

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/131/2022

28th September, 2022

ORDER

This Order disposes the Show Cause Notice No. IBBI/IP/INSP/2021/79/3468/560 dated 26.07.2022 (SCN) issued to Mr. Sundaresh Bhat, 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). Mr. Sundaresh Bhat is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-001/IP-P00077/2017-2018/10162.

1. Developments in relation to resolution process of ABG Shipyard Limited, Corporate Debtor (CD).

- 1.1. The SCN issued by the Board contains contraventions of the provisions of the Code and regulations made thereunder in respect of running the corporate insolvency resolution process (CIRP) of the CD by the insolvency professional, Mr. Sundaresh Bhat acting in the capacity as Interim Resolution Professional/Resolution Professional/Liquidator.
- 1.2. The CIRP of the CD was initiated vide order dated 01.08.2017 by the Hon'ble NCLT, Ahmedabad Bench (AA) on an application filed by ICICI Bank Limited under section 7 of the Code and Mr. Sundaresh Bhat was appointed as an Interim Resolution Professional who was later confirmed as the Resolution Professional. The Committee of Creditors (CoC) passed a resolution on 20.02.2019 for liquidation of the CD which was approved by the AA vide order dated 25.04.2019 and Mr. Sundaresh Bhat was appointed as the Liquidator.
- 1.3. The liquidation value of the CD is approximately Rs. 1487 crore at original reserve price. As per the recent submission by the IP dated 13.09.2022, sales have been made amounting about Rs 535 Crore and about Rs. 700 Crore worth of assets are yet to be sold pursuant to processes that are currently on-going.

2. Hearing before Disciplinary Committee(DC) on the SCN issued.

- 2.1. The Board, in exercise of its powers under section 218 of the Code read with the IBBI Inspection Regulations, appointed an Inspecting Authority (IA) to conduct the inspection *vide* order dated 31.05.2021. The IA, as per sub-regulation (1) of Regulation 6 of the Inspection Regulations, shared the Draft Inspection Report (DIR) with Mr. Sundaresh Bhat *vide* email dated 04.04.2022, to which he submitted reply *vide* email dated 01.05.2022. The IA submitted the Inspection Report to the Board on 09.05.2022.

2.2. Based on the material available on record including the Inspection Report, the Board issued SCN to Mr. Sundaresh Bhat on 26.07.2022. The SCN alleged contravention of Section 208(2)(a), 208(2)(e) of the Code, Regulation 7(1) and Regulation 35(2) of Liquidation Regulations, Regulation 7(2)(a), Regulation 7(2)(h) of IP Regulations read with Clause 1, 2, 3, 9, 12, 13, 14 and 25 of the Code of Conduct specified thereunder and Board Circular No. IBBI/RV/019/2018 dated October 17, 2018, Board Circular No. IP/004/2018 dated 16th January, 2018, Board Circular No. IBBI/IP/013/2018 dated June 12, 2018. Mr. Sundaresh Bhat has replied to the SCN vide email dated 10.08.2022 and additional submission vide email dated 13.09.2022.

2.3. The Board referred the SCN, response of Mr. Sundaresh Bhat and the material available on record, to the DC for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Sundaresh Bhat was given opportunity of personal physical hearing before DC on 06.09.2022 which was availed by him and Mr. Sundaresh Bhat along with his advocates namely Mr. Anoop Rawat and Mr. Ahkam Khan were present during the hearing.

3. Alleged contraventions and submissions of the IP

The contraventions alleged in the SCN and Mr. Sundaresh Bhat's submissions thereon are summarized below:

3.1. Contravention as regards influencing Registered Valuer to change valuation of assets:

- 3.1.1. Clause 9 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct) mandates that an IP shall not influence the decision or the work of the CoC or debtor, or other stakeholders under the Code, so as to make any undue or unlawful gains for himself or his related parties or cause any undue preference for any other persons for undue or unlawful gains and shall not adopt any illegal or improper means to achieve any *mala fide* objectives.
- 3.1.2. The email records dated February 3, 2021, March 12, 2021, April 21, 2021, April 22, 2021 and August 11, 2021 to BMCL Private Limited (valuer) indicate that Mr. Sundaresh Bhat tried to dictate the methodologies for valuation and also to influence the valuation. Mr. Sundaresh Bhat even intimidated the valuer of not paying them of their fees in case valuation report is not prepared as per his views/directions.
- 3.1.3. Mr. Sundaresh Bhat's conduct of dictating the terms, methodology etc. to valuers to conduct the valuation and intimidating them of not paying fees unless the report is made as per his terms, depicts his *mala fide* intent.
- 3.1.4. In view of the above, the Board is of the view that Mr. Sundaresh Bhat has *inter alia* violated Clause 9 read with Clause 1, 2, 3, and 14 of the Code of Conduct.

