

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**  
**(Disciplinary Committee)**

No. IBBI/DC/139/2022

10<sup>th</sup> November, 2022

**ORDER**

**This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2021/81/4070 dated 21<sup>st</sup> September, 2022 issued to Ms. Sonu Jain, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) and regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 (IP Regulations). Ms. Sonu Jain is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-001/IP-P00575/2017-2018/11016.**

**1. Developments in relation to resolution of the CD**

1.1 Following are the assignments handled by Ms. Sonu Jain, IP in which certain contraventions have been observed:

<b>In the matter of</b>	<b>Adjudicating Authority</b>	<b>Date of Admission</b>	<b>Handled the Assignment as</b>
1. Diamond Shipping Company Limited (CD-I)	Kolkata Bench	14.03.2019	Interim Resolution Professional (IRP), Resolution Professional (RP) and Liquidator
2. Bengal Chemicals and Pharmaceuticals Limited (CD-II)	Kolkata Bench	01.11.2019	IRP
3. Falcon Consultancy Private Limited (CD-III)	Kolkata Bench / Cuttack Bench	23.02.2018	Liquidator
4. Jinprabhu Infrastructure Developments Limited (CD-IV)	Kolkata Bench	06.04.2018	IRP, RP and Liquidator

**2. Issuance of Show Cause Notice (SCN) and hearing before DC**

2.1. The Board, in exercise of the powers conferred to it under section 218 of the Code read with the Inspection Regulations, appointed an Inspecting Authority (IA-1) to conduct the inspection of Ms. Sonu Jain vide order dated 11.06.2021. A draft inspection report (DIR), prepared by the IA-1, was shared with Ms. Jain on 15.06.2022 and to which Ms. Jain submitted reply vide email dated 30.06.2022. The IA-1 submitted the Inspection Report to Board on 27.07.2022.

- 2.2. In exercise of its power under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, the IBBI vide Order dated 1<sup>st</sup> July 2022 appointed an Investigating Authority (IA-2) to conduct an investigation of Ms. Jain. IA-2 submitted the Investigation Report to IBBI on 21.07.2022.
- 2.3. Based on the material available on record including the Inspection Report and the Investigation Report, the Board issued the SCN to Ms. Sonu Jain on 21.09.2022. The SCN alleged contravention of sections 18(1)(c), 21(2), 24(8), 35(1)(c), 35(1)(d), 208(2)(a) and 208(2)(e) of the Code, regulations 17(2), 22(1), 22(2), 24(3), 24(4) and 39A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulations 5(2), 6(2), 15, 35(2), 45(3) and 46(1) of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations), regulations 7(2)(a) and (h) of IP Regulations, clauses 1, 2, 3, 5, 9, 10, 12, 13,14, 15, 16 and 19 of Code of Conduct of IP Regulations. Ms. Sonu Jain submitted her reply to SCN vide e-mail dated 06.10.2022.
- 2.4. The Board referred the SCN, written submissions of Ms. Sonu Jain, and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Ms. Sonu Jain availed an opportunity of personal hearing before DC on 27.10.2022 through virtual mode. Ms. Jain also made additional submissions vide her reply dated 29.10.2022.

### **3. Alleged contraventions and submissions of the IP**

Contraventions alleged in the SCN and Ms. Sonu Jain's submissions thereof are summarized below:

#### **3.1. Diamond Shipping Company Limited (CD-I)**

##### **Contravention: Conduct of meeting of Committee of Creditors (CoC) without sole Financial Creditor of CoC:**

- 3.1.1 As per regulation 17(2) of the CIRP Regulations, the IRP shall hold the first meeting of the Committee of Creditors (CoC) within seven days of filing the report certifying constitution of CoC. Further, as per regulation 22(1) of, a meeting of the committee shall be quorate if members of the committee representing at least thirty three percent of the voting rights are present either in person or by video conferencing or other audio and visual means. Regulation 22(2) of CIRP Regulations further states that where a meeting of the committee could not be held for want of quorum, unless the committee has previously decided otherwise, the meeting shall automatically stand adjourned at the same time and place on the next day.
- 3.1.2 It is noted that Ms. Jain filed report certifying constitution of CoC on 9.05.2019. However, she issued a notice dated 06.04.2019 and conducted the 1<sup>st</sup> meeting on 12.04.2019, much earlier than the report certifying constitution of CoC itself. In this meeting she has recorded the presence of 2 operational creditors (OC) as CoC members. In the said meeting, in item

no. 2, Ms. Jain recorded that *'The Chairperson marked the presence of representative of operational creditors in the CoC. As the quorum was ascertained the Chairperson declared that the Meeting was in order and properly constituted.'* It is further noted from the said minutes that Ms. Jain had submitted list of creditors comprising 3 OCs, which the committee took note of. It is, thus, evident that she conducted the 1<sup>st</sup> CoC meeting without properly constituting the CoC and even before the report certifying the constitution of CoC was filed by her before AA.

