

# INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

## (Disciplinary Committee)

No. IBBI/DC/277/2025

21 March 2025

### ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11011/35/2023- IBBI/853/151 dated 10.04.2024, issued to Mr. Kairav Anil Trivedi, an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-002/IP-N00728/2018-2019/12332, who is a Professional Member of the Insolvency Professional Agency of ICSI Institute of Insolvency Professionals.

#### 1. Background

- 1.1 The National Company Law Tribunal, Mumbai Bench (AA) vide its order dated 05.10.2021, admitted the application filed under Section 9 of the Code by M/s. Nitin Plastic (OC) for initiating Corporate Insolvency Resolution Process (CIRP) of M/s. Prince MFG Industries Private Limited (Corporate Debtor -1 / CD-1). Mr. Kairav Anil Trivedi was appointed as the Interim Resolution Professional (IRP) *vide* the same order and later confirmed as the Resolution Professional (RP) of the CD-1 *vide* the AA order dated 10.11.2022.
- 1.2 The National Company Law Tribunal, Mumbai Bench (AA) vide its order dated 09.02.2023, admitted the application filed under Section 7 of the Code by Punjab National Bank (FC) for initiating Corporate Insolvency Resolution Process (CIRP) of M/s. Parenteral Drugs (India) Limited (CD-2). Mr. Kairav Anil Trivedi was appointed as the IRP *vide* the same order. The AA *vide* its order dated 17.10.2023 appointed Mr. Prawincharan Prafulcharan Dwary as the RP of the CD-2.
- 1.3 The National Company Law Tribunal, Mumbai Bench (AA) *vide* its order dated 12.04.2022 admitted the application filed under Section 7 of the Code by Inventure Finance Private Limited Bank (FC) for initiating Corporate Insolvency Resolution Process (CIRP) of M/s. Mahabali Innovative Technologies Private Limited (CD-3). Mr. Kairav Anil Trivedi was appointed as the IRP *vide* the same order and later confirmed as the RP of the CD-3. The AA *vide* its order dated 21.03.2023 initiated liquidation of CD-3 and appointed Mr. Kairav Anil Trivedi as the Liquidator of the CD-3. Later, Mr. Rakesh Kumar was appointed as the Liquidator of the CD-3 *vide* AA's order dated 10.08.2023.

- 1.4 In respect of the CD-1, a show cause notice dated 21.03.2023 had been issued to Mr. Kairav Anil Trivedi and the same was disposed of by the Disciplinary Committee (DC) of the IBBI *vide* its order dated 23.05.2023 suspending the registration of Mr. Kairav Anil Trivedi as IP for a period of six months.
- 1.5 Subsequently, IBBI received further complaint against Mr. Kairav Anil Trivedi in respect of the CD-1. Accordingly, IBBI in exercise of its powers conferred under Section 218 of the Code read with Regulations 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to conduct another investigation in the matter of the CIRP of the CD-1.
- 1.6 Accordingly, the IA served notice of investigation as per Regulation 8(l) of the Inspection and Investigation Regulations on 09.10.2023. Mr. Kairav Anil Trivedi submitted his reply *vide* letter dated 19.10.2023 to the said notice. In the meantime, two orders of AA were received in the matters of M/s. Parenteral Drugs (India) Private Limited (CD-2) and M/s Mahabali Innovative Technologies Pvt. Ltd. (CD-3) with adverse observations against Mr. Kairav Anil Trivedi which were also considered by the IA in the ongoing investigation.
- 1.7 Thus, the IA raised further queries to Mr. Kairav Anil Trivedi on 05.02.2024, however, Mr. Karav Anil Trivedi failed to respond to the queries raised by the IA. Therefore, the IA submitted the Investigation Report (IR) to the Board.
- 1.8 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. Kairav Anil Trivedi had contravened several provisions of the Code and Regulations made thereunder and issued the SCN to Mr. Kairav Anil Trivedi on 10.04.2024 with a request to furnish reply by 24.04.2024. The reply of Mr. Kairav Anil Trivedi to the SCN was received by the Board on 09.05.2024.
- 1.9 The SCN and response of Mr. Kairav Anil Trivedi to the SCN, were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Kairav Anil Trivedi availed the opportunity of personal hearing before the DC through virtual mode on 20.12.2024. Pursuant to the personal hearing, Mr. Kairav Anil Trivedi submitted additional documents.

## **2. Issue of maintainability of Disciplinary Committee proceedings.**

2.1 Mr. Kairav Anil Trivedi in his reply to the SCN has raised certain preliminary objections related to the maintainability of the SCN issued to him, which are as follows:

- a) the complainant failed to meet the criteria of "aggrieved" or "stakeholder" as defined in Regulations 2(1)(a) and 2(1)(i) of the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 as the complainant OC in CD-1 was no longer a stakeholder;
- b) the complaint by the OC in CD-1 was time barred as it was filed after 14 months of the approval of the resolution plan by the CoC;
- c) the Investigation Report, in consequence of which the instant SCN dated 10.04.2024 has been issued, was never provided to him at any stage prior to the issuance of the SCN.

