

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY*****CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 12320 OF 2024****Vijendra Kumar Jain****..... Petitioner****VERSUS****The Insolvency and Bankruptcy Board
of India & Anr.****..... Respondents**

Mr. Gaurav Joshi, Senior Advocate a/w. Mr. Chaitanya Nikte, Ms. Esha Malik, Mr. Swapnil Sangle for the Petitioner.

Mr. Pankaj Vijayan a/w. Ms. Sushmita Chauhan for the Respondent No.1.

Mr. Vinit Jain a/w. Mr. Ashutosh Mishra for the Respondent No.2.

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 10th SEPTEMBER, 2024

P.C. :-

The submissions of the learned counsel have been heard.
The judgment is reserved. Till the time the judgment is pronounced, the order dated 12th August 2024 passed by the Disciplinary Committee shall remain in abeyance.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/242/2024

12 August, 2024

ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/45/2023-IBBI/769/813 dated 11.07.2023, issued to Mr. Vijendra Kumar Jain ('IP') who is a Professional Member of the Institute of the Chartered Accountants of India (ICAI) and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-001/IP-P00721/2017-2018/11253 resident of 401/402, Sai Trishul, Raviraj Oberoi Complex, Off New Link Road, Andheri West, Mumbai City, Maharashtra-400053.

1. Background

- 1.1 The National Company Law Tribunal, Mumbai Bench (AA) vide its Order dated 08.03.2019, admitted the application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) by M/s. Tractebel Engineering Private Limited for initiating Corporate Insolvency Resolution Process (CIRP) of M/s. Transparent Energy System Private Limited ('Corporate Debtor / CD') and appointed Mr. Ashish Vyas as the IRP and later Mr. Nimit Kalsi was appointed as the RP. Mr. Nimit Kalsi was replaced by Mr. Vijendra Kumar Jain later vide the AA order dated 21.02.2020. The AA had approved the Resolution Plan of the CD vide Order dated 16.04.2021 and further approved by the NCLAT vide Order dated 11.04.2023 with certain observations. The AA vide Order dated 04.01.2024 had ordered liquidation of the CD in view of the fact that SRA had failed to implement the Resolution Plan and appointed Mr. Ram Ratan Kanungo as the liquidator of the CD. Further, the NCLAT vide order dated 08.04.2024 set aside the liquidation Order of the AA dated 04.01.2024 and allowed the extension of timeline to SRA for making the payments under the approved Resolution Plan.
- 1.2 The Board in exercise of its powers under Section 218 of the Code, read with Regulation 7(2) and 7(3) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to conduct the investigation in the CIRP of the CD.
- 1.3 Accordingly, a notice under Regulation 8(1) of the Inspection and Investigation Regulation was issued to Mr. Vijendra Kumar Jain on 29.04.2023 with a request to provide reply along with relevant documents. Mr. Vijendra Kumar Jain submitted his reply to the investigation notice vide email dated 11.05.2023 and 19.05.2023.

1.4 Based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the IBBI formed a *prima facie* view and issued the SCN to Mr. Vijendra Kumar Jain on 11.07.2023. The SCN alleged contraventions of several provisions of the Code, the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (CIRP Regulations) and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations). The reply of Mr. Vijendra Kumar Jain on the SCN was received by the Board on 24.07.2023.

1.5 The SCN and response of Mr. Vijendra Kumar Jain to the SCN were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Vijendra Kumar Jain availed an opportunity of personal hearing before the DC through virtual mode on 31.01.2024 with his Advocate Mr. Kunwarpreet Singh.

2. Alleged Contraventions, Submissions of IP and Findings

The contraventions alleged in the SCN, submissions by Mr. Vijendra Kumar Jain and findings of the DC are summarized as follows:

Contravention I

2.1 Lack of due diligence in verification of resolution plan

2.1.1 It was stated by Mr. Vijendra Kumar Jain in the reply to the IA that the full claim amount of Rs.11,465,28,813 only from M/s. Kanoria Chemical and Industries Limited (OC / Kanoria), one of the Operational creditors, was admitted by Mr. Vijendra Kumar Jain based on an arbitration award. However, it is noted on perusal of the NCLAT order dated 11.04.2023 that the Successful Resolution Applicant (SRA) had made zero provision in its resolution plan for Kanoria Chemical and Industries Limited. It was also observed on perusal of the said order that the resolution plan by the SRA had termed the arbitration award *void ab initio* and *the entire process of making the award has been defective and unlawful*. It had also been noted by NCLAT in the aforesaid order that SRA in this case is represented by the same persons who were also on the Board of Directors of the CD.

In this regard the NCLAT *vide* its order dated 11.04.2023 made adverse remarks against the IP's conduct, stating that :

" 23. It is thus clear the Successful Resolution Applicant, which is represented by the same persons, which were on the Board of Directors of the corporate debtor under CIRP, has gone ahead and made a legal analysis about the arbitration process which it certainly did not have the jurisdiction or right to do so. To say that the arbitration award is 'void ab initio' and 'the entire process of making the ward

is defective and unlawful' is abrogating the authority which is only available to a court of competent jurisdiction.

... While it is potently objectionable and completely undesirable for a prospective resolution Applicant to make such comments about a valid judicial process, who find it surprising that these comments escaped the eyes of R-1, the Resolution Professional, and the Adjudicating Authority when examining the resolution plan under section 30(2)(b). We are, therefore, of the view that the Resolution Professional R-1 failed in his duty by not pointing out such objectionable comments when placing the Resolution Plan for consideration of Committee of Creditors and the Adjudicating Authority."

