitioner before the respondent Board in response to the show cause notice with supporting material ought to have been taken

into consideration while analyzing the response to individual issues raised in the show cause notice and that the analysis thereof could not have been dehors such background and material. We find that the impugned order is bereft of any such examination and analysis. In other words, we find that relevant material placed on record by the said petitioner was ignored by the respondent-Board while passing the impugned order. This amounts to violation of the principles of natural justice and a serious procedural infirmity that goes to the root of the matter.

37. We also find substance in the contention raised on behalf of the petitioner that the defences raised on his behalf, *inter alia*, concerned interpretation of the relevant Regulations framed under the IBC, particularly the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 (hereinafter referred to as 'Liquidation Regulations 2016'). We are of the opinion that if more than one interpretation of the relevant regulations was reasonably possible and the petitioner, as the liquidator, had adopted one such interpretation, it could not be said that there was serious contravention or infarction of the provisions of the IBC and the Regulations framed thereunder. In this context, it would be appropriate to consider the findings rendered by the respondent-Board in the impugned order.

38. The first issue on which the respondent-Board found against the petitioner in the impugned order pertained to alleged irregular constitution of the SCC. Regulation 31A(1) of the Liquidation

Regulations 2016 pertains to the SCC and it requires the regulator to constitute the committee within 60 days of the liquidation commencement date. Clause (3) of the aforesaid Regulation 31A stipulates that the liquidator may facilitate the stakeholders of each class i.e. the classes of financial creditors, workmen, employees etc. to nominate their representatives for participation in the consultation committee. The allegation against the said petitioner is that, he treated only SBI as the sole representative of the financial creditors in the SCC while there were other financial creditors also. The said petitioner explained that as per his interpretation of Regulation 31A(3) of the Liquidation Regulations 2016, since SBI and the other two financial creditors i.e. Bank of Baroda and the petitioner-Edelweiss belonged to one class of financial creditors i.e. secured creditors having relinquished their security interest, he treated all three as a class with SBI representing the said class. In his reply, the said petitioner had enumerated the various classes of creditors that he took into consideration such as secured financial creditors, unsecured financial creditors, operational creditors (workmen), operational creditors (government dues) etc. We find that the interpretation placed by the said petitioner on Regulation 31A(3) of the Liquidation Regulations 2016 is certainly an interpretation, which qualifies to be a possible interpretation. This aspect was completely ignored by the respondent-Board in the impugned order while holding against the said petitioner on the first issue.

39. Another relevant aspect concerning the first issue is that when the said petitioner as the liquidator considered SBI as the representative of all financial creditors, no other financial creditor ever raised any grievance in that regard. The documents and material pertaining to meetings of the SCC show that while SBI was treated as the representative of all financial creditors, the other two financial creditors in the same class i.e. secured creditors having relinquished their security interest, being Bank of Baroda and the petitioner-Edelweisse also attended all meetings of the SCC. This is a relevant circumstance ignored by the Disciplinary Committee of the respondent-Board while passing the impugned order and holding against the petitioner on the said issue. In other words, on the said issue, relevant considerations were ignored and this amounts to procedural irregularity resulting in violation of principles of natural justice.

40. As regards the second issue pertaining to the failure of the said petitioner acting as the liquidator in presenting liquidation costs in SCC meetings, at the outset, we find that the Disciplinary Committee of the respondent-Board, in the impugned order, wrongly took into consideration the proceedings of the 7$^{th}$, 8$^{th}$ and 9$^{th}$ meetings of the SCC, because the show cause notice raising the said issue concerned only the 4$^{th}$, 5$^{th}$ and 6$^{th}$ meetings of the SCC. Thus, the consideration of the said issue was necessarily limited to the 4$^{th}$, 5$^{th}$ and 6$^{th}$ meetings of the SCC. This is found to be an error in the impugned order.

41. As regards the allegations contained in the said issue, the impugned order analyzes the response of the said petitioner on the touchstone of interpretation of Regulations 5 and 31A of the Liquidation Regulations 2016. It appears that the said petitioner proceeded on the basis that the necessity of the liquidator presenting the liquidation cost to the SCC under Regulation 31A(6B) of the Liquidation Regulations was to be read with Regulation 5(3)(c) thereof. On that basis, the said petitioner, while performing his role as the liquidator, called for submission of confidentiality undertakings. It is also an admitted position that Regulation 31A(6B) was introduced in the Liquidation Regulations 2016 with effect from 12th February 2024. The notice for the 4th meeting of the SCC was already issued on 10th February 2024, for the meeting slated for 15th February 2024. Thus, at the point in time when the notice for the 4th meeting was issued, Regulation 31A(6B) of the Liquidation Regulations 2016 was yet to come into existence.

42. In the face of such facts, we find it surprising that the Disciplinary Committee of the respondent-Board in the impugned order held that the said petitioner while functioning as the liquidator had shown 'contemptuous attitude' towards the involvement of the stakeholders in the liquidation process. It was also recorded in the impugned order that the stand taken by the said petitioner in his defence was based on a misinterpretation of the provisions. We are of the opinion that if it was a case of

interpretation of provisions and the Disciplinary Committee of the respondent-Board was of the opinion that the interpretation applied by the said petitioner was incorrect, it would still lead to a situation of two views with regard to a particular set of provisions. Apart from this, it is an admitted position that none of the stakeholders ever raised any grievance in that regard. We are of the opinion that in such circumstances, the approach adopted by the Disciplinary Committee of the respondent-Board in the impugned order on the said issue was excessively stringent, leading to adverse finding being rendered against the petitioner. It is to be noted that in the operative portion of the impugned order, the respondent-Board itself recorded that there were technical violations of the Liquidation Regulations 2016. This is also a factor to be taken into consideration.

43. As regards the third issue pertaining to delayed issuance of notices for the first and second auction, the material on record, to which the impugned order also briefly refers, shows that the promoters of the corporate debtor had left no stone unturned to obstruct the process from the very beginning. Their misdeeds had created serious issues regarding parking etc. in the immovable properties and all the issues were required to be sorted out before the first notice for auction could be issued. The members of the SCC were throughout aware of the same and in the meetings, there were deliberations regarding the said issues. After a semblance of regularity was brought about by the efforts of the

said petitioner functioning as the liquidator along with the members of the SCC, that the first notice for auction could be issued.

44. Even with regard to the second notice for auction, ample material was placed on record by the said petitioner to explain why the same could not be undertaken within 15 days on the failure of the first auction. Although the Disciplinary Committee of the respondent-Board does refer to such material, the effect of the same has not been taken into consideration. But the most crucial factor is that the said petitioner had placed on record the fact that such delays were all condoned by the adjudicatory authority i.e. the NCLT. The impugned order proceeds on the basis that such condonation of delay by the adjudicating authority, which has an overarching role in such circumstances, was not a relevant factor at all. This is another illustration of a crucial factor being ignored while holding against the said petitioner on the issue pertaining to delays in issuing the auction notices.

