

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/82/2022

10th February, 2022

ORDER

In the matter of Mr. Anil Goel, Insolvency Professional (IP) under Section 220 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017.

Background

1. This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/(INSP)/2020/49 dated 11th December, 2020 issued to Mr. Anil Goel, E-10A, Kailash Colony, Greater Kailash-1, New Delhi-110048, who is a Professional Member of the Indian Institute of Insolvency Professional of ICAI (IPA) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00118/2017-18/10253.
- 1.1 An SCN was issued to Mr. Goel in two matters, viz., Varrsana Ispat Limited and VISA Power Limited on 11th December, 2020. In Varrsana Ispat Limited, Mr. Goel was appointed as an Interim Resolution Professional (IRP) vide order dated 16.11.2017 of the National Company Law Tribunal, Kolkata Bench (AA). He was confirmed as a Resolution Professional (RP) by a unanimous decision of the Committee of Creditors (CoC) in the meeting held on 17.12.2017 and was later confirmed by the AA vide its Order dated 02.04.2018. Despite Varrsana Ispat Limited being a going concern, the corporate insolvency resolution process (CIRP) failed, as there being no prospective resolution applicant for resolution of insolvency due to the attachment of assets of Varrsana Ispat Limited by the Enforcement Directorate under Prevention of Money Laundering Act, 2002 (PMLA). The AA vide its Order dated 06.08.2019 declared the commencement of liquidation of the Varrsana Ispat Limited and appointed Mr. Goel as the Liquidator. In the matter of VISA Power Limited, Mr. Goel was appointed as an IRP vide order dated 22.12.2017 of the AA. Mr. Goel was appointed as a RP by a unanimous decision of the CoC in the first meeting held on 24.01.2018 and was later confirmed by the AA vide its Order dated 13.02.2018. The CIRP failed as there being no prospective resolution applicant for resolution of insolvency. The AA vide its Order dated 11.10.2018 declared the commencement of liquidation of the VISA Power Limited and appointed Mr. Goel as the Liquidator.
- 1.2 The IBBI, in exercise of its powers under section 218 of the Insolvency and Bankruptcy Code, 2016 (Code) read with the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (I&I Regulations) has appointed the Inspecting Authority (IA), vide its order dated 13.10.2020, to conduct inspection of Mr. Anil Goel,

IP in both the matters on having reasonable grounds to believe that the IP has contravened the provisions of the Code or the rules or regulations made and also the directions of AA. The IA, under regulation 4(1) of I&I Regulations, directed Mr. Goel vide e-mail dated 14.10.2020 to provide copies of documents for inspection by 25.10.2020.

- 1.3 The IA submitted an Interim Inspection Report (IIR) dated 21.10.2020 in the matter of Varrsana Ispat Limited to the IBBI under regulation 5(1) of I&I Regulations stating gross violation of the provisions of the Code, Regulations made thereunder and also the directions issued by the AA to Mr. Anil Goel.
- 1.4 On the basis of materials available on record including the IIR, the Disciplinary Committee (DC), in exercise of the powers conferred under section 220 (2) of the Code read with regulation 5(4) of the I&I Regulations, vide its Interim Order dated 29.10.2020, had issued directions debarring him from undertaking any new assignment, either as an Interim Resolution Professional, Resolution Professional, Liquidator or otherwise, under the Code for a period of 90 days.
- 1.5 As per the said interim order dated 29.10.2020, the direction debarring Mr. Goel from undertaking any new assignment ceased to have effect on expiry of 90 days, that is, on 27.01.2021. The Interim Order also provided that Mr. Goel may submit his written submission post-interim order and seek personal hearing. Mr. Goel vide email dated 09.11.2020 submitted his written submission and sought to avail personal hearing. He appeared before DC for personal hearing on 11.12.2020.
- 1.6 The IA submitted the Inspection Report on 04.12.2020 to the IBBI and IBBI issued SCN against Mr. Goel on 11.12.2020 based on the findings of the IA in respect of his role as an IRP, RP and Liquidator in CIRP of both the said matters. The SCN alleged contraventions of the sections 14(1)(b), 17(2)(e), 18(1)(a) & (f), 23(2), 25(1), 25(2)(a), 28(1)(f), 35(1)(a), (b), (d) & (f), 36(2), 53, 208(2)(a) & (e) of the Code, regulations 4(2)(b), 33(1), 35(2) of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) read with clauses 3 and 9 of Schedule I of Liquidation Regulations, regulation 7(2)(a) & (h) of the IP Regulations read with clauses 2, 3, 5, 12 and 14 the Code of Conduct under Schedule I of the IP Regulations and IBBI circular no. IP/001/2018 dated 03.01.2018 and IBBI circular no. IP/005/2018 dated 16.01.2018. Mr. Anil Goel replied to the SCN vide letter dated 28.12.2020.
- 1.7 The Board referred the SCN, reply of Mr. Goel to the SCN and other material available on record to the DC for disposal of the SCN in accordance with the provisions of the Code and Regulations made thereunder. Mr. Goel availed an opportunity of personal hearing before the DC on 18.02.2021 and 19.02.2021 wherein he reiterated the submissions made in his written reply and also made additional submissions. Thereafter, Mr. Goel submitted additional written submissions vide email dated 18.02.2021, 22.02.2021 and 22.03.2021 in support of his submissions made during the course of personal hearing.

- 1.8 During personal hearing, Mr. Goel informed the DC about the order passed by the Hon'ble Supreme Court dated 15.01.2021 in the matter of Bharat Heavy Electricals Ltd. Vs. Anil Goel, Civil Appeal No(s).3399/2020 with respect to VISA Power Limited.
- 1.9 In the said order dated 15.01.2021, the Hon'ble Supreme Court stayed the directions given by the National Company Law Appellate Tribunal (NCLAT) in its Order dated 10.08.2020 contained in clauses (7) and (8) of the operative directions of that Order.
- 1.10 The Hon'ble NCLAT in its order dated 10.08.2020, *inter alia*, had observed as follows:
“7) Copy of Judgment of the Adjudicating Authority and this Judgment may be sent to IBBI which may consider if actions, if any, are required to be initiated under Chapter – VI of IBC. If Respondent No.1 – Liquidator, extends full cooperation in carrying out the Orders which we are passing, especially, to get back goods/material of Corporate Debtor and reauction, IBBI may consider the same as mitigating factor, in favor of Respondent No.1 in action (if any) under Chapter - VI of IBC.
8) If it appears to Adjudicating Authority that Respondent No.1 is not cooperating, it would be at liberty to replace him with another person as Liquidator.”
- 1.11 It is pertinent to note that the said SCN in relation to VISA Power Ltd. was based on the findings of the IA pursuant to the observations of the Hon'ble NCLAT in its Order dated 10.08.2020 which has been stayed by Hon'ble Supreme Court. The Chapter-VI of Part IV of the Code provides for inspection and investigation, issue of SCN and its disposal by DC.
- 1.12 In view of the fact that the Hon'ble Supreme Court is seized with the matter in Bharat Heavy Electricals Ltd. Vs. Anil Goel, with respect to VISA Power Limited, the DC is of the considered view that the said SCN is now construed to be limited only to M/s Varrsana Ispat Limited. Accordingly, the DC proceeds to dispose of the said SCN.

Alleged Contraventions and Submissions

2. The contraventions alleged in the SCN with respect to Varrsana Ispat Ltd., the corporate Debtor (CD), and Mr. Anil Goel's written and oral submissions thereof are summarized as follows:
- 2.1 **Contravention-I**
- (i) The AA 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. Subsequently, 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 (FCs), Mr. Goel distributed a sum of Rs.26 crore which could have been used for the working capital. The source of fund for the aforesaid distributions has been cited as 'Realization of money by way of debt recovery' by Mr. Goel.

- (ii) The AA, vide order dated 26.06.2020, observed that 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 subject to section 53 of the Code. 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, 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. The AA was of the opinion that 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. Also order dated 14.01.2020 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.
- (iii) It is observed that Section 53 of the Code clearly provides that distribution is that of ‘*proceeds from the sale of the liquidation assets*’ and Regulation 42(2) of the 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 has been observed that there were no ‘realisations’ in terms of ‘Realisation of assets provided in Chapter VI of the Liquidation Regulations, 2016’ in the matter, as the CD was yet to be ‘sold as a going concern’, hence, categorization of some funds, the source of which was stated by Mr. Goel as ‘*Realization of money by way of debt recovery*’ does not fall within the intended scope of ‘*the proceeds from realisation*’ / ‘*proceeds from the sale of the liquidation assets*’. The aforesaid position was categorically explained by the AA in its Orders dated 20.11.2019 and 14.01.2020 wherein it had directed to not proceed with distributions as aforesaid.
- (iv) It has also been noted that Mr. Goel in his response dated 05.09.2020 had stated that “*The creditors were pressuring the liquidator to distribute some money*”. Such a stand, apart from being based on external influence of creditors, shows careless and negligent conduct of the IP as his conduct is in disregard towards orders of AA and the provisions of the Code.
- (v) Further, in the ‘assets possession cum eviction’ notice dated 04th December 2017 issued by Directorate of Enforcement, it is mentioned that “*...officer in-charge of the said property or concerned with the property shall deposit the gross income and all other monetary benefits accrued therefrom in the account of the Directorate of Enforcement.*”
- (vi) From the above, it has been observed that the attachment under PMLA did extend to “*the gross income or all other monetary benefits accrued from the property*” and the distribution of any sums may also run contrary to the attachments under PMLA. Hence, there is a clear contravention of sections 17 (2)(e), 23 (2), 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.

2.1.1 Submission by Mr Goel

With regard to the aforesaid contravention, Mr. Goel submitted as follows:

- (i) Mr. Goel submitted that he had distributed the amount to the tune of Rs. 26 crore as per section 53 of the Code read with regulation 42(2) of Liquidation Regulation subject to regulation 43 “Return of Money” in case of any contingencies happening in near future.
- (ii) Mr. Goel further submitted that he had kept the operation of the CD as a going concern and was performing at optimum capacity utilization for some of the manufacturing segments. The operation under the division of Transmission Tower had come as the sale to public sector companies declined as tenders were not being issued to the company under liquidation. During the process of liquidation, Mr. Goel decided to group the assets of the CD as per regulation 32A “Sale as Going Concern” and accordingly, he categorized the assets and liabilities to be sold as Going Concern. He categorized the debtors of a closed segment i.e. Transmission Tower and started making efforts to realize debt of such debtors in the process of liquidation. Hence, he realized funds from the customers of transmission tower business and found it to be in surplus. The CD was having a net working capital of Rs.140 crores for a monthly turnover of Rs.70 Crores. The CD also earned EBIDTA during three months of liquidation before the lockdown started. Besides the above realisation from sundry debtors of transmission tower business, he also realised funds from sale of stocks/inventory pertaining to transmission tower business. He further submitted that the categorization of the funds was of the nature of “Realization of money by way of debt recovery” which does not fall within the scope of “*the proceeds from realisation*” or “*proceeds from the sale of the liquidation assets*” and has been excluded amongst the asset identified to be sold as a going concern. It can safely be concluded that the entire distribution of Rs.26 Crores was made out of realisation of old debts of a closed business on account of liquidation tag to the CD. That it is pertinent to mention that as per Regulation 39 it is the duty of the liquidator to realize all the assets and dues of the CD. Based on same the fund was consolidated in the liquidation account of the CD by way of recovery of old debts from the segment of Transmission Tower. The operation of the CD was not at all affected by such consolidation of fund.
- (iii) Mr. Goel further submitted that he duly complied with the order dated 20.11.2019 of AA and as stated in the order liquidator did not distribute any amount to the Creditors based on an Interim order and deposited all such amount in a Fixed Deposit account of the CD. Further, all the claims of the workmen and employees were settled before the constitution of the Stakeholder Consultation Committee (SCC) as the CD was a going concern and it continued to remain as a going concern during liquidation Process.
- (iv) Mr. Goel further submitted that, the distribution of the funds was made by him as per the directions in the said order dated 14.01.2020 itself and each and every activity of Mr. Goel complied with the final order dated 14.01.2020. It is imperative to mention that matter was personally attended and argued by Mr. Goel before the AA stating that CD is a going concern and has a networking capital of Rs. 140 Crores for an average monthly turnover of Rs. 70 Crores and Key Managerial Persons (KMP) had shared a document conveying that the CD is having sufficient working capital for running on optimum capacity. The Hon’ble AA announced in the court that Mr. Goel should not

