

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

**DC. No. IIPI/DC/190/2023-24**

**ORDER**

**In the matter of Mr. Kuldip Kumar Bassi (Respondent), under Clause 15(1) of the Disciplinary Policy of IIPI read with Clause 24(1)(c) of IBBI (Model Byelaws and Governing Board of Insolvency Professional Agencies) Regulations 2016.**

- 1.0** This order disposes of the Show Cause Notice (SCN) No. IIPI/DC/190/2023-24 dated 08-02-2024 issued to **Mr. Kuldip Kumar Bassi** (Respondent), Unit No. 410, Level 4, Centrum Plaza, Golf Course Road, Sector 53, Gurgaon-122001. Respondent is a professional member of the Indian Institute of Insolvency Professionals of ICAI (IIPI) and registered with IBBI with Registration No – **IBBI/IPA-001/IP-P00280/2017-2018/10524**.
- 2.0** The Disciplinary Committee of IIPI (DC) issued SCN to the respondent, based on the reference received from Monitoring Committee of IIPI including the findings in the inspection report of Inspection Authority (IA), pertaining to assignments handled by him as an IRP/RP in the CIRP of **(A) Asian Colour Coated Ispat Limited and (B) Lakshmi Energy and Food Private Limited**. The SCN alleged the contravention of the provisions of section 5(13), 17, 25 (1), 25 (2) (a)(e), 28(1) (h) and 208 (2) (a) & (e) of the Insolvency and Bankruptcy Code, 2016, Regulation 13(1), 23(3)(c) 24(1), (2) & (6), 26(1), 27, 33(4), 34, 34A, 39A and 40B 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 14, 16, 17, 19, 25, 27 and 27A of the Code of Conduct for Insolvency Professionals, specified under First Schedule of IBBI (Insolvency Professionals) Regulations, 2016, and Circular No. IBBI/IP/003/2018 dated 3rd January, 2018 and Circular No. IP/005/2018 dated 16th January, 2018 & Circular No. IBBI/IP/013/2018 dated 12th June 2018. The Respondent submitted his contentions to the SCN vide letter dated 15-03-2024.
- 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 21-05-2024 however, respondent sought adjournment, accordingly personal hearing was rescheduled to 30-05-2024. The respondent chooses to be represented through his counsel Ms. Pooja Mahajan. Accordingly, on date respondent appeared before the DC along with his counsel, wherein the counsel of the respondent reiterated the submissions made in the written reply and also made few additional submissions.

**A. Asian Colour Coated Ispat Limited.**

- 4.0 Contravention-** Section 208(2)(a) of the Code provides that an Insolvency Professional (IP) *“to take reasonable care and diligence while performing his duties.”*

Para 6 of the Circular No. IBBI/IP/013/2018 dated 12<sup>th</sup> June 2018, provides that, the IP is directed to ensure that:

- (a) *the fee payable to him, fee payable to an Insolvency Professional Entity, and fee payable to Registered Valuers and other Professionals, and other expenses incurred by him during the CIRP are reasonable;*
- (b) *the fee or other expenses incurred by him are directly related to and necessary for the CIRP;*
- (c) *the fee or other expenses are determined by him on an arms' length basis, in consonance with the requirements of integrity and independence;*
- (d) *written contemporaneous records for incurring or agreeing to incur any fee or other expense are maintained;*
- (e) *supporting records of fee and other expenses incurred are maintained at least for three years from the completion of the CIRP;*

Further Clause 16 of the Code of Conduct clearly provides that “*an insolvency professional must ensure that he maintains written contemporaneous records for any decision taken, the reason for taking the decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his decisions and actions.*”

In view of the foregoing provisions, DC notes that respondent appointed EYRL to provide him with the advisory and support services for Rs. 32 lacs on a monthly basis. Further, it is noted that respondent only proposed the appointment of EYRL without calling any bid process for such an appointment. Therefore, it is difficult to ascertain whether the fees charged by EYRL was reasonable and within the ambit of Circular No. IBBI/IP/013/2018 dated 12-06-2018. It is prima facie taken as a violation because respondent failed to supply sufficient documents to support the diligence which he had exercised while selecting the E & Y for providing support services.

Further, it is noted from the minutes of the 12<sup>th</sup> CoC meeting that M/s Bagchi and Gupta were appointed to conduct eligibility check of the resolution plans u/s 29A of the Code, for which an amount of Rs. 15, 97,751 was paid. In this connection DC notes that respondent paid a decent amount to EYRL (Rs. 8,00,00,000/- Crores in total for advisory and support services) then appointing another professional to conduct the eligibility check of section 29 A for which a separate amount of Rs. 15,97,751 was paid, which appears to be unreasonable and not in consonance with the Circular No. IBBI/IP/013/2018 dated 12<sup>th</sup> June 2018.

Further 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.”