2.2 The DC has examined the grounds raised by Mr. Kairav Anil Trivedi on the issue of non-maintainability of the SCN and observed as under:-

- a) Section 217 of the Code provides that any person who is aggrieved by the functioning of the Insolvency Professional, may file complaint with the Board. Further Regulation 2(j) of the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 defines 'stakeholder' as "a debtor, a creditor, a claimant, a service provider, a resolution applicant and any other person having an interest in the insolvency, liquidation, voluntary liquidation, or bankruptcy transaction under the Code". Further, Section 218 of the Code provides that "on receipt of a complaint under section 217 or has reasonable grounds to believe that any insolvency professional agency or insolvency professional or an information utility has contravened any of the provisions of the Code or the rules or regulations made or directions issued by the Board thereunder, it may, at any time by an order in writing, direct any person or persons to act as an investigating authority to conduct an inspection or investigation of the insolvency professional agency or insolvency professional or an information utility". Chapter-III of the Inspection and Investigation Regulations provides the procedure for conducting investigation and Regulation 10 of the said Regulation provides that IA shall submit the investigation report to the Board. Further, on consideration of the investigation report of the investigating authority, if any prima facie view is formed that there is contravention on the part of the IP, then the SCN is issued by the Board which contains the copy of the investigation report and time is granted to IP to provide his explanation on the allegations mentioned in the SCN.

2.3 Accordingly, the DC finds no infirmity in the issuance of SCN by the Board subsequent to the investigation conducted. The DC will now in following paragraphs, examine the allegations made in the SCN.

### **3. Alleged Contraventions, Submissions of Mr. Kairav Anil Trivedi and Findings of the DC**

The contravention alleged in the SCN, submissions by Mr. Kairav Anil Trivedi and findings of the DC are summarized as follows:

#### **A. Observations with respect to assignment as IRP/RP in the CIRP of CD-1**

##### **3.1.Non- cooperation with the IA.**

3.1.1. Mr. Kairav Anil Trivedi had failed to respond to the queries raised by the IA vide e-mail dated 05.02.2024. Since the said e-mail was duly received by Mr. Kairav Anil Trivedi, such conduct appeared to be deliberate.

3.1.2. Regulation 8(4) of the Insolvency and Bankruptcy Board of India (Inspection & Investigation Regulations), 2017 provides that it shall be the duty of the service provider and an associated person to produce before the IA such records in his custody or control and furnish to the IA such statements and information relating to its activities within such time as the IA may require.

3.1.3. Further, as per Clause 18 of Code of Conduct under Regulation 7 (2) (h) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, an IP is required to provide all information and records as may be required by the Board. Such non-cooperation from Mr. Kairav Anil Trivedi, being a registered IP hinders the process of investigation and defeats the purpose of monitoring duties of the Board as envisaged in the Code.

3.1.4. In view of the above, the Board was of the prima facie view that Mr. Kairav Anil Trivedi did not cooperate with the IA and had contravened Section 208(2)(e) of the Code, Regulation 8(2), 8(4) and 8(8) of Inspection and Investigation Regulations, Regulation 7(2)(h) of the IP Regulations read with Clauses 18 and 19 of the Code of Conduct, specified in the first schedule of the IP Regulations..

#### **Submissions by Mr. Kairav Anil Trivedi.**

3.1.5. Mr. Kairav Anil Trivedi submitted that the given complaint ('second complaint') was by the same OC for the same CD-1, which was just a continuation of the earlier complaint trying to re-justify the earlier complaint which was already closed. Mr. Kairav Anil Trivedi further submitted that IA's e-mail dated

05.02.2024 was nothing but repetition of the requirements which had already been replied by him in detail along with the supporting data and since these replies were received by the IA, there was no misconduct which appeared to be deliberate. Mr. Kairav Anil Trivedi further submitted that the IBBI by issuing this second SCN dated 10.04.2024 for the same CD by the same OC is trying to act on and give effect to its DC order dt 23.05.2023 which has been stayed till date by Hon'ble High Court of Bombay.

3.1.6. Mr. Kairav Anil Trivedi further submitted that he had performed his functions in the manner and as per the conditions specified as per the Code and had been filling the relevant information in the requisite forms and also as and when required by the IBBI.

#### **Analysis and findings of the DC.**

3.1.7. The DC notes the relevant provisions of the Regulation 8 of the Inspection and Investigation Regulations which provides as under:

##### **“8. Conduct of Investigation**

(2) The Investigating Authority may require the service provider or an associated person to submit records as may be required, before the commencement of investigation.

(4) It shall be the duty of the service provider and an associated person to produce before the Investigating Authority such records in his custody or control and furnish to the Investigating Authority such statements and information relating to its activities within such time as the Investigating Authority may require.

