

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/273/2025

27th February 2025

ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11015/3/2024-IBBI/173/855 dated 24.04.2024, issued to Mr. Naren Sheth, an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-001/IP-P00133/2017-18/10275, who is a Professional Member of the Insolvency Professional Agency of Indian Institute of Insolvency Professional of ICAI.

1. Background

- 1.1. The National Company Law Tribunal, Ahmedabad Bench (AA) had admitted the application filed by Acrow Construction Private Limited and others under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') for initiating the corporate insolvency resolution process (CIRP) of K G Corporation Limited (CD-1) *vide* its Order dated 09.11.2020 whereby Mr. Naren Sheth was appointed as the Interim Resolution Professional (IRP) and later confirmed as the Resolution Professional (RP) of the CD-1.
- 1.2. The National Company Law Tribunal, Ahmedabad Bench (AA) had admitted the application filed by Vighnaharta Corrugators Private Limited & others under Section 7 of the Code for initiating the CIRP of Jaybharat Textiles & Real Estate Limited (CD-2) *vide* its Order dated 03.01.2020 whereby Mr. Naren Sheth was appointed as the IRP and later confirmed as the RP of the CD-2.
- 1.3. The IBBI in exercise of its powers under Section 218 of the 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 CD-1 and CD-2.
- 1.4. Accordingly, a notice under Regulation 8(1) of the Inspection and Investigation Regulations was issued to Mr. Naren Sheth on 23.01.2024 with a request to provide reply along with relevant documents. Mr. Naren Sheth submitted his reply to the notice *vide* e-mails dated 05.01.2024 and 20.02.2024.

- 1.5. 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. Naren Sheth 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 SCN to Mr. Naren Sheth on 24.04.2024 with a request to furnish reply by 08.05.2024. The reply of Mr. Naren Sheth was received by the Board on 08.05.2024.
- 1.6. The SCN and response of Mr. Naren Sheth to the SCN, were referred to the Disciplinary Committee (DC) for disposal. The DC provided an opportunity of personal hearing to Mr. Naren Sheth, scheduled on 24.02.2025 at 11:00 A.M. However, Mr. Naren Sheth failed to appear before the DC on the scheduled date and time.

2. Alleged Contravention, Submissions of Mr. Naren Sheth and Findings of the DC

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

Contravention:

Inclusion of related parties in Committee of Creditors (CoC) in CD-1.

- 2.1. It was observed that Mr. Naren Sheth had constituted the CoC of CD-1 with the following financial creditors:

Name of Creditor	Voting percentage (%)
Acrow Construction Pvt Ltd	0.89
Alpha India Properties Ltd	1.56
Archana Syntex Pvt Ltd	14.42
Avazy Realcon Pvt Ltd	17.43
Clematis Trading Pvt Ltd	3.03
Eloquent Traders Pvt Ltd	0.19
Eremurus Trading Pvt Ltd	8.38
Glean Trading Pvt Ltd	0.05
Heavy Steel Pvt Ltd	1.12
Jyotsna Developers Pvt Ltd	0.75
Kausar Textile Pvt Ltd	2.02
Ravex Tradex Pvt Ltd	0.73

Royal Compservices Pvt Ltd	1.31
Super Financial Advisory Solutions Pvt Ltd	4.96
Systematic Trading Pvt Ltd	1.73
Tanvish Trading Pvt Ltd	0.3
Udit Textiles Pvt Ltd	2.48
Unique Warehouse Pvt Ltd	12.33
Vighanaharta Corrugators Pvt Ltd	0.21
Wellworth Apparels Pvt Ltd	1.23
Bank of India	4.83
UCO Bank	8.39
Punjab National Bank	11.66
TOTAL	100

2.2. Based on the shareholding pattern and directorships of CD-1 and its unsecured financial creditors, it was observed that the following thirteen (13) unsecured financial creditors, who were members of the CoC, were related to the CD-1 by way of cross shareholding and common directorships:

- a) Alpha (India) Properties Ltd
- b) Acrow Construction Pvt Ltd
- c) Avazy Realcon Pvt Ltd
- d) Eloquent Traders Pvt Ltd
- e) Eremurus Trading Pvt Ltd
- f) Glean Trading Pvt Ltd
- g) Wellworth Apparels Pvt Ltd
- h) Clematis Trading Company Pvt Ltd
- i) Royal Compservices Pvt Ltd
- j) Super Financial Advisory Solution Pvt Ltd
- k) Systematic Trading Pvt Ltd
- l) Unique Warehouse Pvt Ltd
- m) Udit Textile Pvt Ltd

2.3. The above unsecured financial creditors of the CD-1 had the capacity or were in a position to influence the decisions and policy making in CD-1, through shareholders of the CD-1. Inclusion of the said 13 financial creditors in the CoC, who had majority of voting rights, by

ignoring their direct/indirect relationship with the CD-1 was not in consonance with Section 21(2) of the Code.

Inclusion of related parties in Committee of Creditors (CoC) in CD-2:-

- 2.4. It was also observed that Mr. Naren Sheth had constituted the CoC of CD-2 with the following financial creditors:

Name of Creditor	Voting percentage (%)
Akash Fabrics Pvt Ltd	3.91
Almal Textiles Pvt Ltd	1.33
Amex Infrastructure Pvt Ltd	0.82
Beacon Realcon Pvt Ltd	15.02
Charms Holding Pvt Ltd	0.09
Glean Trading Pvt Ltd	0.03
Udit Textiles Pvt Ltd	6.69
Dhruvi Properties Pvt Ltd	2.56
Richie-Rich Realty Ltd	3.03
Brecon Infra Pvt Ltd	11.97
Eloquent Traders Pvt Ltd	0.07
Gopala Holding Pvt Ltd	12.36
Gopala Powertech Pvt Ltd	3.58
Rajdeep Clothing and Advisory Pvt Ltd	0.10
Royal Compservices Pvt Ltd	0.36
Shanti Synthetics and Processors Pvt Ltd	1.17
Sumeru Reality Pvt Ltd	6.76
Tanvish Trading Pvt Ltd	1.34
Vighanaharta Corrugators Pvt Ltd	0.55
Wellworth Apparels Pvt Ltd	0.45
Bank of India	10.61
Allahabad Bank	1.53
UCO Bank	4.87
Indian Overseas Bank	3.65
Punjab National Bank	4.49
Bank of Maharashtra	2.66
TOTAL	100.00

- 2.5. It is noted in the SCN that as per the SEBI Order dated 14.02.2013 in the matter of Bank of Rajasthan (BOR) and as upheld by the Securities Appellate Tribunal (SAT) order dated 11.02.2014, the interconnections amongst “Promoter Group of BOR” i.e. The “Tayal Group” “Yadav Group” and “Silvassa Group” is as following:-

"I observe that the above four groups were interconnected with each other on the basis of common address, directors, transfer of shares and transfer of funds. The Tayal Group Companies were found to be connected with the Promoter Group Companies on the basis of common corporate addresses, besides the connection established on the basis of the Tayal family – Moreover, the Tayal Group companies were seen to be connected with each other on the basis of common directors, common registered address and common corporate address. Further certain Tayal, Promoter and Silvassa group companies were seen to share common address and directors."

- 2.6. It was observed that the above order of SAT had mentioned CD-2 in Tayal Group entities and its unsecured creditors viz; Amex Infrastructure Private Limited and Charms Holding Pvt. Ltd in Silvassa Group Company. Thus, it was observed that CD-2 was related to Amex Infrastructure Private and Charms Holding Pvt Ltd.
- 2.7. In addition to the above, the entities namely;- Glean Trading Pvt Ltd, Udit Textiles Pvt Ltd, Eloquent Traders Pvt Ltd, Royal Compservices Pvt Ltd and Wellworth Apparels Pvt Ltd. were also inter-connected with the CD-2. Thus, the following seven (7) entities related to CD-2 were part of the CoC with due voting share:

S.No.	Name of Creditor
1	Amex Infrastructure Pvt Ltd
2	Glean Trading Pvt Ltd
3	Udit Textiles Pvt Ltd
4	Eloquent Traders Pvt Ltd
5	Royal Compservices Pvt Ltd
6	Wellworth Apparels Pvt Ltd
7	Charms Holding Pvt.Ltd

- 2.8. In view of the same, it was observed that by including the said seven (7) financial creditors in the CoC of CD-2 by ignoring their direct/indirect relationship with the CD-2 was not in consonance with Section 21(2) of the Code.
- 2.9. Section 21(2) of the Code prohibits inclusion of related party creditors in CoC, as follows:-

" (2) The committee of creditors shall comprise all financial creditors of the corporate debtor:

Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor,] shall not have any right of representation, participation or voting in a meeting of the committee of creditors:...."

- 2.10. The relevant provisions of Section 5(24) of the Code which defines the expression "related party" in relation to a corporate debtor provide as under :

“(24) "related party" in relation to a corporate debtor, means-

(a).....

.....

(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;

.....

(m) any person who is associated with the corporate debtor on account of-

(i) participation in policy making processes of the corporate debtor; or

(ii) having more than two directors in common between the corporate debtor and such person; or

.....”

- 2.11. Section 21(2) of the Code aims to protect the rights of unrelated financial creditors and prevent any bias towards the corporate debtor with the presence of related parties in the CoC. Thus, the intent of Section 21(2) in denying voting rights to related parties is to ensure that the CIRP is driven by external creditors only. Even though related parties may have claims, such parties cannot drive the CIRP, as that would be clear conflict of interests and would act as bias against other Financial Creditors.

- 2.12. The whole objective emanates for cardinal principles of ensuring fairness, transparency, and equitable treatment of creditors during the CIRP and to prevent abuse of the CIRP by existing management or their related parties and protect stakeholders' interests. The Code aims to ensure transparency and removal of any bias against Financial Creditors by ousting related parties in exercising commercial decisions for insolvency resolution under the Code, withdrawal under Section 12A or participation in resolution plans as declared in Section 29A and by covering related party in preferential transactions under Section 43 of the Code. The

definitions stipulated in Section 5(24) applies, as common thread, for all the above purposes and cannot be constructed to be limited from the perspective of the possible abuse against the stakeholders. Section 5(24)(m) of the Code is widely worded and indicates that the legislative intent is on the reality of inter-relationships between the two entities and not on any machinations to allow back door entry of related party claiming remoteness of inter-relationships. If the two entities are operating under common control or associated with each other with common shareholding/control/directorship, Section 5(24)(m)(i) and (ii) will squarely apply. The Investigation Report shows association of related party creditors of both the CDs in the CoC and rendering unrelated FCs in minority with the active involvement of Mr. Naren Sheth as the IRP. The concerted effort was further demonstrated from the voting pattern so as to oust unrelated FCs from majority decision.

- 2.13. In view of the above, the Board, based on material available on record, was of the *prima facie* view that Mr. Naren Sheth had contravened the provisions of Sections 21(2) and 208(2)(a) of the Code, Regulation 7(2)(h) of the IP Regulations read with Clauses 1,3,5 and 14 of the Code of Conduct as specified in the First Schedule of the IP Regulations.

Submissions by Mr. Naren Sheth.

With respect to the allegation of inclusion of related parties in CoC of the CD-1.

- 2.14. Mr. Naren Sheth submitted that apart from several documents obtained from the financial creditors to justify the existence of debt, an undertaking/ declaration to the effect that the claimants are not related party of the CD-1 was also obtained by him. Consequently in terms of Section 21 of the Code and in terms of Regulation 13 of the CIRP Regulations, he admitted the claims of the creditors and duly constituted the CoC with the financial creditors (unrelated party). Mr. Naren Sheth submitted that he took utmost care and caution while admitting the claims of the CoC members, thus the allegations of the admission of related party in the CoC was outrightly denied.
- 2.15. Mr. Naren Sheth further submitted that when the allegations of related party were raised by Punjab National Bank in the 1st CoC meeting held on 10.12.2020, he duly engaged BMB & Associates, a PCA Firm to conduct the due diligence in respect of all the unsecured financial creditors on the issue of related party in terms of Section 5(24) of the Code, besides Section 2(76) read with Section 188 of the Companies, Act, 2013. Mr. Naren Sheth submitted that

