

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/86/2022

4th April, 2022

Order

In the matter of Mr. Anil Kohli, Insolvency Professional (IP) under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 13 of the Insolvency and Bankruptcy Board of India (Investigation and Investigation) Regulations, 2017 and regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/R(INSP)/2019/6/400/2341 dated 25.08.2021 issued to Mr. Anil Kohli, R/o – Flat No. 409, 4th Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 who is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00112/2017-18/10219.

Background

- 1.1 Mr. Anil Kohli was appointed as an interim resolution professional (IRP)/ resolution professional (RP)/Liquidator in corporate insolvency resolution process (CIRP) of five Corporate Debtors (CDs), viz., Moser Baer India Limited vide order dated 14.11.2017 passed by Hon'ble NCLT, Principal Bench New Delhi, MOR Farms Private Limited vide order dated 04.09.2017 passed by Hon'ble NCLT, Chandigarh Bench, S. R. Foils and Tissue Limited vide order dated 07.08.2017 passed by Hon'ble NCLT, New Delhi, Max Tech Oil and Gas Private Limited vide order dated 01.05.2017 passed by Hon'ble NCLT, New Delhi and Vegan Colloids Limited vide order dated 24.11.2017 passed by Hon'ble NCLT, Chandigarh Bench.
- 1.2 The IBBI, in exercise of its powers under section 196 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Anil Kohli vide order dated 03.10.2019. In compliance with Regulation 6(1) of the Inspection Regulations, IA had shared the Draft Inspection Report (DIR) Part I with Mr. Anil Kohli vide e-mail dated 10.07.2020. Mr. Anil Kohli's response to the same was received vide his email dated 21.07.2020. IA shared the Draft Inspection Report (DIR) Part II with the Mr. Anil Kohli vide an e-mail dated 08.01.2021 and response to the same was received on 22.01.2021. Thereafter, IA submitted the Final Inspection Report (FIR) on 31.03.2021, in accordance with Regulation 6(4) of the Inspection Regulations.
- 1.3 The IBBI issued the SCN to Mr. Anil Kohli on 25.08.2021 based on the material available on record including the inspection report in respect of his role as an IRP/RP/Liquidator in the CIRP of CDs. The SCN alleged contraventions of sections 53 and section 208(2)(a) and (e) of the Code, Regulation 4(4) of Inspection

Regulations, Regulation 24(7) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2017 (CIRP Regulations), Regulation 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and Clause 13, 14, 18 and 19 of the Code of Conduct under First Schedule of regulation 7(2) thereof. Mr. Anil Kohli replied to the SCN *vide* letter dated 13.09.2021.

- 1.4 The IBBI referred the SCN, response of Mr. Anil Kohli to the SCN and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Anil Kohli availed an opportunity of physical hearing before the DC on 08.12.2021 wherein he was represented by his counsel, Mr. Abhishek Anand.

2. Alleged Contraventions and Submissions

Contraventions alleged in the SCN and Mr. Kohli's submissions thereof are summarized as follows.

Contravention - I

- 2.1 It was observed by the IA that Mr. Kohli had conducted a meeting with representatives of Workmen & Employees of Moser Baer India Ltd on 17.09.2019. According to the minutes of the said meeting, it had been observed that Mr. Kohli had entered into an agreement for settlement between him and the workers cum employees. The terms of settlement noted were as follows:

"Further Workmen and Employees will be paid an amount of Rs. 1,05,100 only (Rupees One lac five thousand one hundred only) each person towards Full & Final Settlement of their dues towards their Salary for Pre-CIRP period, Leave Encashment, Compensation, Increment, Bonus etc. This payment will satisfy all their claims whatsoever. The amount shall be disbursed on complete withdrawal of all matters whatsoever in any Court/Tribunal/ Authority by any workmen/employees or by the liquidator against workmen/employee. Further, the Labour-Authorities shall be duly informed and the subject settlement shall be recorded before the concerned authorities in some form."

