

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

No. IBBI/DC/35(INTERIM)/2020

29th October, 2020

Interim Order

In the matter of Mr. Anil Goel, Insolvency Professional (IP) under sub-regulation (4) of regulation 5 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017

The Insolvency and Bankruptcy Board of India (IBBI) has referred to the Disciplinary Committee (DC) the Interim Inspection Report (IIR) under sub-regulation (3) of regulation 5 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (I&I Regulations) for gross violation of the provisions of the Code, Regulations made thereunder and directions of the Hon'ble National Company Law Tribunal, Kolkata Bench (Adjudicating Authority) by the IP, Mr. Anil Goel.

2. The IBBI, in exercise of its powers under section 218 of the Insolvency and Bankruptcy Code, 2016 (Code) read with the I&I Regulations has appointed the Inspecting Authority (IA), *vide* its order dated 13th October, 2020, to conduct inspection of Mr. Anil Goel with Registration No. IBBI/IPA-001/IP-P00118/2017-2018/10253 in the matter of liquidation of Varrsana Ispat Ltd., the Corporate Debtor (CD), on having reasonable grounds to believe that Mr. Goel had contravened the provisions of the Code and regulations thereunder and also the directions of Adjudicating Authority (AA) in the said matter. The IA has submitted an IIR to the IBBI under sub- regulation (2) of regulation 5 of the I&I Regulations.
3. On basis of materials available on record including the IIR, the DC notes as follows:
 - (i) Mr. Goel was appointed as an Interim Resolution Professional (IRP) for Varrsana Ispat Limited, the CD *vide* order dated 16th November 2017 of the AA.
 - (ii) Mr. Goel was appointed as a Resolution Professional (RP) by a unanimous decision of the Committee of Creditors (CoC) in the meeting held on 17th December 2017 and was later confirmed by the Hon'ble NCLT *vide* its Order dated 02nd April 2018.
 - (iii) The Corporate insolvency resolution process failed as there being no prospective resolution applicant for resolution of insolvency despite CD being a going concern, due to the attachment of its assets by the Enforcement Directorate under Prevention of Money Laundering Act, 2002. The AA *vide* its *vide* Order dated 6th August 2019 declared the commencement of liquidation of the Corporate Director and appointed Mr. Goel as the Liquidator.

- (iv) On the basis of material available on record, the IBBI having reasonable grounds to believe that there is a gross violations of the provisions of the Code by Mr. Goel in the matter of Varrsana Ispat Limited appointed the IA to conduct an inspection of IP, Mr. Anil Goel. The IA, in pursuance of regulation 4 (1) of I&I Regulations, served a notice on Mr. Goel vide email dated 14th October, 2020 and directed to provide copies of duly enlisted documents by 25th October 2020 which have not been received yet by the IBBI.
4. The DC notes from the IIR that the IA has observed contraventions of certain provisions of the Code, Regulations and directions of the Orders of Hon'ble NCLT which are summarized as follows: -

Illegal distribution of funds by IP despite direction of the AA.

- 4.1 Mr. Goel illegally distributed funds despite the following directions of the AA given to the Liquidator, *vide* order dated 20th November, 2019 in C.A(IB) No. 1546/KB/2019 in CP(IB) No. 543/KB/2017:
- “C.A(IB) No. 1546/KB/2019 is an application filed by the representative of the workmen alleging infringement of their rights as the stakeholders in taking decision by the liquidator regarding distribution of assets of the Corporate Debtor among the Financial Creditors pending consideration of the application filed u/s. 230 of the Companies Act, 2013. As the Company is a going concern the liquidator cannot distribute the assets till the determination of the interim application pending for compromise...”*
- 4.1.1 Subsequently, an application was filed by Employees of the CD, against the Liquidator for blocking the sum of Rs.18 Crores for distribution amongst the stakeholders of the CD during liquidation process. This amount was to be utilized for the operations of the CD and disbursing of the same would adversely impact the operations of the CD. The Adjudicating Authority (AA) in the said matter has, *vide* an order dated 14th January, 2020, categorically observed as follows:
- “...we are of the view that there is no justification for the Liquidator to withhold the aforesaid amount of Rs.18.00 crores and odd, lying with the Liquidator and it is directed that the same may be utilized for the operations of the Corporate Debtor to remain Corporate Debtor as going concern for distribution amongst stakeholders in equal manner as per provision of section 53 of the Insolvency & Bankruptcy Code, 2016, which would include the claims of the employees, if any.”*
- 4.1.2 The Liquidator, Mr. Goel, however, disregarded the AA's Orders prohibiting distribution of the assets of CD amongst the stakeholders and distributed a sum of Rs. 26 Crores, which could have been used as the working capital of the company to continue it as a profitable going concern. In two phases, the Liquidator distributed the amount of Rs.21 Crores on 04.02.2020 and Rs.5 Crores on 16.06.2020 amongst the Financial Creditors.
- 4.1.3 Consequently, the Varrsana Employees Welfare Association approached the AA praying for reversal of disbursements of funds by the Liquidator, Mr. Goel in violation of its previous Orders. The AA in its Order dated 26th June 2020 observed as follows:
- “16. Under Regulation 42 of the IBBI [Liquidation Process] Regulations, 2016, the*