as per the due diligence report submitted by BMB & Associates on 10.03.2021, none of unsecured financial creditors were found to be related party of the CD either in terms of Section 5(24) of Code or in terms of Section 2(76) read with Section 188 of Companies, Act, 2013. Mr, Naren Sheth submitted that the said due diligence report of BMB & Associates was duly shared with the CoC members (including Punjab National Bank) and the same was also discussed in the 2nd CoC meeting held on 18.03.2021, however, no objection to the said report was raised by the financial creditors.

- 2.16. Mr. Naren Sheth further submitted that there was no document or evidence shared by the Punjab National Bank or any other secured financial creditor to suggest as to how the unsecured creditors fall under the category of related party of the CD in terms of Section 5(24) of the Code. However, an application being I.A. No. 338 of 2021 was filed by one of the CoC member (Punjab National Bank) having 11.66% voting share, challenging the constitution of the CoC and inclusion of other CoC members (20 unsecured financial creditors), on the ground of being related party to the CD-1, before the AA.
- 2.17. Mr. Naren Sheth submitted that the AA vide its order dated 02.02.2024 allowed the application being I.A. No. 338 of 2021 by holding the unsecured creditors to be related party of the CD-1, and the said AA's order dated 02.02.2024 was challenged by a set of unsecured financial creditors in an appeal being Company Appeal (AT) (INS) No. 449 of 2024, before the National Company Law Appellate Tribunal (NCLAT) which vide its order dated 01.03.2024 stayed the effect of the AA's order dated 02.02.2024.
- 2.18. Mr. Naren Sheth further submitted that the issue raised in the present SCN pertains to the same issue being dealt by the NCLAT in Company Appeal (AT) (INS) No. 449 of 2024, therefore, he does not deem it appropriate to make any further submissions on the merits of the matter, which may be decided by the NCLAT. He further requested to defer the present proceeding till the outcome of the said appeal.

With respect to the allegation of inclusion of related parties in the CoC of the CD-2.

- 2.19. Mr. Naren Sheth submitted that apart from several documents obtained from the financial creditors to justify the existence of debt, an undertaking/ declaration to the effect that the claimants are not related party of the CD-2 was also obtained. Consequent to which, in terms of Section 21 of the Code and in terms of Regulation 13 of the CIRP Regulations, he admitted

the claims of the creditors and duly constituted the CoC with the financial creditors (5 secured and 19 unsecured). Mr. Naren Sheth further submitted that when the allegation of the related party was raised by the secured financial creditor in the 1st CoC meeting held on 07.02.2020, he duly obtained a due diligence report from DTH & Associates LLP, in respect of all the unsecured financial creditors on the issue of related party in terms of Section 5(24) of Code besides Section 2(76) read with Section 188 of the Companies Act, 2013.

2.20. Mr. Naren Sheth submitted that as per the due diligence report submitted by DTH & Associates LLP on 24.06.2020, none of unsecured financial creditors were found to be related party of the CD-2 either in terms of Section 5(24) of Code or in terms of Section 2(76) read with Section 188 of Companies, Act, 2013.

2.21. Mr. Naren Sheth further submitted that the issue of unsecured financial creditors being related parties was raised by the secured financial creditors before the AA in an application being I.A. No. 296 of 2020, which was rejected by the AA vide order dated 14.12.2021, holding that none of the unsecured financial creditors fall under the ambit of related party in terms of Section 5(24) of the Code, 2016. The said order was assailed by the Bank of India, before the NCLAT in Company Appeal (AT) (INS) No. 1022 of 2021, which was eventually decided by the NCLAT on 05.07.2023, thereby remanding the matter back to the AA for passing a speaking order in accordance with the law. It was also submitted that the NCLAT in the said order dated 05.07.2023, did not give any finding on merits of the case.