- 2.1.1 Section 53 of Code provides that the proceeds from the sale of the liquidation assets shall be distributed in the order of priority and within such period and in such manner as specified. Accordingly, it is alleged that Mr. Kohli *prima facie* violated section 53 of the Code by entering into settlement agreement with Workmen & Employees.
- 2.1.2 In view of the same, it was alleged in SCN that Mr. Anil Kohli has violated section 53, 208(2)(a) and (e) of the Code read with Regulation 7(2)(h) of the IP Regulations and Clauses 14 of the Code of Conduct of the IP Regulations.

Submission

2.2 With regard to the aforesaid contravention, Mr. Kohli made the following submissions:

- (i) While throwing light on the background of Workmen of Moser Baer India Limited (MBIL), Mr. Kohli submitted that the CIRP of MBIL commenced on 14.11.2017 and Mr. Devendra Singh was appointed as IRP and was subsequently confirmed as Resolution Professional. He stated that the CD's main plant is located at Greater Noida, wherein 2200 workers are employed. At the time of taking custody and control of the said plant, it came to the knowledge of the erstwhile RP that the management of the CD had declared a lock-out since 04.11.2017 as per section 68(3) of the U.P. Industrial Disputes Act 1947. In view thereof, the erstwhile RP held series of meetings with the Workmen Union and the Deputy Labour Commissioner.
- (ii) Mr. Kohli submitted that the erstwhile RP also filed an application C.A. No. 06(PB) of 2018 before the Hon'ble AA seeking appropriate direction as to whether the lockout of factory premises of the CD was legal or illegal. The Hon'ble AA *vide* order dated 31.01.2018 disposed of the application and, *inter-alia*, directed the erstwhile RP to take into account any application of the workmen with regard to disbursement of their salaries in view of the fact that lock-out had been declared unlawful by the Deputy Labour Commissioner *vide* order dated 14.11.2017. Mr. Kohli further submitted that there were vigorous protests by the workmen which included dharnas, gheraos and suicide attempts and the workmen had taken over the entire plant of the CD under their control and stationed themselves permanently at the plant and did not even allow the erstwhile RP to visit the plant and take the custody of assets as per the provisions of law.
- (iii) Mr. Kohli submitted that on 13.07.2018, the group of workers gathered at the residence of the erstwhile RP and shouted slogans, carrying placards and accordingly, the erstwhile RP filed C.A. No. 609(PB)/2018 before the Hon'ble AA, wherein this Hon'ble AA *vide* order dated 31.07.2018 directed as under:

"In order to bring/facilitate Resolution and settlement, it becomes necessary for the workers of the Moser Baer India Ltd to first file an affidavit that they will not resort to any arm-twisting methods the way it was done on 13.07.2018. The RP has pointed out in the application and has attached photographs of workers carrying out placards. They are all standing in front of the residence of RP. An affidavit alongwith an undertaking be filed by tomorrow itself with a copy in advance to counsel opposite stating that such a conduct would not be repeated and all workers would follow lawful course". List for further consideration on 02.08.2018."

- (iv) In respect of his appointment as RP and then as Liquidator, Mr. Kohli submitted that the Hon'ble AA *vide* order dated 10.08.2018 appointed Mr. Anil Kohli as the RP for conducting the CIRP of the CD. That *vide* order dated 10.08.2018, this Hon'ble AA also directed the workmen to make a representation to the RP. He stated that the CoC in its eighth meeting resolved by 100% majority to

liquidate the CD as there is no resolution plan and the decision of the CoC was intimated to the Hon'ble AA in terms of the provisions of the Code. Mr. Anil Kohli was appointed as liquidator *vide* liquidation order passed by Hon'ble NCLT dated 20.09.2018.

- (v) Later Mr. Kohli submitted that he filed an application under section 60(5) (c) of the Code CA No. 819 of 2018, to seek indulgence of the Hon'ble AA to decide the question of law, *i.e.*, whether Employee Cost pertaining to wages of Workers/ Employees, who continued on the Rolls during CIRP but were not assigned work due to factory/ plant shutdown, ongoing labour issues & litigations thereon and consequent paucity of working capital funds, formed CIRP cost and if the same was CIRP Cost, then, whether the RP had jurisdiction to accept the same beyond 270 days, *i.e.*, the maximum time permitted under the Code. The Hon'ble AA *vide* order dated 17.09.2018 directed as under:

"...The workers/employees are necessary constituent for running the business of the corporate debtor on day-to-day basis during the moratorium period. Therefore, the RP would be well within his rights to decide the claim made by the employees/workers. In fact such an intention is implicit in the order dated 10.08.2018 passed in CA-295(PB)/2018. Any other view would result in serious prejudice to the rights of the worker/employees or any other claimants.