45. This brings us back to the fact that in the reply to the show cause notice, the petitioner was at pains to point out the manner in which the promoters and ex-directors of the corporate debtor, at every stage, were adopting malicious and obstructive tactics, judicial notice of which, was taken by the adjudicatory authority i.e. the NCLT and even this Court in writ petitions, which the said petitioner was constrained to file. When the adjudicatory authority and even this Court in writ jurisdiction had to pass orders to assist

the said petitioner, functioning as the liquidator, to ensure that the integrity of the process under the IBC was maintained, it was certainly a relevant factor. But, the same was ignored by the Disciplinary Committee of the respondent-Board while holding against the petitioner on the said issue.

46. In the light of the settled position of law, this Court, while exercising writ jurisdiction in this case, has not analyzed the findings rendered by the Disciplinary Committee of the respondent-Board as if sitting in appeal. Instead, the findings have been scrutinized by considering as to whether relevant material was ignored and irrelevant factors were taken into consideration while passing the impugned order. We are of the opinion that the impugned order is vitiated on the touchstone of the said scrutiny and this indicates procedural irregularity and violation of the principles of natural justice. On these grounds, we are inclined to exercise writ jurisdiction to interfere with the impugned order.

47. The aforesaid petitioner has relied upon judgements in the cases of **Inspector Prem Chand vs. Government of NCT of Delhi & Ors.** *(supra)*, **Abdul Rauf Mohammed Khaja vs. State of Maharashtra, through the Secretary, Revenue Department & Ors.** *(supra)* and *Union of India Vs. K. K. Dhawan*, **1993 (2) SCC 56,** for the proposition that mere negligence or carelessness would not amount to misconduct. We are of the opinion that the said judgements were rendered in the context of service jurisprudence wherein the employer proceeded against the employee on the

ground of misconduct. In the present case, the situation is different, for the reason that the said petitioner, while functioning as a liquidator, is not an employee of the respondent-Board, but, he functions under the supervision of the Board, which is the regulator of the process of insolvency and liquidation under the provisions of the IBC. Therefore, strictly speaking, the said judgements may not apply to the facts of the present case.

48. We find substance in reliance placed on behalf of the said petitioner on the judgement of the Supreme Court in the case of **Chairman, Life Insurance Corporation of India & Ors. vs. A. Masilamani** *(supra)*, wherein the Supreme Court has given an analysis of the word 'consider'. In the context of Regulation 11 of the Investigation Regulations 2017, the said position of law assumes significance, because the respondent-Board is required to 'consider' the inspection report to reach a *prima facie* opinion that sufficient cause exists to take action under Section 220(2) of the IBC for issuing show cause notice. In the present case, the inspection report categorically concluded that no actionable material was available. As per the said position of law, the respondent-Board was required to 'think over' and form an opinion on the investigation report to reach a *prima facie* opinion that action against the said petitioner was warranted. We find that the impugned show cause notice dated 9th July 2024 refers to the inspection report, but obviously does not consider the findings therein and proceeds to invoke Section 220(2) of the IBC. We

have already noted that this aspect of the matter vitiated the show cause notice itself.

49. There can be no quarrel with the propositions laid down by the Supreme Court in the judgements of **Union of India & Ors. vs. P. Gunasekaran** *(supra)* and **Chief Commercial Manager, South Central Railway, Secunderabad & Ors. vs. G. Ratnam & Ors.** *(supra)* with regard to the limited jurisdiction that can be exercised by the Writ Court while considering the correctness or otherwise of an order in the nature of the order impugned herein. The said judgements were relied upon by the learned counsel appearing for the respondent-Board. We have exercised our jurisdiction in this case within the narrow compass available as per the settled position of law and we have reached the conclusions hereinabove, which indicate that the petitions deserve to be allowed. We also find that reliance placed on behalf of the respondent-Board on judgement of this Court in the case of **Naren Sheth vs. Union of India & Ors.** *(supra)* is misplaced, because in that case, the Court was convinced on facts about the allegations against the service provider.

50. Although the impugned order imposes the penalty of suspending the registration of the petitioner-Jitender Kumar Jain for a period of three months, it cannot be ignored that by operation of clause 23A of the Model Bye-Laws, the moment the show cause notice dated 9th July 2024 was issued, the authorization for assignment of the said petitioner stood

suspended. In effect, the petitioner suffered suspension for a longer period of time. A Division Bench of this Court in the case of *Amit Gupta Vs. Insolvency and Bankruptcy Board of India*, **2024 SCC OnLine Bom. 989** has commented upon such a drastic consequence in the following manner:-

> *"81. Before we part with the matter, we would be remiss if we did not highlight to the IBBI that it must examine the serious effect of the issuance of a show cause notice to any IP. The very issuance of a show cause notice has the effect of stopping the IP from taking up new work by reason of Bye-Law 23A in the Model Bye-Laws that are statutorily specified in the Schedule to the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, which provides as follows:-*
>
> *"The authorisation for assignment shall stand suspended upon initiation of disciplinary proceedings by the Agency or by the Board, as the case may be."*
>
> *82. While the aforesaid provision is not under challenge before us, we take judicial notice of the serious repercussions on insolvency professionals when the Insolvency and Bankruptcy Board of India issues a show cause notice. The moment disciplinary proceedings are initiated, the insolvency professional's authorisation to conduct his assignments stands suspended. Such a position enabled by subordinate law can have serious implications for insolvency professionals. This position may also have the effect making the Insolvency and Bankruptcy Board of India reticent to issue show cause notices, considering the debilitating impact it can have on any insolvency professional. This situation deserves to be reviewed by the Insolvency and Bankruptcy Board of India.*

51. Thus, we find that the respondent-Board needs to be more circumspect while issuing show cause notices to insolvency

professionals like the petitioner herein and in that backdrop, the necessity of proper consideration of the material under Regulation 11 of the Investigation Regulations 2017 assumes even more significance.

52. Although we find that the petitioner-Edelweiss could not have had a grievance to challenge the impugned order, but the very fact that it chose to challenge the impugned order demonstrates that as a member of the SCC, it was more than happy with the manner in which the petitioner-Jitender Kumar Jain was functioning as the liquidator. As a matter of fact, the petitioner-Edelweiss is at pains to point out that the petitioner-Jitender Kumar Jain took all necessary steps to ensure the integrity of the process undertaken as per the provisions of the IBC and the Regulations framed thereunder and the manner in which the promoters and ex-directors were hell bent upon derailing the same and in the process, targeted the liquidator himself. To that extent, the petition filed by the petitioner-Edelweiss deserves consideration.

53. In view of the above, the writ petitions are allowed. The impugned order dated 18th December 2024 passed by the Disciplinary Committee of the respondent-Board is quashed and set aside. As regards prayer of the petitioner-Jitender Kumar Jain for direction to the respondent No.1-Union of India to consider putting in place an appellate body, the recent amendment of the

IBC, adding sub-section (7) to Section 220 sufficiently satisfies the said grievance of the petitioner. By the said amendment, an avenue of appeal is provided to a person aggrieved by an order of the Disciplinary Committee of the respondent-Board by preferring an appeal before the National Company Law Appellate Tribunal.

54. As regards declaration that Regulation 13(3ba) of the Investigation Regulations 2017 is unconstitutional, serious arguments were not advanced by the parties, and therefore, the said question is not dealt with and it is kept open.