3.1.3 It is further noted from the report certifying constitution of CoC dated 09.05.2019 that Ms. Jain had constituted CoC with only one Financial Creditor (FC), namely ICICI Bank Limited. Thereafter, she had issued notice dated 13.05.2019, for the 2<sup>nd</sup> CoC meeting which included the name of the said FC. In the minutes of 2<sup>nd</sup> CoC meeting held on 18.05.2019, the presence of ICICI Bank Limited/ sole CoC member was marked as 'Absent'. Despite this, she proceeded with the CoC meetings and recorded the following:

*'ITEM NO. 02: TO ASCERTAIN THE QUORUM OF THE MEETING*

*The Chairperson marked the presence of representative of operational creditors in the CoC. As the quorum was ascertained, the Chairperson declared that the Meeting was in order and properly constituted.'*

3.1.4 Without the required quorum, Ms. Jain not only went ahead with the conduct of 2<sup>nd</sup> CoC meeting in complete disregard of provisions of the Code and Regulations but had also perpetuated the wrong by passing the resolution on agendas of reimbursement of IRP public announcement cost, appointment of valuer and to issue Form G calling expression of interest.

3.1.5 It is clear from the above that Ms. Jain has not performed her duties and functions as regards collation and verification of claims, constitution of CoC and conduct of meeting of CoC as per the relevant provisions of the Code and Regulations. Instead by conducting the CoC meetings without the sole FC and by passing the resolution in such illegitimate CoC meeting, she has acted against the spirit and objectives as well as provisions of the Code and Regulations. Further, her action of approving cost incurred by her in the meeting conducted without the presence of sole CoC member shows *mala fide* intentions on her part.

3.1.6 In view of the above, the Board is of the *prima facie* view that Ms. Jain has *inter alia* violated sections 18(1)(c), 21(2), 24(8), 208(2)(a) of the Code, regulations 17(2), 22(1), 22(2), 24(3), 24(4) of the CIRP Regulations, regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clauses 1, 2, 3, 5, 9, 12 and 14 of the Code of Conduct.

## **3.2. Submissions made by the IP**

3.2.1 Ms. Jain has submitted that as per section 15 of the Code, a public announcement was made on 17.03.2019. As required under the CIRP Regulations amended upto 24.01.2019,

the IRP constituted the CoC on 9.04.2019. The CoC was constituted of only two Creditors. Hence, as required under section 22 of the Code, the IRP called the 1<sup>st</sup> CoC meeting on 12.04.2019 with OC as on this date no FC had filed their claim.

3.2.2 Thereafter, the 2<sup>nd</sup> CoC meeting was called on 18.05.2019. The CoC was re-constituted as the ICICI Bank Limited, FC had filed claim. Since, FC was not present in the CoC meeting no resolution in the CoC meeting relating to appointment of Valuer and issuance of Form-G was passed. In the 3<sup>rd</sup> CoC meeting was called on 29.05.2019, the CoC resolved that registered valuer is to be appointed, subject to asset details shared by CoC (ICICI Bank Limited) and quotation finalized by it for the same. The COC had also resolved that Form G is to be published, subject to quotation finalized by ICICI bank Limited for the same.

3.2.3 In the 4<sup>th</sup> CoC meeting was called on 22.07.2019, the RP had laid down the quotations received by the valuers for valuation of the CD-I assets and newspaper vendors for issuance of Form G. The quotations were, however, rejected by the CoC. To resist the non-compliance of the Code Ms. Jain issued Form G dated 24.08.2019 as it is a mandatory requirement. Later on only one valuer was appointed due to prevailing conditions of the COVID -19 pandemic. Ms. Jain submits that no contravention has been done by her.

### **3.3. Findings**

3.3.1 The section 24 of the Code regarding the conduct of the CoC is provide as follows:

*“24. Meeting of committee of creditors. –*

*...(3) The resolution professional shall give notice of each meeting of the committee of creditors to-*

*(a) members of committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5);*

*(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;*

*(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.*

*...(7) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.*

*(8) The meetings of the committee of creditors shall be conducted in such manner as may be specified.”*

3.3.2 The regulation 17 of the CIRP Regulation provides that,

*“17. Constitution of committee.*

*(1) The interim resolution professional shall file a report certifying constitution of the committee to the Adjudicating Authority within two days of the verification of claims received under sub-regulation (1) of regulation 12.*

*(1A) The committee and members of the committee shall discharge functions and exercise powers under the Code and these regulations in respect of corporate insolvency resolution process in compliance with the guidelines as may be issued by the Board.*

*(2) The interim resolution professional shall hold the first meeting of the committee within*

*seven days of filing the report under this regulation...”*

3.3.3 Further, the regulation 22 of the CIRP Regulations provides as follows:

*“22. Quorum at the meeting.*

*(1) A meeting of the committee shall be quorate if members of the committee representing at least thirty three percent of the voting rights are present either in person or by video conferencing or other audio and visual means:*

*Provided that the committee may modify the percentage of voting rights required for quorum in respect of any future meetings of the committee.*

