



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

WRIT PETITION (L) NO.5978 OF 2024

Naren Sheth

.. Petitioner

Versus

The Union of India & Ors.

.. Respondents

**Mr.Shyam Kapadia a/w Abdullah Qureshi i/b India Law
LLP, Advocates for the Petitioner.**

Mr.M.S.Bharadwaj, Advocate for Respondent No.1/ UOI.

**Mr.Pankaj Vijayan a/w Ameya Bandiwadekar, Sushmita
Chauhan, Advocates for Respondent No.2.**

**CORAM: B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.
DATE : FEBRUARY 28, 2024**

P. C.

1. The above Writ Petition is filed to set aside the impugned order dated 30th January, 2024 passed by Respondent No.3, the Disciplinary Committee of the Insolvency and Bankruptcy Board of India(**IBBI**).

2. The learned counsel appearing on behalf of Respondent Nos.2 and 3 sought three weeks time to file an affidavit-in-reply to the above Writ Petition.

3. Acceding to his request we direct that the affidavit-in-reply, if any, shall be filed on or before 20th March, 2024 and a copy of the same shall be served on the advocates for the Petitioner.

4. As far as the ad-interim relief is concerned, we have heard Mr.Kapadia, the learned counsel appearing on behalf of the Petitioner. He submitted that, if the impugned order is not stayed, the suspension against the Petitioner will kick in from tomorrow and then he would not be able to continue working either as the liquidator, or an Interim Resolution Professional, or a Resolution Professional in several other matters where he has been appointed. He therefore submitted that grave prejudice would be caused to the Petitioner. He submitted that looking at the infractions alleged in the impugned order, even if the same were to be accepted as correct, the punishment imposed of suspending the Petitioner for a period of 2 years is extremely harsh and excessive and not commensurate with the infractions alleged against the

Petitioner. He therefore submitted that a case is made out for granting urgent ad-interim reliefs.

5. We have heard Mr.Kapadia, the learned counsel appearing on behalf of the Petitioner at some length for the grant of ad-interim relief. Though *prima facie* we find some merit in the argument canvassed by Mr.Kapadia, at this stage we do not want to elaborate on that aspect any further. Since Respondent Nos.2 and 3 are seeking time to file an affidavit-in-reply to the above Writ Petition, we are of the opinion that till the next date the impugned order deserves to be stayed. We say this because if the suspension order becomes operational, at least *prima facie*, we are of the opinion that the Petitioner would be put to grave hardship as he would not be able to act, either as the Liquidator, an Interim Resolution Professional or a Resolution Professional in any of the matters where he is already appointed. When one looks at the balance of convenience, we are of the view that the Petitioner is entitled to ad-interim relief, at least till the next date.

6. In these circumstances, there will be ad-interim relief by staying the effect and implementation of paragraph 5.2 and 5.4 of the impugned order dated 30th January, 2024. Paragraph 5.2 and 5.4 of the

impugned order, and which is stayed by us, for the sake of convenience, are reproduced hereunder:-

"5.2 The DC, therefore, in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Mr.Naren Sheth, having registration no.IBBI/IPA-001/IP-P00133/2017-18/10275, for a period of two years.

5.4 A copy of this order shall be sent to the CoC/Stake Holders Consultation Committee (SCC) of all the Corporate Debtors in which Mr.Naren Sheth is providing his services, if any, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr.Naren Sheth."

7. Stand over to 26th March, 2024.

8. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN,J.]

[B. P. COLABAWALLA, J.]

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/203/2024

30th January 2024

ORDER

This Order disposes of the Show Cause Notice (SCN) No. IP-14015/9/2022-IBBI/706/245 dated 14.02.2023, issued to Mr. Naren Sheth, an Insolvency Professional, registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00133/2017-18/10275 and a Professional Member of The Indian Institute of Insolvency Professional of ICAI, having residential address recorded with IBBI as, 1014, Prasad Chamber Tata Road No.1, Opera House, Mumbai, Maharashtra, 400004.