hold the funds in FDR, it should be used for the operations of the CD or distributed as per section 53 of the Code and any amount payable to workers should be paid. If the intent of the AA is to restrict the distribution, then in such a situation order should not have included statement like “*for distribution amongst stakeholders in equal manner as per provisions of Section 53 of the Insolvency & Bankruptcy Code, 2016, which would include the claims of the employees, if any*”. Based on the bare reading of the said order and understanding made during the course of hearing, Mr. Goel considered it as permission to disburse or use for working capital of the CD. After taking a view from the management duly appointed by Mr. Goel, he verified all the dues of workers/employees and analyzed the required working capital of the CD. Since the working capital was sufficient for the CD, the liquidator took the decision to distribute the amount realised from the debt recovery. Further, he had filed an application before AA bearing I.A. No. 1165/KB/2020 for clarification of order pronounced by AA dated 14.01.2020 and the order dated 26.06.2020 was passed by the AA.

- (v) Mr. Goel submitted that he had duly complied also with the order of AA dated 14.01.2020 based on the bare reading of the language of the order and the understanding received during the hearing before AA.
- (vi) Mr. Goel submitted that he had duly filed the Preliminary Report along with List of Stakeholders and Asset Memorandum before the AA on 23.10.2019 as per regulation 42(1) of Liquidation Regulations.
- (vii) With regard to assets possession -cum -eviction notice dated 04.12.2017 issued by Directorate of Enforcement, Mr. Goel submitted that it was challenged by him before PMLA (AT) wherein an order dated 21.12.2017 was passed by PMLA (AT) which observed as follows: -
“After gone through the contentions of the appellant as well as arguments address of the appellant, till the next date of hearing no coercive action shall be taken by the respondent with regard to notice issued u/s 8(4) of PMLA-2002.”
- (viii) Mr. Goel submitted that he did not realize any fund by way of realization/sale of assets as the same are still attached by the Enforcement Directorate. Hence, there has been no violation of the provisions of section 17(2)(e) read with section 23(2) of the Code. The assets possession cum eviction notice by PMLA was stayed later, therefore, he has not done any non-compliance of the order of PMLA.

2.2 **Contravention-II**

- (i) In the third progress report dated 15.04.2020 and the fourth progress report dated 15.07.2020 submitted before the AA, Mr. Goel had stated that the monthly fee of Rs. 8 lakh had been charged by him 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.
- (ii) In this regard, it is noted that regulation 4(2) of Liquidation Regulations provides that if the CoC does not determine the fees of the liquidator, the liquidator shall be entitled to a fee for the period of compromise or arrangement under section 230 of the Companies Act, 2013, at the same rate as the RP was entitled to during the CIRP and

for the balance period of liquidation, the liquidator can claim fee which is a percentage of the amount realised net of other liquidation costs, and of the amount distributed.

- (iii) It is observed that Mr. Goel collected his fee on the basis of the amount claimed to be realised and distributed by him. In the 3rd Progress Report it is noted that Liquidator's fee on the above realization and distribution made during the quarter under review was of Rs. 10,196,900/- including GST.
- (iv) Further, in the 4th Progress Report it was submitted by the liquidator that he has distributed a sum of Rs. 5 Crore in this quarter. Liquidator's fee on the realization and distribution made during the quarter under review was Rs. 16,95,679/- including GST.
- (v) From the above, it is clear that Mr. Goel collected his fee from the assets of the CD which formed part of the liquidation estate being the custodian of the assets of the CD. Accordingly, he should not have collected fee by charging the same against the assets of the CD as per, sections 35 and 36 of the Code. Accordingly, there is a breach of the fiduciary duty prescribed under the Code and duty to preserve and protect the assets of the CD while acting as the liquidator which is a violation of sections 35 and 36 of the Code.
- (vi) The 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 Mr. Goel 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 Mr. Goel on the basis of amount distributed is not correct. 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.
- (vii) In addition, Mr. Goel 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. Since, the application filed under section 230 of the Companies Act, 2013 is still pending adjudication before AA, 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.
- (viii) Further, in Mr. Goel's reply to the Draft Inspection Report (DIR), he mentioned that he had remitted back the entire fee taken on realization and distribution of 26 Crores to the account of CD on 04.11.2020 while reserving right to claim it back on approval of realisation and distribution. However, the remittance had only been made after said contravention was observed by the DC in its interim order dated 29.10. 2020. In view of above, there is violation of sections 35, 36, 208(2)(a) and (e) of the Code, regulation 4(2)(b) of the Liquidation Regulations, and regulation 7(2)(h) read with clauses 2 and 14 of Code of Conduct of the IP Regulations.

2.2.1 Submission by Mr Goel

With regard to the aforesaid contravention, Mr. Goel submitted as follows:

- (i) At the outset Mr. Goel submitted that the Liquidator's fee was paid in accordance with provisions of regulation 4 of Liquidation Regulations. It is pertinent to mention that the liquidator has remitted back the entire fee taken on realization and distribution of 26 Crores to the account of CD on 04.11.2020 while reserving his right to claim it back on approval of realisation and distribution. The fees have been returned to the account of the CD along with an interest @ 7.5% per annum.
- (ii) Mr. Goel highlighted that the liquidator along with SCC discussed about the funds realized from the old debtors of the CD. The provision of regulation 39C of CIRP Regulation and 32A of Liquidation Regulation empowers CoC or the Liquidator in consultation with the SCC to identify and group the assets and liabilities to be sold as a going concern. In this case liquidator and the SCC decided to keep surplus cash realised out of tower business outside the group of assets and liabilities to be sold as a going concern. There is a possibility under these provisions that some non-core assets are kept outside the group of assets and liabilities and sold before the CD is sold as a going concern. In such scenario, the liquidator will not get his fee on realisation and distribution of proceeds cannot be the intent of the law makers.
- (iii) The regulation 4 of Liquidation Regulations has been made in such manner that Liquidator will earn more fee in case assets are realised and distributed within the timelines provided in the aforesaid provision. In the table of fee explicit incentive is built up for faster realisation and distribution. In case, a liquidator is working as per the incentive scheme provided in the regulations, it may not be considered as unjust enrichment on the part of the liquidator. The entire structure of Liquidation Regulations and the fee provided therein is based on incentive for faster working.
- (iv) It is pertinent to mention that the liquidator has duly formed the Liquidation estate as per section 36 of the Code and accordingly filed the same before AA on 23.09.2020. As per the asset memorandum the liquidation value of Trade Receivable amounts to more than Rs. 17 crore and the same was realized by the liquidator herein, hence the Mr. Goel has not violated the provision of section 36 of the Code.

2.3 **Contravention-III**

- (i) It has been observed that AA, vide order dated 26.06.2020, had directed Mr. Goel "*to pay the portion of salary deducted from the salary of the employees with applicable bank interest till the date of payment.*" Mr. Goel's response dated 05.09.2020, (regarding Form-A complaint filed against him), stated that the employees had been paid salaries without the interest. Further, he had submitted that the total interest payable to all the employees on the deducted part of the salary was calculated as Rs. 24,950/-. Mr. Goel had also submitted that the error was committed on part of the HR Team of the CD. However, Mr. Goel should have been more cognizant in complying with the Order of AA dated 26.06.2020.
- (ii) Mr. Goel did not deny the finding in the reply of the DIR and agreed that the interest part was not paid to the employees at the first instance. In view of that, he has not complied with the AA order dated 26.06.2020 in letter and spirit. The said order of the AA is very clear and binding. It does not give any relaxation or concessions or

discretion to IP to pay salary without interest, nor did it require the employees to claim interest. Mr. Goel has been negligent in performing his duties under the Code.

- (iii) In view of above, it is alleged that Mr. Goel has been negligent in performing his duties under the Code and have thus violated the provisions of sections 208(2)(a) and (e) of the Code and regulation 7(2)(h) read with clause 14 of Code of Conduct under Schedule I of the IP Regulations.

2.3.1 **Submission by Mr Goel**

- (i) With regard to the aforesaid contravention, Mr. Goel submitted that, he has duly complied with the order of AA dated 26.06.2020. Accordingly, Mr. Goel has credited the balance of salary to the account of employees on 29.06.2020 and the interest was disbursed on 14.09.2020 based on the mail received from HR on the reminder made by Mr. Goel to comply the order of AA. That it is imperative to mention that a copy of the impugned order was received by the Mr. Goel on 28.06.2020 and the same was intimated to all the relevant parties. In accordance with the order the KMP's of the CD dropped a mail on 29.06.2020 detailing about the difference of salary to be paid as per the direction of the said order. The same was approved by Mr. Goel and accordingly all the difference of salary for the month of April was paid by Mr. Goel through RTGS dated 29.06.2020.
- (ii) Mr. Goel had dropped a mail to the HR team of the CD dated 04.09.2020 asking to comply with the interest part the order of AA. In response to same, a reply was received from the side of HR team dated 07.09.2020 wherein interest from 22nd May to 28th June was charged by the team of the CD at the rate of 9% per annum. The same was verified by the office of liquidator and accordingly RTGS for such interest was paid by him on 22.09.2020. Total interest payable to all the employees on the deducted part of the salary was calculated as Rs. 24,950/-. The interest part is a matter of delay and not a non-compliance of Order of AA as timelines are not mentioned in the said order. All the payments are first approved by the Working Committee appointed by the RP/liquidator and then the payment is finally approved by the liquidator. Once the same was approved by the working committee, Mr. Goel credited the interest part to the bank account of CD. Non-payment of interest of Rs. 24,950/- cannot be the intention of Mr. Goel as the amount is too small to justify any other intent. The calculation of interest was delayed by the HR department of the CD and the interest was paid as and when the interest was calculated and shared with Mr. Goel.

2.4 **Contravention -IV**

- (i) In response to complaint vide letter dated 05.09.2020, Mr. Goel had submitted that 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 adjudication from AA with reference to disputed amount of more than Rs. 29 Crore. Accordingly, the Liquidator filed an application before AA seeking adjudication of question of priority and treatment of claims of Central Bank of India with respect to Letter of Credits (LCs) and Bank Guarantees (BGs) issued during CIRP 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 AA.