*(2) Where a meeting of the committee could not be held for want of quorum, unless the committee has previously decided otherwise, the meeting shall automatically stand adjourned at the same time and place on the next day...”*

3.3.4 In the present matter based on the documents submitted the DC notes that Ms. Jain sent the notice dated 06.04.2019 to conduct the 1<sup>st</sup> meeting of the CoC which was held on 12.04.2019, constituting CoC having two OCs as members. That the CoC was conducted even before the report certifying the constitution of CoC was filed by her before AA on 9.05.2019. However, Ms. Jain submitted in her reply dated 29.10.2022 that she had filed report certifying Constitution of CoC on 09.04.2019 and report submitted to Board has a typographical error of 18.05.2019 and the same is also mentioned in the 2<sup>nd</sup> Progress Report. However, on examination of the documents provided it is observed that nowhere in the 2<sup>nd</sup> Progress Report it is mentioned that report certifying the constitution of CoC was filed on 9.04.2019. Also, the report certifying the constitution of CoC as provided to the Board clearly shows the letter addressed to Deputy Registrar for filing as 09.05.2019 and the date in the report is also separately mentioned as 09.05.2019. Hence, contravention on these issues is proven beyond doubt.

3.3.5 The DC further notes that in the report certifying constitution of CoC Ms. Jain had constituted CoC with only one FC, ICICI Bank Limited. However, Ms. Jain conducted the 2<sup>nd</sup> CoC meeting without FC, the sole CoC member, in contravention to the provision of the Code. The DC finds that Ms. Jain conducted the 2<sup>nd</sup> CoC meeting dated 18.05.2019, without presence of ICICI Bank Limited which was marked as 'Absent' thereby without the requisite quorum as per regulation 22 of the CIRP Regulations. Although no resolution was passed in the aforesaid 2<sup>nd</sup> CoC meeting, however, a meeting without the any CoC member was technically void in absence of requisite quorum of the meeting. Hence, Ms. Jain has violated sections 18(1)(c), 21(2), 24 (6), 24(8), 208(2)(a) of the Code, regulations 17(2), 22(1), 22(2), 24(3), 24(4) of the CIRP Regulations, regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clauses 1, 2, 3, 5, 9, 12 and 14 of the Code of Conduct.

#### **4.1 Contravention: Issue regarding appointment of valuers:**

4.1.1 Regulation 35 of Liquidation Regulations stipulates that where valuation has been conducted under regulation 35 of CIRP Regulations, liquidator shall consider average of the estimates of the values arrived under the said provisions. However, in other cases or where liquidator is of opinion that fresh valuation is required, liquidator shall appoint 2

registered valuers within 7 days of liquidation commencement date.

- 4.1.2 It is noted that from the 1<sup>st</sup> and 2<sup>nd</sup> progress reports (during liquidation) dated 28.11.2019 and 1.01.2020, respectively that Ms. Jain has mentioned that CoC having rejected the agenda item for appointment of valuers during 4<sup>th</sup> CoC meeting. In the 1<sup>st</sup> progress report, Ms. Jain has also stated that she had initiated steps to identify the assets of CD-I.
- 4.1.3 It is observed from an undated letter issued by Ms. Jain to Mr. Sekh Tarik Anowar that she had appointed him as registered valuer to determine the liquidation value of CD-I. The relationship disclosure filed with the IPA reflects that the said valuer has been appointed on 23.09.2019 for all asset categories. However, it has been observed from IBBI website records that Mr. Sekh Tarik Anowar has got registered on 5.12.2018 with registration number IBBI/RV/01/2018/10285 for 'Land and Building' asset category.
- 4.1.4 Thus, there is inconsistency in the asset categories for which the valuer was appointed by Ms. Jain. It is further noted that there is inconsistency of information regarding appointment of Valuers disclosed by Ms. Jain in the Relationship Disclosures and that provided in various progress reports filed by Ms. Jain before the AA and the Board. The date of appointment of valuer indicated in the Relationship Disclosure is 23.09.2019. 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> progress reports dated 01.01.2020, 01.04.2020 (signed on 15.07.2020) and 15.07.2020 indicate that valuer was yet to be appointed. 5<sup>th</sup> progress report (30.09.2020) indicates appointment of valuer during the period of 4<sup>th</sup> progress report. The said appointment period is inconsistent with the date reported in relationship disclosure and unverifiable from undated appointment letter. It also noted that Ms. Jain had appointed only one registered valuer and not two as required under regulation 35 of Liquidation Regulations.
- 4.1.5 The Board is of the *prima facie* view that by not appointing required number of Registered Valuers and by providing inconsistent information with regard to appointment of valuers in the relationship disclosures and progress reports, Ms. Jain has *inter alia* violated sections 35(1)(c), 208(2)(a) of the Code, regulation 35 of Liquidation Regulations, regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clauses 1,2, 3 12, 14, 15, and 16 of the Code of Conduct.

