

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**  
**(Disciplinary Committee)**

No. IBBI/DC/193/2023

31<sup>st</sup> October, 2023

**ORDER**

**This Order disposes the Show Cause Notice (SCN) No. COMP-11012/39/2023-IBBI/778/1259 dated 25.08.2023 issued to Mr. Ramit Rastogi, Insolvency Professional under section 219 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 11 and 12 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Investigation Regulations). Mr. Ramit Rastogi is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with registration No. IBBI/IPA-002/IP-N00364/2017-2018/11032 and a Professional Member of Insolvency Professional Agency (IPA) of the ICSI Institute of Insolvency Professionals (ICSI-IIP), having residential address registered with IBBI as 110/S-2, Saraswati Block, Sector D, Pocket-6, Vasant Kunj, New Delhi – 110070.**

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

1.1. The Hon'ble NCLT, New Delhi Bench (AA) *vide* order dated 03.08.2017 admitted the application under section 9 of the Code, by the operational creditor PR International, for initiating Corporate Insolvency Resolution Process (CIRP) of GTHS Retail Private Limited (CD). Mr. Sandeep Bhatt was appointed as the Interim Resolution professional (IRP) on 25.08.2017 and was later confirmed as Resolution Professional by AA on 20.12.2017. The resolution plan was filed before AA for consideration, but resolution applicant withdrew the resolution plan after objection were raised by the directors of the suspended board of the CD as their properties were included in the resolution plan. Consequently, the liquidation order was passed on 16.10.2019 and Mr. Ramit Rastogi was appointed as liquidator by AA on 16.10.2019 after Mr. Sandeep Bhatt sought discharge. Subsequently, after disposal of assets of CD, the liquidator has filed application for dissolution of CD before AA, and the same is pending.

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

2.1. While hearing the application filed for dissolution of CD by liquidator, the AA made observation that against the liquidation value of the asset of the CD amounting to Rs.4,28,98,000/-, the meagre amount of Rs.13,32,042/- is being suggested. The AA was not satisfied with the huge gap between liquidation value and the realized value through liquidation. Keeping in view the critical observations of AA, IBBI appointed an Investigating Authority (IA) to conduct the investigation of Mr. Ramit Rastogi. The investigation notice was issued to Mr. Ramit Rastogi by IA on 25.04.2023. Mr. Ramit Rastogi submitted his reply to investigation notice *vide* email dated 02.05.2023, 07.06.2023, 13.06.2023, 15.06.2023 and 03.07.2023. Thereafter, the IA submitted the investigation report to the Board on 17.07.2023.

- 2.2. Based on the material available on record including the Investigation Report, the Board issued the SCN to Mr. Ramit Rastogi on 25.08.2023. The SCN alleged contravention of sections 35(1)(d), (k) & (n), 208 (2)(a) & (e) of the Code, regulation 39 of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) and regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 2 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct). Mr. Ramit Rastogi clarified his side on the issues raised in the SCN on 08.09.2023.
- 2.3. The Board referred the SCN, written submissions of Mr. Ramit Rastogi, and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder.
- 2.4. Mr. Ramit Rastogi availed an opportunity of personal hearing before DC on 12.10.2023 through physical mode.

### **3. Alleged contraventions and submissions of the IP**

Contraventions alleged in the SCN and Mr. Ramit Rastogi's submissions thereof are summarized below:

#### **Contravention**

##### **3.1. Lack of effort in realisation of the assets of CD.**

- 3.1.1. It was observed from the audited balance sheet of the year 2018-19, that the trade receivables amounted to Rs. 1,67,99,372 as on 31.03.2019 were being reflected. However, in the balance sheet as on 16.10.2019, this entry was drastically reduced to Rs. 1,32,668. In the said balance sheet, Rs. 1,47,93,480 had been mentioned as "considered doubtful". Mr. Ramit Rastogi did not take any action towards realisation of this amount. It is also noticed from the break-up of amount realised provided to IA *vide* email dated 13.06.2023 that there has been nil realisation against trade receivables amounting to Rs. 1,32,668/-.
- 3.1.2. In this regard the AA observed in its order dated 15.07.2022 that during entire liquidation, no application for the realisation of the book debts has been made by the liquidator. Also, the AA in its order dated 17.01.2023 observed that,