55. In view of the above, both the writ petitions are disposed of. Pending applications, if any, also stand disposed of.

**(SHREERAM V. SHIRSAT, J.)** **(MANISH PITALE, J.)**

***Bipin / Minal***

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

**(Disciplinary Committee)**

No. IBBI/DC/257/2024 18.12.2024

**ORDER**

This Order disposes of the Show Cause Notice (SCN) No. COMP-11011/27/2023-IBBI/875/388 dated 09.07.2024, issued to Mr. Jitender Kumar Jain, an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-002/IP-N00033/2016-2017/10070, who is a Professional Member of the Insolvency Professional Agency of ICSI Institute of Insolvency Professionals and having residential address recorded with IBBI as Level 11, Platina, C-59, G-Block, Bandra Kurla Complex, Bandra (East),Mumbai City, Maharashtra-400051.

1. **Background**

1.1 The National Company Law Tribunal, Mumbai Bench (AA) *vide* its Order dated 31.03.2022, admitted the application filed under Section 7 of the Code by State Bank of India (FC) for initiating Corporate Insolvency Resolution Process (CIRP) of M/s. Aaj ka Anand Papers Limited (Corporate Debtor / CD). Ms. Vineeta Maheshwari was appointed as the Interim Resolution Professional (IRP) *vide* the above-said Order and later confirmed as the Resolution Professional (RP) of the CD. The AA *vide* its Order dated 12.04.2023 had initiated Liquidation against the CD and appointed Mr. Jitender Kumar Jain as the Liquidator of the CD.

1.2 The IBBI in exercise of its powers under Section 218 of the Insolvency and Bankruptcy Code (Code), read with Regulations 7(1) and 7(2) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to conduct investigation in the CIRP of the CD.

1.3 Accordingly, a notice under Regulation 8(1) of the Investigation Regulation was issued to Mr. Jitender Kumar Jain on 02.04.2024 with a request to provide reply along with relevant documents. Mr. Jitender Kumar Jain submitted his reply to the investigation notice.

1.4 Based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the Board formed a, *prima facie,* view that Mr. Jitender Kumar Jain has contravened several provisions of the Code, the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and issued the SCN to Mr. Jitender Kumar Jain on 09.07.2024 with a request to furnish reply by 24.07.2024. Mr. Jitender Kumar Jain had sought extension in submitting his reply to the SCN and the reply of Mr. Jitender Kumar Jain on the SCN was received by the Board on 30.08.2024.

1.5 The SCN and response of Mr. Jitender Kumar Jain to the SCN, were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Jitender Kumar Jain availed the opportunity of personal hearing before the DC through virtual mode on 19.09.2024. Pursuant to the personal hearing, Mr. Jitender Kumar Jain had submitted the written submissions *vide* email dated 10.10.2024.

**2. Alleged Contraventions, Submissions of Mr. Jitender Kumar Jain** and **Findings of DC**

The contravention alleged in the SCN, submissions by Mr. Jitender Kumar Jain and findings of the DC are summarized as follows:

**2.1 Irregular constitution of SCC.**

**Alleged Contravention.**

2.1.1 Regulation 31A (1) of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) provides that the liquidator shall constitute a consultation committee (SCC), comprising of all creditors of the CD, within sixty days from the liquidation commencement date (LCD), based on the list of stakeholders prepared under Regulation 31, to advise him on various matters. Further, Regulation 31A (3) of the Liquidation Regulations specifies that the liquidator may facilitate the stakeholders of each class namely financial creditors in a class, workmen, employees, government departments, other operational creditors, shareholders, partners, to nominate their representative for participation in the consultation committee.

2.1.2 It is, however, observed from the constitution of SCC filed by Mr. Jitender Kumar Jain before the AA, that he has considered only one financial creditor (FC) i.e. State Bank of India (SBI) as the representative of all FCs. While other FCs have attended the SCC meetings, however, the constitution of SCC including only SBI as the sole representative of FCs in SCC is not as per the Regulation 31A (1) of Liquidation Regulations.

**Submissions by Mr. Jitender Kumar Jain.**

2.1.3 Mr. Jitender Kumar Jain submitted that in terms of Regulation 31A (3) of the Liquidation Regulations, the stakeholders of each class are entitled to nominate their representative for participation in the SCC. Accordingly, in the present case, the SCC was constituted with SBI as representative of all of the financial creditors in a class (i.e. secured creditors having relinquished their security interest, namely Bank of Baroda (BOB) and Edelweiss Asset Reconstruction Company (EARC). Both BOB and EARC, who are the only parties who can have any grievance with respect to alleged improper constitution of the SCC, have not raised any objection to the constitution of SCC with SBI as their representative. In fact, BOB and EARC have been invited and have been attending all SCC meetings and have been participating in all discussions pertaining to the liquidation process of the Corporate Debtor which fact has also been noted in the SCN. Thus, issuing the SCN without obtaining the views of BOB and EARC in this regard is unfair and unjust on the part of IBBI.

2.1.4 Mr. Jitender Kumar Jain further submitted that Regulation 31A (1) of the Liquidation Regulations provides that the SCC shall comprise of all creditors of the Corporate Debtor and does not specifically provide for all financial creditors to be made a part of the SCC. Regulation 31A of Liquidation Regulation, being delegated legislation, cannot override the provisions of Section 35(2) of the IBC as supposed to be done by the Investigating Authority. The question on interpretation of Regulations 31A(1) and 31A(3) of the Liquidation Regulations and Section 35 of the Code, 2016 cannot be interpreted by IBBI but needs proper interpretation by a court of law.

2.1.5 Mr. Jitender Kumar Jain submitted that SBI holding 63.61% of class, namely, secured financial creditor was willing to join SCC and thus selected as the representative. Notably, as SBI holds more than 50% voting rights in their classes as mentioned in Regulation 31A(4) of the Liquidation Regulations, no one could have challenged them had there been a contest. Notably, the constitution of SCC was intimated to SBI, BOB and EARC on 14.07.2023 and none of them objected to the same till date as recorded in the minutes of 9th SCC meeting.

2.1.6 Mr. Jitender Kumar Jain submitted that assuming, without admitting that the Regulation 31A(3) refers to class of creditors like depositors, etc., however, the list of stakeholders to be prepared as per IBBI circular dated 04.03.2021 No. IBBI/LIQ/40/2021 read with regulation 31(5)(d) of Liquidation Regulations has no such category of creditors, viz., class of creditors. Mr. Jitender Kumar Jain placed reliance on Hon'ble Supreme Court in V.S. Palanivel v. P. Sriram, CS Liquidator, (92024 INSC 659, para 34.2) to support his contention with respect to the formation of SCC.