In view of the above, we dispose of this application. The RP is directed to consider the claim of the employees/workers in accordance with law and the expiry of 270 days on 11.08.2018 would not limit his jurisdiction to decide any claim as long as has arisen respect of 270 days"

- (vi) Mr. Kohli, at the time of hearing threw light on the circumstances under which settlement agreement was executed by him and the workmen. He submitted that the Hon'ble AA *vide* order dated 19.03.2019, whilst allowing the application of the Workmen Union being C.A. No. 19 of 2019 held and directed as under:

"4. A perusal of the aforesaid para shows that the provident fund dues, pension funds dues and gratuity fund dues are not treated as a part of the liquidation estate and would not, therefore be recovered by Section 53 of the Code which provides for waterfall mechanism. The Liquidator has taken a perverse view by unnecessarily referring to explanation II of Section 53 and Section 326 of the Companies Act, 2013.

5. As a sequel to the above discussion, the application is allowed. Learned counsel for the Liquidator states that the claim of the workmen dues shall be considered afresh as per law propounded in the present order as well as the order passed by the Mumbai Bench of NCLT. It is made clear that if there is any deficiency to the provident fund, pension fund, and gratuity fund, then the liquidator shall ensure that the fund is made available in the

aforesaid accounts, even if their employer has not diverted the requisite amount. The prayer made with regard to the bonus and compensation shall also be decided in the light of the observations made in accordance with law

The application stands disposed of. The needful be done at the earliest preferably within the period of two weeks.

- (vii) Mr. Kohli submitted that in compliance of order dated 19.03.2019, he had deposited the PF for the period of 01.08.2017 to 20.09.2018 for an amount of Rs.10,45,43,305/- between 31.05.2019 to 02.09.2019 and also deposited the Gratuity for the eligible employees/workmen who were on the payrolls of the CD in liquidation as on 14.11.2017 for an amount of Rs.23,51,15,861/-between 18.09.2019 to 19.09.2019. Mr. Kohli *vide* its email dated 02.04.2019 intimated the workmen the compliance of order dated 19.03.2019.
- (viii) Mr. Kohli submitted that the workmen union filed CA. No. 1398 of 2019 before the AA to keep intact the dues of workmen in terms of order dated 19.03.2019 passed by the Hon'ble NCLT. That *vide* order dated 25.07.2019, the application was disposed of after taking the statement of the Counsel for the liquidator on record that the dues of the workmen in terms of order dated 19.03.2019 shall be kept intact by Mr. Kohli. *Vide* order dated 21.08.2019, the Hon'ble AA directed Mr. Kohli to take steps to implement the directions issued in order dated 19.03.2019 read with order dated 19.08.2019 passed by the Hon'ble NCLAT. Pursuant thereto, *vide* order dated 25.09.2019, the AA directed Mr. Kohli to file an affidavit, which was duly filed by him.
- (ix) Mr. Kohli further submitted that as per section 53 of the Code, "workman dues" shall have the meaning assigned to it in section 326 of the Companies Act, 2013 ("Act") and the Liquidator is duty bound to follow the same. He stated that in the instant case, he, being a Liquidator, relied upon section 326 of the Act for the purposes of meaning of "workmen dues", however, his view was held to be "perverse" by the Hon'ble NCLT *vide* order dated 19.03.2019.
- (x) Mr. Kohli further submitted that the law itself was evolving and even a bare perusal of conjoint readings of explanation (ii) to section 53 of Code and section 326 & 327 of the Act, it was evident that although he was bound to follow section 53 of the Code but the explanation has been made nugatory by virtue of orders passed by NCLT and by section 327 of the Act.
- (xi) Mr. Kohli stated that pursuant to the notification no S.O. 3453(E) dated 15th November 2016 wherein section 255 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) *w.e.f.* 15th November, 2016 had been notified and sub-section (7) of section 327 of the Companies Act, 2013 stood amended as follows:

“(7) Sections 326 and 327 shall not be applicable in the event of liquidation under the Insolvency and Bankruptcy Code, 2016”
- (xii) Thus, Mr. Kohli submitted that from the aforesaid it was clear that the Liquidator cannot even refer to the meaning of "workmen dues" as provided under section 326 of the Act and by virtue of Order dated 19.03.2019 passed

by the Hon'ble AA in the instant case, the Liquidator was duty bound to pay all dues outside the section 53 of the Code in priority.