Liquidator can commence distribution once the list of stakeholders and asset memorandum, was finalised, subject to Section 53 of the I & B Code. This process according to us can only be done after the realization of the assets [sale of liquidation assets]. Section 36 provides for creation of a liquidation estate that shall include the assets under sub-section 3 of section 36. Section 53 provides for distribution of the proceeds from the sale of the liquidation assets. As per Regulation 42 (2) of the IBBI (Liquidation Process) Regulations, 2016 the liquidator shall distribute the proceeds from realization within ninety days from the receipt of the amount to the stakeholders. The wording of Section 53 and Regulation 42(2) indicates that the stakeholders may be paid out of the proceeds from the sale of assets. The “proceeds from the sale of assets” can only be realized after the sale concludes, which means distribution can also be done only after the conclusion of sale and more so after the liquidator realizes the liquidation value, therefore, in our opinion, the liquidator cannot distribute the funds from working capital and profit to the stakeholders until assets have been liquidated and the liquidator realizes the complete liquidation value. Also, as per the Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. [Civil Appeal No. 8766-67/2019 and other petitions], at para 68 page 113, the Hon’ble Supreme Court has held that the distribution of profits made during the CIRP will not go towards payment of debts of any creditor. Truly this observation may not be applicable to the instant case. Because the CD is undergoing a liquidation process and not CIRP. However, no authority has been brought to our notice so as to hold that proceeds falling under Regulation 42(2) would include working capital or profit available for distribution before liquidating the assets. From the foregoing discussion, we are of the considered view that the distribution of working capital and profit to the financial creditors before liquidating the assets is contrary to regulations under Chapter VII of the IBBI (Liquidation Process) Regulations, 2016.”

4.1.4 The AA in the aforesaid Order also made certain remarks against the Liquidator in paras 17 and 18 stating that:

17. *“We are afraid of the way the liquidator has attempted to regularise his action by interpreting the order in such a way that this AA allowed him to distribute the funds in accordance with section 53...*

18. *The above said order in our considered view never allowed the liquidator to have an interim distribution pending liquidating the assets for the reason that there were no claims from the workmen or employees were pending for distribution. The above said discussions lead us to a conclusion that the justification offered for distributing the fund by the liquidator is not just and proper and not in conformity with any of the provisions of the Code and Regulations.”*

4.1.5 It has been observed by the IA that section 53 of the Code clearly provides that distribution is to be made from the ‘proceeds from the sale of the liquidation assets’ and Regulation 42(2) of IBBI (Liquidation) Regulations, 2016 (Liquidation Regulations) clearly states that “the liquidator shall distribute the proceeds from realization” and, therefore, nothing else can be distributed except ‘the proceeds from realisation’ /

‘proceeds from the sale of the liquidation assets’ in the context of ‘sale of CD as a going concern’ in liquidation. It is noted that there were no ‘realisations’ in terms of *‘Realisation of assets provided in Chapter VI of the Liquidation Regulations’* in the instant matter, as the CD was yet to be *‘sold as a going concern’*. Therefore, the categorization of some funds, the source of which as stated by liquidator, Mr. Goel, was *‘Realization of money by way of debt recovery’* may not fall within the intended scope of *‘the proceeds from realisation’* / *‘proceeds from the sale of the liquidation assets’*.

- 4.1.6 The IA noted that the aforesaid position have already been categorically explained by the AA in its Orders dated 20.11.2019 and 14.01.2020 where it directed the Liquidator to not proceed with distribution of assets. Accordingly, the distribution of Rs. 26 Crores was in contravention of the orders of AA hence, the IP has contravened Section 53 of the Code, Regulation 42(2) of the Liquidation Regulations. Mr. Goel in his response dated 05th September 2020, regarding Form-A complaint filed against him, submitted to the IBBI that the creditors were pressuring the liquidator to distribute some money. This approach of Mr. Goel, apart from being based on external influence of creditors, shows careless and negligent conduct IP as his conduct is in brazen disregard towards orders of NCLT and the provisions of the Code. Hence, the IP has contravened Sections 53, 208(2)(a) and (e) of the Code, Regulation 42(2) of the Liquidation Regulations, and Regulation 7(2)(h) read with clauses 2, 5 and 14 of Code of Conduct of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations).