1. **Background**

- 1.1. The National Company Law Tribunal, Mumbai (AA) had admitted the application under Section 9 of the Code, filed by Vijisan Exports Pvt. Ltd for corporate insolvency resolution process (CIRP) of Ciemme Jewels Limited (CD-1) *vide* Order dated 18.04.2018 whereby Mr. Vinodkumar Pukhraj Ambavat was appointed as Interim Resolution Professional (IRP), who was replaced after the first CoC meeting and Mr. Naren Sheth was appointed as Resolution Professional (RP). The AA *vide* its order dated 25.03.2019 passed an order for Liquidation of CD-1 and appointed Mr. Naren Sheth as Liquidator in the said matter.
- 1.2. The AA had admitted the application under Section 9 of the Code, filed by M/s. Central Investigation and Security Services Limited, for CIRP of M/s Dhanlaxmi Electricals Private Limited (CD-2) *vide* order dated 06.09.2021 and Mr. Naren Sheth was appointed as IRP *vide* the same order, however the CIRP was later withdrawn *vide* order dated 22.06.2023 under Section 12A of the Code. Later on AA *vide* order dated 06.12.2023, admitted the application filed by Operational Creditor Saraswati Wire & Cable Industries against CD-2 and appointed Mr. Rajan Garg as IRP.
- 1.3. In exercise of its powers under Section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, the IBBI appointed an Investigating Authority to conduct an investigation in Liquidation proceedings of CD-1 and investigation in the CIRP proceedings of CD-2. The Investigating Authority sent notice of investigation in terms of Regulation 8(1) of the IBBI (Inspection and Investigation) Regulations, 2017, on 22.06.2022 and 22.07.2022. Mr. Naren Sheth submitted reply to the investigation notice *vide* e-mail dated 23.06.2022 and 27.07.2022. The Investigation Report was submitted by the IA to IBBI on 15.07.2022 with respect to investigation with respect to his role as liquidator in CD-1, and on 03.08.2022 with respect to investigation in his role as IRP in CIRP of CD-2.

- 1.4. On the basis of findings in the investigation report, IBBI on 14.02.2023, issued the SCN to Mr. Naren Sheth, based on findings in the Investigation Report. The SCN, response of Mr. Naren Sheth to the SCN and other material available on record were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Naren Sheth availed an opportunity of personal hearing virtually before the DC on 06.09.2023 wherein he appeared with his Advocate Mr. Asav Rajan.

2. Alleged Contraventions, Submissions of Mr. Naren Sheth and Findings

The contraventions alleged in the SCN and submissions of Mr. Naren Sheth are summarized as follows:

3. In the matter of Ciemme Jewels Limited (CD-1)

3.1. Violation in conducting the process of sale of the assets of the CD

- 3.1.1 The liquidation order was passed by the AA on 25.03.2019 and Mr. Naren Sheth was appointed as the liquidator of CD-1. It is noted that the third auction notice was published on 02.04.2022, wherein the last date for submitting Expression of Interest (EoI) and Earnest Money Deposit (EMD) had been mentioned as 15.04.2022 and 16.04.2022 respectively while the auction date was 08.04.2022. It was noted that Mr. Naren Sheth submitted that this was due to typographical mistake and accordingly corrigendum dated 09.04.2022 was published mentioning correct dates of submission of EoI and EMD as 04.04.2022 and 07.04.2022, respectively.
- 3.1.2 It is noted that the sole stakeholder SBI vide e-mail dated 07.04.2022 objected to discrepancy in the original sale notice dated 02.04.2022 and requested Mr. Naren Sheth to correct the discrepancy in notice or take other remedial steps (including postponing the auction process) to ensure that liquidation and auction process is not jeopardized. However, it is noted that Mr. Naren Sheth chose to go ahead with the auction scheduled on 08.04.2022 ignoring the advice of the sole Stakeholder.
- 3.1.3 It is further noted that the corrigendum published on 09.04.2022 for an auction scheduled on 08.04.2022 makes the revised dates of submission of EoI and EMD as infructuous and the haste in giving only two days' time for submission of EoI, that too informed by way of publishing corrigendum after the intended date deprives bidders who do not have knowledge about developments through other sources, and hence shows malafide intent. It is noted that in the earlier schedule of sale notice shared by Mr. Naren Sheth with SBI, the time intended to be given from date of issue of sale notice to submission of EoI (from 18.11.2019 to 02.12.2019) was 14 days, which was reduced subsequently. It is noted that providing such short notice for submission of EoI and EMD goes against the scheme of the Code as it could keep out potential buyers.