## **4.2 Submissions made by the IP**

- 4.2.1 Ms. Jain submitted that the 2<sup>nd</sup> CoC meeting was called on 18.05.2019. The CoC was re-constituted as the ICICI Bank Limited, FC had filed claim. Since, FC was not present in the CoC meeting no resolution in the CoC meeting relating to appointment of Valuer and issuance of Form- G was passed. In the 3<sup>rd</sup> CoC meeting as held on 29.05.2019, the CoC resolved that registered valuer is to be appointed, subject to asset details shared by CoC (ICICI Bank Limited) and quotation finalized by it for the same. The COC had also resolved that Form G is to be published, subject to quotation finalized by ICICI bank Limited for the same.

4.2.2 In the 4<sup>th</sup> CoC meeting called on 22.07.2019, the RP had laid down the quotations received by the valuers for valuation of the CD-I assets and newspaper vendors for issuance of Form G. The quotations were, however, rejected by the CoC. To resist the non-compliance of the Code Ms. Jain issued Form G dated 24.08.2019 as it is a mandatory requirement. Later only one valuer was appointed due to prevailing conditions of the COVID -19 pandemic. Ms. Jain submits that as the distance of Kutch from Kolkata is 2427 km. She had approached so many valuers to do valuation of Kutch Property none of them were interested at last after making so many calls finally she could find one registered valuer who has accepted her proposal. Kutch is too small place so that she was unable to appoint two valuers.

### 4.3 Findings

4.3.1 The regulation 35 of the CIRP Regulation amended upto 24.04.2020 states that:

*“35. Fair value and Liquidation value*

*1) Fair value and liquidation value shall be determined in the following manner:-*

*(a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;*

*(b) if in the opinion of the resolution professional, the two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and*

*(c) the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.”*

4.3.2 In regards the inconsistency in disclosure of the date of appointment of valuer, the DC notes that the date of appointment of Mr. Sekh Tarik Anowar, valuer indicated in the Relationship Disclosure is 23.09.2019. However, in the 2<sup>nd</sup> progress report dated 01.01.2020, 3<sup>rd</sup> progress report dated 01.04.2020 and 4<sup>th</sup> progress report dated 15.07.2020 it is mentioned that valuer is yet to be appointed. The 5<sup>th</sup> progress report dated 30.09.2020 mentions that the appointment of valuer was during the period of 4<sup>th</sup> progress report. Hence, the DC finds that there is no clarity as to the date of appointment of the valuer and various inconsistent dates are mentioned in relationship disclosure and the progress reports and the appointment letter is also undated. Hence, it is observed that there is a lapse on the part of Ms. Jain in making clear and transparent disclosure.

4.3.3 With regard to the appointment of single valuer even when the Code and the Regulations made thereof mandates the requirement of two registered valuers to conduct valuation of the CD-I, the DC is inclined to take a lenient view as prevailing circumstances of COVID-19 pandemic and lack of valuers in Kutch may have prevented Ms Jain from adhering to the stipulations of the statute.

## 5.1 Bengal Chemicals and Pharmaceuticals Limited (CD-II)

### Contravention: Issue of fees and expenses incurred on or by the IP:

5.1.1 It is noted that AA vide order dated 1.11.2019 ordered initiation CIRP of Bengal Chemicals & Pharmaceuticals Limited under section 9 of the Code and appointed Ms. Jain as the IRP. Further vide order dated 13.11.2019, AA set aside the admission order on the ground that the entire amount had been paid to the OC by the CD-II. Thus, the CD-II was under CIRP only for 13 days. It is, however, observed that Ms. Jain had charged Rs. 5,50,000 as fee for such brief period of CIRP.

5.1.2 Ms. Jain's conduct of charging exorbitant fees of Rs. 5,50,000 for only 13 days of CIRP period of the CD-II has also been adversely commented upon by AA in its order dated 26.03.2021 while disposing of an IA filed by Ms. Jain before AA for payment of the fees and expenses of the IRP amounting to Rs.5,50,000/- by the OC. The relevant extract of the order is as under:

*"... The Insolvency Professionals are governed by the Insolvency and Bankruptcy Board of India ("IBBI"), the IBBI have issued several circulars with respect to the fees incurred by the Insolvency Resolution Professionals. Circular No. IP/004/2018 dated 16<sup>th</sup> January, 2018 provides "it is clarified that an insolvency professional shall render services for a fee which is a reasonable reflection of his work, raise bills / invoices in his name towards such fees" and Circular No. IBBI/IP/013/2018 dated 12<sup>th</sup> June, 2018 provides: .... He must, therefore, ensure that not only fee payable to him is reasonable, but also other expenses incurred by him are reasonable. What is reasonable is context specific and it is not amenable to a precise definition. " It is unfortunate that despite several directions from the IBBI, such exorbitant amounts are being charged with no justifiable reason given..."*

5.1.3 It is further noted that AA rejected Ms. Jain's prayer for payment of her fees amounting to Rs. 6,49,000 for thirteen days by the OC despite receiving an advance of Rs.1,00,000/- as the same is not only unjustifiable but also lacks supporting documents.