Fee Charged by Liquidator in Violation of Regulation 4 of Liquidation Regulations

- 4.2 The Liquidator in the third progress report dated 15.04.2020 for the period January-March, 2020 and the fourth progress report dated 15.07.2020 for the period April-June, 2020 submitted before the AA, stated that the monthly fee of Rs. 8 lakh has been charged by the Liquidator as per regulation 4(2)(a) of the Liquidation Regulations, along with the separate fee on the realized and distributed amount of Rs.21 Crores and Rs.5 Crores at two different time periods as per regulation 4(2)(b) of the Liquidation Regulations.
- 4.2.1 The ‘amount realised’ and ‘amount distributed’, as claimed by the Liquidator while calculating his fee, is not covered under the meaning of the terms ‘amount realised’ and ‘amount distributed’ under Regulation (4)(2)(b) of the Liquidation Regulation. The understanding of ‘amount distributed’ in the context of ‘sale of CD as a going concern’ does not intend to mean to ‘distribute the current assets like cash in hand, working capital, etc.’ to the stakeholders. The amount generated by the CD (working capital and profit/loss) which was distributed by the Liquidator does not fall within the scope of the term ‘amount distributed’ as used in Regulation 4(2)(b) of the Liquidation Regulations. Accordingly, the recovery of fee by the Liquidator on the basis of ‘amount distributed’ is not correct. This approach would encourage liquidators to distribute all the cash /working capital/ profit made by the CD to generate higher fees instead of trying to run the CD as a going concern. This would vitiate the whole objective of keeping the CD as a going concern and the difference between other modes of sale and ‘sale of CD as a going concern’ will be diluted. Therefore, as the ‘distribution’ was itself illegal, any fee

charged on the basis of such distribution will also be illegal. The Liquidator in the case was entitled to Rs.8 lakh as per Regulation 4(2)(a) but nothing under Regulation 4(2)(b).

4.2.2 In addition, the Liquidator has charged fee under regulation 4(2)(a) and 4(2)(b) of the Liquidation Regulations at the same time. The fee on realization and distribution can be paid only for the “*balance period of liquidation*”, after the period of compromise or arrangement as per regulation 4(2) of the Liquidation Regulations. Since, the application filed under section 230 of the Companies Act, 2013 is still pending adjudication before Hon’ble NCLT, the Liquidator charging both fees of Rs.8 lakh during the period of compromise/arrangement and as a percentage of amount realized and distributed, is not in consonance with aforesaid Sections 208(2)(a) and (e) of the Code read with Regulation 4(2) (b) of Liquidation Regulations.

4.2.3 The Liquidator has collected his fee on the basis of the amount claimed to be realised and distributed by him. In this regard, the Liquidator has submitted in the 3rd Progress Report that:

“Liquidator’s fee in accordance with provisions of regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, on the above realization and distribution made during the quarter under review was collected by the liquidator. Hence liquidator received a fee of Rs. 10,196,900/- Including GST as applicable is duly collected by the liquidator.”

Further, in the 4th Progress Report, it is stated that:

“As discussed above the liquidator has distributed a sum of Rs. 5 Crore in this quarter. Liquidator’s fee in accordance with provisions of regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, on the above realization and distribution made during the quarter under review was collected by the liquidator. Hence liquidator received a fee of Rs. 16,95,679 /- Including GST as applicable is duly collected by the liquidator.”

4.2.4 The Liquidator has collected his fee from the assets of the company which formed part of the Liquidation Estate. The Liquidator is custodian of the assets of the CD. Accordingly, there is a breach of a fiduciary duty of the Liquidator prescribed under the Code and the duty of the Liquidator to preserve and protect the assets of the CD under Sections 35 and 36 of the Code.

4.2.5 The AA has *vide* Order dated 26.06.2020 held categorically held that “*the liquidator cannot distribute the funds from working capital and profit to the stakeholders until assets have been liquidated and the liquidator realizes the complete liquidation value*”. Accordingly, if the original distribution was not valid, the liquidator was not entitled to charge fee on the same. Mr. Goel in his response dated 05.09.2020 has stated that the liquidator has not violated the order of the Hon'ble NCLT dated 26.06.2020 as no fresh distribution was made by the liquidator and the fees was charged as per regulation 4 of the Liquidation Regulation for the distribution that was made on 16.06.2020. As the IP has himself stated that he only charged fee for the distribution made on 16.06.2020, i.e.,

Rs 5 crore, this itself is illegal as the original distribution was not as per provisions of the Code. Hence, this act of IP is in violation of clauses 2 and 14 of Code of Conduct under IP Regulations.