In Paragraph 30(iv) of the said order, the NCLAT also held that:

"and he should have brought the objectionable comments made by the Successful Resolution Applicant regarding the arbitration award in the arbitration process which was included in the resolution plan to the notice of Committee of Creditors as also the Adjudicating Authority, which he failed to do so, and therefore he is reprimanded regarding this failure in the call of his duty."

It was, thus, evident that after verification of the claim of Kanoria Chemical and Industries Limited, Mr. Vijendra Kumar Jain had admitted the full claim amount but there was no objection raised by Mr. Vijendra Kumar Jain to zero provisioning for Kanoria Chemical and Industries Limited made in the resolution plan submitted by the SRA.

2.1.2 It was further noted that, Section 30(2)(b) of the Code requires the Resolution Professional to examine each resolution plan received by him to confirm that each resolution plan provides for payment of debts of operational creditors in such manner which shall not be less than the amount to be paid to such creditors in the event of a liquidation of the CD under Section 53. Further, Section 30(2)(e) of the Code requires the Resolution Professional to confirm that the resolution plan does not contravene any of the provisions of the law for the time being in force. Regulation 38(1A) of the IBBI (Resolution Process for Corporate Persons) Regulation, 2016 (CIRP Regulations) provides that a resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the CD. Regulation 39(2) requires a Resolution Professional to submit to the CoC compliant resolution plans.

2.1.3 It is the duty of the Resolution Professional in the CIRP of the CD to ensure that the resolution plan being presented to the CoC is a compliant one. It is, however, observed that Mr. Vijendra Kumar Jain presented before the CoC a resolution plan, which did not have provision for payment to one of the operational creditors (Kanoria Chemical and Industries Limited) despite having

admitted its claim in full after due verification. It is alleged that Mr. Vijendra Kumar Jain chose to ignore the fact that the SRA had made legal analysis of arbitration award, which formed basis of admission of claim of Kanoria, to justify zero provision to Kanoria in the resolution plan which has been held to be beyond the jurisdiction of Successful Resolution Applicant by NCLAT. Thus, Mr. Vijendra Kumar Jain failed to comply with the requirement of Section 30(2)(e) of the Code which requires Resolution Professional to ensure that resolution plan does not contravene any law for the time being in force.

2.1.4 It was further noted in the SCN that on perusal of NCALT order dated 11.04.2023 that the Successful Resolution Applicant (SRA) in this case is represented by the same persons who were on the Board of Directors of the CD. Ex-Directors of the CD being the SRA were party to arbitration proceedings between CD and Kanoria Chemical and Industries Limited and their legal analysis of the arbitration award to make zero provisioning for Kanoria Chemical and Industries Limited was not only beyond their jurisdiction as also noted by NCLAT but could also be done with ulterior motive in order to reduce their overall liability. The conduct of Mr. Vijendra Kumar Jain towards allowing zero provisioning shows his mala fide intention.

2.1.5 In view of the above, the Board formed the *prima facie* view that Mr. Vijendra Kumar Jain had contravened Sections 30(2)(b) & (e), 208(2)(a) & (e) of the Code, Regulations 38(1A) & 39(2) of the CIRP Regulations, Regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clauses 1, 3 and 14 of the Code of Conduct as specified in the First Schedule of IP Mr. Vijendra Kumar Jain Regulations (Code of Conduct).

Submissions by Mr. Vijendra Kumar Jain

2.1.6. Mr. Vijendra Kumar Jain in his response to the SCN submitted that during the discharge of his duties as the Resolution Professional of the CD, he complied with all the provisions of the Code read with the Rules and Regulations made thereunder with regard to conducting due diligence of the Resolution Plan in accordance with Section 30(2) read with Regulations 38 and 39 of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (CIRP Regulations”).

2.1.7 It was further submitted that the Resolution Plan was presented by Mr. Vijendra Kumar Jain before the Committee of Creditors of the CD for their consideration and voting was in compliance of the provisions of the Code and rules and Regulations made thereunder.

2.1.8 Mr. Vijendra Kumar Jain submitted that Section 30(2)(b) of the Code requires the Resolution Professional to confirm that the amount which is payable to the operational creditors towards their

debts must at least be either what is provided in sub-clause (i) of clause (b) of subsection (2) of Section 30 of the Code or sub-Clause (ii) of clause (b) of subsection (2) of Section 30 of the Code, whichever is higher. Sub clause (i) refers to the amount paid to the operational creditors in the event of a liquidation under Section 53 and Sub-clause (ii) refers to the amount that would have been paid to the operational creditors, if the amount to be distributed under the resolution plan was distributed in accordance with the order of priority under Section 53(1)(b), which provides for a waterfall mechanism.

2.1.9 Mr. Vijendra Kumar Jain further submitted that explanation-1 to clause (b) of Section 30(2) of the code, is clarificatory in nature and provides that distribution which is in accordance with provisions of the Section 30(2)(b) of the code, shall be fair and equitable to such creditors. Mr. Vijendra Kumar Jain submitted that in the present case, as per the valuation ascertained by the Registered valuers, the amount payable to the OC under Section 30(2)(b)(i) and 30 (2)(b)(ii) was NIL and as per the resolution plan, the OC are offered NIL amount. Accordingly, the amount paid under the Resolution Plan to the OC was in accordance with the provision of Section 30(2)(b) of the Code and the same shall be treated as fair and equitable as per the explanation provided under the statute.