(8) It shall be the duty of the service provider and an associated person to give to the Investigating Authority all assistance which the Investigating Authority may reasonably require in connection with the investigation.”

3.1.8. Further Clause 18 of the Code of Conduct provides that:

“18. An insolvency professional must appear, co-operate and be available for inspections and investigations carried out by the Board, any person authorised by the Board or the insolvency professional agency with which he is enrolled.”

3.1.9. Clause 19 of the Code of Conduct provides that:

“19. An insolvency professional must provide all information and records as may be required by the Board or the insolvency professional agency with which he is enrolled.”

3.1.10. The DC notes the submission of Mr. Kairav Anil Trivedi that IA's e-mail dated 05.02.2024 was the repetition of the clarifications and documents required which had already been replied by him in detail along with the supporting data to the IA on earlier occasions. Mr. Kairav Anil Trivedi in his reply to the present SCN had provided date on which the given documents as sought by IA vide e-mail dated 05.02.2024, were provided to IA on earlier occasions. However, the DC finds it pertinent to note that the documents sought by the IA in the e-mail dated 05.02.2024 related to the fresh investigation. Hence, Mr. Kairav Anil Trivedi was duty-bound to provide the requested documents. At least Mr. Kairav Anil Trivedi could have informed the IA in response to the IA's e-mail dated 05.02.2024 that the requested documents had already been provided to the IA on earlier occasions and that the IA may refer to the same. However, Mr. Kairav Anil Trivedi remained silent on the said e-mail dated 05.02.2024 of the IA. Therefore, the DC finds that Mr. Kairav Anil Trivedi's failure to extend the required assistance and provide the requested documents constitute non-cooperation and a failure on his part to discharge his duties under the Code and Regulations made thereunder. Hence the DC holds the contravention.

### **3.2. Implementation of resolution plan during pendency of the appeal before the NCLAT.**

3.2.1. The AA approved the resolution plan in respect of the CD-1 vide its order dated 15.05.2023. The clause 8.9 of the resolution plan provided that the payment of the total resolution amount of Rs.40 crores will be made on *'the 45<sup>th</sup> day from the date of communication of order of approval by AA provided there is no appeal filed against the said order. If any appeal filed, then the payment would be released on 45<sup>th</sup> day after appeal has been disposed of'*.

3.2.2. The Operational Creditor (OC) filed an appeal on 09.06.2023 before the NCLAT, Delhi against the said order of approval of resolution plan through Mr. Anuj Kumar Solanki, Authorised Representative of the OC. Mr. Anuj Kumar Solanki also served an advance notice of the said appeal to Mr. Karav Anil Trivedi on 09.06.2023. Further, the NCLAT vide order dated 21.06.2023 directed to issue notice to Mr. Karav Anil Trivedi and the counsel of Mr. Karav Anil Trivedi accepted the notice.

3.2.3. It was noted that Mr. Kairav Anil Trivedi in his reply dated 05.08.2023 to the application filed by the OC, against the approval of resolution plan, admittedly the entire payment under the resolution plan had been made and distributed on 30.06.2023, even though Mr. Kairav Anil Trivedi was served with an advance notice of the filing of the application before the NCLAT by the OC vide its email dated 09.06.2023.

3.2.4. Being a member of the monitoring committee, Mr. Kairav Anil Trivedi went ahead to allow the SRA to make the payment of entire consideration against the terms of the resolution plan despite pendency of appeal before the NCLAT.

3.2.5. In view of the above, the Board was of the *prima facie* view that Mr. Kairav Anil Trivedi was in contravention of provisions of Sections 208(2)(a) and (e) of the Code and Regulations 7(2)(a) and (h) of the IP Regulations read with Clauses 3, 5 and 14 of the Code of Conduct specified in the First Schedule in the IP Regulations.

**Submissions by Mr. Kairav Anil Trivedi.**

3.2.6. Mr. Kairav Anil Trivedi submitted that the implementation of the Resolution Plan was a decision to be taken by the SRA and the CoC, and the only role of the Chairman of the monitoring committee was to ensure that the instructions are complied with and the amounts are distributed as per the approved plan. The RP after approval of the Plan became *functious Officio* and had no role to play since the CIRP was already over.

3.2.7. Mr. Kairav Anil Trivedi further submitted that the terms of the resolution plan was payment in 45 days from the date of approval and without any stay order by NCLAT, there is no restriction on implementation. The decision to implement was taken by the SRA and the CoC using its commercial wisdom and the monitoring committee had to implement the decision of the CoC and the SRA.