Non-payment of 'Interest' part to the employees by the Liquidator

4.3 The IA noted that the AA, *vide* order dated 26.06.2020, had directed the liquidator “*to pay the portion of salary deducted from the salary of the employees with applicable bank interest till the date of payment.*” In his response dated 05.09.2020, the Liquidator submitted to the IBBI that the employees had been paid salaries without the interest. However, this was on account of the employees preferring to claim for salaries without interest.

4.3.1 The Liquidator has not complied with the Hon'ble NCLT order dated 26.06.2020. The aforementioned order of the NCLT is very clear and binding on the Liquidator. It does not give any relaxation or concessions or discretion to the Liquidator to pay salary without interest. Therefore, Mr. Goel has been negligent in performing his duties under the Code and there is violation of aforesaid provisions of Sections 208(2)(a) and (e) of the Code and Regulation 7(2)(h) read with clause 14 of Code of Conduct for Insolvency Professionals under IBBI (Insolvency Professionals) Regulations, 2016.

Violation of Moratorium during CIRP by Financial Creditor

4.4 The IA also noted the following direction of the NCLT *vide* order dated 12.07.2018 (in C.A.(IB) No. 563 of 2018),
“*...it is also alleged that the Central Bank of India in violation of application of the moratorium recovering amount from the account of the Corporate Debtor. The Bank is directed not to recover any of the debt from the Corporate Debtor because, moratorium is in force. Subject to the right of the applicant to have a recovery of the amount if any recovered by the Bank during the moratorium period, the CA is disposed of accordingly.*”

4.4.1 The recovery of some amount was made during the moratorium period by Central Bank of India and this was well within the knowledge of the Liquidator. However, rather than taking action against such activities, Mr. Goel proceeded with the Corporate Insolvency Resolution Process (CIRP) and it was only after an application was made by erstwhile promoters / directors that these facts got highlighted before Hon'ble NCLT. Thus, there is gross negligence on the part of Mr. Goel of the whole CIRP process and the basic premise of Section 14 of the Code which prohibits any recovery during the moratorium period by any of the creditors has been vitiated in the matter.

4.4.2 In the 2nd Stakeholder Consultation Committee (SCC) meeting dated 05.12.2019 also this matter was discussed, the minutes of this meeting stated as follows:
“*...Based on the chart of distribution, it was clearly shown that Central Bank of India, UCO Bank and Indian Oversea Bank has recovered some amount as per the chart in hand during the process of CIRP. It was proposed by the liquidator that such amount so recovered will be considered as distribution during the process of liquidation and accordingly a proportionate distribution chart was shared with all the stakeholders.*”

However, Central Bank of India objects and wanted a complete reconciliation of amount so recovered during the process of CIRP Period. Hence, the liquidator assured that the complete reconciliation will be done by him and its team. The entire facts regarding the recovery would be crystalized and finalized. Thereafter, the liquidator worked on this issue and found that the amount recovered by the Central Bank of India has Following Components:

1. FDR and Cash margin against BG and letter of credit.
2. The amount of LC or BG issued during CIRP and letter of Credit on, either the BG was invoked or the LC dissolve and the payment was made by CBI.
3. The amount recovered by CBI out of TL and some part of Interest were also found recovered.

On the basis of observation provided by the liquidator. The Central Bank of India objected on the second point as these Letter of Credit or Bank Guarantee was issued during CIRP on the instruction of Interim Resolution Professional. The same should honoured by the Liquidator during the process of liquidation and should not be understood as recovery or withdrawal by the bank.”

- 4.4.3 With regard to the issue of recovery by the Central Bank of India during moratorium, Mr. Goel in the reply dated 05.09.2020 had submitted:

“.... all the recoveries made by Central bank of India were adjusted while accepting claim in the process of liquidation. The same was discussed in various SCC meeting and accordingly it was decided to take an adjudication from NCLT with reference to disputed amount of Rs. 29 crore and odd. Accordingly, the team of liquidator filed an application before NCLT Kolkata bench to seek adjudication of question of priority and treatment of claims of central bank of India with respect to letters of credits and bank guarantees issued during CIRP period for which the claims were filed during CIRP. Central Bank’s claim that all the LCs and BGs opened during the CIRP period should be considered as CIRP cost if devolved or invoked and that claim of Central Bank is pending for adjudication before the hon’ble Kolkata Bench, NCLT.”