2.1.10 In addition to the above, Mr. Vijendra Kumar Jain submitted that one of the incidental observations made in the SCN is that the Resolution Professional did not raise any objection to zero provisioning for Kanoria Chemical and Industries Limited made in the resolution plan submitted by the Successful Resolution Applicant ("SRA"), in response to which Mr. Vijendra Kumar Jain would like to place on record the ruling of NCLAT in the matter of "Excel Engineering Vs Vivek Murlidhar Dabhade" wherein it was held as follows:

"..... There is no embargo for the classification of the 'Operational Creditors into separate / different classes for deciding the way in which the money is to be distributed to them by the CoCs. We are of the view that the 'Operational Creditors' were paid as per Section 30(2)(b) of the Code coupled with Regulation 38 of the Corporate Insolvency Process Regulations as the 'Operational Creditors are entitled to receive only such money that are payable to them as under Section 53 of the Code."

2.1.11 Also, in the matter of "Gail India Ltd Vs. Ajay Joshi (Resolution Professional of Alok Industries Ltd. & Ors.", the NCLAT held as follows:

"73. In reality, there is no embargo for the classification of Operational creditor(s) into separate/ different classes for deciding the way in which the money is to be distributed to them by the Committee of Creditors because of the fact, undoubtedly, they do have

the subjective final discretion of 'Collective Commercial Wisdom' in relation to (1) The amount to be paid (2) The quantum of money to be paid to a certain category or the incidental category of creditors, of course, nicely balancing the interests of the 'Stakeholders' and the 'Operational Creditors'. as the case may be. Suffice it for this Tribunal to pertinently make a significant mention that it cannot be lost sight of that the 'Appellant's' claim is not relatable to the supply of goods or services so as to keep the 'Corporate Debtor' as a Going Concern. It is to be remembered that the 'Appellant' had commenced Arbitration proceedings in regard to its claim emanating from the 'Gas Sale Agreement'. In fact the Appellant's claim pertains to supposed obligation to pay for goods, even where, these were not made use of as "take or pay obligation'. Looking at from any angle, the impugned order dated 08.03.2019 passed by the Adjudicating Authority (National Company Law Tribunal). Ahmedabad Bench in dismissing the LA. 41/2019 in IA 259/2018 (filed by the Applicant for Appellant) in CP (IB)48/2017 documents not suffer from any material irregularity or patent illegality in the eye of Law. Resultantly the instant 'Appeal' sans merits."

In view of the above referred ruling of the NCLAT, it is evident that there is no embargo or restriction on the classification of operational creditors into separate/different classes, for deciding the manner in which the payment is to be distributed to each sub class. Further, the amount and manner of distribution to each class or sub classes, which is in compliance of Section 30(2)(b) is the discretion of the CoC.

Accordingly, the categorisation or division of operational creditors into separate classes in the Resolution Plan is not in contravention of the provisions of the Code and rules and Regulations made thereunder, as there is no embargo or restriction on the same, as held by the NCLAT in the above stated matters. It was submitted by Mr. Vijendra Kumar Jain that he had availed the legal opinion for the same in this issue before placing the Resolution Plan before the CoC for its consideration and voting.

2.1.12 Mr. Vijendra Kumar Jain submitted that he had diligently fulfilled his duty as Resolution Professional of the Corporate Debtor by ensuring that the resolution plan is in compliance with provisions of the Code and rules and regulations thereunder, and hence there was no objection to be raised in the first place. Further, in accordance with the provisions of Regulation 35(2) of the CIRP Regulations, Mr. Vijendra Kumar Jain after receipt of the resolution plan had provided the fair and liquidation value of the CD to the CoC. The CoC was completely aware of the proposal made in the resolution plan and the approval of the financial proposal made in the resolution plan is completely within the commercial wisdom of the CoC.

2.1.13 Mr. Vijendra Kumar Jain submitted that the claim of Kanoria Chemical and Industries Limited was admitted under the category of Contingent Claims, as the appeal under Section 34 of the Arbitration and Conciliation Act, 1996 was pending before the competent court as on the

insolvency commencement date. Accordingly, considering that the claim of Kanoria Chemical and Industries Limited was not a crystallized claim and the same was pending before the competent court for adjudication, Mr. Vijendra Kumar Jain admitted the said contingent claim and duly disclosed information memorandum.

2.1.14 Mr. Vijendra Kumar Jain further submitted that the SRA has made legal analysis of the arbitration award which formed the basis of admission of the claim of Kanoria, to justify the payment being made to Kanoria under the resolution plan.

2.1.15 Mr. Vijendra Kumar Jain submitted that the legal analysis of the arbitral award or justification of different treatment for contingent claim provided under the Resolution Plan, cannot be considered as illegal or objectionable statement, as the language and statement mentioned in the resolution plan was verbatim to the language and ground used by the Corporate Debtor in the appeal filed under Section 34 of the Arbitration and Conciliation Act, 1996, prior to the initiation of Corporate insolvency Resolution Process of the Corporate Debtor by the erstwhile management of the Corporate Debtor, who is also the Successful Resolution Applicant in this matter.

2.1.16. Further, the copy of the entire appeal filed under Section 34 of the Arbitration and Conciliation Act, 1996 was made part of the Resolution Plan submitted by the SRA. Further, the statement by the SRA in the resolution plan challenging the arbitral award was to establish the resolution/rationale behind the treatment proposed under the resolution plan and cannot be treated as non-compliance of any law for the time being in force and therefore merely on this, the plan cannot be said to be not in compliance of Section 30(2)(e) of the Code.