- 3.1.4 Accordingly, the Board was of the *prima facie* opinion that Mr. Naren Sheth had, *inter alia*, contravened Section 208(2)(a) and (e) of the Code, Clause 5 and 6 of Schedule I of the Liquidation Regulations and Clause 2, 15 and 19 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Submission by Mr. Naren Sheth

- 3.1.5 Mr. Naren Sheth submitted that one Vijisan Jewels Private Limited (VJPL) was occupying the CD's premises at Andheri (East) in view of a leave and license agreement. He submitted that although the said agreement expired on 31.03.2019 but VJPL failed to handover the said premises and as such he had to approach the Hon'ble AA for necessary directions for handing over the said property and AA vide order dated 13.11.2019 directed VJPL to vacate the premises. He submitted that VJPL filed frivolous applications before the AA to delay in handing over the possession of the said premises and also filed appeal before the Hon'ble NCLAT and the same came to be rejected on 13.08.2021.
- 3.1.6 Mr. Naren Sheth submitted that due to non-cooperation from VJPL, he filed an application before AA for breaking the lock and to have police protection for taking possession of the said premises and the Hon'ble AA was pleased to allow the application vide order dated 03.01.2022, whereby it directed the concerned Superintendent/Commissioner of Police under whose jurisdiction the property was situated, to render assistance to him for taking possession of the said premises. He submitted that he immediately acted on the said order and took possession of the said premises of the CD.
- 3.1.7 Mr. Naren Sheth further submitted that in the earlier two auctions conducted on 04.12.2019 and 08.03.2021, not a single bid was received. He submitted that the first auction dated 04.12.2019 was done as per the directions of the Hon'ble AA vide order dated 13.11.2019. He submitted that the said auction was not a mere formality as the said order itself was self-explanatory as it was mentioned therein that possession and auction to go simultaneously. He submitted that the 2nd auction was done on 01.03.2021 as per the suggestion of the sole Stakeholder i.e. State Bank of India vide email dated 16.01.2021.
- 3.1.8 Mr. Naren Sheth submitted that after taking possession of property with the help of police protection and before conducting the E-auction, he and his team in normal course of market survey found out that there were false rumours going around by certain vested interests regarding price of the said property and it was being said that the said property was not having value of more than 10 Crore. He submitted that the said fact was further established when VJPL filed 2 applications before the NCLT for buying out the said property and in one e-mail 23.12.2019 it was proposed to be purchased at Rs.10,00,00,000 (Rupees ten crore only). He submitted that since there was no current valuation report, he decided to obtain a fresh valuation report and also informed SBI of the same vide email dated 08.03.2022 and also mentioning therein the tentative schedule for the E-auction starting from 21.03.2022. He submitted that final valuation report was received vide email dated 21.03.2022 of the CD in which liquidation value came around 10,82,00,000

(Rupees Ten crore eighty two lakh only) and the same was communicated to SBI vide email dated 21.03.2022 and thereafter SBI vide email dated 23.03.2022 congratulated Mr. Naren Sheth for taking back the possession and requested to proceed with the E-auction.

