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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 13317/2022 & CM APPL. 40416/2022**

SAVAN GODIAWALA

..... Petitioner

Through: Mr. Mukul Rohatgi and Mr. Neeraj
Kishan Kaul, Sr. Advs. with Mr.
Manmeet Singh, Ms. Nastassia
Khurana, Mr. Deepak Joshi and Mr.
Keshav Sehgal and Ms. Mukta Halbe,
Advs.

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

..... Respondent

Through: Ms. Madhavi Divan, Sr. Adv. with
Mr. Sahil Monga and Mr. Shubham
Saigal, Advs. for IBBI.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

% **14.09.2022**

CM APPL. 40417/2022 (for exemption)

Allowed, subject to all just exceptions.

The application shall stand disposed of.

W.P.(C) 13317/2022 & CM APPL. 40416/2022(Interim Stay)

Notice. Since the respondent is duly represented by learned counsel, let a counter affidavit be filed within a period of four weeks from today.

The Court takes note of the principal contention as addressed by Mr. Rohatgi and Mr. Kaul, learned Senior Counsels appearing in support of the writ petition, who submit that the record would reflect that there has been an evident failure on the part of the Insolvency and Bankruptcy Board of India ["Board"] to provide a copy of the Final Investigation Report which was submitted. It was contended that the Board was clearly obligated to provide



a copy of the said report in terms of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017. It was additionally submitted by learned senior counsels appearing for the petitioner that the scale of fee as framed was open to interpretation and competing views being taken. It was their submission that there was thus no mala fide on the part of the petitioner. In any case, the Court is apprised that the overcharged amount has since then been duly refunded and deposited by the petitioner.

Ms. Diwan, learned senior counsel appearing for the Board on the other hand submitted that even if the Final Investigation Report had not been provided to the petitioner, the same would not have any impact on the ultimate order passed since the same was based upon the Board independently dealing with and considering all issues and aspects of the matter. Insofar as the question of excess fee charged is concerned, learned senior counsel submitted that the refund came to be made only after the Board has taken cognizance of the infractions besetting the liquidation process. Learned senior counsel pointed that out that no effective steps were taken by the petitioner and the liquidation proceedings languished for over four years without any effective steps having been taken to bring about a closure thus causing grave prejudice to the creditors of the corporate debtor.

The more important aspect which merits further consideration arises from the admitted fact that the petitioner who while being a Partner in Deloitte Touche Tohmatsu India LLP [“Deloitte”] engaged that entity for the purposes of assisting him in the process of liquidation of the corporate debtor. While that relationship is stated to have been duly disclosed to the Committee of Creditors, the Court notes that Regulation 7 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016



required the Liquidator to not appoint a professional who may have been his “relative”. Further the First Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 which came to be amended w.e.f. 23 July 2019 also placed on the statute book Regulation 23 B in terms of which a Resolution Professional stands restrained from appointing any of his relatives or related parties. The Court takes note of these two Regulations in light of the contention of Ms. Diwan who submitted that the engagement of Deloitte not only fell foul of Regulation 7, in any case it was incumbent upon the petitioner to have disengaged and disassociated that entity from the liquidation process once the Amendments introduced in 2019 came to be enforced.

Additionally, the Court notes that the issue of whether it would have been permissible for a Resolution Professional to have appointed a related party at all bearing in mind the duty of liquidators to maintain integrity, independence and impartiality which were recognised and enshrined in the First Schedule even before it came to be amended in 2019, is a question which would merit consideration.

Consequently, and till the next date of listing the impugned order dated 18 August 2022 insofar as it requires the petitioner to deposit the disgorgement amount alone shall remain stayed.

List again on 13.12.2022, in the category of “End of Board”.

Dasti.

YASHWANT VARMA, J.

SEPTEMBER 14, 2022/bh

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/124/2022

18th August, 2022

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/R(INSP)/2021-22/11/3651/550 dated 13.06.2022 issued to Mr. Savan Godiawala, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 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. Savan Godiawala 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-00239/2017-2018/10468.