3.2. Submissions of Mr. Sundaresh Bhat

- 3.2.1. Mr. Sundaresh Bhat submitted that the SCN has presupposed the valuation being discussed with registered valuers for an official valuation under the Liquidation Regulations. The official valuation under the Liquidation Regulations had already been

conducted in 2019. There is no provision under the law for a revised valuation under Regulation 35 of the Liquidation Regulations to be conducted and this market price assessment exercise undertaken by BMCL Private Limited ("BMCL") did not seek to override or undercut the official valuation in any way. The market price assessment exercise undertaken by BMCL was an exercise run because of the events in 2020-2021 due to the pandemic, to assist and improve negotiations with counterparties. Moreover, the various discussions with the advisor appointed were not to influence them but simply to require it to comply with the methodology already agreed in writing by these advisors in a stakeholders' meeting and in a contract. The said advisor BMCL was in flagrant breach of agreed terms and Mr. Sundaresh Bhat by endeavoring to obtain an accurate report, was protecting the interests of the stakeholders and the process by requesting him to correct this.

- 3.2.2. During the personal hearing, Mr. Sundaresh Bhat denied the allegation that he influenced, or tried to influence, in any manner whatsoever, BMCL, or the report of BMCL. He submitted that due to change in market conditions on account of the COVID-19 pandemic between 2020 - 2021, there was a shift in the prices of metals and steels. One of the major assets of the CD, that was pending sale was the metal and steel scrap materials at the Dahej shipyard of the CD. Mr. Bhat further stated that it was also clarified in the said meeting that such a market assessment was aimed at ascertaining the realizable value and such an exercise would not be considered to be a 'valuation' or 'valuation report' as defined in the Code, and the professional advisor appointed shall not be appointed in the capacity of a 'registered valuer' as defined under the Code.
- 3.2.3. Mr. Bhat submitted that the exercise was aimed at assessing the market realizable value of a part of the assets of the CD which was exposed to frequent fluctuation in price driven by market dynamics, and not of the CD or its entire assets. In lieu thereof, BMCL was appointed as a professional advisor to the Liquidator to conduct a market assessment to establish realizable value exercise for the Dahej metal and scrap. As explained above, BMCL was not appointed to carry out 'valuation' services as a 'registered valuer' under the Code.
- 3.2.4. He further stated that, without prejudice to the above, eventually, the matter was resolved on 26.10.2021. It was agreed that BMCL report be accepted and taken on record on the basis that the realizable value basis market estimate of ship blocks and ship scrap is Rs. 31.50 per kg, *i.e.*, the same price that was contained in the report shared by BMCL on 12.03.2021. Thus, in any case, no change was made in the report by BMCL.
- 3.2.5. Mr. Bhat submitted that clause 9 of the Code of Conduct pertains to an IP influencing either the CoC, debtor or other stakeholders under the Code. Under Regulation (2)(1)(k) of the Liquidation Regulations, 'Stakeholders' is defined as "*the stakeholders entitled to distribution of proceeds under section 53*". BMCL is not a stakeholder entitled to distribution under section 53 of the Code and accordingly, does not classify as a 'stakeholder' as prescribed in the Code and Liquidation Regulations. Further, under Regulation 2(1)(k) of the Inspection Regulations, 'Stakeholder' is defined as "*means a stakeholder as defined in clause 0) of sub-regulation (1) of regulation 2 of the*

Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017. Further, under Regulation 2(1)(j) of the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 ("Grievance Regulations"), '*Stakeholder*' means a debtor, a creditor, a claimant, a service provider a resolution applicant and any other person having an interest in the insolvency, liquidation, voluntary liquidation, or bankruptcy transaction under the Code". BMCL is not a service provider either. The '*Service Provider*' is defined under Regulation 2(1)(h) of the Grievance Regulations, '*Service Provider*' is defined as "an insolvency professional agency, an insolvency professional, an insolvency professional entity or an information utility". He submitted that on a co-joint reading of the above legal provisions, it was clear that BMCL does not fulfil the criteria of persons stipulated under Clause 9 of the Code of Conduct as, BMCL is not in the committee of creditors or debtor nor is a 'stakeholder' under the Code. Mr. Bhat submitted that the notice does not state that he has made or did this to make any undue or unlawful gains for himself or his related parties, or cause any undue preference for any other persons for undue or unlawful gains or adopt any illegal or improper means to achieve any *mala fide* purpose. Therefore, Clause 9 does not apply on facts or, in law.

3.3. Summary Findings

- 3.3.1. The DC observed that several emails were exchanged between BMCL Private Limited and Mr. Bhat wherein the IP has provided the methodology to the valuer to conduct the valuation. The email dated 21.04.2021 between the valuer and Mr. Bhat showed that Mr. Bhat was influencing the work of the registered valuer. In dealing with other professionals, especially valuers, abundant caution is required so as to avoid the situation of influencing the end results; which otherwise required to be carried out independently. It is not the question whether BMCL was entrusted with the work of valuation or to examine specific query related to price discovery, in both the situation, threat to withhold the fee is devoid of any justification and is akin to influencing the price discovery mechanism.
- 3.3.2. Considering the fact that BMCL Private Ltd. had been engaged not for doing the valuation of the assets of CD but for doing market assessment of the assets of the CD on the advice of SCC, DC takes a lenient view and close this particular contravention with a word of caution to Mr. Sundaresh Bhat.