- 4.4.4 In direct contravention of the NCLTs’ order dated 12.07.2018, the Liquidator, Mr. Goel, rather than recovering the amounts, proceeded to reconcile and adjust the same while submission of claims/adjusting payments during alleged distribution during Liquidation. Hence, the Liquidator ignored the observations of the Hon’ble NCLT in this matter and thereby violated clause 14 of Code of Conduct under IP Regulations.

- 4.4.5 As per section 25(1) of the Code, it is the first duty of the IP to preserve and protect the assets of the CD during the CIRP. However, the IP by not raising an alarm and by tacitly allowing the recovery made by Central Bank of India, has diluted this duty and accordingly has violated Section 25(1) of the Code.

Violation of directions/observations of NCLT

- 4.5 The IA also observed in IIR that an IP is required to timely follow the directions/observations of the NCLT in any matter, except when an appeal is upheld against such direction/observation. In this matter, it is noted that the IP has disregarded

and disobeyed various directions of the NCLT in the following Orders:

Sl. No.	Date of Order by NCLT	Observations/directions pertaining to
1.	Order dated 20 th November, 2019 (in C. A. (IB) No. 1546/KB/2019)	Prohibiting distribution of assets by liquidator
2.	Order dated 14 th January, 2020	
3.	Order of 26 th June, 2020	Prohibiting distribution of assets by liquidator and Payment of interest to employees/workers
4.	Order dated 12 th July 2018 (in C.A.(IB) No. 563 of 2018)	Recovery of the amount recovered by Central Bank of India during moratorium period in CIRP

- 4.5.1 In view of the above the IA also observed that it reflects that the IP was negligent and did not take reasonable care and diligence while performing his duties and, therefore, he has violated section 208(2)(a) and (e) of the Code, Regulation 7(2)(h) of the of IBBI (Insolvency Professionals) Regulations, 2016 and Clauses 2 and 14 of Code of Conduct for Insolvency Professionals mentioned in First Schedule under Regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016.

Findings

5. After examination of the IIR in the light of the orders of AA, the DC finds as follows:
- 5.1 As regards the issue of distribution of funds by IP from working capital of the CD, the DC notes as follows:
- (i) The Hon'ble NCLT vide order dated 20.11.2019 had clearly directed that as the CD is a going concern and the Liquidator cannot distribute the assets till the determination of the application pending for compromise. The Order dated 14.01.2020 had again directed the Liquidator to utilize the Rs.18 Crores for the operations of the CD to keep it continuing as a going concern. Despite the explicit directions of the AA in said Orders, that the funds kept in the CD's account is to be utilized for continuing the CD as a going concern and not to distribute the assets of CD amongst the Financial Creditors, the Mr. Goel did not comply the directions of the Hon'ble NCLT and acted in defiance of the said Orders.
 - (ii) Though the Liquidator had submitted before the AA that the fund was distributed to reduce the burden of debts on the CD as per the Code, it is observed that the CD was being run as a going concern and the application for compromise or arrangement was also pending adjudication. Since, the business of a company is its most valuable asset, to stop or impairing it would destroy its value and its prospect of being sold as a going concern. By distributing the cash/working capital/profits generated by the CD would have adversely affected the returns for the creditors, employment of the workers and resultantly the going concern of the CD.

(iii) Further, the provisions of the Code and the Regulations thereof are abundantly clear in its intent that distribution is to be made from the ‘*proceeds from the sale of the liquidation assets/ proceeds from realization*’ and interim distribution prior to the sale of the CD as a going concern is in contravention of the Code. Distribution under Section 53 of the Code cannot take place prior to realization of the assets irrespective of the manner of sale. Section 53 of the Code provides that:

“53. Distribution of assets.

*(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, **the proceeds from the sale of the liquidation assets** shall be distributed in the following order of priority and within such period and in such manner as may be specified”*

(iv) The period and manner of distribution has been specified by the IBBI in the Regulation 42 of the Liquidation Regulations. The Regulation 42 of the Liquidation Regulations reads as under:

“42. Distribution.

(1) Subject to the provisions of section 53, the liquidator shall not commence distribution before the list of stakeholders and the asset memorandum has been filed with the Adjudicating Authority.

