

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
(Disciplinary Committee)

No. IBBI/DC/99/2022

13<sup>th</sup> May, 2022

**Order**

**This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2020/53 dated 10.03.2022 issued to Mr. Prasad Kamalakar Dharap, 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. Mr Dharap is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-001/IP-00702 /2017- 18/11228.**

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

- 1.1. The Hon'ble NCLT, Mumbai Bench (AA) *vide* order dated 22.06.2018 admitted the application under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating Corporate Insolvency Resolution Process (CIRP) of Jejani Pulp and Paper Mills Private Limited (CD). The AA appointed Mr. Prasad Kamalakar Dharap as an Insolvency Resolution Professional (IRP) who was later confirmed as the Resolution professional (RP). Owing to non-finalization of resolution plan, Committee of Creditors (CoC) sought liquidation and AA *vide* order dated 18.10.2019 ordered liquidation of the CD.
- 1.2. Over 2 years 7 months have elapsed since the order of liquidation, yet liquidation process has not been completed. Reportedly auction of plant and machinery has fetched Rs 1.41 Crore and auction of parcels related to land is pending in want of further directions.

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

- 2.1 On having reasonable grounds to believe that Mr. Prasad Kamalakar Dharap had contravened certain provisions of the Code, Regulations and Circulars issued thereunder, the Board, in exercise of the powers conferred to it under section 218 of the Code read with the Inspection Regulations, appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Prasad Kamalakar Dharap *vide* Order dated 07.12.2020. A draft inspection report (DIR), prepared by the IA, was shared with Mr. Prasad Kamalakar Dharap on 01.03.2021, to which Mr. Prasad Kamalakar Dharap submitted reply *vide* email dated 15.03.2021. The IA submitted the Inspection Report to Board on 26.03.2021.
- 2.2 Based on the material available on record including the Inspection Report, the Board issued the SCN to Mr. Prasad Kamalakar Dharap on 10.03.2022. The SCN alleged contravention of sections 208(2)(a) and (e) of the Code, read with regulation 15(1)(b) of the Insolvency

and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Regulations), regulation 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations) and clause 13 of the Code of Conduct as specified in the First Schedule of the IP Regulations. Mr. Prasad Kamalakar Dharap replied to the SCN on 28.03.2022.

2.3 The Board referred the SCN, response of Mr. Prasad Kamalakar Dharap 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. Prasad Kamalakar Dharap availed an opportunity of personal hearing before DC on 06.05.2022 in online mode.

### 3. Consideration of the SCN

The DC has considered the SCN, response of Mr. Prasad Kamalakar Dharap to the SCN and other material available on record and accordingly, proceeds to dispose the SCN.

### 4. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Mr. Prasad Kamalakar Dharap's submissions thereof are summarized below:

#### Contravention – I

#### 4.1 Delay in submission of Progress Report

4.1.1. According to Regulation 15(1) of Liquidation Regulations, a liquidator is required to submit progress reports to the AA within fifteen days after the end of every quarter during which he acts as liquidator. In the present case, the order of liquidation was issued by the AA on 18.10.2019 wherein Mr. Prasad Kamalakar Dharap was appointed as a liquidator. It was observed that Mr. Prasad Kamalakar Dharap had submitted the following progress reports to the AA with delays as detailed below:

No.	Quarter ended on	Due date	Submitted on	Delay
1.	31.12.2019	15.01.2020	21.01.2020	6 days
2.	30.06.2020	15.07.2020	09.11.2020	116 days
3.	30.09.2020	15.10.2020	09.11.2020	25 days
4.	31.12.2020	15.01.2020	20.01.2021	5 days

4.1.2. Mr. Prasad Kamalakar Dharap had failed to submit the progress report during liquidation to the AA within the prescribed timeline. The said act of Mr. Prasad Kamalakar Dharap is not in consonance with Section 208(2)(a) and 208(2)(e) of Code, Regulation 15(1)(b) of the Liquidation Regulations, Regulation 7(2)(h) of IP Regulations read with clause 13 of Code of Conduct as stated in the First Schedule of IP Regulations.

