

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/278/2025

26th March 2025

ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI/C/2024/01084/905/864 dated 06.11.2024, issued to Mr. Umesh Poddar who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-001/IP-P-01912/2019-2020/12962 and is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI (IIIP-ICAI).

1. Background

- 1.1 The National Company Law Tribunal, Kolkata (AA) admitted the application filed by Oriental Bank of Commerce (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating the corporate insolvency resolution process (CIRP) of RDH Technologies Private Limited (Corporate Debtor/CD) *vide* its order dated 28.08.2019 and appointed Mr. Ajay Kumar Agarwal as Interim resolution professional (IRP) who was later confirmed as Resolution Professional (RP). Since the extended CIRP period expired and there was no resolution plan received, the AA passed the order on 09.11.2021 for the liquidation of the CD and appointed Mr. Umesh Poddar as the liquidator.
- 1.2 The Board was in receipt of complaints against Mr. Umesh Poddar in the liquidation proceeding of the CD. The Board in exercise of its powers conferred under Section 218 of the Code read with Regulation 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations), appointed an Investigating Authority (IA) to conduct an investigation of Mr. Umesh Poddar in the matter of the CD. The IA served the notice of investigation as per Regulation 8(1) of the Investigation Regulations on 21.07.2023 and in response thereof, Mr. Umesh Poddar submitted his reply on 10.08.2023 and 13.06.2024. After considering the reply, the IA submitted the investigation report (IR) to the Board.
- 1.3 Based on the findings in the investigation report, the Board formed a *prima facie* opinion that Mr. Umesh Poddar contravened the provisions of the Code and Regulations made thereunder *and* issued the SCN to Mr. Umesh Poddar on 06.11.2024 alleging contraventions of the provisions of the Code, the IBBI (Liquidation Process) Regulations 2016 (Liquidation Regulations) and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations). Mr. Umesh Poddar submitted his reply to the SCN on 04.12.2024.
- 1.4 The SCN and the response of Mr. Umesh Poddar to the SCN were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Umesh Poddar availed an opportunity of personal hearing before DC on 04.03.2025 through virtual mode wherein he appeared with advocate Ms. Pooja Mahajan. Mr. Umesh Poddar submitted his additional written submissions on 07.03.2025.

2. Alleged Contraventions, Submissions of Mr. Umesh Poddar, Analysis and Findings.

The contraventions alleged in the SCN, submissions by Mr. Umesh Poddar and analysis and findings of the DC are summarized as follows:

2.1 Delay in submission of Relationship Disclosure with concerned IPA

- 2.1.1 The circular dated 16.01.2018 issued by the Board *inter alia* provides that an IP shall ensure disclosure of his relationship, if any, with other professionals engaged by him, to the Insolvency Professional Agency (IPA) to which he is a professional member, within three days of the appointment of such professional. It said circular also states that the IP shall provide confirmation to the IPA to the effect that the appointment of every other professional has been made at an arms' length relationship.
- 2.1.2 It was observed from the 'Relationship Disclosure' submitted by Mr. Umesh Poddar to the concerned IPA that Renomex Dealers Private Limited (Renomex) was appointed as an accountant by him on 25.11.2021. However, the relationship disclosure pertaining to said appointment was made on 12.03.2023. It was, thus, seen that the disclosure, which was required to be made within 3 days of appointment, was made with a substantial delay of 469 days.
- 2.1.3 Mr. Umesh Poddar submitted before the IA that Renomex was appointed in the ordinary course of business for GST and TDS related work and not for the purpose of running the liquidation process, thus disclosure of appointment of Renomex was not required. However, the circular dated 16.01.2018 which was later subsumed under clause 8B, 8C and 8D of the Code of Conduct contained in Schedule I of the IP Regulations (Code of Conduct) does not provide for such distinction in the matter of filing of relationship disclosures with the concerned IPA. In view of the above, it was observed that Mr. Umesh Poddar had *prima facie* contravened provisions contained in Board Circular dated 16.01.2018 and Clauses 13 and 14 of the Code of Conduct under IP Regulations.

2.2 Submissions by Mr. Umesh Poddar.

- 2.2.1 Mr. Umesh Poddar submitted the regulatory development juxtaposing with the liquidation process of the CD as under:

Liquidation Process of the CD		Evolution of Legal Provision	
Date	Activity	Date	Development
		16.01.2018	The Circular was issued requiring disclosure of the relationship.
28.08.2019	The CIRP of the CD commenced		
		16.09.2019	Mr. Umesh Poddar was registered as an IP.
		16.10.2020	IBBI issued a discussion paper on the appointment of professionals.

		Dec' 2020	IBBI floated a discussion paper titled “ <i>Engagement of professionals in a Corporate insolvency Resolution Process</i> ”
		24.06.2021	IBBI considered an agenda note regarding the appointment of professionals.
09.11.2021	Liquidation commenced and he was appointed as liquidator	09.11.2021	Mr. Umesh Poddar got first assignment as an IP.
25.11.2021	Renomex was engaged to provide filing services etc.		
		15.02.2022	IBBI floated a discussion paper titled “Engagement and appointment of professionals’ in a corporate insolvency resolution process”
		04.07.2022	IP Regulations was amended to subsume the provisions of the Circular.
30.09.2022	Renomex service contract expired		
		09.11.2022	The Circular was rescinded.

