

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/25/2020

02nd June 2020

Order

In the matter of Mr. Kanwal Chaudhary Insolvency Professional (IP) under Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 read with Section 220 of the Insolvency and Bankruptcy Code, 2016 (Code).

Appearance before Disciplinary Committee on 26th May 2020:

For Noticee	Mr. Kanwal Chaudhary, IP
For Board	Mr. Umesh Kumar Sharma, Chief General Manager Dr. Debajyoti Ray Chaudhuri, Chief General Manager Ms. Tuhina Mardi, Assistant Manager Mr. Anshul Agrawal, Assistant Manager Mr. Animesh Khandelwal, Research Associate

1. Background

- 1.1 This Order disposes of the Show Cause Notice (SCN) dated 5th December 2019 issued to Mr. Kanwal Chaudhary, EA-413, Maya Enclave, New Delhi-110064, who is a Professional Member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-002/IP-N00207/2017-18/10661.
- 1.2 In exercise of its power under section 218 of the Code read with the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017, the Board vide Order dated 4th July 2019 appointed an Inspecting Authority (IA) to conduct an inspection of Mr. Kanwal Chaudhary on having reasonable grounds to believe that the IP had contravened provisions of the Code, Regulations, and directions issued thereunder.
- 1.3 The Board on 5th December 2019 had issued the SCN to Mr. Kanwal Chaudhary based on findings of an inspection in respect of his role as interim resolution professional (IRP)/ resolution professional (RP) in corporate insolvency resolution process (CIRP) of Ireo Fiveriver Private Limited (CD). The SCN alleged contraventions of several provisions of the Insolvency and Bankruptcy Code, 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations) and the Code of Conduct under regulation 7(2) thereof, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), IBBI Circular dated 03.01.2018 on “Insolvency professional to use Registration Number and Registered Address in all his communications” and IBBI Circular dated 17.10.2018 on “Valuation under the Insolvency and Bankruptcy Code, 2016”. Mr. Kanwal Chaudhary replied to the SCN vide letter dated 25th December 2019.

1.4 The Board referred the SCN, response of Mr. Kanwal Chaudhary 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. Kanwal Chaudhary availed an opportunity of personal e-hearing before the DC on 26th May, 2020 when he reiterated the submissions made in his written reply and also made a few additional submissions. Thereafter, the IP submitted additional reply vide email dated 27th May 2020 in support of his submissions made during the course of personal e-hearing.

2. **Consideration of SCN**

The DC has considered the SCN, the reply to SCN, written and oral submissions of Mr. Kanwal Chaudhary, other material available on record and proceeds to dispose of the SCN.

3. **Alleged Contraventions, Submissions, Analysis and Findings**

A summary of contraventions alleged in the SCN, Mr. Kanwal Chaudhary's written and oral submissions thereon and their analysis with findings of the DC are as under:

3.1 **Contravention:** Regulation 27 of the CIRP Regulations states that a resolution professional shall within seven days of his appointment but not later than forty-seventh day from the insolvency commencement date appoint two registered valuers to determine the fair and liquidation value of the corporate debtor. Further, in this regard IBBI Circular IBBI/RV/019/2018 (w.e.f 1st February, 2019) specifies that only valuers registered with the Board under the Companies (Registered Valuers and Valuation) Rules, 2017 may be appointed by the IP during the CIRP. In the aforementioned matter, RP appointed M/s RBSA Valuation Advisors LLP and K.G. Somani & Co. as valuers on 23rd February 2019. However, it has been observed that the RP appointed valuers who were not registered with the Board in violation of this Circular. IP's actions indicate misunderstanding of the law.

Submission:

As regards appointment of unregistered valuers being RBSA Valuation Advisors LLP and K.G. Somani & Co., it is submitted by RP that it would though appear that RBSA Valuation Advisors LLP and K.G. Somani & Co. were themselves not registered with IBBI on the date of their appointment, however the undersigned was informed that they have registered valuers as their partners or on their panel who would be conducting and issuing valuation reports for each category of assets. Even in EOI for valuers, it was specifically mentioned by IP that valuation done by valuers of specific class of assets need to be disclosed alongwith names of all valuers who have been engaged for valuation in respect of different class of assets. The relevant portion of EOI issued to valuers is being reproduced as under:

“The valuer shall include in his report the valuation done by valuers of specific class of assets and disclose the names of all valuers who have been engaged for valuation in respect of different class of assets in accordance with Companies Registered Valuers Rules, 2017.”

RBSA Valuation Advisors LLP, informed the RP that it has 09 partners and all its partners are registered valuers. Further, RBSA has been registered as RVE for all three asset classes viz. Securities & Financial Assets; Land & Building and Plant and Machinery vide registered No. IBBI/RE-E/05/2019/110 dated 29th August, 2019. K.G. Somani & Co., through it also came to be appointed on misconception, however, no valuation reports were obtained from this firm. Rather valuation reports have been obtained from Ms. Gunjan Agarwal and Mr. Varun Sharma who both are registered valuers with IBBI. In fact upon careful examining IBBI's Circular dated 17th October, 2018 and 13th August, 2019 as also advisory received from IPA, it was realized that RBSA and K.G. Somani could not have been appointed at the first place. Therefore, corrective measures were taken and Ms. Gunjan Agarwal and Mr. Varun Sharma were appointed in the place of M/s K.G Somani and reports have been submitted by them. RBSA Valuation Advisors LLP informed that they were in the process of getting itself registered as RVE and ultimately came to be registered on 29th August, 2019. The valuation report dated 11th September prepared by Mr. Rajeev R Shah for Securities & Financial Assets and Mr. Arpit M. Sharma for Land & Building came to be submitted on 17th October, 2019. Both aforesaid valuers as well as RBSA are the registered valuers with IBBI. Having explained the aforesaid factual matrix, RP does accept that initially appointment letters to non-registered valuers ought not to have been issued. There was an inadvertent error committed which subsequently was corrected.

In furtherance to submissions made during the personal e-hearing, the RP has also submitted in his reply vide email dated 27.05.2020 that, with respect to appointment of unregistered valuers at the first instance, RP reiterates that both the firms at that point of time represented that they have registered valuers as their partners. Considering that one engages a Law Firm or a CA Firm but ultimately it is the Lawyer enrolled with Bar Council who appears in Court or the CA enrolled with ICAI who signs the Audit Report, an impression was taken that such appointment letters could be issued. However, later when it was realized that this wasn't proper, remedial action was taken. Neither any report was obtained nor any monies paid to them. However, timelines did get breached in the process, for which the IP sincerely apologize.