“Explanation. — For the purpose of this regulation, “expenses” include the fee to be paid to the 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 resolution professional.”

In view of the foregoing provision, it is noted that in Form III, an amount of Rs. 32 lacs are reflected as paid to IPE; however, no such cost was ratified by the CoC.

- 4.1. Submissions by Mr. Kuldip Kumar Bassi** - Respondent submitted that IRP/RP is entitled to appoint a professional and the fee of the same is required to be ratified/approved by the Committee of Creditors. The calling of bids for appointment of professional cannot be considered as the only yardstick for reasonableness of the fee appointed by the RP.
- 4.1.1.** Respondent further submitted that ACCIL had complex steel operations and was operational at the time when respondent took control of the Company. He appointed EYRL as the support service provider in light of its expertise in complex IBC matters. The appointment was made on basis of assessment of their expertise and the fee of EYRL was duly approved by the CoC in its commercial wisdom. You may note that approval of fee of professionals by the CoC, which comprises of the largest PSU banks in India is itself a check for reasonability of the fee charged by EYRL. You may further note that due to respondent efforts in running the operations of ACCIL with assistance if EYRL, the Cash and Bank balance of ACCIL increased from INR 2 crores at the start of CIRP to more than INR 400 crores during the CIRP. Therefore, there cannot be any reason or complaint by any party regarding the work undertaken by EYRL and merely because bids from other IPEs were not invited does not ipso facto mean that respondent was in violation of any law or that fee paid to EYRL was unreasonable.
- 4.1.2.** Respondent further submitted that EYRL had supported him while he was the IRP of ACCIL and ably assisted him in various activities including managing the operations of the plants of ACCIL and given the successful support from EY during the IRP phase, it was considered prudent to continue with EY during RP phase as well in the best interest of all stakeholders.
- 4.1.3.** Respondent further submitted that conducting the checks of proposed resolution applicants under Section 29A of the Code, was not part of the scope of EYRL. Therefore, he could not have unilaterally imposed a new task on EYRL which was not part of the agreed scope. Further, it is submitted that as an RP, he had appointed different professionals for different works basis the determination of the skill set required for the work coupled with their expertise in the area. As you may also be well aware that determination of Section 29A is a fact-finding exercise coupled with analysis of Section 29A. Not only the facts related to the resolution applicant, but also all its connected parties are to be checked. This requires specialized skill-set. He believed that he required assistance of a specialized agency to undertake this exercise and hence appointed Bagchi & Gupta to conduct 29A checks. This is similar to the appointment of a Transaction auditor to assist in relation to avoidance transactions. Respondent also added that the report prepared by Bagchi & Gupta was duly analyzed by him and discussed with the CoC.
- 4.1.4.** Respondent during personal hearing submitted that the fee of Bagchi & Gupta, in the 11th CoC meeting held on 26th February 2019, 6 quotes (including but not limited to the fees and least estimated fees) from different consultants to conduct the 29A checks were presented to the CoC and the CoC in their commercial wisdom voted for Bagchi & Gupta to carry out the 29A check of the prospective resolution applicants. Notably, all costs were duly approved by the CoC in its commercial wisdom.
- 4.1.5.** Respondent further submitted that the costs of INR 32 lakhs payable to IPE were not ratified by the CoC, this is an incorrect observation since all costs were duly approved by the CoC in its commercial wisdom. As submitted by respondent in his earlier response the insolvency commencement date of the Corporate Debtor is 20<sup>th</sup> July 2018, and as per the 2nd CoC dated 25<sup>th</sup> September 2018, fee of INR 36 lacs was approved as a consolidated amount for IRP/ RP

and his process advisors, of which INR 32 lacs pertained to fee of EYRL. Accordingly, while filling information in Form III, the fee of INR 32 lacs paid to EYRL was duly mentioned under the fee paid to the then IPE. After its de-recognition on 28 September 2018, all the future fees paid to EYL were reflected under fee paid for Support services.

**4.2. Findings-** DC notes that respondent has been able to provide satisfactory justification for appointing EYRL for providing support services and Bagchi & Gupta for conducting 29A checks. Hence, DC cannot hold respondent guilty for appointing different professional based on the determination of the skill set required for the work, also where the fee for such professionals were duly approved by the CoC. Since, the CoC in exercise of its commercial wisdom approved the fees charged by the professionals and so long as the fee being charged are reasonable within the said Circular and are not an overwhelming burden on the CD, no contravention could be made out of the Code and the Regulations made thereunder.

**4.2.1** In respect of charge pertaining to non-ratification of fee by the CoC, for amounting of Rs. 32 lacs paid to IPE, as per Form III, DC notes the submission of the respondent that fee of INR 36 lacs was approved as a consolidated amount for IRP/ RP and his process advisors, of which INR 32 lacs pertained to fee of EYRL. Accordingly, while filling information in Form III, the fee of INR 32 lacs paid to EYRL was duly mentioned under the fee paid to the then IPE. After its de-recognition on 28 September 2018, all the future fees paid to EYL were reflected under fee paid for Support services.