- 3.1.9 Mr. Naren Sheth submitted that thereafter, he took steps to conduct the E- auction of the said premises for the third time. He submitted that the 3rd Notice for Sale of Assets dated 02.04.2022 was uploaded on the IBBI website and the E-auction platform and the same was also published in two newspapers i.e. Financial Express and Navakal on 02.04.2022. He submitted that in the Notice for Sale of Assets it was mentioned about the E-auction Process Information Document and the same was also uploaded on the E-auction Platform with complete details of the E-auction and the process to be followed for the interested bidders.
- 3.1.10 He submitted that in the published notice for Sale of Assets dated 02.04.2022 at the top portion it was mentioned that the last date for submitting KYC documents and EMD/BID was 04.04.2022 and 07.04.2022 respectively and the date and time of E-Auction as 08.04.2022 from 2.00 pm to 4.00 pm, which were the correct dates as per the process document. He submitted that due to inadvertent typographical error in the last portion of the said notice for sale of assets in point 5 the last date for submission of EOI was mentioned as 15.04.2022 and last date for payment of EMD and other forms as 16.04.2022. He submitted that there was no *malafide* on his part or on the part of his team, but it was a human error and eventually the newspaper has also published the same. He submitted that upon realizing the said inadvertent error, he immediately rectified the said portion in the Notice for Sale of Assets and re-uploaded the same on the E-auction platform and the IBBI website on 04.04.2022 and the same was also reflected on the E-auction Platform.
- 3.1.11 He further submitted that after uploading the rectified notice and thereafter having discussions with IBBI and the stakeholder, he further decided to publish a corrigendum for the said purpose and accordingly on 08.04.2022 a corrigendum was uploaded on the IBBI website for clarification purposes and also the same was published in the two newspapers i.e. Financial Express and Navakal on 09.04.2022.
- 3.1.12 Mr. Naren Sheth submitted that as per the published Notice for Sale of Assets and the E-auction Process Information Document, he received the KYC documents from the interested bidder on 04.04.2022. He submitted that as per the schedule as mentioned in the E-Auction process information document, he conducted his due diligence and 29A compliance and intimated to the interested bidder about their eligibility to participate in the bid process. He submitted that accordingly, EMD were submitted by the bidder on 07.04.2022.
- 3.1.13 Mr. Naren Sheth submitted that according to the Timetable - Clause O in the E-auction Information Process document, it was explicitly mentioned that the KYC documents were to be submitted by 04.04.2022, intimation to interested bidders by 05.04.2022, site visit on 06.04.2022 and EMD and other forms by 07.04.2022. He submitted that any expected

bidder cannot disregard the E-auction Information Process document, and that any bidder while submitting the EMD must have knowledge of the entire timetable and then only will submit EOI.

- 3.1.14 Mr. Naren Sheth submitted that some parties have filed application challenging the notice of sale before the NCLT and he had filed a detailed reply therein. He submitted that the said applications have been heard and are reserved for orders. He submitted that he had made a submission before the Hon'ble NCLT that the said parties are now taking undue advantage of the inadvertent typographical error in only one portion of Notice for Sale of Assets whereas it is also mentioned in the Notice for Sale of Assets the last date for KYC document submission is 04.04.2022 and EMD is 07.04.2022 and even otherwise all the interested bidders were obligated or rather they had to go through the E-Auction Information Process Document for all the compliances to submit the KYC documents/EMD/Declarations and other forms. He submitted that it is quite apparent that any prudent person will go through the E-auction Information Process document as they would have to submit the declaration and other forms being part of the E-auction Information Process Document.
- 3.1.15 Mr. Naren Sheth further submitted that he had taken a conscious decision to give two days time for submission of EOI as there were false rumours going around which would have led the prospective bidders to back off because of the said rumours which would have affected the E-Auction and in turn the price of the asset of the CD. He submitted that the said decision was based on the market survey and the circumstances at that point of time and that he took the decision only to maximize the value of the asset and to the benefit of the only stakeholder i.e. State Bank of India, which has also not raised any objection/concern on the E-Auction and the successful bidder.
- 3.1.16 He submitted that the issue of anomaly in the notice of sale had been clarified by way of his submissions, however, the query in respect of why he chose to go ahead with the E-auction is due to the fact that the EMD of one of the bidder was already received and the bid price was also higher than the reserve price and keeping in mind not to loose the said bidder, he chose to continue to go ahead with the E-auction. He submitted that the said bidder had agreed with all the conditions more particularly depositing 50% of the bid price within three days from auction date, as mentioned in the E-auction Information Process Document. He submitted that depositing of 50% amount within three days was an important point as only the interested and committed bidders would have participated in the process and also the bidder would have been constrained to continue after depositing EMD and the total consideration amount could also be realised that also in short span of time. He submitted that as a Liquidator, he also had to keep the timelines in mind as there was already delay in getting the possession of the property and there was an extension sought for the liquidation period.
- 3.1.17 He further submitted that SBI had given the options to him to take a call on the E-auction as can be seen from their email dated 08.04.2022 and that he had chosen the best option after analysing all the pros and cons of the situation and there was no disregard to the

suggestion of the stakeholder and infact he had maintained complete transparency in the entire CIRP and Liquidation process of the CD. He submitted that the entire E - auction process had been completed and the best bidder had been selected and the post E-auction process was also concluded. He submitted that he had taken all efforts with due caution in conducting the Liquidation and the e-auction process and there is no deliberate contravention or violation of any provisions in particular clause 5 and 6 of Schedule I of Liquidation Regulations and moreover the same had been duly complied with complete transparency.