3.4. Contravention No. II as regards to prescribing Non-refundable participation fees.

- 3.4.1. It is observed that in the public announcements made on 17.09.2019, 27.09.2019, 21.10.2019, and 11.11.2019, Mr. Sundaresh Bhat prescribed non-refundable participation fee of Rs. 5,00,000/-, Rs. 10,00,000/-, Rs. 10,00,000/- and Rs.50,000/- respectively at the time of submission of Expression of Interests (EOI).
- 3.4.2. Seeking non-refundable participation fees from prospective bidders defeats the spirit of the Code, one of the objectives of which is maximization of value of assets of the

CD. Such unreasonable conditions would also have acted as an impediment for the prospective bidders to participate in the bidding process which is manifested in successive failure of e-auctions thereby delaying the process. Mr. Bhat's submission in reply to DIR that he refunded participation fees to EOI applicants who withdrew their EOI is misleading as the participants would not be knowing about it and hence payment of 'non-refundable' participation fees would have weighed in their decision to submit EOI.

- 3.4.3. In view of the above, the Board is of the view that Mr. Sundaresh Bhat has *inter alia* violated clause (d) of sub-regulation (4) of amended regulation 36A of CIRP Regulations read with clause 12, 13 and 14 of the Code of Conduct.

3.5. Submissions of Mr. Sundaresh Bhat

- 3.5.1. Mr. Sundaresh Bhat submitted that at the time when the auction process was conducted vide advertisements dated 17.09.2019, 27.09.2019, 22.10.2019 and 11.11.2019 ("E-Auctions"), proviso to Schedule I (1)(3) of the Liquidation Regulations was not in force and there was no embargo in the Liquidation Regulations against prescribing non-refundable participation fee in the auction process for sale of assets under liquidation. Such participation fees were common practice preferred by committees of creditors for CIRP and stakeholder committees to keep out non-serious participants in the process. In the absence of any such provision, including a non-refundable fee in a sale process cannot be held as contravention of any applicable law.
- 3.5.2. The proviso to Schedule I (1)(3) of the Liquidation Regulations was inserted pursuant to an amendment dated 30.09.2021, that is, nearly two years later, which restricts requirement of payment of any non-refundable deposit or fee for participation in an auction under the liquidation process. The amendment is not retrospective. Therefore, when the proviso to Schedule I (1)(3) of the Liquidation Regulations was not in effect at the relevant time when E-Auctions were conducted by him and he cannot be held to be in contravention of any applicable law.
- 3.5.3. The liquidation process of the CD commenced vide order of the AA dated 25.04.2019, following which Mr. Bhat commenced carrying out his duties under the Code. Prior to commencement of the auction processes, Mr. Bhat consulted the financial creditors as stakeholders in terms of seeking their advice/views on the mode, method and terms of sale, as is the obligation cast on him. During a meeting of such financial creditors of the CD on 13.09.2019, it was advised that for the first auction, the CD 'as a whole' should be put for sale. The asset to be put for sale had a reserve price of Rs. 14,80,00,00,000/- (Rupees One Thousand Four Hundred and Eighty Crore only). It was apprehended that a public invitation for EOI for participation may attract non-serious buyers who might be interested only in buying some assets, like the scrap, and not to bid for CD to continue it as a going concern. Prescription of non-refundable participation fee of Rs. 5,00,000/- was likely to ensure only bidders capable of purchasing the asset as a whole, participate. It was agreed that prescription of non-refundable participation fee would ensure the participation of legitimate bidders who

possess the wherewithal and financial capability to execute such a sale. It was also the intent of stakeholders and Mr. Bhat that there was timely closure of the auction process to achieve early closure and maximization of value for the stakeholders. The participation fee contemplated herein was 0.003% of the reserve price of the assets, which is negligible compared to the reserve price.

- 3.5.4. Mr. Bhat submitted that there is no material on record or evidence to suggest that it was because of prescription of non-refundable participation fees that auction could not fructify. The failure of the auctions was due to economic considerations and not as a result of imposition of Participation Fees, which in any event was a miniscule fraction of the reserve price, and which had not only been prescribed in consultation with the stakeholders but was perfectly in consonance with the law as it prevailed at the relevant time.

3.6. Summary Findings

- 3.6.1. Clause (d) of sub-regulation (4) of amended regulation 36A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) states:

“(d) not require payment of any fee or any non-refundable deposit for submission of expression of interest.”

Further, sub-regulation (4) of amended regulation 36B of CIRP Regulations states:

“(4) The request for resolution plans shall not require any non-refundable deposit for submission of or along with resolution plan.”

The above provisions mandates the RP not to prescribe payment of any fee or any non-refundable deposit for submission of EOI and resolution plan for CDs during CIRP.

Clause 13 and 14 of the Code of Conduct for Insolvency Professionals provided under IP Regulations states as follows:

“13. An insolvency professional must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan his actions, and promptly communicate with all stakeholders involved for the timely discharge of his duties.

14. An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code.”

- 3.6.2. The DC observes that the prescription of non-refundable participation fee by Mr. Sundaresh Bhat in successive auctions, despite the failure of previous auctions, would have acted as a deterrent for prospective bidders and would have led to limited participation and resultant failure of the auctions.