2.2.2 Mr. Umesh Poddar submitted that subject line of the Circular, which indicates its applicability reads as under:

“Sub: Disclosures by Insolvency Professionals and other Professionals appointed by Insolvency Professionals conducting Resolution Processes.”

Thus, it applies to an IP conducting a resolution process. The IBC envisages three types of resolution processes, namely, CIRP (Chapter II), pre-packaged insolvency resolution process (Chapter IIIA), and fast-track corporate insolvency resolution process (Chapter IV) of Part II of the Code. The Circular does not apply to either a liquidation process or an IP conducting a liquidation process. The Circular sets the context in its opening paragraph, which reads as follows:

“The Insolvency and Bankruptcy Code 2016 read with regulations made thereunder provide for appointment of an Insolvency professional (Interim Resolution Professional (IRP)/ Resolution Professional (RP) to conduct the resolution process, Corporate Insolvency Resolution Process, and the fast-track process, and discharge other dates. These authorise the Insolvency Professional to appoint registered valuers, accountants, legal and other professionals to assist him in discharge of his duties in resolution process.”

Thus, it is in the context of the authority of an IP (IRP/RP), who is conducting a resolution process (CIRP and the Fast Track Process), to appoint professionals to assist him in the

resolution process. It is not in the context of the authority of an IP, who is acting as liquidator, to appoint professionals to assist him in the liquidation process.

2.2.3 Para 2 of the Circular, which provides the rationale reads:

“In the interest of transparency, it has been decided that an insolvency professional and every other professional appointed by the insolvency professional for a resolution process will make disclosures as specified in Para 3 to 5 hereunder.”

Thus, the rationale is transparency in the appointment of professionals in a resolution process. Only the appointments, as identified in Para 3 to 5 of the Circular, are considered relevant for transparency and are subject to disclosure requirements. The Circular does not envisage disclosure for appointments for a liquidation process or routine appointments for a resolution process that do not have a bearing on transparency.

2.2.4 He submitted that to provide better clarity regarding the appointment of professionals under the Circular, the Board took the following steps:

(a) Acting on the advice of the Board during its 20th meeting held on 16.10.2020, the Board issued a discussion paper titled *“Subject: Engagement of ‘professionals’ in a Corporate Insolvency Resolution Process”* in December 2020.

(b) Based on the consultations, the Board, in its meeting on 24.06.2021, considered an agenda note that included a section titled *“Part J: Amendments to the CIRP Regulations, after public consultations”* dealing with the issues relating to the appointment of professionals. However, the Board deferred the decision on this matter.

(c) On 15.04.2022, the Board again issued a discussion paper titled: *“Engagement and appointment of professionals’ in a corporate insolvency resolution process”*. These actions consistently demonstrate that the IBBI intended the Circular to address disclosures related to appointment of professionals in resolution processes. There was no indication or suggestion that disclosures for professional appointments in liquidation processes were envisaged.

2.2.5 He submitted that Paragraph 3 of the Circular outlines the disclosure requirements, stating: *“An insolvency professional shall disclose his relationship, if any,...”* This establishes that the obligation is to disclose relationships, as specified in Paragraph 5 of the Circular. If no relationship of the specified nature exists, no disclosure is required. The Circular does not mandate disclosure of appointments as such, but only of relationships tied to those appointments.

2.2.6 He submitted that Annexure A of the Circular identifies the categories of professionals with whom relationships must be disclosed: Insolvency Professional, Registered Valuer, Accountant, Advocate, and any other professional. While the Circular does not define *“any other professional,”* it requires such individuals to be identified by their professional membership numbers. It does not cover a person engaged under a service contract.