- (ii) In the minutes of the 2nd SCC meeting, it is stated that 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 CIRP. It was proposed by Mr. Goel that such amount so recovered will be considered as distribution during 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. Hence, Mr. Goel assured that the complete reconciliation will be done by him and his team. Thereafter, Mr. Goel worked on this issue and found that the amount recovered by the Central Bank of India has the components of FDR and Cash margin against BG and LC, the amount of LC or BG issued during CIRP and LC on either the BG was invoked or the LC dissolved and the payment was made by Central Bank of India, the amount recovered by Central Bank of India out of TL and some part of interest were also found recovered.
- (iii) On the basis of observation provided by Mr. Goel, the Central Bank of India objected on the second point as these LC or BG was issued during CIRP on the instruction of IRP. The same should be honoured by the Liquidator during the process of liquidation and should not be understood as recovery or withdrawal by the bank. As per minutes of the 2nd CoC Meeting it was observed that the Central Bank of India has denied to open the LCs for 180 days stating that CIRP procedure is for 180 days from 16th November and 2 months has already passed so they are unable to open the LC having tenure/ due date for payment beyond CIRP. It was also stated the RP advised all the members of CoC that if the BG is not renewed then the entire fund flow will be frustrated and therefore, the banks should extend BG. If the Indian Overseas Bank does not extend BG, it will result in reduction in non-fund based facilities during moratorium period. Such reduction would be considered as recovery and will be violation of Section 14 of Code.
- (iv) As per minutes of the 4th CoC Meeting it was noted that the operations of the CD are impacted adversely as Central Bank of India is not opening/establishing fresh LC with a usance period of 180 days. The representative of Central Bank of India in the meeting explained that as per the directions of their Head Office they will open fresh LC upto the end of CIRP. It was clarified by RP that any decline in outstanding would be temporary and the CD is entitled to draw those funds for the purpose of working capital requirement of the CD. It was also clarified by the RP that instalments of term loan cannot be recovered during CIRP.
- (v) As per 9th CoC Meeting, it was stated that the KMPs wanted to raise the matter of operation of accounts by Central Bank of India and the difficulties faced by them in the operations of CD. The RP supported them and appraised the members that Central Bank of India not opening LC for import of raw material for the CD. He also appraised that substantial amount, to the extent of Rs. 50 Crores has been reduced from the total outstanding of Central Bank of India as on the date of commencement of CIRP. It was also appraised to the members that AA has directed Central Bank of India for opening

of LC facilities and not to reduce their outstanding from the amount of claim as submitted to RP. After discussions the representative of Central Bank of India assured the members that they would not let the CD suffocate for want of funds for its working capital.

- (vi) It is observed that these facts of recovery by the Central Bank of India during CIRP were presented before the AA by the suspended director of the CD. AA vide order dated 12.07.2018 gave the direction that the Bank is not to recover any of the debt from the CD because the 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.
- (vii) It is observed from the above facts that recovery of some amounts was made during the moratorium period by Central Bank of India. Further, the amount recovered by the Central Bank of India had the following component:
 - 1. FDR and Cash margin against BG and LC,
 - 2. Amount paid on invocation of BG and on devolvement of LC and recovering the same from the loan account during moratorium
- (viii) It is noted that Mr. Goel had not taken action with regard to such activities and it was only after an application was made by erstwhile promoters / directors that these facts got highlighted before the AA. Thus, there is gross negligence on Mr. Goel's part in the whole CIRP and the basic premise of section 14 of the Code which prohibits any recovery during the moratorium period by any of the creditors did get vitiated in the matter. Thus, there is a contravention of section 14 of the Code.
- (ix) Further, in non-compliance of the AA's order dated 12.07.2018, Mr. Goel rather than recovering the amounts, proceeded to reconcile and adjust the same with submission of claims/adjusting payments during alleged distribution during liquidation. Therefore, Mr. Goel ignored the observations of the AA in this matter and thereby violated clause 14 of Code of Conduct under the IP Regulations. It has been further observed that the suspended directors of the CD had filed an application before AA against the Central Bank of India and Indian Overseas Bank for not opening the LC and Central Bank of India for recovering the amount from the account of CD in violation of moratorium during the CIRP. Further, they have also filed the contempt application against the banks for non-compliance and the matter is currently sub-judice. Mr. Goel has submitted to IA that he has always supported the application filed by suspended directors. He has also submitted that the application has been filed before AA by him for adjudication of claim amount of Central Bank of India and treatment of priority of such claim amount with respect to LCs and BGs issued during CIRP period for which the claims were filed during CIRP and the matter is sub-judice before AA. However, rather than awaiting the application from suspended directors, he should have moved the AA for directions against Central Bank of India and Indian Overseas Bank which was not done in the instant matter. Hence, Mr. Goel failed in preserving and protecting the assets of the CD and has violated section 25(1) of the Code. In view of the above, it is a violation of sections 14, 25(1), 208(2)(a) and (e) of the Code and regulation 7(2)(h) read with clause 14 of Code of Conduct under IP Regulations.

2.4.1 Submission by Mr Goel

- (i) With regard to the aforesaid contravention, Mr. Goel at the outset submitted that he had always opposed the wrongful recovery made by the secured lenders. The same was discussed in various CoC meetings and the same was kept in mind while accepting the claim of Central Bank of India and Indian Overseas Bank during the process of Liquidation. During CIRP, the Central Bank of India filed a claim of Rs. 137.32 Crore including outstanding LCs amounting to Rs. 73.83 Crores and PBG of Rs. 22.87 Crore at a margin of 10% and BGs amounting to Rs. 16.40 Crore at a margin of 100%. During the course of CIRP the account was not declared as NPA and claim was filed accordingly during the period of CIRP. That it is pertinent to mention that LCs were honoured on presentation out of revenue or sale proceeds of the CD as a part of normal operation of the CD. PBG's were also released on expiry of their tenure or were paid in case invoked out of revenue or sale proceeds of the CD.
- (ii) Mr Goel further submitted that after the commencement of CIRP, LCs amounting to Rs. 48.40 Crore, PBGs amounting to Rs. 2.56 Crore at 100% margin were opened during CIRP at his request within the overall limit of Rs. 137.32 Crore i.e. the original claim filed by the bank on the commencement of CIRP.
- (iii) That LCs amounting to Rs. 48.40 crore was opened within the overall limit of claim filed during CIRP. The LCs outstanding as at date of commencement of CIRP were already a part of claim filed by Central Bank of India. Out of the above sum of Rs. 48.40 crore a sum of Rs. 29.17 crore were paid out of devolvement account and the balance LCs were either paid out of TRA account or margin money. Central Bank of India claims that the sum of Rs. 29.17 crore be paid to Central Bank of India as CIRP cost in priority to other creditors. This claim of the Central Bank of India is not sustainable as the entire amount of outstanding LCs as on date of commencement of CIRP was part of claim filed by them and the overall outstanding of fund based and non-fund based was freezed at the claimed amount.
- (iv) That the accounts of Central Bank of India with reference to LC's and BG's were reconciled and accordingly an excel sheet showing the status of LCs and BGs outstanding as on the date of commencement of CIRP; LCs devolved during CIRP; LCs paid out of TRA account and out of devolvement account; BGs invoked during CIRP; BGs cancelled/expired during CIRP without invocation. All the LCs and BGs honoured during the process of CIRP were required for the operations of the CD as going concern.
- (v) He submitted that the application was filed by erstwhile promoters against the recovery of Central Bank of India during CIRP. The same was supported by the RP and Mr. Goel thought fit not to start another litigation with the same subject matter as it will hamper the proceedings and will be an extra burden of cost over the operations of CD. The last LC was honoured by Central Bank of India on demand of Mr. Goel on 20.02.2018 whereas the CIRP was going to end on 13.08.2020. Meanwhile the promoter filed an application against Central Bank of India which also caused a great harm to the operations of CD, because after the application was filed, the Central Bank of India started refusing opening of fresh LC and started giving excuses that permission is awaited from higher authorities of the Bank.
- (vi) Mr. Goel further submitted that on final reconciliation, he formed his opinion with reference to indirect recovery made by the Central Bank of India by way of delaying and then refusing to open fresh LCs. In the meantime, Central Bank of India had started

asking for priority treatment to all the LCs opened during CIRP at the request of the RP and those devolved and paid by the bank other than the TRA account maintained by the CD. He therefore, filed an application under section 60 (5)(c) seeking adjudication of question of priority and treatment of claims with respect to LC and BG issued during CIRP period for which the claims were filed during CIRP. The same was filed by Mr. Goel on 28.08.2020.

- (vii) In the light of the facts mentioned above, Mr. Goel submitted that he had duly complied with the provision of Section 14 of the Code and had not allowed any recovery by Central Bank of India. The alleged recovery is the result of refusing or delaying opening of fresh LCs by the bank during CIRP, while the outstanding LCs for which the claim was filed by Central Bank of India before the RP were being paid and honoured out of the revenue of the CD. He identified an amount of more than Rs. 29 crore which was in dispute due to reduction of non-fund based facilities like LCs and BGs and non-opening of new LCs and BGs during the last phases of CIRP. Based on same he filed an application before AA for seeking directions. The actions taken by him were done with utmost *bona fide* intent to secure the assets of the CD by keeping the operations as a going concern.
- (viii) A small amount of term loan was recovered by Central Bank of India from the TRA account of the CD without any information to Mr. Goel and the same was recovered back from Central Bank of India immediately after the same was observed by him from the accounts of the CD. He had never permitted any withdrawal or recovery by Central Bank of India and any decrease in the claim of Central Bank of India during Liquidation Process as compared to claim filed during CIRP is the result of refusal or delay in opening of LCs and BGs during the last period of CIRP.

2.5 **Contravention-V**

- (i) It had been observed that Mr. Goel had disregarded the directions of the AA in various orders, a gist of which is as follows:

S. No	Date of Order by AA	Observations/ directions pertaining to
1	Order dated 20 th November, 2019	Prohibiting distribution of assets by liquidator
2	Order dated 14 th January, 2020	
3	Order dated 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

- (ii) In his reply to the DIR, Mr. Goel submitted that no distribution of the assets or fund was made by him vide the interim order dated 20.11.2019. As per the directions of AA he did not distribute the funds and accordingly kept them in for Fixed Deposit as such

fund was in excess to the Working Capital and as per the discussion with KMP's no excessive fund was required by the operation of CD.

- (iii) With respect to the order dated 14.01.2020, he submitted that the hearing was personally attended by him and based on same the interpretation of order was harmoniously constructed. During the course of hearing the court observed that such accumulation of fund is not justified and accordingly mentioned the same in the order. If the intent of the AA is to restrict the distribution then in such a situation order should not have included statement like "*for distribution amongst stakeholders in equal manner as per provisions of section 53 of the Code, which would include the claims of the employees, if any.*"
- (iv) Mr Goel submitted that based on the bare reading of the said order and understanding made during the course of hearing, Mr. Goel considered it as permission to disburse or use for working capital of the CD.
- (v) However, Mr. Goel's submission cannot be accepted as the question of multiple interpretations of the Order of AA does not arise. If there were any doubts regarding the order dated 14.01.2020 of AA, he could have sought clarification from AA prior to making distribution of funds. However, the same was not done. In view of above, it is a violation of sections 208(2) (a) and (e) of the Code and regulation 7(2)(h) read with clause 2 and 14 of Code of Conduct under IP Regulations.