3.2.8. Mr. Kairav Anil Trivedi further submitted that the only appeal filed against the Resolution Plan was by the OC and no other entity had ever disputed the Resolution Plan before the NCLT/ NCLAT. Further, the NCLAT appeal was heard on 21.06.23 before the implementation of the Resolution Plan on 30.06.23 but even after hearing the arguments, no stay on implementation of the plan was granted by the NCLAT and thus there was no legal restriction on the implementation of the plan even when the same was prayed in the application. The filing of the appeal and the issuance of the notice by the NCLAT does not refrain the implementation of the Resolution Plan unless a specific stay has been granted. Thus, since no legal stay had been granted, the plan had been successfully implemented, and the SRA is in possession since the last 11 months running the CD successfully.

**Analysis and findings of the DC.**

3.2.9. The DC notes the submission made by Mr. Kairav Anil Trivedi that, following the approval of the resolution plan, the role of the RP becomes *functus officio*, meaning the RP had no further role to play since the CIRP got concluded. The DC also notes Mr. Kairav Anil Trivedi's submission that the

decision to implement the plan was taken by the SRA and the CoC. However, Mr. Kairav Anil Trivedi's role as Chairman of the monitoring committee was to ensure compliance with the covenants as provided in the approved resolution plan.

- 3.2.10. The DC notes that the AA approved the resolution plan in respect of the CD-1 vide its order dated 15.05.2023. The NCLAT, on an appeal preferred by the OC challenging the order of the AA dated 15.05.2023 directed to issue notice to Mr. Kairav Anil Trivedi which notice was accepted by Mr. Kairav Anil Trivedi's counsel on 21.06.2023. The DC also notes that Clause 8.9 of the resolution plan stipulated that the total resolution amount of Rs.40 crore would be paid on the 45<sup>th</sup> day from the date of communication of the AA's approval order, provided no appeal had been filed against the plan approval order. If an appeal is filed, payment would be made on the 45<sup>th</sup> day after the appeal is disposed of.
- 3.2.11. The DC notes that Regulation 38 of CIRP Regulations empower the CoC to consider the requirement of a monitoring committee for implementation of the resolution plan. Where such a committee is considered necessary, the CoC may, while approving the resolution plan, decide to constitute it with the resolution professional or propose another insolvency professional, or any other person as its members. The DC further notes that the monitoring committee is empowered with comprehensive supervision and monitoring functions, including oversight of plan implementation, ensuring statutory compliance, and facilitating smooth transfer of assets and control to the successful resolution applicant.
- 3.2.12. The DC notes that Mr. Kairav Anil Trivedi, as Chairman of the monitoring committee, was tasked with ensuring the comprehensive supervision and monitoring of the implementation of the approved resolution plan. Furthermore, in his capacity as Chairman, it was his responsibility to raise concerns with the SRA and the CoC members regarding the distribution of the resolution amount as per Clause 8.9 of the resolution plan, particularly considering the appeal challenging the approval of the resolution plan was pending before the AA.
- 3.2.13. Mr. Kairav Anil Trivedi failed to adequately fulfil his duties as Chairman of the monitoring committee in guiding the SRA and the CoC that the plan could not be implemented in terms of clause 8.9 of the approved resolution plan, as appeal against the plan approval of the order of the AA had been filed and advocate of Mr. Kairav Anil Trivedi had been served notice for the same. This oversight not only constitutes a failure in ensuring proper implementation of the approved resolution plan, but it also indicates a lack of diligence and responsibility in performing the supervisory functions entrusted to him. As a result, such conduct undermines the integrity of the resolution process.

3.2.14. The DC also notes that the NCLAT *vide* its order dated 20.02.2025 in Company Appeal (AT)(Ins.) 916 of 2023, has set aside the AA order dated 15.05.2023 wherein the resolution plan of CD-1 was approved by the AA. The DC notes that Mr. Kairav Anil Trivedi being member of the monitoring committee, should have ensured the compliance with the terms of the distribution of payments as provided in clause 8.9 of the resolution plan in view of the pending appeal before the NCLAT.

3.2.15. In view of the above, the DC holds the contravention.

### **3.3. Reimbursement of amount to the OC.**

3.3.1. The NCLT Mumbai Bench *vide* its order dated 05.10.2021 directed the OC to deposit an amount of Rs.2,00,000 (Rupees two lakh only) towards the initial CIRP cost by way of DD in favour of the IRP. With respect to the reimbursement of the said Rs. 2,00,000 to the OC, the IA requested Mr. Karav Anil Trivedi to provide supporting documents as evidence which Mr. Karav Anil Trivedi failed to provide.

3.3.2. In view of the above, the Board was of the *prima facie* view that Mr. Karav Anil Trivedi was in contravention of provisions of Sections 208 (2) (a) and (e) of the Code, Regulation 33(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and Regulations 7(2) a) and (h) of the IP Regulations read with Clause 14 of the Code of Conduct specified in the First Schedule in the IP Regulations.