5.1.4 In view of the above, the Board is of the *prima facie* view that Ms. Jain has *inter alia* violated section 208(2)(a) of the Code, regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clauses 1, 2, 12, 14 and 25 of the Code of Conduct as well as IBBI Circular No. IP/005/2018 dated January 16, 2018 and IBBI/IP/013/2018 dated June 12, 2018.

## 5.2 Submissions made by the IP

5.2.1 Ms. Sonu Jain submitted that according to IBBI Circular No. IP/004/2018 dated 16.01.2018, IP is under obligation to raise bills/ invoice towards fees incurred. Ms. Jain raised bills but informed that she did not receive any payment from FC. Apart from Rs. 1,41,647 received from the Applicant. Regulation 33(3) of CIRP Regulations, 2016 specifies the cost of IRP to be borne by the applicant of CIRP and same is to be reimbursed by the COC to the extent it ratifies.



5.2.2 As per the order of the AA dated 01.11.2019, the Applicant was directed to give Rs. 1,00,000 to the IRP as advance fees. The details of the fees and expenses for the instant matter as follows:

<b>S No.</b>	<b>Particulars</b>	<b>Amount (in Rs.)</b>	<b>Supporting Document</b>
A	IRP Fees	0	Bills provided but amount due
i.	Support Services availed, if any	25000	Copy of engagement letter, scope of work and bills provided
ii.	Registered Valuers appointed, if any	0	Not appointed
iii.	Other Professionals engaged	25000	Copy of engagement letter to professionals provided
iv.	Other expenses	91647	copy of bills provided (Rs.20,000 conveyance, Rs. 10,000 accounting charges, Rs. 23,647 publication expenses, Rs. 11,000 filing expenses Rs. 5,400 out of pocket Rs. 21,600 GST charges)
B	Total Expenses (i. + ii. + iii. + iv.)	141647	
C	<b>Total Fees and Expenses claimed (A + B)</b>	141647	
D(i)	Amount received from OC	141647	Bank statement attached
D(ii)	Amount received from CD, if any	0	NA
E	<b>Pending Fee and Expenses</b>	400000	IRP Fees (Rs. 1,50,000) advocate (Rs. 1,25,000) Business process advisor (Rs. 1,25,000) + GST

5.2.3 Hence, Ms. Jain submits that she has not violated provision of the Code and the Regulations made thereof.

### 5.3 Findings

5.3.1 It is observed that the CIRP of the CD-II was initiated vide AA order dated 1.11.2019 and Ms. Jain was appointed as the IRP. However, vide order dated 13.11.2019, the AA set aside the admission order on the ground of settlement between the OC and the CD-II and also made the observation that an initial amount of Rs. 1,00,000 has been paid to the IRP the expenditure of which has not been accounted for.

5.3.2 Further, in the order of the AA dated 26.03.2021 it is observed that Ms. Jain has demanded a fee and expenses of the IRP amounting to Rs.6,49,000/- (5,50,000/-+99,000 as IGST

@18%) for a CIRP of 13 days. The IBBI Circular No. IP/004/2018 on ‘Fees payable to an insolvency professional and to other professionals appointed by an insolvency professional’ dated 16.01.2018 clarifies as follows:

“3. In view of the above, it is clarified that an insolvency professional shall render services for a fee which is a reasonable reflection of his work, raise bills / invoices in his name towards such fees, and such fees shall be paid to his bank account.”

5.3.3 In the present matter DC finds that Ms. Jain claimed a CIRP Cost of Rs. 6,49,000/- (inclusive of Rs. 1,50,000/- IRP fees) which is excessive for a CIRP that lasted for mere 13 days and is a steep charge as proposed by Ms. Jain are not in proportion to the work done by her. However, keeping in view that no payment has been received towards the bills for the expenses raised by Ms. Jain, DC is inclined to take a lenient view on this issue.

## 6.1 Falcon Consultancy Private Limited (CD-III)

### Contravention: Delays in filing of Progress Reports with NCLT:

6.1.1 The regulation 15 of Liquidation Regulations stipulates filing of first progress report to AA within 15 days after the end of the quarter in which she is appointed, and the subsequent progress report(s) are required to be filed within 15 days after the end of every quarter during which she acts as liquidator. It may be noted that in the present matter, order for liquidation and appointment of Ms. Jain as liquidator was passed on 5.12.2018. However, Ms. Jain have filed the progress reports belatedly as below:

Norm	Latest Timeline (Days)	Latest Stipulated Timeline (Date)	Actual Date of Report (Filing date not available)	Delay (in Days)
First progress report	Q1 + 15	15-Jan-19	18-Feb-19	34
Q-2 progress report	Q2 + 15	15-Apr-19	15-Jun-19	61
Q-3 progress report	Q3 + 15	15-Jul-19	23-Sep-19	70
Q-4 progress report	Q4 + 15	15-Oct-19	01-Jan-20	78
Q-5 progress report	Q5 + 15	15-Jan-20	01-Apr-20	77
Q-6 progress report	Q6 + 15	15-Apr-20	15-Jul-20	91
Q-7 progress report	Q7 + 15	15-Jul-20	13-Oct-20	90
Q-8 progress report	Q8 + 15	15-Oct-20	11-Jan-21	88
Q-9 progress report	Q9 + 15	15-Jan-21	03-Apr-21	78
Q-10 progress report	Q10 + 15	15-Apr-21	07-Jul-21	83
Q-11 progress report	Q11 + 15	15-Jul-21	30-Sep-21	77

6.1.2 Thus, in view of the aforesaid, it has been observed that Ms. Jain had filed the progress report with delays in the range of 34 to 91 days. Further during inspection only undated/ unsigned word file copies and not the signed copies were provided to IA for majority of progress reports.