- 2.2.7 This Circular was rescinded on 09.11.2022 following the incorporation of its provisions into the IP Regulations on 04.07.2022. This step was necessary as the Circular lacked a legal basis under the IBC, whereas regulations being backed by statutory authority, hold legal sanctity.
- 2.2.8 He further submitted that the Code empowers the Board to prescribe legal norms by regulations consistent with the IBC and the rules made thereunder. It does not authorize the issuance of circulars to create binding legal norms. This was made clear by the Hon'ble High Court of Bombay in *Amit Gupta vs IBBI and UOI [WP (Lodging) Ne 34700 of 2023]* when it struck down a few clauses of an IBBI circular. It, however, observed that it would indeed be feasible for the IBBI in its legislative wisdom, to propose the contents of those very clauses as an amendment to the regulations, following the due process of making regulations. He submitted that by following the due process, the Board incorporated the provisions of the Circular into the IP Regulations on 04.07.2022. Therefore, the contents of the Circular got legal sanctity only from 04.07.2022, granting it legal validity. The SCN acknowledges this transition, noting that the provisions of the Circular were subsumed under clauses 8B, 8C and 8D of the Code of Conduct on the same date. Therefore, the legal enforceability of the Circular's contents began only from 04.07.2022. The SCN asserts that the Circular gained legal sanctity as its provisions were incorporated into clauses 8B, 8C and 8D of the Code of Conduct.
- 2.2.9 The amendments which introduced clauses 8B, 8C, and 8D, came into effect on 04.07.2022, as stipulated in clause 1(2) of the amendment notification. The Hon'ble Bombay High Court, in *Amit Gupta vs. [AR WP (Lodging) No. 34701 of 2023]*, emphasised that regulatory amendments have prospective application and would not be available to punish past actions.
- 2.2.10 Clause 8B of the Code of Conduct reads: *"An insolvency professional shall disclose his relationship, if any, with the corporate debtor, other professionals engaged by him, financial creditors, interim finance providers and prospective resolution applicants to the insolvency professional agency of which he is a member, within the time specified hereunder ... "*. While it does, not explicitly mention the resolution process, the use of terms such as corporate debtor financial creditor, interim finance provider, and prospective resolution applicant makes it unequivocally clear that the clause pertains to the resolution process. If the intent were to extend the clause to the liquidation process, it would have included disclosures of relationships at least with bidders for the CD. its business, or its assets. Thus. the scope of clauses 8B, 8C, and 8D mirrors that of the Circular and does not extend lit the liquidation process
- 2.2.11 Clause 8B requires disclosures to be made within three days of an appointment. If the appointment occurred six months or a year before the clause took effect, compliance within three days would be inherently impossible, this further underscores the prospective nature of the amendment and the impracticality of retroactive application.
- 2.2.12 Section 35 of the IBC outlines the powers and duties of the liquidator. Clause (1)(f) specifically empowers the liquidator *"to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities..."* This provision allows a liquidator to seek professional assistance from any individual or engage a professional to fulfil their obligations. However, the IBC, along with the rules and regulations framed under

it, does not impose any requirement on a liquidator to disclose his relationship, if any with the person providing such professional assistance.

2.2.13 The IBC and its accompanying regulations do not define the term “professional.” However, the Board has provided significant clarifications on this matter through discussion papers, board agenda notes, and orders of its disciplinary committee (DC).

2.2.14 Compliance with the Circular became difficult as there was no clarity with regards to professionals. To impart clarity on this, IBBI issued a Discussion Paper in December 2020. Para 12.7 thereof concluded who is a professional - *“The test to determine whether a person is a professional or not is whether the person is permitted by the regulator of the concerned profession to practise the profession under its oversight. If answer is yes, the person is a professional.”*

2.2.15 Following consultations, the Board, in its meeting on 24.06.2021, considered an agenda note proposing amendments to CIRP regulations to clarify the definition of a professional. Para 5(d) of the agenda note stated: *“Professional for this purpose shall mean a person who practices a profession, having been enrolled or registered with the regulator of the profession concerned and is subject to conduct regulations of that regulator. Such person includes organised entities that are subject to conduct regulations of the concerned regulator.”* After detailed deliberations, the Board decided to revisit the issue.

2.2.16 The Board issued another Discussion Paper in February 2022 which focused on excluding those who are not professionals, rather than defining who qualifies as one. Para 16.6 stated:

“16.6 On other instances an IP may require certain other professional service such as advertising and marketing, change and leadership management, business restructuring advisory etc These are more generically labelled as consultancy services and do not fall under a single banner of profession. These services are hired as service contracts or professionals are employed through contractual arrangements. These are not regulated entities or professionals but are employed on contractual terms The concerns regarding the cost, conflict of interest and confidentiality exist especially when entities are appointed for this purpose ”

2.2.17 He referred to the order of the DC no. IBBI/DC/26/2020 dated 08.06.202 which held as follows: *“D&P is not a professional, having authorisation of a regulator of any profession to render any professional service, and its conduct and performance is not subject to oversight of any regulator of any profession, therefore, appointment of D&P is in-contravention of section 2002 of the Code.”*

2.2.18 Thus, to date, neither the IBC nor the regulations explicitly define who qualifies as a professional. However, a common understanding supported by the Board clarifications, suggests that a professional is a person granted the right to practise by a regulator (state, statutory, or self-regulatory body) after verifying their credentials and such a person operates under the oversight of the regulator, which has the authority to revoke this right in cases of misconduct. Para 12.2 of the Discussion Paper of December 2020 states:

"12.2 In common parlance, a professional is a person who has a right to practise a profession. A regulator (state, statutory regulator or self-regulator) after profession confers this right on a person to practise the profession, after following the due process and on being satisfied of the credentials of the person, The person practices the profession under the oversight of the regulator, which can take away the right, if he is found abusing it. Neither the IBBI nor IPs have any clarity."

2.2.19 He submitted that there is a substantial body of orders and judgments from the AA, the NCLAT, and the Supreme Court holding that timelines prescribed under regulations are directory in nature. Since the Circular lacks legal standing as a regulation, any timelines mentioned within it cannot be considered mandatory.