**Analysis and Findings of the DC.**

2.1.7 The relevant extract of Regulation 31A of the Liquidation Regulations, 2016 is reproduced below:-

**31A. Stakeholders' consultation committee**

*(1) "The liquidator shall constitute a consultation committee, comprising of all creditors of the corporate debtor, within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to :-*

*(a)……….*

*(2)………..*

*(3) The liquidator may facilitate the stakeholders of each class namely financial creditors in a class, workmen, employees, government departments, other operational creditors, shareholders, partners, to nominate their representative for participation in the consultation committee.*

*(4) If the stakeholders of any class fail to nominate their representatives, under sub regulation (3), such representatives shall be selected by a majority of voting share of the class, present and voting.*

*(4A) the representative under sub-regulation (3) or (4) shall vote in proportion to the voting share of the stakeholders it represents."*

2.1.8 The DC notes that as per Regulation 31A (1), the SCC should comprise of all creditors based on the list of stakeholders, to advise the liquidator on various matters. Regulation 31A (3) allows the liquidator to facilitate stakeholders from different classes, including financial creditors in a class, workmen, employees, and government departments, to nominate representatives for the SCC. So, the representatives of only the above categories of creditors which normally include larger number of individual creditors are to be nominated to facilitate effective participation in the SCC. The financial creditors other than financial creditors in a class i.e., secured financial creditors are to be present in the SCC individually.

2.1.9 The DC notes that in the present case it has been observed that Mr. Jitender Kumar Jain, the liquidator, constituted the SCC by including only the State Bank of India (SBI) as the representative of all the secured financial creditors (FCs). Other secured financial creditors, namely Bank of Baroda (BOB) and Edelweiss Asset Reconstruction Company (EARC), were not formally included as the part of the SCC, however, they were attending the SCC meetings.

2.1.10 The DC further notes that the list of stakeholders to be prepared for filing as per IBBI circular No. IBBI/LIQ/40/2021 dated 04.03.2021 is to be filed under Regulation 31(5)(d) of Liquidation Regulations which requires that the liquidator shall file the list of stakeholders on the electronic platform of the Board for dissemination on its website. The purpose of this requirement is to improve transparency and enable stakeholders to ascertain the details of their claims at a central platform and therefore had nothing related to the nomination of representative for participation in the consultation committee.

2.1.11 The DC notes Mr. Jitender Kumar Jain has placed reliance on para 34.2 of the Hon'ble Supreme Court judgement in V.S. Palanivel v. P. Sriram, CS Liquidator, 2024 INSC 659 which provides about the constitution of the SCC from the list of stakeholders on a category-wise basis, as prescribed under Regulation 31 within a period of sixty days from the date of commencement of liquidation and the binding nature of the SCC advisory. The DC further notes that Mr. Jitender Kumar had stressed reliance on the Hon'ble Supreme Court's observation that, "The Stakeholders' Consultation Committee is to be drawn from the list of stakeholders on a category-wise basis, as prescribed under Regulation 31."

2.1.12 The DC notes that the Regulation 31A (1) provides that SCC to be constituted based on the list of stakeholders prepared under Regulation 31. Regulation 31 provides that liquidator shall prepare a list of stakeholders, category-wise, on the basis of proofs of claims submitted and accepted. The DC notes that the observation of the Hon'ble Supreme Court in the Para 34.2 of the judgement relied upon is with regard to the constitution of SCC. The relied judgment further discussed about the nomination on behalf of the director/ shareholders in the SCC which is indeed one of the categories of stakeholders as provided under Regulation 31A (3). Financial Creditors not pertaining to financial creditors in a class are not mentioned in Regulation 31A (3). Therefore, the judgement being based on different set of facts does not help the case of Mr. Jitender Kumar Jain.

2.1.13 The DC notes that Mr. Jitender Kumar Jain has considered only one financial creditor (FC) i.e. State Bank of India (SBI) as the representative of all Secured financial creditor who had relinquished their security interest u/s 52 of the Code, 2016 for the purpose of constitution of the SCC under Regulation 31A of the Liquidation Process. The DC had during the hearing and *vide* e-mail dated 21.09.2024 had requested Mr. Jitender Kumar Jain to provide evidence of explicit agreement or approval from other FCs to appoint SBI as their representative. In response, Mr. Jitender Kumar Jain stated that he had informed SBI, BOB, and EARC of the SCC's composition on 14.07.2023, and that none of these parties had raised any objections to date, as documented in the minutes of the 9th SCC meeting.

2.1.14 The DC also notes the submission of Mr. Jitender Kumar Jain that since, SBI holding 63.61% of the class, therefore, no other party could have contested their representation if challenged. The DC also notes the submission of Mr. Jitender Kumar Jain that BOB and EARC had not raised any objection to the constitution of SCC. However, the DC finds it pertinent to note that BOB and EARC's lack of objection regarding SBI's nomination as the sole FC representative does not grant Mr. Jitender Kumar Jain the authority to structure the SCC in contravention of Regulation 31A (1) of the Liquidation Regulations. Furthermore, the lack of objection on the part of BOB and EARC cannot be construed as their explicit approval of SBI's nomination to the SCC.

2.1.15 The DC, after perusal of all the SCC minutes, notes that the representatives of all the three FCs i.e., State Bank of India, Bank of Baroda and Edelweiss Asset Reconstruction Company Limited were invited in the SCC meetings and were also present in all the SCC meetings from 1st SCC meeting to 10th SCC meeting. The DC further notes that the constitution of SCC filed by Mr. Jitender Kumar Jain before the AA, shows that he has considered only one financial creditor (FC) i.e. State Bank of India (SBI) as the representative of all FCs.

2.1.16 The DC notes that the stand of Mr. Jitender Kumar Jain is inconsistent as on one hand, he contends that SCC was constituted with SBI as the representative of secured financial creditor but on the other hand he has called all secured financial creditors i.e., SBI, BOB and EARC in all the meetings of the SCC.

2.1.17 In light of the above, the DC finds that Mr. Jitender Kumar Jain has considered only one financial creditor (FC) i.e. State Bank of India (SBI) as the representative of all FCs, which is in violation of Regulation 31A (1) of Liquidation Regulations. Therefore, the DC finds Mr. Jitender Kumar Jain is in contravention of Regulation 31A(1) of the Liquidation Process, Regulations,2016 even though the same has not been objected by any concerned financial creditors.

**2.2. <u>Auction process document finalised without consultation with SCC.</u>**

**Alleged Contravention.**

2.2.1. The provisions of Regulation 31A(l)(b) of the Liquidation Regulations require the liquidator to consult the SCC *inter alia* on matters relating to sale process including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process

2.2.2. It is observed that post conduct of 3rd SCC meeting, Mr. Jitender Kumar Jain sent an email dated 04.12.2023 to SBI seeking its views and comments on the auction process document. SBI gave its go ahead to release of the document on 07.12.2023. The opinion of other FCs and SCC members was not sought for. By not discussing the auction process document in SCC and seeking only the views of SBI, only one of the stakeholders, on mail, Mr. Jitender Kumar Jain has contravened Regulation 31 A(l)(b) of the Liquidation Regulations.

**Submissions by Mr. Jitender Kumar Jain**

2.2.3. Mr. Jitender Kumar Jain submitted that the said allegation did not form part of the Complaint and/or the said Letter filed by the Complainant and therefore this purported allegation cannot form a part of the SCN.