*(2) The liquidator shall distribute the **proceeds from realization** within ninety days from the receipt of the amount to the stakeholders.*

(3) The insolvency resolution process costs, if any, and the liquidation costs shall be deducted before such distribution is made.”

(v) As per Regulation 42 of the Liquidation Regulations, the Liquidator can only commence distribution once the list of stakeholders and asset memorandum has been finalized. However, the DC notes the observation of Hon’ble NCLT in para 15 of its order dated 26.06.2020 indicating the required conditions not fulfilled by the Liquidator, Mr. Goel, for the purposes of distribution of assets as follows:

“Admittedly, list of stakeholders has not been finalized. Admittedly valuation for assessing the liquidation value is also not seen finalized. Assets of the CD have not been liquidated so far. Under S. 230 of the Companies Act, 2013, application for Compromise or Arrangements filed by R9 is pending for consideration. The CD is a going concern. It has two businesses. One is manufacturing steel. The factory of the CD is in operation even in the midst of lockdown and it is running on profit as submitted by the liquidator. A tower transmission business seems to be non operational. In the said background, can the liquidator invoke section 53 and Regulation 42(2) at this stage where admittedly liquidating the assets, chances of revival by way of compromise or arrangement has not been completed. So can profit, working capital kept for uninterrupted cash flow be distributed by the liquidator for the sake of reducing the future burden of the CD? Our answer is in the negative.”

(vi) In the instant matter, the list of stakeholders was yet to be finalized as per the said Order. Further, the liquidation value has also not been arrived at and in consequence the asset memorandum cannot be filed with the Adjudicating Authority. Therefore, in

absence of these two requirements, there cannot be any distribution at the outset under Regulation 42 of the Liquidation Regulations. The aforesaid observations of the Hon'ble NCLT further spells out absence of these requirements together with the fact of pending application for compromise under Section 230 of the Companies Act, 2013.

- (vii) The distribution can only be done after the conclusion of sale of assets subject to the provisions of the Regulation 42(1) of the Liquidation regulations. The stakeholders can be paid as per the waterfall mechanism under Section 53 of the Code. In the instant matter, Mr. Goel in defiance of the Order of the NCLT distributed the working capital and profits to the financial creditors, not just impaired the operations of CD but also displayed his bias towards the interest of one group of creditors and further, in doing so, Mr. Goel contravened the provisions of section 53 of the Code. Hence, the submissions made by the Liquidator, Mr. Goel, before the AA that as per order dated 14.01.2020, the Liquidator was allowed to distribute funds amongst the stakeholders in accordance to the provisions of Section 53 of the Code is merely an attempt to grasp at straws. In this context, the AA also observed that Mr. Goel is attempting to regularize his action by deliberately misinterpreting the Order in such a way to allow him to distribute the funds prematurely without having a finalized list of stakeholders nor the complete liquidation value.
- (viii) In the above backdrop the DC notes that every IP whether as a RP or Liquidator is required under Section 208 (2)(e) to perform his functions in such manner and subject to such conditions as may be specified by the IBBI, which we find in the case of process of liquidation under Liquidation Regulations that he is also required to take reasonable care and diligence while performing his duties under clause (a) of that section. Further, as per clause 2 of the Code of Conduct he should not misrepresent any facts or situation and should refrain from being involved in any action that would bring disrepute to the profession. As per clause 14, he should not act with *mala fide* or be negligent while performing his functions and duties under the Code. In addition to the provisions of the Code and Regulations, it is the duty of every IP to follow the directions contained in the judicial Orders relating to the processes which are binding in nature.
- (ix) In view of the above, the DC is of the view that the distributions of Rs. 26 Crores was in blatant disregard of the Code, Regulations, the Code of Conduct and directions contained in the Orders of AA. The submission of Mr. Goel to the IBBI that he was being pressurized to distribute money does not reflect maintenance of independent and impartiality by Mr. Goel in accordance with clause 5 of the Code of Conduct. Hence, there is a clear contravention of Sections 53, 208(2)(a) and (e) of the Code, Regulation 42(2) of the Liquidation Regulations, and Regulation 7(2)(h) read with clauses 2, 5 and 14 of Code of Conduct of the IP Regulations.

5.2 With regard to the second issue in respect of fee Charged by Liquidator in Violation of Regulation 4 of Liquidation Regulations, the DC finds as follows:

- (i) It is stated in the 3rd progress report and the 4th progress report that, the monthly fee of Rs. 8 Lakh has been charged by the Liquidator as per regulation 4(2)(a) of the

Liquidation Regulations, along with the separate fee of Rs. 10,196,900/- and Rs. 16,95,679 /- on the realization and distribution amount of Rs. 21 Crore and Rs. 5 Crore as per regulation 4(2)(b). Regulation 4(2) of the Liquidation Regulations provides for the fees of a Liquidator as follows:

“4. Liquidator’s fee.