#### **Submissions by Mr. Kairav Anil Trivedi.**

3.3.3. Mr. Kairav Anil Trivedi submitted that Rs 2,00,000 had been reimbursed *vide* DD no. 878256 dated 27.06.2023 drawn on Yes Bank Ltd. and the same had been sent to the OC by speed post *vide* EM672461839IN dated 03.07.2023 to M/s Nitin Plastic, 1st Floor, Rana Market, Meerut Road, Muzaffarnagar-251003 UP, the address mentioned in the claim form.

#### **Analysis and findings of the DC.**

3.3.4. The DC notes that Mr. Kairav Anil Trivedi had reimbursed Rs 2,00,000/- *vide* DD no 878256 dated 27.06.2023 drawn on Yes Bank Ltd. and the same had been sent to M/s. Nitin Plastic (OC) by Speed post *vide* EM672461839IN dated 03.07.2023 at the address of the OC as mentioned in the claim form. Accordingly, the submission of Mr. Kairav Anil Trivedi is accepted by the DC.

### **3.4. Compliance with respect to fraudulent transaction.**

- 3.4.1. Regulation 35A of the CIRP regulations provides that the RP shall form an opinion whether the CD has been subjected to any transaction covered under Sections 43, 45, 50 or 66 on or before the 75<sup>th</sup> day of the insolvency commencement date and if the RP is of the opinion that the CD has been subjected to any transactions covered under Sections 43, 45, 50 or 66, he shall make a determination on or before the 115<sup>th</sup> day of the insolvency commencement date. Where the RP makes a determination, he shall apply to the AA for appropriate relief on or before the 135<sup>th</sup> day of the insolvency commencement date.
- 3.4.2. The RP is also required to forward a copy of the avoidance application to the prospective resolution applicant to enable him to consider the same while submitting the resolution plan within the time initially stipulated.
- 3.4.3. In this matter, it was noted while the application for approval of the resolution plan was filed before AA on 27.09.2022, the application under Section 66 of the Code was filed by Mr. Kairav Anil Trivedi on 10.03.2023 i.e., after filing of the application for approval of the resolution plan. Mr. Kairav Anil Trivedi has failed to follow the timeline given in Regulation 35A of the CIRP Regulations. Further, in terms of Regulation 40B of CIRP Regulations, Mr. Kairav Anil Trivedi was required to submit CIRP Form 6 in the event of filing of application in respect of preferential, fraudulent, undervalued and extortionate transaction within seven days of filing. When IA specifically asked Mr. Kairav Anil Trivedi to inform if any application was filed by Mr. Kairav Anil Trivedi pursuant to transaction auditor's report and to provide a copy of such avoidance application filed by him before the AA, Mr. Kairav Anil Trivedi did not respond. Further, Mr. Kairav Anil Trivedi failed to file the CIRP Form 6 with the Board.
- 3.4.4. In view of the above, the Board was of the prima facie view that Mr. Kairav Anil Trivedi failed to follow the timeline as mentioned under Regulation 35A and to file CIRP Form 6 within 7 days of filing of application before the AA as required under Regulation 40B of the CIRP Regulations.

#### **Submissions by Mr. Kairav Anil Trivedi.**

- 3.4.5. Mr. Kairav Anil Trivedi submitted that he had filed the necessary forms disclosing the formation of the opinion on the PUFF transactions and thus complied with the requirement. Further, the said form contains the determination of the amount and thus is compliant of the requirements under the Code.

3.4.6. Mr. Kairav Anil Trivedi submitted that the application to be filed with the AA needs to be supported by forensic Audit Report and for this the forensic auditor needs to be appointed by the CoC along with approval of his fees and the period for which forensic audit is to be conducted. Further, due to COVID 19 pandemic lockdown, there have been delays due to lockdown and the restrictions on availability of qualified staff for visit to the client locations. PUF application with the AA cannot be filed without the Auditor being appointed by the CoC.

3.4.7. Mr. Kairav Anil Trivedi further submitted that filling of the application of PUF transactions depends on a lot of factors to be completed and unless all of these factors are fulfilled the application cannot be filed as it would be rejected upfront without the due care and diligence and without giving sufficient opportunity to the other party to file their objections.

#### **Analysis and findings of the DC.**

3.4.8. The DC notes that the Regulation 35A of the CIRP Regulations provides as under:

**“35A. Preferential and other transactions.**

(1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under Sections 43, 45, 50 or 66.

(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under Sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date.

(3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirtieth day of the insolvency commencement date.”

3.4.9. The Regulation 35A of the CIRP regulations clearly specify that onus of filing avoidance transaction rests with the RP. For filing the same, CoC’s permission is neither necessary nor a pre-condition. The Code read with Regulations specifies the timeline for each task in a CIRP, as well as the overall timeline. Since, Mr. Kairav Anil Trivedi had faced hardships due to COVID 19 pandemic lockdown, there have been delays due to lockdown and the restrictions on availability of qualified staff for visit to the client location, the DC accepts his submission and advise him to carefully plan his actions, promptly communicate with all stakeholders, appoint professional with time-bound mandates and ensure that every task in the CIRP is completed in time. The DC also cautions Mr. Kairav Anil Trivedi to file document, record, and application accurately and without errors.