6.1.3 In view of the above, the Board is of the *prima facie* view that Ms. Jain has *inter alia*

violated section 208(2)(a) of the Code, regulation 15 of Liquidation Regulations, regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clauses 12, 13, 14, 16 and 19 of the Code of Conduct.

## 6.2 Submissions made by the IP

6.2.1 Ms. Sonu Jain submitted that her offices is at Kolkata and the AA is at Cuttack. The Progress report is sent via courier so the delay has happened in filling first progress report and it is prayed to kindly condone the delay. Ms. Jain submitted that only in filing first progress report there is a delay of 30 days and there has not been delay in filing any other progress reports. Ms. Jain assures that she will not delay in future assignment. Ms. Jain submits that she can file the new signed copies if unsigned copies are received.

Norm	Latest Stipulated Timeline (Date)	Actual Date of Report (Filing date not available)	Delay (in Days)
Preliminary report	18-Feb-19	15-Feb-19	0
First progress report	15-Jan-19	18-Feb-19	32
Q-2 progress report	15-Jul-19	15-Jun-19	0
Q-3 progress report	15-Oct-19	23-Sep-19	0
Q-4 progress report	15-Jan-20	01-Jan-20	0
Q-5 progress report	15-Apr-20	01-Apr-20	0
Q-6 progress report	15-Jul-20	15-Jul-20	0
Q-7 progress report	15-Oct-20	13-Oct-20	0
Q-8 progress report	15-Jan-21	11-Jan-21	0
Q-9 progress report	15-Apr-21	03-Apr-21	0
Q-10 progress report	15-Jul-21	07-Jul-21	0
Q-11 progress report	15-Oct-21	30-Sep-21	0

## 6.3 Findings

6.3.1 It is observed that the regulation 15 of the Liquidation Regulations stipulates the timeline for submission of progress reports as follows:

*“15. Progress reports.*

*(1) The liquidator shall submit Progress Reports, in the format stipulated by the Board, to the Adjudicating Authority and the Board as under-*

*(a) the first Progress Report within fifteen days after the end of the quarter in which he is appointed;*

*(b) subsequent Progress Report(s) within fifteen days after the end of every quarter during which he acts as liquidator; and*

*Provided that if an insolvency professional ceases to act as a liquidator during the liquidation process, he shall file a Progress Report for the quarter up to the date of his so ceasing to act, within fifteen days of such cessation.”*

6.3.2 The DC observes that Ms. Jain has submitted that except for first progress report there has not been any delay on her part in making timely submission. However, it is observed that Ms. Jain claims that the latest stipulated timeline for 2<sup>nd</sup> Progress Report is 15.07.2019 even when the latest dated for 1<sup>st</sup> Progress Report is 15.01.2019. It is noted that she skipped the reporting of an entire quarter to ensure alignment with her delayed timelines. The Progress Report in the liquidation process is an essential report as it enables the AA and the Board to supervise the activities, functioning and financial position of the CD. Hence, the conduct of Ms. Jain omitting reporting of a quarter to suit her delayed timelines is a negligence and is a contravention of section 208(2)(a) of the Code, regulation 15 of Liquidation Regulations, regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clauses 12, 13, 14, 16 and 19 of the Code of Conduct.

## **7.1 Contravention: Issue regarding Maintenance of records:**

- 7.1.1 Regulation 39A of CIRP Regulations and regulation 5 and 6 of Liquidation Regulations stipulates provisions for preservation of physical and electronic copy of records pertaining to CIRP and liquidation process, respectively, for applicable period. Further, regulation 7(2)(g) of IP Regulations provides that the registration granted to an IP shall be subject to the condition that he maintains records of all assignments undertaken by him under the Code for at least three years from the completion of such assignment.
- 7.1.2 It has been noted that during the inspection, Ms. Jain has furnished significant number of information/ documents in editable '.docx' files (like report certifying constitution of CoC, progress reports, list of stakeholders, notice and agenda, minutes of meetings of stakeholders) and a lot of them are unsigned. Further she has provided limited information to IA during the inspection.
- 7.1.3 It is further noted that in the matter of Falcon Consultancy Private Limited, AA, Cuttack Bench vide its order dated 3.08.2021 observed that "*This application is filed by the Liquidator of Falcon Consultancy Private Limited, namely, Ms. Sonu Jain (hereinafter referred to as 'the Liquidator/applicant'). It is observed and pertinent to mention at the outset that the application has not been properly made. It is haphazard and also at several places instead of NCLT Cuttack Bench it is mentioned as Kolkata Bench. Also, the relevant provisions of law have not been properly referred to. However, in the interest of Liquidation process this matter has been taken up by this Bench. It is desirable that the Applicant should exercise caution and due diligence while filing such Applications and Petitions.*"
- 7.1.4 In view of the above, the Board is of the *prima facie* view that Ms. Sonu Jain has *inter alia* violated section 208(2)(a) of the Code, regulations 39A of CIRP Regulations, regulations 5 and 6 of Liquidation Regulations, regulation 7(2)(a) and 7(2)(h) of IP Regulations read with clauses 10, 16 and 19 of the Code of Conduct.

## **7.2 Submissions made by the IP**

- 7.2.1 Ms. Jain submitted that she is maintaining books of accounts for at least three years and the soft copy of files which have been received in Word Format (.doc) she will send a signed document.
- 7.2.2 Further, Ms. Jain submitted that in the Petition at several places NCLT Kolkata Bench was mentioned instead of Cuttack Bench because the Falcon Consultancy Private Limited (CD-III) earlier being heard before Kolkata Bench and thereafter it has been transferred to Cuttack bench and the mistake is inadvertent.

### **7.3 Findings**

- 7.3.1 The regulation 39A of the CIRP Regulations provides that,  
“39A. *Preservation of records.*  
(1) *The interim resolution professional or the resolution professional, as the case may be, shall preserve copies of all such records which are required to give a complete account of the corporate insolvency resolution process...*  
(4) *The interim resolution professional or the resolution professional shall preserve the records at a secure place and shall be obliged to produce records as may be required under the Code and the Regulations...*”
- 7.3.2 In the present matter the DC notes that Ms. Jain has furnished several documents (i.e the report certifying constitution of CoC, list of stakeholders, notice and agenda, minutes of meetings of stakeholders) in editable Word Format and the documents are not a record of the original but are unsigned the authenticity of which cannot be verified. Further, Ms. Jain has provided limited information to IA-I during the inspection. Even though Ms. Jain has informed that she is maintaining the books of accounts for the past three years and the signed copies of file sent in editable format will be provided, however, no further documents/records have been shared.
- 7.3.3 In regards to the order of AA dated 03.08.2021 observing that the application has been drafted in a *haphazard* manner, Ms. Jain has replied that due to case being transferred to the Cuttack bench from Kolkata Bench mistake in addressing the Court had occurred. However, the DC finds that Ms. Jain has taken a casual and inattentive approach in discharging her duties and has failed to provide relevant documents to the IA. Hence, contravention could be made out of section 208(2)(a) of the Code, regulations 39A of CIRP Regulations, regulation 7(2)(a) and 7(2)(h) of IP Regulations read with clauses 10, 16 and 19 of the Code of Conduct.

### **8.1 Jinprabhu Infrastructure Developments Limited (CD-IV)**

#### **Contravention: Filing of incomplete information for dissolution of CD-IV:**

- 8.1.1 Ms. Sonu Jain has filed an application under section 54(2) of the Code read with regulation 45(3) of Liquidation Regulations for dissolution of CD-IV. The AA vide its order dated 1.03.2022 made the following observations:

- a) *The Bank Statement of Corporate Debtor as attached with the Application still shows a balance of Rs.71,822.70/- as on 12 October, 2021.*
- b) *Further, no information is given with respect to the investment of the Corporate Debtor in Intel-wave Trade & Services Limited neither the liquidator has annexed Form 11 to the Application.*
- c) *No submission has been made by the liquidator with regard to the distribution of assets of the Corporate Debtor as per section 53 of the code.”*

8.1.2 As per regulation 46 of Liquidation Regulations, before the order of dissolution is passed under section 54(2), the liquidator shall apply to the AA for an order to pay into the Companies Liquidation Account in the Public Account of India any unclaimed proceeds of liquidation or undistributed assets or any other balance payable to the stakeholders in his hands on the date of the order of dissolution. However, as per statement attached with application for dissolution filed by Ms. Jain, CD-IV was having account balance of Rs 71,822/- as on 12.10.2021.

8.1.3 It may be further noted that as per regulation 45(3) of Liquidation Regulations, Liquidators shall submit an application along with the final report and compliance certificate in Form-H. However, it has been observed that no Form-H was attached along with the application for dissolution dated 8.08.2021 filed by IP.

8.1.4 In view of the above, the Board is of the *prima facie* view that Ms. Jain has *inter alia* violated section 208 (2) (a) of the Code read with regulation 45 (3), regulation 46 (1) of Liquidation regulations, regulation 7(2) (h) and clause 12, 14,15 of the Code of Conduct.

## **8.2 Submissions made by the IP**

8.2.1 Ms. Sonu Jain submitted that application is filed under section 54(2) of the Code read with regulation 45(3) of the Liquidation Regulations, by the Liquidator in the matter of CD-IV praying for its dissolution. The CIRP started on 6.04.2018, wherein Ms. Jain was appointed as IRP and was subsequently confirmed as RP. The AA had passed an order dated 08.10,2018 for Liquidation and appointed Ms. Jain as Liquidator.

8.2.2 In view of the observation of the IBBI the bank statement of CD-IV shows a balance of Rs 71,822.70/- as on 12.10.2021 but the latest bank statement of CD-IV as shared nil balance.

8.2.3 With respect to investment made in Interwave Trade & Services Limited, it is submitted that the CD-IV had held investment in the private companies, which are under Liquidation or not in position to function anymore. Hence, the investments are non-existent in the present date.

8.2.4 Distribution sheet for distribution of Assets of CD-IV as per section 53 of the Code mailed to Hon’ble AA, in which the payment is made to OC is as below:

<b>Date of Distribution</b>	<b>Amount paid to Light speed Trade &amp; Consultancy Private Limited</b>
30.07.2021	50,000
31.07.2021	1,50,000

4.08.2021	2,00,000
5.08.2021	2,00,000
6.08.2021	1,00,000
7.08.2021	1,00,000
7.08.2021	1,00,000
11.10.2021	65,000

### 8.3 Findings

8.3.1 The regulation 45 of the Liquidation Regulations states as follows:

*“45. Final report prior to dissolution.*

*(1) When the corporate debtor is liquidated, the liquidator shall make an account of the liquidation, showing how it has been conducted and how the corporate debtor’s assets have been liquidated.*

*(2) If the liquidation cost exceeds the estimated liquidation cost provided in the Preliminary Report, the liquidator shall explain the reasons for the same.*

*(3) The liquidator shall submit an application along with the final report and the compliance certificate in form H to the Adjudicating Authority for –*

*(a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or*

*(b) for the dissolution of the corporate debtor, in cases not covered under clause (a).”*

8.3.2 In the present matter the AA vide its order dated 1.03.2022 made observations regarding the incomplete Application for dissolution of CD-IV and annexures submitted by Ms. Jain. The AA noted that bank statement of CD-IV still showed a balance of Rs.71,822.70/-, no information regarding the investment in Intel-wave Trade & Services Limited and distribution of assets of the CD-IV was shared by Ms. Jain. In her submission she has shared bank statement showing nil balance as on 01.11.2021, investment made in Interwave Trade & Services Limited are under Liquidation or not in position to function anymore, Form H and sheet for distribution of Assets has been proved by Ms. Jain. However, the DC finds that Ms. Jain should have submitted these documents at the first instance when dissolution of the CD-IV was being decided by AA and the information was crucial for getting the complete picture of the CD-IV. It is observed that Ms. Jain has casual and neglectful approach in discharging her duties and contravention of section 208 (2)(a) of the Code read with regulation 45 (3), regulation 46 (1) of Liquidation regulations, regulation 7(2) (h) and clause 12, 14,15 of the Code of Conduct could be made out.

### 9. Order

9.1 From the aforesaid discussion, DC finds that Ms. Sonu Jain was conducting CIRP and Liquidation proceeding in a very casual and careless manner which is not at all expected from an Insolvency Professional. Ms. Jain was not only casual in keeping the records of the proceeding and submitting the same to IA, but she was careless in filing report also with AA.

- 9.2 The Code has carefully vested prominence to financial creditors in the CoC. Declaring the CoC being in order with aid of operational creditors, despite absence of sole financial creditor, is a serious contravention and can't be overlooked. Meddling with the composition of the CoC is violative of the basic structure of the Code. No professional can afford to hide behind the argument that CoC without identified financial creditor has taken decisions which were of minor consequence as major decisions were put on hold, as convening such a meeting itself was *void ab initio*.
- 9.3 In view of the above, the Disciplinary Committee, in exercise of the powers conferred under Section 220 of the Code read with Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017, issues the following directions:-
- (i) hereby imposes penalty on Ms. Sonu Jain for Rs. 5,00,000/- (Rupees Five Lakhs only) and directs him to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of "penalty imposed by IBBI" on <https://bharatkosh.gov.in> within 45 days from the date of issue of this order and submit a copy of the transaction receipt to the Insolvency and Bankruptcy Board of India.
  - (ii) In addition, she will be working as probationer for four months with other experienced IP so nominated by her IPA under which she is registered. Till completion of this probation, the Authorisation for assignment (AFA) of Ms. Sonu Jain will remain in suspended animation and she will not take any fresh assignment or service under the Code in the capacity of Insolvency Professional.
  - (iii) Ms. Sonu Jain is directed to be more careful and cautions while dealing with assignments under the Code and Regulations made thereunder and should be extremely careful while submitting report to AA and IBBI.
- 9.4 The Order shall come into force with immediate effect, in view of para 9.3.
- 9.5 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Ms. Sonu Jain is enrolled as a member.
- 9.6 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.
- 9.7 Accordingly, the show cause notice is disposed of.

-Sd-  
(Sudhaker Shukla)  
Whole Time Member, IBBI

Dated: 10<sup>th</sup> November, 2022  
Place: New Delhi