

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/268/2025

19th February 2025

ORDER

This Order disposes of the Show Cause Notice (SCN) COMP- 11012/170/2023-IBBI/859/204 dated May 03, 2024, issued to Mr. Vijay Kumar Garg (herein referred as “**Mr. Garg/ IP/ Liquidator**”) who is a Professional Member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-002/IP-N00359/2017-2018/11060.

1. Background

- 1.1 The Lanco Vidarbha Thermal Power Limited (Corporate Debtor/CD) was admitted into Corporate Insolvency Resolution Process (CIRP) vide order dated 03.10.2019 of the Adjudicating Authority, NCLT, Hyderabad Bench (AA) wherein Mr. Garg was appointed as the Interim Resolution Professional (IRP). Subsequently, Mr. Garg was confirmed as the Resolution Professional (RP) in the CIRP of the CD. Thereafter, the AA vide its order dated 30.06.2021 ordered liquidation of CD and Mr. Garg was appointed as the Liquidator.
- 1.2 The Board in the exercise of its powers under Section 218 of the Insolvency and Bankruptcy Code, 2016 (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 investigate the conduct of Mr. Garg in the liquidation process of the CD.
- 1.3 The Investigation Authority served the notice upon Mr. Garg, to which the reply were received on 20.02.2024 and 21.03.2024. After considering the reply, the IA submitted the Investigation Report (IR) to the Board. Based on the findings in the IR, the Board formed a *prima facie* view that Mr. Garg had contravened provisions of the Code and Regulations made thereunder and issued SCN to Mr. Garg on 03.05.2024. The reply of Mr. Garg to the SCN was received on 16.05.2024.
- 1.4 The Board referred the SCN and the response of Mr. Garg to the SCN to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Garg availed an opportunity of personal hearing before the DC on 11.02.2025 through virtual mode and provided additional submissions.

2. Alleged Contraventions, Submissions of IP and Findings

- 2.1 The contraventions alleged in the SCN, submissions by Mr. Garg and findings of the DC are summarized as follows:

Contravention:

2.2 Irregularity in Disposal of Liquidation Estate of the CD

- 2.2.1 The 2nd Sale Notice dated 13.01.2022 was issued by Mr. Garg for the sale of assets of the CD. The said auction notice listed eight (8) lots of assets available for sale in e-auction. As per the said auction notice, out of the said eight (8) lots, Lot No. 3 mentioned “*Plant & Machinery*”

including Civil Works/Structures (excluding materials lying in the Custom Bonded warehouse and certain other items)” and Lot No. 8 mentioned “Ash Handling plant-pipes for HCSD system (9 inch seamless)”.

2.2.2 On completion of the auction process of Lot No. 8, Sri Kanagavalli Enterprises and Realty was declared as the successful bidder for Lot No. 8. Mr. Garg communicated about the result of auction of Lot No. 8 to the said successful bidder vide email dated 28.03.2022 and subsequently, a letter of intent dated 06.04.2022 was issued by Mr. Garg to the said successful bidder.

2.2.3 It is further observed that the said successful bidder of Lot No. 8 vide email dated 22.04.2022 informed Mr. Garg that there was a mismatch in the material available during the inspection conducted by it prior to and after the auction and further requested Mr. Garg to allow to lift the entire quantity of material inspected prior to auction. As per Mr. Garg’s reply to the IA vide letter dated 10.11.2023, he has stated to have responded to the successful bidder, vide email dated 27.04.2022, that in the sale notice dated 13.01.2022 and addendum dated 09.03.2022 as well as 2nd E-Auction Process Information Document, the specifications relating to assets in Lot 8 were clearly written i.e. *“Ash Handling plant- pipes for HCSD system (9 inch seamless)”* only. He also informed the Successful Bidder that its request to keep the EMD amount for future e-auctions and return of the additional amount was not acceptable as the same was not in accordance with the terms and conditions stipulated in the LOI and further apprised the relevant terms and conditions of 2nd E- Auction Information Process Document, declarations and undertaking.