**4.2.2** In view of the foregoing, the DC accepts the submissions of the respondent.

**5.0 Contravention-** As per Regulation 24 of the Insolvency Resolution Process for Corporate Persons Regulation 2016, at the commencement of the meeting the resolution professional (RP) will act as the chairman of the Committee and shall take a roll call. However, it is noted that Mr. Shailendra Ajmera, a partner with EYRL, who was assisting respondent to provide advisory and support services, conducted the roll call during the first CoC meeting.

**5.1 Submissions by Mr. Kuldip Kumar Bassi** - Respondent in this regard submitted that at the time of said CoC meeting, he was under the weather and was having difficulty in addressing a large audience. Therefore, after taking the chair as the IRP and after welcoming all the participants, respondent introduced the IRP support team led by Mr. Shailendra Ajmera and instructed Mr. Shailendra Ajmera to take the roll call of the participants. Therefore, the roll call taken by Mr. Ajmera was done under the respondent instructions and on his behalf and only because respondent was finding it difficult to address the large audience.

**5.1.1** Respondent further submitted that he asked Mr. Ajmera to take the roll call on account of his ill health in one of the CoC meetings, it does not imply outsourcing of duties by him or non-compliance of IP Regulations by him.

**5.2 Findings-** In the instant matter DC notes the submissions made by the respondent and finds that respondent under exceptional circumstances had allowed Mr. Ajmera to take a roll call in the first CoC meeting i.e. on account of his ill health. Given the circumstances as explained, DC is inclined to take a lenient view for the contravention made by the respondent. However, advises the respondent to be more careful in future.

**6.0 Contravention-** It is observed that as per the scheme of Insolvency and Bankruptcy Code any dues pertaining to pre-CIRP period must be admitted as a claim. However, based on the minutes of the 27<sup>th</sup> CoC meeting it was noted that a payment of Rs. 1.81 Crores have been made to different transporters against the total pre-CIRP dues of Rs. 2.49 Crores. Also, GST liability of Rs. 42.21 lakhs for the period 2017-18 was paid to enable filing of annual GST returns.

**6.1. Submissions by Mr. Kuldip Kumar Bassi** - The respondent in this connection submitted that the Code envisages the IRP/ RP to maintain the Corporate Debtor as a going concern. This is the primary duty of the IRP/RP. While running operations of such complex nature, the IRP/ RP is often faced with taking quick decisions to ensure the going concern status of the company and to preserve and protect these assets. As mentioned previously, ACCIL had various plants with specialized steel coating operations. The plants of ACCIL are 'continuous' plants – this means that the plant cannot be shut down at any point in time and any disruption of its operations could prove to be fatal to the going concern status of the corporate debtor.

**6.1.1** Respondent further submitted that payments to transporters were considered imperative by respondent to ensure continuous operation of the plants, given the blockage of entry and exit gates by them. Faced with imminent disruption and given the ground realities, in line with his primary responsibility under the Code to keep the Corporate Debtor as going concern, and his assessment of the costs and benefits, some payments were made against their dues. Timely payments helped in resolving the situation. Please note that this was also duly informed to the CoC.

**6.1.2** Respondent further submitted that making these payments at the right time enabled the business of the Corporate Debtor to continue as a going concern. It is further submitted that the intent of the law is succinctly captured in the preamble to the Code, which states as follows:

*“ to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto ”.*

**6.1.3** Respondent further submitted that the rationale behind Section 14 is to preserve the assets and ensure value maximization. The decision taken by him to make certain payments to ensure going concern was for time-bound resolution and maximization of value of assets while balancing interests of all stakeholders – in line with the Preamble to the Code. While [INR 1.3 Cr] were paid to transporters, overall, due to the efficiency and work done by respondent and his team, the cash and bank balance of CD increased from INR 2 crores to more than INR 400 crores during the tenancy of the CIRP. This was possible due to brave and business-oriented decisions taken by respondent in the overall best interest of the CD's business and the CoC was also presented with cash flows of the CD during CIRP from time to time.

**6.1.4** Respondent further submitted that the actions taken by him in good faith for maximizing value and to protect the interests of all stakeholders not only led to increased efficiency and

value in the business but also suitably led to a successful conclusion of the CIRP, wherein, INR 1,500cr+ got paid to the stakeholders as part of the insolvency resolution and protected the livelihoods of the more than 1000 persons employed at the Corporate Debtor along with their families.