*"Ld. Liquidator present in person submits that in compliance of the order dated 15.07.2022, it has already filed a report which is available on the DMS. He further submits that explanation for the difference in the liquidation value and the amount realized has been explained by him. However, we are not convinced. The moot point involved in the present application is whether the amount of Rs. 13,32,042/- realised in disposal of assets of CD i.e., against the estimated liquidation value of Rs. 4,28,98,000/- should be accepted, while considering the application for dissolution of the company under Section 54?"*

3.1.3. A primary duty of the liquidator under section 35(1)(d) of the Code is to take such measures to protect and preserve the assets and properties of the CD as he considers necessary. Section 35(1)(k) of the Code provides that it is the duty of the liquidator to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the CD. Further, regulation 39 of the Liquidation Regulations provides that the liquidator shall endeavour to recover and realize all assets of and dues to the CD in a time-bound manner for maximization of value for the stakeholders.

3.1.4. It was the duty of Mr. Ramit Rastogi to make efforts to realize the amount from debtors and also approach the AA to seek directions for recovery of such amount. It is also observed that no further action was taken to pursue the notices to debtors filed by RP and follow up the litigations with debtors and the amount was merely written off. Since trade receivables constitute 49% (approx.) of the total assets of the CD as on ICD i.e., 03.08.2017, it was his duty to approach the AA and seek necessary directions for realization of the same. However, Mr. Ramit Rastogi failed to take any steps to recover the trade receivables.

3.1.5. In view of the above, the Board held the *prima facie* view that Mr. Ramit Rastogi has contravened provisions of sections 35(1)(d), (k) and (n), 208 (2)(a) & (e) of the Code, regulation 39 of the Liquidation Regulations and regulation 7(2)(a) and (h) of the IP Regulations read with Clauses 2 and 14 of the Code of Conduct.

### 3.2. Submissions made by the IP

3.2.1. Mr. Ramit Rastogi submitted that on asking for the handover of the records of the CD, the RP *vide* his email dated 06.12.2019 stated as under: “*All documents are with company. We have handed over all what we had*”. *Vide* email dated 06.12.2019, he categorically sought *inter alia* the following details:

- List of all debtors and creditors as on 16.10.19 with their contact no, e-mail id and addresses;
- Action taken to recover the amount from debtors during the CIRP process along with copies of supporting documents;

In response to the above the RP stated that he has handed over all the documents to the Company. The RP neither informed about the notices, if any, sent to the debtors nor told about or handed over any arbitration proceedings filed for recovery of amount. Rather it was explained that the CD had a complex business structure wherein the CD on supplying the goods to the franchisee, booked it as a sale on MRP and booked franchise as its debtor. The franchise used to remit the full amount of sale to the CD which in turn used to remit 45% of the sale amount as commission and reimbursement for meeting store running expenses to the franchise. Since, the CD was in fashion business of women garments which changes very quickly and the failure of the CD to supply fresh goods due to closure resulted in their sale(s) being hit badly and the stores started suffering losses due to which they

filed claims against the CD and the debtors turned out to be the creditors ultimately. There were multiple litigations with counter claims with several cases under section 138 of Negotiable Instruments Act.