2.22. Mr. Naren Sheth further submitted that the AA is seized of the matter and the application being I.A. No. 296 of 2020, challenging the constitution of the CoC (related party issue), is pending adjudicating before the AA, in such circumstances, whereby the issue raised in the present show cause pertains to the same issue being dealt by the AA, it may not be appropriate to decide the merits of the issue of parties being related to the CD-2, when the same is pending before the AA. Mr. Naren Sheth further submitted that since, the matter is pending before the AA, he does not deem it appropriate to make any further submissions on the merits of the matter, which shall be decided by the AA as per law in the due course.

2.23. In his additional response, Mr. Naren Sheth submitted the order of Adjudicating Authority dated 06.04.2021 in the matter of CIRP of Krishna Knitwear Technology Limited (I.A. No. 953 of 2020 in CP (IB) No. 279 of 2018). Mr. Naren Sheth submitted that the AA while

dealing with the similar issue and involving certain unsecured creditors, had rejected the contention of respondents therein, who had relied upon the SAT order dated 11.02.2014 (as relied in the show cause notice) to prove the unsecured creditors therein as related party. Mr. Naren Sheth further submitted that the above said order of NCLT was upheld by the NCLAT vide its order dated 05.12.2022 and further by Hon'ble Supreme Court vide its order dated 29.03.2023.

Analysis and findings of the DC.

- 2.24. The DC observes that there are certain common unsecured creditors in CD-1, CD-2 as well as the corporate debtor - Krishna Knitwear Technology Limited, which were held as persons acting in concert in the SEBI order dated 14.02.2023 and SAT order dated 11.02.2014. The DC further notes that in the matter of Krishna Knitwear Technology Limited, the NCLT in its order dated 06.04.2021, after considering the transaction auditor report and the SEBI order dated 14.02.2023 and SAT order dated 11.02.2014, had held that the unsecured financial creditors were not related party to the corporate debtor - Krishna Knitwear Technology Limited. This order of NCLT was upheld by the NCLAT vide its order dated 05.12.2022, however, the issue regarding determination of related party was not examined by the NCLAT as the same was not agitated in original appeal application. Further, the order of NCLAT was upheld by Hon'ble Supreme Court in its order dated 29.03.2023.
- 2.25. Now, in the matter of CD-1, the NCLT after considering the relevant materials on record (including the above-said order of SEBI and SAT) had held that the unsecured financial creditors are related party of the CD-1. This order of NCLT is challenged before NCLAT where the matter is *sub judice* and stay has been granted on the NCLT order dated 20.02.2024.
- 2.26. In the matter of CD-2, the NCLT had held that the unsecured financial creditors are not related party. This order of NCLT was challenged before the NCLAT which had remanded back the matter to NCLT. The matter is *sub judice* before the NCLT.
- 2.27. In view of the foregoing, since the issue whether certain unsecured creditors are related parties of CD is pending adjudication before NCLAT in Comp. Appeal (AT) (INS) No. 449 of 2024 for CD-1 and is pending adjudication before the AA (after getting the same remanded

back by the NCLAT) in I.A. No. 296 of 2020 for CD-2, the DC deems it appropriate to await the decision of NCLAT and the AA in these cases.

3. Order.

- 3.1. In view of the paragraph 2.27 above, the DC in exercise of the powers conferred under Section 220(2) of the Code read with Regulation 13 of the Inspection and Investigation Regulations and Regulation 11 of the Insolvency Professionals Regulations, disposes the SCN with a direction to the Board to examine the matter afresh after disposal of the appeal before the NCLAT for CD-1 and the application with the AA for CD-2.
- 3.2. In view of paragraph 3.1 above, this Order shall come into force immediately.
- 3.3. A copy of this order shall be forwarded to the Insolvency Professional Agency of Indian Institute of Insolvency Professional of ICAI where he is enrolled as a member.
- 3.4. A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, for information.
- 3.5. Accordingly, the show cause notice is disposed of.

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

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

Dated: 27th February 2025
Place: New Delhi