- 6.1.5** Respondent further submitted that the payments made to the GST department to enable filing of the annual GST returns and hence in compliance with law. It may be noted that the CIRP of the Corporate Debtor was initiated in July 2018 and the issues under the GST law for companies undergoing CIRP was only clarified by the Government in April 2020. Therefore, at that point in time there was no option before the IRPs/RPs but to pay the previous GST dues in order to enable filings for the CIRP period. It is a known fact that such dues were being paid by the IRPs/ RPs so as to ensure compliance with law and without such payment, subsequent filings were not possible.
- 6.1.6** Respondent further submitted that to ensure compliance with law and to preserve the value of ACCIL, he deemed it fit to make such GST payments. Apart from ensuring compliance with law, such payments also benefited the operational creditors of the Corporate Debtor who provided services during CIRP as could also gain the benefit of the GST outputs/refunds.
- 6.1.7** Respondent further submitted that due to his efforts the cash and bank balances of the Corporate Debtor increased from INR 2 crores to more than INR 400 crores. Respondent strongly refutes the allegations that merely because he made certain payments to transporters to ensure continuous operations of the plant and payments for GST dues to comply with law, he became non-compliant with the provisions as quoted.
- 6.1.8** Respondent further submitted that IRPs/ RPs ought not to be penalized for taking hard calls for keeping the Corporate Debtor as a going concern and to avoid any monetary loss to the Corporate Debtor basis their assessment of ground reality.
- 6.1.9** Respondent further submitted that such issues were discussed with the members of the CoC (at the relevant time). Hence, fully transparency was maintained with regards to these payments, which itself shows that there was no mala fide intention or wrongdoing on respondent part.

**6.2 Findings-** The DC notes that section 14 of the Code provides in express terms, prohibition of certain actions against the corporate debtor which may interrupt the resolution process except the supply of essential and critical services. Section 14 of the Code reads as follows:

***“14. Moratorium.***

- (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -*
- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
  - (b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
  - (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the*

*Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

*(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

*Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;*

*(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

*(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances.*

*(3) The provisions of sub-section (1) shall not apply to — (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority; (b) a surety in a contract of guarantee to a corporate debtor.*

*(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

*Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”*

**6.2.1.** The provision on ‘Moratorium’ envisages prohibition on transfer, alienation or disposal of any of the assets or legal right or beneficial interest of the CD. The moratorium under the Code refers to the period wherein no judicial proceedings for recovery, enforcement of security interest, sale or transfer of assets, can be instituted or continued against the CD. The moratorium mechanism facilitates the continued operation of the business and allows the debtor a breathing space for re-organising its affairs. The BLRC in its report has made following observations:

*“...One of the goals of having an insolvency law is to ensure the suspension of debt collection actions by the creditors and provide time for the debtors and creditors to re-negotiate their contract. This requires a moratorium period in which there is no collection or other action by creditors against debtors.”*

**6.2.2.** As an RP, respondent should ensure that CIRP is conducted as per the provisions of the Code and Regulations made thereunder. It has to be understood that conduct and performance of a RP have a substantial bearing on the survival of an ailing entity. He, therefore, is expected to function with a strong sense of urgency and with utmost care and diligence. Moreover, if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that

which has been prescribed. The principle behind the Rule is that if this was not so, the statutory provision might as well not have been enacted. Section 14 of the Code, therefore, by necessary implication, prohibits this power from being exercised in any manner other than the manner set out in the said provision of the Code.

3.3.10. The DC notes that there cannot be an exceptional or special treatment to any corporate entity in any CIRP. While reinforcing the rule of law, every stakeholder is to be given the same level playing field, irrespective of its size or the influence of people behind them. Under the existing laws, once CIRP is initiated against a CD and a moratorium is imposed, the provisions of the Code take precedence over all other laws of the country. In the instant case, payment of pre-CIRP dues to the certain transporters and GST liability of the CD and that too in preference of other creditors had the effect of causing disturbance in the moratorium as envisaged in the provisions of section 14 of the Code. The resolution process will be rendered meaningless, if the assets of the CD are allowed to be disintegrated during the process. The adjudicating authority is required to declare moratorium under section 14(1) of the Code which commences with the commencement of the CIRP. The purpose of instant stay is to prevent fleecing of the debtor's assets before orderly distribution to creditors can be affected.

**6.2.3.** In present case, the DC notes the submission of respondent that payments to transporters were considered imperative by respondent to ensure continuous operation of the plants, given the blockage of entry and exit gates by them. Faced with imminent disruption and given the ground realities, in line with his primary responsibility under the Code to keep the Corporate Debtor as going concern, and his assessment of the costs and benefits, some payments were made against their dues. Timely payments helped in resolving the situation. DC also notes that the said issue was duly informed to the CoC by the respondent. However, there is no evidence on record to suggest that respondent had approached to AA on the issue to seek directions.