2.1.17. Mr. Vijendra Kumar Jain further submitted that as per Section 30(4) of the Code, 2016, it is the responsibility of the Committee of Creditor to consider the manner of distribution proposed in the resolution plan. Therefore, as the Resolution Professional of the Corporate Debtor, Mr. Vijendra Kumar Jain role and responsibility in placing a compliant plan before the Committee is duly fulfilled and the issue allowing or disallowing zero provision for Kanoria in the resolution plan is within the commercial wisdom of the CoC. There had absolutely been no malafide intention on his part as the CoC is absolutely aware of the fact that the claims of Kanoria Chemical and Industries Limited are classified as contingent liability and that the resolution plan provided separate treatment to the contingent claims, since the same was not crystalised on the insolvency commencement date.

2.1.18. Mr. Vijendra Kumar Jain submitted that Regulation 38(1A) of the Code, 2016 requires the Resolution Applicant to provide a mandatory statement in the Resolution plan as to how it has dealt with the interest of all the stakeholder, including the FC of the Corporate Debtor. Mr. Vijendra Kumar Jain further submitted that the resolution plan was in compliance of Section 30(2)(b) and 30(2)(e) and regulation 38(1A) of the CIRP Regulations and accordingly, a compliant Resolution Plan was submitted before the CoC for their approval.

Analysis and Findings of the DC

2.1.19. The DC notes that Mr. Vijendra Kumar Jain in his reply as well as at the time of hearing, had contended that it was the discretion of the CoC to provide any amount to the OC and further that OC would not have received any amount out of the liquidation value of the CD. The DC in order to verify Mr. Vijendra Kumar Jain's claim that the OC would not have received any amount out of the liquidation value, had sought copy of the valuation report from Mr. Vijendra Kumar Jain vide email dated May 29, 2024. However, no response was received from Mr. Vijendra Kumar Jain, finally after reminding on the phone call, Mr. Vijendra Kumar Jain submitted the valuation report on June 28, 2024 after considerable delay.

2.1.20. The DC has also perused the NCLAT's order dated 11.04.2023 in C.A(AT)(Ins.) No. 618 of 2021 case titled Kanoria Chemical & Industries Ltd vs. Mr. Vijendra Kumar Jain, erstwhile RP of CD and two others wherein the following issues were arise for the consideration and decision of the NCLAT:-

- a) *“Whether the treatment of the claim of the Appellant filed in pursuance of the arbitral award was done inappropriately in the resolution plan and thereafter approved by the Adjudicating Authority in accordance with law?”*
- b) *Whether the Successful Resolution Applicant, which is represented by the same persons, who were also part of the Board of Directors of the corporate debtor which went into CIRP, were ineligible to submit a resolution plan as per section 29-A of the IBC?*
- c) *Whether R-1 failed his duty to communicate admitted claim amount of the Appellant to him during the CIRP and also in the examination of the submitted resolution plan before its approval by the Adjudicating Authority?”*

2.1.21. The NCLAT's vide order dated 11.04.2023 after consideration of the aforesaid issues in Paragraph 30 of the said order held as follows:-

“30. On the basis of discussion in the aforesaid paragraphs, we decided the three issues stated in paragraph 14 of this judgment as follows:-

(i) The Appellant was incorrectly classified as an operational creditor with payment of ‘zero’ amount on the basis of prejudicial and objectionable analysis of arbitration process by Successful Resolution Applicant as stated in the Resolution Plan. Therefore, the Applicant should be paid an amount equal to the amount permissible to the operational creditor receiving maximum percentage of payment against admitted claim, from among all the various categories of operational creditors in the resolution plan.

(ii) The Successful Resolution Applicant was entitled to submit a resolution plan, since it is permitted under section 240-A of the IBC to submit a resolution plan in respect of the corporate debtor, which is an MSME.

(iii) We are, therefore, of the view that the comments made in the resolution plan which has been quoted from pages 62 to 65 of the reply affidavit of R-2 are completely uncalled for and are liable to be deleted from the approved resolution plan.

(iv) The Resolution Professional Shri Vijendra Kumar Jain should have been more dutiful and alert in responding to various e-mails of the Appellant regarding admitted amount of his claim, and further he should have brought the objectionable comments made by the Successful Resolution Applicant regarding the arbitration award in the arbitration process which was included in the resolution plan to the notice of Committee of Creditors as also the Adjudicating Authority, which he failed to do so, and therefore he is reprimanded regarding this failure in the call of his duty.

(v) In view of the fact that due to incorrect and prejudicial treatment of the Appellant’s claim by the successful resolution applicant in the resolution plan, the Appellant had to engage in unnecessary litigation to get his just due, we order that a litigation cost of rupees One Lakh shall be paid by Successful resolution applicant to the Appellant within 30 days of this order and submit an affidavit regarding the payment before this Tribunal.”

2.1.22. The DC further notes the submission of Mr. Vijendra Kumar Jain that both the liquidation value and resolution plan value was much lower than the claim of secured creditor SBI and hence, Kanoria being an OC is much lower in priority under Section 53 would not be entitled to any payment as per the distribution of liquidation value and resolution plan value as per the waterfall mechanism under Section 53. Moreover, Mr. Vijendra Kumar Jain submitted that even the distribution as per Section 53 of the Code, the minimum entitlement to the OC would be ‘Nil’. To support his contention that it is possible to give different treatment to different OCs, Mr. Vijendra Kumar Jain has cited several orders of NCLAT.