2.5.1 **Submission by Mr Goel**

- (i) With regard to the aforesaid contravention, Mr. Goel submitted that he is well aware about the directions given by AA and has complied with all the directions.
- (ii) In regard to Order dated 20.11.2019, Mr. Goel humbly submitted that no distribution of the assets or fund was made by the liquidator. In compliance of the directions of AA, the liquidator did not distribute the funds and accordingly kept them in Fixed Deposit as such fund was in excess to the Working Capital and as per the discussion with KMP's no additional funds were required for the operations of CD.
- (iii) In regards to Order dated 14.01.2020, Mr. Goel mentioned that the hearing in this matter before the Hon'ble AA was personally attended by him and based on same the interpretation of order dated 14.01.2020 was harmoniously made with the discussions in the court room. During the course of hearing, the court observed that such accumulation of fund is not justified and accordingly mentioned the same in the order. If it were the intent of the AA to restrict the distribution then in such a situation order should not have included statement like "*for distribution amongst stakeholders in equal manner as per provisions of Section 53 of the Insolvency & Bankruptcy Code, 2016, which would include the claims of the employees, if any.*". The alleged non-compliance of AA's order dated 14.01.2020 is on account of understanding the language written in the order. That based on the plain reading of the said order and understanding made during the course of hearing Mr. Goel considered it as permission to disburse or use for working capital of the CD.
- (iv) In regard to Order dated 26.06.2020, Mr. Goel submitted that he had complied with the directions of the AA. The Liquidator had requested the FCs to deposit the disbursed amount in the interest-bearing account and the amount that had been deducted from the salary of the employees of the CD was paid and payment of the interest was also made

by him. Further, he submitted during personal hearing that he had preferred an appeal before Hon'ble NCLAT against the order dated 26.06.2020 of AA.

- (v) In regard to Order dated 12.07.2018, Mr. Goel submitted that he complied with the directions and participated and supported the application filed by the suspended director. It may be reiterated that Central Bank of India has not made any recovery from the account of CD but have refused and delayed opening of fresh LCs and BGs for the operations of CD while the existing outstanding LCs and BGs were either being paid out of the revenue of CD or BGs were being expired without any invocation. The matter of non-opening of LCs or delay in opening of LCs was discussed in various CoC meetings and the same was kept in mind while accepting the claim of Central Bank of India and Indian Oversea Bank during liquidation process. The intention of Mr. Goel has never been to support the FC and has made all the efforts to get the fresh LCs and PBGs issued for the business of the CD. The application filed by suspended director was fully supported by the RP as it is apparent from the order of the AA. The independent application was not filed by the Mr. Goel before AA only to avoid multiplicity of proceedings and to save on CIRP cost and RP was already a party to the application filed.

2.6 **Contravention-VI**

- (i) It has been observed that Mr. Goel hired services of AAA Capital Services Private Limited for inspection and supervision during both CIRP and liquidation process, without following the transparent process of seeking quotations from the other market participants. This act becomes particularly worrisome given the fact that Mr. Goel is also the founder chairman of AAA Capital Services Private Limited and by this he has attempted to facilitate unjust enrichment of AAA Capital Services Pvt Ltd at the expense of the CD. Further, no relationship disclosure being made regarding the same to the IPA (IIP ICAI), thereby, leading to violation of the IBBI's Circular No. IP/005/2018 dated 16th January 2018.
- (ii) Further section 28 (1)(f) of the Code provides that IP must take prior approval of CoC before undertaking any related party transaction. However, it is observed that the approval of CoC was not obtained before releasing payments to AAA Capital Services Private Limited.
- (iii) In the reply of DIR, Mr. Goel submitted that AAA Capital services Pvt. Ltd. is an associate concern of Anil Goel, engaged in outsourcing of SARFAESI action for and on behalf of the banks and financial institutions including identification of secured assets, taking symbolic possession, making application before DM/CMM/JMM for police help, tie up with the police for taking physical possession, making Panchnama and inventory while taking physical possession, publicity for sale of assets and final sale of asset in e-auction. This associate company has human resources across 80 cities of India and they are regularly doing surprise inspections of all those secured assets where physical possession has been taken and security guards has been deputed. This associate concern is having experienced employees for surprise inspection of security guards and for meeting their requirement at the secured assets and submitting a report to banks and financial institutions.
- However, Mr. Goel has not provided any justification neither for not taking prior approval of CoC under section 28(1) of the Code nor for non-submission of disclosure.

- (iv) In view of above, it is alleged that Mr. Goel has violated the provisions of section 28(1)(f) and 208(2)(a) of the Code, regulation 7(2)(a) and 7(2)(h) of the IP Regulations, 2016, clauses 2, 3, 5 and 14 of the Code of Conduct provided in the first schedule of the IP Regulations and IBBI's Circular No. IP/005/2018 dated 16th January 2018.

2.6.1 Submission by Mr Goel

With regard to aforesaid contravention, Mr. Goel submitted as follows:

- (i) AAA Capital services Pvt. Ltd. is an associate concern of Mr. Goel and is engaged in outsourcing of SARFAESI action for and on behalf of the banks and financial institutions including identification of secured assets, taking symbolic possession, making application before DM/CMM/JMM for police help, tie up with the police for taking physical possession, making Panchnama and inventory while taking physical possession, publicity for sale of assets and final sale of asset in e-auction. This associate company has human resources across 80 cities of India and they are regularly doing surprise inspections of all those secured assets where physical possession has been taken and security guards have been deputed. This associate concern is having experienced employees for surprise inspection of security guards and for meeting their requirement at the secured assets and submitting a report to banks and financial institutions regularly.
- (ii) The said associate concern is the infrastructure of the Liquidator and he has used the same infrastructure for surprise inspection of security guards deputed at factory of Varrsana Ispat Limited in Gujarat located close to Bhuj and Kandla Port. This inspection was done for few months starting from November 2018 to December 2019. This process was started by the security head consequent to difficulties faced at site. The reports of all these inspections were submitted to all the creditors every month.
- (iii) The billing done by AAA Capital Services Pvt Ltd. is the reimbursement of actual expenses incurred with no profit component. Since, AAA Capital Services Pvt Ltd. is a separate entity, the expense actually incurred by AAA Capital Services Pvt Ltd. was claimed by way of a bill from the CD. These are expenditures which were incurred by the liquidator using another Cost Centre of its associate Company having human resource in that area where the factory of the CD is located. The cost of security guards and the inspection of security guards are an operational expense and do not require any special approval from the CoC. The experience of the team of AAA Capital Services Pvt Ltd. was used for the operations of the CD and the same was charged to the CD as reimbursement of expenses without any profit motive or profit element in the bills.
- (iv) The Circular No. IP/005/2018 dated 16th January 2018 for disclosure of related party interest is applicable to the appointment of any professionals and deputing any person for physical checking of the security guards is not an appointment of a professional. Appointment of Security guards is otherwise an operational expense and are not the expenses pertaining to CIRP of the CD. No specific approval is required from CoC for operational expenses under the provisions of Code and the regulations made thereunder. Mr. Goel submitted that watch and ward security expenses of the CD are operational expenses of the CD which does not require approval of the CoC.
- (v) Total inspections done by the team of AAA Capital Services Pvt Ltd was 13 (Thirteen) in numbers and all the reports were sent to members of CoC. Total expenditure incurred

and claimed by AAA Capital Services Pvt Ltd for all the inspections was Rs. 50,740/- and bills were issued from 17.10.2018 to 18.12.2019 period. The payment was not made by the CD till 22.06.2020 and then they were reminded for these bills and at the request of the CD fresh bills were issued to claim the GST charged in those bills as input tax credit by the CD.

- (vi) Mr. Goel submitted that for total expenditure of Rs. 50,740/- for 13 number of inspections which includes the cost of human resources, cost of travelling, lodging and boarding, photography, preparation of report, photostat of gate register and attendance register, etc., no adverse inference be drawn against Mr. Goel as the intent cannot be so for such a small amount of expenditure.

2.7 **Contravention-VII**

- (i) It had been observed that Mr. Goel's registration as well as email address registered with the IBBI has not been mentioned in the email dated 23rd August 2018 for circulating minutes of 9th CoC meeting. Further the Circular dated 03rd January 2018 mandates Mr. Goel to state his name, registration number, registered email id, address and his capacity as IRP/RP/liquidator in all his communications and public announcement. However, Mr. Goel has violated the said Circular by not mentioning his name, registration number, registered email id, address and his capacity as IRP/RP/liquidator in the Sale Notice dated 19th February 2020.
- (ii) The IBBI had issued a circular No. IP/001/2018 dated 03rd January 2018 which provides that IP in all his communications shall use his name, address and email as registered with the IBBI. However, it was observed that Mr. Goel had not mentioned his registration address as well as email address registered with the IBBI in the email dated 23rd August 2018 for circulating minutes of 9th CoC meeting.
- (iii) It was further observed that Mr. Goel has violated the said circular by not mentioning his name, registration number, registered email ID as well as address in the Sale Notice dated 19th February 2020.
- (iv) Mr. Goel in his reply of the DIR submitted that *"I am using case specific email id for each assignment for the purpose of ease of managing data and identification of records. I regret that my email id as registered with IBBI was not used in this email while circulating minutes for 9th COC meeting. However, the case specific email id was mentioned. The registration no. was mentioned in the signatures on the minutes of the meeting, However, on the email circulating the minutes of the meeting, the registration no. was not mentioned. Since the email was only for the purpose of circulating the minutes of the meeting, the registration no. mentioned on the signature on minutes of meeting may be considered as compliance of circular no. IP/001/2018 dated 03rd January 2018."*
- (v) However, the said submission of Mr. Goel cannot be accepted in the light of explicit provisions of the said Circular. In view of above, it was alleged that Mr. Goel had violated the provisions of section 208(2)(a) of the Code and Board's Circular No. IP/005/2018 dated 16th January 2018.

2.7.1 **Submission by Mr Goel**

With regard to the aforesaid contravention, Mr. Goel submitted as follows:

- (i) He has always complied with IBBI Circular dated 3rd January 2018 and has stated all the following particulars in his communications: -
- (a) Name
 - (b) Registration number of IBBI
 - (c) Registered email ID
 - (d) Address
 - (e) capacity either as IRP or RP or liquidator
- (ii) He has been using case specific email ID for each assignment for the purpose of ease of managing data and identification of records. He regretted that his email ID as registered with IBBI was not used in this email while circulating minutes for 9th CoC meeting. However, in the same communication the registered email ID of the liquidator was used in the minutes of the meeting attached to the email. Mr. Goel assures that this error would not be repeated in future.
- (iii) The newspaper advertisement dated 19.02.2020 released only in Economic Times was not a sale notice under regulation 33 of Liquidation Regulations. The newspaper advertisement named as sale notice was only released to generate leads for the purchase of CD as a going concern and was not a statutory notice. This was an advertisement released for sale of CD as a going concern after the de-attachment order was passed by the AA. The objective of the advertisement was discussed in the 3rd SCC meeting dated 03.02.2020.
- (iv) Further, it was suggested by the members of the SCC that with reference to the Insolvency and Bankruptcy (Amendment) Ordinance, 2019, the liquidator should make efforts to sale the assets of the CD (subjected to the appeal pending before PMLA (AT). The liquidator imparted the members of SCC that in respect of the matter pending before the PMLA, it was not possible to sell the assets of the CD. But with reference to the Ordinance 2019 efforts should be made to develop prospective buyers by developing leads/bidders for selling the CD as a going concern.
- (v) In the said advertisement, no e-auction date was mentioned nor any reserve price was mentioned therein. Mr. Goel on the basis of his experience, thought appropriate to advertise for developing interest in the CD and develop competition amongst the prospective buyers. This action was taken after the insertion of Section 32A in the Code, *w.e.f.* 28.12.2019 as it was expected that the CD can be sold now as a going concern.
- (vi) Mr. Goel further submitted that there is no violation of section 208 (1) and (e) of the Code as the he has always maintained integrity by being honest, straightforward, and forthright in all professional relationships and complete independence in his professional relationships and conducted all insolvency resolution and liquidation process independent of external influences. The intention of Mr. Goel was to complete the process of liquidation as per timelines with full transparency for the maximization of interest of the CD and to restore the same.