**6.2.4** DC further notes the submission of the respondent that the payments were made to the GST department to enable filing of the annual GST returns and hence compliance with law. It may be noted that the CIRP of the Corporate Debtor was initiated in July 2018 and the issues under the GST law for companies undergoing CIRP was only clarified by the Government in April 2020. Therefore, at that point in time there was no option before the IRPs/RPs but to pay the previous GST dues in order to enable filings for the CIRP period. It is a known fact that such dues were being paid by the IRPs/ RPs so as to ensure compliance with law and without such payment, subsequent filings were not possible.

**6.2.5** In view of the submission made by respondent, and materials available on record, DC notes that respondent has violated section 14(1)(b) and 208(2)(a) of the Code, regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clause 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct) for payment of pre-CIRP expenses during Moratorium. The contravention in terms of payment of pre-CIRP dues to the transporters in violation to the statute is established beyond doubt which is not consistent with section 14 of the Code. The point to be considered is whether such contravention can be ignored as it stems from the actions which are firstly not taken with any mala fide intention and secondly are taken as a requirement arising from commercial judgement to run the CD as a going concern. There are no evidences which can raise doubts about intentions of the respondent for not being bona fide. The case for running the CD as a going concern is strong, and evidence suggests that payment of pre CIRP dues became of crucial importance to keep the CD as going concern. DC also notes the overall progress of the CIRP of the CD resulting

into resolution and thus takes lenient view. However, procedural lapses about not informing the CoC about the requirement of the Code and not approaching to AA to seek directions for such payments points towards dereliction of duty by respondent. Hence, DC hereby strictly advises respondent for avoiding such contraventions in future and to be mindful of following provisions of the law in letter and spirit, and approaching AA for directions, if any diversions are encountered.

**7.0 Contravention-**It was observed from the minutes of the 3<sup>rd</sup> CoC meeting that respondent sought approval for the remuneration of the persons who were erstwhile-Key Managerial Personnel (CEO, CFO & CS) of the CD, and it was mentioned that these officers were attending the office to discharge their duties and remuneration was paid to them. It was prima facie taken as a violation because respondent failed to supply sufficient documents clarifying the duties/responsibilities assigned by respondent to these erstwhile-KMPs to support his response, submitted to IA.

**7.1. Submissions by Mr. Kuldip Kumar Bassi -** Respondent submitted that commencement of CIRP does not mean termination of appointment of KMPs such as the CEO, CFO & CS. It may be noted that Section 17 (1) (c) of the Code provides that upon appointment of the IRP, the *“officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional”*. This makes it clear that the existing management and officers of the company are required to continue to discharge their duties and that they will report to the IRP/RP. This is because the powers of the board of directors is suspended and is to be exercised by the IRP/ RP. Therefore, the duties of the existing KMP continue and consequently, they are required to be paid remuneration.

7.1.1. Respondent further submitted that it is well settled now (through multiple precedents and orders of DC itself), that only powers of the board of directors get suspended (and vested in IRP) and not their duties. Similarly, the powers of the management vest in IRP and this does not mean that the duties of various personnel and KMPs of the CD also come to end. Section 17 (1)(c) which makes it clear that the duties of officers of the CD continue and that they are to report to the IRP/ RP.

**7.1.2** Respondent further submitted that Section 28 (1)(f), a related party transaction required CoC approval, which was duly taken by respondent for payment of remuneration to the KMPs. Hence, there was no violation in continuing the role of KMPs or payment of their consideration.

**7.1.3.** Respondent further submitted that the role of these KMPs continued and the CoC was duly apprised of the same and considering the same, the remuneration to these KMPs was approved by the CoC under Section 28 of the Code.

**7.2 Findings-** - DC notes that respondent has been able to provide satisfactory justification for continuing the KMPs during CIRP. Hence DC cannot hold respondent liable for the contravention, as alleged.

## **B. Lakshmi Energy and Food Private Limited.**

**8.0 Contravention-** In the CIRP of Lakshmi Energy and Foods Limited, it was noted from the minutes of the 5th CoC meeting that the advisor of the erstwhile IRP i.e. EY LLP recommended respondents name as RP and later he was appointed as RP in the CIRP of the CD. Further post respondents' appointment as RP he proceeded to continue the services of EY LLP without considering appointment of other registered IPEs for which an amount of Rs. 2,95,43227 (24.5 lakh per month) was paid to EY LLP. Thus, the fee paid to EY LLP appears to be unreasonable and not in consonance with Circular No. IBBI/IP/013/2018 dated 12-06-2018. It was prima facie taken as a violation, as respondent failed to supply sufficient documents to support the diligence which he had exercised while continuing the services of EY LLP.