2.2.4. Mr. Jitender Kumar Jain further submitted that in the 3rd SCC meeting, it was decided that the draft auction process document will be provided to the financial creditors (who were the only SCC members present in the 3rd SCC meeting) representing 99.79% of all stakeholders of the Corporate Debtor. Mr. Jitender Kumar Jain also submitted that *vide* email dated 04.12.2023, the auction process document was sent to the SCC members, including all of the financial creditors, which was confirmed/approved by SBI, holding 62% share of the total claims of the Corporate Debtor (as against requisite majority of 51%) and the other financial creditors *viz.* BOB and EARC did not raise any objection to the auction process document at any point of time (as confirmed by them in 9th SCC meeting as well) and therefore, the same was issued by him.

2.2.5. Mr. Jitender Kumar Jain submitted that since none of the stakeholders of the Corporate Debtor except the secured financial creditors *viz.* SBI, BOB and EARC had attended the 3rd SCC meeting, the email dated 04.12.2023 was sent to the above stakeholders requesting for their comments on the auction process documents. None of the other stakeholders of the Corporate Debtor have raised any objection with respect to the process followed in relation to issuing and releasing the auction process document.

2.2.6. Mr. Jitender Kumar Jain further submitted that since, the stakeholder consultation committee is a non-binding advisory body and Liquidation Regulation, being delegated legislation, cannot override the provisions of Section 35(2) of the IBC.

**Analysis and Findings of the DC.**

2.2.7. The DC notes that in terms of section 218 of the Code read with Inspection and Investigation Regulations, the Board is empowered to take into account any material made available to it, regarding any alleged misconduct by the service provider. Section 196 of the Code bestows various powers and functions on the Board, including to carry out inspection and investigation on service providers and pass such orders as may be required for compliance of provisions of the Code and Regulations, monitoring of performance of service providers, etc. The conduct of an Insolvency Professional in CIRP or Liquidation has wide implications and affects the rights and interests of all the stakeholders. Therefore, to effectively discharge its statutorily mandated duties and functions, under the Code, the Board can very well examine the conduct of the IP via investigation or inspection either suo moto or whenever any information about the conduct related issue is received by the Board by any person. Accordingly, the submission of Jitender Kumar Jain that the said allegation did not form part of the Complaint and/or the said Letter filed by the Complainant and therefore this purported allegation cannot form a part of the SCN, cannot be accepted.

2.2.8. The DC notes that the issue revolves around whether Mr. Jitender Kumar Jain, the liquidator, violated Regulation 31A(1)(b) of the IBBI (Liquidation Process) Regulations, 2016 by finalizing the auction process document without consulting all members of the SCC. Regulation 31A(1)(b) requires the liquidator to consult the SCC on various matters, including the sale process, reserve price, pre-bid qualifications, marketing strategy, and auction procedures. The relevant extract of Regulation 31A(1)(b) of the IBBI (Liquidation Process) Regulations, 2016 is reproduced below: -

**"31A. Stakeholders' consultation committee.**

(1) The liquidator shall constitute a consultation committee, comprising of all creditors of the corporate debtor, within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to-

(a) remuneration of professionals appointed under regulation 7;

(b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process.;

………….

(10) The advice of the consultation committee shall not be binding on the liquidator:

Provided that where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing and submit the records relating to the said decision, to the Adjudicating Authority and to the Board within five days of the said decision; and include it in the next progress report."

2.2.9. The DC notes that under the liquidation process, the SCC's role is advisory, as specified in Regulation 31A (10). The liquidator is not bound to act on the SCC's recommendations but is required to consult the committee on key decisions. However, if the liquidator makes a decision that differs from the advice given by the SCC, the liquidator must record the reasons for doing so in writing. Accordingly, the SCC's recommendations are advisory and do not impose binding obligations on the liquidator.

2.2.10. The DC notes that the requirement to take the SCC's advice on the specified matters, as envisaged under Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016, cannot be bypassed on the argument that the SCC's advice is not binding on the liquidator. This is a well-established legal principle; if a particular procedure is to be followed, it must be complied with in both letter and spirit. The submission of Mr. Jitender Kumar Jain , stating that since the SCC is a non-binding advisory body, consultation with the SCC is not required as it cannot override the provisions of Section 35(2) of the IBC, not only goes against the spirit of the Code and the Regulations but also demonstrates the contemptuous attitude of Mr. Jitender Kumar Jain in disregarding the opinions of other stakeholders in the process.

2.2.11. The DC had perused the minutes of the 3rd SCC meeting dated 28.11.2023, wherein it was noted that the liquidator is still working on the terms and conditions for the sale of immovable properties and the same will be circulated to lenders for their review. The DC further noted that in the 9th SCC meeting dated 19.07.2024, the issue whether first auction notice discussed in the SCC meeting was addressed and it was minuted as follows:-

> "**Issue 2 - First auction notice not discussed in SCC meeting:** The Chairperson stated that pursuant to discussion in third SCC meeting the terms and conditions were sent to all three lenders. Out of which SBI holding 62% voting rights approved the same. The representative of BOB clarified that since they did not have any objection to the same, they did not reply on the same. The Chairperson stated that he had taken the confirmation of the representative of EARC over the phone that was confirmed by the representative of EARC."

2.2.12. The DC notes that BOB and EARC, in the 9th SCC meeting dated 19.07.2024, provided clarification regarding the response to Mr. Jitender Kumar Jain's email dated 04.12.2023, which sought review and comments on the auction process documents. The DC also notes that SBI, holding 62% of the voting rights, replied via email on 07.12.2023: *"You may proceed with the publication." Additionally, the representative of BOB and EARC provided clarification regarding why they had not responded to the email dated 04.12.2023.*

2.2.13. The DC notes that, undoubtedly, while there may be concerns about the lack of documentation regarding the review or advice from all the SCC members, Mr. Jitender Kumar Jain's action of proceeding with the auction documents without the documentation from all the SCC members is contrary to the best practices and vigilance expected from the IP. However, based on SBI's email dated 07.12.2023 and the absence of objections from other SCC members, along with the further clarification noted in the 9th SCC meeting, the action of proceeding with the auction documents appears to be in line with the regulatory framework of the Code, 2016, and the Liquidation Regulations made thereunder. Accordingly, the DC accepts Mr. Jitender Kumar Jain's submission with an advisory to exercise more caution in future assignments.

## 2.3. <u>Failure to present liquidation cost in SCC meetings.</u>

**Alleged Contravention.**

2.3.1. Regulation 31A(6B) of the Liquidation Regulations requires the liquidator to present the actual liquidation cost along with reasons for exceeding the estimated cost, if any, in every SCC meeting.

2.3.2. It is, however, observed on perusal of minutes of 4$^{th}$, 5$^{th}$ and 6$^{th}$ SCC meeting, that Mr. Jitender Kumar Jain had failed to present the liquidation cost and other details relating to the same to the SCC in these SCC meetings. Thus, Mr. Jitender Kumar Jain has contravened Regulations 31 A(6B) of Liquidation Regulations read with Clause 27 of the Code of Conduct as specified in the First Schedule of IP Regulations.