Analysis:

A person is registered as a valuer only after passing the valuation examination conducted by the IBBI and on recommendation of RVO. A company or a firm is registered as RVE, if it fulfils the requisite criteria provided under the Companies (Registered Valuers and Valuation) Rules, 2017. The objective of the valuation exercise is to enable the Committee of Creditors (CoC) and the prospective resolution applicants to take an informed decision based on the fair and liquidation value of the CD. Also the solemn purpose of the Code is to the maximise the value of assets and a critical element in achieving the objective is by ensuring transparent and credible determination of value of the assets to facilitate comparison and informed decision making. Hence, it is essential that qualified, accountable and professional individuals are allowed to conduct valuation under the Code. The Hon'ble Delhi High Court in the matter of Cushman and Wakefield

v. UOI W.P.(C) 9883/2018, had held that, *“The endeavor of the Rules is to introduce a class of professionals where the focus is on the professionals skills of the individuals rather than a business venture. Professionalism is introduced into the profession of valuation, which involves sophisticated skills and a high degree of integrity, impartiality and ethics for the purposes of the Companies Act and IBC, through Valuation Rules which can regulate this area and make valuers more accountable and professionally trained.”*

Regulation 27 of the CIRP Regulations provides that:

“27. Appointment of registered valuers.

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

Provided that the following persons shall not be appointed as registered valuers, namely:

(a) a relative of the resolution professional;

(b) a related party of the corporate debtor;

(c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or

(d) a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.”

The IBBI Circular dated 17.10.2018 on “Valuation under the Insolvency and Bankruptcy Code, 2016” states that:

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

It has been observed that in the 2nd CoC Meeting dated 13.02.2019 it was noted that, *“To approve the appointment of registered valuers by Interim Resolution Professional*

As desired by the CoC members viz financial institutions in last CoC meeting, the IRP floated EOI inviting two more bids. One of the valuer CBRE declined to bid and the other bidder RBSA gave a quote of Rs. 5,25,000/-. Both HDFC and Axis approved the bid made by RBSA. It was brought to notice of CoC members that there was a need to circulate fresh EOI in view of only one bid being received and since new valuation regulations are effective post 1st Feb-2019 requiring valuation by specific class of assets. IRP was requested to float a fresh EOI for appointment of one other valuer and further negotiate with RBSA.”

Thereafter, in the 3rd CoC meeting dated 08.05.2019 the appointment of the two valuers was informed to the CoC members stating that,

“In terms of Regulation 27 of CIRP Regulations, the RP has appointed two valuers to determine the valuations prescribed by the regulation 35. The RP had invited bids from several valuers and the two lowest bids were selected. The selected valuers were issued appointment letters on 23rd of February 2019. Details of selected valuers are as under :-

<i>Name of the Valuers</i>	<i>Fees</i>
<i>K G Somani & Co.</i>	<i>Rs. 5,10,000/-</i>
<i>RBSA Valuation Advisors LLP.</i>	<i>Rs. 5,25,000/-</i>

The above remuneration is inclusive of all out of pocket expenses but exclusive of GST.”

Thus, as per the minutes of 2nd CoC meeting the RP was well aware of the IBBI Circular dated 17.10.2018 which was to be effective from 01.02.2019 but he still appointed K.G Somani & Co. and RBSA Valuation Advisors LLP. RP has clearly accepted that K.G. Somani & Co. was not registered at the time of appointment and he had mistakenly appointed them even though no valuation report was obtained from K.G. Somani & Co. However, it is observed that on one hand the RP discontinued the services of K.G Somani & Co. on the grounds of non-registration with IBBI at the time of appointment and replaced (K.G Somani & Co.) with valuers Ms. Gunjan Agarwal and Mr. Varun Sharma. On the other hand, the RP despite the same ineligibility still allowed RBSA Valuation Advisors LLP to continue as the valuers for the CD for further 6 months until they got registered on 29th August 2019. This differential treatment given to the two valuers firms on the same issue is jarring.

The DC has been informed by the IPA Division of the Board that IPA of ICSI has dealt with this matter and vide their letter dated 05th December, 2019 has advised and directed Mr. Kanwal Chaudhary, RP to strictly comply with the IBBI Circular with regards to appointment of registered valuers in future. Nevertheless, the illegality committed by the IP cannot be ignored.

CIRP under the Code envisages estimation of fair value and liquidation value of the assets of the CD. These values serve as reference for evaluation of choices, including liquidation, and selection of the choice that decides the fate of the CD, and consequently of the stakeholders. A wrong valuation may put an otherwise viable company into liquidation, which may in turn affect the economy of the country.

Findings:

The RP had appointed two unregistered entities as Registered Valuers of the CD on 23rd February. On discovering his mistake, he appointed Ms. Gunjan Agarwal and Mr. Varun Sharma in place of K.G Somani & Co. but allowed RBSA Valuation Advisors LLP to continue for another 6 months till they got registered as an entity on 29 August, 2019.

Hence, there is violation of Section 208(2)(a) and (e) of the Code, Regulation 27 of the CIRP Regulations, Regulation 7(2)(a), 7(2)(h) and 7(2)(i) of the IP Regulations, read

with clause(s) 1, 2, 10 and 14 of the Code of Conduct of the said IP Regulations and IBBI Circular IBBI/RV/019/2018 dated 17.10.2018.