**8.1. Submissions by Mr. Kuldip Kumar Bassi** - In response to this allegation respondent submitted that, EYLLP had assisted him/ IRP in the following:

1. Assistance in Preparation of process / information memorandum and IEOI
2. Assistance in Marketing of the CD and pitching the opportunity to invest in the CD with various PRAs
3. Assistance in Preparation of evaluation matrix
4. Discussions with prospective resolution applicants and assistance in answering their queries with respect to the CD.
5. Assisting in presenting the Resolution Plan to the CoC and summarizing the critical components
6. Assistance with discussions and engaging with external consultants such as Legal Counsel, Transaction Auditor, security agency etc.
7. Assistance with engaging with CoC Members and attending all CoC Meetings
8. Assisting in claim verification (to the extent possible)
9. Assisting in preparation of applications/ forms, legal strategy in consultation with Legal Counsel.

**8.1.1** Respondent further submitted that despite the ongoing non-cooperation by the Promoter, the verbal and physical threats and lack of information, possession and control of the assets of Corporate Debtor, 4 (Four) Prospective Resolution Applicants formed part of the Final List, pursuant to which, 1 (One) Resolution Plan was submitted for the Corporate Debtor and the same was evaluated, negotiated and placed before the CoC for their consideration. However, the said resolution plan was rejected by the CoC Members in their commercial wisdom.

**8.1.2** Respondent further submitted that the erstwhile IRP (appointed by the Hon'ble National Company Law Tribunal), in the 2nd Meeting of the CoC had informed the CoC Members that he will not be able to provide his written consent to act as the RP on account of personal reasons. Notably, EYLLP had been appointed by the erstwhile IRP to provide assistance to him during the CIRP. It was noted by respondent through review of minutes of CoC meetings conducted before his tenure by the erstwhile IRP that post receiving information from the erstwhile IRP about his inability to continue as RP, various discussions took place in the CoC meetings regarding appointment of new RP.

**8.1.3** Respondent The circumstances leading to his appointment and appointment of EYLLP are recorded in the meetings of the CoC and hereunder .:

- a. **In the 3rd CoC Meeting** the CoC Members invited Mr. Tara Chand Meenia from ARCK Resolution Professional LLP to deliberate on the appointment of the RP.
- b. **In the 4th CoC Meeting** the CoC deliberated on appointment of Mr. Tara Chand Meenia as the Resolution Professional and ARCK Resolution Professionals LLP as the Insolvency Professional Entity, at a fee of INR 1.5 Lakhs and 3.5 Lakhs per month respectively. The said resolution was placed for voting and **the resolution failed to garner the requisite voting percentage as PNB (the lead member of the CoC) abstained from voting.** Hence, the CoC, in its commercial wisdom, did not approve appointment of the said insolvency professional as the RP and said IPE as support service provider even though they had quoted a lesser amount for the assignment.
- c. **In the 5th CoC Meeting, the CoC Members themselves sought suggestions and details of Insolvency Professionals who would be willing to be appointed as the Resolution Professionals of the Corporate Debtor from EY that was also present in the meeting as the advisor of IRP.** Upon such request being made, EY made suggestions for consideration of the CoC. Respondents name was also suggested as one of the IPs by EY. After discussions, the CoC proceeded to place the following for approval:
  1. ***“Mr. Tara Chand Meena to act as the RP and ARCK Resolution Professionals LLP as the Insolvency Professional Entity (IPE). The fee for the RP and IPE would be INR 1.5 Lakhs per month and 3.5 Lakhs per month respectively (excluding taxes and out of pocket expenses).***
  2. ***Mr. Kuldip Kumar Bassi to act as the RP and EY restructuring LLP as the Advisor. The fee for the RP and its Advisor would be INR 6 Lakhs per month and 24 Lakhs per month respectively (excluding taxes and out of pocket expenses).***
  3. ***Mr. Chandra Prakash to act as the RP and EY Restructuring LLP as the Advisor. The fee for the RP and its Advisor would be INR 6 Lakhs per month and 24 Lakhs per month respectively (excluding taxes and out of pocket expenses)”***

Notably, the Minutes of the 5th CoC meeting record that **“PNB proposed that all the three insolvency professionals may be considered by the CoC and one will be selected. The IRP team accordingly proceeded to step outside the Meeting Room to enable effective discussions on the same. Post such deliberations, the IRP and its Team was informed by the CoC that all members of CoC had agreed to the proposal of PNB to put names of all three insolvency professionals for voting.”**

The resolutions for appointment of the Resolution Professional and its Advisor again failed to garner the 66% voting percentage (PNB and Syndicate Bank abstained from voting).

- d. **In the 6th CoC Meeting**, the CoC resolved to approve respondents appointment as the Resolution Professional, along with EY as the Advisor in its commercial wisdom. It may be noted that the 6th CoC Minutes clearly state that the RP and the RP Advisor’s support fee shall be INR 5.5 Lakhs / month and INR 24.5 Lakhs / month.