**Submissions by Mr. Jitender Kumar Jain.**

2.3.3. Mr. Jitender Kumar Jain submitted that this regulation was inserted with effect from 12.02. 2024 and the notice of the 4$^{th}$ SCC meeting held on 15.02.2024 was issued to the SCC members on 10.02.2024 i.e. even before Regulation 31 (A) (6B) was brought into force and therefore the allegation that Mr. Jitender Kumar Jain has contravened the said regulation by not disclosing the actual liquidation cost in the 4$^{th}$ SCC meeting is completely baseless and is liable to be disregarded.

2.3.4. Mr. Jitender Kumar Jain further submitted that as per Regulation 5 (3) (c) of the Liquidation Regulations, he was required to *inter alia* share the progress reports and minutes of the SCC meetings with the stakeholders on receipt of a confidentiality undertaking. By email dated 14.07.2023, the draft confidentiality undertaking was shared with SCC members, however, there was no response to the same by SCC members other than financial creditors. Therefore, Regulation 31 A (6)(b) of the Liquidation Regulations directing him to discuss and disclose the liquidation cost in SCC meeting even when confidentiality undertaking is not received from all the stakeholders is contradictory to Regulation 5 (3) (c) of the Liquidation Regulations. Thus, the alleged non-disclosure of liquidation cost in the SCC meeting could not have been a ground for issuance of the SCN against him when there is a direct contradiction between the regulations framed by IBBI. The liquidation cost was always informed to the financial creditors and other SCC members (who provided the confidentiality undertaking in accordance with Regulation 5 (3) (c) of the Liquidation

Regulations) on a regular basis through quarterly reports which were shared with them since the initiation of liquidation process of the Corporate Debtor. This fact was also discussed in 9th SCC meeting wherein it was recorded that the Liquidator has since beginning shared the cost with the Lenders who are relevant stakeholders as per the clause 27 of Code of Conduct.

2.3.5. Mr. Jitender Kumar Jain further submitted that he has shared the cost and related papers with the Lenders (who are likely to get distribution from the assets of the Corporate Debtor and thus relevant stakeholders under clause 27 of the Code of Conduct) and representing 99.79% of stakeholders even before new regulation came into existence.

**Analysis and Findings of the DC.**

2.3.6. The DC notes the submission of Mr. Jitender Kumar Jain that Regulation 31 (A) (6B) was brought into force *w.e.f* 12.02.2024 *vide* Notification No. IBBI/2023-24/GN/REG112. The DC also notes the submission of Mr. Jitender Kumar Jain that since the beginning Mr. Jitender Kumar Jain is sharing progress process having receipt and payment wherein full cost is being disclosed with the SCC members who have given confidentiality undertaking.

2.3.7. Regulation 5 (3) (c) of the Liquidation Regulations, 2016 is reproduced below :-

(3) Subject to other provisions of these Regulations, the liquidator shall make the reports and minutes referred to sub-regulation (1) available to a stakeholder in either electronic or physical form, on receipt of
(a) an application in writing;
(b) costs of making such reports and minutes available to it; and
(c) an undertaking from the stakeholder that it shall maintain confidentiality of such reports and minutes and shall not use these to cause an undue gain or undue loss to itself or any other person.

2.3.8. Regulation 31A(6B) of the Liquidation Regulations, 2016 reads thus:-

"31A. Stakeholders' consultation committee.

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

2.3.9. The DC notes that there is no contradiction between Regulation 5(3) and Regulation 31A(6B) of the Liquidation Regulations, 2016, as both provisions serve distinct purposes. Regulation 5(3) is in respect of ***making available to stakeholders*** reports and minutes to stakeholders upon request, subject to the submission of confidentiality undertaking so as to ensure that the information is not used for undue gain or loss. These reports and minutes can be shared in electronic or physical form, ensuring transparency while safeguarding sensitive information and preventing misuse. In contrast, Regulation 31A(6B) pertains to meetings of the SCC, wherein the liquidator is required to ***present during the meeting key updates***, including the actual liquidation costs (along with reasons for exceeding estimated costs, if any), the consolidated status of ongoing legal proceedings, and the overall progress of the liquidation process. Unlike Regulation 5(3), there is no requirement for a formal confidentiality undertaking, as the SCC operates within a defined framework of transparency and accountability.

2.3.10. Regulation 5(3) ensures ***access to specific reports*** for stakeholders while maintaining confidentiality and accountability, whereas Regulation 31A(6B) emphasizes ***presentation of key updates*** to the SCC during the meeting allowing active participation of stakeholders in the liquidation process.

2.3.11. The DC notes that even after the introduction of Regulation 31 (A) (6B) *vide* amendment dated 12.02.2024, SCC meetings were conducted five times i.e., $4^{th}$, $5^{th}$, $6^{th}$, $7^{th}$, $8^{th}$, and $9^{th}$ SCC meetings conducted on 15.02.2024, 19.03.2024, 25.04.2024, 31.05.2024, 27.06.2024 and 19.07.2024 respectively. During the $4^{th}$, $5^{th}$, $6^{th}$, $7^{th}$ and $8^{th}$ SCC meetings, the required key updates regarding the liquidation cost, receipts, and payments were not made before the SCC in accordance with Regulation 31A(6B) of the Liquidation Regulations. Nevertheless, in the $9^{th}$ SCC meeting, Mr. Jitender Kumar Jain while informing the SCC about the issuance of SCN had clarified the SCC that the receipts and payment details had been shared *via* proper emails with stakeholders who had submitted the confidentiality undertaking.

2.3.12. The DC notes that Mr. Jitender Kumar Jain's reliance on the $9^{th}$ SCC meeting, wherein it was recorded that he had shared the cost with the lenders who are relevant stakeholders since the beginning, and therefore claimed compliance with Regulation 31A(6B) of the Liquidation Regulations, cannot be accepted. This is because the requirement under Regulation 31A(6B) is to present key updates including the actual liquidation cost and other related details to all the stakeholders which was not fulfilled in the 4th, 5th, 6th, 7th, and 8th SCC meetings, as evidenced by the minutes of the respective SCC meetings. The stakeholders other than those who had given confidentiality undertaking have been deprived of these key updates to be presented during the course of SCC meetings thereby limiting their active involvement. The

DC further notes that Mr. Jitender Kumar Jain's approach reflects a disregard for the involvement of stakeholders and contemptuous attitude towards them besides misinterpretation of the provisions.

2.3.13. In light of the above, the DC observes that there was non-compliance with Regulation 31A(6B) regarding the presentation of liquidation costs in the SCC meetings conducted after the insertion of Regulation 31A(6B) of the Liquidation Regulations i.e., 12.02.2024. Therefore, the DC finds Mr. Jitender Kumar Jain is in contravention of Regulations 31 A(6B) of Liquidation Regulations read with Clause 27 of the Code of Conduct as specified in the First Schedule of IP Regulations.

**2.4. <u>Delayed issue of first auction notice</u>**

**Alleged Contravention.**

2.4.1. Clause 1(1 A) of Schedule I to Liquidation Regulations requires the liquidator to issue a public notice of an auction for sale under Regulation 32 within forty-five days from liquidation commencement date (LCD) unless the consultation committee advises to extend the timeline.

2.4.2. As per the material available on record, the first auction notice was issued by Mr. Jitender Kumar Jain on 08.12.2023 i.e. after 240 days from LCD. Further, the delay in issuing auction notice was not discussed with the SCC. Hence, Mr. Jitender Kumar Jain has contravened Clause 1 (1 A) of Schedule I of Liquidation Regulations.

**2.5. <u>Delay in conducting second auction after failure of first auction.</u>**

2.5.1. Clause 1 (IB) of Schedule I to Liquidation Regulations requires the liquidator to issue public notice for the next auction, in case of failure of the auction, within fifteen days from the last failed auction unless the consultation committee advises to deviate from the specified time period.

2.5.2. It is noted that the first auction in the instant matter was scheduled on 10.01.2024. The said auction notice failed. Subsequently, the second auction notice was issued on 16.02.2024 i.e. after more than a month from the date of first auction. It is, thus, seen that 2$^{nd}$ auction notice after the failure of first auction was not issued within the prescribed timeline of 15 days.

Further, the delay in issuing auction notice was not discussed with the SCC. Hence, Mr. Jitender Kumar Jain has contravened Clause 1(1B) of Schedule I to Liquidation Regulations.

**Combined Submissions by Mr. Jitender Kumar Jain**

2.5.3. Mr. Jitender Kumar Jain submitted that in each of the applications enclosing a copy of the Progress Report of the ongoing liquidation process filed before the AA, a specific prayer was made to condone the delay(s) in the Liquidation process of the Corporate Debtor, if any. The aforesaid I.A.'s were allowed in their entirety by the AA and therefore, the delays, if any, in carrying out the Liquidation Process of the CD is already condoned by the AA.

2.5.4. Mr. Jitender Kumar Jain further submitted that it is settled law that the timelines under the Liquidation Regulations are only directory in nature and cannot be considered as a deadline as held by the Hon'ble National Company Law Appellate Tribunal in the case of Standard Surfa Chem India Pvt Ltd v. Kishore Gopal Somani (Company Appeal (AT) (Ins) No. 684 of 2021) and therefore the SCN could not have been issued on the basis of alleged delay in issuance of the 2nd auction notice.

2.5.5. Mr. Jitender Kumar Jain further submitted that as per Regulation 34(2) of the Liquidation Regulations, the asset memorandum is to be prepared within 75 days from the liquidation commencement date and therefore the auction could not have been conducted within 45 days from liquidation commencement date.

2.5.6. Mr. Jitender Kumar Jain also submitted that no objections have been raised by any of the members of the SCC in respect of alleged non-adherence to the timelines prescribed under the Code, 2016 and allied regulations. Importantly, the delay was due to three public notices issued by the ex-promoters/directors of the Corporate Debtor and its fronts to frustrate the auction notice issued in December 2023. Therefore, it was necessary to find out the correctness of such public notices before issue next auction notice.

2.5.7. Mr. Jitender Kumar Jain submitted that in view of above, it required more time to examine the issues raised in these public notices specially with respect to mezzanine floor because as per earlier rent agreement with Equitas Small Finance Bank Ltd ("Equitas") signed by the promoter it has carpet area of 2,043 square feet but promoter of the Corporate Debtor issued a public notice to contrary. Due to this issue, the auction was delayed and in next auction, mezzanine floor was removed from auction as issue remained unresolved despite best efforts. This was also discussed in the 5th SCC meeting. Thus, on the one hand, the ex-promoters/directors of the Corporate Debtor and its fronts to frustrate the e-auction and on the other hand they don't comply with the directions of the AA by providing requisite information even after being directed by the AA in IA 1623/2023.

2.5.8. Mr. Jitender Kumar Jain also submitted that the SCC is a non-binding advisory body and Liquidation Regulation, being delegated legislation, cannot override the provisions of Section 35(2) of the IBC as is to be done by the IA by making this allegation.

**Analysis and Findings of the DC.**

2.5.9. The DC notes Mr. Jitender Kumar Jain's submission that each application, including the Progress Report of the ongoing liquidation process filed before the AA, contained a specific request to condone any delays in the liquidation process of the Corporate Debtor. These applications were allowed in their entirety by the AA, which, according to Mr. Jitender Kumar Jain, signifies that any delays in the liquidation process were condoned by the AA. However, the DC observes that seeking general condonation of delays through Progress Reports is not a substitute for discussing specific delays, such as the delay in issuing the auction notice, with the SCC. Generally, progress reports filed by liquidators are *'taken on record'* by the AA and do not imply that the prayers made within these reports are granted. It is well-established law that, if specific exemptions or condonations are sought, then each instance, should be addressed in a separate application before the AA. Therefore, the DC cannot accept this submission.

2.5.10. The DC notes Mr. Jitender Kumar Jain's submission that the timelines under the Liquidation Regulations are considered directory rather than mandatory deadlines, as held by the Hon'ble NCLAT in Standard Surfa Chem India Pvt Ltd v. Kishore Gopal Somani (Company Appeal (AT) (Ins) No. 684 of 2021). The DC notes that the said judgement does not apply to the facts of the present case as the case relates to the extension of time for completion of the auction process, a scenario distinct from the present case. Furthermore, the paragraph 31 of the said decision provides for extension on timelines in special circumstances of 2nd Wave of Covid 19 and with the permission of AA to extend the timeline, which is not the issue in the present case. Therefore, the relied judgement does not assist Mr. Jitender Kumar Jain in the current case.

2.5.11. The DC notes the submission of Mr. Jitender Kumar Jain that, as per Regulation 34(2) of the Liquidation Regulations, the asset memorandum is to be prepared within 75 days from the liquidation commencement date, and therefore, the auction could not have been conducted within 45 days of the liquidation commencement date. However, the DC observes that Mr. Jitender Kumar Jain has conflated two distinct requirements.

2.5.12. At this juncture, the DC is not inclined to delve into the matter of timelines concerning the preparation of the asset memorandum vis-à-vis the issuance of the auction notices which arise on account of the fact that these different timelines are on account of insertion of the provision for fresh valuation of assets of the CD at a later date and therefore, the timelines provided otherwise have to be read harmoniously. However, the DC notes that delay of more than 240 days in issuing public notices, without the advice of the SCC, is quite a long delay and is not explainable on account of difference of 30 days between 45 days and 75 days. Taking such an argument which does not explain the considerable delay and an attempt to explain his misconduct by pointing deficiencies in the Regulations does not augur well for Mr. Jitender Kumar Jain.

2.5.13. The DC further notes that Mr. Jitender Kumar Jain appears to be deflecting the issue by raising points related to the preparation of the asset memorandum, the issuance of public notices, and their respective timelines. However, the core issue remains the significant delay in the issuance of auction notices without obtaining the advice of the SCC on extended timelines. Even if the inconsistencies in his interpretation of the Regulations are considered in his favour, considerable period of delay still remains. The first auction notice was issued by Mr. Jitender Kumar Jain on 08.12.2023, i.e., 240 days after the Liquidation Commencement Date (LCD). The second auction notice was issued only on 16.02.2024, over a month after the first auction.

2.5.14. The DC further notes that the issue herein is not that there is simply delay in issuing the first and second auction notices, but rather that the extension of timeline in view of delay in publication of auction notices was not on the basis of advice by the SCC as provided under Clause 1(1B) and Clause 1(1A) of Schedule I to the Liquidation Regulations.

2.5.15. The DC highlights that the Clause 1(1B) and Clause 1(1A) of Schedule I to the Liquidation Regulations, provides a structured approach and adherence to regulatory procedures remain essential for transparency and accountability in the liquidation process. The relevant clause are reproduced below:-

***"SCHEDULE 1***

*1.(1A) Subject to provisions of regulation 2B, the liquidator shall issue a public notice of an auction for sale under regulation 32 within forty-five days from the liquidation commencement date unless the consultation committee advises to extend the timeline*

*(1B) The liquidator shall issue public notice for the next auction, in case of failure of the auction, within fifteen days from the last failed auction unless the consultation committee advises to deviate from the specified time period."*

2.5.16. The DC notes that Clause 1(1A) of Schedule to the Liquidation Regulations requires the liquidator to issue a public notice for the first auction within forty-five from LCD days unless the SCC advises the extension of timeline. Clause 1(1B) of Schedule I to the Liquidation Regulations requires the liquidator to issue a public notice for the next auction within fifteen days of the failure of previous auction, unless otherwise advised by the SCC. Mr. Jitender Kumar Jain also submitted that the SCC was apprised of the progress regarding the assets of the Corporate Debtor and the difficulties faced in sale of assets due to public notices issued by the suspended directors.

2.5.17. The DC further notes that Mr. Jitender Kumar Jain in the 9$^{th}$ SCC meeting held on 19.07.2023, while apprising the SCC about the issuance of SCN against him and noted that Mr. Jitender Kumar Jain in consultation with SCC in July 2023 and December 2023 had decided when to do the auction from time to time. The DC had gone through the minutes of 2$^{nd}$ SCC meeting held on 24.07.2023, 3$^{rd}$ SCC meeting held on 28.11.2023 and also the 4$^{th}$ SCC meeting held on 15.02.2024, to ascertain if, advice of SCC was taken in extending the timeline for the issue of public notice. The relevant extract of the SCC minutes are extracted below:-

**"TO DISCUSS SALE OF ASSETS OF THE COMPANY INCLUDING MANNER OF SALE, PRE-BID QUALIFICATIONS, RESERVE PRICE, MARKETING STRATEGY AND AUCTION PROCESS**

The Chairperson stated that as discussed earlier the valuation of three assets is ready but due to parking relating issue, e-auction will take some time. Therefore, the Chairperson stated that in between pre-bid qualifications, reserve price, marketing strategy and auction process can be discussed and for this purpose the Chairperson will circulate the terms and conditions soon to the lenders for their review."

(Extract from the 2nd SCC meeting)

**"TO DISCUSS SALE OF ASSETS OF THE COMPANY INCLUDING MANNER OF SALE, PRE-BID QUALIFICATIONS, RESERVE PRICE, MARKETING STRATEGY AND AUCTION PROCESS**
The Chairperson stated that he is still working on the terms and conditions of education for sale of immovable properties, viz., ground floor, mezzanine floor, and Office Nos. 211-213 (Lakme Academy premises) and office no. 214 (NMIMS premises) on second floor of Aaj Ka Anand Building and soon the same will be circulated to the lenders for their views by end of this week."

(Extract from the 3rd SCC meeting)

**"TO DISCUSS SALE OF CITIOTEL PREMISES OWNED BY THE COMPANY**
The Chairperson informed to the meeting that it is also proposed to sale the Citiotel Premises for which draft of terms and conditions of e-auction was sent. It was clarified that as few investors approached to EARC (first charge holder of Citiotel premises), therefore, in consultation with EARC the reserve price is fixed at fair value to maximise the realisation to EARC."

(Extract from the 4th SCC meeting)

2.5.18. The DC has perused the minutes of the all the SCC meetings and notes that no doubt, the SCC was regularly informed about the reasons of the delays caused in the sale of the properties of the CD and the steps taken by the Liquidator for the sale of the properties. However, the DC notes that the minutes do not reflect any advice or consent from the SCC regarding an extension of the timeline for issuing the auction notice, as required under Clause 1(1B) and Clause 1(1A) of Schedule I to the Liquidation Regulations. Furthermore, the DC notes that Mr. Jitender Kumar Jain has failed to place on record any other communication from the SCC Members, regarding the advice to extend the timelines for the issue of public notice.

2.5.19. The DC notes that while Mr. Jitender Kumar Jain had valid reasons for the delay in issuing the second auction notice, the DC finds that he did not adhere to the necessary regulatory procedures for seeking an extension of the timeline from the SCC. Under Clause 1(1B of Schedule I to the Liquidation Regulations, the liquidator is required to issue a public notice for the next auction within fifteen days of the failure of the first auction unless the SCC advises otherwise. In the current case, the DC observes that while Mr. Jitender Kumar Jain may have had valid reasons for the delay, he failed to take advice of SCC before extending the timeline for issuing the second auction notice. This constitutes a breach of the procedural requirements and shows disregard for the opinion of the members of SCC.

2.5.20. In light of the above, the DC finds that Mr. Jitender Kumar Jain has contravened the Clause 1(1A) and Clause 1(1A) of Schedule I to Liquidation Regulations.

**3. Order.**

3.1. In view of the foregoing, the DC in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the Inspection and Investigation Regulations and Regulation 11 of the IP Regulations hereby suspends the Authorisation for Assignment of Mr. Jitender Kumar Jain (Registration No. IBBI/IPA-002/IP-N00033/2016-2017/10070) for a period of three months.

3.2. Mr. Jitender Kumar Jain’s actions reflect a clear technical violation of Liquidation Regulation, 2016. By failing to consider all the secured financial creditors as members of the SCC, he violated provisions of Regulation 31A of the Liquidation Process. By failing to disclose critical information to the SCC including the disclosure with regard to the actual liquidation cost, Mr. Jitender Kumar Jain has not kept the stakeholders adequately informed, thereby violating the principle of transparency and accountability essential to the liquidation process. Further, he has failed to take advice of SCC regarding the delay in conducting auction as merely providing information does not equate to taking their advice. These non-compliances undermine the stakeholders' ability to participate effectively in the decision-making process.

3.3. Mr. Jitender Kumar Jain is advised to comply fully with the requirement of liquidation regulations and involve all stakeholders in the SCC to the extent as mandated under Regulations as involvement of stakeholders is critical for maintaining transparency, trust, and fairness in the liquidation process.

3.4. A copy of this order shall be forwarded to the Insolvency Professional Agency of Institute of Company Secretaries of India where Mr. Jitender Kumar Jain is enrolled as a member.

3.5. A copy of this order shall be sent to the CoC/ Stakeholders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Jitender Kumar Jain is providing his services, if any, and the respective CoC/SCC, as the case may be, shall decide about continuation of existing assignment of Mr. Jitender Kumar Jain.

3.6. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.

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

-sd/-

Dated:18.12.2024
Place: New Delhi

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