1. Developments in relation to resolution of the CD

- 1.1. The Show cause notice (SCN) issued by the Board includes contraventions of the provisions of the Insolvency and Bankruptcy Code, 2016 (Code) and regulations made thereunder in respect of running the insolvency processes of two corporate debtors (CDs), namely, (i) Lanco Infra Tech Limited and (ii) Shirpur Power Private Limited. As detailed in succeeding paragraphs, the insolvency professional, Mr. Savan Godiawala was Interim Resolution Professional/Resolution Professional/Liquidator for Lanco Infra Tech Ltd. and Interim Resolution Professional/Resolution Professional for Shirpur Power Private Limited.
- 1.2. In the case of Lanco Infra Tech Limited, Hon'ble NCLT, Hyderabad *vide* its order dated 07.08.2017 admitted the application filed by IDBI Bank Limited under section 7 of the Code and appointed Mr. Savan Godiawala as an Interim Resolution Professional who was later confirmed as the Resolution Professional. As no resolution plan was approved by the Committee of Creditors (CoC), the CoC passed a resolution for liquidation of the CD which was approved by Hon'ble AA *vide* order dated 27.08.2018 and Mr. Savan Godiawala was appointed as the Liquidator.
- 1.3. In the case of Shirpur Power Private Limited, Hon'ble NCLT, Ahmedabad *vide* its order dated 04.03.2020 admitted the application filed by State Bank of India and Bank of Baroda

under section 7 of the Code and appointed Mr. Savan Godiawala as an Interim Resolution Professional who was later confirmed as the Resolution Professional. As no resolution plan was approved by the Committee of Creditors (CoC), the CoC passed a resolution for liquidation of the CD which was approved by Hon'ble AA vide order dated 10.03.2021 and Mr. Dushyant Dave was appointed as the Liquidator.

- 1.4. Despite considerable time has elapsed, liquidation process in respect of both the CDs has not concluded yet. The Liquidation value in the matter of Lanco Infra Tech Limited, was estimated at Rs. 320 crores whereas in case of Shirpur Power Private Limited, the liquidation value of the assets was estimated as Rs. 477.84 crores. In case of Lanco Infratech, the Liquidator has realized around Rs.129 crores till date and out of which, around Rs.56 crores has been distributed. Further, Rs.314 crores (approx.) has been realized and Rs. 280 crores has been distributed to creditors in the matter of Shirpur Power Private Limited.

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

- 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 12.10.2020. The IA under sub-regulation (1) of Regulation 6 of the Inspection Regulations shared the Draft Inspection Report (DIR) with Mr. Savan Godiawala vide email dated 11.11.2021, to which Mr. Savan Godiawala submitted reply *vide* email dated 23.12.2021. The IA submitted the Inspection Report to the Board on 07.04.2022.
- 2.2. Based on the material available on record including the Inspection Report, the Board issued SCN to Mr. Savan Godiawala on 13.06.2022. The SCN alleged contravention of Section 34(8), 208(2)(a) and 208(2)(e) of the Code, Regulation 35A of CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clause 1, 2, 3, 10, 14 and 25 of Code of Conduct as specified under IP Regulations. Mr. Savan Godiawala replied to the SCN vide email dated 04.07.2022.
- 2.3. The Board referred the SCN, response of Mr. Savan Godiawala to the SCN and the material available on record, to the DC for disposal of the SCN in accordance with the Code and

Regulations made thereunder. Mr. Savan Godiawala was given opportunity for personal hearing before DC which he availed and he attended the proceedings along with his advocates Mr. Abhinav Vasisht and Nastassia Khurana. on 03.08.2022 online.

3. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Mr. Savan Godiawala's submissions thereof are summarized below:

In the matter of Lanco Infra Tech limited

3.1. Contravention with regard to withdrawal of excess remuneration as Liquidator's fee:

- 3.1.1. It is observed that for the period from 27th February 2019 to 27th August, 2019, due to wrong calculation of liquidation fee, Mr. Savan Godiawala has drawn excess fee of Rs. 83,04,764/- (Rupees Eighty-three lakh four thousand seven hundred and sixty-four) in excess of the fees that was payable to him in accordance with the aforesaid Regulations.
- 3.1.2. It is Mr. Savan Godiawala's own admission in reply to DIR that *"Based on the above interpretation, the IA reckons that the fee of liquidator is to be reduced by Rs. 83,04,764/- ... Without prejudice, the IP wishes to align with the guidance provided by IBBI in this regard and is therefore in the process of reversing the difference to Corporate Debtor."* In addition, Mr. Savan Godiawala has placed on record a tabulated calculation sheet wherein he had submitted *"the excess amount works out to Rs. 85,59,962/-"*.
- 3.1.3. In view of the above, the Board is of the view that Mr. Savan Godiawala had inter-alia violated Section 34(8) of the Code, Regulation 4(3) of Liquidation Regulations read with Clause 10, 14 and 25 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