**8.1.3** Respondent further submitted that as far as respondent continuing with EY is **concerned, it may be noted that Section 25(2)(d) of the Code authorizes the RP to appoint** accountants, legal or other professionals. Further, the RP may also appoint an IPE to assist him in any assignment. This decision is left to the discretion of the Insolvency Professional, with fees to be ratified with the CoC. In respondent wisdom, based on his experience of working with EY and given that EY was already familiar with the case, he appointed EY as the IPE.

**8.1.4** Respondent further submitted that as regards the cost/ fee of EY, , merely because bids from other IPEs were not called, it does not ipso facto mean that the fee of EY was not reasonable or that respondent has not complied with the Code or regulations or Code of Conduct. There is no provision in applicable regulations that required him to undertake a bid process for appointment of a support service provider and it was permissible for him to appoint an advisor basis expertise of an entity coupled with respondent experience of working with them in the past. Notably, the CoC approved the costs of EY as the Advisor and hence was also satisfied with the reasonableness of the fee

**8.1.5** Respondent also submitted that the Code and the regulations provide adequate safeguards, in the form of approval/ ratification of fee by the CoC as CIRP cost in respect of appointment of any advisor/ IPE by the RP since such process ensures that CoC has also assessed the reasonableness of costs. The decision of CoC is based on assessment of what they perceive to be in the interest of the best outcome of the CIRP at the time of taking the decision.

**8.1.6** Respondent also submitted that the CoC in exercise of their commercial wisdom and being alive to the scope of work and their assessment of complexity of the CIRP, have duly approved/ratified the fee of EY.

**8.2 Findings-** DC notes that respondent has been able to provide satisfactory justification for continuing EYRL post his appointment as RP. Hence, DC cannot hold respondent guilty for contravention, as alleged. DC notes that since, the CoC in exercise of its commercial wisdom approved the fees charged by the professionals and so long as the fee being charged are reasonable within the said Circular and are not an overwhelming burden on the CD, no contravention could be made out of the Code and the Regulations made thereunder.

**9.0 Contravention-** It was observed that in the CIRP of Lakshmi Energy and Foods Limited, it was recorded in the minutes of the 15<sup>th</sup> CoC meeting that cost was ratified by the CoC, since the same was contributed by CoC. Whereas at the same time it was also recorded in the minutes at various places that the cost was not ratified by the CoC. Thus, it appears that respondent did not record the decisions of the committee properly in the minutes. Also, respondent did not provide the voting sheets for decisions recorded in the minutes. Below is the table highlighting the costs (in column D) which seem to be not approved/ratified by the CoC, to the extent mentioned in the said column amounting to approx. Rs. 31,11,804.

Particulars	(A) Ratified CIRP Cost as per item no. 24 of 15 <sup>th</sup> CoC meeting dated 28-09- 2020	(B) Cost presented for ratification as per item no. 25 of 15 <sup>th</sup> CoC 28-09-2020	(C) Cost mentioned in form III	(D) Cost which has been termed as ratified however they are not ratified.

Tranche 1				
Fee of valuer 1	1,50,000			1,50,000
Fee of valuer 1	2,75,000			2,75,000
Fee of transaction Auditor	4,95,000			4,95,000
Cost of PA and EOI	1,45,000		3,78,664	3,78.664
Tranche 2				
Fee of Advocate (February 2020 to September 2020)	24,00,000	24,00,000	21,00,000	21,00,000
OPE of Legal advisors	54,000	54,000		54,000
Advance of Surveyors	1,00,000	1,00,000	1,36,000	1,00,000
Fee of e-voting agency (for on CoC meeting)	5900	5900		5900
Website creation charge	25,000	25,000	79,000	79,000
Publication of form G revised	1,74,240	1,74,240		1,74,240
Tentative cost   of immediate repair of shed and boundary wall	15,74.880			
Tentative cost - of insurance premium for the year 2020-21		40,00,000		

**9.1. Submissions by Mr. Kuldip Kumar Bassi-** In respect of this allegation, the respondent submitted that the CIRP costs were paid only basis ratification/ approval of the CoC. Further, the CD had no funds and hence, the CIRP costs were contributed by the CoC members. Since the CoC members themselves paid for CoC costs, it is evident that the CoC had approved such costs.

**9.1.1** Respondent further submitted that he did not record the decisions in 15th CoC minutes, he submit that all discussions/ decisions were duly recorded in the CoC meetings and the minutes.

**9.1.2** Respondent further submitted that since the CD had no funds of its own, costs had to be contributed by the CoC members themselves. Unfortunately, no clear stand was being taken

by the CoC members in the meetings. On account of this, various advisors including legal counsels were providing services to respondent without getting paid since it was critical for him to be represented before the NCLT. Notably, the members appreciated that such costs would need to be paid and contributed by them.