3.2.2. On approaching the CD represented by its ex -director/promoter, Mr. Harsh Manchanda, the liquidator was explained that the figures of trade receivables were overstated by an amount of Rs.1,47,93,480/- in the Balance Sheet for financial year ended 31.03.2019. He also informed that the same fact has been reported by the statutory auditor in his statutory audit report for financial year ended 31.03.2019 which reads as under:

*“No provision has been made for doubtful debts amounting to Rs.1,47,93,480/- & doubtful securities deposit appearing under the other non current assets of Rs.15,78,816/- (Inclusive Interest accrued Rs.7,38,816/-) resulting in profit for the year and reserve & surplus being overstated by Rs.1,63,72,296/- and trade receivables & doubtful securities deposit under the other non current assets being overstated by Rs.1,47,93,480/- and Rs.15,78,816 respectively. This is at variance with Accounting Standard AS 29 ‘Provision, Contingent Liabilities and Contingent Assets’ specified under section 1333 of the Act, read with Rule (7) of the Companies (Accounts) Rules 2014 and Companies (Accounting Standard) Amendment Rules, 2016 resulting in profit for the year, liabilities and reserves and surplus being overstated by the same amount.”*

3.2.3. Mr. Ramit Rastogi submitted that he also referred the unaudited financials as at 16.10.2019 wherein the provision was made for doubtful debts of Rs.1,47,93,480/- and reported the same in his Preliminary Report filed with the AA on 30.12.2019 and also reported the matter to Stakeholders’ Consultation Committee (SCC). Also, since the matter relating to actions for realisation of debtors and/or their provisioning was never discussed in CoC meetings, he took the matter to SCC meeting(s) held on 18.12.2019 and 19.02.2020 and *inter alia* reported the matter of writing off the debtors to the SCC and sought the permission for incurring expenditure on Transaction Audit, since the CD had no funds and the CIRP cost amounting to Rs.2 lacs was outstanding as on the liquidation date. SCC was of the firm view that nothing could be realised from the debtors and they don’t want to incur any more expenditure or time on the case and wanted to close the matter at the earliest.

3.2.4. Mr. Ramit Rastogi submitted that for realising the debtors as appeared in the balance sheet as on the liquidation date viz, 16.10.2019, he approached the RP and sought their details but the RP *vide* his email dated 06.12.2019 informed that he has handed over the records of the CD to its ex-director/promoter. Also, the authority for operating bank accounts of the CD was lying with its ex-director/promoter instead of RP. Taking the benefit of it the ex-director/promoter transferred an amount of Rs. 50,480/- and Rs. 61,104/- to his personal SBI account from the CD’s account on 22.10.2019 and 29.10.2019 respectively, post issuance of the liquidation order. Since, the RP has handed over the records of CD to its suspended director/promoter instead of handing over the same to the liquidator, he had no

choice but to follow-up with the ex-director/promoter of the CD and on facing serious non-cooperation by the ex-directors/promoters in providing information/documents he was constrained to file an application on 03.09.2020 bearing IA 3719/2020 under sections 19 (2 & 3) and 34(3) read with regulation 9 of the Liquidation Regulations *inter alia* praying for issuance of necessary directions to the ex-directors to provide assistance and cooperation to the liquidator and to provide the requisite documents/ information/ records. On the directions of AA, he was able to recover an amount of Rs.95,001/- from the ex-director/promoter which were wrongfully transferred by ex-director to his account. Also, the liquidator got the details of the debtors outstanding as on 16.10.2019 (date of passing of liquidation order) amounting to Rs.1,32,268/- who returned the unsold garments, which he sold through auction along with other obsolete items and realised an amount of Rs.47,000/-. The same was reported to AA in the Final Report as well as in the dissolution application filed with AA.

- 3.2.5. Mr. Ramit Rastogi submitted that he made all due efforts in realisation of the assets of the CD despite of breakout of Covid-19 pandemic during that tenure. In this regard, the following points may be noted as also reported in the Preliminary Report / Progress Reports / Dissolution Application filed with the Hon'ble NCLT:

*There were no physical assets available except for one old Hyundai i10 Car and that too was hypothecated with HDFC Bank which has financed the Car and its last two EMI's were pending for payment.*

*For realising the Car the liquidator made all efforts including invoking the provisions of Regulation 21A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and asked the lender to proceed with the removal of hypothecation so that the asset could be included in the Liquidation Estate.*

*After rigorous follow-ups, HDFC Bank issued the NOC and the liquidator got the same collected on 16th July 2020 and the liquidator could realise its best price of Rs.2.60 lacs in 2nd Auction.*