2.1.23. The DC also notes that Mr. Vijendra Kumar Jain had cited the said judgements i.e., (i) Gail India Ltd. vs. Ajay Joshi, RP of Alok Industries and Ors. [MANU/NL/0437/2021] decided on 4.10.2021 and (ii) Excel Engineering & Ors. vs. Vivek Murlidhar Dabhade, RP of New Phaltan Sugar Works

Ltd. & Ors. [MANU/NL/0884/2022], before the NCLAT also, and the same were differentiated by the NCLAT in Paragraph 28 its order dated 11.04.2023. The Paragraph 28 of NCLAT's order dated 11.04.2023 is reproduced herein below:-

“28. We also take note of the following two judgments cited by the Learned Counsel for Respondents No. 2 and 3:- (i) “Gail India Ltd. Vs. Ajay Joshi RP of Alok Industries Ltd. and Ors.(supra) (ii) Excel Engineering and Ors.(supra) Both the above judgments of this Tribunal are distinguished on the basis of the fact while the judgments correctly held, there is no embargo for the classification of operational creditors into separate/different classes for deciding the way in which the money is to be distributed to them by the Committee of Creditors. In the facts of the present case, this judgment is distinguishable on the basis that the Appellant Kanoria Chemical & Industries Ltd. was kept in a separate category and approved payment of ‘zero’ amount only on the basis of an incorrect classification.”

Accordingly, in DC's opinion. the judgements relied upon by Mr. Vijendra Kumar Jain to substantiate his case are not relevant.

2.1.24. The core issue for analysis is not about whether Kanoria (OC), is receiving the minimum entitlement as per the provisions of Code, 2016. Rather, it is about Mr. Vijendra Kumar Jain's failure to bring to the notice of the CoC and the Adjudicating Authority the objectionable comments made by the SRA regarding the arbitration award in the arbitration process, which were included in the resolution plan.

2.1.25. The DC notes the submission of Mr. Vijendra Kumar Jain that in compliance of his duty of verification of the Resolution Plan, he had also obtained legal opinion to ascertain whether the Resolution Plan as proposed by the SRA complies with the basic mandatory requirements of Section 30 (2) of the IBC as well as Regulation 38 of the CIRP Regulations before submitting the proposed Resolution Plan before CoC. The DC had perused legal opinion dated 13.07.2020 as received by Mr. Vijendra Kumar Jain. In this regard, it is noted that in the said legal opinion also, it was highlighted that it is not in the domain of SRA to comment upon the likelihood of success of the challenges to arbitral award. The relevant Paragraph 12 & 13 of the said legal opinion is reproduced herein below: -

“CATEGORY H - CREDITORS UNDER LITIGATION

12. The Resolution Applicant proposes to not pay any amounts to those creditors who have filed claims on the basis of arbitral awards which are under challenge. In my opinion, this may be permissible as such claims are themselves in doubt. A combined reading of the judgment of the Principal Bench of the National Company Law Tribunal in case of Grasim Industries Limited v. Tecpro Systems and of the Hon'ble Supreme Court of India in the case of K. Kishan v. Vijay Nirman Company Private Limited⁷ would suggest that claims from creditors based on arbitral awards which are under challenge ought not to be entertained.

13. That being said, I would recommend that the Resolution Applicant modify the Resolution Plan to simply state that they are disputed claims and that the Resolution Applicant only proposes to pay an amount of Rs. 1 to them. This would be in line with the judgment of the Hon'ble Supreme Court of India in the case of COC of Essar Steel Limited v. Satish Kumar Gupta wherein a similar provision in a resolution plan was upheld. It should not be for the Resolution Applicant to comment upon the likelihood of success of the challenges to the arbitral awards being relied upon by the creditors in question.”

2.1.26. Furthermore, after careful consideration of the facts, the DC notes that Mr. Vijendra Kumar Jain's approach towards handling the resolution plan submitted by the Successful Resolution Applicant (SRA) in the present case demonstrates significant shortcomings. At the very outset, Mr. Vijendra Kumar Jain should have strongly objected to the SRA's proposal on the grounds that it included comments and legal analyses of the arbitration process, deeming the award void ab initio and unlawful. This overstepping of jurisdiction by the SRA was not only inappropriate but also indicative of a conflict of interest, given that the SRA was represented by the same individuals who were directors of the suspended board of the CD. Their intimate knowledge of the internal affairs of the CD and the arbitration process could have influenced their stance on the claim by Kanoria, which was not justifiable for an independent resolution plan assessment.

2.1.27. Secondly, Mr. Vijendra Kumar Jain had failed to adequately highlight these issues to the CoC and the Adjudicating Authority even when the said concern is duly highlighted in the legal opinion dated 13.07.2020. Mr. Vijendra Kumar Jain's duty as the RP under the Code, 2016 was to ensure that the resolution plan adhered to the provisions of Code, 2016 and the relevant CIRP regulations. This included ensuring that the resolution plan did not contravene any existing laws and that it addressed the interests of all stakeholders, including the OC like Kanoria. By not objecting to the SRA's inappropriate legal comments and failing to bring these to the attention of the CoC and the AA, Mr. Vijendra Kumar Jain had neglected his responsibilities entrusted to him as the RP of the CD. He has also not acted on the legal opinion which suggested that RA should not have commented on the likelihood of success of the challenges to the arbitral awards and to get the resolution plan modified to that extent.

2.1.28. The DC concludes that, Mr. Vijendra Kumar Jain's failure to strongly object to the SRA's proposal and adequately report the issues to the CoC and the AA was a lapse in his duties as an RP.

2.1.29. In view of the above, the DC finds Mr. Vijendra Kumar Jain in contravention of Section 208(2)(a) & (e) of the Code, Regulations 38(1A) & 39(2) of the CIRP Regulations, Regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clauses 1, 3

and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Contravention II

2.2. Non-intimation regarding the claim of Kanoria Chemical & Industries Limited

- 2.2.1 It is observed that Mr. Vijendra Kumar Jain *vide* email dated 29.06.2019 informed Kanoria that an amount of Rs. 16.78 Lakh as per the books of account of the CD against the claim of Rs.6.68 crore made by Kanoria was admitted. Mr. Vijendra Kumar Jain in his reply to IA has further stated that he had asked for supporting documents from Kanoria *vide* email dated 21.05.2020 and after verification, an amount of Rs. 11.46 crore was admitted.
- 2.2.2 It is noted that Kanoria *vide* emails dated 17.02.2021, 02.03.2021, 07.04.2021, and 15.04.2021 (i.e., from February to April 2021) repeatedly requested Mr. Vijendra Kumar Jain to inform status of their claim but Mr. Vijendra Kumar Jain replied to them only on 15.04.2021. For almost two months, there was no response to the specific request made by Kanoria to know about status of their claim.
- 2.2.3 It is further observed that even in the delayed response to Kanoria, the status of claim was not intimated. Email dated 15.04.2021 merely stated that the resolution plan was submitted before the AA and it was pending approval of the AA. Thus, Mr. Vijendra Kumar Jain failed to intimate Kanoria the precise amount of claim admitted by him. In this regard, NCLAT also *vide* its order dated 11.04.2023 took notice of the inaction of Mr. Vijendra Kumar Jain and made the following remarks regarding the conduct:

"... we are of the view that once the Appellant had submitted complete details about the arbitration award, and the calculation of claimed amount in excel sheet and KYC documents, the admitted amount of the claim should have been communicated to the Appellant, while observing so, we are conscious of the fact that the appellant sent several emails in follow-up to the Resolution Professional. The work of updating and verification and final determination of the amount of claims is to be done by the Resolution Professional as per Regulations 12, 12A, 13 and 14 of the CIRP Regulations. The list of creditors shall be maintained by the Resolution Professional and made available to the persons filing the claims in accordance with sub-regulation (2) of Regulation 13 and based on the record submitted by the parties, it is clear that the Appellant could not get to know the amount of his claim finally admitted by the Resolution Professional despite continuous follow-up. The Resolution Professional has clearly failed in his duty in this regard.

...The Resolution Professional Shri Vijendra Kumar Jain should have been more dutiful and alert in responding to various e-mails of the Appellant regarding admitted amount of his claim..."

2.2.4. Regulations 13(2)(a) of the CIRP Regulations states that the list of creditors shall be available for inspection by the persons who submitted proofs of claim. However, in this case, although Mr. Vijendra Kumar Jain admitted the claim of Kanoria in full based on the proof of claims provided by them, but failed to inform them about their status of claim despite repeated request made by it which is in contravention of the spirit of Regulation 13(2)(a) of the CIRP Regulations.

2.2.5. It is further alleged that the IA *vide* e-mail dated 18.05.2023 specifically requested Mr. Vijendra Kumar Jain to clarify whether the List of Creditors with the AA was filed, as mandated under Regulation 13(2)(d) of CIRP Regulation and if so, to provide its documentary proof. Mr. Vijendra Kumar Jain *vide* email dated 19.05.2023 informed about filing of list of creditors by him before the AA on 30.03.2019 but Mr. Vijendra Kumar Jain failed to reply if the updated list of claims after admission of Kanoria's claim for Rs.11.46 crore in 2020 as required under Regulation 13(2)(d) of the CIRP Regulations was filed before the AA. The omission to reply to specific query of IA with regard to filing of list of creditors indicated that the Mr. Vijendra Kumar Jain did not file the list of creditors before the AA after admission of the claim of Kanoria, thereby failing to act in accordance with Regulation 13(2)(d) of CIRP Regulations.

2.2.6. In the view of above, the Board is of the *prima facie* view that Mr. Vijendra Kumar Jain had contravened Sections 25(2)(e) and 208 (2)(a) of the code, regulation 13(2) (a) & (d) of the CIRP Regulations, Regulation 7 (2)(a) & (h) of the IP Regulations read with Clause 14 of the Code of Conduct.

Submissions by Mr. Vijendra Kumar Jain

2.2.7. Mr. Vijendra Kumar Jain submitted the chronology of events and the same is reproduced herein below:

Dates	Events
21.02.2020	Mr. Vijendra Kumar Jain was appointed as the Resolution Professional of the Corporate Debtor vide order dated February 21, 2020 of the NCLT, Mumbai Bench.
March 2020	As per the handover of the documents by the erstwhile RP, no details of the claim of Kanoria was mentioned in the list of creditors and the information memorandum handed over to the IP.
24.03.2020	On account of outbreak of Covid-19 pandemic in the Country, the Central Government announced nationwide complete lockdown in the Country for a period 21 days, which was later extended multiple time. It is pertinent to note herein that Mr. Vijendra Kumar Jain