2.8 **Contravention-VIII**

- (i) It had been mentioned in the 2nd Progress Report dated 14th January 2020, 3rd Progress Report dated 15th April 2020 and 4th Progress Report dated 15th July 2020 that:

“Up to the last date for submission of claims on 5th September 2019, the Liquidator received 7(seven) claims from Financial Creditors (Secured & Un-secured) and 12(twelve) Claims from Operational Creditors. All the claims received were collated and such claims were verified based on the proof submitted by the claimants... The Liquidator has filed the List of Stakeholders with AA dated 23rd October 2019. Further, the Liquidator has received new claims from Operational Creditors & received various revised claims from the Financial Creditor, the Liquidator has verified the same and the Liquidator will file an application before the AA for modification in the List of Stakeholders under regulation 31(3) Liquidation Regulations.”

- (ii) It has been observed that Mr. Goel has received new claims from OCs and received various revised claims from the FC. Further in these progress reports, Mr. Goel has mentioned that he has verified the same and will file an application before the AA for modification in the List of Stakeholders under regulation 31(3) of the Liquidation Regulations. However, despite the submission made by Mr. Goel that the final list was finalized to be filed before AA in the month of March 2020, this finalised list was never filed with AA.
- (iii) Further, Mr. Goel in his reply of the DIR submitted that as per regulation 31(3) of Liquidation Regulation, liquidator is required to apply to AA to modify an entry in the list of stakeholders filed with the AA. It is believed that liquidator is not required to file this application whenever there is any modification or any additional claim is received and verified by him. Therefore, it was decided that application would be filed to AA after some more claims are received or modified more specific to the claim of FC for which liquidator has filed an application before AA for resolution of a dispute on claim verification. The liquidator has verified all the claims received within the stipulated and prescribed timeline however, no timeline is prescribed for filing of an application before AA whenever a modification or an entry is required to list of stakeholders. However, this cannot be used as a ground to justify such an inordinate delay.
- (iv) In view of the above, it is alleged that Mr. Goel has violated the provisions of section 208(2) (a) of the Code, regulation 31 of the Liquidation Regulations as well as clause 14 of the Code of Conduct provided in First Schedule of IP Regulations.

2.8.1 Submission by Mr Goel

With regard to the aforesaid contravention, Mr. Goel submitted as follows:

- (i) The last date for filing claims under the liquidation process of the CD was 05.09.2020. Mr. Goel duly compiled all the claims and verified them with the book of accounts of the CD. Since the operations of the CD are going concern and most of the OC's are a part of business even during the process of Liquidation. Hence the claims were verified accordingly.
- (ii) Even after the due date of receiving claim the liquidator receives various claims from other OCs. The liquidator duly compiled all the claims and asked for certain clarification as and when required. Since the RCC limited was representing most of the stakeholders in the SCC hence all the claims so compiled were shared with the official representative.

- (iii) Based on the last claim received by him, the list of stakeholders was modified and the final list was finalized to be filed before AA in the month of March 2020. Due to nationwide lockdown by virtue of Covid-19 such application was not being filed as the court was taking urgent application only. The liquidator had verified all the claims received within the stipulated and prescribed timeline however, no timeline is prescribed for filing of an application before AA whenever a modification or a fresh entry is required in the list of stakeholders.
- (iv) In the light of the facts mentioned above, Mr. Goel submitted that he had duly complied with the provision of section 208 and on identification of new claims, he reconciled/verified the same. The actions taken by Mr. Goel were done with utmost *bona fide* intent to secure the assets of the CD by keeping the operations as a going concern as per the provision of the Code.

2.9 **Contravention-IX**

- (i) As per 3rd SCC Minutes, it was stated that:
“The liquidator imparted the member of SCC that new valuers are being appointed to ascertain the Liquidation Value in accordance with Code on the demand of Central Bank of India as the previous valuation was conducted during CIRP period. To comply with the provision of law, the liquidator seek quotations from various registered valuers and accordingly appointed two valuers named:-
 - *Resolute Valuers & Consultants Private Limited*
 - *Ravi Rajan and Co. LLP.... ”*
- (ii) Regulation 35(2) of the Liquidation Regulations provides that where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the CD. As per the aforesaid regulation, the opinion should be that of the Liquidator to conduct fresh valuations and not to be influenced by the creditors. However, as per the minutes of 3rd meeting of SCC, Mr. Goel called for fresh valuations on demand of the Central Bank of India. As per 3rd SCC Minutes, it is stated that:
“....The liquidator imparted the member of SCC that new valuers are being appointed to ascertain the Liquidation Value in accordance with Code on the demand of Central Bank of India as the previous valuation was conducted during CIRP period..... ”
- (iii) In Mr. Goel’s reply to the DIR, he had justified the appointment of new valuers on the ground of increasing liquidation value. However, he had not denied the involvement of FC in the appointment of valuers. In view of above, it was alleged that Mr. Goel has been negligent in performing his duties under the Code and there is violation of sections 208(2)(a) and (e) of the Code, regulation 35 (2) of Liquidation Regulations and regulation 7(2)(h) read with clause 5 of Code of Conduct under IP Regulations.

2.9.1 **Submission by Mr Goel**

With regard to the aforesaid contravention, Mr. Goel submitted as follows:

- (i) At the liquidation commencement date on 06.08.2020, all the assets of CD were attached by Enforcement Directorate under PMLA and the Liquidator lost all the applications made before NCLT, NCLAT and Hon'ble Supreme Court for de-attachment of assets. The liquidator was not entitled to sell the assets of the CD till the assets are de-attached from the Enforcement Directorate.
- (ii) The valuation of assets is required under regulation 35 of Liquidation Regulations for the purpose of providing information in the Asset Memorandum and for the purpose of fixing reserve price on the sale of the assets by the liquidator as per Schedule I to Liquidation Regulations.
- (iii) At the liquidation commencement date, the liquidator decided to provide information in the Asset Memorandum based on the valuation done by the registered valuers under regulation 35 of CIRP regulations as there was no possibility of sale of assets in the near future as the application filed by the liquidator before the Appellate Authority under PMLA was going on a slow pace and another application filed by the liquidator before Special Court under PMLA was also not likely to deliver any order in the near future for de-attachment of assets of the CD as per the opinion of legal consultants. The Liquidator can use the valuation of assets as done during CIRP under regulation 35 of the CIRP Regulations and the same was used for the purpose of submission of Asset Memorandum.
- (iv) On 22.07.2020, Mr. Goel obtained an order from AA and was permitted to sell the assets of CD after the insertion of section 32A to Code, *w.e.f.*, 28.12.2019. It was decided by the liquidator that a fresh valuation of the assets of CD is required as the earlier valuation was done during CIRP on 28.06.2018 and there had been changes in some capital equipment and capital assets and the current assets of the CD has completely been changed. The matter was discussed in 3rd SCC meeting on 03.02.2020 and it is a matter of coincidence that even the stakeholders suggested that a fresh valuation be taken to arrive at the latest value of the fixed and current assets of the CD for the purpose of fixing the reserve price. The decision to get the fresh valuation of assets of the CD was independently taken by Mr. Goel as there was no option except to get the fresh valuation done for sale of the CD as a going concern. The CD is a going concern and all the current assets have recycled during the CIRP and Liquidation Process and the quantity and value of the current assets and some of the fixed assets have changed in more than two years. The earlier valuation done was during CIRP and was older by about 27 months.
- (v) In view of the above facts and circumstances of the case, Mr Goel submitted that the appointment of registered valuers were made on 27.01.2020 after the insertion of Section 32A to the Code *w.e.f* 28.12.2019 expecting that the assets of the CD would be de-attached and the liquidator would be able to sell the assets of the CD. The valuation was done according to the circumstances of the case and the coincidence of a suggestion made by Central Bank of India and recorded in the minutes of the meeting of SCC by the liquidator accordingly may not be considered as the work done at the instance of FC. The liquidator had no option other than getting fresh valuations done as the earlier valuation was not correct because of dynamic nature of the assets and the reserve price is required to be fixed based on valuations which should not be very old. Even the earlier

Liquidation Regulations suggested that the reserve price should not be fixed on a valuation which is older more than six months.

- (vi) In the light of the facts mentioned above, Mr. Goel submitted that he has duly complied with the provision of regulation 35(2) of Liquidation Regulations by appointing the valuers duly registered with IBBI after the insertion of Ordinance under section 32A. The intention of the liquidator was to save the liquidation cost at the Liquidation Commencement date and to sell the assets at current market value and to fix the reserve price based on latest valuations. The intent was completely independent and not influenced by FC.

2.10 **Contravention- X**

With regard to the aforesaid contravention, Mr. Goel submitted as follows:

- (i) It has been observed that Mr. Goel had incurred various expenses during his tenure on travel and stay of CoC members. IA categorically mentioned Mr. Goel's submissions that the inspection of CD had been arranged for its secured lenders as it used to be done in the past years. It appears that the travel by such members is not in the capacity as members of CoC but rather as '*secured lenders of CD who wanted to visit premises of CD*'. It is Mr. Goel's duty to preserve and protect the assets of the CD and no role is envisaged for preservation and protection of assets of the CD under the Code for the FCs.
- (ii) Mr. Goel in the reply of the DIR submitted that the secured creditors had executed loan agreements with the CD and this is a general condition of a loan that monitoring and inspection would be done by the officials of the secured creditors and the cost of such inspection and monitoring would be borne by the borrowers. The CD was under obligation to accept their request of inspection as they have been doing in the past. These expenses are part of the operational expenditure of the CD and for operational expenditures, no specific approval of CoC is required. CoC was provided periodic profit and loss account and cost sheet including all these expenditures.
- (iii) From the above, it is observed that that the findings of IA were not denied by Mr. Goel and he did agree to the fact that certain inspections by FCs were in fact arranged by CD. In view of the above, it is alleged that Mr. Goel has violated the provisions of section 25(1) and 25(2) of the Code along with regulation 7(2)(h) of the IP regulations and clauses 5 and 14 of Code of Conduct provided in First Schedule of IBBI (Insolvency Professionals) Regulations, 2016.

2.10.1 **Submission by Mr Goel**

- (i) Mr. Goel submitted that the RP has not specifically authorized or incurred any expenses for members of the CoC which had been paid by CD. Only expenses incurred by the IRP/RP/Liquidator to conduct CoC and SCC, visit the plant site for management of the CD and stay/travel of himself was made part of the CIRP/Liquidation cost. The preservation, protection, control and custody of the assets of the CD was well within the control and supervision of RP/Liquidator and no such responsibility has been shifted to secured creditors.

- (ii) The secured creditors had executed loan agreements with the CD and this is a general condition of a loan that monitoring and inspection would be done by the officials of the secured creditors and the cost of such inspection and monitoring would be borne by the borrowers. The CD was under obligation to accept their request of inspection as they have been doing in the past. These expenses are part of the operational expenditure of the CD and for operational expenditures, no specific approval of CoC is required. CoC was provided periodic profit and loss account and cost sheet including all these expenditures.
- (iii) The aforementioned submissions and information as provided by him makes clear that he has always, with utmost *bona fide* intent, tried his level best to comply with the provisions as envisaged in the Code as well in the regulations in force. However, if the IBBI feels that Mr. Goel has fell short in any compliance, then he undertakes to make such compliance good and also undertakes that in future these matters would be considered and complied with exactly as per the timelines and view provided in the Code, Regulations, Circulars etc.