- 3.2.6. Mr. Ramit Rastogi submitted that he also approached the various banks in which the CD had bank accounts, most of which were frozen by the banks due to insufficiency of funds, however, he was able to locate one FD lying with SBI, Noida against the security of which bank guarantees were issued. He submitted that after invoking the provisions of regulation 21A of Liquidation Regulations, he made tremendous efforts and after very rigorous follow-ups for months, the SBI had remitted an amount of Rs.8.5 lacs approx. to the liquidation account of the CD on 03.09.2020.

- 3.2.7. Mr. Ramit Rastogi submitted that it can be observed from the reply of the RP dated 23.06.2023 annexed to SCN that: *"On 22.10.2020, the RP filed affidavit to the Hon'ble Tribunal stating that he has handed over to the liquidator, the excel file of financials for financial year 31.03.2019, IM, COC meeting, action taken report on different class of creditors, valuation reports and other documents."* He submitted that RP seems to have filed false affidavit with the AA to the extent that no action taken report on different class

of debtors was ever shared with him. RP in his reply dated 23.06.2023 stated that: *“The RP took all actions, issued notices to the debtors, filed arbitration cases against them but there were several litigations and counter claims. In several cases, the recoveries were claimed against the CD. The action taken report along with proof of notices were filed to the Hon’ble NCLT vide diary no.1155 dated 01/03/2018 and the same were discussed in different COC meetings in detail”* He submitted that none of the minutes of the CoC meetings makes mention about the actions taken against the debtors and/or filing of arbitration cases against them otherwise the Liquidator would have been aware of the same and could have proceeded further for realisation of debtors.

3.2.8. Mr. Ramit Rastogi submitted that the liquidation value is defined in clause 2(k) of CIRP Regulations as under: *“Liquidation Value” means the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date.* The Liquidation Regulations does not define the term liquidation value hence he took its meaning as defined in the CIRP Regulations. Since, as per CIRP Regulations, liquidation value is based on the estimated realisable value as on CIRP commencement date i.e., 03.08.2017, he was dependent on the CoC meeting minutes for the liquidation value. As per agenda Item No.4 of the minutes of the 3rd CoC Meeting dated 15.01.2018, the liquidation value as on Insolvency commencement date i.e., 03.08.2017 was taken as Rs.428.98 lacs basis the value as per the certified accounts as on the ICD. However, as per agenda item No.10 of the minutes of 2nd CoC meeting dated 15.11.2017 the liquidation value was taken as 61.12 lakhs basis the report of the RP and provisional accounts as on ICD, being the current assets and few fixed assets of the CD. Later on, in agenda item No.3 of the 7th Meeting of CoC dated 11.03.2019 the present liquidation value as at 31.01.2019 was considered and was taken as Rs.143,93,528/-. The liquidator considered all the values and mentioned Rs.4.29 crores as the liquidation value in Form H which was based on the aggregated figures of the certified accounts as at 03.08.2017, being the ICD and not on the estimated realisable value. However, the actual realisable was only 61.12 lacs as per the RP report as was mentioned in the minutes of 2nd meeting of CoC dated 15.11.2017. The whole confusion has arisen due to the fact that liquidation value was incorrectly recorded in the 3rd COC minutes as the figures were taken on the book value of all assets as per unaudited financials instead of estimated realisable value. The AA vide order dated 12.09.2019 observed as: *“.....there are no assets of the Company which needs to be liquidated. Under such circumstances, directing liquidation is a meaningless exercise. There are no funds to meet the CIR costs, let alone the liquidation costs.”*

3.2.9. He submitted that since he was neither informed nor handed over any notices sent to debtors or of any arbitration proceedings in relation to the debtors which he could have proceeded further under section 35(1)(k) of the Code. Even none of the minutes of the CoC meetings makes mention about the actions taken against the debtors and/or filing of arbitration cases against them otherwise he would have been aware of the same and could have proceeded further for realisation of debtors. Further, to protect and preserve the assets of the CD under section 35(1)(d) and to realise their best value, he took all the limited

assets of CD into his custody and placed them in a rented locked accommodation till they were disposed of through auction.