3.6.3. The DC accepts the submission of Mr. Sundaresh Bhat to the extent of non-application of regulation 36A(4)(d) and regulation 36B (4) of CIRP Regulations. However, the submission of Mr. Sundaresh Bhat that the prescription of non-refundable participation fee would ensure the participation of legitimate bidders who possess the wherewithal and financial capability to execute such a sale, does not bode well as evident from the circumstances of the instant case. On the contrary, the prospective participants were unaware that the condition of non-refundability of participation fee shall be diluted in such scenarios where the auction fails, as such, some prospective bidders may not have even participated in the auction. Such misuse of authority on part of the liquidator defeated the very objectives of the Code to maximize value of assets of the CD and complete the process in a time-bound manner. Hence, the DC hold Mr. Sundaresh Bhat in contravention of clauses 13 and 14 of the Code of Conduct under IP Regulations.

3.7. Contravention with regard to appointment of unregistered valuers.

- 3.7.1. It is observed that Mr. Sundaresh Bhat appointed two registered valuers namely Manish Kaneria and Rakesh Narula *vide* respective engagement letters dated 30.04.2019. However, Mr. Sundaresh Bhat informed to SCC in its meeting held on 19.06.2019, that he appointed RBSA Valuation Advisors LLP and Rakesh Narula and Co. to conduct the valuation of the assets of the CD instead of Manish Kaneria and Rakesh Narula. Mr. Sundaresh Bhat's statement before SCC is further substantiated by the fact that the valuation report dated 15.07.2019, and corrigendum dated 19.11.2019, submitted by RBSA Valuation Advisors LLP were signed by Mr. Manish Kaneria as one of the partners of RBSA and not in his individual capacity. Further, the valuation report dated 13.07.2019, was signed by Rakesh Narula both in his individual capacity as well as partner of Rakesh Narula & Co.
- 3.7.2. As is evident Mr. Sundaresh Bhat got the valuation of assets of CD done through RBSA Valuation Advisors LLP, which was not a registered valuer entity at that time. Rakesh Narula and Co was also not a registered valuer entity until 23.07.2020.
- 3.7.3. The Board Circular IBM/RV/019/2018 dated 17.10.2018 specifically provides that with effect from 01.02.2019, no insolvency professional shall appoint a person other than a registered valuer to conduct any valuation under the Code or any of the regulations made thereunder.
- 3.7.4. Furthermore, IBBI Circular No. IP/003/2018 dated 03.01.2018 prohibits an IP to outsource any of his duties and responsibilities under the Code. It is noted that Mr. Sundaresh Bhat allowed Mr. Manish D Kaneria and Mr. Rakesh Naurla to outsource appointment of valuers in different assets class to others. It is seen that Mr. Manish D Kaneria appointed Mr. Rajeev Shah as valuer for asset class, Securities and Financial Assets. Similarly, Mr. Rakesh Narula appointed Mr. Tejas Dave and Mr. Chander Sawhney as valuer for asset class, Land and Building and Securities and Financial Assets, respectively.
- 3.7.5. Thus, by appointing unregistered valuer entities and additionally allowing to outsource his duties of appointing valuers in different asset class, Mr. Sundaresh Bhat has

violated *inter alia* Regulation 7(1) read with Regulation 35(2) of Liquidation Regulations, Clause 1 and 14 of the Code of Conduct and IBBI Circular No. IBBI/RV/019/2018 dated 17.10.2018.

3.8. Submissions of Mr. Sundaresh Bhat

- 3.8.1. Mr. Sundaresh Bhat denied that he had appointed any unregistered valuer. He denied that RBSA Valuation Advisors LLP or Rakesh Narula and Co. were appointed as valuers by him.
- 3.8.2. Mr. Sundaresh Bhat stated that Mr. Manish Kaneria was appointed as registered valuer by him which was evident from (i) his Contract/ engagement letter dated 30.04.2019 which was on the letter of head of Mr. Manish Kaneria wherein his registration number with the IBBI was clearly mentioned; and (ii) the said engagement letter in the first paragraph states "this letter of engagement defined the terms of engagement between Mr. Sundaresh Bhat ("Client / Liquidator)" and independent, registered valuer, Mr. Manish Kaneria ("Registered Valuer") in connection with the valuation services to be provided by the Registered Valuer to Client.." Therefore, it is abundantly clear that the appointment of Mr. Manish Kaneria under Regulation 35 of the Liquidation Regulations, is of him being a registered valuer.
- 3.8.3. With regard to the observation that Mr. Sundaresh Bhat informed the stakeholders in its meeting held on 19.06.2019 that RBSA Valuation Advisors LLP and Rakesh Narula & Co. have been engaged to conduct valuation of assets of Corporate Debtor; Mr. Bhat submitted that while drafting the minutes names of partnership firms of Mr. Kaneria and Mr. Narula instead of their actual names may have been used but that was only inadvertently. An inadvertent and colloquial use in minutes does not change the fact that appointment as registered valuers was of individuals and not their firms, which is fully substantiated by the appointment letters.
- 3.8.4. With regard to the observations relating to valuation report from Mr. Manish Kaneria being signed by him as a partner of RBSA, and the valuation report of Mr. Rakesh Narula signed in his individual capacity as well as partner of Rakesh Narula and Co.; Mr. Bhat submitted that if the registered valuer used his title as partner of the firm, then Mr. Sundaresh Bhat cannot be held responsible or liable the valuer's acts.
- 3.8.5. Regarding the issue raised during the personal hearing whether the fees were paid to Mr. Kaneria, Mr. Sundaresh Bhat submitted that an engagement letter was executed with Mr. Kaneria on 30.09.2019 and the report was submitted by Mr. Kaneria in July and November 2019. He stated that RBSA was registered with the Board with effect from 29.08.2019. Mr. Sundaresh Bhat added that on 09.09.2020, an email was sent on behalf of Mr. Manish Kaneria by Mr. Nachiket Kadu, personnel of RBSA attaching the invoice for the professional services in relation to the valuation of the Corporate Debtor. Since the invoice requested the payment in the account of RBSA, Mr. Sundaresh Bhat in good faith and upon the instructions of Mr. Kaneria (as apparent from the cover email) made such payment to the account of the RBSA. Mr. Sundaresh Bhat submitted that Mr. Kaneria was and is a partner at RBSA and himself requested