3.2 Contravention: Section 22(2) of the Code states that the CoC may appoint an RP (either IRP as RP or new IP as RP) by a majority vote of not less than 66% of the voting share of the financial creditors. In the present matter, IP made an error in capturing the claim amounts of two creditors (Mr. Pramod Kumar Agarwal and Mr. Krishna Saroop Singh) due to which the voting percentage of these creditors were calculated on admitted amounts which were higher than the actual amounts. Number of votes considered for Mr. Pramod Kumar Aggarwal was for the amount Rs. 40915856/- while it ought to have been for the amount claimed Rs. 4091586/-. Similarly, the number of votes calculated for Mr. Krishna Saroop Singh on the amount Rs. 180514713/- while the amount claimed was Rs. 1805147.13/-. As a result of these errors, IP's appointment as RP got confirmed with the resolution being passed with 66.39% of votes in favour of the resolution, whereas the correct percentage of votes in IP's favour comes to only 64.56% on the resolution. IP brought this error to the notice of the CoC members during the 4th CoC meeting when a financial creditor pointed out this fact. However, it has been observed that while placing the list of creditors before the CoC members during the 3rd CoC Meeting, the admitted amount w.r.t those two creditors were taken on the correct claim amount. This indicates that the RP became aware of the errors in the 3rd CoC meeting but still he did not take any action in this regard for reason best known to him. Further, with regards to these errors, RP filed an application before the Hon'ble NCLT but it was observed that the RP misrepresented these errors at that stage. As seen above there are two different types of errors (decimal placed at the wrong place and addition of an extra digit) on RP's part in verification of claims, however, RP stated in the said application that decimal was placed at a wrong place for both the claim amounts. RP's actions indicate his attempt to mislead the stakeholders.

Submission: The RP submits that as regards committing an error in capturing the claim amounts of two of the claimants and it would have come to notice at the stage of 3rd CoC, there was failure on his part to correctly capture/verify the claim amounts of Mr. Pramod Kumar Agarwal and Kishan Saroop Singh. The error is apparently true and there cannot be any dispute about the same. Being fallible and making mistake is inherent to being a human. He reiterates that it could not be noticed at the stage of 3rd CoC. The accounting records were not forthcoming from CD even till the time of 2nd CoC. Thereafter, on persistent persuasion by RP, records in relation of Homebuyers were provided. RP's team then proceeded to re-ascertain the amounts to be admitted taking the accounting record submitted by CD. Most of the claims got revised on account of fresh information being made available. As per claim forms, Homebuyers had claimed interest ranging from 9% to 30% on principal amount paid, therefore, to maintain uniformity and considering the respective Builder-Buyer Agreements as well as court orders, Homebuyers were categorized in following manner:

- i. Villa Buyers
- ii. Plot Buyers
- iii. Apartment Buyers

- iv. Floor Buyers
- v. Court orders

Accordingly, allottees of Villas and Plots were provided 7.5% interest per annum whereas allottees of Apartment and Floors were provided interest @10% per annum. Homebuyers who had court orders were provided rate of interest according to the interest awarded in respective Court orders. It would appear that error in capturing the claim amount of Mr. Pramod Kumar Agarwal came to be corrected in a routine revision as explained above which was being done as regards all the homebuyers. It should be appreciated that the above exercise resulted in revision of amounts for almost all the homebuyers claims and therefore, possibility for RP to discover the error with regard to claim of a single Homebuyer was remote, be it Mr. Pramod Kumar Aggarwal or anyone else. It will not be out of place to state here that there were fresh claims also which were considered post the 2nd CoC leading to 3rd CoC. It must be appreciated that it was the RP who immediately brought the error to the notice of CoC during 4th CoC when a financial creditor pointed out the same. RP neither ignored or suppressed the said fact and also approached the NCLT with all bonafide. Had there been any malafide, RP wouldn't have disclosed the same to CoC. Further, as regards misrepresenting before Hon'ble NCLT, it is submitted that objective of application was to bring to the Notice of Hon'ble NCLT the errors that occurred in two figures. There was no malafide in approaching Hon'ble NCLT or say intentional misrepresentation. In para 22 of the said application, RP categorically disclosed the errors with figures and annexed list of Creditors which were noticed by the Hon'ble NCLT, the errors that had crept in two figures which resulted in IP securing 66.395% votes. Here, in the event there would have been any such misrepresentation, Hon'ble NCLT could have taken note of the same. In the above facts and circumstances, RP denies that there have been alleged violations.

During the personal e-hearing, the IP reiterated the submissions made in the reply to the SCN.

Analysis:

As per the Code it is the duty of the CoC to confirm the IRP as the RP. Based on the performance of the IRP in conducting the affairs of the CD the satisfaction of the CoC is accorded. The creditors represented by a CoC holds the key to the fate of the CD and its stakeholders as it exercises its commercial wisdom in determining how the insolvency of the CD will be resolved.

Section 22 (2) of the Code provides that:

“22. (2) The committee of creditors, may, in the first meeting, by a majority vote of not less than sixty-six per cent of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.”

It has been alleged that the RP was aware of the errors in claim amount figures during the 3rd CoC meeting but still he did not take any action in this regard and that the RP misrepresented these errors in the application before the Hon'ble NCLT as decimal was placed at a wrong place for the claim amounts but it was observed that the error in the claim amount was of decimal placed at the wrong place and addition of an extra digit.

It is noted that in Form CA submitted by Mr. Pramod Kumar Agarwal dated 29.12.2018 the total claim amount is mistakenly mentioned as Rs. 40,91,5856/- by the claimant and the Form CA submitted by Mr. Krishna Saroop Singh on 03.01.2019 correctly mentions the claim amount as Rs.18,05,147.13/-. In the list of creditors for the 1st CoC meeting, RP has mentioned the claim amounts as Rs. 4,09,15,856/- for Mr. Pramod Kumar Agarwal and Rs. 18,05,147.13/- for Mr. Krishna Saroop Singh. Thereafter, the RP stated the claim amounts as Rs. 4,09,15,856/- for Mr. Pramod Kumar Agarwal and erroneously stated as Rs.18,05,14,713/- for Mr. Krishna Saroop Singh while calculating their voting share (which were 0.98% and 4.32% respectively) for the 2nd CoC meeting. However, the accurate voting share should have been 0.10% and 0.04% respectively.

Thereafter, it is observed that according to the list of creditors presented by RP to the CoC in the 3rd Meeting held on 8th May, 2019 amount of claim admitted along with interest of Mr. Krishna Saroop Singh was calculated to be Rs.17,04,609.96/- and of Mr. Pramod Kumar Agarwal was Rs.29,66,479/- which could have only been arrived at if the calculation was made over the actual amount was taken as Rs.18,05,147.13/- and Rs.40,91,856/- respectively. Hence, it can be inferred that the RP had been aware of the mistake in his calculation of the claim amount during the 3rd CoC meeting.