	resided in Mumbai which was one of the most affected cities in the country due to the Covid-19 virus and accordingly, the restriction of lockdown was extended by the State Government of Maharashtra during the year 2020 and 2021 i.e., during the first and second wave of Covid-19.
20.04.2020	In view of the nation-wide lockdown in the country and its impact on the ongoing CIRP process of the Corporate Debtor, the Board vide Notification No. IBBI/2020-21/GN/REG059 dated 20 th April, 2020 inserted Reg 40C in the CIRP Regulation, as per which, period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.
21.05.2020	After going through the documents and records of the Corporate Debtor, the IP identified outstanding claim of Kanoria and upfront approached them for filing of the claim with the Resolution Professional along with the supporting documents vide an email dated 21.05.2020.
28.05.2020	Subsequently, after due verification of the claim of Kanoria, Mr. Vijendra Kumar Jain updated the Information Memorandum and shared the same with the Prospective Resolution Applicant vide email dated 28.05.2020. It is pertinent to note herein that the IP included the name of the Kanoria in the list of creditors as a contingent claim within 7 days from the date on which the claim of Kanoria came to the knowledge of the IP. Further, the updated list of creditors was also uploaded on the website of the Corporate Debtor.
27.11.2020	The Board" November 27,2020, issued a circular for filing of list of creditors under clause (ca) of sub-regulation (2) of regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on the online platform www.ibbi.gov.in . Mr. Vijendra Kumar Jain immediately after issuance of the IBBI circular filed the updated list of creditors on IBBI portal on December 01, 2020 which included the name of Kanoria as well.
04.12.2020	However, the filing of claims with the AA was inadvertently missed. We request to condone the same as the omission was not intentional. Considering COVID-19 outbreak in India and its severity in the state of Maharashtra and specifically Mumbai, the Resolution Professional made best efforts to manage the CIRP process of the Corporate Debtor. Accordingly, the claims were published on IBBI portal, intimated to the RA and the CoC via updated IM, published on website of the CD and was also included in the Resolution Plan filed with the NCLT.
17.02.2021, 02.03.2021 07.04.202114.04.2021	The Claimant i.e., Kanoria Chemical approached Mr. Vijendra Kumar Jain over email for update in the matter of Corporate Debtor.

15.04.2021	Following up by Kanoria Chemical with Mr. Vijendra Kumar Jain was during the second wave of COVID-19 outbreak in India and this time as well the State of Maharashtra and specifically Mumbai was badly impacted. However, as soon as the mail of claimant was seen by the team of the IP it was responded informing the status of the CIRP of the Corporate Debtor.
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- 2.2.8. Mr. Vijendra Kumar Jain submitted that he is based out of Mumbai and it is a matter of fact that the outbreak of Covid-19 in the state of Maharashtra was severe and the functioning of his office and the IPE with whom he is associated was severely impacted. Nevertheless, he made sure that the CIRP process of the Corporate Debtor was being managed without any impact, to the extent possible. However, it cannot be denied that certain process and SOP made by him for running the CIRP could not be followed during such time.
- 2.2.9. Mr. Vijendra Kumar Jain further submitted that he himself approached Kanoria for filing of the claims and admitted their entire amount as contingent claim on account of pending appeal against the arbitral award before the competent court and accordingly updated the information memorandum and shared the same with the PRA and members of the CoC. Further the list of creditors was also updated on the website of the Company and the Board (immediate after the portal was available for uploading) for the public at large.
- 2.2.10. Mr. Vijendra Kumar Jain submitted that many members of his team were infected with Covid-19 virus and the working of his office was impacted due to imposition of nationwide lockdown in the country. Due to which the tracking and responding of certain emails may had been delayed or missed during the period of 1st and 2nd wave of Covid-19 in the country i.e., between March 2020 to January 2021 and between March 2021 to June 2021, respectively.
- 2.2.11. Mr. Vijendra Kumar Jain further submitted that the Board itself took note of the challenges being faced by insolvency professional nationwide and accordingly inserted Regulation 40C for the benefit of all the stakeholders of the insolvency ecosystem.
- 2.2.12. Mr. Vijendra Kumar Jain submitted that the follow-up emails of the claimant i.e., Kanoria was sent during the period of second wave of Covid-19 in the country, due to which the response to the same was delayed. However, as soon as it was practicable to respond to the same, the claimant was duly informed about the status of the CIRP of the Corporate Debtor. In case, the claimant was not satisfied with the response, they could have responded back on the email sent by him seeking update w.r.t their claim. Accordingly, it is evident that the claimant was fully aware of the fact that his entire claim was admitted and further update on the status of the CIRP of the Corporate

Debtor, which was duly provided by his team.

2.2.13. Mr. Vijendra Kumar Jain further submitted that it is evident that he had made every effort to admit and take on record the claim of Kanoria and updated the same in the IM, so that the PRA takes the same into account while preparing the plan. Mr. Vijendra Kumar Jain also submitted that he had discharged his duties as a Resolution Professional of the Corporate Debtor with utmost care and due diligence, in an effective and responsible manner. However there has been delay in communication due to unforeseen circumstances arising out of Covid-19, which is a matter of fact.

Analysis and Findings of the DC

2.2.14. Regulation 13(2) of the CIRP Regulation, 2016 provides as follows:-

“13. Verification of claims.

(2) The list of creditors shall be –

- (a) available for inspection by the persons who submitted proofs of claim;
- (b) available for inspection by members, partners, directors and guarantors of the corporate debtor or their authorised representatives;
- (c) displayed on the website, if any, of the corporate debtor;
- (ca) filed on the electronic platform of the Board for dissemination on its website:
Provided that this clause shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020;]
- (d) filed with the Adjudicating Authority; and
- (e) presented at the first meeting of the committee.”

2.2.15. Regulation 13 outlines the process for verifying and handling claims during the corporate insolvency resolution process (CIRP). Regulation 13(2) specifies that the list of creditors must be made available for inspection, displayed on the corporate debtor's website, filed on the Board's electronic platform, and submitted to the Adjudicating Authority.

2.2.16. The DC notes that in the Information Memorandum (IM) as prepared by Mr. Ashish Vyas, erstwhile IRP of CD, the claim of Kanoria/OC was not reflected under the claims of OC but was instead shown in the trial balance amounting Rs.16,78,510.35 as Debit amount on the Insolvency Commencement Date (ICD). Further, Mr. Vijendra Kumar Jain had shared the updated IM dated

18.07.2020 wherein the Kanoria was reflecting as Debtor as on ICD amounting Rs.16,78,510 as well as the Kanoia claim of Rs.1,146.28 lakh was reflected under the contingent liability. However, it is pertinent to note that the IM dated 18.07.2020 was not shared with Kanoria. So, Kanoria was unaware about the status of the claim admitted by the RP.

2.2.17. The DC had perused the email correspondence between the Kanoria and Mr. Vijendra Kumar Jain and his team regarding the claim submission and its status. It is observed that Mr. Vijendra Kumar Jain via email dated 21.05. 2020 through email id transparent@kanchansobha.com had informed Kanoria of his appointment as RP and requested for proving additional documents to verify the claim. Kanoria in response vide email dated 16.06.2020 had provided the additional documents required for verification of the claim. Further, Kanoria vide email dated 18.06.2020, 02.03.2021, 17.03.2021, 07.04.2021, 14.04.2021, 15.04.2021 had sought update about the status of the claims. After, several reminder e-mails from Kanoria inquiring about the status of their claim, Mr. Vijendra Kumar Jain via email dated 15.04.2021 had replied to Kanoria's emails that the resolution plan is submitted to the AA and is pending for approval. The relevant extract of the e-mail dated 15.04.2021 sent by Mr. Vijendra Kumar Jain to Kanoria is reproduced below: -

“Thu, Apr 15, 2021

Dear Madam

The Resolution Plan is submitted to the Hon'ble NCLT, Mumbai Bench and it is pending for approval from Hon'ble NCLT, Mumbai Bench.

We shall update you accordingly.

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Thanks & Regards

Neha Jain

(Office of Resolution Professional)

Vijendra Kumar Jain

Resolution Professional

Transparent Energy Systems Private Limited

Reg. No. IBBI/IPA-001/IP-P00721/2017-2018/11253

Contact No. – +91 7738042447”

2.2.18. It is evident that despite multiple emails from Kanoria seeking updates on the status of its claim, Mr. Vijendra Kumar Jain had failed to provide any update. After approximately 11 months, he informed Kanoria that the Resolution Plan was pending approval, but still did not address the specific question regarding the status of Kanoria's claim.

2.2.19. The DC further notes that Mr. Vijendra Kumar Jain was asked to submit the copies of list of creditors along with acknowledgement proof of uploading on the website of CD and IBBI,

however, Mr. Vijendra Kumar Jain had failed to provide the acknowledgement proofs of the same. Further, it is seen that the broad details of claims for various categories of creditors have been uploaded by Mr. Vijendra Kumar Jain on the IBBI website on 07.12.2020, however, the annexures having details of creditors along with the amount admitted are not available. Nevertheless, it is the duty of the RP to respond to the claimant about the status of its claim.

2.2.20. The delay in responding to the Kanoria's emails due to outbreak of Covid-19 is acknowledged by DC, but even then, the failure of Mr. Vijendra Kumar Jain in updating the status of Kanoria's claim before the AA shows negligence in performing his duty. This highlights deficiency in the conduct and duties of Mr. Vijendra Kumar Jain, the RP of CD, who failed to properly inform Kanoria and other creditors about the status of their claims.

2.2.21. The DC notes that the Mr. Vijendra Kumar Jain had failed to timely update Kanoria on the status of their claim, a critical responsibility under the CIRP Regulations. Despite the severe impact of the COVID-19 pandemic, which indeed posed unprecedented challenges, there exists a significant delay on the part of Mr. Vijendra Kumar Jain, in responding to Kanoria's repeated requests and the failure to provide clear information about Kanoria's admitted claim as well as failure to supply the updated list of creditors to the AA and the IBBI, which show lapse in fulfilling his responsibilities as entrusted by the Code, 2016.

2.2.22. Based on the analysis of the events and submissions, the DC finds that Mr. Vijendra Kumar Jain did not discharge his duties as required under the Code and the CIRP Regulations. Accordingly, the DC finds Mr. Vijendra Kumar Jain in contravention of Sections 25(2)(e) and 208 (2)(a) of the code, regulation 13(2) (a) & (d) of the CIRP Regulations, Regulation 7 (2)(a) & (h) of the IP Regulations read with Clause 14 of the Code of Conduct.

3. ORDER

3.1. In view of the forgoing discussion, the DC finds that Mr. Vijendra Kumar Jain failed to perform his duties provided under the Code read with Regulations made thereunder. Hence 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 hereby suspends the registration of Mr. Vijendra Kumar Jain having registration No. IBBI/IPA-001/IP-P00721/2017-2018/11253 for a period of one year.

3.2. This Order shall come into force on expiry of 30 days from the date of its issue.

- 3.3. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Vijendra Kumar Jain is enrolled as a member.
- 3.4. A copy of this order shall be sent to the CoC/ Stakeholders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Vijendra Kumar Jain is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Vijendra Kumar Jain.
- 3.5. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.
- 3.6. Accordingly, the show cause notice is disposed of.

Sd/-
(Sandip Garg)
Whole Time Member
Insolvency and Bankruptcy Board of India

Sd/-
(Jayanti Prasad)
Whole Time Member
Insolvency and Bankruptcy Board of India

Dated: 12 August 2024
Place: New Delhi