### **3.5. Non-performance of duties under the Companies Act.**

3.5.1. In the complaint it had been alleged that Mr. Kairav Anil Trivedi failed to file annual returns and financial statements of the CD with the Ministry of Corporate Affairs (MCA). The IA specifically asked Mr. Kairav Anil Trivedi, vide email dated 05.02.2024 to provide documentary evidence in support of such filings with the MCA. However, Mr. Kairav Anil Trivedi did not respond to the said email of the IA.

3.5.2. In view of the above, the Board was of the prima facie view that Mr. Kairav Anil Trivedi failed to file the annual returns and financial statements with the MCA and contravened Sections 17(2)(e) and Section 208(2) (a) and (e) of the Code and the Regulations 7(2) a) and (h) of the IP Regulations read with clauses 13 and 14 of the Code of Conduct specified in the first schedule in the IP Regulations.

#### **Submissions by Mr. Kairav Anil Trivedi.**

3.5.3. Mr. Kairav Anil Trivedi submitted that in the various forms filed during CIRP it was informed that CD-1 was non-operational and there were no employees. Mr. Kairav Anil Trivedi had after obtaining the approval from the CoC appointed the statutory auditors to the CD. However, due to COVID pandemic and the related lockdowns there had been delays in conducting the audits. Thus, by the time the audit was completed the CIRP period got over and thus the SRA will have to file the audited accounts with the MCA.

3.5.4. Mr. Kairav Anil Trivedi submitted that he had performed his duty diligently and made every effort to appoint the auditors after taking approval of the CoC. The CIRP period being limited and the time required for appointment and collecting the data without any past employee and the COVID 19 pandemic lockdown led to the CIRP period being over and thus the SRA would be filling the Audited accounts of the CD.

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

3.5.5. The DC notes the submission of Mr. Kairav Anil Trivedi, that the Form CIRP 2, filed by him with IBBI on 17.11.2021, indicates that the accounts of CD-1 had not been audited due to the non-operational status, lack of employees, and delays in receiving information. Further, due to the COVID-19 pandemic and the related lockdowns, there were delays in conducting the audits, and by the time the audit was completed, the CIRP period had ended.

3.5.6. The DC also notes that the CIRP against CD-1 was initiated by the AA vide its order dated 05.10.2021, and the resolution plan was approved on 15.05.2023. Given that the accounts of the CD-1 had not been audited since 2019, it was the responsibility of Mr. Kairav Anil Trivedi to seek assistance from the directors of the suspended board of the CD-1 to complete the financial records who were also bound by the Code and submit the statutory audit report with the MCA. Further, Mr. Kairav Anil Trivedi cited the challenges posed by the pandemic and the limited duration of the CIRP, the DC observes that the CIRP of CD-1 was conducted for approximately two years.

3.5.7. The DC finds that Mr. Kairav Anil Trivedi, as the RP, should have been more proactive to ensure the timely completion of the statutory filings. In view of the above, the DC holds the contravention.

**B. Observations with respect to assignment in the matter of M/s Parenteral Drugs Pvt Ltd. (CD-2)**

3.6.1. The AA, vide its order dated 17.10.2023, directed Mr. Kairav Anil Trivedi to handover all the records, papers, information, data, status report, etc. whatever available with him in the physical or electronic format to Mr. Prawincharan Prafulcharan Dwary, the RP appointed for the CD-2. Further, the AA vide its order dated 12.12.2023 made adverse observations against Mr. Kairav Anil Trivedi in the matter of M/s Parenteral Drugs Private Limited. The extract of observations is given below:

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*4) Despite the clear and categorical directions from this Bench to handover whatever data, records, effects, available with him in the Physical and Electro format to the Newly appointed Resolution Professional, the erstwhile Resolution Professional has not done the same.*

*5) The conduct of the outgoing Resolution Professional calls for an explanation from him as to why the contempt proceedings be initiated against him for failure to handover the data to the newly appointed Resolution Professional, in defiance of the earlier order of this Bench”*

3.6.2. Further, the AA vide its order dated 19.12.2023, issued a notice to Mr. Kairav Anil Trivedi for the defiance of order dated 17.10.2023. Relevant extract of the order dated 19.12.2023 is as follows:

*“2. The defiance of the order dated 17.10.2023 by them is apparent on the face accordingly, this Bench consider it appropriate to issue a Notice against Respondent in terms of Section 425 of the Companies Act, 2013 r/w Rule 11 of the NCLT, Rules and section 12 of Contempt of Court Act, 1972.”*

3.6.3. The IA vide emails dated 17.01.2024 and 09.02.2024 asked Mr. Kairav Anil Trivedi to provide specific response on the handover of the records. However, Mr. Kairav Anil Trivedi failed to provide any specific reply. Thus, the IA observed that Mr. Kairav Anil Trivedi has failed to handover the required

documents, records, etc. in his custody to the newly appointed RP even though the AA vide its order dated 17.10.2023 had directed Mr. Kairav Anil Trivedi to hand over the records, data, etc. to the newly appointed RP. Further, the AA had issued notice to Mr. Kairav Anil Trivedi vide its order dated 19.12.2023 in terms of Section 425 of the Companies Act read with Rule 11 of the NCLT Rules and Section 12 of the Contempt of Court Act, 1972 for defiance of the order of the AA dated 17.10.2023.