Further, from the minutes of the 4th CoC meeting dated 13.06.2019 it is observed that only when the mistake was pointed out by one Mr. Desh Ram Dhankar, the RP was advised by the CoC to approach the Hon'ble NCLT for clarification. The relevant minutes are as given under:

“Further, Email of Mr. Desh Ram Dhankar was placed before the members of COC pointing out that in the voting held during 16th-18th Feb, 2019 as regards appointment of RP, number of votes considered for Mr. Krishan Saroop Singh Guleria, were for the amount 180514713 while amount claimed was 1805147.13. Similarly, number of votes considered for Mr. Promoda Kumar Aggarwal was for amount 40915856 while it ought to have been for amount claimed 4091586. Therefore, RP secured 64.56% votes instead of 66.39%. The members took note of the same and advised RP to approach NCLT seeking appropriate orders in this respect.”

Thereafter, the IP filed an application with the Hon'ble NCLT on 15.06.2019 stating that,

“22. That while the CIRP was being conducted in the above manner, one of the homebuyers namely. Sh. Desh Ram Dhankar sent an email dated 22.05.2019, pointing out that in the voting held during 16th February – 18th February, 2019 as regards the

appointment of RP, number of votes considered for a homebuyer Mr. Krishan Singh Swaroop Guleria were for the amount being Rs.180514713 while the amount claimed was Rs.1805147.13. Similarly number of votes considered for another homebuyer, Mr. Pramod Kumar Aggarwal was for amount of Rs.40915856 while it ought to have been for the amount claimed being Rs.4091586. Therefore, RP secured 64.56% votes instead of 66.39% votes.

...there occurred an error as regards putting “decimal” in two of the figures of the amounts claimed by the homebuyers by virtue of which there has arisen a difference of 1.83% for the votes to have been secured for being appointed/ confirmed as RP...”

Further, the Hon’ble NCLT in its Order dated 02.07.2019 observed that,

“CA No. 2019/2019 is filed under Section 16(5) by the Resolution Professional seeking directions with respect to the confirmation of appointment of Resolution Professional since there was an discrepancy in calculating the voting share for approval by CoC. It is further stated that discrepancy in calculation of the voting share of the CoC Members has come to surface and the required 66 per cent is not met but after considering the actual voting share percentage for approving the appointment by COC comes to 64.56% which is less than by 1.44% required as under Code. Let one more COC meetings be held with this agenda put for voting. Application is deferred till the report of the next meeting by COC.”

In pursuant to the Order of the Hon’ble NCLT, the 5th meeting of the CoC dated 05.08.2019 was held wherein the IP was not re-confirmed as RP. The relevant portion of the minutes of the 5th CoC meeting is as under:

“To confirm the appointment of Mr. Kanwal Chaudhary as RP as per direction of NCLT

In terms of NCLT Order dated 2nd July, 2019 the agenda for confirming the appointing Mr. Kanwal Chaudhary as RP was required to be placed again before the CoC in view of discrepancy noted in the voting share for appointment of RP. Hence, in compliance of the same, the present CoC meeting was convened for passing the following resolution. Here it required to be mentioned HDFC Limited, after the Notice & Agenda having been circulated sought amendment in the Agenda so as state ‘Confirmation’ in place of ‘Ratify’. The same is accordingly amended. HDFC also proposed name of one Mr. Krishan Vrid Jain to act as RP. However, in view of the order dated 02.07.2019, it was explained that it was the agenda as stated in the order, which was placed in the meeting. The AR also placed email of one homebuyer proposing name of Mr.Taneja to act as RP, She stated that he has also obtained some consent/approval of an Association of homebuyers. However, in view of Association not being recognized under IBC and their being no resolution from majority of Homebuyers as also in view of order dated 02.07.2019, the same could not be considered at this stage. The following resolution is thus being proposed to be put to vote

“Resolved that appointment of Mr. Kanwal Chaudhary is confirmed as Resolution Professional in the CIRP of Ireo Fiveriver Private Limited. He shall be entitled to remuneration of Rs.6,00,000/- per month all inclusive apart from out of pocket expenses and such expenses shall form a part of CIRP cost.”

Hence, it is observed that the RP was clearly aware of the error in calculating the claim amount of Mr. Krishna Saroop Singh and Mr. Pramod Kumar Agarwal, before the 3rd CoC meeting as he had rectified the same while evaluating the admitted claim amount (for the 3rd CoC meeting). Ideally, he should have informed the CoC in 3rd meeting itself. However, the RP reckoned to disclose the error before the CoC members in the 4th CoC meeting only when the discrepancy was pointed out by a member by an e mail, wherein he was advised to seek clarification from the Hon’ble NCLT. Though the RP submitted an application before the Hon’ble NCLT misstating the details of the error (which is decimal wrongly placed and addition of an extra digit instead of ‘*putting “decimal” in two of the figures of the amounts*’) it is observed that he had already explained in details the error in the claim amounts of Mr. Pramod Kumar Agarwal and Kishan Saroop Singh and the deficiency in the voting percentage for confirming the RP in the paragraph 22 of the Application submitted. Further, the Hon’ble NCLT directed for *one more COC meeting to be held with this agenda put for voting*. Accordingly, the RP convened the 5th CoC meeting for confirmation of appointment, but his appointment was not reconfirmed. Though the RP had not voluntarily taken initiative to disclose the error in voting share and only on prompting of a financial creditor took to discussing the issue in the 4th CoC meeting, it is observed that the Hon’ble NCLT has already taken cognizance of the issue and in its wisdom has already sought to cure the irregularity by directing to reconfirm the appointment of the RP in the next CoC meeting.

Findings:

Though there seems to be some negligence on the part of RP in not putting the correct figures of claims received and admitted, however, since the issue was discussed in the 4th CoC meeting (on being pointing out by a creditor) and then an application was moved before the Hon’ble NCLT, on whose direction one more COC meetings was held with this agenda put for voting wherein the RP could not secure the requisite percentage of voting hence, strictly no contravention could be made out.