3.2. Submissions of Mr. Savan Godiawala

- 3.2.1. Mr. Savan Godiawala humbly submitted that he had already voluntarily offered to refund the amount of Rs. 85,59,962/- immediately. Such monies have also been since refunded.
- 3.2.2. Mr. Savan Godiawala noted that the interpretation set out in the Draft Inspection report was also plausible and therefore, he decided not to contest such interpretation

of IBBI, and therefore, expressly on a “without prejudice” basis, agreed to align with the approach given in the Draft Inspection Report, even though it would result in refund of fees in an amount of Rs. Rs. 92,44,758/- inclusive of taxes.

3.3. Summary Findings

In view of the above submissions, the DC observes that Mr. Savan Godiawala has not taken due care in interpreting his entitled fee as per sub-regulation 3 of Regulation 4 of the Liquidation Regulations. Though he had taken mitigating steps by refunding the amount of 92,44,758/- in the liquidation account of the CD, when mistake was told to him, however, fact remains that he has withdrawn the excess amount; whether it was unintentional or not is a subject matter of interpretation. The contravention assumes significance as any wrong withdrawal from the liquidation estate tantamount to lesser availability of realizable value for the creditors.

3.4. Contravention No. II with regard to fee of Deloitte Touche Tohmatsu India LLP (DTTILLP)

- 3.4.1. Regulation 7(1) 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.
- 3.4.2. It is observed that Mr. Savan Godiawala is a partner of Deloitte Touche Tohmatsu India LLP (DTTILLP) and DTTILLP was appointed by him vide work order dated 28th August, 2018 to assist him in taking control and managing affairs of the CD and other obligations as the Liquidator of the CD. Regarding fee to DTTILLP, the work order mentions that *"The cost of services of DTTILLP to liquidator will be as per mutually agreed"*. It is, thus, observed that Mr. Savan Godiawala engaged a related entity for helping him in the liquidation process of the CD at vague terms and conditions and without specifying the amount of fee payable to such entity.
- 3.4.3. It is observed that DTTILLP was paid an amount of Rs. 3,46,15,000/- (Rupees Three crores forty-six lakhs fifteen thousand) against an invoice dated 25th October 2019 for services provided by it for the period from 27th August 2018 to 27th August 2019. Hence, the effective monthly fees of DTTILLP comes to Rs. 28,84,583/- (Rupees Twenty-Eight lakhs eighty-four thousand five hundred and eighty-three) per month for this period. Further, DTTILLP was paid an amount of Rs. 3,22,58,065/- (Rupees Three crores twenty-two lakhs fifty-eight thousand and sixty-five) against an invoice dated January 18, 2020, for services provided by it for the period from 28 August 2019 to December 31, 2020. Thus, the effective monthly fees of DTTILLP comes to Rs.

20,16,129/- (Rupees twenty lakhs sixteen thousand one hundred and twenty-nine) per month for this period.

- 3.4.4. Furthermore, it is noted that DTTILLP was paid an amount of Rs. 80,00,000/- (Rupees Eighty lakhs) against an invoice dated July 14, 2021, for services provided by it for the period from 01 January 2021 to 30 June 2021. Thereby, the effective monthly fees of DTTILLP comes to Rs. 13,33,333/- (Rupees twenty-two lakhs two thousand one hundred and forty-nine) per month for this period.
- 3.4.5. It is, thus, observed that the fee of DTTILLP was later reduced over the months without any change in scope of work, as per Mr. Savan Godiawala's own admission in response to queries raised by the IA vide e-mail dated September 27, 2021. Hence, it is clear that the work which could have been done by DTTILLP for Rs. 13 lakhs per month (approx.), Mr. Savan Godiawala paid initially 28 lakhs per month (approx.) and later Rs. 20 lakhs (approx.) per month.
- 3.4.6. As brought out above, DTTILLP was paid three different amounts for three different periods in the liquidation process without any change in scope of work. Further, the amount of fees paid to DTTILLP were more than double what was paid to Mr. Savan Godiawala as liquidator.
- 3.4.7. 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 double one's own fee as liquidator is not only unjustified but unreasonable also. 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.
- 3.4.8. In view of the above, the Board is of the view that Mr. Savan Godiawala 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).