(1) The fee payable to the liquidator shall be in accordance with the decision taken by the committee of creditors under regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(2) In cases other than those covered under sub-regulation (1), the liquidator shall be entitled to a fee-

(a) at the same rate as the resolution professional was entitled to during the corporate insolvency resolution process, for the period of compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013); and

(b) as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation, as under:”

- (ii) The DC notes from the bare perusal of the provisions that where the CoC has not decided the fees of the Liquidator, the provisions of Regulation 4(2) and (3) of the Liquidation Regulations will apply. In the present matter, the application for compromise arrangement under section 230 of the Companies Act, 2013 is still pending adjudication before Hon’ble NCLT and distribution of assets of the CD has been prohibited vide Order dated 26.06.2020 of the AA. Further, the essential requirements for commencement of distribution under Regulation 42(1) of the Liquidation Regulations as also spelt out in the observations of the Hon’ble NCLT having not been finalized, viz., list of stakeholders and asset memorandum. In such a situation the question of Liquidator’s entitlement under Regulation 4(2)(b) of the Liquidation Regulations does not arise particularly prior to the process of realization of assets and also in light of the observations of the Hon’ble NCLT. Therefore, the Liquidator’s act of taking of percentage of amount realized and amount distributed is in contravention of the Regulation 4(2)(b) of the Liquidation Regulations. However, in this matter in view of an application for compromise or arrangement being pending for adjudication, the Liquidator could not have charged both the monthly fees of Rs.8 lakh during the period of compromise/arrangement and also the percentage of amount realized and distributed under Regulation 4(2)(b) of the Liquidation Regulations.
- (iii) Further, the ‘amount realised’ and ‘amount distributed’ as claimed by the Liquidator while calculating his fee under Regulation 4(2)(b) of the Liquidation Regulation is based of the illegal distribution of funds by Liquidator from working capital of the CD to the financial creditors. That despite repeated directions given by the AA to the Liquidator, vide its Order dated 20.11.2019, 14.01.2020 and 26.06.2020, Mr. Goel distributed the amount of the working capital. Further, Mr. Goel has taken a percentage of funds distributed in contravention of the directions of the AA. This unabashed display of the conduct of Mr. Goel, while acting as a Liquidator who is a custodian of the assets and effects of the CD and who is required to take measures to protect and

preserve the assets of the CD under Section 35(1)(b) and (d) as also to hold the liquidation estate as a fiduciary for the benefit of all the creditors under Section 36, is in contravention of the Code of Conduct and provisions of the Code. Section 35 and 36 of the Code provides the following:

“35. Powers and duties of liquidator. –

(1).....the liquidator shall have the following powers and duties, namely: -

(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;...

(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;

36. Liquidation estate. –

(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.”

- (iv) Further, taking a percentage of the ‘amount distributed/ amount realised’ out of the current assets of working capital of the CD by the Liquidator as his fee would only serve to vitiate the purpose of the Code. Instead of running the Company effectively, the liquidator may engage in distributing the working capital to earn a quick penny at the expense of the livelihood of the employees and workers who are dependent on the CD as a going concern. Hence, the IP has contravened sections 35, 36, 208(2)(a) and (e) of the Code read with Regulation 4(2)(b) of Liquidation Regulations and Regulation 7(2)(h) of IP Regulations read with clauses 2 and 14 of Code of Conduct of the IP Regulations.

5.3 With respect to the issue of non-payment of ‘Interest’ part to the employees by the Liquidator, this DC finds as follows:

- (i) The AA, in its order dated 26.06.2020, had explicitly and unequivocally ordered the Liquidator *“to pay the portion of salary deducted from the salary of the employees with applicable bank interest till the date of payment.”* Mr. Goel in his reply dated 05.09.2020 to the IBBI informed that on the day of the Order, the HR Department had paid the employees their deducted portion of salaries but without the interest. This was done on account of the employees preferring to claim for salaries without interest. However, now the HR Department has been directed to make calculations of interest and get it approved from Liquidator. The payment of interest would be made immediately on finalization of calculations. Mr. Goel further submits that the amount of interest calculated would not be more than Rs. 50,000/- for total amount of salaries and wages paid in a month.
- (ii) In view of the above submissions, it is observed that Mr. Goel has taken a very casual and lax approach in his conduct of liquidation proceedings. Mr. Goel rushed to comply with the Order and paid the employees on the same day but only to the extent of paying the employees their deducted portion not the interest. Then Mr. Goel conveniently puts the blame on the employees for not having claimed their salaries with interest, when Mr. Goel was duty bound to follow the direction of AA and only when the IBBI sought

clarification on the conduct, Mr. Goel directed his team to make the calculation for interest payments. The DC finds that the IP has been negligent in performing his duties under the Code and is in violation of Sections 208(2)(a) and (e) of the Code and Regulation 7(2)(h) read with clause 14 of Code of Conduct under IP Regulations.