- 3.3 **Contravention:** As per regulation 13 of the CIRP regulation, an insolvency professional must maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it. Further, regulation 16A(7) of the CIRP Regulations states that voting share of creditors in class shall be in proportion to the financial debt which includes an interest at the rate of 8% per annum unless a different rate has been agreed to between the parties. However, it has been observed that the list of creditors provided by the IP to the CoC were not prepared in accordance to regulation 13 of CIRP regulations. In some lists only claimed amount was specified (lists circulated before 1st & 2nd CoC meeting) while in other lists only admitted

amount was mentioned (list circulated before 3rd & 4th CoC meeting). Further RP also failed to specify the interest applied for computation of claims w.r.t class of creditors in violation to regulation 16A (7) of the CIRP Regulations since financial creditors also consisted of homebuyers.

Submission: IP submits that as regards the list of creditors not prepared in accordance with Regulation 13 of CIRP Regulations is concerned, the same is denied as RP had prepared and provided the list of creditors in accordance with Regulation 13. To the Inspecting Authority, RP had by mistake forwarded the voting lists of creditors, however, later RP had provided the list of creditors along with his response to draft inspection report indicating therein amounts claimed; amounts admitted and interest provided. It appears that Annexure R-7 with RP's response has not been considered.

During the personal e-hearing, the RP reiterated the submissions made in reply to the SCN.

Analysis:

Any creditor, workmen, employees or any other stakeholder, who has a right to payment and right to remedy against the CD can submit claim to RP. Therefore, it is one of the primary functions of the RP to receive and collate all the claims and prepare a list of creditors. The list of creditors shall then be made available for inspection to the CoC members, claimant who submitted proof of claims and other stakeholders. List of creditors is a consolidated data that collates the details of debt due to each stakeholder and it is of utmost importance that the list of creditors should be prepared by the IRP/ RP in accordance to the provisions of the CIRP Regulations.

Regulation 13 of the CIRP Regulations provides that:

“13. Verification of claims.

(1)The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

(2)The list of creditors shall be–

(a) available for inspection by the persons who submitted proofs of claim;

(b) available for inspection by members, partners, directors and guarantors of the corporate debtor;

(c) displayed on the website, if any, of the corporate debtor;

(d) filed with the Adjudicating Authority; and

(e) presented at the first meeting of the committee..”

Regulation 13 (1) of the CIRP Regulations mandates an IRP or the RP, *as the case may be to verify and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.*

Regulation 13 (2) (e) of the CIRP Regulations provides that the *list of creditors shall be presented at the first meeting of the committee.*

Further, Regulation 16A (7) of CIRP Regulations, 2016 provides:

“16A. (7)The voting share of a creditor in a class shall be in proportion to the financial debt which includes an interest at the rate of eight per cent per annum unless a different rate has been agreed to between the parties.”

Submission of list of creditors, before the Inspecting Authority, containing the details as per the requirement of Regulation 13 of CIRP Regulation is not disputed. However, the allegation is that the list of creditors provided by the IP to the CoC were not prepared in accordance to regulation 13 of CIRP regulations. In the present matter the list of creditors submitted before the 1st and 2nd CoC meeting shows only the name of creditors and their claimed amount (*the amount of claims admitted and the security interest, if any, missing*) while the 3rd and 4th CoC meeting lists contains only name of creditors and admitted amount (*the amount claimed and the security interest, if any, missing*). There may not be any security interest but amount of claims admitted (in 1st and 2nd COC meeting) and the amount claimed (in 3rd and 4th COC meetings) were mandatorily required to be included in the list of creditors by IRP/RP as the case may be. The RP has submitted that there is no security interest registered by CD against the amounts of Homebuyers.

Findings:

Since the list of creditors presented before the committee (as required by clause (e)of Regulation 13 of CIRP Regulation) do not contain the complete details (containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims) there is contravention of Regulation 13 of the CIRP Regulations.

This is in violation of Section 208(2)(a) & (e) of the Code and Regulation 7(2)(a) and 7(2)(h) of the IP Regulations, read with clause 10 and 14 of the Code of Conduct as given in the First Schedule of the IP Regulations and Regulation 13 of CIRP Regulations, 2016.

3.4. Contravention: Preparation of Information Memorandum (IM) is one of the crucial tasks of an Insolvency Professional. As per clause (d) of regulation 36(2) of the CIRP regulations, IM shall contain list of creditors containing the name of creditors, the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims. In the present matter, it has been observed that the RP

failed to maintain list(s) containing the said particulars.

Submission: The IP submits that, as regards IM not containing list of creditors along with amounts claimed or admitted, the same is not correct and is, therefore, denied. As per Clause 3.1 of Information Memorandum, requisite information has been provided in tabulated form indicating amount claimed by creditors and amount admitted. Notes to table under Clause 3.1 clearly mentions that amount admitted includes interest calculated till date of commencement of CIRP, interest rates as per their respective agreements with Corporate Debtor. In addition, detailed Homebuyer wise listing has been provided as Annexure VI to the IM where amount claimed, and amount admitted have been disclosed. There is no security interest registered by CD against the amounts of Homebuyers. Details of security interest have been disclosed in clause 4 of IM.

During the personal e-hearing, the RP reiterated the submissions made in reply to the SCN.

Analysis:

The objective of the IM is to provide a complete picture of the financial position of the CD that is seeking resolution. The information provided in the IM is crucial to the CD as the prospective resolution applicants would rely on such information for a better understanding and evaluating the position of CD, thereby aiding them in decision to make a bid for the CD by submitting a resolution plan. Hence, to ensure that the CD gets a fair chance at reaching a resolution, the RP must ensure that all necessary information depicting a comprehensive position of the CD is provided.

Regulation 36 (2) of the CIRP Regulations, 2016 provides that:

“36. (2) The information memorandum shall contain the following details of the corporate debtor-

(a) assets and liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values.

Explanation: ‘Description’ includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, and any other relevant details.]

(b) the latest annual financial statements;

(c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;

(d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;

(e) particulars of a debt due from or to the corporate debtor with respect to related parties;

(f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;

- (g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;
- (h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;
- (i) the number of workers and employees and liabilities of the corporate debtor towards them;
- (j) ***
- (k) ***
- (l) Other information, which the resolution professional deems relevant to the committee.”

After the e-hearing, the RP has submitted a copy of the IM on 27th May 2020.