2.2.4 Aggrieved by Mr. Garg’s response to the above-said email dated 22.04.2022, the said bidder filed an IA No. 637 of 2022 in CP (IB) No. 529/7/HDB/2018 before the AA seeking to set aside the sale pursuant to auction notice dated 13.01.2022. The AA vide order dated 15.09.2023 set aside the sale of items covered in Lot 8 and *inter alia* directed Mr. Garg to refund the sale amount to the applicant (the successful bidder) and to conduct a fresh sale of all items of Lot No. 8.

2.2.5 On perusal of the said order of the AA and 2nd Sale notice along with process documents, it is noted that Lot No. 3 does not mention specifically about HCSD Pipes of 8.75 inch dimension. However, the successful bidder of Lot No. 3 was allowed to take HCSD Pipes of 8.75 inch dimension kept at Lot No. 8. In this connection, the following observations of the AA in its order dated 15.09.2023 is relevant:

“17. Thus, for the first time, that too upon being directed by the Tribunal, supra, the liquidator in his additional affidavit has come out with the statement that, “most of the material including the pipes (other than the one mentioned in Lot No. 8) have been delivered to M/s HR Commercials Pvt. Ltd. and approximately 75% of the material has been dismantled and transported out of the plant”

18. This statement of the liquidator on oath not only establishes that the HCSD pipes of 8.75 dimension were illegally delivered to M/s HR Commercials Pvt. Ltd, which is the purchaser of items of Lot No. 3, but also runs contrary to his earlier statement in his Counter Affidavit to the present Petition filed on 20/07/2002, as in para 23 of his counter affidavit he had stated that “ the present application alleging inability to distinguish between pipes of 8.75 and 9 inches put together in the same pile which were kept separately (no reference to Lot no 3), * this observation is ours) cannot be said to be an act of negligence so as to warrant the defence of caveat emptor by the liquidator/respondent ’*

22. Moreover, having taken a firm stand that HCSD Pipes of 8.75 dimension did not form part of Lot No 8 and as the HCSD Pipes of 8.75 dimension as per his own description of various Lot's in the e auction sale notice HCSD Pipes are not included in Lot No 3, the liquidator ought is bound by the provisions of the IB Code, to preserve and protect the entire liquidation estate of the corporate debtor until the same is liquidated as per the provisions of IB Code and has no right what so ever to dispose of the same as per his whims and fancies, by arranging gate passes to the successful purchaser of Lot no 3 and ensured that the same were taken away clandestinely from out of the site, even without the same being formally handed over to the said unjust beneficiary. Thus, illegality in disposal of valuable portion of the liquidation estate by the liquidator in the case on hand is at its peak, as things speak for itself Res ipsa loquitur.

24. ... the only irresistible conclusion that one can draw is that 'HCSD- seamless pipes of Ash Handling Plant, did not form part of sale items of Lot No 3, hence the question of entitlement of these pipes by the successful bidder of Lot No 3 does not even arise, consequently delivery of these items to the sold bidder is grossly illegal and untenable.

26. ... In fact, the liquidator has not even indicated anywhere in his pleadings, the location, quantity and the value of the HCSD pipes of 8.75 dimension which he illegally handed over to the successful bidder of Lot No 3 in an illegal manner. Needless to say, that but for our order dated 28.10.2022 the. above narrated facts and events would not have seen the light of the day. Therefore, in the above factual back drop it is quite probable that HCSD pipes of 8.75 dimension also formed part of Lot No 8 alone.

29. Thus, the petitioner herein is well within its right to reject the goods as the liquidator has acted in total violation of the terms & conditions of the impugned sale, the provisions of the IB Code, the rules and Regulations made there under and thus denied the petitioner the contracted quantity of goods of Lot No 8.”

39. Accordingly, we hereby set aside the sale of the items covered under Lot No 8 held on 24.02.2022 and confirmed in favour of the petitioner on 28.03.2022 and we further direct the liquidator to refund the sale consideration received from the petitioner, within 15 days from the date of receipt of this order and report compliance.