Analysis and findings

3. The DC notes that liquidation under the Code is not an independent liquidation but takes place on the failure of the CIRP or the CoC decides to liquidate at any time during the CIRP. Every liquidator is bound by the provisions of the Code and Liquidation Regulations. He is also required to follow the Code of Conduct under section 208(2) of the Code and the First Schedule to the IP regulations while performing his duties during the liquidation process. Section 35 of the Code enumerates various duties which reads as follows:

“35. Powers and duties of liquidator.

(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:—

(a) to verify claims of all the creditors;

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

(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;

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

(e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary

(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;

Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.

(g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;

(h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;

(i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;

(j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code.”

3.1.1 Under the Code, the liquidator has a duty to carry on the business of the CD for its beneficial liquidation as he considers necessary under section 35(1)(e). Thus, the liquidator should endeavour to keep the CD as a going concern. Regulation 39 of the Liquidation Regulations provides that the liquidator shall recover and realize all assets and dues to the CD in a time-bound manner for maximization of value of the assets of the CD for the stakeholders. He shall distribute the proceeds from the sale of the liquidation assets in accordance with the provisions of section 53 of the Code which provides as follows:

“Section 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 as may be specified”

3.1.2 For the purpose of beneficial liquidation, many options are provided for liquidation of the CD and its assets including ‘sale as going concern’ or slump sale or parcel sale, standalone basis or collectively the assets of the CD under regulation 32 of the Liquidation Regulations which reads as under:

“32. Sale of Assets, etc. –

The liquidator may sell-

(a) an asset on a standalone basis;

(b) the assets in a slump sale;

(c) a set of assets collectively;

(d) the assets in parcels;

(e) the corporate debtor as a going concern; or

(f) the business(s) of the corporate debtor as a going concern:

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.”

- 3.1.3 Further, the regulation 32A of the Liquidation Regulation provides for identification and grouping of the assets for the purpose of sale as a going concern. It reads as follows:
*“32A. Sale as a going concern.
(3) Where the committee of creditors has not identified the assets and liabilities under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee.”*
- 3.1.4 A timeline of 90 days from the receipt of the amount within such money received are to be distributed to the stakeholders is provided under Regulation 42 (2) of the Liquidation Regulations which provides:
*“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.”*
- 3.1.5 In the instant matter, the DC takes note of the facts that the liquidation of the CD was initiated on 06.08.2019 and Mr Goel as a liquidator constituted the SCC on 07.10.2019 as per Regulation 31A of the Liquidation Regulations. He also constituted ‘Committee of Key Managerial Personnel’ comprising of 8 persons. The liquidator in consultation with SCC in its 1st and 2nd meeting discussed to disburse the amounts recovered from old debtors to the stakeholders as the CD being a going concern.
- 3.1.6 The assets of the CD were attached by the Directorate of Enforcement under Prevention of Money Laundering Act. The AA vide its order dated 22.07.2020 had detached the assets of CD and allowed the Liquidator to proceed with the sale of the assets; but the operation of the said order has been stayed by the Hon’ble High Court of Calcutta vide order dated 20.11.2020 in WP No. 7962/2020 filed by the ED.
- 3.1.7 Varrsana Employees Welfare Association filed an IA before the AA submitting that the company is a going concern and there is possibility of revival of CD. It also submitted that as an application under section 230 of the Companies Act, 2013 is pending consideration, the liquidator cannot distribute the assets till the determination of such application. The AA vide order dated 20.11.2019 directed the liquidator not to distribute the amount recovered from old debtors while such application is pending. In compliance of this order, Mr Goel did not distribute that amount.
- 3.1.8 Again, Varrsana Employees Welfare Association filed an IA against the liquidator before AA in withholding the substantial amount of Rs. 18 crore which has been realised and if disbursed would lead to reduction in cashflow for operation of CD. The AA had *vide* order dated 14.01.2020 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

provisions of Section 53 of the Code, which would include the claims of the employees, if any.”

- 3.1.9 In compliance of the said order, the Liquidator, Mr Goel, disbursed Rs. 21 crore on 04.02.2020 and Rs. 5 crore on 16.06.2020 to the financial creditors, viz., the Central Bank of India, Corporation Bank of India, UCO Bank, United Bank of India Indian, Overseas Bank. In this regard, Mr. Goel took an undertaking from them in accordance with Regulation 43.
 - 3.1.10 Again, Varrsana Employees Welfare Association filed another application before AA against the Liquidator for wrongful deduction of salary and distribution during the process of the liquidation. The AA allowed the application and passed the order dated 26.6.2020. wherein it observed that the distribution of funds from working capital and profit to the stakeholders until assets have been liquidated, and till the liquidator realizes the complete liquidation value is not in conformity with the provisions of the Code and Regulations and directed that (i) since the CD being in operation and there was enough working capital as submitted by the liquidator (about 40 crores), there is no need to return the same, however, the stakeholders/financial creditors who are in receipt of the funds shall keep the amount received by them in an interest bearing account of the CD, and returnable as per Regulation 43, if need arises for operating the CD; (ii) the liquidator is directed to pay the portion of salary deducted from the salary of the employees with applicable bank interest till the date of payment.
 - 3.1.11 In compliance of the said order dated 26.6.2020, the Liquidator had requested the FCs to deposit the disbursed amount in the interest-bearing account as also the amount that had been deducted from the salary of the employees of the CD was paid and payment of the interest was also made by Mr. Goel.
 - 3.1.12 The IBBI took note of the order of AA dated 26.6.2020 and appointed the IA, vide its order dated 13.10.2020, to conduct inspection of Mr. Anil Goel, the liquidator, on having reasonable grounds to believe that he had contravened the provisions of the Code and the regulations in Varrsana Ispat Limited. The IA submitted an IIR on 21.10.2020 in this matter to the IBBI under regulation 5(1) of I&I Regulations stating gross violation of the provisions of the Code, Regulations made thereunder by the liquidator and also the directions issued by the AA to him. On the basis of materials available on record including the IIR, the DC, vide its Interim Order dated 29.10.2020 had directed Mr Goel not to take fresh assignments for a period of 90 days from the date of the issue of the order.
 - 3.1.13 The IA submitted the Inspection Report on 04.12.2020 to the IBBI and IBBI issued SCN against Mr. Goel on 11.12.2020 alleging contravention of various provisions of the Code and the regulations. Mr. Anil Goel replied to the SCN vide letter dated 28.12.2020.
 - 3.1.14 The Hon'ble NCLAT *vide* its order dated 19.01.2022 set aside the order of the AA dated 26.06.2020.
4. The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of Mr. Anil Goel and also the provisions of the Code, rules and the regulations made thereunder finds as follows.

4.1 **Distribution of Funds**

4.1.1 With regards to issue relating to distribution of funds, the DC notes that prior to the amendment to Liquidation Regulations in 2018, the Liquidator had limited options when the CD goes into liquidation to either sell the assets as piecemeal or slump sale but after the amendment a viable CD could be sold to any prospective bidders as a going concern, which would ensure continued returns for the creditors, employment of the workers and steady revenue for the government as well. Since, the CD as a going concern is its most valuable asset and to sale it in slump or piecemeal would only serve to destroy its value and also affect the livelihood of its workers and employees.

4.1.2 The DC also takes note of the AA order dated 20.11.2019 which states as follows:

“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...”

In compliance with the said order Mr. Goel did not distribute the amount recovered from the old debtors.

4.1.3 The DC notes that after the order of AA dated 20.11.2019, an application was filed by Varrsana Employees Welfare Association of the CD against the Liquidator for withholding Rs.18 Crores for distribution amongst the stakeholders of the CD during liquidation process which had allegedly adversely impacted the operations of the CD. In its order dated 14.01.2020 the AA made the following observations 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.”

4.1.4 The DC takes note of the fact that the Liquidator, Mr. Goel, in view of the said order distributed a sum of Rs. 26 Crores, in two phases, an amount of Rs.21 Crores was distributed on 04.02.2020 and Rs.5 Crores on 16.06.2020 amongst the FCs. Subsequently, the Varrsana Employees Welfare Association filed an application before the AA praying for reversal of disbursements of funds by Mr. Goel. The Hon’ble AA in its Order dated 26.06.2020 observed as follows:

“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.”

“21. a. The distribution of funds from working capital and profit to the stakeholders until assets have been liquidated, and till the liquidator realizes the complete liquidation value is not in conformity with the provisions of the Code and Regulations;

b. The stakeholders/financial creditors who are in receipt of the funds shall keep the amount received by them in an interest bearing account of the CD, and returnable as per Regulation 43, if need arises for operating the CD;

c. The liquidator is directed to pay the portion of salary deducted from the salary of the employees with applicable bank interest till the date of payment.”

- 4.1.5 The DC also takes note of the fact that in compliance of the said order dated 26.6.2020, the Liquidator had requested the FCs to deposit the disbursed amount in the interest-bearing account as also the amount that had been deducted from the salary of the employees of the CD was paid and payment of the interest was also made.
- 4.1.6 The DC takes note of the section 53 of the Code provides that distribution is to be made from the “*proceeds from the sale of the liquidation assets*” and regulation 42(2) of Liquidation Regulations also notes that “*the liquidator shall distribute the proceeds from realization*” within 90 days. So, it is the mandate of the Code and Regulations made thereof that distribution is to be made from “*the proceeds from realisation*”/ “*proceeds from the sale of the liquidation assets*” in regard to the “sale of CD as a going concern” in liquidation. However, it is also noted that as per regulation 32A of Liquidation Regulations where the CoC has not identified the assets and liabilities as per regulation 39C of the CIRP Regulation, the liquidator in consultation with the SCC shall identify and group the assets and liabilities to be sold as a going concern. Therefore, it is observed that the Liquidator in consultation with the SCC has been vested with power to identify and group assets and liabilities to be sold as going concern.
- 4.1.7 In the present matter, the DC also notes the submission of Mr. Goel about the identification and separation of the funds recovered from an old debt from a closed business and there is no “realisations” in terms of “Realisation of assets” provided in Chapter VI of the Liquidation Regulations. He further submitted that in accordance with the regulation 32A of Liquidation Regulations, he has not included Rs. 26 crore amount in the group of assets and liabilities identified to be sold as going concern. The DC also notes the contention of Mr. Goel that the categorization of the funds was of the nature of realization of money by way of debt recovery and did not fall within the scope of “the proceeds from realisation” or “proceeds from the sale of the liquidation assets” and had been excluded amongst the asset identified to be sold as a going concern.
- 4.1.8 The DC also notes from his submission that the CD was having a net working capital of Rs.140 Crores for a monthly turnover of Rs.70 Crores and that the CD was also earning EBIDTA during three months of liquidation before the Covid-19 Lockdown had started. Further, the KMP had also shared a document conveying that the CD is having sufficient working capital for running on optimum capacity.
- 4.1.9 With regard to the allegation regarding distribution, the DC notes from the submission of that Mr. Goel had not made any distribution in compliance of the Order dated 20.11.2019 of the AA. However, distribution of the funds were made by the liquidator in compliance of the order dated 14.01.2020 as per his understanding of the plain language of that order and that during the course of hearing, the Hon’ble AA had observed that accumulation of fund was not justified and that the liquidator should not withhold the funds and it should be used for the operations of the CD for distribution as per section 53 and any amount payable to workers should be paid. Based on the understanding in the course of hearing,

Mr. Goel had distributed the amount of Rs. 26 crore in two phases, Rs. 21 crore on 04.02.2020 and Rs. 5 crore on 16.06.2020. The DC finds that Mr. Goel has followed the bare language of the observations made in order dated 14.01.2020.