List of Creditors

A list of creditors is based on claims received and admitted by the RP up to 13/03/2019. Resolution Professional can admit claims received till 13/03/2019 (ninetieth day from the start of CIRP (as per regulation 12(2) of CIRP Regulation), The claim verification process is a continuous process, whereby any claim admitted may undergo change on submission/discovery of further information which supplements or is contrary to the information on record as on date of this document. In a few cases clarifications are being sought from the claimants for reconciliation/ validation of claims submitted. The list of creditors is being reproduced below:

3.1 Financial Creditors

S.No	Financial Creditor	Amount Claimed	Claim Admitted	Voting Share (%) to be calculated as per admitted claim
1	UNION BANK OF INDIA			

From the above table (appearing at page no. 8 of the IM) it is adequately clear that the particulars of the list of creditors containing the name of creditors (Column-2 Financial Creditor), the amount claimed (Column-3) by them and the amount of their claims admitted (Column-4) was clearly mentioned at in accordance with Regulation 36(2) of the CIRP Regulations (keeping in view the confidential nature of the IM, names and amounts have not been mentioned). As per submission made by IP there is no security interest registered by CD against the amounts of Homebuyers. However, the security interest relating to Banks has been shown separately at page no. 10 and 11 of the IM. Further, the list of creditors (for the homebuyers) is available at pages 173-179 of the IM contains the name of creditors, the amount claimed by them and the amount of their claims admitted including interest.

Findings:

Since the copy of IM submitted before the DC contains the name of creditors, the amount claimed by them, the amount of their claims admitted and the security interest , there is no contravention of Regulation 36 (2) of the CIRP Regulations, 2016.

3.5 Contravention: Certain transaction which were initiated by the Corporate Debtor, purportedly with the homebuyers, before the CIRP commencement date were finalized

after CIRP commenced in this matter. One such transaction was entered with Ireo Waterfront Private Limited for amount of Rs. 1,00,000/-. In this regard RP has submitted to the Inspecting Authority that this transaction was unauthorized in nature as money was not transferred to any creditor but to a group company of the Corporate Debtor and due to this with Ireo Waterfront Private Limited will be required to make a refund. Section 25 (1) of the Code states that it is the duty of the resolution professional to preserve and protect the assets of the corporate debtor. However, it has been observed that the RP failed to take any steps to reverse the transaction. RP's action indicates his casualness towards CIRP.

Submission:

It is submitted by the RP that, as regards Rs. 1,00,000/- transferred to Ireo Waterfront Pvt. Ltd. maintaining its account no. 01732100000345 with Kotak Mahindra Bank, the same was Kotak to Kotak internal transfer. This amount was recoverable as Ireo Waterfront Pvt. Ltd. is a group company of CD and not a creditor of CD. This transaction was unauthorized and required to be refunded by Ireo Waterfront Pvt. Ltd. RP had notified Ireo Waterfront Pvt. Ltd. in this regard by way of an email dated 16.08.2019. However, availing appropriate remedy, seeking its reversal in the event the same wasn't complied with. RP was awaiting the report from the Auditor which was appointed to conduct transactional audit so that any other such transfers, if any, brought to notice, could be included in one application instead of filing separate applications. Such transactions were first noticed by the RP only and were brought to the notice of CoC and formed basis of further advent of Transaction and Forensic Audit. The CoC approved the same in 3rd CoC. As Section 43 of IBC, 2016 requires RP to apply to Adjudicating Authority for avoidance of preferential transactions, it would be prudent to list all such transactions that are unearthed through transaction and forensic audit. Therefore, it cannot be alleged that RP's approach was casual.

During the personal e-hearing, the IP reiterated the submissions made as in reply to the SCN.

Analysis:

As per the Code it is the duty of the RP to file an avoidance application on finding transactions that may prejudice the interests of the CD and that of the other stakeholders. Thus, a duty is imposed on the RP to file such an application immediately with Adjudicating Authority upon receipt of report to preserve and protect the assets of Corporate Debtor.

Section 25 (1) of the Code provides that:

"25. Duties of resolution professional. -

*(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."*It has been observed that the transaction between the CD and Ireo Waterfront

Pvt. Ltd. was made on 14.12.2018 post the commencement of CIRP (which was on 13.12.2018) for an amount of Rs. 1,00,000/-. Also, the transaction was referred to in the 2nd CoC meeting stating that,

“Further, it was brought to the Notice of CoC that post admission of the application, there was a withdrawal/transfer of Rs.26.00 lacs on 14th December 2018 in two of the bank accounts maintained by CD with Kotak Bank. Therefore, it was considered appropriate to call upon Kotak to provide the details of aforesaid transactions and to take action in accordance with law.”

Thereafter, in the 3rd CoC meeting it was observed that,

“5. To take note of action taken by RP since the last CoC meeting

The Resolution Professional placed before the COC, the action taken report since the last COC meeting. COC members enquired about the status of clarification sought from Kotak bank regarding transactions of withdrawal of Rs.26.00 lacs appearing in the statement of Kotak bank account on 14th December 2018. RP clarified that those transactions pertained to refund cheques issued to homebuyers by Corporate Debtor prior to commencement of CIRP which hit the bank account one day after commencement of CIRP.”

However, it has been observed that Rs.25 lakhs was made to creditor Fimosys Infrastructure Private Limited but the remaining Rs. 1,00,000/- was made to Ireo Waterfront Pvt. Ltd, a group company of the CD. Moreover, in the appointment letter dated 18.05.2019 to the Forensic Auditor and Transaction Auditor for Corporate Debtor, TR Chadha & Co LLP the scope of their engagement is as follows:

“A. To carry out forensic audit for financial years 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and for the period 01st April, 2018 to 13th December 2018 i.e. Insolvency Commencement Date.”

From the above scope of the Forensic Auditor and Transaction Auditor assessment, it is observed that this does not include the date of the transaction made to Ireo Waterfront Pvt. Ltd. for the amount of Rs. 1,00,000/- i.e. 14.12.2018 and neither is there any mention of the aforesaid unauthorised transaction in the appointment letter. Further, it is observed that only after this issue was raised in the inspection conducted by the Board on 25.07.2019 and the draft inspection report was shared with the RP on 06.08.2019, the RP finally decide to notify Ireo Waterfront Pvt. Ltd., vide email dated 16.08.2019 of the unauthorised transaction made in their favor and to remit the aforesaid amount back to CD.