5.4 With respect to the issue of violation of moratorium during CIRP by financial creditor, this DC finds as follows:

(i) It is observed that the AA had directed that the Bank was not to recover any of the debt from the CD because moratorium was in force. However, in contravention of section 14 of the Code recovery of some amount was made during the moratorium period by Central Bank of India. In the 2nd SCC Meeting dated 05.12.2019 it was proposed by Mr. Goel that amount so recovered will be considered as distribution during the process of liquidation and accordingly a proportionate distribution chart was shared with all the stakeholders. However, Central Bank of India objected and wanted a complete reconciliation of amount so recovered during the process of CIRP Period, which the liquidator assured that the complete reconciliation will be done by him and his team. Mr. Goel in his reply dated 05.09.2020 had admitted that all the recoveries made by Central bank of India were adjusted while accepting claim in the process of liquidation.

(ii) In view of the above, the DC is of the considered view that the Liquidator contravened the AA order dated 12.07.2018 and instead of recovering the amounts taken out by Central Bank of India, the Liquidator proceeded to reconcile and adjust the same while accepting claims and adjusting payments in the process of liquidation. It is the duty of the IP to preserve and protect the assets of the CD during the CIRP. However, the IP was complicit in allowing Central Bank of India recovering their debt during the moratorium and even adjusted payments during distribution in the Liquidation period. This is in contravention of Section 25(1) of the Code which provides as under:

“25(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.”

(iii) Hence, Mr. Goel did not adhere to the observations of the AA wherein the bank was directed not to recover any of the debt from the CD. He adjusted payments in the process of liquidation in this matter, which is in violation of section 25(1) of the Code and Regulation 7(2)(h) read with clause 14 of Code of Conduct under IP Regulations.

ORDER

6. In view of the above findings, this DC notes that, during the liquidation process of Varrsana Ispat Limited, the directions given to Mr. Goel, the Liquidator, by the AA in its Order dated 20.11.2019, 14.01.2020, 26.06.2020 and 12.07.2018 were not complied with by him nor did he adhered to the observations made thereunder. Thus, he acted in defiance of orders of AA in the said matter. Mr. Goel did not take reasonable care and diligence while performing his duties during the processes under the Code and, therefore, he has violated sections 25(1), 35,

36, 53, 208(2)(a) and (e) of the Code, Regulations 4(2)(b) and 42(2) of the Liquidation Regulations, and Regulation 7(2)(h) read with clauses 2, 5 and 14 of Code of Conduct of the IP Regulations.

- 6.1 Given the professional responsibilities of the IP, the conduct of the IP forms the crucial edifice to achieve credibility of the whole process and to inspire confidence among the stakeholders, it is necessary to take urgent action to contain further damage, pending completion of inspection.
7. In view of the above, the DC, in exercise of the powers conferred under section 220 (2) of the Code read with sub- regulation (4) of regulation 5 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017, hereby issues following directions:-
- (a) Mr. Anil Goel, Insolvency Professional with Registration No. IBBI/IPA-001/IP-P00118/2017-2018/10253 is hereby debarred from undertaking any new assignment, either as an Interim Resolution Professional, Resolution Professional, Liquidator or otherwise, under the Code.
 - (b) The direction under (a) above shall come into force with immediate effect and shall cease to have effect on expiry of 90 days from the date of the order.
 - (c) The Inspecting Authority shall complete the inspection and submit draft inspection report by 13th November, 2020 and final inspection report by 4th December, 2020, as specified in the order dated 13th October 2020 of the IBBI.
8. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Anil Goel is enrolled as its professional member.
9. A copy of this order shall be forwarded to the Registrar of the NCLT, Principal Bench, New Delhi for information.
10. If Mr. Anil Goel, the IP, is aggrieved by this order, he may submit his written submissions and may seek an opportunity of hearing within 15 days from the date of receipt of this order.

-Sd-

Date: 29.10.2020
Place: New Delhi

(Dr. Mukulita Vijayawargiya)
Disciplinary Committee