3.5. Submissions of Mr. Savan Godiawala

- 3.5.1. Mr. Savan Godiawala submitted that the liquidation process of Lanco commenced pursuant to the order dated August 27, 2018 of the Hon'ble AA whereby he was appointed to continue as the Liquidator of Lanco. Thereafter, pursuant to the ensuing public announcement, he admitted claims of financial creditors to the extent of Rs. 54,335 Crore (approx.) (out of total financial debt claimed of Rs 55,030 Crore (approx.)), the admitted claims of operational debt stand at Rs. 7,005 Crore (approx.) (out of total operational debt claimed of Rs 17,972 Crore (approx.)) and the admitted claims of Employee and Workmen stand at Rs. 34.59 Crore (approx.) (out of total employee and workmen debt claimed of Rs. 40.65 Crore (approx.)). The quantum of claims made in the Liquidation Process of Lanco itself represents the significant complexity of the liquidation process of Lanco and the enormity of the responsibility which was and continues to be discharged by Mr. Savan Godiawala.
- 3.5.2. Further, Mr. Savan Godiawala stated that the assets of Lanco were not just spread out across various geographical locations such as NCR, Himachal Pradesh, Uttar Pradesh, Chhattisgarh, Madhya Pradesh, Maharashtra, Odisha, Sikkim, Telangana, Karnataka, Tamil Nadu as on the Liquidation Commencement Date, but also spanned diverse sectors including construction, roads, thermal power, solar power, hydro power, transmission and distribution, metro, etc.
- 3.5.3. Mr. Savan Godiawala submitted that in order to effectively discharge its functions as the Liquidator, he required extensive professional support from an institution which had the reach, capability and necessary expertise to render effective assistance to help him conduct the liquidation process in a smooth manner. Mr. Savan Godiawala denied that DTTILLP was appointed under vague terms and conditions without specifying the fee payable to such entity. He submitted that DTTILLP had the necessary expertise and personnel to assist him in discharging its functions as the liquidator. The appointment of DTTILLP was specifically placed during the CIRP of Lanco before the CoC at its 1st meeting held on 12 September 2017 meeting where the CoC, in its commercial wisdom and having regard to the complexity involved in the CIRP of Lanco, approved DTTILLP's fee of Rs 75 lacs per month.
- 3.5.4. Mr. Savan Godiawala submitted that at the relevant time, there was no restriction on appointment of a related party, and therefore, he being a partner of DTTILLP is wholly irrelevant for the present matter. And since DTTILLP was appointed to provide professional services to Mr. Savan Godiawala during the CIRP of Lanco, it was thus

engaged for the Liquidation Process in terms of the work order dated 28 August 2018 issued by Mr. Savan Godiawala.

- 3.5.5. Pursuant to the commencement of the Liquidation Process, Mr. Savan Godiawala provided an update to the stakeholders at the first consultation meeting held on 09 October 2018 about the appointment of valuers, legal counsel, professional advisor and accounting advisor. DTTILLP was appointed as the professional advisor to assist him and coordinate the entire liquidation process. As evident from the minutes of the first consultation meeting, it was specifically disclosed that the appointment was proposed to span till the completion of the liquidation process for a fixed monthly professional fee of Rs. 50 lakhs plus expenses and applicable taxes.
- 3.5.6. The scope of services provided by DTTILLP was all encompassing except providing services for valuation, e-auction platform related services and legal advisory. DTTILLP was engaged for assisting the IP in managing the affairs of Lanco and for discharging his other functions during the liquidation process of Lanco, because of the same a comprehensive scope of work (and not vague) was stipulated in the Work Order.
- 3.5.7. Mr. Savan Godiawala submitted that DTTILLP was appointed for the liquidation process at a significantly reduced rate during the Liquidation Process as also recorded in the minutes of the 18th meeting of the CoC. Subsequently, with the passage of the Liquidation Process and as set out hereinbelow, as it was realized that the actual work had reduced, the Liquidator further re-negotiated the fees of DTTILLP as has also been observed in the SCN.
- 3.5.8. Mr. Savan Godiawala reiterated and emphasized that the following processes needed to be carried out immediately upon commencement of the Liquidation Process for which active assistance is required from its advisors to ensure time bound facilitation of different processes.
- 3.5.9. Mr. Savan Godiawala stated that since most of the above processes were completed within the initial phase of the Liquidation Process, the effective scope of assistance provided by the DTTILLP progressively reduced with a corresponding reduction in the amounts charged by DTTILLP for its services which were negotiated by him. Therefore, as the liquidation process progressed with the passage of time, the efforts and consequentially the quantum of work of DTTILLP and the requirement of deployment of resources from DTTILLP reduced.