Hence, it is observed that the unauthorised transaction made in favor of Ireo Waterfront Pvt. Ltd. was within the knowledge of RP however, it was only after the issue was raised by the Board, he took action towards it. In view of this, the argument raised by RP that he was awaiting the report from the Auditor which was appointed to conduct

transactional audit so that, other such transfers, if any, brought to notice, could be included in one application instead of filing separate applications does not hold good. As per Regulation 35A of the CIRP Regulation, 2016 the RP is required to form an opinion on preferential and other transactions within 75 days of the commencement (of CIRP) and to make a determination on the same within 115 days of commencement and to file application to AA for appropriate relief within 135 days of commencement. However, it has been seen that from 14.12.2018 till 16.08.2019, wherein 245 days had passed and no action was taken by RP and only on the issue being pointed out by the Board, the RP deigned to send an email to Ireo Waterfront Pvt. Ltd on 16.08.2019. Though such transactions were first noticed by the RP and were discussed before the CoC, it was in regards to refund made to homebuyers and no mention of the transfer to a group company or any further action that is being contemplated to recover such amount has been stated. Moreover, nowhere in the scope of the Forensic and Transaction Audit Agreement this unauthorised transaction was covered. Therefore, the DC is of the view that the RP has not undertaken adequate measures to reverse the transaction and has shown a casual attitude in his conduct of CIRP.

Findings:

The IP had not taken any action for 245 days towards correcting the unauthorised transaction until the IA pointed out the issue and no discussions before CoC were held regarding the transfer to a group company or any action to be taken thereof. Further, the RP did not mention the unauthorised transaction in the scope of the Forensic and Transaction Audit Agreement either. Hence, the DC is of the view that the RP has shown a casual attitude towards his responsibilities and adequate measures were not taken to reverse the transaction.

This is in violation of Sections 25 (1), 208(2)(a) & (e) of the Code and Regulation 7(2)(a) and 7(2)(h) of the IP Regulations, read with clause 14 of the Code of Conduct as given in the First Schedule of the IP Regulations.

3.6 Contravention: As per clause 25A of the Code of Conduct (under the IP regulations) an insolvency professional is required to disclose, *inter alia*, the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member. In the present matter, RP appointed M/s Linkstar Infosys Pvt Ltd. for providing e-voting services. However, it has been observed that while providing cost disclosures to his IPA, RP failed to disclose cost incurred by engaging M/s Linkstar Infosys Pvt Ltd.

Submission:

RP has submitted that as regards not disclosing costs incurred by engaging Linkstar Infosys Pvt Ltd. he is of the understanding that it would not fall in the category of 'professionals' engaged to operate / manage affairs of the CD. Its service was taken as and when e-voting was to be conducted for considering resolutions of CoC. Therefore, by RP's understanding, no disclosures were required to be made.

During the personal e-hearing, the IP also submitted that as Linkstar Infosys Pvt Ltd. was not handling the assets of the CD, there is no requirement of Cost disclosure.

Analysis:

CIRP under the Code is a non-adversarial resolution process where the defaulting CD cedes control to an IP, who is responsible for managing the affairs of the company as a going concern and preserving its value. It is the objective of the Code to ensure that there is transparency in the functioning and performance of IPs and an arm's length relationship is maintained and reasonable fees are paid to the professionals engaged by the IP during the CIRP of the CD. Therefore, Cost disclosures are made to ensure that the CIRP is conducted with transparency and accountability, it is also accessible by all the stakeholders, who can ascertain that the CIRP of the CD is not incurring any unreasonable costs.

Clause 25A of the Code of Conduct as given in the First Schedule of the IP Regulations provides that:

“25A. An insolvency professional shall disclose the fee payable to him, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.”

The above mentioned Clause of the code of conduct clearly states that the RP is required to disclose costs incurred to the Insolvency Professional Agency of which he is a member, of all the fees that are payable to any professional that have been engaged by him. However, the IP has submitted that provider of services for e-voting is not a 'professional'. The definition of the term 'professional' has not been provided under the Code nor has any Circular been issued to the effect to clarify as to who may be covered as a professional.

The term 'Profession' as defined by the Black's Law Dictionary, 4th Edition is as under:

“Profession- A vocation, calling, occupation or employment involving labor, skill, education, special knowledge and compensation or profit, but the labor and skill involved is predominantly mental or intellectual, rather than physical or manual.”

Professionals in India are generally members of professional body, which adheres to a model set of Code of Conduct and has acquired expertise in a specialised field such as legal, valuation, accounting etc. Hence, in the absence of any provision under the Code or Regulations or Circular and the understanding as per the common usage of the term professional, it cannot be held that provider of e-voting services would be covered as a professional as per clause 25A of the Code of Conduct. It is some sort of support service.

Findings:

DC is of the view that provider of e-voting services is not a professional, hence there is no contravention.

3.7 Contravention: IBBI Circular dated 03rd January, 2018 provides that an insolvency professional in all his communications as an IP must provide: (i) his name, address and email, as registered with IBBI; (ii) his Registration Numbers as an IP, and (iii) the capacity in which he is communicating. However, it has been observed that IP communicated with various stakeholders during the course of CIRP while using the letterheads indicating his profession as a lawyer and not that of an insolvency professional.

Submission: IP submits that as regards using the letter heads reflecting the profession as lawyer is absolutely correct. This aspect was never realized till Inspecting Authority advised in this regard and accordingly RP sent the notice / agenda and Minutes of 5th CoC meeting on letterhead reflecting Kanwal Chaudhary as IP. The advise was well taken and RP has since then using letter heads mentioning profession as ‘Insolvency Professional’.

Analysis:

The letterheads carry the identification of a person be it natural or juristic for the benefit of all his contemporaries. Therefore, it is essential that the IP must identify himself in respect of his capacity either as IRP/ RP or Liquidator that he is holding in the CD. RP’s registration number helps in identifying his status on registration with IBBI.

The Circular dated 03.01.2018 issued by IBBI on ‘Insolvency professional to use Registration Number and Registered Address in all his communications.’ provides that,

“It is hereby directed that in all his communications, whether by way of public announcement or otherwise to a stakeholder or to an authority, an insolvency professional shall prominently state: (i) his name, address and email, as registered with the IBBI, (ii) his Registration Number as an insolvency professional granted by the IBBI, and (iii) the capacity in which he is communicating (Example: As Interim Resolution Professional of XYZ Limited, As Resolution Professional of ABC Limited, etc.).”