- (xiii) Mr. Kohli submitted that the Code demarcates the role of the stakeholders who are the ultimate beneficiaries in the process and the role of the Liquidator. He stated that in the instant case, the stakeholders, *i.e.*, the workmen union through the office bearers approached him for payment of their dues outside the section 53 whilst placing reliance on orders of NCLT and NCLAT and the appeals pending before the Hon'ble Supreme Court and the said issue was duly brought to the notice of the secured creditors who were the ultimate beneficiaries under section 53 of the Code. Admittedly, the secured creditors directed him to resolve the same and then he entered into the said settlement agreement keeping in view the interest of all stakeholders and the fact that the dues will now follow under section 53 of the Code as the same forms outside the scope in terms of order dated 19.03.2019 passed by the Hon'ble NCLT and order dated 19.08.2019 passed by the NCLAT.
- (xiv) Mr. Kohli submitted that he sold almost all the assets of the CD including the plants at Noida & Greater Noida by July 2019 and realized Rs 325 crore (approx.) and that immediately after the sale, the workmen started threatening him and the buyers that they would not let the buyers take the possession of the plants of the CD until their claims were settled. That the workmen gheraoed the factory premises and held various demonstrations outside the factory premises. The workmen were not allowing/threatening the successful bidders/buyers from entering the premises of the CD for taking the possession of the assets purchased by them. Mr. Kohli stated that the successful bidders/ buyers started pressing him to cancel the sale and refund the consideration paid towards the said assets by them. That the workmen also filed an application before Hon'ble AA seeking restraint on him to distribute entire sale proceeds till the issue of workmen dues was not decided by the NCLAT or the Hon'ble Supreme Court.
- (xv) Mr. Kohli submitted that in the month of September 2019, while discharging his duties in the Liquidation Process under the Code, he had sold almost all the assets of the CD (in liquidation) and received funds from sale proceeds. A part of such funds was already disbursed to workmen & employees (towards wages/salaries during CIRP period) as per the directions of Hon'ble AA *vide* order dated 19.03.2019. That during the pendency of the applications being C.A. No. 767 und C.A. No. 768, the workmen & employees were pressing him for payment of their pending dues which included pre-CIRP wages/Salary, Leave Encashment, Compensation, Increment, Bonus etc. Mr. Kohli submitted that he also discussed the said issue with FCs in the Stakeholders meeting held on 17.09.2019 wherein he was directed to enter into Full & Final Settlement with workmen/employees within the framework authorized by them. And, since the Hon'ble AA allowed the application of workmen thereby inculcating to keep all workmen dues out of section 53 of the Code.
- (xvi) Mr. Kohli stated that under direction from FCs being the ultimate beneficiaries under section 53 of the Code, and in terms of Hon'ble AA order dated 19.03.2019 and in order to resolve the matter and to perform his obligation towards buyers and considering timebound proceedings, he tried to restrict the amount of settlement at the approximate levels of compensation payable as per

law and accordingly settlement was arrived at Rs 1,05,000 per workmen/employee to avoid any payment beyond permissible under law.