40. Since the impugned sale has been set aside, let there be a fresh sale of all the items of Lot No 8 in the interest of all the stakeholders of the corporate debtor, as expeditiously as possible. We therefore direct the Chairman of the SCC of the corporate debtor under liquidation, to forthwith call the meeting of the members of SCC to decide on conducting fresh auction sale of all the items of Lot No 8 as expeditiously possible, but not later than 15 days from the date of receipt of this order. The liquidator shall place the minutes of the SCC meeting before this Tribunal.”

2.2.6 It was observed that Mr. Garg had not defined the lot-wise assets of CD in clear and unequivocal terms in the auction notice which has resulted in the mismatch of assets seen by the successful bidder of lot No. 8 during inspection of that lot and after completion of auction. This confusion finally led to the challenge of the sale process of Lot No. 8 before the AA which set aside the auction sale of Lot No. 8.

2.2.7 By not conducting the sale in a transparent manner as brought out above, the Board held prima-facie view that Mr. Garg had contravened Regulation 33(1) of the IBBI (Liquidation Process) Regulations 2016 (Liquidation Regulations) read with clauses 3 and 9 of Schedule 1 and Regulations 7(2)(a), (h) of IBBI (Insolvency Professionals) Regulation read with Clauses 1, 2, 3 and 14 of the Code of Conduct for Insolvency Professionals.

Submissions by the IP

- 2.2.8 Mr. Garg has submitted detailed background and overview of developments relating to sale of Lot 8. Mr. Garg has also submitted the reply to observations of the investigating officer. Mr. Garg has further submitted that it is incorrect to impute a *malafide* intent. He had made submissions to the best of his ability and had always responded to all queries of the AA in all sincerity. Since the matter pertained to Lot No.8, all earlier submissions were made in relation thereto. The buyer of Lot 8 had no locus standi with respect to Lot 3. For example, he was asked on 31.03.2023 to submit an affidavit on the status of Lot 8. It was filed on 17.04.2023 and Mr. Garg confirmed that Lot 8 was still available but that finds no mention in the order. The copy of the Affidavit had already been submitted to the Investigating Officer.
- 2.2.9 He submitted that he had reiterated many times and had not said 8.75-inch pipes were HCSD pipes. Hence, these can't be considered as part of Lot 8. They were part of Lot 3 which was bought by someone else and if these were delivered to him after taking full payment, there is no illegality. Mr. Garg reiterated that he had never said 8.75" pipes were HCSD pipes. If description of Lot 3 did not include anything about 8.75" pipes, neither did the description of Lot 8 include them. Therefore, on what basis can the bidder of Lot 8 claim these be delivered to him. Mr. Garg denied that there was any clandestine sale nor was there any unjust beneficiary. The goods have been sold as per the terms of the Auction document and therefore no malafide can be attributed to him. Incidentally, it was never the bone of contention in the sense that a specific charge of malafide was levelled against Mr. Garg in the petition filed by the applicant. Had that been the case, the liquidator would have tried to establish his innocence during the proceedings.
- 2.2.10 Mr. Garg submitted he acted in a bonafide manner in accordance with the auction notice and process documents. Subsequent to the Order, it has been proved beyond doubt that specifications of Lot 8 were given correctly, the Lot was still available in entirety, that other pipes were not HCSD pipes, that other pipes were part of Lot 3. That more than full value has been realized of assets sold and delivered and assets not sold are still available. Thus, all contentions of the Liquidator stand proved. There has been no illegal or clandestine sale.
- 2.2.11 Also, Mr. Garg stated that the segregation of items were deliberated in the SCC meetings and sale process was undertaken in accordance with the advice of the members of the SCC. The relevant minutes of SCC meeting have already been provided during the Investigation and Mr. Garg has acted in accordance with the decisions taken by SCC members in SCC meetings. Mr. Garg further stated that the Applicant had to stand on its own footing and not on the basis of pleadings made by the Liquidator. The Applicant had not filed any evidence to show that pipes of lesser sizes than 9 inches were formed part of Lot 8. As reiterated earlier, Lot 3 was an omnibus Lot containing thousands of items (clubbed under 66 heads), detailed description could not be provided. The Liquidator has been filing its progress report in accordance with the provisions of the Code.
- 2.2.12 Mr. Garg stated that possession of the assets of Lot 3 was delivered to the successful bidder and he has not delivered any pipes which formed part of Lot 8. As stated earlier since the case of the Applicant was restricted to Lot 8, the liquidator has provided details in relation to the HCSD pipes of 9 inches in its pleadings. It is pertinent to state that since Lot 8 consisted of HCSD of 9 inches, how was the bidder of Lot 8 concerned with pipes of smaller diameter? Further, Mr. Garg as the Liquidator is not bound to give him information about another Lot for which the Applicant had not even participated. The Applicant was given reply according to the Lot it had bought. Mr. Garg denied that the contracted goods were being denied to the Applicant. In fact, he was ready to deliver the same.