3.6.4. In view of the above, the Board was of the *prima facie* view that Mr. Kairav Anil Trivedi contravened the provisions of Sections 208(2) (a) and (e) of the Code and Regulation 7(2) (h) of the IP Regulations read with Clauses 14 and 19 of the Code of Conduct specified in the first Schedule in the IP Regulations.

#### **Submissions by Mr. Kairav Anil Trivedi.**

3.6.5. Mr. Kairav Anil Trivedi submitted that the AA's order dated 17.10.2023 was appealed and thus, has not reached finality on 12.12.2023 for its implementation. Therefore, no action can be initiated by IBBI on the ex-parte comments passed on the conduct of RP without the RP's presence and without providing prior notice of hearing.

3.6.6. Mr. Kairav Anil Trivedi further submitted that CD-2 is a listed company, and all records are available in public domain and the new RP has taken charge of the plant and renewed the contract manufacturing. Further, the Form G was also issued by the new RP and Resolutions Plans are being received, therefore, the allegation of non-receipt of information by the new RP is baseless.

3.6.7. Mr. Kairav Anil Trivedi submitted that it was the duty of the new RP to make efforts to get the information and he cannot pass on his responsibility by stating that he does not have information when he has issued the Form G, prepared the IM, updated the list of creditors, taken possession of the plant and renewed the contract manufacturing etc.

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

3.6.8. The DC notes that NCLAT, in its order dated 05.12.2023, in Company Appeal (AT) (Insolvency) No. 1439 & 1440 of 2023, filed by Mr. Kairav Anil Trivedi challenging the AA order dated 17.10.2023, upheld the AA order dated 17.10.2023. The DC further notes that, despite the NCLAT upholding the AA order, Mr. Kairav Anil Trivedi has failed to hand over the required documents, records, and other materials in his custody to the newly appointed RP.

3.6.9. The DC takes note of the AA's order dated 19.12.2023, wherein notice under Section 425 of the Companies Act, 2013 was issued to Mr. Kairav Anil Trivedi for the defying the order dated 17.10.2023 and directed as follows:

*"2. The defiance of the order dated 17.10.2023 by them is apparent on the face accordingly, this Bench consider it appropriate to issue a Notice against Respondent in terms of Section 425 of the Companies Act, 2013 r/w Rule 11 of the NCLT, Rules and section 12 of Contempt of Court Act, 1972."*

3.6.10. The DC also notes that the IA, vide emails dated 17.01.2024 and 09.02.2024, requested Mr. Kairav Anil Trivedi to provide a specific response regarding the handover of records, and offered him an opportunity to demonstrate his compliance with the duty of handing over the documents of CD-2 as the erstwhile RP. However, Mr. Kairav Anil Trivedi failed to provide any specific reply or present evidence showing that he handed over the documents and records in his custody to the new RP appointed by the AA.

3.6.11. The DC finds that Mr. Kairav Anil Trivedi, as the erstwhile RP of CD-2, had failed to handover the document and records of the CD-2 to the new RP. In view of the above, the DC finds that Mr. Kairav Anil Trivedi contravened the provisions of Sections 208(2) (a) and (e) of the Code and Regulation 7(2) (h) of the IP Regulations read with Clauses 14 and 19 of the Code of Conduct specified in the Schedule in the IP Regulations.

### **C. Observations with respect to M/s. Mahabali Innovative Technologies Pvt Ltd. (CD-3).**

3.7.1. Mr. Kairav Anil Trivedi was appointed as the liquidator in the matter of CD-3 vide AA's order dated 21.03.2023 and the DC of IBBI, vide order dated 23.05.2023 suspended Mr. Kairav Anil Trivedi's registration for a period of six months. However, Mr. Kairav Anil Trivedi concealed this vital fact from the CoC and the AA. This has been categorically observed by the AA, vide its order dated 10.08.2023 wherein it made adverse observations against Mr. Kairav Anil Trivedi. The extract of the observations is given below:

*"It is also inferred from the pleadings that the Liquidator never brought to notice of suspension of his AFA to either of erstwhile CoC member(s), and has also failed to bring this fact to the notice of this Tribunal. The IBBI may look into this negligence on the part of outgoing Liquidator and take appropriate action."*

3.7.2. As the AA had referred such negligence of Mr. Kairav Anil Trivedi to IBBI to look into and take appropriate action, the IA vide emails dated 17.01.2024, 14.02.2024 and 15.02.2024 requested Mr. Kairav Anil Trivedi to submit his response on the aforesaid observations of the AA. Mr. Kairav Anil Trivedi submitted his response on 21.02.2024 stating that no notice by the AA was issued to him before making the adverse observation. However, no specific response was received from Mr. Kairav Anil Trivedi.