- (xvii) Mr. Kohli submitted that however, pursuant to the aforesaid settlement, a representation dated 19.09.2019 was received on 20.09.2019 by him from 432 workmen assailing the said settlement arrived by the workmen union. Subsequently, *vide* email dated 24.09.2019, the President of the Workmen Union Mr. Mahesh Chand Sharma stated that the settlement could not be enforced due to the withdrawal and the claims would be dealt as per the provisions of law or final orders of Court.
- (xviii) Mr. Kohli submitted that the stakeholders, for whom the Liquidator is a custodian of the assets of the CD (in liquidation) in the instant case in, took a decision as per their commercial wisdom to get their dues recovered for which it was necessary to resolve the dispute with the workmen, they advised Mr. Kohli for entering in settlement and in fact agreed to forgo their rights towards the workmen who are weaker part of the society and that even the Courts had taken sympathetic view towards workmen. In this regard, Mr. Kohli referred to the decisions of the Hon'ble Supreme Court, wherein it has been held that the commercial wisdom of the lenders/stakeholders is "paramount".
- (xix) Mr. Kohli, thus, made a submission that he neither acted on the said settlement nor made any payment in terms of the settlement and thus, no contravention can be said to have been made by him. Mr. Kohli stated that he did not distribute any amount contrary to the waterfall provided under section 53 of the Code and acted as per the challenges faced by him from the workmen union in this case including Dharnas, Slogan Shouting, prohibiting access to the auction purchasers under the Sale. Mr. Kohli submitted that he acted on the advice of the secured financial creditor in order to complete the Liquidation Process without any delay. During personal hearing, Mr. Kohli submitted that the amount of settlement agreed with the workmen/employee was not in excess of the amount payable to them under section 53 of the Code.
- (xx) Mr. Kohli submitted he did not contravene section 53 of the Code. He submitted that the dictionary meaning of "Contravention" is *An act which violates the law, a treaty or an agreement which the party has made*. Mr. Kohli stated that, in the instant case, the Settlement Agreement between him and the Workmen Union was entered into on the advice of the Stakeholders, *i.e.*, the secured creditors for early completion of Liquidation Process and he did not distribute any amount of the sale proceeds to the stakeholders contrary to section 53(1) of the Code and therefore no act has been done by him to violate the law.
- (xxi) Mr. Kohli also referred to section 35(1)(j) of the Code, which stipulates the power and duty of the Liquidator to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of the Code. He drew attention to section 35(1)(m) of the Code which stipulates the power and duty of the Liquidator to take all such actions, steps or to sign and execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge

of his duties and obligations and functions as liquidator.

- (xxii) Mr. Kohli thus submitted that it was evident that there would be no contravention for merely entering into any agreement on behalf of the Company for settlement of claims and for necessary steps for liquidation. And that it was only if in the event, such settlement was acted by him thereby making payments contrary to the waterfall mechanism provided under section 53 of the Code, any contravention could have been found against him.
- (xxiii) Mr. Kohli also stated that it was a well settled position of law that no offence could be committed unless and until prosecution proves that the accused had committed an offence in contravention of the enforceable provision of the Act. In this regard, Mr. Kohli stated that it was not disputed that the said Settlement Agreement had not been acted upon and no distribution in terms of the said Settlement Agreement was made by him. Thus, in absence of the solitary ingredient for any contravention, *i.e.*, distribution contrary to the waterfall provided under section 53 of the Code, no contravention can be made against him.

Contravention - II

- 2.3 Regulation 24(7) of the CIRP Regulations requires that the RP shall circulate the minutes of the meeting to all participants by electronic means within 48 hours of the said meeting. However, it is observed that Mr. Anil Kohli had circulated the minutes of CoC meetings in the following CIRP assignments with delay:
 - (a) S.R Foils and Tissue Limited.
Minutes of 15th CoC meeting conducted on 03.05.2019 were shared with members of Coc on 06.05.2019 with a delay of twenty-four hours (approx.).
 - (b) MOR Farms Private Limited.
Minutes of 2nd CoC meeting conducted on 16.11.2017 were shared with members of CoC on 20.11.2017 with a delay of forty-eight hours (approx.).
 - (c) Vegan Colloids Limited.
Minutes of 7th CoC meeting conducted on 14.08.2018 was shared with members of CoC on 17.08.2018 with a delay of twenty-four hours (approx.).

Thus, it was alleged in the SCN that Mr. Anil Kohli's act is *prima-facie* not in consonance with Regulation 24(7) of the CIRP Regulations read with Regulation 7(2)(h) of the IP Regulations and Clause 13 of the Code of Conduct under regulation 7(2) thereof.

Submission

- 2.4 In respect of the issue of circulation of the minutes of the CoC meeting, Mr. Anil Kohli submitted that his act was *prima facie* not in consonance with regulation 24(7) of CIRP Regulations. His submission in respect of the afore-mentioned three CIRP's is given below:
 - (a) S.R Foils and Tissue Limited.