2.2.20 He further submits that he appointed Renomex for the contractual work of GST, TDS and bookkeeping on 25.11.2021. Renomex is not a professional, as it does not have a professional membership number, nor is it registered with any regulatory body overseeing a profession. The engagement with Renomex was pursuant Section 33(1)(f) of the Code, where he sought assistance through a Service contract. The subject line of the appointment reads:

"Subject; Appointment for book keeping services, filing of GST & TDS Returns for RDH Technologies Private Limited (under Liquidation)".

This confirms that Renomex was appointed to provide specific services related to bookkeeping, GST, and TDS returns, rather than to function as an accountant or other regulated professional. The person providing such services is neither required to possess any professional qualification nor mandated to register with any professional regulatory authority.

2.2.21 Mr. Umesh Poddar referred the engagement letter which provided as follows:

"1. Purpose of this Engagement For timely and accurate filing of GST& TDS returns of the Corporate Debtor under the prescribed law.

2. Scope of Engagement

- a. To file GST returns as per the provisions and notifications of the GST Act,*
- b. To file TDS returns as per the provisions and notifications of the Income Tax Act*
- c. To provide bookkeeping services for the Corporate Debtor"*

These tasks fall under the general category of service provision. While a professional can carry out these tasks, they are not exclusive to any professional, Therefore, this engagement was a service contract for assistance, rather than an appointment of a professional for his or her specialised services.

2.2.22 He submitted that he had disclosed the appointment of Renomex to IPA on 12.03.2023, well in advance of receiving the notice of investigation on 21.07.2023. This disclosure was made as a matter of best practice to ensure transparency and adherence to good governance.

2.2.23 With regards to any information being given to SCC for engagement of Renomax, Mr. Umesh Poddar additionally submitted that when the liquidation commenced on 09.11.2021, or when Renomex was engaged by him on 25.11.2021, the SCC was not in existence. At that time, the

applicable regulations required the constitution of an SCC within 60 days of the commencement of the liquidation process. Regulation 31(1A), which was introduced on 16.09. 2022, more than a year after the liquidation process had commenced, mandated that the CoC constituted during the CIRP would act as the SCC until the SCC under the liquidation process was formed. Further, Renomex was engaged for routine tasks, as is evident from the purpose and scope of its engagement. It was not engaged as a professional. The scope of the SCC included advising on the remuneration of professionals before their engagement. Even if the SCC had existed at the relevant time, consultation regarding Renomex’s engagement was not necessary, as Renomex was not a professional, and the engagement of a professional or a person for professional assistance did not fall within the SCC’s advisory scope. Therefore, there was no occasion to inform the SCC.

2.2.24 With regards to qualification of the persons running Renomex, he submitted that it is a company managed by a Board of Directors then consisting of Mr. Arun Kharkia and Mr. C.P. Sharma. Neither holds a professional qualification: Mr. Kharkia is a commerce graduate, while Mr. Sharma has completed education up to class 7. The company deployed different employees to carry out the engagement. Most services were provided by Mr. Anjani Banka, a commerce graduate with no professional qualifications.

2.3 Analysis and Findings of the DC

2.3.1 The brief timeline of events is tabulated as below:

Date	Events
09.11.2021	Liquidation Commencement Date
25.11.2021	Appointment of Renomex by Mr. Umesh Poddar.
04.07.2022	Circular dated 16.01.2018 subsumed into IP Regulations.
12.03.2023	Relationship disclosure made by Mr. Umesh Poddar to concerned IPA.

The above timeline establishes the delay in relationship disclosure by Mr. Umesh Poddar.

2.3.2 The DC notes the submissions made by Mr. Umesh Poddar that the Circular dated 16.01.2018 applies only to the resolution process. However, such distinction has not been accentuated while subsuming the Circular in Clauses 8A, 8B and 8C of the Code of Conduct. Moreover, both the Circular and Clause 8B of the Code of Conduct specifies ‘accountant’ as professional. The engagement letter dated 25.11.2021 appointing Renomex includes bookkeeping services in its scope of engagement. Thus, the submission of Mr. Umesh Poddar that he was not required to make disclosure regarding engagement of Renomex cannot be accepted.

2.3.3 It is further noted that Circular dated 16.01.2018 was rescinded by Circular dated 09.11.2022 having subject line as “*Review of Regulations*”. The Circular dated 09.11.2022 states in Paragraph 2 as follows:

*“2. The Board conducted an exercise of review of regulations, circulars based on experience gained. It is observed that certain circulars are no longer required on account of being already provided in the **Insolvency and Bankruptcy Board of India (Insolvency Professionals)***

Regulations, 2016 [IP Regulation] or the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 [Model Bye-Laws Regulations] or the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 [IU Regulations], as the case may be.”

(emphasis applied)

Thus the submission of Mr. Umesh Poddar that the Circular dated 16.01.2018 did not have legal sanctity is not tenable. The above Circular dated 16.01.2018 was rescinded as result of review exercise.