It has been observed from the various documents submitted by the IP in the CIRP of Ireo Fiveriver Limited (such as the CoC Minutes of the 2nd, 3rd, 4th, expression of interest for inviting Forensic Audit, appointment letter for conducting Forensic Audit etc.) that the RP has indicated his profession as lawyer which is in clear contravention of the IBBI Circular dated 03.01.2018, which categorically states that ***an insolvency professional shall prominently state: (i) his name, address and email, as registered with the IBBI, (ii) his Registration Number as an insolvency professional granted by the IBBI, and (iii) the capacity in which he is communicating*** with the stakeholders. Further, it is also noted that the IP has also not provided his registration number or any other information identifying himself as a registered insolvency professional. The situation becomes graver when the mistake is done by a lawyer. The RP has admitted that he has wrongly been addressing his profession as Advocate in the letterheads and had not

realized his mistake until the IA pointed it.

Findings:

The RP in his reply to the SCN has admitted that in various communications with the stakeholders he has used letterheads indicating his profession as an Advocate until the IA pointed it out.

Hence this is in violation of Section 208(2)(a) & (e) of the Code and Regulation 7(2)(a), 7(2)(h) and, 7(2)(i) of the IP Regulations, read with clause(s) 2, 10, 12 and 14 of the Code of Conduct as given in the First Schedule of the IP Regulations and IBBI Circular dated 03rd January, 2018.

4. Conclusion

- 4.1 The RP holds a central position in conducting the CIRP. He acts as a bridge between the debtor and the creditor. He is appointed by the Adjudicating Authority as an officer of the Court to oversee the resolution process and he also has to maintain transparency in the process ensuring that all the stakeholders are appropriately informed. The duty placed on the IP is burdensome however, he also possesses immense powers which if unchecked would severely affect the ailing CD and prejudice the interests of various stakeholder. The RP has to perform a balancing act of overseeing the resolution of the CD as well as take care of the interests of all the stakeholders. Hence, it is crucial that the RP abides by the Code, rules, regulations and guidelines at all times.
- 4.2 The BLRC also noted that: *“The Committee recommends that an industry of regulated professionals be enabled under the Code (Burman and Roy, 2015). These Insolvency Professionals will be delegated the task of monitoring and managing matters of business by the Adjudicator, so that both creditors and the debtor can take comfort that economic value is not eroded by actions taken by the other. The role of the professional is also critical to ensure a robust separation of the Adjudicator’s role in to ensuring adherence to the process of the law rather than on matters of business, while strengthening the efficiency of the process.*

The Committee recognizes that it is not possible, at present, to fully design every last procedural detail about the working of the bankruptcy process. Further, the changing institutional environment in India will imply that many procedural details will need to rapidly evolve in the future.”

- 4.3 In this matter, the DC observes that Mr. Kanwal Chaudhary displayed a negligent approach during the conduct of CIRP which can be elaborated as below:
- i. The RP had appointed two unregistered entities as Registered Valuers of the CD on 23rd February 2019 in contravention of Regulation 27 of the CIRP Regulations and IBBI Circular IBBI/RV/019/2018 dated 17.10.2018. On discovering his mistake, he appointed Ms. Gunjan Agarwal and Mr. Varun Sharma in place of K.G Somani & Co. but allowed RBSA Valuation Advisors LLP to continue for another 6 months

till they got registered as an entity on 29 August 2019.

- ii. The list of creditors presented by IRP/RP before the committee in its 1st to 4th meeting do not contain the complete details as per requirement of Regulation 13 of CIRP Regulations.
- iii. The unauthorised transaction made in favor of Ireo Waterfront Pvt. Ltd. was within the knowledge of RP. However, the RP had not taken any action for 245 days towards correcting the unauthorised transaction until the IA pointed out the issue, no discussions before CoC were held regarding the transfer to a group company or any action to be taken thereof and neither did the RP mention the unauthorised transaction in the scope of the Forensic and Transaction Audit Agreement.
- iv. The RP has, in the various communications with the stakeholders, used letterheads indicating his profession as an Advocate but there is no indication of his registration as an Insolvency Professional or his capacity as IRP or RP in the CIRP of CD.

4.4 Thus, Mr. Kanwal Chaudhary has displayed utter misunderstanding of the provisions of the Code and Regulations made thereunder. He has, therefore, contravened provisions of:

- i. Sections 25 (1), 208(2)(a) and (e) of the Code,
- ii. Regulation 13 and 27 of the CIRP Regulations.
- iii. Regulations 7(2)(a), 7(2)(h) and 7(2)(i) of the IP Regulations, 2016 read with clauses 1, 2, 10, 12 and 14 of the Code of Conduct under the said Regulations.
- iv. IBBI Circular dated 17.10.2018 on “Valuation under the Insolvency and Bankruptcy Code, 2016”; and
- v. IBBI Circular dated 03.01.2018 on “Insolvency professional to use Registration Number and Registered Address in all his communications”.

5. Order

5.1 During the personal e-hearing, Mr. Kanwal Chaudhary submitted that the errors committed by him during CIRP were bonafide mistakes and not intentional. In view of the above, the DC, in exercise of the powers conferred under Section 220 of the Code read with sub-regulations (7) and (8) of Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017, disposes of the SCN with the following directions:

- 5.1.1 The registration of Mr. Kanwal Chaudhary as an Insolvency Professional, having Registration No. IBBI/IPA-002/IP-N00207/2017-18/10661, shall be suspended for three months; and
- 5.1.2 Mr. Kanwal Chaudhary shall not seek or accept any process or assignment or render any services under the Code during the period of suspension. He shall,

however, continue to conduct and complete the assignments / processes he has in hand as on date of this order.

- 5.2 This Order shall come into force on expiry of 30 days from the date of its issue.
- 5.3 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Kanwal Chaudhary is enrolled as a member.
- 5.4 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.
- 5.5 Accordingly, the show cause notice is disposed of.

-Sd-

(Dr. Navrang Saini)
Whole Time Member, IBBI

Dated: 02nd June 2020

Place: New Delhi