INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/281/2025 01 April 2025

ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP- 11015/28/2023-IBBI/873/327 dated 14.06.2024, issued to Mr. Anil Mehta who is an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-001/IP-P00749/2017-2018/11282 and a Professional Member of the Indian Institute of Insolvency Professionals of ICAI (IIIP-ICAI).

1. Background

1.1 The NCLT, Mumbai Bench (AA) vide its order dated 01.02.2019 admitted the application filed by Bank of Baroda under Section 7 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of Pratibha Industries Limited (CD) and Mr. Sunil Kumar Choudhary was appointed as the Interim Resolution Professional (IRP) who was subsequently appointed as the Resolution Professional (RP) *vide* order of the AA dated 14.03.2019. Since no resolution plan was approved by the Committee of Creditors (CoC), the AA passed order for the liquidation of the CD on 08.02.2021 and Mr. Anil Mehta was appointed as the Liquidator. Thereafter he was replaced, and Mr. Avil Menezes was appointed as the Liquidator by the AA as resolved by the Stakeholder’s Consultation Committee (SCC) with 85.94% voting.

1.2 The Board was in receipt of a complaint against Mr. Anil Mehta with respect to his role in the CD. The Board, in the exercise of its powers conferred under Section 218 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations), appointed the Investigating Authority (IA) to conduct investigation of Mr. Anil Mehta in his assignment pertaining to the CD.

1.3 Thereafter, the IA served a notice of investigation to Mr. Anil Mehta as per Regulation 8(1) of the Investigation Regulations on 20.04.2023. Mr. Anil Mehta submitted his reply vide emails dated 28.04.2023, 13.07.2023 and 17.08.2023. After considering the said responses, the IA submitted the Investigation Report.

1.4 Based on the Investigation Report, the Board held a prima facie view that Mr. Anil Mehta had contravened the provisions of the Code, and the Regulations made thereunder and issued the SCN to Mr. Anil Mehta on 14.06.2024. The SCN alleged contraventions of several provisions of the Code and IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations). The reply of Mr. Anil Mehta on the SCN was received by the Board on 28.06.2024.

1.5 The Board referred the SCN, response of Mr. Anil Mehta to the SCN to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Anil Mehta availed an opportunity of personal hearing before the DC through virtual mode on 12.03.2025. He provided his additional submissions on 15.03.2025.

2. Alleged Contraventions, Submissions of Mr. Anil Mehta, Analysis and Findings

The contraventions alleged in the SCN, submissions of Mr. Anil Mehta, Analysis and findings of the DC are summarized as follows:

2.1 Failure to take custody of CD's assets and misappropriation of CD's resources

2.1.1 During the CIRP of the CD, Mr. Anil Mehta was informed that the suspended management was using the CD's letterhead and was making official communication with the stakeholders on behalf of the CD. Mr. Anil Mehta sent an email to the promoters on 04.11.2020 requesting them to refrain from representing themselves or acting as officer/personnel of the CD. During the investigation, he submitted that it would be impossible to ensure that erstwhile management is barred from using letterhead that they already possessed. Such a response appears to be washing hand with responsibilities of faith and confidence reposed in an Insolvency Professional (IP) under the Code and Regulations and showing lack of care with a backswing of hand. The compulsion imposed by law cannot be compromised by claiming impossibility of performance, particularly when recourse is available. No steps seem to have been taken to stop mismanagement by the suspended management, including by approaching the AA for appropriate directions.

2.1.2 It is the duty of IP to take immediate control of the affairs of the CD and accordingly it was his duty to stop any communication made by the suspended management on behalf of CD. Hence, it was observed that he failed to take control and custody of the assets of the CD.

2.1.3 During the course of the liquidation process of the CD, Mr. Anil Mehta used one of the CD's cars for one month. He submitted that the car was used due to medical conditions of his son and that the fuel expenses were reimbursed to the CD from his personal account. However, it remained unclear why the CD's asset was used for personal reasons in the first place, and even if exigent, whether the same was done with the prior concurrence/information of the SCC.

2.1.4 In view of the above, the Board held the *prima facie* view that Mr. Anil Mehta contravened the provisions of Sections 25(2)(a), Section 208(2)(a) of the Code, Regulations 7(2)(a) and 7(2)(h) of the IP Regulations read with Clauses 1 and 2 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

2.2 Submissions by Mr. Anil Mehta

2.2.1 Mr. Anil Mehta submitted that Mr Sunil Chaudhary was appointed as the IRP of the CD on 01.02.2019. He was advised by the support team, i.e., M/s EY Restructuring Advisors LLP which continued to support him, that they had advised the suspended management of their duties and obligations. He took over all the cars in the possession of the suspended management with the orders of the AA. He also filed an application with the AA for taking control of the property. He submitted that he did not realise that company stationery would be misused by the suspended management. He took full charge of the CD and this was the first instance of the suspended management misusing the company's letterhead.

2.2.2 He submitted that he did not know whether the suspended management had kept old stationery or printed new one. As soon as the matter of the suspended management using CD's letterhead came to his knowledge, he immediately referred the matter to the legal counsel M/s Chandhiok & Mahajan and as per advice received, he issued instructions that this was wrong and should not be repeated failing which legal consequences will follow. He also spoke to the suspended management and warned them of consequences in case this was repeated. This incident was never repeated again, and the intended objective was achieved.

2.2.3 He submitted that the continued co-operation of the suspended management was required and reporting this incident to the AA would not have resulted in benefit in running the overall affairs of the CD. Additionally, it would have burdened the CD with additional legal cost.

2.2.4 During liquidation process of the CD, he used one of the CD's cars for one month for which he submitted that the car was used due to medical conditions of his son and that the fuel expenses were reimbursed to the CD from his personal account.

2.2.5 He submitted that he was facing multiple problems at that time:

- Inspection conducted by IBBI.
- Multiple litigations involving the company and the problems created by M/s R Krishnamurthy and Mr Ravi Baid as sub-contractor.
- His Son faced a severe issue of Epilepsy (which could have become life threatening). The reports relating to this were submitted earlier. And it is the Company people who suggested that he use the Company car so that they can be kept in running condition. However, it would be pertinent to mention that he agreed to the said suggestion subject to the reimbursement of full costs.

2.2.6 He submitted that the car was used for 7-8 times involving a trip to the hospital /office, totalling around 120 kms; Even @ Rs 30 per km the cost would have been Rs.3600 (Rupees three thousand six hundred). He voluntarily paid for the entire cost of petrol of around Rs.17,259 (Rupees Seventeen thousand two hundred fifty-nine) filled up in the car during that period. There was no financial loss to the CD. He submitted that he had full intention of disclosing same in the next SCC.

2.2.7 He accepted that he did not inform the SCC prior to its use, but there was just no time to do these things as the situation was very serious and critical. Additionally, not having impoverished the CD, but rather having enriched it by reimbursing more than what was spent and there being also no provision in the Code to take prior permission, no permission of the SCC was sought or considered necessary.

Analysis and Findings of the DC.

2.2.8 The DC notes that an IP is under the duty to take control and custody of all the assets of the CD, as soon as it takes charge. This includes taking the custody of the assets including the physical assets, financial and non-financial data and information records. This is mandated with an intent to avoid any misuse and ensure proper supervision over the CIRP process. The DC notes the submission of Mr. Anil Mehta that after commencement of the CIRP of the CD, Mr. Sunil Kumar Choudhary had been appointed as the IRP and subsequently he was appointed as the RP and after taking charge as RP, he was informed by M/s EY Restructuring Advisors LLP, the support team appointed by the IRP that suspended management of their obligations and duties. When it came to the notice of Mr. Anil Mehta, he took legal opinion on the issue and warned the suspended management towards using such letterhead and it was submitted that thereafter the letterhead of the CD was not used by the suspended management of the CD. The DC also notes the submission of Mr. Anil Mehta that he was not aware whether the suspended management had kept the letterhead of the CD with themselves or printed the new letterhead. The DC observes that Mr. Anil Mehta was not effective in discharge of his duties under the Code.

2.2.9 Regarding the issue of use of car of the CD by Mr. Anil Mehta for his personal use, the DC is of the view that the Mr. Anil Mehta should have refrained himself from using the assets of the CD for his personal use. Considering the fiduciary nature of work performed by an IP under the Code, the conduct of Mr. Anil Mehta is unethical.

3. Order.

3.1. 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, hereby suspends the registration of Mr. Anil Mehta (Registration No. IBBI/IPA-001/IP-P00749/2017-2018/11282) for a period of three months.

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

3.3. A copy of this order shall be sent to the CoC/ Stakeholders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Anil Mehta 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. Anil Mehta.

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

3.5. A copy of this order shall also be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Anil Mehta is enrolled as a member.

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

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

Date: 01 April 2025
Place: New Delhi