

**Indian Institute of Insolvency Professionals of ICAI
(Disciplinary Committee)**

DC.No. IIIPI/DC/48/2021-22

ORDER

In the matter of Ms. Reshma Mittal (Respondent), under Clause 15(1) of the Disciplinary Policy of IIIPI read with Clause 24(1)(c) of IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations 2016.

1.0 This order disposes of the Show Cause Notice (SCN) No. IIIPI/DC/48/2021-22, dated 27th December, 2021 issued to **Ms. Reshma Mittal** (Respondent), R-4/39, Raj Nagar, Ghaziabad, Uttar Pradesh, 201002. Respondent is a professional member of the Indian Institute of Insolvency Professionals of ICAI (IIIPI) and registered with IBBI with Registration No – **IBBI/IPA-001/IP-P00297/2017-18/10541**.

2.0 The Disciplinary Committee of IIIPI (DC) issued SCN to respondent, based on the reference received from Monitoring Committee of IIIPI, including the findings in the inspection report of Inspection Authority (IA), pertaining to assignments handled by her as IRP/IP in the CIRP of **(a) Him Steels Private Limited; (b) Pellet Energy Systems Private Limited; and (c) Monika Freshway Foods Private Limited**. The SCN alleged the contravention of provisions of Section 18(1)(b), 25(1), 25(2)(d) and (e), 29A(c), 208(2)(a) of the Insolvency and Bankruptcy Code, 2016; Regulation 13, 27, 30A(2)(b), 30A(5), 33(4), 34, 34A, 35(2), 36(1), 36(4), 39B and 39C(3) of the Insolvency Resolution Process for Corporate Persons Regulation, 2016; Regulation 7(2)(a), (h) and (i) of IBBI (Insolvency Professional) Regulation, 2016 read with clauses 1, 2, 3, 5, 9, 10, 12, 13, 14, 15, 16, 19 and 27 of the Code of Conduct for Insolvency Professionals, specified under First Schedule of IBBI (Insolvency Professionals) Regulations, 2016 and IBBI Circular no. IBBI/IP/003/2018 dated 03-01-2018 and IBBI/CIRP/005/2018 dated 16-01-2018.

3.0 The DC referred the SCN, written/oral submissions of the respondent and other material available on record for disposal of the SCN in accordance with the Code and Regulations made thereunder. An opportunity for personal virtual hearing was provided to the respondent on 06-05-2022. Respondent herself presented pleadings and additional submissions before the DC of IIIPI via video conferencing mode.

A. Him Steel Private Limited

4.0 Allegation: Regulation 33(4) of the CIRP Regulation provides that “*the amount of expenses ratified by the committee shall be treated as insolvency resolution process cost.*”

Further, Regulation 34 of the CIRP Regulation, provides that “*the committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.*”

In view of the foregoing provisions, it is noted that expense on account of fees of Transaction Auditor along with cost of publication/republication of Form G was not ratified by the committee of creditors.

4.1 Submission: Respondent submitted that the in the item no.5 of 2nd CoC meeting, fee of Transaction Auditor was approved, and it was assented by CoC to cover the period since

financial year 2015-2016 to 2018-19, which amounted to 4 years instead of 2 years for which quote was received amounting to 1.42 lakhs and it was approved by CoC to increase the fee proportionately. Accordingly, Rs.2.13 lakhs were paid to transaction auditor to cover the period of 4 years instead of 2 years. Relevant portion was reproduced by respondent:

“CoC deliberated on appointment of transaction auditor and about the period to be covered by Transaction auditor, RP informed to CoC that above-mentioned quotes are for the audit period as prescribed in IBC i.e. 2 years. DGM of Syndicate Bank suggested to cover the period of transactions since the date of reimbursement i.e. FY 15-16 and to increase the fee proportionality.

4.2 The respondent submits that EOI republication was duly approved by CoC in its 3rd and 4th meeting

Item no. 4 from minutes of the 3rd CoC meeting is reproduced as below:

“Resolved that form G (Invitation for submission of expression of interest) shall be re-published in newspapers to explore prospective resolution applicants.”

Item no.4 of 4th CoC meeting is reproduced as below:

“RP requested the CoC to ratify the publication dated 19.12.2019. CoC ratified the re-publication of EOI in newspaper on 19th Dec 2019 by RP.”