Mr. Anil Kohli submitted that he was aware of the duties cast upon him under the Code and the regulations as made thereunder. He submitted that the 15th Meeting of CoC was convened on (Friday) 03.05.2019. However, as 5.05.2019 (Sunday) being office holiday and even the banks and financial institutions were closed, minutes were circulated on the very next working day, *i.e.*, 6.05.2019. He further stated that it was apposite to mention that in total 15 CoC meetings were convened by him in the said matter and only on the said one instance the circulation got delayed, that too on account of a holiday being Sunday. He stated that being aware and vigilant, he immediately upon the next working day circulated the minutes. Thus, Mr. Kohli was aware that the circulation of minutes was mandatory under the Regulations and only due to the 48 hours falling on a Sunday being a holiday, the delay in circulation took place. Finally, he submitted that he would be vigilant in this regard in future and shall take due reasonable care for the same.

(b) MOR Farms Private Limited.

Mr. Kohli submitted that he was aware of the duties cast upon him under the Code and the regulations as made thereunder. He submitted that 2nd meeting of CoC was held on 16-11-2017 (Thursday) at State Bank of India, Chandigarh at 3:00 PM which was attended by him along with his one team member. The period of 48 hours occurred on Saturday which was a non-working day and immediately on opening of office on Monday, *i.e.*, 20.11.2017 minutes were circulated. He stated that it was apposite to mention that in total 4 (Four) CoC meetings were convened by him in the said matter and only on the said one instance the circulation got delayed, that too on account of a holiday being Saturday & Sunday. Being aware and vigilant, Mr. Kohli immediately upon the next working day circulated the minutes. Thus, Mr. Kohli was aware that the circulation of minutes was mandatory under the Regulations and only due to the 48 hours falling on Saturday & Sunday being a holiday, the delay in circulation took place. He submitted that he would be vigilant in this regard in future and shall take due reasonable care for the same.

(c) Vegan Colloids Limited.

Mr. Kohli submitted that 7th meeting of CoC was convened 14.08.2018, however, as 15.08.2018 being Independence Day which is observed as public holiday throughout the country and all banks/FIS/PSUs and other institutions /companies/firms etc. also remain closed on date. Likewise, Mr. Kohli's office was also closed on 15.08.2018 and staff resumed their work on 16.08.2018. He stated that minutes were circulated within 48 hours, *i.e.*, on 17.08.2018 as office resumed. Mr. Kohli further submitted that it was apposite to mention that in total 7 (Seven) CoC meetings were convened by the him in the said matter and only on the said one instance the circulation got delayed, that too on account of a holiday being Independence Day. Being aware and vigilant, Mr. Kohli immediately upon the next working day circulated the minutes. Thus, Mr. Kohli being aware that the circulation of minutes was mandatory under the Regulations and only due to the 48 hours falling on Independence Day being a holiday, the delay in circulation took place. Mr. Kohli submitted that he would be vigilant in this regard in future and shall take due reasonable care for the same.

Contravention - III

- 2.5 According to sub-regulation (4) of regulation 4 of Inspection Regulations, it shall be the duty of the service provider to produce before the IA such records in his custody or control and furnish to the IA such statements and information relating to its activities within such time as the IA may require. The IA observed that Mr. Anil Kohli had failed to provide documents pertaining to Liquidation assignment of Max Tech Oil and Gas Services Private Limited to the IA. Thus, in the SCN it was alleged that Mr. Anil Kohli's act is *prima facie* not in consonance with Regulation 4(4) of Inspection Regulation read with Regulation 7(2)(h) of the IP Regulations and clause 18 and 19 of the Code of Conduct under regulation 7(2) thereof.