- 4.1.10 Further, the DC also notes from submission of Mr. Goel that he had already filed the preliminary report with list of stakeholders and asset memorandum with AA on 23.10.2019 and his submission that the condition of filing the list of stakeholders and asset memorandum as per regulation 42 of Liquidation Regulation does not require its finalization. The regulation 42 clearly states that distribution shall not commence before the list of stakeholders and the asset memorandum has been filed with the AA and it does not specify finalisation of the same. List of stakeholders is a dynamic document and can be changed on any additional claim filed or any additional information provided to liquidator and he is authorized to modify the list of stakeholders subject to regulation 31(3) of Liquidation Regulations. The DC finds the submission of Mr. Goel tenable.
- 4.1.11 The DC also notes that after issuance of the interim order by it on 29.10.2020, Mr. Goel has also filed an application before AA bearing I.A. No. 1165/KB/2020 seeking clarification of order pronounced by AA dated 14.01.2020. The DC also notes that the AA vide its order dated 26.06.2020 reviewed order dated 14.01.2020 and gave certain directions as stated in aforesaid paragraph 3.1.10 which were complied with by the Liquidator as stated in paragraph 3.1.11.
- 4.1.12 The DC further notes that the liquidator appealed against the order dated 26.06.2020 before the Hon'ble NCLAT which *vide* its order dated 19.01.2022 set aside the order dated 26.06.2020 of the AA and observed as follows,
“What we observe that the Adjudicating Authority in its impugned order dated 26.06.2020 has reviewed its own order dated 14.01.2020 in C.A(IB) No.1546/KB/2019 in CP (IB) No.543/KB/2017. The Adjudicating Authority (NCLT) has only power to rectify any mistake apparent from the record in accordance with Section 420 of the Companies Act, 2013 R/w Rule 154 of NCLT Rules, 2016.”
- 4.1.13 With regard to the issue of assets possession-cum- eviction notice dated 04.12.2017 issued by Directorate of Enforcement, the DC notes that the notice was challenged by Mr. Goel and an order was passed Hon'ble PMLA (AT) dated 21.12.2017 staying the notice by directing that-
“After gone through the contentions of the appellant as well as arguments address of the appellant, till the next date of hearing no coercive action shall be taken by the respondent with regard to notice issued u/s 8(4) of PMLA-2002.”
- 4.1.14 The DC finds that Mr. Goel that he had recovered amount from the old debtors but did not realize any asset by way of realization/sale of assets as the same are still attached under the PMLA. The DC further finds that Mr Goel had complied with the order of AA dated 20.11.2019 by not distributing the funds recovered from old debt, order dated 14.1.2020 by distributing funds in terms of bare understanding of the language of that order and order dated 26.06.2020 by paying to the employees their remaining dues relating to salary and interest thereof and requested the financial creditors who were in receipt of the funds to keep the amount received by them in an interest bearing account of the CD. In view of the order dated 19.01.2022 of the Hon'ble NCLAT setting aside the order of AA dated 26.06.2020, no contravention could be made out.

4.2 **Fee of Liquidator**

4.2.1 The DC takes note of the regulation 4(2) of the Liquidation Regulations which provides as follows:

“4. Liquidator’s fee.

(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”

4.2.2 The DC notes that Mr. Goel charged a monthly fee of Rs. 8 Lakh as well as a percentage of amount recovered and amount distributed. Mr. Goel has submitted in the 3rd and 4th 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 realization and distribution made during the respective quarter under review including GST as applicable was collected by the liquidator.

4.2.3 The DC also takes note that Mr. Goel had taken mitigating actions by remitting his entire fee taken for recovery and distribution of Rs. 26 Crores to the account of CD on 04.11.2020 before the issuance of SCN dated 11.12.2020. The fee had been returned to the account of the CD along with an interest of 7.5% per annum. However, Mr. Goel has reserved his right to claim it back on approval of realisation and distribution by the AA.

4.2.4 The DC notes that in the present case, the fee of the Liquidator is *inter alia* related to distribution of funds. In view of the remittance of entire fee by Mr. Goel and further in view of the order of the Hon’ble NCLAT dated 19.01.2022 setting aside the order of the AA dated 26.06.2020 holding the distribution of funds not in conformity with the provisions of the Code and Regulations, no contravention could be made out.

4.3 **Payment of Interest to Employees**

4.3.1 With regard to the issue relating to payment of interest to employees, the DC notes that the AA, vide its order dated 26.06.2020, had directed Mr. Goel to pay the portion of salary deducted from the salary of the employees with applicable bank interest till the date of payment.

4.3.2 The DC further notes that Mr. Goel credited the balance of salary to the account of employees on 29.06.2020 and the interest part was paid on 22.09.2020 as per the mail received from HR on the reminder made by Mr. Goel to comply the order of AA. Mr. Goel had sent an e-mail dated 04.09.2020 to the HR team of the CD requesting to calculate the interest in compliance with the order of AA. By a reply e-mail from HR team dated 07.09.2020 it was informed that interest from 22nd May to 28th June was calculated at the rate of 9% per annum. The same was verified by Mr. Goel and accordingly the interest was paid by the Mr. Goel on 22.09.2020 when the interest was calculated and shared with Mr. Goel. The total interest payable to all the employees on the deducted part of the salary was calculated as Rs. 24,950/-. In this context, the DC finds that there was no deliberate contravention by Mr. Goel. Due to delay by HR department in calculating the interest, the payment to employees was consequently delayed and the interest amount was paid by Mr.

Goel on 22.09.2020, before issuance of SCN, hence there does not appear to be any contravention in this regard.

4.4 **Recovery by FCs during Moratorium**

4.4.1 With regard to this issue the DC notes that, the AA in its order dated 12.07.2018 had given the direction to the Central Bank of India not to recover from CD during the CIRP as follows:

“...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.”

4.4.2 The DC notes from the submission of Mr. Goel as per the minutes of the 2nd SCC meeting dated 05.12.2019, wherein it has been recorded 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.

4.4.3 The DC further notes the submission of Mr. Goel that a small amount of term loan was recovered by Central Bank of India from the TRA account of the CD without any information to Mr. Goel and the same was recovered back from Central Bank of India immediately after the same was observed by him from the accounts of the CD. Hence, the DC observes that there appears to be no negligence or contravention on the part of Mr. Goel. Further, the DC notes that an application was filed by erstwhile promoters against the recovery by Central Bank of India during CIRP and the same was fully supported by Mr. Goel though he did not file separate application in order to avoid multiplicity of proceedings as he thought that filing application on the same subject matter will further delay the process. The DC further notes that Mr. Goel had filed an application under section 60(5)(c) of the Code before AA seeking adjudication on the question of priority and treatment of claims of the banks with respect to Letters of Credit and Bank Guarantees for which claims have been issued during CIRP period.

Hence, in view of the above the DC finds that there appears to be no contravention on the part of Mr. Goel in this regard.

4.5 **Compliance with the Orders of AA**

4.5.1 With regard to the order dated 20.11.2019 of AA by Mr. Goel, the DC notes the submission of Mr. Goel that as per the directions of AA the funds were kept in for Fixed Deposit as it was in excess of the Working Capital and in view of the discussion with KMP no additional funds were required for the operations of CD and therefore, no distribution of the assets or

fund was done by him pursuant to order dated 20.11.2019 which is explicit from the minutes of the 2nd SCC meeting dated 05.12.2019 wherein it was decided that:

“Further it was informed by the liquidator, that amount so recovered from the working capital of the Corporate Debtor is reserved in form of Fixed Deposit in the liquidation Account of the Corporate Debtor. No distribution can be done as per order dated 20.11.2019.”

Hence, there appears to be no violation of the said order.

4.5.2 With regard to order dated 14.01.2020, the DC notes the observations of the AA made 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.”

4.5.3 The DC also notes the submission of Mr. Goel that he has complied with that order on the basis of the bare reading of the language of the said order which directed him to utilise funds for the operations of the CD to remain CD as going concern for distribution amongst stakeholders as per provision of section 53 of the Code and considered the same as permission to disburse. The DC finds that Mr. Goel distributed the funds in compliance with the Order on the basis of its bare language.

4.5.4 With regard to order of AA dated 26.06.2020, the DC notes that in compliance of this order, the Liquidator had requested the FCs to deposit the disbursed amount in the interest-bearing account as also the amount that had been deducted from the salary of the employees of the CD was paid and payment of the interest was also made by Mr. Goel in September 2020.

4.5.5 In view of the above, the DC finds no contravention. Moreover, Mr. Goel had preferred an appeal against the order dated 26.06.2020 before the Hon’ble Appellate Tribunal, with respect to distribution made in the process of liquidation out of debts recovered by the liquidator. The Hon’ble NCLAT in its order dated 19.01.2022 set aside the order dated 26.06.2020.

4.5.6 With regard to order dated 12.07.2018, the DC notes that Mr. Goel recovered back from Central Bank of India the amount that was withdrawn from the accounts of the CD. Further, Mr. Goel has filed an application seeking adjudication of question of priority and treatment of claims of the respondents with respect to letters of credits and bank guarantees issued during CIRP period for which the claims were filed during CIRP. Hence, no contravention could be made out.

4.6 Expenses for Inspection of Security Guards

4.6.1 With regards to this issue, the DC notes the provisions of section 28 (1) of the Code which provides as under:

“28. Approval of committee of creditors for certain actions. -

(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take

any of the following actions without the prior approval of the committee of creditors namely: -

- (a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;
- (b) create any security interest over the assets of the corporate debtor;
- (c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;
- (d) record any change in the ownership interest of the corporate debtor;
- (e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;
- (f) undertake any related party transaction;
- (g) amend any constitutional documents of the corporate debtor;
- (h) delegate its authority to any other person;
- (i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;
- (j) make any change in the management of the corporate debtor or its subsidiary;
- (k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;
- (l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or
- (m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.”

4.6.2 The DC further notes the Circular No. IP/005/2018 dated 16th January 2018 which states that:

“3. An insolvency professional shall disclose his relationship, if any, with (i) the Corporate Debtor, (ii) other Professional(s) engaged by him, (iii) Financial Creditor(s), (iv) Interim Finance Provider(s), and (v) Prospective Resolution Applicant(s) to the Insolvency Professional Agency of which he is a member, within the time specified”

4.6.3 The DC notes the allegation that Mr. Goel hired the services of AAA Capital services Pvt. Ltd., which is an associate concern of Mr. Goel, for carrying out surprise inspection of security guards without following the transparent process of seeking quotations from the other market participants or obtaining prior approval of CoC. The DC notes from the submission of Mr. Goel that the watch and ward security expenses of the CD are operational expenses of the CD for the protection and preservation of the assets of the CD and do not require any specific approval from the CoC. The DC also notes that total bills raised by AAA Capital Services Pvt. Ltd amounted to Rs. 50,740/- for 13 number of inspections during the months of November 2018 to December 2019. which included the cost of human resources, cost of travelling, lodging and boarding, photography, preparation of report, photostat of gate register and attendance register, etc. Further, the billing done by AAA Capital Services Pvt Ltd. is the reimbursement of actual expenses incurred as the cost of inspection of the security guards does not appear to be unreasonably high. In view of the small amount of operational expense incurred for the purpose of

conducting 13 inspections of the security guards to ensure the protection and preservation of the assets of the CD, the DC takes a lenient view in this regard.