that payment be made into that account. Therefore, he upheld the spirit of the law and paid the professional into his account i.e. the account that the professional wanted to be paid in. Without prejudice, it was submitted by Mr. Sundaresh Bhat that the payments were made only after RBSA was registered with the Board and Mr. Kaneria is and was a partner with RBSA.

- 3.8.6. Mr. Sundaresh Bhat submitted that the Corporate Debtor was admitted into liquidation on 25.04.2019. At such time (and within 7 days from such date), there were barely any registered valuers entities / organizations that were registered with the Board, as per the website of the Board. In terms of the Liquidation Regulations, the Liquidator may appoint only two registered valuers. Given the limited pool of the registered valuers or entities at the relevant time, he was unable to find two registered valuers having the requisite qualification/ registration to value all three asset classes (i.e. Land & Building; Plant & Machinery; and Securities & Financial Assets), for appointment.
- 3.8.7. Mr. Sundaresh Bhat submitted that in order to address the matter of (i) appointment of second valuer for the asset class 'Land and building' and (ii) appointment of two valuers for the asset class 'Securities & Financial Assets', the engagement letters for appointment of the registered valuers i.e. Mr. Rakesh Narula and Mr. Manish Kaneria make a provision for the aforementioned registered valuers to obtain inputs from other registered valuers (which are clearly identified in the engagement letters) including Mr. Tejas Dave, Mr. Chander Sawhney and Mr. Rajeev Shah for the asset class in which the first mentioned registered valuer were not registered. In terms of Rule 8 of the Companies (Registered Valuers and Valuation) Rules, 2017, Mr. Manish Kaneria (in the capacity of the appointed registered valuer) was empowered to obtain inputs from Mr. Rajeev Shah for the asset class 'Securities and Financial Assets'; and Mr. Rakesh Narula (in the capacity of the appointed registered valuer) was empowered to obtain inputs from Mr. Tejas Dave and Mr. Chander Sawhney for the asset classes 'Land and Building' and 'Securities and Financial Assets' respectively. This cannot be construed as 'outsourcing' being well within the letter of the applicable law in this regard particularly, Rule 8 of the Companies (Registered Valuers and Valuation) Rules, 2017. Thus, there has been no contravention of Regulation 7(1) read with Regulation 35(2) of Liquidation Regulations since the Liquidator appointed two registered valuers for carrying out the valuation exercise strictly in terms of the Liquidation Regulations.

3.9. Summary Findings

- 3.9.1. The records indicate that Mr. Bhat had appointed two registered valuers namely Mr. Manish Kaneria and Mr. Rakesh Narula vide respective engagement letters dated 30.04.2019. The records further indicate that the valuation report dated 15.07.2019 and corrigendum dated 19.11.2019 thereto submitted by RBSA Valuation Advisors LLP and signed by Manish Kaneria as one of its Partners, mention that "*RBSA Valuation Advisors LLP has been appointed as a registered valuer to determine liquidation value of specified assets of the Company on a standalone basis in accordance with clauses*

(a) to (f) regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016”. Further, the valuation report states that “In accordance with our appointment vide engagement letter dated April 30, 2019...”, whereas RBSA Valuation Advisors LLP was not a registered valuer entity as on 30.04.2019. The RBSA Valuation Advisors LLP was registered as Registered Valuer Entity on 29.08.2019. Further, the payments were also credited to the respective entities instead to the account of the registered valuers.

- 3.9.2. Further, it is observed that Mr. Bhat has appointed Mr. Manish D Kaneria as valuer who has further outsourced and appointed Mr. Rajeev Shah as valuer for asset class, Securities and Financial Assets. Similarly, Mr. Rakesh Narula who has further outsourced and appointed Mr. Tejas Dave and Mr. Chander Sawhney as valuer for asset class, Land and Building and Securities and Financial Assets, respectively.
- 3.9.3. The minutes of the stakeholders’ committee meeting dated 19.06.2019 indicate that Mr. Sundaresh Bhat has informed the committee that he had appointed RBSA Valuation Advisors LLP and Rakesh Narula & Co. to conduct valuation of assets of CD, instead of Manish Kaneria and Rakesh Narula.