- 2.2.13 Mr. Garg also stated that he had offered 9 inches HCSD pipes under Lot 8 which can be clearly seen right from E-auction notice and email clarification given by Mr. Garg. It is again reiterated that the Applicant's bid price is only 8.46% higher than the reserve price which is quite normal in a competitive auction scenario. Further, the 2nd highest bid for Lot 8 was only Rs.1 lakh lower than the Applicant's bid which clearly reflects that the Applicant has not overquoted the bid price and the other buyers were also aware of the quantum and type of assets in Lot 8 and that he has made bid a competitive price in full knowledge of what comprised Lot 8.
- 2.2.14 The AA vide its order dated 15.09.2023 passed orders setting aside sale of items covered under Lot 8 and directed Mr. Garg to refund the sale consideration received from the Applicant within 15 days from the date of receipt of the order and report compliance. The AA further directed Mr. Garg as the Liquidator to conduct fresh sales of all items of Lot 8 in the interest of all the stakeholders of the Corporate Debtor, as expeditiously as possible with the further direction to the Chairman of the SCC to call for meeting of members of SCC to decide on conducting fresh auction sale of all items of Lot 8 as expeditiously as possible, but not later than 15 days from the date of receipt of order and to place the minutes of SCC before the AA. The AA further directed to list the matter after 15 days for reporting compliance. Mr. Garg has submitted that he had complied with the orders of the AA and filed the compliance affidavit on 03.10.2023. The matter was again taken up on the 05.10.2023 and in view of his affidavit, the AA treated the matter as closed with a direction that the process of resale of Lot 8 be commenced within three (3) weeks.
- 2.2.15 Mr. Garg *inter alia* has also submitted that there were no common items among Lots except pipes figured in Lot no. 3 and 8. However, the specifications of the pipes were different. Therefore, he sent a mail on 20.12.2022, well before the inspection schedule, to all those who had submitted EOI for Lot no. 8 that this Lot comprised only 9 inch seamless pipes lying in the pipe yard and no other, and that appropriate placards had been placed at appropriate places. No further query was received from the bidder.

Analysis and Findings of the DC

- 2.2.16 The DC notes that 2nd Sale Notice dated 13.01.2022 was issued by Mr. Garg for the sale of assets of CD. The said auction notice listed eight (8) lots of assets available for sale in e-auction. As per the said auction notice, out of the said eight (8) lots, Lot No. 3 mentions "*Plant & Machinery including Civil Works/Structures (excluding materials lying in the Custom Bonded warehouse and certain other items)*" and Lot No. 8 mentions "*Ash Handling plant-pipes for HCSD system (9 inch seamless)*". Sri Kanagavalli Enterprises and Realty ("Bidder") emerged as the successful bidder for the Lot 8.
- 2.2.17 The DC has considered the oral and written submissions of Mr. Garg. The DC notes that the Bidder was aggrieved and approached the AA *inter alia* contending that he revisited the site on 21.04.2022 for obtaining the delivery of HCSD pipes lying in Lot no. 8 and found that the quantity of HCSD pipes were lesser than that what was shown and found on 03.03.2022 and on enquiry it was informed orally that HCSD pipes of 8.75 dimensions were segregated and clandestinely removed from Lot no. 8. The Bidder submitted that he is entitled for the delivery of the said entire quantity, and a minute difference could not have spotted during this inspection cannot be ground to deny the said HCSD pipes to the Bidder especially when there is no separate lot for sale of Ash handling pipes of any another dimension as the e-auction sale notice.