4.7 Adherence to IBBI Circular

4.7.1 With regard to the above violation, the DC takes note of the IBBI Circular No. IP/001/2018 dated 03rd January 2018 which 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

Additionally, an insolvency professional may use a process (Example: CIRP, Liquidation, etc.) specific address and email in its communications, if he considers it necessary subject to the conditions that: (i) the process specific address and email are in addition to the details required in Para 2 above, and (ii) the insolvency professional continues to service the process specific address and email for at least six months from conclusion of his role in the process.”

4.7.2 DC notes from the submission that Mr. Goel has been using case specific email ID for each assignment for the purpose of ease of managing data and identification of records. Mr. Goel has expressed his regret that his email ID as registered with IBBI was not used in this email while circulating minutes for 9th CoC meeting. He further submitted that this error occurred inadvertently and without *mala fide* as in the same communication the registered email ID of the liquidator was used in the minutes of the meeting attached to the email. The DC accepts the contention.

4.7.3 With regard to the allegation in respect of the advertisement dated 19.02.2020 the DC notes that the title ‘Sale Notice’ was mentioned in the advertisement released in the Economic Times for the sale of the CD as a going concern without any liability, detailing property along with plant and machinery of the CD. The DC further notes that in the advertisement, no e-auction date, no reserve price and registered e-mail was mentioned however, case specific e-mail was mentioned. The DC further takes note of the contention of Mr. Goel that as no e-auction date was mentioned in the said notice so the same should not be construed as a sale notice but merely an advertisement for developing interest in the CD and generating competition amongst the prospective buyers. The Liquidator under the Code is required to comply with the provisions of the Code and the Regulations and adhere to the Circulars issued from time to time. In the said Circular all the IPs have been directed to state in all their communications their details of name, address, registration number and mailing address as well as capacity of the IP. Such adherence facilitates the stakeholders about the nature of transaction and correct contact address. In the present case, Mr. Goel should have adhered to the Circular whether it is a statutory notice or not. However, during the course of personal hearing before the DC, Mr. Goel stated that inadvertently this mistake took place and assured that this error would not be repeated in future. In view of the above, the DC takes a lenient view and Mr. Goel is cautioned that he should be more careful and avoid such lapses in future.

4.8 **Filing of Claims before AA**

4.8.1 With regard to this issue, the DC takes note of the Regulation 31 of the Liquidation Process Regulation which provides as follows:

“31. List of stakeholders.

(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.

(2) The liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of the claims.

(3) The liquidator may apply to the Adjudicating Authority to modify an entry in the list of stakeholders filed with the Adjudicating Authority, when he comes across additional information warranting such modification, and shall modify the entry in the manner directed by the Adjudicating Authority.

(4) The liquidator shall modify an entry in the list of stakeholders filed with the Adjudicating Authority, in the manner directed by the Adjudicating Authority while disposing off an appeal preferred under section 42.

(5) The list of stakeholders, as modified from time to time, 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 on the electronic platform of the Board for dissemination on its website:

Provided that this clause shall apply to every liquidation process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021.”

4.8.2 The DC notes from the submission of Mr. Goel that it had been mentioned in the 2nd Progress Report dated 14.01.2020, 3rd Progress Report dated 15.04.2020 and 4th Progress Report dated 15.07.2020 that:

“Up to the last date for submission of claims on 5th September 2019, the Liquidator received 7(seven) claims from Financial Creditors (Secured & Un-secured) and 12(twelve) Claims from Operational Creditors. All the claims received were collated and such claims were verified based on the proof submitted by the claimants... The Liquidator has filed the List of Stakeholders with AA dated 23rd October 2019. Further, the Liquidator has received new claims from Operational Creditors & received various revised claims from the Financial Creditor, the Liquidator has verified the same and the Liquidator will file an application before the AA for modification in the List of Stakeholders under regulation 31(3) Liquidation Regulations.”

4.8.3 The DC further notes from the submission of Mr. Goel he had received new claims from OCs and various revised claims from FCs. Further, in the aforesaid progress reports, Mr. Goel has stated that he had verified the claims and will file an application before the AA for modification in the List of Stakeholders as per regulation 31(3) of the Liquidation Regulations. The DC notes the allegation that despite the submission made by Mr. Goel

that the final list was to be filed before AA in the month of March 2020 but the same was not filed with AA. In this regard the DC further notes from the submission of Mr. Goel that as per regulation 31(3) of Liquidation Regulation, the liquidator is required to apply to AA to modify an entry in the List of Stakeholders filed with the AA and there is no timeline requirement to file application whenever there is any modification, or any additional claim is received and verified. Therefore, it was decided that application would be filed before AA after some more claims are received or modified more specific to the claim of FC for which Mr. Goel has filed an application before AA for resolution of a dispute on claim verification. The last date for filing claim under the liquidation process of the CD was 05.09.2020. The liquidator has compiled all the claims and verified them with the book of accounts of the CD as the operations of the CD are going concern and most of the OC's are a part of business. It is observed that Mr. Goel verified the claims received within the stipulated timeline, but no specific timeline is prescribed for filing of an application before AA whenever a modification or an entry is required to list of stakeholders. Based on the last claim received by Mr. Goel, the list of stakeholders was modified and the final list was finalized to be filed before AA in the month of March 2020. However, due to nationwide lockdown for Covid-19 such application was not being filed as the court was taking urgent application only. In view of the above the DC accepts the submissions and there appears to be no violation especially in view of nationwide lockdown due to pandemic.

4.9 Valuation of Assets

4.9.1 With regard to this issue the DC takes note of the provision of Regulation 35(2) of the Liquidation Regulations which provides that:

“35. Valuation of assets intended to be sold.

(2) In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor:

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

-

(a) a relative of the liquidator;

(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 liquidator is a partner or director.”

4.9.2 As per the aforesaid regulation, where the liquidator is of the opinion that fresh valuation is required, then he shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the CD. The DC notes the allegation that Mr. Goel, Liquidator, influenced by the creditors to conduct fresh valuations on the demand of the Central Bank of India which is reflected in the minutes of the 3rd SCC Meeting held on 03.02.2020, as follows:

“The liquidator imparted the member of SCC that new valuers are being appointed to ascertain the Liquidation Value in accordance with Code on the demand of Central Bank of India as the previous valuation was conducted during CIRP period.

To comply with the provision of law, the liquidator seek quotations from various registered valuers and accordingly appointed two valuers named:-

- Resolute Valuers & Consultants Private Limited*
- Ravi Rajan and Co. LLP....”*

4.9.3 The DC notes the submission of Mr. Goel that during the liquidation commencement on 06.08.2020, all the assets of CD were attached by Enforcement Directorate under PMLA and the Hon’ble NCLT, NCLAT and Hon’ble Supreme Court had refused to de-attach the assets. Hence, Mr. Goel was not able to sell the assets of the CD till the assets are de-attached from the Enforcement Directorate. The valuation of assets of CD was required for the purpose of providing information in the Asset Memorandum and for fixing reserve price on the sale of the assets. Therefore, on the liquidation commencement date Mr. Goel had provided information in the Asset Memorandum based on the valuation as done during CIRP by the registered valuers under regulation 35 of CIRP regulations as there was no possibility of sale of assets in the near future due to attachment of assets of the CD. Thereafter, appointment of registered valuers was made on 27.01.2020 after the insertion of Section 32A to the Code w.e.f 28.12.2019 in anticipation that the assets of the CD would be de-attached and Mr. Goel would be able to sell the assets of the CD, which eventually culminated on 22.07.2020, when Mr. Goel received order from AA with permission to sell the assets of CD. Hence, it was decided by Mr. Goel that a fresh valuation of the assets of CD is required as the earlier valuation was done 27 months prior during the CIRP on 28.06.2018 and there has been changes in the two years in the capital equipment, capital assets and the current assets of the CD. Mr. Goel also informed that in the discussion held in 3rd SCC meeting it was a coincidence that the stakeholders suggested that a fresh valuation be taken when Mr. Goel had also independently decided to take fresh valuation for the purpose of fixing the reserve price.

4.9.4 In view of the above submissions the DC is of the opinion that, since the earlier valuation was done for CIRP some two years ago, it was essential to conduct a valuation so that updated information reflecting the present values of the capital equipment, capital assets and the current assets of the CD is mentioned in the Asset Memorandum. Further, the opinion of the creditors to take a fresh valuation does not preclude the satisfaction of the liquidator in any manner. In fact the approval of the creditors along with satisfaction of the liquidator shows the consensus reached and the urgent requirement to conduct a fresh valuation of the CD as a going concern. Therefore, there appears to be no contravention.

4.10 **Expenses of inspection by lenders**

4.10.1 Under the Code, it is crucial that the expenses incurred are to be kept at a minimum so that there is no erosion of the value of CD and no unnecessary cost is added which may take away from the already diminished shares of the creditors and other stakeholders. Thus, it is the duty of an IP, under the Code, to take reasonable care and diligence while performing his duties, including incurring expenses. Section 25 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.*
- (2) *For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -*
- (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;*
 - (b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;*
 - (c) raise interim finances subject to the approval of the committee of creditors under section 28;*
 - (d) appoint accountants, legal or other professionals in the manner as specified by Board;*
 - (e) maintain an updated list of claims;*
 - (f) convene and attend all meetings of the committee of creditors;*
 - (g) prepare the information memorandum in accordance with section 29;*
 - (h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.*
 - (i) present all resolution plans at the meetings of the committee of creditors;*
 - (j) file application for avoidance of transactions in accordance with Chapter III, if any; and*
 - (k) such other actions as may be specified by the Board.”*

4.10.2 The DC notes that the submission of Mr. Goel that he had incurred various expenses for the travel and stay of CoC members but not in the capacity as members of CoC but rather as ‘*secured lenders of CD who wanted to visit premises of CD*’ which is part of the ordinary course of business. The DC notes the submission of Mr. Goel that the secured creditors have executed loan agreements with the CD and this is a general condition of a loan that monitoring and inspection would be done by the officials of the secured creditors and the cost of such inspection and monitoring would be borne by the borrowers. That the CD was obligated to accept request of inspection as was previous practice. Further, as these expenses are in the nature of operational expenditure of the CD, no specific approval of CoC is required. Only expenses incurred by the IP for conducting CoC and SCC, visit the plant site for management of the CD and stay/travel of himself was made part of the CIRP/Liquidation cost. Also, the CoC was duly informed of these expenses by submitting periodic profit and loss account and cost sheet including all these expenditures. The DC finds that as the expenses were of operational expenses and no provision of the Code or the Regulations thereof mandates that expenses incurred for day-to-day operations has to be approved by the CoC, therefore, there is no lapse on the part of Mr. Goel. Also Mr. Goel had informed the same to CoC by submitting expenditure cost sheets. Hence, no contravention could be made out.

ORDER

5. In view of the above, the DC, in exercise of the powers conferred under Section 220 of the Code read with sub-regulations (7), (8), (9) and (10) of Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 disposes of the SCN without any directions.
6. The Order shall come into force with immediate effect in view of para 5.
7. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Anil Goel is enrolled as a member.
8. 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.
9. Accordingly, the show cause notice stands disposed of.

-Sd-

Date: 10th February, 2022

Place: New Delhi

(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI