

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/188/2023

5th September 2023

ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI//IP/INSP/2022/123/33/683 dated 06.01.2023, issued to Mr. Vishal Pawankumar Bidawatjika, who is a Professional Member of Indian Institute of Insolvency Professional of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00125/2017-18/10267 and resident of 307, Business Classic, 3rd Floor, Chincholi Bunder Road, Near HP Petrol Pump, Malad (West), Mumbai, Maharashtra, 400064.

1. Background

- 1.1. The National Company Law Tribunal, Mumbai (AA) had admitted the application under Section 7 of the Code for corporate insolvency resolution process (CIRP) of Bluplast Industries Limited (CD-1) *vide* Order dated 5.10.2017 whereby Mr. Vishal Pawankumar Bidawatjika was appointed as Interim Resolution Professional (IRP) and was later appointed as Resolution Professional (RP) after the first CoC meeting on 10.11.2017. The AA *vide* its order dated 10.08.2018 passed an order for Liquidation of CD-1 and appointed Mr. Bidawatjika as Liquidator in the said matter.
- 1.2. The AA had admitted the application under Section 7 of the Code for CIRP of Anil Printers Limited (CD-2) *vide* order dated 06.05.2019 and Mr. Bidawatjika was appointed as IRP *vide* the same order, who was later confirmed as the RP after the first meeting of CoC. The AA passed an order for liquidation of CD-2 *vide* its order dated 15.10.2019 and Mr. Bidawatjika was appointed as Liquidator *vide* the same order.
- 1.3. The National Company Law Tribunal, Ahmedabad (AA) had admitted the application under Section 9 of the Code for CIRP of M/s Today's Writing Instruments Limited (CD-3) *vide* its order dated 05.10.2017 and appointed Mr. Navnit Lal Bhatia as IRP *vide* the same order. The NCLT, Ahmedabad, ordered for Liquidation of CD-3 on 30.11.2018, and appointed Mr. Bidawatjika as Liquidator in the Liquidation process of CD-3.
- 1.4. In exercise of its powers under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, the IBBI appointed an Inspecting Authority to conduct an inspection of Mr. Bidawatjika in the matter of his appointment as Liquidator in the Liquidation process of CD-1, CD-2 and CD-3 and M/s Wings Travel Management (I) Pvt. Ltd. (CD – 4). The Draft Inspection Report dated 29.06.2022, was shared with Mr. Bidawatjika and the same was replied by him on 13.07.2022. Thereafter, the IA submitted the Inspection Report to IBBI on 01.08.2022.
- 1.5. The IBBI on 06.01.2023, had issued the SCN to Mr. Bidawatjika, based on findings in the Inspection Report in respect of his role as Liquidator in the Liquidation of CD-1, CD-2, and CD-3. The SCN alleged contraventions of several provisions of the Insolvency and

Bankruptcy Code, 2016 (Code), IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations), the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations), and the Code of Conduct for Insolvency Professionals as specified in the First Schedule of IBBI (Insolvency Professionals) Regulations, 2016. Mr. Bidawatjika submitted his reply to the SCN on 12.01.2023.

- 1.6. The SCN and the response of Mr. Bidawatjika to the SCN were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Bidawatjika availed an opportunity of personal hearing virtually before the DC on 26.05.2023. The DC granted liberty to Mr. Bidawatjika, for submitting additional documents/submissions and accordingly Mr. Bidawatjika, submitted proof of refund of the excess amount drawn, *vide* e-mail dated 29.05.2023, consisting of Bank statement of ICCI Bank and HDFC Bank.

2. Alleged Contraventions, Submissions of Mr. Bidawatjika and Findings

The contraventions alleged in the SCN and submissions of Mr. Bidawatjika are summarized as follows:

2.1. Charging of Excess Fee

- 2.1.1. It was noted that as per Regulation 4 (3) of IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) as applicable at the relevant time, in all cases where fee of the liquidator has not been decided by the committee of creditors before commencement of liquidation, the liquidator shall be entitled to a fee as a percentage of the amount realized net of other liquidation costs, and of the amount distributed, as per the prescribed table. It is noted that for liquidation commencing on or after 25.07.2019, the said regulation 4(2) provides that in cases other than where fee payable to the liquidator has not been decided by the committee of creditors, the liquidator shall be entitled to a fee-

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

(b) as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation, as per the prescribed table.

- 2.1.2. It was noted that liquidation processes of CD-1, CD-2 and CD-3 were initiated on 10.08.2018, 15.10.2019 and 30.11.2018 respectively. It is noted that *vide* e-mail dated 22.03.2021, the Board had pointed out incorrect percentage applied by Mr. Bidawatjika for calculation of his fee as liquidator and had brought to his notice excess fee drawn/charged in the liquidation process of CD-1, CD-2 and CD-3 in the following manner:

S. No.	Corporate Debtor	Excess Fee Drawn/Charged (in Rs.)
i.	Bluplast Industries Ltd (CD-1)	4,42,790.00
ii.	Anil Printers Ltd (CD-2)	6,74,732.00
iii.	Todays Writing Instruments Ltd (CD-3)	6,42,564.00
Total		17,60,086.00

2.1.3. It was noted that in his reply to this mail, Mr. Bidawatjika had *vide* letter dated 01.04.2021 informed the Board that the amount ascertained as Excess Drawn /Calculated will be reimbursed / adjusted by him net of receivables from each of the Companies, into the account of the respective Company in liquidation. It is noted that in his reply to the DIR, Mr. Bidawatjika had admitted of having charged excess fees as Liquidator as per Regulation 4(3) of Liquidation Regulation by calculating “first six months’ from the date of receipt of first tranche of sale proceeds of assets instead of from liquidation commencement date. It is further noted that he admitted of having refunded the excess fees after being pointed out by the Board, thus, Mr. Bidawatjika, had charged excess fee as liquidator in the liquidation of CD-1, CD-2 and CD-3 and only after being pointed out by the board, he refunded the excess amount to the liquidation account of the respective CD.

2.1.4. Accordingly, the Board was of the *prima facie* opinion that Mr. Bidawatjika had, *inter alia*, contravened section 208(2)(a) and (e) of the Code, regulation 4(3) of the then Liquidation Regulations, regulation 7(2)(h) of the IP Regulations read with Clause 10, 14 and 25 of Code of Conduct for IP under First Schedule to IBBI (Insolvency Professionals) Regulations, 2016 (Code of Conduct).

Submission by Mr. Bidawatjika

2.1.5. Mr. Bidawatjika submitted that he charged the fee payable to the Liquidator strictly in terms of Regulation 4 of IBBI (Liquidation Process) Regulations, 2016 under the genuine presumption that the “first six months” starts from the date of realization of assets/ first tranche and not from the date of commencement of liquidation process period as advised by the Board in the DIR sent to him by mail dated 22.06.2022. He submitted that a reading of the explanation/foot note provided there under Regulation 4 (table fee for realisation and fee payable on distribution) is silent on as to when the period of “first Six months” starts.

2.1.6. Mr. Bidawatjika submitted that as against the fee calculated and charged by him, the DIR pointed out the discrepancy in calculation of fee charged by him and termed the same as “Excess”, and that he agreed with the view of the IA with respect to provisions and explanation of Regulation 4, wherein the "first six months' should be reckoned from the

date of commencement of liquidation process date as against “from the date of receipt of first tranche of sale proceeds of assets” as was misconstrued by him. He submitted that in view of this he admitted and accepted the finding of the IA.

- 2.1.7. Mr. Bidawatjika submitted that the calculation of fees which turned out to be excess, was calculated strictly in terms of Regulation 4 purely unaware of the fact that ‘The First Six Months’ starts from the date of commencement of liquidation process, commencement date as concluded by the IA as against the start of first six months from the date of realization from sale of asset(s) due to absence of clarity in the provisions governing the payment of fee as to when the first six months commences (either from the date of sale or from the date of commencement of LCD). He submitted that it was purely an error of understanding of the provision and not due to any intention or negligence on his part to overcharge the CD in any case or under any circumstances. He submitted that the charge of receiving excess fees and refund of the same only after it was brought to his notice through the DIR was overstated.
- 2.1.8. Mr. Bidawatjika submitted that he admitted the wrong and refunded the “Excess” fees charged by him immediately after receipt of the mail of 22.03.2021 from the IA only to uphold the Order of the Board as a disciplined Chartered Accountant registered with ICAI and a disciplined member of IIPICAI as an Insolvency Professional without entering into any argument or protracted correspondence. He submitted that calculation and charging the fee payable to the Liquidator was entirely based on the Provisions of Regulation 4 and the same was the result of misunderstanding the “real “ meaning of start of first six months.
- 2.1.9. Mr. Bidawatjika submitted that he exercised due diligence with utmost dedication while performing his duties as IRP/RP and liquidator, and that he meticulously followed the provisions of the Code and Rules and regulations made there under in the best interest of the stakeholders, the Hon’ble NCLT and the IBBI. He submitted that Hon’ble NCLT Mumbai Bench had orally commended the work done by him in following the timelines under CIRP in respect of M/s. Bluplast Industries Limited.
- 2.1.10. Mr. Bidawatjika submitted that he had not violated the provisions of regulation 4(3), and the fee was calculated by him strictly in accordance with the provisions of the said Regulation, however, due to no clarity with regard to the start of first six months, the error had taken place which was purely on account of wrong interpretation and understanding of the provision.
- 2.1.11. Mr. Bidawatjika submitted that he had not violated provisions Regulation 7 (2) (h) of Insolvency Professionals Regulations in any manner and at any point of time during his appointment or assignment as Liquidator of any of the four matters. He submitted that he was aware of the Code of Conduct for Insolvency Professionals and has been a disciplined and well-behaved Chartered Accountant since his pass out in 2002 and has never been indicted in any manner by the ICAI. He submitted that he has been a disciplined Insolvency Professional registered with IBBI and enrolled with Indian Institute of Insolvency Professional of ICAI, always conducted himself abiding by the Rules and

Regulations of the IBBI and IIPICAI and has not been indicted in any manner either by the IBBI or IIPICAI since his Registration as IP.