### 3.3. Summary Findings

- 3.3.1. The DC notes the mail communication between Mr. Ramit Rastogi and Mr. Sandeep Bhatt. Mr. Ramit Rastogi had specifically requested *“List of all debtors and creditors as on 16/10/19 with their contact no, e-mail id and addresses; Action taken to recover the amount from debtors during the CIRP process along with copies of supporting documents;”* from the suspended directors of CD and Mr. Sandeep Bhatt to which Mr. Sandeep Bhatt replied on same days as *“All documents are with company. We have handed over all what we had. Thanks.”*
- 3.3.2. The DC notes that Mr. Ramit Rastogi had filed application under section 19(2) of the Code seeking directions to suspended directors to provide him documents where Mr. Sandeep Bhatt was not made party. The AA issued notice to Mr. Sandeep Bhatt. Further Mr. Sandeep Bhatt filed Affidavit dated 20.10.2020 before AA in terms of its direction dated 12.10.2020 where he further submitted that none of above records which includes *“List of all debtors and creditors as on 16/10/19 with their contact no, e-mail id and addresses; Also Action taken to recover the amount from debtors during the CIRP process along with copies of supporting documents;”* pertains to him and it is property of the company. The above facts support contention of Mr, Ramit Rastogi that he was not given details of debtors and actions, if any, pending against them by erstwhile RP Mr. Sandeep Bhatt.
- 3.3.3. The DC notes the minutes of SCC meeting dated 18.12.2019 where it was deliberated that *“The Committee members deliberated on the list of assets and opined that it is only the value of Motor Vehicle and the Fixed Deposits against which Bank Guarantees have been issued which seems to be realisable and the amount shown as recoverable from debtors seems impossible since nothing has been recovered during the CIRP Process.”* Though as deliberated in the SCC meeting dated 18.12.2019 that realisable assets were only motor vehicle and fixed deposit, Mr. Rastogi did not take any steps for trade receivables. If details of such trade receivables were not given to him by the directors/promoters of the CD and RP, apart from filing 19(2) application against directors/promoters, Mr. Rastogi should have sought direction from AA for getting the details of the proceedings including arbitration proceedings pending from the RP.

### Order

- 4.1. The nature of the business of the CD has been such that it was being operated with insignificant amount of fixed assets. Security payment against the hired premises reportedly eroded with adjustment against rent. Trade receivable said to lost its value with time. The observation and valuations done by two valuers too differ substantially in their findings. Therefore, for low realization, liquidator cannot be faulted. Surely on trade receivables count, more efforts were required and in case he was not getting due cooperation from RP he should have approached AA for orders.

- 4.2. In view of the submission made by Mr. Ramit Rastogi, and materials available on record, DC finds Mr. Ramit Rastogi has been negligent in treatment of doubtful assets. Had Mr. Rastogi filed application before AA seeking direction against erstwhile RP for providing details of the trade receivables and arbitration proceedings, he would have been in a better position to maximise realisation of assets of CD. Mr. Ramit Rastogi should be careful in his conduct as an IP.
- 4.3. In view of the forgoing discussion, the DC, in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the Investigation Regulations disposes of the SCN with caution to Mr. Ramit Rastogi to be more careful and vigilant while handling assignments under the Code and Regulations made thereunder.
- 4.4. This Order shall come into force immediately in view of para 4.2.
- 4.5. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Ramit Rastogi is enrolled as a member.
- 4.6. A copy of this order shall be sent to the CoC/ Stake Holders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Rastogi is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Rastogi.
- 4.7. 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.
- 4.8. Accordingly, the show cause notice is disposed of.

-sd/-

(Sudhaker Shukla)  
Whole Time Member, IBBI

Date: 31<sup>st</sup> October, 2023

Place: New Delhi