The Board Circular IBBI/RV/019/2018 dated 17.10.2018 states that:

“5. The regulations made under the Code specify requirements of valuation and who can conduct such valuation. For example, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provide for valuation as under:

“2(1)(m): “registered valuer” means a person registered as such in accordance with the Companies Act, 2013 (18 of 2013) and rules made thereunder.”

“27. The resolution professional shall within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35:

Provided...”.

6. In view of the above, every valuation required under the Code or any of the regulations made thereunder is required to be conducted by a ‘registered valuer’, that is, a valuer registered with the IBBI under the Companies (Registered Valuers and Valuation) Rules, 2017. It is hereby directed that with effect from 1st February, 2019, no insolvency professional shall appoint a person other than a registered valuer to conduct any valuation under the Code or any of the regulations made thereunder.

Further, regulation 7(1) pertaining to appointment of professionals under Liquidation Regulations provides as follows:

“7. Appointment of professionals.

(1) A liquidator may appoint professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.”

Further as per Regulation 35(2) pertaining to valuation of assets under Liquidation Regulations:

“... where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor:”

Clause 14 of the Code of Conduct states :

“14. An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code.”

3.9.4. The DC observes that Mr. Sundaresh Bhat has not acted as per IBBI Circular No. IBBI/RV/019/2018 dated 17.10.2018 which mandates the liquidator to appoint only registered valuers with effect from 01.02.2019 to conduct valuation under the Code and Regulations made thereunder. Hence, Mr. Sundaresh Bhat is in contravention of IBBI Circular No. IBBI/RV/019/2018 dated 17.10.2018.

3.9.5. Further, rule 8(2) of Valuation Rules provides for obtaining inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer whereas Regulation 35(2) of Liquidation Regulation provides for appointment of two registered valuers for each class of asset by the liquidator. The DC notes that Rule 8(2) cannot be interpreted to hold outsourcing (of responsibility) *pari passu* with obtaining inputs. In view of the same, the conduct of outsourcing the appointment of valuers to third person, Mr. Sundaresh Bhat has acted in contravention of Regulation 7(1) read with Regulation 35(2) of Liquidation Regulations and Clause 14 of the Code of Conduct under IP Regulations.

3.10. Contravention with regard to fees of BDO Restructuring Advisory LLP.

3.10.1. Sub-regulation (1) of Regulation 7 of Liquidation Regulations provides that a liquidator may appoint professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.

3.10.2. It is observed that Mr. Sundaresh Bhat appointed BDO Restructuring Advisory LLP (BDO), where he is a partner, for providing support services in the liquidation process

of the CD. It is observed from 1st to 9th quarterly progress reports filed before AA that fee/remuneration charged by BDO varies in every quarter. Further in addition to fees, out of pocket expenses (OPE) to BDO has also been charged in every quarter. In certain quarters, no fees have been charged by BDO but OPE has still been charged. It is also observed that since fourth progress report onwards, the OPE of Liquidator and BDO has been presented together as expenses for liquidator's team. The table below shows quarter wise details of fees, OPE paid to BDO and combined OPE paid to BDO and Liquidator together:

Period of Quarterly Progress Report	Professional Fee paid to BDO	OPE paid to BDO	Combined OPE paid to BDO
June 2019	20,00,000	5,00,000	-
September 2019	22,50,000	4,50,000	-
December 2019	47,50,000	1,50,000	-
March 2020	-	1,50,000	-
June 2020	-	15000	-
September 2020	7,50,000	-	1,09,742
December 2020	8,25,000	-	2,76,016
March 2021	-	-	5,58,449
June 2021	27,00,000	-	1,16,465

- 3.10.3. Some basis was indicated in ninth progress report for quarter ending 30.06.2021 stating Rs. 9 Lakhs per month fee of BDO. However, this does not apply to BDO's fee for earlier quarters. Fixing of fees having such wide variation without fixing any criterion or basis for calculating fees of IPE is not in conformity with the provisions of Regulation 7(1) of Liquidation Regulation as per which the remuneration to professionals appointed in the process of liquidation should be a reasonable one.
- 3.10.4. Further, considering that Mr. Sundaresh Bhat is one of the partners of the BDO, charging of OPE incurred by him and BDO together only shows his *mala fide* intention but also is in violation of Board Circular No. 1P/004/2018 dated 16th January 2018 which provides that professionals appointed by an IP shall raise bills/invoices in his /its name towards such fees, and such fees shall be paid to his /its bank account. Clubbing of these two expenditures also suggests that Mr. Sundaresh Bhat has not acted independently while conducting the process of liquidation of the CD and the IPE engaged by him was not merely for support services.
- 3.10.5. It is seen on perusal of 13th progress report filed on July 13, 2022, that since the inception of the liquidation process till the quarter period ended June, 2022, the fees payable to BDO is Rs. 2,83,28,750/- whereas fees payable to Mr. Sundaresh Bhat as per Regulation 4 of Liquidation Regulations is Rs. 2,21,00,000/-. BDO was additionally paid out of pocket expenses also. As brought out above, BDO engaged for support services was paid more than the fees of the liquidator. Enabling provisions in the Code and regulations allowing appointment of professionals by liquidator are there for the purpose of helping him in managing the process of liquidation. The table indicating percentage of fee on the amount realized/distributed provided under

regulation 4(3) of Liquidation Regulations duly takes into account the role and function of a liquidator in running the liquidation process. Any entity engaged to help a liquidator cannot be expected to be entrusted with responsibilities more than that of liquidator so as to justify higher fees to such entity in comparison to that of liquidator. Hence, engaging a related entity on vague terms and conditions and paying them fee more than his own fee as liquidator is not only unjustified but also *mala fide*.