Submissions

- 2.6 Mr. Kohli submitted that *vide* e-mail dated 21.10.2019, he had already apprised IA about ten assignments handled/being handled by him under the Code as on 10.10.2019 *vide* the prescribed format in the form of Pre-Inspection questionnaire form. This Pre-Inspection questionnaire form was submitted well before physical inspection wherein specific details pertaining to his ongoing and concluded assignments as on 10-10-2019 were provided. This Pre-Inspection questionnaire form includes the name and information of "*Maxtech Oil & Gas Services Private Limited*" under head of "Concluded CIRP Assignment" as well as under the head of "Ongoing Liquidation Assignment".
- 2.6.1 Mr. Kohli further submitted that at the time of filing of CIRP Forms, he had filed Form CIRP-6 for the case on 17.10.2019 on IBBI portal, applicable during his tenure. Hence, he stated that there was never an intent or reason to hide any information from the authorities. He submitted that only CIRP records were sought by IA and he had duly submitted the same. In this regard, he submitted that he had not concealed any information and had duly provided the IA with the documents and information as sought from time to time.

Analysis and Findings

3. After considering the allegations in the SCN and submissions made by Mr. Kohli in light of the provisions of the Code, regulations and the relevant circulars, the DC finds as follows.
- 3.1 The objective of the Code is to resolve insolvencies, promote entrepreneurship, maximize valuation of assets, make available credit and balance the interests of all stakeholders, in a time bound manner. The IP is conferred under the Code, with vast powers to manage the affairs of the CD and to conduct the process of insolvency resolution.
- 3.2 The role of the RP is crucial and critical to fulfill the objective of the Code. It is imperative that the RP functions and discharges his/ her duties independently in a fair and transparent manner and facilitate the fulfilment of the objectives of the Code. Various checks and balances have been provided in the Code and Regulations made thereunder to ensure independent, fair and transparent functioning of the IRP/RP. It is the duty of an IRP/ RP to perform and discharge his/ her duties in accordance with the Code and the Regulations made thereunder, in letter and spirit to achieve the objectives of the Code.

3.3 The responsibilities of the IRP/RP under the Code require highest level of standards, caliber and integrity which inspire confidence and trust among the stakeholders and the society. The role of the RP is vital to the efficient operation of the insolvency and bankruptcy resolution process. The IP forms a crucial pillar upon which rests the credibility of the entire resolution process. For that purpose, the Code provides for certain duties, obligations for undertaking due diligence in the conduct of the insolvency process to establish integrity, independence, objectivity and professional competence in order to ensure credibility of both the process and profession as well. Therefore, it becomes imperative for an IP to perform his duties with utmost care and diligence. Section 208(2) of the Code provides that every insolvency professional shall abide by the Code of conduct. It reads as follows:

“208. Functions and obligations of insolvency professionals.-

(2) Every insolvency professional shall abide by the following code of conduct:

—

(a) to take reasonable care and diligence while performing his duties;

(e) to perform his functions in such manner and subject to such conditions as may be specified.”

3.4 The IP is to maintain integrity, by being honest, straight forward and forthright in all his professional relationships while conducting business during CIRP. His conduct has a substantial bearing on performance and outcome of the processes under the Code. He, therefore, is expected to function with reasonable care and diligence to ensure credibility of the process and at all times abide by the Code, rules, regulations, and guidelines thereunder. In this regard, regulation 7(2)(a) and 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professional), Regulations, 2016 provides as under:

“7. Certificate of Registration:

(1)

(2) The registration shall be subject to the conditions that the insolvency professional shall -

(a) at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled”.

(h) abide by the Code of Conduct specified in the First Schedule to these Regulations”

3.5 With regard to the first issue relating to settlement of claims of workmen/employees, the DC notes the submission of Mr. Kohli that the Settlement Agreement between him and the Workmen Union was entered into on the advice of the stakeholders, *i.e.*, the secured creditors for early completion of Liquidation Process and he did not distribute any amount of the sale proceeds to the stakeholders contrary to section 53(1) of the Code and therefore no act has been done by him in contravention of the Code. The DC also notes submission of Mr. Kohli that there would be no contravention for merely entering into any agreement on behalf of the Company for settlement of claims and it was only if in the event,

such settlement was acted by him thereby making payments contrary to the waterfall mechanism provided under section 53 of the Code, any contravention could have been found against him.