2.1.12. Mr. Bidawatjika submitted that he had not violated Clause 10 of the Code of Conduct, and had acquired all necessary skills to diligently manage the affairs of the CD strictly in line with the provisions of the IBC and Rules/Regulations made there under from time to time. He submitted that he had not violated provisions of Clause 14 of the Code of Conduct, and that his conduct as an Liquidator has not come under the scrutiny of IBBI/IIPICAI or any of the NCLTs. He submitted that he had not violated Clause 15 of the Code of Conduct and that he always kept the stakeholders updated in all his communications viz., notices, reports, updates, directions, or clarifications, in a way that was well understood by all the stakeholders in all his assignments.

2.1.13. Mr. Bidawatjika submitted that he had not violated Clause 25 of the Code of Conduct for IPs. He submitted that he had handled all the matters with meticulous compliance of all regulations and provisions of IBC, 2016 without inviting any wrath from the Honourable Institutions governing the IBC, and in view of this, concluding his conduct as a Liquidator in all the matters under reference as not becoming of the conduct of an IP as a “fit and proper” person will cause irreparable loss to him. He submitted that as an official (IRP/RP/Liquidator) appointed by NCLTs at various locations, he has been upholding the image of a “Court Appointed Official” being the custodian of the IBC.

Findings of DC

2.1.14. The DC notes that Regulation 4(2) of the Liquidation Regulations, 2016 provides for the manner of calculation of fees of the liquidator in cases where the same is not decided by the CoC. The Liquidator is to charge fees in accordance with the manner prescribed by the regulations. The period of first six months prescribed in Regulation 4 of the Liquidation Regulations commences from the date of the liquidation commencement date and the said period of first six months cannot be interpreted as to commence from the date of realisation of the assets of the CD. Since the provisions of Regulation 4(2) of Liquidation Regulations are unambiguous, the contention of Mr. Bidawatjika is not tenable.

2.1.15. After the DC hearing on 26.05.2023, Mr. Bidawatjika, sent e-mail on 29.05.2023, submitting proof of refund of excess amount drawn and it was reported by him that out of the excess fee charged amounting to Rs.17,88,486 (Rupees seventeen lakh eighty eight thousand four hundred eighty six only) he actually received excess amount of Rs.1,24,102 (Rupees one lakh twenty four thousand one hundred two only) for CD 1 and Rs.6,19,133 (Rupees six lakh nineteen thousand one hundred thirty three only) for CD 3, and no amount was received for CD 2, and on getting the same pointed out by the IA, Mr. Bidawatjika, refunded the excess amount withdrawn to the account of the CD 1, and CD 3. The contravention of charging excess fee is established and had there been no inspection and finding by IA, the stakeholders would have been put to loss.

3. ORDER

- 3.1. In view of the forgoing discussion and SCN, reply to the SCN, further oral and written submission made by Mr. Bidawatjika, the DC is of the view that Mr. Vishal Pawankumar Bidawatjika failed to read Regulation 4 properly and erroneously took a view that the period of first six months, will commence from the date of realisation of the assets. It clearly evidences Mr. Bidawatjika's lack of understanding of the provisions of the Code and Regulations made thereunder. Mr. Bidawatjika has sought pardon for misunderstanding and wrong interpretation of the provisions and further assured to conduct himself in strict compliance of the Rules and Regulations governing the code of conduct in all his future endeavours.
- 3.2. The DC, in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby imposes penalty of Rs.1,00,000 (Rupees one lakh only) on Mr. Vishal Pawankumar Bidawatjika and directs him to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of "penalty imposed by IBBI" on <https://bharatkosh.gov.in> within 45 days from the date of issue of this order and submit a copy of the transaction receipt to IBBI.
- 3.3. The DC further warns Mr. Bidawatjika, to be more careful and diligent and strictly comply with the provisions of the Code and Regulations made thereunder.
- 3.4. This order shall come into force immediately in view of the para 3.2 and 3.3 of the order.
- 3.5. A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Vishal Pawankumar Bidawatjika is providing his services, if any.
- 3.6. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Vishal Pawankumar Bidawatjika is enrolled as a member for their further necessary action.
- 3.7. A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.
- 3.8. Accordingly, the show cause notice is disposed of.

Sd/-

(Jayanti Prasad)

Whole Time Member, IBBI

Dated: 5th September 2023

Place: New Delhi