

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
(Disciplinary Committee)

No. IBBI/DC/197/2023

21<sup>st</sup> December, 2023

**Order**

This order disposes of the Show Cause Notices (SCN) No. IBBI/IP/INSP/2022/163 (SCN-1) & COMP-11015/112/2022-IBBI/540/741 (SCN-2) dated 13.12.2022 & 24.04.2023 respectively issued to Mr. Nirav Anupam Tarkas, who is an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00776/2018-2019/12375 and enrolled as professional member with the ICSI Institute of Insolvency Professionals having residential address recorded with IBBI as 209, BN Chambers, RC Dutt Road, Opp ITC Welcome group Hotel, Vadodara- 390007.

**1. Background**

- 1.1 The National Company Law Tribunal (NCLT), Mumbai Bench (AA-1) had admitted M/s Euro Ceramics Limited (CD-1) in the Corporate Insolvency Resolution Process (CIRP) *vide* order dated 25.02.2019 in an application filed by the Financial Creditor, Anchor Leasing Private Limited, under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) and Mr. Arun Kapoor was appointed as an Interim Resolution Professional (IRP) *vide* the same order. Mr. Nirav Anupam Tarkas was appointed as a Resolution Professional (RP) *vide* order dated 07.05.2019 passed by the AA. Thereafter, liquidation order was passed by the AA *vide* order dated 01.12.2020 and Mr. Tarkas was appointed as a liquidator *vide* same order.
- 1.2 In the matter of SCN-1, the IBBI, in exercise of its powers under section 218(1) of the Code read with regulations 3(1) and 3(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) appointed an Inspecting Authority (IA) to conduct the inspection of record pertaining to liquidation of M/s Euro Ceramics Limited (CD-1) and the role of Mr. Tarkas as a Liquidator of CD-1. The Draft Inspection Report (DIR) was shared with Mr. Tarkas *vide* email dated 28.06.2022 by the IA. Mr. Tarkas's response to the same was received by the IA *vide* email dated 12.07.2022. IA submitted the Inspection Report to the Board on 29.07.2022. The IBBI, on the basis of observations in the Inspection Report, issued the SCN-1 to Mr. Tarkas on 13.12.2022 and the reply to the SCN was received from Mr. Tarkas on 27.12.2022.
- 1.3 The National Company Law Tribunal, Ahmedabad Bench (AA) had admitted M/s Shreebhav Polyweaves Private Limited (CD-2) in CIRP *vide* order dated 31.08.2021 on an application filed by the Financial Creditor, State Bank Of India, under section 7 of the Code and Mr. Tarkas was appointed as an IRP *vide* the same order. In the 1<sup>st</sup> meeting of CoC, held on 01.12.2021, resolution was passed to replace Mr. Tarkas and appoint Mr. Vikas Gautamchand Jain as RP. The NCLT, Ahmedabad Bench (AA-2) had admitted M/s Shreebhav Polyknits Private Limited (CD-3) in CIRP *vide* Order dated 27.09.2021 on an application filed by the Financial Creditor, State Bank of India, under section 7 of the Code and Mr. Tarkas was

appointed as an IRP *vide* same order. In the 1<sup>st</sup> meeting of CoC, held on 01.12.2021, resolution was passed to replace Mr. Tarkas and appoint Mr. Vikas Gautamchand Jain as RP.

- 1.4 In the matter of SCN-2, the IBBI, in exercise of its powers under section 218 of the Code read with regulations 7 (2) and 7 (3) of the Inspection Regulations, appointed the IA to conduct investigation in the matter of Shreebhav Polyweaves Pvt. Ltd. (CD-2) and Shreebhav Polyknits Pvt. Ltd. (CD-3). Thereafter, the IA served a notice of investigation under regulation 8 (1) of the Inspection Regulations on 22.07.2022 and 26.07.2022. Pursuant to the said notice, Mr. Tarkas submitted response *vide* his email dated 22.08.2022. The IA submitted an Investigation Report on 16.09.2022. The Board, on the basis of observations in the Investigation Report, issued the SCN-2 on 24.04.2023 to Mr. Tarkas and reply to the SCN was received on 13.05.2023.
- 1.5 The SCNs, the response of Mr. Tarkas to the SCNs, and other material available on record was referred to the Disciplinary Committee (DC) for disposal of the SCNs in accordance with the Code and Regulations made thereunder. Mr. Tarkas availed an opportunity for a personal hearing through virtual mode before the DC on 23.05.2023 and appeared before the DC along with his Advocate Mr. Yuvraj Thakore.
- 1.6 The DC has considered the SCNs, the reply to the SCNs, submissions of Mr. Nirav Anupam Tarkas, and other material available on record and proceeds to dispose of the SCNs.

## **2. Alleged Contraventions, Submissions, Analysis, and Findings**

The contraventions alleged in the SCNs and Mr. Tarkas's written and oral submissions thereof are summarized as follows.

### **Contravention (under SCN No. IBBI/IP/INSP/2022/163 (SCN-1))**

#### **2.1 Issue in the auction under the Liquidation Process**

- 2.1.1 Schedule I to the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) prescribes the manner in which the sale of assets under liquidation is to be undertaken by the Liquidator. It *inter-alia*, mandates a Liquidator to facilitate due diligence to the interested buyers to conduct the auction in a transparent manner. Sub-clause (11) of clause 1 of Schedule I of the Liquidation Regulations provides that if required, the Liquidator may conduct multiple rounds of auctions to maximize the realization from the sale of the assets, and to promote the best interests of the creditors.
- 2.1.2 The Board noted that *vide* an e-auction notice dated 16.03.2022, some assets including vehicles of the CD-1 were put on sale by Mr. Tarkas. As per the auction notice, the auction for the said sale was scheduled to be held on 29.03.2022. On completion of the auction process on 29.03.2022, the vehicles mentioned in the auction notice were sold to one Mr. Dinesh Thoriya. Mr. Dinesh Thoriya paid Rs. 4 lakhs (Rupees four lakhs only) as EMD on 25.03.2022

for participation in the E-auction scheduled to be held on 29.03.2022, Rs.10 lakhs (Rupees ten lakhs only) on 02.04.2022 and Rs. 26 lakhs (Rupees twenty-six lakhs only) on 16.04.2022. It is, thus, evident that Mr. Thoriya paid the entire amount of sale consideration well within the stipulated time.

- 2.1.3 The Board also noted that later on, another E-auction notice was issued on 13.04.2022 for the sale of some more assets of the CD-1 for which an E-auction was scheduled to be held on 21.04.2022. It was noted that the vehicles already sold to Mr. Dinesh Thoriya were also included in the said E-auction notice and some interested buyers submitted EMD for participation in the auction to purchase the said vehicles. However, Mr. Tarkas informed them that the said vehicles were no longer part of the auction dated 21.04.2022 and hence, the E-auction of said vehicles had been cancelled.
- 2.1.4 Thus, it is noted by the Board that even after completion of the sale process of the vehicles of the CD-1 wherein the successful bidder of the vehicles had already made part payment of the sale price (Rs. 40 lakhs) i.e., Rs.10 lakhs (Rupees ten lakhs only) on 02.04.2022 and the successful bidder still had 15 more days to pay the remaining amount of sale consideration, Mr. Tarkas included the said vehicles again in the E-auction notice dated 13.04.2022, which was cancelled only after payment of the balance amount by the successful bidder of the earlier auction held on 29.03.2022. Such action of Mr. Tarkas shows negligence on his part. The cancellation of the auction notice dated 13.04.2022 was only due to the completion of the sale of vehicles of the earlier auction and this has only delayed the liquidation process and caused inconvenience to prospective bidders of the cancelled auction notice.
- 2.1.5 In view of the above, the Board was of the *prima facie* view that Mr. Tarkas had, *inter alia*, violated sub-clauses (6), (9), and (11) of clause 1 of Schedule I of Liquidation Regulations and Clause 2 and 14 of Code of Conduct of the First Schedule of the IBBI (Insolvency Professionals) Regulations, 2016 (Code of Conduct).

#### **Submissions made by Mr. Tarkas**

- 2.1.6 Mr. Tarkas submitted that multiple rounds of auctions were conducted for liquidating the assets of the CD-1, and 7 advertisements were issued for conducting the bid process for the assets of the CD-1. The notice dated 17.03.2022 was issued to auction the vehicles along with the other assets of the CD-1 and the auction was scheduled to be conducted on 29.03.2022. The reserve price of the vehicles was Rs. 40 lakhs (Rupees forty lakhs only). The participants were required to deposit 10% amount of the reserve price for participation in the auction sale and 90% of the amount was to be deposited within 30 days from the date of commencement of the successful auction.
- 2.1.7 Mr. Tarkas further submitted that one Mr. Dinesh Thoria deposited an amount of Rs. 4 lakhs (Rupees four lakhs only) for participation in the auction process and he further deposited an amount of Rs. 36,00,000 (Rupees thirty-six lakhs only) in two tranches (Rs. 10 Lakhs on

02.04.2022 and Rs. 26 Lakhs on 16.04.2022). Mr. Dinesh Thoria was a successful bidder for the assets of the CD-1 for vehicle class only and the sold vehicles were duly handed over to him. Mr. Tarkas also stated that in the auction conducted on 29.03.2022, only vehicles were sold but no other assets were sold such as land, buildings, plants, machinery, etc.

- 2.1.8 Mr. Tarkas submitted that there was tremendous pressure from the financial creditors viz. State Bank of India and Cosmos Bank (both comprising 97% of the Stake Holders Consultation Committee “SCC”) to sell the assets of the CD-1 as the account of the CD was declared NPA for more than 11 years. Due to inadvertence, the value of vehicle sold in the auction dated 29.03.2022 was included in the advertisement template dated 13.04.2022 which was held on 21.04.2022 however, the only unsold assets such as land, building, plant, and machinery should have been included in the auction notice dated 13.04.2022. Mr. Tarkas further submitted that the only auction of vehicle class was cancelled, and the other class of asset’s auction was conducted on the scheduled date of 21.04.2022, the bids were also received for the unsold remaining assets of the CD-1. Hence, it cannot be said that inconvenience was caused to the prospective bidder or Mr. Dinesh Thoriya due to the cancellation of the auction notice for the vehicle class.
- 2.1.9 Mr. Tarkas submitted that no harm was caused to the entire liquidation process due to this mere inadvertence act on his part. The auction of the assets in various classes of the CD-1 was conducted successfully. In fact, Mr. Tarkas had also realized the entire sale proceeds from the auction of the vehicles from Mr. Thoriya without any disputes or demur. The inadvertence on the part of Mr. Tarkas had neither caused a delay in the liquidation process of the CD-1 nor it had affected the commercial viability of the liquidation process of the CD-1 in any manner. Accordingly, there was no violation of any provisions of the Code or the Regulations on the part of Mr. Tarkas.

### **Analysis and Findings**

- 2.1.10 The contention of Mr. Tarkas that the value of the sold vehicles were included inadvertently in the E-auction notice dated 13.04.2022 is not well-founded. As per the E-auction notice dated 13.04.2022, the details of the vehicles along with the registration number had been published along with the value of the vehicles for the E-auction which was scheduled to be held on 21.04.2022.
- 2.1.11 The contention of Mr. Tarkas that no inconvenience was caused either to any of the prospective bidders or to Mr. Dinesh Thoria due to the cancellation of the E-auction for vehicle class is not tenable. Various emails were sent to Mr. Tarkas by one of the prospective bidder namely M/s Sangvi Tradelink LLP which had filed a bidding application for vehicle class along with the EMD of Rs. 4,00,000 (Rupees four lakhs only), wherein it stated that Mr. Tarkas has returned the EMD amount vide cheque dated 20.04.2022 without any clarifications or letter attached to it. The DC notes that after the cancellation of the E-auction process of vehicles class only of the CD-1, Mr. Tarkas had not taken any reasonable measures to make the stakeholders aware about the cancellation of the E-auction of vehicle class which was

scheduled to be held on 21.04.2022.

2.1.12 Accordingly, DC is of the view that Mr. Tarkas has failed to act as per the provisions of sub-clauses (6), (9), and (11) of clause 1 of Schedule I of Liquidation Regulations and Clauses 2 and 14 of the Code of Conduct.

## 2.2 **Reduction in Reserve Price beyond permissible limit**

2.2.1 The Board had observed that Mr. Tarkas issued the notice for the sale of assets of CD-1 on 17.01.2022 wherein the reserve price for the vehicle class was set at Rs. 60,00,000 (Rupees sixty lakhs only) and the date of the auction was 01.02.2022. Subsequently, another notice was published on 17.03.2022, wherein the reserve price for vehicle class was reduced by 33.33% to Rs. 40,00,000/-. The reduction in reserve price in percentage terms was 33.33% against the 25% permissible limit as per sub-clause (4A) of clause 1 of Schedule-I of the Liquidation Regulations. In view of the above, the Board was of the *prima facie* view that Mr. Tarkas had inter alia violated sub-clause (4A) of clause 1 of Schedule-I of Liquidation Regulations and clauses 1 and 14 of the Code of Conduct.

### **Submissions made by Mr. Tarkas**

2.2.2 Mr. Tarkas has submitted that there was no reduction in the reserve price as per the statutory provisions of the Code. Rather, the auction value of the assets was made at a price that was considerably and substantially higher than the liquidation value as per the Liquidation Regulations. Mr. Tarkas has produced the following table of valuation done by the registered valuers during the CIRP process and liquidation process;

<i>Sr. No.</i>	<i>Asset</i>	<i>IBBI registered valuer</i>	<i>Fair market value (in Rs.)</i>	<i>Liquidation value (Rs.)</i>	<i>% increase/ (decrease) in sale price over liquidation value under the liquidation process</i>
1.	<i>Vehicles (liquidation process)</i>	<i>Mr. Hitesh Prajapati</i>	<i>13,18,500</i>	<i>9,88,875</i>	<i>304%</i>
2.	<i>Vehicles (CIRP Process)</i>	<i>CA Bharat Gajjar</i>	<i>60,00,000</i>	<i>40,00,000</i>	<i>Nil</i>

2.2.3 Mr. Tarkas has submitted that, as per the valuation report prepared by Mr. Hiten Prajapati (IBBI registered valuer), the liquidation value under the liquidation process of the vehicles was Rs 9,88,875/- (Rupees nine lakhs eighty-eight thousand eight hundred seventy-five only). It is mandated to achieve the object of the maximization of the value of the assets of the

Corporate Debtor, the Liquidator attempted to sell the vehicles at Rs. 60,00,000 (Rupees sixty lakhs only), which was the fair value of the vehicles as per the valuation during the CIRP proceedings, as mentioned in the report prepared by CA Bharat Gajjar. Upon getting no bids, Mr. Tarkas again attempted to sell the said vehicles at a reserve price at Rs. 40,00,000 (Rupees forty lakhs only), which was the liquidation value as per the valuation report conducted during the CIRP. However, it is important to note that the aforementioned amount of Rs. 40,00,000 (Rupees forty lakhs only) is not a reduction from the previous amount of Rs. 60,00,000 (Rupees sixty lakhs only) rather, it is only the liquidation value which duly finds mention in the valuation of CA Bharat Gajjar.

- 2.2.4 Mr. Tarkas submitted that he sold vehicles at a price much above the liquidation value as valued under the liquidation process hence a successful attempt was made to sell assets at a value higher than the liquidation value for the maximization of value to all stakeholders, Govt., creditors, etc. Accordingly, Mr. Tarkas submitted that he did not violate any of the rules and regulations under the Code or Liquidation Regulations. Rather he had been successful in maximizing the values of assets under the sale of the CD-1.

### **Analysis and Findings**

- 2.2.5 The DC notes that the vehicles were put to auction at a price of Rs.60,000,00 (Rupees sixty lakhs) on 01.02.2022. When there was no buyer for the said amount, the said vehicles were auctioned again vide sale notice dated 17.03.2022 wherein the reserve price of the said vehicles was mentioned as Rs.40,000,00 (Rupees forty lakhs only), resulted in reduction of 33.33% from the previous reserve price. The sub-clause 4A of clause 1 of Schedule-I of Liquidation Regulations provides that “*where an auction fails at the reserve price, the liquidator may reduce the reserve price by up to twenty-five percent of such value to conduct subsequent auction*”. So, whatever is the reserve price in one sale, in the subsequent sale, the reserve price cannot be reduced by more than 25%. The DC therefore finds that by reducing the reserve price by 33.33%, Mr. Tarkas has violated sub-clause 4A of clause 1 of Schedule-I of Liquidation Regulations.

### **Contraventions (SCN No. 11015/112/2022-IBBI/540/791)**

- 2.3 **Non-circulation of the minutes of 1<sup>st</sup> meeting of the Committee of Creditors (CoC)**

#### **In the matter of M/s Shreebhav Polyweaves Pvt. Ltd. (CD-2):**

- 2.3.1 The Board had noted that Mr. Tarkas conducted the 1<sup>st</sup> CoC meeting of CD-2 on 01.12.2021 in the capacity as an IRP, wherein it was resolved to appoint Mr. Vikash Gautamchand Jain as a Resolution Professional (RP). Regulation 24(7) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (CIRP Regulations) provides that the RP shall circulate the minutes of the meeting by electronic means to all members of the committee within forty-eight hours of the meeting. However, Mr. Tarkas failed to adhere to the mandate

of the regulations and even despite repeated reminders from the sole Financial Creditor (FC), failed to timely circulate the minutes of the 1<sup>st</sup> CoC meeting.

2.3.2 The Board had also observed that State Bank of India (SBI), the sole member of CoC for CD-2, vide e-mails dated 4.12.2021 and 13.12.2021 and further vide letters/emails dated 5.01.2022, 11.01.2022 and, 7.02.2022 repeatedly requested Mr. Tarkas to provide the minutes of 1<sup>st</sup> CoC meeting. On failure to provide the minutes of the 1<sup>st</sup> CoC meeting, the sole FC moved an application (bearing No. IA 4 of 2022) before the AA for the replacement of Mr. Tarkas. However, the AA rejected the said application *vide* Order dated 05.01.2022 as a copy of the relevant minutes of the 1<sup>st</sup> CoC meeting had not been annexed with the application. Subsequently, another Application No. 155 of 2022 was filed by SBI wherein the AA vide Order dated 16.03.2022 directed Mr. Tarkas to supply a copy of the minutes of the 1<sup>st</sup> CoC meeting within two weeks from the date of the order. However, it is noted that Mr. Tarkas provided the minutes of the 1<sup>st</sup> CoC meeting to SBI only on 05.04.2022 i.e. with a delay of six days.

**In the matter of Shreebhav Polyknits Pvt. Ltd. (CD-3):**

2.3.3 The Board had observed that in CD-3, wherein Mr. Tarkas was an IRP, he conducted the 1<sup>st</sup> CoC meeting on 01.12.2021 but he failed to share the minutes of the meeting within 48 hours of the conclusion of the meeting with the sole member of CoC, i.e., SBI. Thereby, the sole FC, vide e-mail dated 4.12.2021, 13.12.2021, 5.01.2022, and 11.01.2022 and letter dated 11.01.2022 repeatedly requested Mr. Tarkas to provide minutes of the 1<sup>st</sup> CoC meeting. However, Mr. Tarkas shared the minutes of the 1<sup>st</sup> CoC meeting only on 05.04.2022.

2.3.4 It was also observed from the minutes of the 2<sup>nd</sup> CoC meeting dated 16.04.2022, that Mr. Tarkas shared the minutes of the 1<sup>st</sup> CoC meeting, only on 05.04.2022 with SBI through speed-post. Thus, the final minutes were shared by Mr. Tarkas after 4 months from the date of conclusion of the meeting, whereas he was duty bound in terms of regulation 24(7) of the CIRP Regulations to share the minutes of the meeting in a stipulated manner. Since, during the first CoC meeting, it was resolved to replace Mr. Tarkas with Mr. Vikas Gautamchand Jain as a RP, the failure of Mr. Tarkas to provide the minutes of 1<sup>st</sup> CoC meeting shows his malafide intent to delay the process of his replacement.

2.3.5 In view of the above, the Board was of the prima facie view that Mr. Tarkas had contravened section 208(2)(a) and 208(2)(e) of the Code, regulation 24(7) of CIRP Regulations, regulations 7(2)(a) and 7(2)(h) of IP Regulations, read with Clause 1, 2, 3, 10, 13 and 14 of the Code of Conduct.

**Submission made by Mr. Tarkas**

2.3.6 Mr. Tarkas has submitted that the sole FC was not cooperating with him from the date of the admission order. The sole FC was directed to pay an amount of Rs. 2,00,000 (Rupees two

lakhs only) and Rs. 5,00,000 (Rupees five lakhs only) for CD-2 and CD-3 respectively. But the FC had failed to pay the amount to Mr. Tarkas. Hence, Mr. Tarkas was left in peril to conduct the meeting of the CoC without any cooperation from the sole FC.

- 2.3.7 Mr. Tarkas has further submitted that he had been in ICU since 01.09.2021, the FC and the suspended management were not cooperating with him in conducting the CIRP process. Hence, it was very difficult for Mr. Tarkas to conduct the CIRP process. Mr. Tarkas also submitted that he was in anticipation to file a non-cooperation application before the AA for non-cooperation by the suspended management and the FC. The CoC minutes were not circulated as neither any fee mandated by NCLT was paid nor cooperation was given by Suspended Management or Financial Creditor.
- 2.3.8 Mr. Tarkas has also submitted that he had sent minutes of the 1<sup>st</sup> CoC meeting within 6 days of the order of the AA. However, as per the order, it is clear that he was required to furnish the same within two weeks. Moreover, the draft of the minutes was circulated to the sole FC after seeking their observations if any other matter/ issues were left out and discussed in the meeting. Thus, Mr. Tarkas has not violated any provisions of law including regulation 24(7) of the CIRP Regulations and regulations 7(2)(a) and 7(2)(h) of the IP Regulations read with clauses 1, 2, 3, 10, 13 and 14 of the Code of Conduct.

### **Analysis and Findings**

- 2.3.9 With regard to the issue of the delay in circulation of the CoC minutes, the regulation 24(7) of the CIRP Regulation states that:
- “24. Conduct of meeting.  
(7) The resolution professional shall circulate the minutes of the meeting to all participants by electronic means within forty-eight hours of the said meeting”.*
- 2.3.10 The DC notes that in the 1<sup>st</sup> CoC meeting held on 01.12.2021 for CD-2 and CD-3, the resolution had been passed to replace Mr. Tarkas and appoint Mr. Vikas Gautamchand Jain as RP. Thereafter, Mr. Tarkas did not share the minutes of the meeting within 48 hours of the conclusion of the meeting with the sole member of CoC, i.e., SBI (FC) in both the CDs. The DC further notes that despite repeated emails from the FC, Mr. Tarkas had not circulated the minutes to it. Subsequently, the FC had to file an application before AA in the CD-2. However, due to non-availability of CoC minutes, the AA rejected the application. Again, FC filed an application before AA wherein AA directed Mr. Tarkas to circulate the minutes of the CoC. Post such direction of the AA, Mr. Tarkas shared the minutes to the FC. Thus, the DC finds that there is a considerable delay of over 4 months in circulation of the minutes of the CoC to FC in both the CD-2 and CD-3.
- 2.3.11 It is to be noted that circulation of the minutes of the meeting within 48 hours of the said meeting, is provided to ensure the consensus and finalization of the facts disclosed, resolution passed, votes taken, names of attendees and other important details by the members of the



meeting. The minutes of the CoC meetings serve as the official records of actions undertaken during the CIRP proceedings and prompt receipt of the minutes allows sufficient time for actions to be reviewed before the next meeting, which improves the efficiency of meetings.

- 2.3.12 In the instant matter, delay of over 4 months particularly when the FC had resolved to replace the Mr. Tarkas and the submission of Mr. Tarkas that the CoC minutes were not circulated as neither any fee mandated by NCLT was paid nor cooperation was given by Suspended Management or Financial Creditor, depicts the motives of Mr. Tarkas which resulted in delaying the whole resolution process. It is to be noted that time is an essence of the Code and objectives can be achieved only if activities prescribed under the Code are accomplished in the prescribed time-bound manner. Mr. Tarkas tried to hold the process, which cannot be allowed at any cost.
- 2.3.13 In view of the above, the DC finds that Mr. Tarkas has failed to perform his duty and violated the provisions of section 208(2)(a) and 208(2)(e) of the Code, regulation 24(7) of CIRP Regulations, regulations 7(2)(a) and 7(2)(h) of IP Regulations, read with Clause 1, 2, 3, 10, 13 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

#### 2.4 **Non- performance of various activities under the CIRP:**

- 2.4.1 The Code and the CIRP Regulations mandate various activities such as the appointment of registered valuers, determination of avoidance transactions, preparation of Information Memorandum (IM), Invitation of Expression of Interest (EoI), Issuance of Request for Resolution Plan (RFRP), etc. to be conducted within the timelines prescribed under regulation 40A of CIRP Regulations. However, the Board has observed that except for issuing public announcements for both CDs (CD-2 & CD-3) and conducting the 1<sup>st</sup> meeting of CoC on 01.12.2021, no further action was taken by Mr. Tarkas in the CIRP of both CDs (CD-2 and CD-3). Further, section 12(1) of the Code provides that CIRP shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate CIRP. The CIRP is a timebound process and completion of the CIRP process in adherence to the timelines prescribed under the provisions of the Code and Regulations made thereunder is the most significant part of the process.
- 2.4.2 In view of the above, the Board was of the *prima facie* view that Mr. Tarkas had contravened section 12(1) of the Code, regulation 40A of the CIRP Regulations read with clauses 1, 2,3, 10, 13, and 14 of the Code of Conduct.

#### **Submissions made by Mr. Tarkas**

- 2.4.3 Mr. Tarkas reiterated that the sole member of the CoC (SBI) had not cooperated from day one of the admission order and had not paid the fee of Rs. 2,00,000 and 5,00,000 for CD-2 and CD-3 respectively as directed by the AA. The suspended management was also not

cooperating with him. In the absence of the non-cooperation of the FC and the suspended management, it was very difficult for him to conduct the CIRP process of both CDs. Mr. Tarkas submitted that he anticipated filing the application before the AA for non-cooperation by the FC and suspended management, but he was replaced with a new RP (Mr. Vikash Gautamchand Jain) in the 1<sup>st</sup> CoC meeting which was shocking for him. Hence, Mr. Tarkas was prevented from conducting the CIRP process. Mr. Tarkas further submitted the information with respect to actions taken by him in the CIRP of CD-2 and CD-3.

### **Analysis and Findings**

- 2.4.4 The DC observes that the information submitted by Mr. Tarkas, enlist. *inter alia*, the work performed by him such as quotation for public announcement and security guard, public announcement in newspaper, visit to registered office and factory for charge, list of document required, claim form received, receiving of Audited Accounts and letter from SBI to inquire development under CIRP, conduct of 1<sup>st</sup> CoC meeting and exchange of various emails etc. Hence, it is evident that after the 1<sup>st</sup> CoC meeting, no further actions for the CIRP Process had been taken by Mr. Tarkas, such as the appointment of registered valuers, determination of avoidance transactions, preparation of Information Memorandum (IM), Invitation of Expression of Interest (EoI), Issuance of Request for Resolution Plan (RFRP), etc. which are to be performed within the prescribed timelines.
- 2.4.5 Time is a crucial facet of the processes under the IBC and non-conduct or any lapses in performing the activities prescribed during CIRP, within the stipulated timeframe, results in delaying the whole resolution process, defeating the objectives of the IBC. Thus, an IRP is bound to conduct the CIRP of the CD as per the timelines specified under the Code and Regulations 40A of the CIRP regulations. The contention of Mr. Tarkas that he had been replaced in the 1<sup>st</sup> CoC meeting with some other RP due to which he was prevented from conducting the CIRP Process is not acceptable. By merely passing resolution by CoC, for replacement of IRP/RP, an IRP/RP is not prevented from conducting the further proceedings under CIRP. In fact, section 16(5) of the Code clearly mandates that the IRP shall continue till the date of appointment of the RP under section 22 of the Code. So till new RP is appointed by the order of AA, the previous IRP/RP is bound to keep on conducting further proceedings of CIRP in accordance with the Code and Regulations framed thereunder.
- 2.4.6 In view of the above, the DC finds that Mr. Tarkas has not performed his duties with regard to various activities prescribed for conduct of CIRP process and thus, contravened the provisions of Section 12(1) of the Code, Regulation 40A of the CIRP Regulations read with Clauses 1, 2,3, 10, 13, and 14 of the Code of Conduct.
- 2.5 **Control and custody of assets of the CD:**

- 2.5.1 The Board had observed from the minutes of the 1<sup>st</sup> CoC meeting (for both the CDs) that Mr. Tarkas requested the suspended management to clear the expenses incurred during the CIRP since the said expenses form part of CIRP costs only. Further, it was observed from the

minutes of the 1<sup>st</sup> CoC meeting for CD-2 and CD-3 that suspended management i.e., Mr. Sanjay Agarwal mentioned that: “*In view of this impasse by FC i.e., SBI, he was forced to open other bank accounts outside SBI to ensure that the unit remains operating and as a going concern.*”

- 2.5.2 The above circumstances clearly indicate that control of CD-2 and CD-3, even post CIRP admission was with the suspended management only. It is also noted that if for some reason Mr. Tarkas was not able to take custody and control of assets of the CD-2 and CD-3, he did not approach the AA for necessary orders in terms of section 19 of the Code.
- 2.5.3 Section 18(1)(f) of the Code mandates the IRP shall take control and custody of any asset over which the CD has ownership rights as recorded in the balance sheet of the CD. Further, section 25(1) of the Code mandates an RP to preserve and protect the assets of the CD, including the continued business operations of the CD. It is the duty of the RP, in view of Section 25(2)(a), to take immediate custody and control of all the assets of the CD including the business records of the CD.
- 2.5.4 Therefore, Mr. Tarkas failed to take appropriate control and custody of the assets of CD-2 and CD-3. The Board was of the *prima facie* view that he had, *inter-alia*, violated section 25(1), section 25(2)(a) of the Code read with clauses 2 and 3 of the Code of Conduct.

#### **Submission made by Mr. Tarkas**

- 2.5.5 Mr. Tarkas submitted that various agencies were appointed for taking over the possession of the assets of the CDs, but sole FC and suspended management were not cooperating with him. Mr. Tarkas further submitted that the FC, itself had not co-operated and given control of the old SBI Account of the CDs to him. He had sent them correspondence asking them to hand over the control of the account of the CDs under section 19 and mark it “No Lien”. However, Mr. Tarkas was informed by the Surat Branch that since the CDs have been admitted to the CIRP, the control of the bank account of the CDs is with SBI SAMB Ahmedabad. Mr. Tarkas had sent the request to SBI SAMB, Ahmedabad but they had neither given control of the account under section 19 of the Code nor enabled him to lodge his signature as an authorized signatory showing a flagrant violation of section 19 of the Code. Thus, there are no violations of section 25(1) and section 25(2)(a) of the Code read with clauses 2 and 3 of the Code of Conduct.

#### **Analysis and Findings**

- 2.5.6 Section 25 (2)(a) of the Code mandates that the RP shall take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor. In the instant matter, on perusal of the minutes of the 1<sup>st</sup> CoC meeting of CD - 2 and CD - 3, it is observed that CA Sanjay Aggarwal (Ex-Director of the CDs) was involved in managing the affairs of the CDs. It substantiates the allegation that appropriate control and custody of

both the CDs was not taken by Mr. Tarkas. Accordingly, the DC is of the view that Mr. Tarkas has violated the provisions of section 25(1), section 25(2)(a) of the Code read with clauses 2 and 3 of the Code of Conduct.

## 2.6 **Withdrawal of amount as CIRP cost without CoC's approval in the matter of CD- 3**

- 2.6.1 The Board had observed that in the matter of CD-3, it has been noted from the ledger for the period 01.04.2021 to 31<sup>st</sup> Marc31.03.2022 that various debits from CD's account in lieu of CIRP cost to the tune of Rs 7,36,000 approximately has been made. However, the 1<sup>st</sup> CoC minutes, which was conducted by Mr. Tarkas did not mention any approval of CIRP cost. The conduct of Mr. Tarkas of withdrawing the money from the CD's account on account of CIRP cost, without CoC approval, was in violation of regulation 33 of the CIRP Regulations.
- 2.6.2 Regulation 31 specifically mentions that Insolvency Resolution Process Costs (IRPC), as *inter-alia*, expenses incurred on or by the interim resolution professional to the extent ratified under regulation 33 CIRP Regulations. Further, regulation 33 of CIRP regulations specifically provide that amount of expenses ratified by the CoC only shall be treated as IRPC.
- 2.6.3 In view of the above, the Board was of the prima facie view that Mr. Tarkas had, *inter alia* violated regulation 33 of CIRP Regulations read with Clause 1, 2, 3, 14, and 26 of the Code of Conduct.

### **Submission made by Mr. Tarkas**

- 2.6.4 Mr. Tarkas submitted that SBI in the meeting dated 08.10.2020, decided to select him being the most eligible Insolvency Professional for conducting the CIRP for the CDs. Thereafter, vide sanctioned letter dated 02.11.2020, SBI appointed him for conducting the CIRP for both CDs. As per the said sanctioned letter, the fee of Mr. Tarkas was fixed to the tune of Rs. 1,65,000 (Rs. 1.10 Lakhs as a fee + Rs. 0.20 Lakhs as out-of-pocket expenses + Rs. 0.35 lakhs as a professional fee of Ind Exp.).
- 2.6.5 Mr. Tarkas further submitted that the same officers who fixed his fees vide sanction letter dated 02.11.2020 (Deputy Manager and AGM) were present in the 1<sup>st</sup> CoC meeting. Hence, the sole CoC member is stopped making a u-turn from their own sanction letter dated 02.11.2020. Thereby, there is no requirement of approval or disapproval of the fee already sanctioned by the sole FC.
- 2.6.6 It was also submitted by Mr. Tarkas that the provisions of regulations 33 and 34 of the CIRP Regulations are irrelevant in the present matter as the sole CoC member had already approved his fee prior to the commencement of the CIRP Process.

- 2.6.7 Mr. Tarkas further submitted that he had acted with all fairness and within the statutory framework of the Code and has also acted in the interest of the CDs. There was some delay in conducting the CIRP due to his hospitalization which was beyond his control. In view of the above, the impugned Show Cause Notice is required to be withdrawn.
- 2.6.8 Mr. Tarkas has made an additional submission that he has already sent a copy of the IA filed by the RP of the CDs, i.e., Mr. Vikas Gautamchand Jain and he also replied to the Board informing that this entire matter is sub-judice before NCLT Ahmedabad, therefore the adjudication of present SCN would be a parallel proceeding, which cannot be permitted under law. Thus, till the decision of the IA by the NCLT Ahmedabad, this SCN should be kept in abeyance.

### **Analysis and Findings**

- 2.6.9 Regulation 34 of CIRP Regulations clearly mandates that the committee shall fix the expenses incurred on or by the Resolution Professional, and Regulation 33 provides that the applicant shall fix the fees of IRP. If no fee is fixed by the applicant, the same shall be fixed by the AA. It also provides that the fee borne by the applicant for the IRP shall be reimbursed by the CoC to the extent rectified by the CoC. For ready reference, regulation 33 is reproduced hereunder.
- 33. Costs of the interim resolution professional*
- (1) The applicant shall fix the expenses to be incurred on or by the interim resolution professional.*
- (2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1)*
- (3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.*
- (4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.*
- [Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the interim resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional.*
- 2.6.10 The above provisions make it clear that even though the fee of the IRP may have been fixed and borne by the applicant, then also ratification of the same is required from the CoC. If the fee fixed by the applicant is not ratified by CoC, the same is to be borne by the applicant and the IRP cannot take such fee from the account of the CD. In the present matter, though the fees claimed by Mr. Tarkas (stated to be approved by the SBI vide sanctioned letter dated 02.11.2020 in the capacity of the applicant) was approved, however, it was not ratified by the CoC (sole CoC member) after admission of the CD in CIRP.
- 2.6.11 In view of the above, the DC finds that Mr. Tarkas has violated the provisions of regulation 33 read with Clauses 1, 2, 3, 14, and 26 of the Code of Conduct.

### **3 Order**

- 3.1 In view of the foregoing discussion, the DC finds that Mr. Nirav Anupam Tarkas has conducted the auctions in an improper manner in CD-1 by inviting bids for already sold vehicles and reducing the reserve price beyond permissible prescribed limits. With regard to the CD-2 and CD-3, the DC finds that Mr. Nirav Anupam Tarkas failed to perform his duties as per the Code read with regulations by not circulating the minutes of the CoC for over 4 months to the CoC and not performing various activities such as appointment of registered valuers, determination of avoidance transactions, preparation of Information Memorandum (IM), Invitation of Expression of Interest (EoI), Issuance of Request for Resolution Plan (RFRP), etc. Further, Mr. Tarkas has also failed to take appropriate control and custody of the assets of CD-2 and CD-3. Moreover, Mr. Tarkas had also withdrawn Rs.7,36,000 (Rupees seven lakhs thirty six thousand only) from the account of CD – 3 on account of CIRP cost, without the approval of the CoC. Hence, the DC finds that Mr. Nirav Anupam Tarkas has contravened the provision of sections 12(1), 25(1), 25(2)(a), 208(2)(a), and (e) of the Code, regulations 7(2)(a) and (h) of the IP Regulations, regulations 24(7), 33, 40A of the CIRP Regulations, clause 4A, 6, 9 and 11 of Schedule I of the Liquidation Regulations read with clauses 1, 2, 3,10,13,14 and 26 of the Code of Conduct.
- 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, hereby, suspends the registration of Mr. Nirav Anupam Tarkas having registration no. IBBI/IPA-002/IP-N000776/2018-2019/12375, for a period of two years.
- 3.3 This Order shall come into force on the expiry of 30 days from the date of its issue.
- 3.4 A copy of this order shall be sent to the CoC/ Stake Holders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Tarkas is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Tarkas.
- 3.5 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICSI where Mr. Nirav Anupam Tarkas is enrolled as a member.
- 3.6 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench National Company Law Tribunal.
- 3.7 Accordingly, the show-cause notices are disposed of.

Date: 21<sup>st</sup> December, 2023

Place: New Delhi

sd/-

(Jayanti Prasad)

Whole-time Member, IBBI