Analysis and Findings

- 3.1.18 The DC took note of submission of Mr. Naren Sheth that published auction notice dated 02.04.2022 mentions at the top portion the last date for submitting KYC documents and EMD/BID was 04.04.2022 and 07.04.2022 respectively and the date and time of E-Auction as 08.04.2022 from 2.00 pm to 4.00 pm. The DC further notes that Mr. Naren Sheth submitted that that due to inadvertent typographical error in the last portion of the said notice in point 5 the last date for submission of EOI was mentioned as 15.04.2022 and last date for payment of EMD and other forms as 16.04.2022.
- 3.1.19 The DC observes that the entire aforementioned auction was scheduled to complete in a very short span of period of seven days including submission of documents and bidding process and reasonable time was not provided by Mr. Naren Sheth for inspecting the assets by the prospective bidders.
- 3.1.20 The DC further notes that the stakeholder State Bank of India vide email dated 08.04.2022, while pointing out the discrepancy in the auction notice had given option to Mr. Naren Sheth to take remedial steps including postponing the auction. The DC observes that Mr. Naren Sheth chose to go ahead with the auction scheduled on 08.04.2022 and issued a corrigendum in the newspapers on 09.04.2022 i.e. one day after the e-auction date i.e. 08.04.2022. Thus, the DC finds that conducting the auction on 08.04.2022 and taking a remedial action by publishing a corrigendum on 09.04.2022 cannot amount to a corrective action as the corrigendum was published after the date of auction. Thus, the DC views that submissions of the Mr. Naren Sheth do not justify the undue haste shown by him in conducting the auction.
- 3.1.21 The DC further notes that one prospective bidder had submitted the EOI and EMD on 06.04.2022. However, Mr. Naren Sheth as liquidator had rejected the proposal on account of non-submission of KYC documents on 04.04.2022. The DC also notes that despite irregularities having been made in the auction notice and interest shown by another prospective bidder, Mr. Naren Sheth continued the auction scheduled on 08.04.2022 and declared a successful bidder (a sole bidder whose KYC/EMD was accepted). The DC views that despite the fact that there was other prospective bidder showing interest to participate in the auction process, Mr. Naren Sheth declared the sole bidder as the successful bidder, which is against the purpose stipulated under the Code of maximisation

of the value of the assets of the CD, which could have been achieved if more bidders had participated.

- 3.1.22 The DC further notes that the aforesaid auction was challenged before the Hon'ble NCLT and Hon'ble NCLT vide order dated 02.03.2023, had set aside the said auction. The Hon'ble NCLT has also observed that:

“the Liquidator has completed the e-auction in utmost haste within one week for the reasons best known to him. The hasty manner and the procedural irregularities committed by the Liquidator in conducting the above auction clearly points out finger towards his conduct and this Bench has taken a very serious note of the same. The explanation of failure of earlier auctions and obtaining physical possession of the property after prolonged litigation cannot be considered as a reasonable explanation. It is settled proposition of law that the mistakes in the e-auction publication would certainly amount to material illegality and irregularity that vitiates the entire process of auction. As rightly contended by the Applicant, issuing of corrigendum after completion of the e-auction serves no purpose and the very object of issuing corrigendum is frustrated by issuing such corrigendum after completion of e-auction and such an e-auction has to be set aside on that score alone.”

- 3.1.23 The DC also notes that the liquidator has filed an appeal against the order of NCLT before NCLAT. The hon'ble NCLAT vide order dated 04.07.2023, in the matter of Naren Sheth vs. Sunrise Industries and Others, CA (AT) (Insolvency) No. 401 of 2023, observed that:
- “It may not be ethical and appropriate for the appellant to reject a bid that is more than the liquidation value just because of a typographical error in E-auction Notice. The Liquidator has submitted that they had also issued a corrigendum with correct dates, however, as per his own submission, the corrigendum was issued after the sale took place*

...the corrigendum for rectification of error in the notice for sale of assets was given in newspapers and IBBI website which was after the E-auction was completed, rendering these to be futile and at best paper exercise on post facto basis.”

...it is evident that the entire E-auction were rather conducted in a hurry and the Adjudicating Authority rightly observed that there was hardly any sufficient gap for date of application in completing the E-auction exercise.”

- 3.1.24 The DC further notes that the NCLAT, in Para 30 of the said order, held that:
- “We are not in position to appreciate any solid grounds for such hurry since at least two bidders shown their interest for the said property and have given their EMDs of Rs. 1.15 Crores. The averment of the Liquidator that he was trying to do away wrongful influence by few individuals/entities is not convincing at all and rather create suspects in the mind regarding true intentions.”*

- 3.1.25 Furthermore, the DC takes note of the observation made by NCLAT against the conduct of Mr. Naren Sheth, whereby it held that:

“In view of all these material irregularities, we do not find any error in the Impugned Order dated 02.03.2023, wherein the E-auction was set aside and it was held that the Liquidator must bear all expenses incurred for the auction. We also do not appreciate conduct of the Liquidator in whole process as observed by the Adjudicating Authority.”

- 3.1.26 In view of forgoing, the DC views that the entire conduct of auction by the liquidator goes against the key tenet of the underlying principle of auction i.e., maximum engagement of prospective bidders by providing reasonable time to understand the terms and conditions of the auction, fair time for inspection of assets being auctioned, and taking decision to participate in the auction process. It may be noted that the liquidator holds the liquidation estate as a fiduciary for the benefit of all the stakeholders. Moreover, the purpose of having the auction mechanism for selling the assets of the CD during liquidation process is for value maximisation. Not allowing all interested bidder(s) in auction and conducting an auction in a short span of time, restricts competition, lacks transparency and goes against the prime objective of the Code i.e. value maximisation. In view of the above, the DC finds that the liquidator has conducted the third auction in an unfair, non-transparent, inappropriate, and unduly hasteful manner which resulted in the auction process being set aside by the AA.
- 3.1.27 In view of the above, the DC finds that contravention on the part of Mr. Naren Sheth in discharge of his duties is established, which constitutes violation of Section 208(2)(a) and (e) of the Code and Clause 5 and 6 of Schedule I of the Liquidation Regulations.

4. In the matter of Dhanlaxmi Electricals Private Limited (CD-2)

4.1. Contravention I: Delayed issue of public announcement

- 4.1.1 It is noted that CD-2 had been admitted into CIRP by AA vide order dated 06.09.2021, however, the public announcement dated 29.09.2021 was actually issued by Mr. Naren Sheth on 05.10.2021 in the newspapers i.e. after 29 days from the date of admission order. It is noted that the Public Announcement informs the various stakeholders of the CD as to the initiation of the CIRP and enables them to make their respective claims in a timely manner. It is noted that a substantial delay could affect the interests of the stakeholders and it is noted that Mr. Naren Sheth had delayed in publishing the public announcement beyond the specified period and had not provided document to confirm the date of receipt of admission order.
- 4.1.2 Accordingly, the Board was of the *prima facie* view that he had, *inter alia* violated Regulation 6(1) of the IBBI ((Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulation) and Clause 13 of the Code of Conduct.

Submission by Mr. Naren Sheth

- 4.1.3 Mr. Naren Sheth submitted that on 29.09.2021 one IP informed him that there is an admission order dated 06.09.2021 in case of CD-2 passed by the Hon'ble NCLT in which Mr. Naren Sheth had been appointed as the IRP. He submitted that he had not given any consent Form to act as the Resolution Professional for the CD-2 and infact the Hon'ble NCLT had appointed him directly in the said order. He submitted that he had not received any communication either from the operational creditor or the registry and as soon as the order came to his knowledge on 29.9.2021, he downloaded the same order from NCLT website and took steps towards the CIRP.
- 4.1.4 Mr. Naren Sheth submitted that although he was informed about the order on 29.09.2021 the publication was done on 05.10.2021 and during the said period he had to trace the operational creditor and also started communication with the CD vide email dated 29.09.2021. He submitted that upon finding out the details of operational creditor, he immediately sent an email dated 01.10.2021 to the operational creditor mentioning therein the scope of work, fees and expenses. He submitted that 02.10.2021 (Gandhi Jayanti) was a public holiday and 03.10.2021 was a Sunday and as such he could not have done any work. He submitted that thereafter, he took a quote for publication on 04.10.2021 and published the same on 05.10.2021.
- 4.1.5 Mr. Naren Sheth submitted that on 05.10.2021 both the Operational Creditor and the Director Mr. Mustaq Khan had come to his office and informed him that they were ready to settle the matter and submitted Form FA for withdrawal of CIRP. He submitted that, accordingly, he filed Petition bearing no. IA/2597/2021 C.P. (IB)/244(MB) 2020 to the Hon'ble NCLT for withdrawal of CIRP. Mr. Naren Sheth submitted that he had diligently followed all the guidelines under the IBBI regulations and has applied equity between all the interested bidders and as such any complaint did smack of vested interests only to delay the liquidation process and the dissolution of the CD.

Findings of DC

- 4.1.6 The DC notes that the ground taken by Mr. Naren Sheth, defending his action in delayed publication of public notice, even after becoming aware of the admission order, is not tenable. Hence the DC finds that Mr. Naren Sheth has contravened Regulation 6(1) of CIRP Regulations in this case.

4.2 Contravention II: Inconsistencies in the Public Announcement

- 4.2.1 It is noted that there are inconsistencies in the dates mentioned in public announcement for submission of claims, that in column 11 of Form A, the last date for submission of claim had been shown as 13.10.2021, whereas in second paragraph, the last date for submission of claim had been mentioned as 5.12.2021. Thus, in view of this, it is noted that such obvious inconsistencies could mislead the stakeholders and also lead to delay in the process, which displayed a casual and negligent approach in discharging the duties by Mr. Naren Sheth. Accordingly, the Board was of the prima facie view that he had, *inter alia*, violated Clause 12 of the Code of Conduct.

Submission by Mr. Naren Sheth

- 4.2.2 Mr. Naren Sheth submitted that he had successfully handled various number of corporate insolvency resolution process and that he had been diligent towards his duties and obligations and had not disregarded any Provisions or Regulations during any CIRP process in particular Section 208 (2) (a), Liquidation Regulations 6 (1), Clause 5 and 6 of Schedule I, IP Regulation 7 (2) (h), Clause 2,12,13,15, and 19 of the Code. He submitted that the said Sections/Regulations/Clauses were not attracted on the given facts and circumstances of the case and requested to be discharged from the present proceedings.
- 4.2.3 He submitted that he had diligently followed all the guidelines under the IBBI regulations and has applied equity between all the interested bidders and as such any complaint did smack of vested interests only to delay the liquidation process and the dissolution of the CD.

Findings of DC

- 4.2.4 The DC notes that Mr. Naren Sheth has not given any specific reply with respect to the discrepancies in the public announcement with respect to last date mentioned for submission of claim. The two dates mentioned in the public announcement for submission of claim, i.e. 13.10.2021 in column 11 and 05.12.2021 in second para, shows carelessness and negligence on the part of Mr. Naren Sheth in this case and therefore the DC holds the charge made in the SCN.

5. ORDER

- 5.1. In view of the forgoing discussion, the DC is of the view that Mr. Naren Sheth has contravened the applicable provisions of the Code and Regulations made thereunder with respect to (i) conducting auction for sale of assets during the liquidation process for CD-1 and (ii) delay and inconsistencies in making public announcement during CIRP for CD-2.
- 5.2. The DC, therefore, in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Mr. Naren Sheth, having registration no. IBBI/IPA-001/IP-P00133/2017-18/10275, for a period of two years.
- 5.3. This Order shall come into force on expiry of 30 days from the date of its issue.
- 5.4. A copy of this order shall be sent to the CoC/ Stake Holders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Naren Sheth is providing his services, if any, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Naren Sheth.

- 5.5. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Naren Sheth is enrolled as a member.
- 5.6. 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.
- 5.7. Accordingly, the show cause notice is disposed of.

Sd/-
(Jayanti Prasad)
Whole Time Member, IBBI

Dated: 30th January 2024
Place: New Delhi