2.2.18 The DC also observes that counsel for the liquidator *inter alia* submitted before the AA that Lot No. 8 comprised of HCSD pipes other than 9 inch is absolutely wrong as the HCSD pipes of 8.75 inch dimension were kept separately and never formed part of Lot no. 8. He further submitted that the bidder was given the complete opportunity to inspect the goods before submitting its bid and the Bidder through its representative physically inspected the pipes in Lot no.8 for a few hours as against the allowed time of two days and submitted the bid. As such post confirmation of the bid, the Bidder is not entitled to complain about quantity of the items or seek for cancellation of the bid. He referred to clauses of the 2nd E-auction process information document “*The auction is being conducted strictly on as “as is where is”, “as is what is”, “whatever there is” and “without recourse basis. The liquidator assumes no responsibility of quantity/quality of material/items proposed for sale.....”*”

2.2.19 The DC notes the observation of the AA that existence of HCSD pipes of 8.75 inch dimension and delivering to the successful bidder of Lot no. 3 has been admitted by Mr. Garg as the liquidator. The AA asked Mr. Garg that *inter alia*, in which of the lot of pipes of size of 8.75 inch dimension were offered for sale.

2.2.20 Mr. Garg as the liquidator *inter alia* submitted to the AA that the Lot no. 3 was comprised of Plant & Machinery including Civil Works/Structures (excluding materials lying in the Custom Bonded warehouse and certain other items). The detailed specifications (including pipes of smaller diameters less than 9 inches) could not be provided because of thousands of items were included in Lot no.3 since Lot no. 3 was an omnibus lot. Only a few items were carved out from omnibus lot whose specifications including lot no. 8 were clearly given and communicated. The SCC was of the view that it may not be possible to sell the assets in one lot. He further submitted that accordingly, most of the material including the pipes (other than the one mentioned in Lot no. 8) have been delivered to M/s HR Commercial Pvt. Ltd. And approximately 75% of the material has been dismantled and transported out of the plant.

2.2.21 The AA vide order dated 15.09.2023 *inter alia* observed that

“18. This statement of the liquidator on oath not only establishes that the HCSD pipes of 8.75 dimension were illegally delivered to M/s HR Commercial Pvt. Ltd, which is the purchaser of items of Lot No. 3, but also runs contrary to his earlier statement in his Counter Affidavit to the present Petition filed on 20/07/2002, as in para 23 of his counter affidavit he had stated that “ the present application alleging inability to distinguish between pipes of 8.75 and 9 inches put together in the same pile which were kept separately (no reference to Lot no 3), * this observation is ours) cannot be said to be an act of negligence so as to warrant the defence of caveat emptor by the liquidator/respondent ’*

....

22. Moreover, having taken a firm stand that HCSD Pipes of 8.75 dimension did not form part of Lot No 8 and as the HCSD Pipes of 8.75 dimension as per his own description of various Lot's in the e auction sale notice HCSD Pipes are not included in Lot No 3, the liquidator ought is bound by the provisions of the IB Code, to preserve and protect the entire liquidation estate of the corporate debtor until the same is liquidated as per the provisions of IB Code and has no right what so ever to dispose of the same as per his whims and fancies, by arranging gate passes to the successful purchaser of Lot no 3 and ensured that the same were taken away clandestinely from out of the site, even without the same being formally handed over to the said unjust beneficiary. Thus, illegality in disposal of valuable portion of the

liquidation estate by the liquidator in the case on hand is at its peak, as things speak for itself Res ipsa loquitur.

24. ... the only irresistible conclusion that one can draw is that 'HCS D- seamless pipes of Ash Handling Plant, did not form part of sale items of Lot No 3, hence the question of entitlement of these pipes by the successful bidder of Lot No 3 does not even arise, consequently delivery of these items to the sold bidder is grossly illegal and untenable...

26. ... In fact, the liquidator has not even indicated anywhere in his pleadings, the location, quantity and the value of the HCS D pipes of 8.75 dimension which he illegally handed over to the successful bidder of Lot No 3 in an illegal manner...

29. Thus, the petitioner herein is well within its right to reject the goods as the liquidator has acted in total violation of the terms & conditions of the impugned sale, the provisions of the IB Code, the rules and Regulations made there under and thus denied the petitioner the contracted quantity of goods of Lot No 8. ”

2.2.22 The AA set aside the sale of items under Lot no. 8 held on 24.02.2022 and directed Mr. Garg as liquidator for fresh sale of all the items of Lot No 8 in the interest of all the stake holders of the corporate debtor.

2.2.23 The DC further notes the minutes of 17th SCC meeting held on 21.09.2023 wherein aforesaid order of the AA was discussed and minutes *inter alia* states that “*However, it is true that specifications of other pipes though segregated and kept separately with appropriate placards, were not given in the description of Lot 3 as it was felt if the giving of specifications of all items is not practically possible..*

...the liquidator desired to clarify to the SCC that while, in hind sight, perhaps more details could have been given about Lot no.3, there has been no illegal sale of any item and full value (rather than more than the Liquidation Value) has been realised and goods have been delivered to the rightful buyer”

2.2.24 In view of the above discussions, the DC finds that Mr. Garg has failed to provide a particular lot for specific asset of HCS D pipes of 8.75 dimension, which caused confusion making the auction notice questionable and resulted in auction getting set aside by the AA. It may be noted that the liquidator holds the liquidation estate as a fiduciary for the benefit of all the stakeholders. To ensure transparency and fairness in selling the assets of the CD, the act of the liquidator should be fair and transparent and understandable, bearing in mind the expectations of others and what a reasonable and informed third party would consider appropriate. It is the duty of the IP/the liquidator that assets are appropriately classified and presented for auction in clear terms and without ambiguity. The IP/the liquidator must categorize assets based on their type, value, and condition, ensuring that each lot is appropriately labelled. The IP/the liquidator must discuss with the SCC and may consult valuers to determine the appropriate categorization of assets, ensuring their efficient disposal and maximizing value. The IP/the liquidator must provide clear descriptions of each lot, listing details such as the asset's condition, specifications, and any relevant legal considerations. This helps potential buyers understand exactly what they are bidding for, reducing confusion or disputes during or post the auction.

2.2.25 Hence, the DC finds Mr. Garg has failed to act as per Regulation 33(1) of Liquidation Regulations read with Clauses 3 and 9 of Schedule 1 and Regulations 7(2)(a), (h) of IBBI (Insolvency Professionals) Regulation read with Clauses 1, 2, 3 and 14 of the Code of Conduct under Insolvency Professionals Regulation.

3. ORDER

- 3.1. In view of the foregoing, 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 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby suspends the registration of Mr. Vijay Kumar Garg for a period of one year.
 - 3.2. This Order shall come into force after the expiry of 30 days from the date of its issuance.
 - 3.3. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Vijay Kumar Garg is enrolled as a member.
 - 3.4. A copy of this order shall be sent to the SCC of Lanco Vidarbha Thermal Power Limited (CD), in which Mr. Vijay Kumar Garg is providing his services, *if any*. The SCC may decide whether to continue his services or not. In case, the SCC decides to discontinue his services, the SCC may file an appropriate application before the AA.
- 3.1. 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.
 - 3.2. Accordingly, the show cause notice is disposed of.

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

Sd/-
(Ravi Mital)
Chairperson
Insolvency and Bankruptcy Board of India

Dated: 19th February 2025
Place: New Delhi