#### 4.2. Submissions made by the IP

With regard to the aforesaid contravention, Mr. Prasad Kamalakar Dharap made the following submissions –

- 4.2.1. Mr. Prasad Kamalakar Dharap submitted that this was his first case in which he was appointed as IRP and later confirmed as RP and *vide* liquidation order dated 18.10.2019, he was appointed as liquidator. With respect to the first delay of 6 days, Mr. Dharap submitted that he was located at Nagpur and he had sent the progress report to his lawyer in Mumbai who had received it on 14.01.2020. However, he could file the same only on 21.01.2020 due to which there was a delay of 6 days.
- 4.2.2. With respect to the delay of 116 days and 25 days, Mr. Dharap further submitted that due to COVID-19 lockdown, his office staff who belonged to places near Nagpur, were sent back to their native places. Thus, he did not have the requisite information and the staff to assist him in preparation of progress reports. As a result, both the quarterly reports were submitted on 09.11.2020. As far as delay of 5 days is concerned, Mr. Dharap submitted that his son's marriage took place on 07.01.2021 due to which his office work got slightly affected and hence, a minor delay in submission took place. He further submitted that the progress report submitted had been in compliance with the Liquidation Regulations prescribed by the Board.

#### 4.3. Summary Findings

- 4.3.1. In respect of the issue of delay in submission of the Progress report, the DC notes that a liquidator is required to oversee the entire process of liquidation, right from the liquidation order to the dissolution of the CD. He has to take custody of all the assets, evaluate them properly and dispose them in a transparent manner keeping in mind the objectives of the Code and the regulations made thereunder. In the interim, he is obligated under the Code and regulations thereunder to preserve and protect them. He is obligated to invite claims and verify them for consolidation. Thereafter, he may admit or reject the claims. He is obligated to defend any suit, prosecution or other legal proceedings, civil or criminal, in the name and on behalf of the CD. The responsibility of the liquidator includes ensuring full transparency and good governance practices in the management of the assets of the Liquidation trust. The liquidator manages the Liquidation trust and must adhere to the provisions, rules and regulations applicable under the relevant law.
- 4.3.2. The DC observes that under Regulation 15(1) of the Liquidation Regulations, it is the duty of the liquidator to submit progress reports to the AA within 15 days after the end of every quarter during which he acts as liquidator.
- 4.3.3. The DC notes the submission of Mr. Dharap that this was his first case in which he was appointed as IP and later confirmed as RP and in the liquidation order, he was appointed as liquidator. The DC also noted his submission that major delay occurred due to imposition of COVID-19 lock down which forced his office staff to desert the office. Thus, he did not have the requisite information and the staff to assist him in preparation of progress reports.
- 4.3.4. In light of reasonable and sufficient cause explained made by Mr. Dharap in respect of delays in submitting progress reports to the AA, lenient view is required to be taken on this count.

## Contravention-II

### 4.4. Non-Compliance of Regulation 31(1) and 31(2) of Liquidation Regulations

4.4.1. According to Regulation 31(1) of Liquidation Regulations, a liquidator is required to prepare a list of stakeholders, category-wise, on the basis of proofs of claims submitted and accepted under these regulations, with the amount of claims admitted, the extent to which the debts or dues are secured or unsecured, the details of the stakeholders, and the proofs admitted or rejected in part, and the proofs wholly rejected. However, it was noted that the list prepared by Mr. Dharap only consisted of summary of stakeholders and was not in line with details as required under regulation 31(1) of Liquidation Regulations.

4.4.2. Regulation 31(2) of Liquidation Regulations states that liquidator shall file list of stakeholders with the AA within forty-five days from the last date for receipt of claims, and the filing of the list shall be announced to the public in the manner specified in Regulation 12(3). Accordingly, the said list was to be filed before AA on or before 14th January 2020, but the same was submitted to AA on 20.01.2020 with a delay of 6 days along with preliminary report. Mr. Dharap has failed to make a public announcement in the manner specified under Regulation 12(3) regarding filing of list of stakeholders with AA as prescribed under Regulation 31(2).

4.4.3. In view of the above, the said conduct of Mr. Dharap is *prima-facie* not in consonance with Section 208(2) (a) and 208(2)(e) of the Code, Regulation 31(1) and 31(2) of Liquidation Regulations, Regulation 7(2)(h) of IP Regulations read along with clause 13 of Code of Conduct under First Schedule of IP Regulations.

### 4.5. Submissions made by the IP

4.5.1. Mr. Dharap submitted that the following chart was prepared by him for the purpose of deciding the number of representatives as required under regulation 31A (2). Mr. Dharap stated that there was no ill intention on his part to hide any information or derive any benefit out of the same.