- 3.5.10. It is pertinent to note that even though DTTILLP's quantum of work reduced, Mr. Savan Godiawala did not wish to unnecessarily reduce the scope of work stated in the work order with DTTILLP by issuing addenda because in such proceedings, work can again increase depending on how the various processes operate. Sometimes auctions, sales etc. can get cancelled at the last moment and a fresh auction process may have to be commenced. Similarly, the claims can also come at belated stages which may require verification. Mr. Savan Godiawala, in his wisdom and in good faith did not wish to reduce or lessen the scope of work but ensured that the rates got re-negotiated and significantly reduced to the benefit of the company in liquidation.
- 3.5.11. Mr. Savan Godiawala stated that the fact that DTTILLP had charged fees almost double to the fees of the Liquidator cannot be said to be a violation of any provisions of the Code, the Regulations framed thereunder or the Code of Conduct as alleged in the SCN. Before proceeding to address the reasonability of the fees charged by DTTILLP, Mr. Savan Godiawala submitted that a number of professionals were deployed by DTTILLP at all times because of which the fees of DTTILLP invariably remained higher than that of the liquidator. Therefore, it is incorrect and inappropriate to compare the fees of the IP with that of the DTTILLP and arrive at the findings contained in the Show Cause Notice.

3.6. Summary Findings

- 3.6.1. The DC notes that no document is available to detail the objective criteria adopted in the process of the selection of DTTILLP. The minutes of the CoC dated 12th September 2017, indicate that while getting the approval of the CoC for engaging DTTILLP for rendering support services during CIRP process selection criteria for identifying DTTILLP to provide professional was not disclosed.
- 3.6.2. Minutes of last 18th CoC meeting dated 02.05.2018, stands as testimony that CoC did not agree to fee to be charged by the liquidator and the terms of payment to be made to the support services.
- 3.6.3. As per the minutes, in the said meeting, *"The Chair informed that RP along with the assistance of Legal Counsel shall file an application under section 33(1)(a) of the Code on 03.05.2018. In the scenario of liquidation order being passed, the Chair proposed to act as the Liquidator on same terms (including the fee) as RP and DTTILLP shall assist him in discharging his duties as a liquidator."* On the issue following observation is minuted: *"ICICI bank informed that fee structure is stipulated in the Code and the same should be followed. The spirit of the Code to introduce a fee structure is to ensure recovery in a timely manner. RP's representative informed that*

having a success fee based structure may lead to lower recovery to the stakeholders as liquidator's fee could be higher than in case of retainer based arrangement. However, the CoC insisted to follow the same structure as per the Code. RP's representative said that RP does not have any issue and is agreeable to act as liquidator as per suggestions of CoC and directions from NCLT."

- 3.6.4. From above decision of CoC, it is evident that Mr Savan Godiawala was instructed by the CoC to draw the fee as per table based dispensation as provided under Regulation 4(2) of the Liquidation Regulations 2016. However, there was no decision taken on continuation of the services of the DTTILLP. Therefore, to get his stand vindicated on need for professional services he worked out an alternative arrangement by placing the matter before Stakeholders Consultative Committee (SCC), despite being aware of the provisions that under the statute, SCC has only recommendatory role. In the First meeting of stakeholders dated 09.10.2018, the Liquidator provided an update on the appointment of, inter alia, professional advisor to assist him in beneficial liquidation of the CD. In this, it was mentioned that DTTILLP was being appointed to assist the liquidator and coordinate the entire liquidation process at the cost of Rs. 50 Lakhs per month for a term upto completion of liquidation. Minutes of SCC mention that *"The Chair stated that these appointments are required to carry out the beneficial liquidation of the CD keeping in view the complex nature and the significant amount of resources required for the said purpose. He also mentioned that the cost of DTTILLP is significantly lower than that incurred in the CIRP process and is subject to the relevant provisions of the Code and regulations therein."*
- 3.6.5. As is evident from the findings of the inspecting authority, the services of DTTILLP were hired neither on the basis of well laid out terms of reference nor remunerations were fixed in relation to services rendered by them. It is found that DTTILLP has billed the amount equivalent to Rs. 50 lakh per month less the amount of fees billed by the liquidator. For an illustration for the period 27th August, 2018 to 27th August, 2019 the fees of liquidator was Rs. 2,53,85,000/- (as determined by liquidator), the amount billed by DTTILLP was as follows:

S. No	Particulars	Amount
1.	Overall amount to be charged to CD by Liquidator and DTTILLP {50,00,000*12 months} (A)	6,00,00,000
2.	Less: Amount Billed by Liquidator (B)	(2,53,85,000)
3.	Amount Billed by DTTILLP (A-B)	3,46,15,000

- 3.6.6. Support services charging amount depending on the fee of liquidator has created unprecedented situation devoid of any commercial wisdom or professional ethics. Due to fusion of fee of Liquidator with that of residual entitlement of the support services to arrive at a total charges being billed against these two entities is bad in law as the provisions of the statute provide for distinct manner in which fee of liquidator is to fixed independent of consideration whether or not support services are being hired.

In the matter of Shirpur Power Private Limited ('SPPL')

3.7. Contravention with regard to failure in filing avoidance application

- 3.7.1. *Regulation 35A(1) of CIRP Regulations provides timelines for forming opinion whether the CD has been subjected to any transaction covered under section 43, 45, 50 or 66 of the Code. Regulation 35A(2) provides timelines for determination of PUFE transactions in the CD subsequent to forming opinion and Regulation 35A(3) provides timelines for filing of necessary applications before AA for orders after determination of such transactions.*
- 3.7.2. It is observed that although Mr. Savan Godiawala appointed BDO India LLP vide engagement letter dated July 01, 2020 to conduct the transaction review audit of the CD, however, he failed to initiate action as required under regulation 35A(2) and 35A(3) of CIRP Regulations.
- 3.7.3. In view of the above, the Board is of the view that Mr. Savan Godiawala had inter-alia violated Regulation 35A of CIRP Regulations read with Clause 1, 2, 3 and 14 of the Code of Conduct.

3.8. Submissions of Mr. Savan Godiawala

- 3.8.1. Mr. Savan Godiawala submitted that CIRP of Shirpur Power Private Limited commenced during the COVID-19 pandemic and subsequently, on account of the lockdown imposed by the Central Government along with the State Governments, certain processes contemplated under the Code got delayed, albeit for reasons not attributable to the Insolvency Professional which were entirely beyond his control. Specifically, the CIRP of SPPL commenced on March 4, 2020 however the copy of the order for commencement of CIR Process was made available to him only on March 20, 2020, when the Covid-19 started spreading in country. Mr. Savan Godiawala stated that on March 22, 2020, an announcement was made for imposition of a nation-wide lockdown across the country amid the Covid-19 Pandemic by the Central Government from March 24, 2020 which was later extended from time to time. The lockdown was gradually relaxed in a graded manner across the country on a periodic review of the existing circumstances across different states; from May 31, 2020 onwards. However, in the phased unlock period also, many restrictions such as travel restrictions, operation

of offices with lower capacities, etc. hindered the timely completion of different processes contemplated under the Code for CIRP as well as liquidation processes.

- 3.8.2. Mr. Savan Godiawala submitted that owing to the unprecedented circumstances impeding achievement of timelines contemplated under the Code and the regulations framed thereunder, the Hon'ble Insolvency and Bankruptcy Board of India (IBBI) issued a notification dated 20 April 2020, with effect from 29 March 2020, inter alia incorporating Regulation 40C in the CIRP Regulations providing for exclusion of the period during which lockdown was imposed by the Central Government for the purposes of assessing compliances with the timelines under the Code.
- 3.8.3. Mr. Savan Godiawala stated that due to the lockdown and other restrictions imposed on account of the Covid-19 pandemic, certain processes in the CIRP of SPPL also got delayed including the immediate processes contemplated under Section 18 of the Code.
- 3.8.4. In the present case, with the intent that all preferential, undervalued, extortionate and fraudulent transactions could be discovered, the IP had duly appointed BDO India LLP to conduct the transaction review audit ("TRA") in terms of a work order dated 01 July 2020 ("TRA Work Order"). An application under Sections 43, 45, 49, 52 and 66 of the Code could have been filed only on discovery of information on the basis of the TRA, which the concerned auditor did not conclude till the commencement of liquidation. This delay, by no stretch of imagination, can be attributed to the IP. It is pertinent to submit that no allegation in this regard has also been made in the Show Cause Notice. The TRA Work Order envisaged and required the TRA to conclude its audit and submit its draft report within four weeks from the date of the issuance of the Work Order. Thereafter, to facilitate such audit, the requisite data was progressively provided to the TRA from July 06, 2020 onwards.
- 3.8.5. The appointment of the TRA coincided with the Covid19 pandemic due to which the offices of SPPL operated with minimal staff, hence availability of information from SPPL required for the transaction audit was significantly delayed. This was also brought to the notice of the CoC at its 6th meeting held on October 22, 2020. The CoC was informed that the transaction audit is near completion and a discussion call had been scheduled the next day with the auditor requesting for the draft report. During such discussion, the transaction auditor then requested for significant additional information/ clarifications vide their email dated October 28, 2020. Multiple discussions took place between the RP and the TRA as well as the management of