2.3.4 The DC notes that the judgement by Bombay High Court in matter of Amit Gupta vs IBBI & Anr. (WP(L) 3471/2023 observed that “*The Impugned Circular invokes Section 196 of the IBC, which empowers the IBBI to perform various functions listed therein. Section 196(1)(t) empowers the IBBI to make regulations and guidelines on matters relating to insolvency and bankruptcy, including a mechanism for time bound disposal of the assets of the Corporate Debtors. Section 240(1) of the IBC empowers the IBBI to make regulations to carry out the provisions of the IBC. Section 240(2)(e) empowers the IBBI to make regulations in connection with liquidation costs while Section 240(2)(x) enables making regulations in respect of fees for conduct of liquidation proceedings. Therefore, the IBBI indeed has powers to make regulations and guidelines under Section 196. Any component of the Impugned Circular that is not ultra vires the LP Regulations, would, in our view, constitute validly made “guidelines” to enable the world at large to appreciate matters of insolvency and bankruptcy. That said, such guidelines must necessarily be consistent with, and within the parameters stipulated in the IBC, or regulations made under the IBC.*”

2.3.5 Thus it was observed by the Hon’ble Bombay High Court that the circular was issued to clarify the misinterpretations about fees in the regulations. The circular intended to clarify the confusion regarding respective regulations. The Hon’ble Bombay High Court observed that some contents of the circular were not in the nature of clarifications which apply in retrospective manner and therefore it was observed that they need to be introduced by way of regulations as they were to override the existing regulations. However, the circular dated 16.01.2018 provides for making relationship disclosure prospectively and is not in conflict with any regulations. Hence the judgement of the Hon’ble Bombay High Court is not applicable in the present case.

2.3.6 The DC further notes that the submission of Mr. Umesh Poddar that he is required to make relationship disclosure only when there is relationship is not tenable. The circular in paragraph 3 states that “*An insolvency professional shall disclose his relationship, if any, with..*” The Circular intends making of disclosure whether there is relationship or not. The relevant paragraphs of the circular provide as follows:

“6. *An Insolvency Professional Agency shall facilitate receipt of disclosures as required above. It shall disseminate such disclosures on its web site within three working days of receipt of the disclosure.*

7. *The Insolvency Professional shall provide a confirmation to the Insolvency Professional Agency to the effect that the appointment of every other professional has been made at arms' length relationship.*

...

9. *The Insolvency Professional shall ensure timely and correct disclosures by him and the other Professionals appointed by him. Any wrong disclosure and delayed disclosure shall attract action against the Insolvency Professional and the other Professional as per the provisions of the law."*

The circular intends that the appointment of the professionals should be made at arms' length. Hence the relationship disclosure disseminated in the website of the IPAs are nil. The objective behind the making disclosure public and timely is that becomes public in the interest of transparency. If there is any challenge or objection to the appointment of professional or disclosure of relationship, the same can made by any stakeholder in a timely manner. The DC also perused the relationship disclosures made by Mr. Umesh Poddar with IPA where it was observed that in most of the disclosures made by Mr. Umesh Poddar with various professionals etc. in various CDs, there is no relationships with the professionals etc. So, if Mr. Umesh Poddar was genuinely having this belief that the circular does not require disclosing relationships where there is no relationship, such relationships would not have been disclosed by him. It also brings out that instead of admitting a mistake, he is arguing on grounds which he himself does not believe.

2.3.7 With regards to the submission by Mr. Umesh Poddar that the circular will be applicable only in the resolution process and not liquidation, the DC perused the relationship disclosures made by him in respect of his assignment as liquidator in the website of the IPA. Mr. Umesh Poddar made relationship disclosure with respect to RDH Technologies Private Limited which was admitted to liquidation on 09.11.2021, Aawrun Furnishings Man-Tra Private Limited which was admitted to liquidation on 18.08.2023, Prapti Fashions Private Limited which was admitted to liquidation on 13.12.2024. He made the relationship disclosure on appointment of professionals in respective CDs during their liquidation process as follows:

Sr.	CD	Date of Appointment	Name of Professional	Date of Disclosure
1	RDH Technologies Private Limited	30.09.2022	Legal Fix	30.09.2022
2	Aawrun Furnishings Man-Tra Private Limited	01.10.2023	DRR Associates and consultant and Ashish Sawe, Registered valuer/RV	28.10.2023
3	Aawrun Furnishings Man-Tra Private Limited	01.10.2023	Daisy Shukla, RV	28.10.2023
4	Aawrun Furnishings Man-Tra Private Limited	01.10.2023	Brahmpal Bhardwaj, RV	28.10.2023
5	Prapti Fashions Pvt Ltd	13.12.2024	Appointment of Mr. Umesh Poddar as liquidator	23.12.2024

6	RKDS Exports Pvt Ltd	19.12.2024	Appointment of Mr. Umesh Poddar as liquidator	23.12.2024
7	RDH Technologies Private Limited	20.08.2022	Joy Saha, Advocate and Dipak Kumar Pal - Stenographer	22.08.2022
8	Aawrun Furnishings Mantra Pvt Ltd	18.08.2023	Appointment of Mr. Umesh Poddar as liquidator	21.08.2023
9	RDH Technologies Private Limited	09.06.2022	Nimisha Agarwal, Advocate	09.06.2022
10	RDH Technologies Pvt Ltd	01.08.2022	Heritage Security & Investigation Services, Security Services	06.09.2022
11	Aawrun Furnishing Man-Tra Private Limited	01.11.2023	Anil Rustogi, RV	04.11.2023

The above facts show that the submission of Mr. Umesh Poddar that the circular dated 16.01.2018 does not match his act and practice with respect to relationship disclosure being applicable only to liquidation process. Even though arguing that he was not required to make relationship disclosure as there was no existence of any relationship, still Mr. Umesh Poddar made belated disclosure on 12.03.2023. Thus Mr. Umesh Poddar has been inconsistent in his submissions and taking a ground that relationship disclosures were not required in liquidation proceedings while he himself has made disclosures in his liquidation assignment. So, the DC does not agree with the various grounds raised by Mr. Umesh Poddar. However, the DC notes that there was no relationship with Renomex and no prejudice has been caused to any stakeholder. So the DC is inclined to take a lenient view in the matter.

2.4 Acceptance of bid documents beyond stipulated time during the auction process

- 2.4.1 During the Liquidation process of the CD, second auction notice dated 05.05.2022 was published by Mr. Umesh Poddar, wherein last date for submission of bid documents was provided as 10.05.2022. Admittedly, in response to the said auction notice, he received only one bid document within the stipulated timeline. On 18.05.2022 i.e. after the last date of submission of bid document, he received another bid document and the same was accepted by him.
- 2.4.2 In his reply to the IA, he stated that he accepted bid document of a bidder after last date of submission keeping in view the objective of value maximization and that the SCC members during the third SCC meeting were informed about the same.
- 2.4.3 Clause 9 of Schedule I of IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) *inter alia* provides that an auction shall be transparent. The dates mentioned in the auction notice have a sanctity; therefore, scrupulous adherence to such timelines is essential for the sake of transparency of the auction process. If sufficient response to the auction notice is not received within the prescribed timelines, extension of timelines can be considered rather than delayed acceptance of bid which is against the principles of fair play and equity and lacks transparency.

2.4.4 As far as IP's contention that SCC in its 3rd meeting was informed about delayed acceptance of bid documents from a bidder, although such information to SCC would not have legitimised the action but it is observed that the minutes of 3rd SCC meeting do not have any such discussion and mention. It is, thus, seen that Mr. Umesh Poddar made a misleading statement to the Board about informing SCC about delayed acceptance of bid document. In view of the above, the Board held *prima facie* view that Mr. Umesh Poddar contravened Clause 9 of Schedule I of IBBI (Liquidation Process) Regulations 2016 read with Clauses 12 and 14 of the Code of Conduct.

2.5 Submissions by Mr. Umesh Poddar.

2.5.1 Mr. Umesh Poddar submitted it will be helpful to juxtapose the regulatory developments with the liquidation process of CD:

Liquidation Process of the CD		Evolution of Legal Provision	
Date	Activity	Date	Development
		01.04.2018	Regulation 32 of the Liquidation Regulations was amended to allow the sale of the CD as a going concern.
		22.10.2018	Regulation 32 was replaced.
		25.07.2019	Regulation 32A was inserted to detail of the sale as a going concern.
09.11.2021	Liquidation commenced, he was appointed as liquidator.	09.11.2021	Mr. Umesh Poddar got his very first assignment as an IP.
09.03.2022	Invitation of bid documents for auction for the sale of CD as a going concern		
05.05.2022	2 nd invitation of bid documents for auction for the sale of CD as a going concern		
10.05.2022	Last Date to submit bid document		
19.05.2022	Last date to deposit EMD		
20.05.2022	The auction was held		
		16-09-2022	Liquidation Regulations was amended to require the sale of the CD as a going concern exclusively only at the first auction.

2.5.2 He submitted that Regulation 32 of the Liquidation Regulations, as initially notified, envisaged the sale of assets, and Regulation 33 provided the mode of sale of assets, as detailed in Schedule 1 to the Liquidation Regulations. The same reads as under:

“32. Manner of sale.

The liquidator may:

a) sell an asset on a standalone basis: or

b) sell

i) the assets in a slump sale,

ii) a set of assets collectively, or

(iii) the assets in parcels.

33. Mode of sale,

(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner as specified in Schedule I...”.

2.5.3 Subsequently Regulation 32 was amended to allow the sale of a CD as a going concern and details of such sale were specified in Regulation 32A which was inserted on 25.07.2019. Sub-regulation 4 of regulation 32A reads as under;

“(4) If the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32,”.

This made clear that if the sale of the CD as a going concern does not materialise, the assets would be sold in the manner provided in regulation 32 read with the mode of sale under Regulation 33. The Liquidation Regulations did not envisage the sale of the CD as a going concern through auction, it was left to the liquidator to adopt the best method, including the resolution plan envisaged under CIRP. On 16.09.2022, the Liquidation Regulations underwent further amendment. with the substitution of Sub-regulation 4 of Regulation 32A. The revised sub-regulation reads:

“(4) The liquidator may sell the assets of the corporate debtor under clause (e) of regulation 32 exclusively only at the first auction,”

This brought in the requirement of the sale of a CD through auction. Prior to this amendment, there was no requirement for the sale of the CD as a going concern to be carried out through an auction.

2.5.4 Regulation 33 states that a *“Liquidator shall ordinarily sell through an auction.”* In a recent order dated 03.04.2024, the NCLAT held: *“In any case the Schedule I of the Liquidation Regulations is directory in nature, could not be mandatory,” (Mr. Bhanu Pratap Singh Vs. Mr. Rakesh Jindal (Liquidator) CA (AT) (Insolvency) No. 105 of 2074).* It is not necessary to follow the auction process under Schedule I. A catena of orders and judgments from the AA, the NCLAT, and the Supreme Court have held that timelines prescribed under regulations are directory in nature. The timelines in auctions have also been held directory. Clause 12 of Schedule 1 provides a timeline for the highest bidder to bring the sale consideration. A successful bidder sought an extension of time beyond what is provided under clause 12 of Schedule 1. The NCLAT allowed the extension of time as the timeline is directory [*Standard*

2.5.5 Schedule 1 of the Liquidation Regulations provides for the sale of assets through auction and private sale. Clause 9 of the Schedule reads: “*Auction shall be transparent, and the highest bid at any given point shall be visible to other bidder.*” This ensures transparency by allowing all bidders to see the highest bid during the auction. However, the Schedule does not specify any norms or processes for selecting the bidders who will participate in the auction. He submitted that he opted to use an auction to sell the CD as a going concern. This decision was made in consultation with the SCC, to ensure the sale process was aligned with stakeholder interests and regulatory requirements.

2.5.6 As the first auction attempt failed, he made a second attempt, where he indicated timelines as under:

S. No	Event	Dates (on or before)
1	Public Announcement of E-Auction	05.05.2022
2	Submission of Bid Documents by Interested Bidders	10.05.2022
3	Due Diligence & Site Visits by Eligible Bidders	19.05.2022
4	Deposit of Earnest Money by Eligible Bidders for participation in e-auction Process	19.05.2022
5	Agency to share User ID and Password to Qualified Bidders for participation in E-Auction Process	20.05.2022

2.5.7 Mr. Umesh Poddar submitted that he received bid documents as well as the earnest money deposit (EMD) from Party A on 18.05.2022 before the time stipulated in the auction notice. Party B submitted bid documents along with EMD on 18.05.2022, one day before the last date for depositing EMD. He allowed both Parties A and B to participate in the auction held on 20.05.2022. However, Party B logged into the auction on the scheduled date but opted not to place a bid. As a result, Party A remained the sole participant and was consequently declared the successful bidder. Mr. Umesh Poddar submitted that his decision was made after careful consideration of the circumstances and with the intent to uphold the principles of fairness, transparency, and value maximisation for the stakeholders. At the relevant time (March-May 2027), the law did not mandate the sale of the CD as a going concern through auction. Schedule 1, which outlines the auction process, is directory for any sale under the Liquidation Regulations, as held by NCLAT in *Bhanu Pratap Singh (supra)*. Therefore, Schedule 1 has no bearing on the sale made. He submitted that he chose to conduct the sale via auction as a matter of best practice. He followed the principles outlined in Schedule 1, particularly regarding transparency.

2.5.8 Assuming, for the sake of argument, that Schedule 1 applied, it does not prescribe specific timelines for auctions, as held in *Naren Seth, Liquidator of Cinemme Jewels Lid, v. Sunrise Industries & Ors. (CA(AT)Ins N. 401 & 695 of 2023)*. Even where timelines are mentioned (e.g, Clause 12), they are deemed directory [*Standard Surfa (supra)*]. The primary requirement

under Schedule 1 is transparency in the auction process, especially regarding the visibility of the highest bid. The auction I conducted met this transparency standard. Since Schedule 1 does not stipulate a process or timeline for qualifying bidders, he used his judgment and wisdom to allow the bidders ensuring the best interests of stakeholders and aligning with the Code's objective of maximizing value.

- 2.5.9 The sale of the CD resembled a resolution plan more than an asset sale. Precedents guide appropriate actions regarding late offers. In *ICICI Bank Limited v. Unimark Remedies Ltd*, [MA No, 1529 of 2018 and CP No. 197 of 2018], the Adjudicating Authority attempted to answer: *“whether the Resolution Plan of the Applicant can be considered at this belated hour or should the same be rejected even without looking into the same,”* It answered *“...we are of the considered view that the spirit at the Code is first and then comes the other things. The rejection of the Resolution Plan by the CoC even without opening the envelope containing the Resolution Plan on the ground that the same is submitted after the expiry of the stipulated time fixed by the CoC, is certainly against the law /Code and we hereby direct the Respondent to forthwith consider the Resolution plan of the Applicant on its merits. ...”*
- 2.5.10 Party B met the substantive requirements, including the timely submission of the EMD. Given the technical delay in Party B's bid documents, he decided to condone this delay as a minor issue in the interest of conducting a successful auction. This decision was made after considering the possibility of a failed auction or a low realisation, which was real. There was no bidder during the CIRP stage. The first auction had no bidders as Party A had submitted bid documents but did not proceed, leading to the failure of the auction. With the fear of a similar outcome in the second auction, he decided to allow Party B to participate because previously also in the first auction Party A had floated EOI , but did not participate in the auction which resulted into a failed auction. He then had to make a third auction with a further lower reserve price. His reasoning was that party A backed out in the 1st auction and Party B backed out in the second auction.
- 2.5.11 He further submitted that he had apprised the SCC in its meeting held on 23.09.2022 about the receipt of bid documents from two parties. He provided all relevant details regarding the auction process up to its conclusion, this included sharing certain documents related to the bid submissions, However, the minutes of the meeting recorded the gist of the discussion made, rather than the detailed discussion.

2.6 Analysis and Findings of the DC

- 2.6.1 Regulation 32 of the Liquidation Regulation as on 01.04.2018 stood as follows:

“32. Manner of sale.

The liquidator may:

a) sell an asset on a standalone basis: or

b) sell

i) the assets in a slump sale,

ii) a set of assets collectively, or

(iii) the assets in parcels.

(c) sell the corporate debtor as a going concern.”

2.6.2 Regulation 32 of the Liquidation Regulation as on 22.10.2018 stood as follows:

“32. Sale of Assets, etc.

The liquidator may sell-

- (a) an asset on a standalone basis;*
- (b) the assets in a slump sale;*
- (c) a set of assets collectively;*
- (d) the assets in parcels;*
- (e) the corporate debtor as a going concern; or*
- (f) the business(s) of the corporate debtor as a going concern:*

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.”

2.6.3 Regulation 32A was inserted in the Liquidation Regulation on 25.07.2017 which provided as follows:

“32A. Sale as a going concern.

(1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses.

(2) For the purpose of sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.

(3) Where the committee of creditors has not identified the assets and liabilities under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee.

(4) If the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32.”

2.6.4 During all this time, the Regulation 33 of the Liquidation Regulations stood as follows:

“33. Mode of sale.

(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.”

2.6.5 The CD was admitted to liquidation on 09.11.2021. The 2nd auction of the CD was held on 20.05.2022. Thereafter, Regulation 32A(4) of the Liquidation Regulations were further amended on 16.09.2022 as follows

“(4) The liquidator may sell the assets of the corporate debtor under clause (e) of regulation 32 exclusively only at the first auction.”

- 2.6.6 The DC notes that though the word auction was specifically mentioned in Regulation 32(4) of the Liquidation Regulations on 16.09.2022 with regards to sale as going concern. However, reading Regulation 32 and 32A, as they evolved with amendments, along with Regulation 33(1), it cannot be said that the auction was not meant to be mode of sale.
- 2.6.7 Even though Mr. Umesh Poddar submitted that auction process is not mandatory for sale as a going concern, he himself has adopted the auction process for selling the CD as a going concern and is following procedure as specified in Schedule I which applies in case of an auction process. It seems strange, first to adopt a process and then to argue against its applicability when some contravention is pointed out.
- 2.6.8 The DC notes that in the auction process, Mr. Umesh Poddar accepted the bid after the last date of acceptance of the bid but EMD was received before the last of its submission. Mr. Umesh Poddar breached a timeline which was provided by himself for the auction. The breach of such timeline can create doubts of inclination towards a particular bidder. Acceptance of a bidder beyond the timeline can lead to further litigation and challenges by other bidders before various forum which can delay the process.
- 2.6.9 Moreover, such issues should have been brought into the notice of SCC. He submitted that the fact of late receipt of the bid document from one bidder was discussed in the 3rd SCC meeting. But on perusal of the minutes of the 3rd SCC meeting, the DC does not find any such discussion. Moreover, the 3rd SCC meeting was conducted on 23.09.2022, almost four months after conducting the auction on 20.09.2022, wherein the bidder who had submitted bid documents late had been allowed to participate in the auction.
- 2.6.10 The submission by Mr. Umesh Poddar that the timelines is directory as held by various forums, the DC observes that such decisions are taken in light of judicial equity exercised by the judicial or quasi-judicial forums. While running a process, an IP is required to adhere to the timelines specified by him while accepting bids during auction. If the timeline needs to be extended, the same should be done with the consent of other stakeholders and then every other party should also be able to take the benefit of that extended timeline. Since, he has accepted the bid beyond the timeline, the DC holds the contravention. However, in this particular case, the DC finds that acceptance of late bid does not involve any malafide and has not prejudiced any party. The DC, therefore, is inclined to take a lenient view.

3. Order.

- 3.1 Considering the facts and circumstances involved the contraventions, the DC in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby warns to Mr. Umesh Poddar to be extremely careful in all his assignments. Mr. Umesh Poddar is also directed to undergo pre-registration educational course specified under regulation 5(b) of the IP Regulations from the IPA where

he is registered. Mr. Umesh Poddar shall not accept any new assignment under the Code till the successful completion of pre-registration education course.

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

3.3 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Umesh Poddar is enrolled as a member.

3.4 Accordingly, the show cause notice is disposed of.

-sd/-

(Sandip Garg)

Whole-time Member

Insolvency and Bankruptcy Board of India

Dated: 26th March 2025

Place: New Delhi