(a) The amount of claim admitted, if applicable,	(b) The extent to which the debts or dues are secured or unsecured, if applicable,	(c) the details of the stakeholders,	(d) The proofs admitted or rejected in part, and the proofs wholly rejected.
15,10,71,356	Secured Financial Creditor	JM financial Asset Reconstruction Company Limited	Admitted
12,50,000	Unsecured Financial Creditor	Khandelwal Sales Corporation	Rejected in part
65,28,922	Operational Creditor unsecured	Shridutta Kripa Packaging Pvt. Ltd	Admitted
52,94,458	OC Govt Unsecured	Sales Tax Officer,	Rejected in Part

		Gadchiroli	
40,30,127	Unsecured- Related	Sharad Jejani (Suspended Director of CD)	Admitted

4.5.2. In respect of the issue of making public announcement of list of stakeholders, Mr. Dharap submitted that the liquidation order issued by the Hon'ble Mumbai Bench carried a glaring mistake. The petition for liquidation was ordered as "Rejected" instead of "Allowed". This was a typographical error as the order was in favour of allowing the petition. Mr. Dharap submitted that although he did not wait for the corrected order and started his timeline of liquidation from the date of original order, he was trying hard to get the correction done and we could finally get the corrected order on 21.01.2020. Mr. Dharap submitted that the public announcement was missed as he was involved in this as well as various other litigations. He further submitted that the present regulations as amended *w.e.f.* 04.03.2021 do not require public announcement of list of stakeholders. He also stated that the company under consideration was a closely held private limited family company. All the stakeholders, as mentioned in the list of stakeholders, were informed about their inclusion in the Stakeholders Committee and notice of all the stakeholders committee meetings was also sent to them.

#### 4.6. Summary Findings

4.6.1. In respect of the issue of preparation of the list of stakeholders being not in line with Regulation 31(1) of the Liquidation Regulations, the DC notes that Liquidation Regulations require that liquidator shall verify every claim as on the liquidation commencement date, and thereupon prepare a list of stakeholders, with specified details. The list of stakeholders shall be filed with the AA and the same may be modified, with its approval. The list of stakeholders shall, inter-alia, be displayed on the website, if any, of the corporate debtor. In this regard, the Regulation 31 (1) of the Liquidation Regulations is relevant which provides that:

*31(1). "The liquidator shall prepare a list of stakeholders, category-wise, on the basis of proofs of claims submitted and accepted under these Regulations, with-*  
*(a) the amounts of claim admitted, if applicable,*  
*(b) the extent to which the debts or dues are secured or unsecured, if applicable,*  
*(c) the details of the stakeholders, and*  
*(d) the proofs admitted or rejected in part, and the proofs wholly rejected."*

4.6.2. The DC notes the submission of Mr. Dharap that the list of stakeholders was prepared by him for the purpose of deciding the number of representatives as required under Regulation 31A (2) of the Liquidation Regulations. The said list was also mentioned in the reply to the SCN submitted by Mr. Dharap.

4.6.3. In respect of the issue of failure to make public announcement of the list of stakeholders in the manner specified under Regulation 12(3) of the Liquidation Regulations, the DC notes the submission of Mr. Dharap that the delay in public announcement remain pending in want of curative order from the AA.

4.6.4. The DC further notes the submission of Mr. Dharap that the CD was a closely held private limited family company. All the stakeholders, as mentioned in the list of

stakeholders, were informed about their inclusion in the Stakeholders Committee and notice of all the stakeholders committee meetings was also sent to them.

## **5. Order**

- 5.1. In view of the submission made by Mr. Prasad Kamalakar Dharap, and materials available on record, DC notes that Mr. Prasad Kamalakar Dharap should have been more careful and vigilant in conducting the liquidation process and should have been cautious and prompt in discharging his duties as a liquidator of the CD.
- 5.2. The deficiencies as noticed and conceded by Mr. Prasad Kamalakar Dharap appear to be minor in nature. Therefore, DC is inclined to take lenient view and cautions Mr. Prasad Dharap to be more careful in future while handling process under the Code. Time is the essence in relation to running processes under the Code, and even minor delays have snowballing effect in terms of deterioration of value.
- 5.3. In case, such repetitive instances are noticed in future, the matter will be treated as willful negligence and action will be taken accordingly.
- 5.4. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Prasad Kamalakar Dharap is enrolled as a member.
- 5.5. 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.
- 5.6. Accordingly, the show cause notice is disposed of.

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(Sudhaker Shukla)  
Whole Time Member, IBBI

Dated: 13<sup>th</sup> May, 2022

Place: New Delhi