SPPL seeking clarifications and information for the TRA to conclude on their observations. However, the information required by the TRA was not provided by the management of SPPL within the prescribed time. Due to limited availability of data on account of the above circumstances, the TRA could not submit its final draft report pending information requested from SPPL, hence the IP could not conclude the audit and/or determine any of the transactions u/s 43, 45, 50 and 66 before the completion of the CIR Process.

- 3.8.6. Mr. Savan Godiawala submitted that the AA passed the order for liquidation of SPPL on March 10, 2021, a copy of which was made available to him on March 12, 2021 pursuant to which he was no longer in control of SPPL, hence, could not continue with the TRA exercise. However, to the extent, Mr. Savan Godiawala earnestly endeavored to hand over all documents, emails and other details related to the transaction audit work done by the TRA including having detailed discussions and interactions with the liquidator subsequently appointed, draft observations made by the TRA, to facilitate early completion of such transaction audit by the TRA under the tenure of such liquidator. He further stated that the SCN notice also pre-supposed that the TRA would have disclosed actionable findings for which the IP would have been required to file an application under the aforesaid sections. Without prejudice, Mr. Savan Godiawala submitted that while the TRA could not be concluded for reasons not attributable to him and wholly beyond its control, the scheme of the Code entails that the liquidator also has powers to look into all these matters as also conclude with regard to preferential transactions, undervalued transactions, extortionate transactions and fraudulent transactions and file applications under the relevant sections as can a resolution professional with regard to these transactions; and as such, no prejudice can be said to have been caused to any stakeholder of SPPL on account of non-filing of an application pursuant to the TRA.

3.9. Summary Findings

- 3.9.1. The DC notes the submission of Mr. Savan Godiawala that BDO India LLP was appointed to review the transactions of the Corporate Debtor during the relevant period in terms of regulation 35A read with Sections 43-50 and 66 of the Code to conduct the transaction review audit (“TRA”) in terms of a work order dated 01 July 2020 (“TRA Work Order”). The DC notes that the appointment of the TRA coincided with the Covid-19 pandemic due to which the offices of SPPL operated with minimal staff, hence availability of information from SPPL required for the transaction audit was significantly delayed. The same was also brought to the notice of the CoC at its 6th meeting held on October 22, 2020.

- 3.9.2. The DC further notes that the AA passed the order for liquidation of SPPL on March 10, 2021. In between the initiation of CIRP and the order of liquidation, Mr. Savan Godiawala had enough window of opportunity to complete the audit and get filed the requisite application. Incidentally, Mr. Savan Godiawala himself is a chartered accountant, he needed no assistance from audit firm to do the transaction audit for establishing the PUF transactions. Further, minutes of sixth meeting of the Committee of Creditors held on October 22, 2020, show that Mr. Savan Godiawala informed the members that – *“The RP and his team are in continuous follow-up with the Transaction Review Auditors and the transaction audit is completed and a discussion call is scheduled for next day.”* Despite this reportedly advance stage of the audit, no efforts were made to take a view on nature of transactions on the basis of which application could have been filed with the AA.
- 3.9.3. The DC notes that Sections 35A of the Code requires an IP to timely identify and form an opinion about the transactions covered under sections 43, 45, 50 and 66 (2) of Insolvency and Bankruptcy Code. It is pertinent to note that timely identification and reversal of avoidance transactions can result in better recovery to the creditors. In the instant case, Mr. Savan Godiawala as Resolution Professional has failed to comply with these provisions.