- 3.10.6. Moreover, an IP is obliged under section 208(2)(a) of the Code to take reasonable care and diligence while performing his duties, including incurring expenses. The Board Circular dated June 12, 2018 (No. IBBI/IP/013/2018) clearly specifies that not only fee payable to IP is reasonable but also other expenses incurred by him are reasonable.
- 3.10.7. In view of the above, the Board is of the prima facie view that Mr. Sundaresh Bhat has *inter alia* violated Regulation 7(1) of Liquidation Regulations, read with Clause 1, 2, 14 and 25 of the Code of Conduct and Board Circular dated June 12, 2018 (No. IBBI/IP/013/2018) and Board Circular No. IP/004/2018 dated 16th January 2018.

3.11. Submissions of Mr. Sundaresh Bhat

- 3.11.1. Mr. Sundaresh Bhat submitted that he was a partner of the insolvency professional entity being BDO Restructuring Advisory LLP ("BRAL" or "IPE") duly registered with the IBBI on or about June 2017. As regards the appointment of IPE (in which the concerned IP is a partner or director) by IP in connection with any work relating to his assignment, the same is expressly permitted in terms of the explanation supporting Clauses 23A to 23C of the Code of Conduct for Insolvency Professionals under First Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016. Mr. Sundaresh Bhat denied the allegations and observations regarding alleged violation of the provisions of the Code, Regulations and Code of Conduct referred in the Notice. No payment whatsoever has been made to IPE at varying rates, the estimates regarding the IPE fees mentioned in the various quarterly reports filed by the IP with the Adjudicating Authority, are merely estimates of IPE fees and are not the actual fee paid to the IPE other than in the twelfth and thirteenth progress reports wherein the actual fees paid has been set out. Since the IPE was continuing to render services without payment, it was prudent to provide some estimate to ensure provisional accounting for the IPE fees. In fact, no invoices were raised, and no fees was paid at all to IPE until after due finalization of the understanding relating to IPE fees with the stakeholders at the meeting held on 14 January 2022 and even thereafter only 50% of the approved IPE Fees which was due and payable has actually been paid till date. Mr. Sundaresh Bhat further submitted that an amount of Rs. 5 crore is payable to BRAL for the services rendered over the past 3.5 years, which amounts to Rs. 12.5 Lacs per month. Therefore, the fees of BRAL tantamount to 0.34% of the liquidation value of the assets of the Corporate Debtor.
- 3.11.2. Mr. Sundaresh Bhat has submitted that the fee of the IPE was not variable or based on vague criteria. He appointed the IPE to provide support services for the tenure of the Corporate Debtor's liquidation and that has been duly disclosed. As detailed above, the IPE has executed varied, complex and time-consuming exercises for supporting the

Liquidator in carrying out his functions.

- 3.11.3. Mr. Sundaresh Bhat submitted that the extensive scope of work of the IPE clearly substantiated the amount of work/effort and involvement of the IPE in the Corporate Debtor's liquidation process which was amongst the largest of such processes in the country (also being acknowledged by the Reserve Bank of India). Moreover, the fees of the IPE had been duly discussed and negotiated at meetings of the stakeholders held on 14 January 2022. Pursuant to the aforesaid meetings, given the scope of work, complexity and reasonableness commensurate to the work and market practice, the stakeholders provided their concurrence/ approval to payment of Rs. 12.5 Lacs per month as fixed fee to IPE for the liquidation tenure.
- 3.11.4. Mr. Sundaresh Bhat submitted that the *bona fides* of the IP and IPE were strongly reflected in the fact that the IPE continued to provide support and services in connection with the liquidation process of the Corporate Debtor without payment of a single rupee for a period of 33 months. Further, not only were the rates of the IPE fees fixed after due advice from the stakeholders but even the payment of the fee (which has only been partly paid till date) was made after due consultations with stakeholders. Accordingly, not only has the fees of the IPE been affixed in due consultation with the stakeholders after duly taking into account the scope of work, complexity and reasonableness commensurate to the work and market practice, the fees so fixed was in fact far lower than the work being undertaken as per market standard.
- 3.11.5. In respect to the observation relating to the quantum of fee payable to IPE being higher than that payable to Mr. Sundaresh Bhat, he submitted that the Liquidation Regulations only envisage payment of reasonable fee to the professionals engaged by the liquidator. The Code or the Liquidation Regulations do not provide for a cap/ limit to the fee payable to the professionals engaged by the Liquidator. Accordingly, as long as the fee charged by the professional engaged (in this case-BRAL) is commensurate with the scope of work, the same is legally permissible regardless of whether it is higher or lower than the fee payable to the Liquidator. It is also extremely pertinent to mention that no payment whatsoever has been made to IPE at varying rates, the estimates regarding the IPE fees mentioned in the 1st to 11th quarterly reports filed by the IP with the Adjudicating Authority, were merely estimates of IPE fees and are not the actual fee paid to the IPE.
- 3.11.6. In respect of the OPE of the IP and IPE being presented together as expenses for the liquidator's team for the period September 2020 to June 2021, Mr. Sundaresh Bhat clarified that the joint figure was only presented for the sake of convenience and ease of presentation, the actual bills/ invoices were raised separately by IP and IPE team respectively and actual reimbursement made into respective bank accounts only. There has been not a single instance of joint charging or joint payment of OPE to IP and IPE thus no question of mala fide arises.

3.12. Summary Findings

- 3.12.1. The DC notes that Mr. Sundaresh Bhat appointed BDO for tenure of liquidation proceeding of the CD, which was further renewed for revised retainer support since April 2021. The DC notes that Mr. Sundaresh Bhat has not stated any criterion or basis for calculating fees of BDO which is variable as can be observed from progress reports filed before AA. Fixing of fees having such wide variation without fixing any criterion or basis for calculating fees of IPE is not in conformity with the provisions of Regulation 7(1) of Liquidation Regulation as per which the remuneration to professionals appointed in the process of liquidation should be a reasonable one.
- 3.12.2. The DC has also observed that Mr. Sundaresh Bhat is one of the partners of the BDO. The charging of OPE incurred by him and BDO together is against the intend of Board Circular No. 1P/004/2018 dated 16th January 2018 which provides that professionals appointed by an IP shall raise bills/invoices in his /its name towards such fees, and such fees shall be paid to his /its bank account. Clubbing of these two expenditures also suggests that Mr. Sundaresh Bhat has not acted independently while conducting the process of liquidation of the CD and the IPE engaged by him was not merely for support services.
- 3.12.3. Further, it is observed from the 13th progress report filed on July 13, 2022, that since the inception of the liquidation process till the period ended June, 2022, the fees payable to BDO is Rs. 2,83,28,750/- whereas fees payable to Mr. Sundaresh Bhat as per Regulation 4 of Liquidation Regulations is Rs. 2,21,00,000/-. Apart from the fees, the BDO was additionally paid out of pocket expenses also. As brought out above, BDO engaged for support services was paid more than the fees of the liquidator. Any entity engaged to help a liquidator cannot be expected to be entrusted with responsibilities more than that of liquidator so as to justify higher fees to such entity in comparison to that of liquidator. Hence, engaging a related entity on vague terms and conditions and paying them fee more than his own fee as liquidator is not only unjustified but also *mala fide*. Thus, in view of the above facts, the DC is of the view that by vaguely fixing fee of BDO and obscurely presenting OPE, Mr. Sundaresh Bhat had contravened Clause 25A of the Code of Conduct under IP regulations.

4. Order

- 4.1. Section 36 of the Code provides that the liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors. Further, the IP as per section 208(2)(a) of the Code, is bound to abide by the Code of Conduct and to take reasonable care and diligence while performing his duties. As per the clause 25 of the Code of Conduct, an IP must provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken and is not inconsistent with the applicable regulations.
- 4.2. Drawing and charging unreasonable amount as fee is akin to overcharging at the expense of all the creditors of CD, whose liquidation estate Mr. Sundaresh Bhat is holding as a fiduciary. Section 7(1) states that a liquidator may appoint professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost. It is

pertinent to note here that Circular No. IBBI/IP/013/2018 dated 12-06-2018 provides in para 3 thereof that an IP is obliged under section 208(2)(a) of the Code to take reasonable care and diligence while performing his duties, including incurring expenses. 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. An IP has to take due diligence while deciding the fee payable to him but also other expenses incurred by him. In the present case, Mr. Sundaresh Bhat has paid BDO a fee far more than that of his own fee plus OPE. The DC observed that terms and references of the work and the remuneration were needed to be spelt out in the contract clearly to dispel any suspicion on the ground of connivance. This due diligence has not been followed in the instant case by the IP.

- 4.3. In addition to specific obligations and prohibitions under the Code and the regulations made thereunder, an IP must always abide by the Code of Conduct as specified in First Schedule under the IP Regulations. The Code of Conduct requires that an IP must not only be fair, but also seen to be fair in all his professional dealings.
- 4.4. Hence, the DC, in exercise of the powers conferred under section 220 (2) of the Code read with Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Mr. Sundaresh Bhat for a period of two years.
- 4.5. The Order shall come into force on expiry of 30 days from the date of its issue in view of para above.
- 4.6. A copy of this order shall be sent to the CoC members of all the Corporate Debtors in which Mr. Sundaresh Bhat is providing his services as IRP or RP or to the stake holder committee members where he is serving as liquidator and to concerned AAs for taking appropriate view on whether to continue his services or not. In CIRP cases where CoC decides to discontinue his services, CoC may file an appropriate application before the concerned AA.
- 4.7. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Sundaresh Bhat is enrolled as a member.
- 4.8. 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.

Accordingly, the show cause notice is disposed of.

Sd/-

(Sudhaker Shukla)

Whole Time Member, IBBI

Dated: 28th September, 2022

Place: New Delhi