- 3.5.1. The DC further notes Mr. Kohli's submission that in the instant case, the workmen union through the office bearers approached him for payment of their dues outside the section 53 whilst placing reliance on orders of NCLT and NCLAT and appeals pending before the Hon'ble Supreme Court, and the said issue was duly brought to the notice of the secured creditors who were the ultimate beneficiaries under section 53 of the Code. The DC notes that the secured creditors directed Mr. Kohli to resolve the same and that he entered into the said settlement agreement keeping in view the interest of all stakeholders and the fact that the dues would not fall beyond section 53 of the Code.
- 3.5.2. The DC further notes the submission of Mr. Kohli that the secured creditors took a decision to get their dues recovered for which it was necessary to resolve the dispute with the workmen and they advised Mr. Kohli for entering into settlement and in fact agreed to forgo their rights towards the workmen who were weaker part of the society and that even the Courts had taken sympathetic view towards workmen.
- 3.5.3. The DC notes Mr. Kohli's submission that under direction from FCs being the ultimate beneficiaries under section 53 of the Code, and in terms of Hon'ble AA order dated 19.03.2019 and in order to resolve the matter and to perform his obligation and considering timebound proceedings, he tried to restrict the amount of settlement at the approximate levels of compensation payable as per law and accordingly settlement was arrived at Rs 1,05,000 per workmen/employee to avoid any payment beyond permissible under law.
- 3.5.4. The DC finds that the contention of Mr. Kohli that settlement entered into between Mr. Kohli and workers' union could not be enforced and was withdrawn, thereby causing no prejudice to any stakeholder is untenable as section 53 explicitly provides for disbursement of proceeds of liquidation. However, the DC notes in this regard that the said settlement was made with workers on the advise of stakeholders, in good faith to settle the issues of workmen for the purpose of completion of liquidation process and moreover, the same was not executed and enforced. Therefore, the DC takes a lenient view and advises Mr. Kohli to be extra careful while conducting processes under the Code and regulations made thereunder.
- 3.6 With regard to the issue of delayed circulation of the minutes of the CoC meeting, the DC notes that regulation 24(7) of the CIRP Regulation require that resolution professional shall circulate the minutes of the meeting to all participants by electronic means within forty-eight hours of the said meeting.
- 3.6.1. The DC notes the submissions of Mr. Kohli that various CoC meetings were convened by him in the afore-stated CIRPs, *namely*, S.R Foils and Tissue Limited, MOR Farms Private Limited and Vegan Colloids Limited and only with regard to only single instance in all the respective cases, the circulation got delayed on account of holiday. The DC further notes that Mr. Kohli immediately upon the next working day circulated the minutes and he being aware that the circulation of minutes was

mandatory under the regulations and only due to the 48 hours falling on a holiday, the delay in circulation took place. The DC accepts his contention and finds no contravention.

- 3.7 With regard to the issue of not providing documents pertaining to Liquidation assignment of 'Max Tech Oil and gas Services Pvt. Ltd.' to the IA, the DC notes that as per sub-regulation (4) of Regulation 4 of Inspection Regulation, it shall be the duty of the service provider to produce before the IA such records in his custody or control and furnish to the IA such statements and information relating to its activities within such time as the IA may require.
- 3.7.1. The DC notes the submission of Mr. Kohli that *vide* email dated 21-10-2019, he had already apprised IA about ten assignments including Max Tech Oil and Gas Services Pvt. Ltd. handled/being handled by him under the Code as on 10.10.2019 *vide* the prescribed format in the form of Pre-Inspection Questionnaire form. The DC notes his submission that at the time of filing of CIRP Forms, he had filed Form CIRP-6 for the case on 17.10.2019 on IBBI portal, applicable during his tenure. The DC notes his submission that there was never an intent or reason to hide any information from the authorities and that he had not concealed any information and had duly provided the IA with the documents and information as sought from time to time. Hence, DC accepts his submissions and therefore, there appears to be no contravention in this regard.

Order

4. In view of the above, the DC, in exercise of the powers conferred under section 220 (2) of the Code read with sub-regulations (7) and (8) of Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017, disposes of the SCN without any directions and advises Mr. Anil Kohli to be extremely careful while performing duties under the Code.
5. The order will come into effect immediately in view of para 4 above.
6. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Anil Kohli is enrolled as a member.
7. 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.
8. Accordingly, the show cause notice is disposed of.

(Dr. Mukulita Vijayawargiya)
Whole time member, IBBI

Dated: 4th April, 2022
Place: New Delhi