4. Order

- 4.1. In view of the above, contraventions in terms of wrongful withdrawal of fee and hiring of related party without proper identification of scope of work with wrong manner of determination of fee in case of his dealings in respect of Lanco Infra Tech Limited and laxity in filing application on avoidance transaction in respect of Shirpur Power Private Limited are established beyond doubt.
- 4.2. 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.
- 4.3. In view of provisions as mentioned in para 4.2 above, without due diligence, drawing excess amount as fee is akin to overcharging at the expense of all the creditors of CD, whose liquidation estate he is holding as a fiduciary. Mere negligence, oversight or

misinterpretation cannot be discernable possible reasons for this over-drawl, particularly in the context that over-drawl for which he was not entitled to, would have remained with him, had this fact was not come to the notice of the Board.

- 4.4. Clause 23B of the Code of Conduct provides that an IP shall not engage or appoint any of his relatives or related parties, for or in connection with any work relating to any of his assignment. Though this regulation explicitly was included on 23.7.2019, post the award of professional services to DTTILLP, however in the structure of the Code, the requirement of keeping an arms-length wherever there is possibility of conflict of interest is very much implicit. Regulation 7(2) of the Liquidation Regulations provides that the liquidator shall not appoint a professional under sub-regulations (1) who is his relative, is a relative party of the corporate debtor or has served as an auditor to the corporate debtor in the five years preceding the liquidation commencement date. If intension was not to extend unreasonable payments to DTTILLP, at least it was within his rights to stop the dealings and payments to the related party firm from the date when revised regulations putting restrictions on such dealings became effective.
- 4.5. 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. Savan Godiawala has paid DTTILLP a fee more than double of his own fee as liquidator on the basis of open ended contract which is neither reasonable nor justified. It is a notable fact that Mr. Savan Godiawala is a partner in DTTILLP, so it amounts to a clear case of conflict of interest and a clear case where liquidator explicitly revealed his preference to hire the professional services from DTTILLP which is a related party at an unreasonable rate. Furthermore, the table-based fee being charged by the liquidator and the remuneration entitled to accrue to the professional service as adjustable components is not as per provisions of the Code and regulations made thereunder. It is one of the case, where charges to the DTTILLP, which is a related party, has been fixed as a residual amount after deducting accruals to the liquidator through table based dispensation from a fixed sum of Rs. 50 lakhs. 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.

- 4.6. 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. For example, clause 3 of the Code of Conduct requires that an IP must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the insolvency proceedings or not. Clause 5 of the said Code of Conduct requires that an IP must maintain complete independence in his professional relationships and must conduct the insolvency resolution, liquidation or bankruptcy processes, independent of external influences. Further, process specific regulations mandate different requirements. For example, regulation 3 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) provides for the eligibility requirements for an IP to act as a resolution professional in a CIRP. Thus, the Code read with Regulations provides enough safeguards to ensure that there is no conflict of interests undermining independence of the IP.
- 4.7. The existence of conflict of interests is not explicit in certain situations, though such situations are covered under the general provisions. In this context, it is pertinent to note that emerging jurisprudence emphasis that IP is an officer of the Court. An IP therefore should ensure that his direct or indirect interest must not lead to any conflict of interest.
- 4.8. 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. Savan Godiawala for a **period of three years**.
- 4.9. The Order shall come into force on expiry of 30 days from the date of its issue in view of para 4.8.
- 4.10. As submission made by Mr. Savan Godiawala provisions related to related parties have come at a later date. Atleast to appear to be fair in his dealings, Mr. Savan Godiawala should have cancelled the contract with DTTILLP with effect from 23rd July 2019; the date when revised regulations came into the effect. In the progress report filed with the AA and the Board, it is indicated that DTTILLP is continuing to bill the professional fee in favour of the related party. In view of this, the DC hereby imposes a penalty on Mr. Savan Godiawala to deposit amount equivalent to payments made to DTTILLP after 23rd July 2019 **till now** 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.

- 4.11. A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Savan Godiawala is providing his services as IRP or RP, if any and in cases where Mr. Savan Godiawala is serving as liquidator, the same may be forwarded 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.
- 4.12. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Savan Godiawala is enrolled as a member.
- 4.13. 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:18th August, 2022

Place: New Delhi