3.7.3. In view of the above, the Board was of the *prima facie* view that Mr. Kairav Anil Trivedi contravened the provisions of Sections 208(2) (a) and (e) of the Code and Regulation 7(2) (h) of the IP Regulations read with Clause 19 of the Code of Conduct specified in the first Schedule in the IP Regulations.

**Submissions by Mr. Kairav Anil Trivedi.**

3.7.4. Mr. Kairav Anil Trivedi submitted that the Hon'ble High Court of Bombay in the matter of Kairav Trivedi vs Union of India, IBBI & others passed an order setting aside the Investigation , SCN and the DC order dated 23.05.23 on 20.06.23 well before the implementation date of 22.06.23. Also, IBBI being represented during the hearing on 20.06.2023 was fully aware of the order of stay pronounced during the hearing. The relevant extract of the Hon'ble HC order dated 20.06.2023 was quoted as under:-

*" Pending the hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to issue an order of injunction thereby restraining and injuncting the Respondents from in any manner acting upon or giving effect to or implementing the impugned order dated 23.05.2023 and the Show Cause Notice dated 21.03.2023 and stay the operation, effect and implementation thereof."*

3.7.5. Mr. Kairav Anil Trivedi further submitted that the IA vide its e-mail dt 17.01.2024, 14.02.2024 and 15.02.2024 asked for explanation on the said matter. The said explanation was provided in the reply dated 21.02.2024 but IBBI failed in its duty to record the same at the investigation stage and in the investigation order.

**Analysis and Findings of the DC.**

3.7.6. The DC notes that Mr. Kairav Anil Trivedi's submission that the investigation, the SCN dated 21.03.2023 and the DC order dated 23.05.2023 were set aside by the Hon'ble High Court of Bombay vide its order dated 20.06.2023, is not correct. *Vide* the order dated 20.06.2023, the Hon'ble High Court of Bombay stayed the SCN dated 21.03.2023 and the DC order dated 23.05.2023 and did not set aside the SCN and the DC order and the matter was still pending before Hon'ble High Court of Bombay.

3.7.7. The DC also notes the order of the Hon'ble High Court of Bombay dated 20.06.2023, wherein the following ad-interim relief was granted:

*“c. Pending the hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to issue an order of injunction, thereby restraining and injuncting the Respondents from in any manner acting upon, giving effect to, or implementing the impugned order dated 23.05.2023 and the Show Cause Notice dated 21.03.2023, and staying the operation, effect, and implementation thereof.”*

The DC notes that the ad-interim stay on the DC order dated 23.05.2023 was granted by the Hon'ble High Court of Bombay via its order dated 20.06.2023. However, since Mr. Kairav Anil Trivedi's AFA was suspended due to issuance of the SCN dated 21.03.2024, Mr. Kairav Anil Trivedi was duty bound to inform the CoC, SCC, where he was rendering his services, the complete facts, to enable the stakeholders to take informed decisions.

3.7.8. The DC notes that Mr. Kairav Anil Trivedi was under a clear duty to inform the AA about the DC order dated 23.05.2023, wherein his registration was suspended for a period of six months, and his AFA was effectively suspended due to the pending disciplinary proceedings following the issuance of the SCN dated 21.03.2023. Mr. Kairav Anil Trivedi's failure to disclose the pendency of the disciplinary proceedings and the DC order dated 23.05.2023, while continuing his assignment with CD-3, constitutes a clear contravention of his obligations and duties as set forth by the Code, the Regulations, and the Code of Conduct.

3.7.9. In view of the above, the DC holds the contravention.

#### **4. ORDER**

4.1. In view of the foregoing discussions, 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 registration of Mr. Kairav Anil Trivedi (Registration No. IBBI/IPA-002/IP-N00728/2018-2019/12332) for a period of two years.

4.2. This Order shall come into force after expiry of 30 days from the date of its issuance.

4.3. A copy of this order shall be forwarded to the Insolvency Professional Agency of Institute of Company Secretaries of India where Mr. Kairav Anil Trivedi is enrolled as a member.

- 4.4. A copy of this order shall be sent to the CoC/ Stakeholders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Kairav Anil Trivedi 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. Kairav Anil Trivedi
- 4.5. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.
- 4.6. Accordingly, the show cause notice is disposed of.

Dated: 21 March, 2025  
Place: New Delhi

Sd/-  
(Jayanti Prasad)  
Whole Time Member  
Insolvency and Bankruptcy Board of India