4.3 The respondent further submits that all CIRP expenses were directly paid by sole financial creditors which gives evidence of their consent/approval to expenses. Further, all item wise insolvency resolution process costs were duly disclosed in Form II and Form III submitted to IIIPI.

4.4 Findings: The DC notes that Section 5(13) of the Code defines the term “Insolvency Resolution Process Costs” (IRPC) as follows –

“5 (13). “insolvency resolution process costs” means—

- (a) the amount of any interim finance and the costs incurred in raising such finance;*
- (b) the fees payable to any person acting as a resolution professional;*
- (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;*
- (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and*
- (e) any other costs as may be specified by the Board.*

Further, Regulation 31 of CIRP Regulations, 2016 provides that:

31. “Insolvency Resolution Process Costs under Section 5(13)(e) shall mean –

- (a) amounts due to suppliers of essential goods and services under Regulation 32;*
- (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);*
- (c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;*
- (d) expenses incurred on or by the interim resolution professional fixed under Regulation 34; and*
- (e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.*

The DC also notes that Regulation 33(4) of the CIRP Regulations provides:

“33(4) Costs of the interim resolution professional:

- (1) ...*

(4) the amount of expenses ratified by the committee shall be treated as insolvency resolution process cost.”

4.5 The DC notes the submission of the respondent that as per item no.5 of 2nd CoC meeting, quote for the fees of Transaction Auditor was invited for period of 2 years. However on the request of one of CoC member it was extended to period of 4 years which led to increase in fees from 1.42 lacs to 2.13 lacs.

4.6 The DC notes Regulation 24(6) of CIRP Regulations, 2016, requires that *“The resolution professional shall ensure that minutes are made in relation to each meeting of the committee.....”* In this connection the DC notes that the cost of republication/publication of Form G is not recorded in minutes. However, the approval of EOI publication/republication was duly recorded in minutes of CoC meeting and since all CIRP expenses were directly paid by sole financial creditor which gives evidence of their consent/approval to expenses and were duly disclosed by respondent under Form II and Form III submitted to IIIPI, thus, DC is inclined to take lenient view.

5.0 Allegation: Regulation 36 (1) read with Regulation 36(4) of the Insolvency Resolution Process for Corporate Persons Regulation 2016 provides that the resolution professional shall share the Information Memorandum (IM) in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier, after receiving an undertaking from a member of the committee to the effect that such member or resolution applicant shall maintain confidentiality of the information and shall not use such information to cause undue gain or undue loss to itself or to any other person and comply with the requirements under sub-section 2 of section 29. However, it is noted that Information Memorandum was submitted to the CoC before the undertaking was obtained from them.

5.1 Submission: Respondent submitted that she has taken reasonable care and diligence while performing her duty and has obtained the CNDU before the date of sharing IM with CoC.

5.2 Finding: With regard to the issue of sharing of IM without obtaining confidentiality agreement, the DC notes the submission of the respondent she has taken reasonable care and diligence while performing her duty and has obtained the CNDU before the date of sharing IM with CoC.

The DC notes that regulation 36 of the CIRP regulations provides that:

“36. Information memorandum.

(1) Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier.”

5.3 DC further notes that the respondent did not provide the copy confidentiality undertaking, asked for by the IA. It is duty of an IP to produce all records in his/her custody or control and furnish such statements and information relating to its activities within such time as the IA may require. At the same time DC notes that CNDU was obtained from Mr. Agarwal, authorised representative of Syndicate Bank (CoC), prior of sharing the IM and has now been furnished by the respondent. In this backdrop there appears no contravention on the part of the respondent.

6.0 Allegation: Regulation 39B read with regulation 39C (3) of the CIRP Regulation provides that while approving resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33 the committee may make a best estimate of the amount required to meet the liquidation costs, in consultation with the RP. Further, the committee shall make a best estimate of the value of liquid assets available to meet the liquidation costs and where the estimated value of liquid assets is less than the estimated liquidation costs, the committee shall approve a plan providing for contribution for meeting the difference between the two. In case committee want to explore decides to explore the option of sale of entity as going concern it can ask the RP for same and in that case, RP shall submit the recommendation of the committee under regulation 39C (1) and (2) regarding sale of corporate debtor or business as a going concern to the AA while filing the decision of committee under section 30 or 33 as the case may be. In view of foregoing, it was noted that though agenda item to “approve the liquidation of corporate debtor and approving the name & fee of the liquidator” was put before CoC in its 6th meeting, respondent failed to discuss best estimate of amount required to meet liquidation costs, also you failed to obtain recommendation of CoC for sale of corporate debtor assets.

6.1 Submission: Respondent submitted that fair value and Liquidation value was shared with CoC members in 3rd COC meeting as no resolution plan was received by CD and matter of republication of EOI as well as of liquidation of CD was to be considered in the same meeting so as to avoid any further delay in the process. That as liquidation value was 19 crores and the liquidator fee as calculated in accordance with prescribed regulations was calculated to Rs 89.50 lacs, thus there was no situation of planning the contribution of meeting the difference. Also, intention of CoC for sale of CD as a going concern is clear from the liquidation order.

6.2 Findings: The DC notes that regulation 39B read with regulation 39C (3) of the CIRP Regulation provides that while approving resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, CoC may make a best estimate of the amount required to meet the liquidation costs, in consultation with the RP.

6.3 The DC notes that respondent submitted as no resolution plan was received by CD and matter of republication of EOI as well as of liquidation of CD was to be considered in the same meeting so as to avoid any further delay in the process. Also, intention of CoC for sale of CD as a going concern is clear from the liquidation order.

6.4 The DC notes from order of NCLT, New Delhi, dated 25-06-2020, in *Syndicate Bank V. Him Steel Pvt. Ltd.*, that adequate discussion and voting was done before CoC for sale of corporate debtor. Relevant extract from the order is reproduced below:

“On perusal of these submissions, it appears that CoC in its wisdom rejected the resolution plan looking at the value of it, since the CoC was of the view that plan was not viable and feasible, it has passed a resolution with 100% voting share for liquidation of the corporate debtor, therefore, we hereby order for liquidation of the corporate debtor as going concern allow this application by appointing the RP as liquidator.....

(e) The liquidator is directed to carry the functions of the Liquidator as envisaged under the Insolvency and Bankruptcy Code, 2016 and also Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.”

6.5 DC heard the respondent carefully and found no malafide intention on the part of the respondent and in the above given scenario, no contravention can be attributed on part of the respondent.

B. Monika Freshway Foods Private Limited

7.0 Allegation: Regulation 27 of the Insolvency Resolution Process for Corporate Persons Regulation 2016 provides that the resolution professional shall within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35. However, it is noted that respondent failed to appoint asset class valuer for Securities and Financial Assets.

7.1 Submission: Respondent submitted that as per financials statement on Insolvency Commencement Date, stock was nil with no cash balance. For 6 months old trade receivables, having no value, CoC decided to issue legal notices to debtors so as to ascertain the value. In view of the above, as approved in 3rd CoC meeting, valuer for SFA was not appointed.

7.2 Findings: The IP is to maintain integrity, by being honest, straight forward and forthright in all his professional relationships while conducting business during CIRP. His/her conduct has a substantial bearing on performance and outcome of the processes under the Code. He/she, therefore, is expected to function with reasonable care and diligence to ensure credibility of the process. It is imperative for an IP to perform his/her duties and functions with utmost care and diligence in time bound manner.

7.3 The DC notes that regulation 27 of the CIRP Regulations provides for appointment of professionals. The regulation is reproduced below:

“27. Appointment of Professionals. (1) The resolution professional shall, within seven days of his appointment but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35.”

7.4 The DC notes the submission of the respondent that as per financials statement on Insolvency Commencement Date, stock was nil with no cash balance and same was informed to CoC in 3rd meeting. Relevant extract from the minutes are reproduced hereunder:

“RP informed that there are 3 type of valuers i.e. land & building , Plant & Machinery and Financial Assets. Since Corporate debtors is not having any stock , receivables are more than 6 months old and there is no financial assets in the company hence only 2 types of valuers are required i.e. Land & building and Plant & machinery.”

7.5 DC heard the respondent carefully and found no malafide intention on the part of the respondent and in the above given scenario, no contravention can be attributed on part of the respondent.

8.0 Allegation: Regulation 30A of the CIRP Regulations provides that:

“(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority –

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

(2) The application under sub-regulation (1) shall be made in Form FA of the Schedule accompanied by a bank guarantee-

(a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of sub-regulation (1); or

(b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).

(3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt....”

It is noted that respondent filed withdrawal application before the Adjudicating Authority without obtaining bank guarantee from the applicant. The said application was filed on 25-07-2019, which was rejected by the Adjudicating Authority based on the grounds that the application was not accompanied by the Bank guarantee. Delay of 16 days has also been noted in filing the application for withdrawal before the Adjudicating Authority.

8.1 Submission: Respondent submitted, that she repeatedly requested applicant for bank guarantee. The same has been recorded in minutes of 6th CoC meeting and evident from order of NCLT. Due to shortage of time and CoC ignorant of law, she had no option other than filing withdrawal application before NCLT without bank guarantee.

8.2 Findings: The DC notes the submission of the respondent that despite her best efforts, she was not able to get the bank guarantee from applicant. The DC further notes the submission of respondent that said fact was also noted in minutes of the 6th CoC meeting, as well as respondent has adduced various e-mails in support of her contentions. DC also notes the submission of the respondent that the said fact was also brought before the NCLT and same was recorded in the order dated 23-08-2019. Relevant extracts from order of NCLT, dated 23-08-2019, and 6th CoC meeting, reproduced hereunder:

- i. *NCLT order dated 23/08/2019- “2. In this regard, Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 stipulates that the application for withdrawal of the application shall be made in Form FA accompanied by a bank guarantee, but the compliance has not been made by applicant and CoC has also not considered the said fact.*
- ii. *Item no.2 of 6th CoC meeting- “She further brought to the notice of CoC that she had repeatedly requested to proprietor of Ayush Trading Company under copy to Union Bank of India and ex-directors vide e-mail dt 10th July 2019, 13th July 2019, 15th July 19, 19th July 19 and 20th July 19 to submit the BG. But he failed to give required attention to the request made by RP and hence failed to comply with the regulation of CIRP regulations of IBC.”*

8.3. As per her submission, she could not obtain bank guarantee despite her best efforts in the context of given facts and circumstances. DC notes the difficulties, as explained by the respondent, and accepts the submission of respondent.

C. Pellet Energy Systems Private Limited

9.0 Allegation: Section 29A(c) provides that “A person shall not be eligible to submit resolution plan, if such person, or any other person acting jointly or in concert with such person.

(a).....

(b).....

(c) *At the time of submission of resolution plan has an account or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of corporate insolvency resolution process of corporate debtor.”*

In this connection, it is noted that the corporate debtor was resolved via resolution plan submitted jointly by Abellon Clean Energy Limited and Promoter Mr. Bharat Sharma. However, it is noted that in view of Section 29A(c) the promoter is ineligible to be a resolution applicant.

On perusal of the balance sheet, it indicates that the gross block of plant and machinery exceeds the limit prescribed by the MSME Act, also the investment in plant and machinery, are more than the higher limit prescribed i.e., Rs. 10.00 crore to qualify as MSME. Only Udyog Aadhar registration certificate is not sufficient support to establish the fact that the corporate debtor is a MSME.

9.1 Submission: Respondent submitted that CD was a MSME having Udyog Aadhar Registration certificate. She carried out due diligence by computing the gross block of plant and machinery in accordance with MSME Act 2006. During the personal hearing, respondent clarified that she calculated the gross block in conformity with notification dated 05-10-2006 issued by Ministry of Small-Scale Industries and accounting standards, and verified that it falls within ambit of MSME. The respondent also added that due to Covid-19 at peak on that point of time, she couldn't provide the complete calculations as she was not in possession of the requisite documents.

9.2 Findings: In respect of this allegation, the DC notes the submission of the respondent that CD was a MSME having Udyog Aadhar Registration certificate and meets the composite criteria of Investment and Turnover as mentioned in law. Committee notes the contentions of the respondent that after excluding installation of plant and machinery charges, technical charges, demurrage charges, fire equipment, spare parts, etc. from cost of fixed assets the value CD meets the eligibility criteria of MSME, as per notification dated 05-10-2006 issued by Ministry of Small-Scale Industries.

After excluding those items from the balance sheet in conformity with notification issued by Ministry of Small-Scale industries, dated 05-10-200, titled “*Guidelines for calculating investment in Plant & Machinery,*” and as per accounting standard 10, paragraph 9.3, titled “*Components of Cost,*” the valuation of company falls under 10 crores, which makes it fall within the ambit of MSME.

9.3 DC also notes that the details of assets computation, as provided by the respondent pursuant to the issuance of SCN, was not provided to IA at the time of inspection. At the same time

DC notes the submission of the respondent that at that point of time, covid was at peak. Therefore, she was unable to provide the supporting documents in her defence. The DC notes that the pandemic situation is an exceptional circumstance and accepts respondent's contention as the pandemic situation was beyond her control and the same appears to have caused lapse in submission of complete information.

10.0Allegation: Regulation 33(4) of the CIRP Regulation, provides that *"the amount of expenses ratified by the committee shall be treated as insolvency resolution process cost."*

Further, Regulation 34 of the CIRP Regulation, provides that *"the committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs."* In this connection, it is noted that the fee disclosed in Form II and Form III mismatch with the fees mentioned in the minutes and the exceeded amount mentioned in the Forms were not ratified by the committee of creditors. Discrepancies were recorded in fee disclosures made in Form II and Form III, as specified below:

1. Fees payable to IPE reported in Form II and III exceeds the fees reported in minutes by Rs.31.70 Lacs;
2. Fees payable to other professionals as disclosed in Form III, exceeds the fees disclosed in minutes by Rs. 9.00 Lacs;
3. An amount of Rs. 7.79 Lacs reported in form III w.r.t expenses on CIRP related fillings does not appear in the minutes of the meetings of CoC.
4. The expense recorded in Form II and III exceeds expense recorded in minutes by a total of Rs. 48.49 Lacs.

10.1Submissions: Respondent submitted that all the expenses were ratified by CoC, i.e., fee paid to resolution professional, fee paid to insolvency professional entity, fee paid to professionals and legal expenses, in 11th CoC meeting held on 11-04-2019. CIRP ended on 15-04-2019, however, later NCLT issued directions to reconsider the resolution plan.

10.2Subsequently, 12th-15th CoC meetings were held for the specific purpose of reconsidering resolution plan. Noting of running expenses such as security guard expenses, RP fee, etc. was done in 12th CoC meeting held on 07-09-2019. The order approving resolution plan was passed by Hon'ble NCLT on 27-08-2020, and hence till then no CoC meeting was held resulting into time gap of 11 months. Hence, due to this duration, the respondent was not able to note running expenses in any CoC meeting, till submission of Form-III.

10.3Findings: The DC notes that Section 5(13) of the Code defines the term, Insolvency Resolution Process Costs" (IRPC) as follows –

Regulation 33(4) of the CIRP Regulation, provides that *"the amount of expenses ratified by the committee shall be treated as insolvency resolution process cost."*

Further, Regulation 34 of the CIRP Regulation, provides that *"the committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs."*

10.4The DC notes the submission of the respondent that all the expenses were ratified by CoC, i.e., fee paid to resolution professional, fee paid to insolvency professional entity, fee paid to professionals and legal expenses, in 11th CoC meeting held on 11-04-2019.

10.5The DC further notes the submission of the respondent that running expenses such as security guard expenses, RP fee, etc. was recorded in 12th CoC meeting held on 07-09-2019. Order

approving resolution plan was passed by Hon'ble NCLT on 27-08-2020, and hence till then no CoC meeting was held, resulting into time gap of 11 months. From 12th CoC meeting to submission of Form III, certain running expenses were incurred, which could not be recorded in CoC minutes, due to non-existence of CoC. Therefore, there is a difference in amount as recorded in minutes of CoC meetings in comparison to amount mentioned under Form III. Looking into the circumstances, and situations/facts as clarified by the respondent, the DC finds no malafide intention on the part of the respondent and in the above given scenario, no contravention can be attributed on part of the respondent.

11.0Allegation: Para (3) of IBBI Circular No. IP/005/2018 dated 16th January,2018, requires that an insolvency professional shall disclose his relationship, if any, with (i) the Corporate Debtor, (ii) other Professional(s) engaged by him, (iii) Financial Creditor(s), (iv) Interim Finance Provider(s), and (v) Prospective Resolution Applicant(s) to the Insolvency Professional Agency of which he is a member, within three days from the event. However, following delays has been noted: -

- a) Date of constitution of CoC- Delay of 236 days.
- b) Appointment of RP-Delay of 331 days.

11.1Submission: That in CIRP of Pellet Energy Systems Private Limited, delay in submitting disclosures happened as she erroneously filed the wrong disclosures. However, after figuring out the mistake, she was unable to rectify the mistake as there was no option of modification available on portal of IPA.

11.2Findings: An insolvency professional is bestowed with myriad duties. An insolvency professional is expected to exercise due diligence while performing his duties. His diligence should be reflected not only during the corporate insolvency resolution process but also while fulfilling any obligation as a professional member under the Code.

11.3The respondent submitted that once the error was pointed out by IPA (IIPI), she tried to rectify the same, however, by then the window of online portal of IPA was closed. Therefore, delay was caused.

11.4At the same time DC notes that all other compliances within stipulated time by the respondent. Admitting the delay, she assured the DC to be more vigilant in future. DC also notes that at the time when this lapse occurred, the implementation of the Code was in the nascent stage and the legal jurisprudence of this new insolvency regime was evolving. In this backdrop, DC is inclined to take a lenient view.

D. Similar among CIRPs

12.0Allegations: It is noted that respondent did not communicate reasons of rejection to the claimants for portion of claims not admitted in all the CIRPs. Being a resolution professional, respondent should have provided the reasons in writing to the claimants for the portion of claims not admitted.

12.1Submissions: Respondent submitted that she duly verified all the claims within 7 days of receipt from creditors. The defects and rejection were duly submitted to them for rectification. Further, list of creditors mentioning the amount claimed by the creditor, amount admitted by RP, reasons for rejection, were duly uploaded on website. The list was always also available to creditors for inspection in the office of RP.

12.2 Findings: The role of the RP is crucial and critical to fulfil the objective of the Code. It is imperative that the RP functions and discharges his/ her duties independently in a fair and transparent manner and facilitate fulfilment of the objectives of the Code.

12.3 The DC notes the submission of respondent that the reasons for rejection were recorded and made available for inspection in the office of respondent at all times and further uploaded it on website. The DC notes that since the respondent uploaded the list of creditors along with reasons for rejection on website, which is a public domain form where creditors could check their status of claims at any point of time. Hence, in this backdrop there appears no contravention on the part of the respondent.

13.0 Allegations: Regulation 35(2) of the CIRP Regulation provides that *“After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.*

- a. In Him Steel Private Limited, it is noted that respondent disclosed the valuation figures to CoC before receipt of resolution plan, which is evident from minutes of 3rd CoC meeting held on 02-11-2019 which is in violation to abovesaid regulation.
- b. In Monika Freshway Foods Private Limited, it is noted that respondent disclosed the valuation figures to CoC before receipt of resolution plan, which is evident from minutes of 5th CoC meeting which is in violation to abovesaid regulation.

13.1. Submission: The respondent submitted that in Him Steels Private Limited, fair value and liquidation value was shared after taking confidential undertaking from CoC, as decision on the liquidation of CD or republication of EOI was to be considered in the same CoC meeting.

13.2. In Monika Freshways Private Limited, respondent submitted that since no resolution plan was received in response to the EOI publication, hence, fair value and liquidation value was provided to CoC after taking confidential undertaking. Moreover, CD had done settlement with FC having 92% voting share, therefore CoC wanted to file a withdrawal application under section 12A. Relevant extracts from item 6th of 5th CoC meeting is reproduced by respondent as under:

“It was informed by authorised representative of Union Bank of India (AR of UBI) that corporate debtor has done the settlement with them hence they have decided to file of application with Hon’ble NCLT u/s 12A to withdraw the application pursuant to which CIRP proceedings were initiated.”

13.3. Findings: The DC noted that respondent submitted that in both the CIRPs, the fair and liquidation values were sharing after obtaining confidential undertaking from CoC members.

- i. In Him Steels Private Limited, values were shared as republication of EOI as well as liquidation was to be considered in the same CoC meeting.
- ii. In Monika Feshways Private Limited, due to absence of resolution plan in response to EOI publication, values were shared as CD had done settlement with FC having 92% voting share, therefore CoC want to file the withdrawal application under section 12A.

13.2.The DC notes that Regulation 35(2) of the CIRP Regulations defines the term, “Fair value and Liquidation value” as follows –

“After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.

13.3. At the same time, DC notes that there is no IBC provision expressly prohibiting RP to share fair and liquidation value with CoC in case RP does not receive any resolution plan. In such scenario, intention of the RP is of great significance to understand whether the disclosure done does not vitiate the intention of Act or to gain unjust profit. It is noted that act was performed in order to process CIRP effectively, without any ulterior motive. In this backdrop, DC is inclined to take a lenient view.

14.0Allegations: In pursuant to regulation 13(1) of the CIRP Regulations, it is the duty of the IP to receive, collate and verify every claim received by him. Further, the IBBI Circular no. IP/003/2018 dated 3rd January, 2018 clarifies that the IP shall not outsource any of its duties and responsibilities under the Code. It has been observed that you appointed RR Insolvency Professional LLP, an IPE for verifications of claims and certain other services such as preparation and updating of list of creditors from time to time, preparation of notice of CoC meeting, preparation of minutes of CoC meeting, appointment of registered valuers, drafting of EOI publication for prospective resolution applicant. The aforesaid acts reflects that respondent have outsourced her responsibilities and did not perform diligently in accordance with the requirements, as specified under the Code.

14.1Further, it is noted, excessive payment in addition to monthly remuneration was paid separately to IPE. Following payments were noted:

- a. In Him Steel Private Limited, an excessive amount of Rs.1,93,756/- was paid in addition to Rs.2,90,000/- remuneration set monthly.
- b. In Monika Freshway Foods Private Limited, the IPE was hired for Rs.1,25,000/- per month. However, Rs.1,95,000/- was paid separately for preparation of RFRP.
- c. In Pellet Energy Systems Private Limited, an excessive amount of Rs.1,90,000/- was paid in addition to Rs.2,50,000/- remuneration set monthly.

14.2Submissions: The respondent submitted that IPE only assisted the RP in carrying out her responsibilities. The Code read with regulations allow an insolvency professional to appoint accountants, legal or other professionals, as may be necessary.

14.3As per circular No. IP/003/2018 dated 03-01-2018 issued by IBBI “it is hereby directed that an insolvency professional shall not outsource any of his duties and responsibilities under the Code.

14.4Respondent submitted that IPE has only assisted her to perform various functions as mentioned in the code. She has not outsourced any of her duties and responsibilities. For preparation of RFRP and legal services, separate appointment letter was issued. Moreover, expenses were duly approved by CoC in its commercial wisdom. IBBI has also given their viewpoint on several public forum that fee of RP and IPE is marker driven and hence could not be fixed.

14.5 Findings: The DC notes that Regulation 13(1) of the CIRP Regulations defines the term, “Verification of claims” as follows –

“(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.”

The DC after considering the submissions and seeing the ‘engagement letter’ issued by respondent to IPE, observed that it only assisted her to perform various functions as mentioned in the code. She has not outsourced any of her duties and responsibilities to it.

The DC notes that all the expenses paid to IPE were duly approved by CoC in its commercial wisdom. During personal hearing DC raised its suspicion of collusion of respondent with IPE, since the same IPE was appointed in all the three CIRPs, but respondent clarified that there is no relationship between IPE and respondent.

15.0 Hence, DC observed that despite the failure of respondent to comply with certain regulations and timely compliance with IA, no material or substantial fact was concealed from CoC. Where respondent has failed to comply with the code and regulations, she has assured the DC that she will be diligent and ensure that no such event occurs in future. Therefore, no mala fide intention was found on the part of the respondent.

16.0 In view of the facts, as stated above, the DC is inclined to take a lenient view. Accordingly, in exercise of the powers conferred under Regulation 24(1) (c) of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 read with clause 15(1) of the Disciplinary Policy of IIPAI, DC noted that deficiencies noticed and conceded by Ms. Reshma Mittal appear to be minor in nature. However, DC hereby issues the following advisory to the respondent: -

- i. To be more careful in future while handling process under the Code.
- ii. Mandatory provisions, compliances and duties imposed under the Code and regulation shall not be overlooked despite approval of CoC.
- iii. In case, such repetitive instances and negligence are noticed in future:
 - a) A Monetary penalty will be imposed;
 - b) Any other action will be taken accordingly.

Hence, DC hereby disposes of the SCN without any adverse directions against the respondent.

17.0 This order shall come into force from the date of its issue.

18.0 A copy of this order shall be forwarded to the Insolvency and Bankruptcy Board of India.

Date: 14-06-2022

Place: Delhi

CERTIFIED TRUE COPY

Sd/-

Mr. Satish Marathe (Chairman)

Mr. Satpal Narang (Member)

CA. Rahul Madan (Member)

Copy to:

1. Insolvency and Bankruptcy Board of India.
2. Indian Institute of Insolvency Professionals of ICAI- Members Record.