**9.1.3** Respondent further submitted that in the 14th CoC meeting, he once again presented various CIRP costs for ratification which included costs and OPE of legal counsel, publication of Form G and revised Form G, cost of e-voting agency etc. During the meeting, PNB and Canara Bank ratified the costs subject to approval of their respective higher authorities.

**9.1.4.** Respondent further submitted that at the request of the CoC members, details of Tranche 1 and Tranche 2 were shared with the CoC members after the 14th CoC meeting. In the 15th CoC meeting (which was the second last meeting of the CoC in the CIRP), the RP informed the CoC members that costs have been shared and also shared Tranche 1 and Tranche 2 of the CIRP costs.

**9.1.5** Respondent also submitted that Tranche 1 costs as mentioned in the Table set out in the SCN had been ratified by the CoC earlier and therefore, in the table set out under Tranche 1 at para 24, the said costs are showing under Ratified CIRP cost. These are:

a. Fee of Valuer 1: Cost were ratified in the 2nd CoC Meeting.

b. Fee of Valuer 2: Cost were ratified in the 2nd CoC Meeting

c. Fee of Transaction Auditor: Costs ratified in the 6th CoC Meeting.

d. Cost of PA and EOI:

- Cost of PA was ratified in the 6th CoC Meeting

- Cost of EOI: This is the first EOI that was issued, and this cost was ratified by the CoC in the 9th CoC meeting.

**9.1.6** Respondent further submitted that in view of aforesaid, the observation made in the Table shared by the DC with respect to Tranche 1 is incorrect as these costs had been ratified much earlier. As regards the discrepancy between the costs of PA and EoI and Cost mentioned in column (A) and mentioned in column (C) (cost in Form III), please note that the cost of PA and EoI mentioned in column A relates to only Tranche 1 and only to the first EoI which was published on 10 March 2020. However, in the present case, the EOI was revised and published on 13 March 2020 and 31 March 2020. The Cost in Form III includes costs of publication of these EOIs as well.

**9.1.7** Respondent further submitted that as per Tranche 2 mentioned in the Table in the SCN, please note that these costs were presented for ratification during the 14th CoC meeting. In the said meeting, the CoC members stated that the costs are ratified subject to approval of higher authorities and that the same will be released by them upon such ratification. Since respondent had not been informed by the banks of receipt of approval of their higher authorities, he once again put up such costs for ratification of the CoC members so as to ascertain if their internal approvals have been received. To which, PNB assured that the proposal for ratification of the costs has been shared with the appropriate authority and that the approvals shall be received in the coming few days.

- 9.1.8** Respondent also submitted that the 15th CoC meeting was the second last meeting of the CoC conducted on September 28, 2020, while the liquidation application was filed by respondent on October 9, 2020.
- 9.1.9** Respondent further submitted that in the 15th CoC meeting, he was informed by the banks of receipt of their internal approvals pursuant to which the CoC members themselves released and contributed the CIRP costs (including Tranche 1 and Tranche 2). Given that the CoC members had ratified the costs subject to internal approvals and further given that the CoC members, after the 15th CoC meeting, themselves released the costs after obtaining their approvals, he was under the belief that no further ratification or approval of the CoC members is required.
- 9.1.10** Respondent further submitted that eventually, the CoC released only 21 Lakh towards the legal counsel fee since they sought a further discount from the legal counsel and the legal counsel was agreeable to the said discount in the interest of closing the matter expeditiously.
- 9.1.11** Respondent further submitted that with regard to allegation that he did not provide the voting sheets for the decisions recorded in the minutes of the CoC meetings, The minutes of the meetings along with voting results have been duly shared earlier. However, again enclosed all the CoC Minutes and their respective voting results for the DCs ready reference.
- 9.1.12** Respondent further submitted that, in the minutes of the 14th CoC Meeting, Punjab National Bank and Syndicate Bank informed that costs have been ratified subject to approval of their respective authorities.
- 9.1.13** Respondent further submitted that the fee of the legal counsel and other expenses were released by the CoC members after the conclusion of the CIRP. Hence it is evident that the CoC members received approval of their respective authorities else they would not have released the amounts with respect to such costs and expenses.
- 9.1.14** Respondent further submitted that once he received the monies from the CoC, he accordingly released the payments to the concerned professionals. It is pertinent to note that when he took over the Corporate Debtor the plants of the Corporate Debtor were shut for the past 3-4 years, there was no cash balance available with the Corporate Debtor. Notably all these payments were made to the professionals, once these payments were contributed by the members of the CoC in the bank account of the Corporate Debtor.
- 9.2. Findings-** 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.”*

**9.2.1** Further DC notes the submission of the respondent that the CIRP costs were paid only basis ratification/ approval of the CoC. Further, the CD had no funds and hence, the CIRP costs were contributed by the CoC members. Since the CoC members themselves paid for CoC costs, it is evident that the CoC had approved such costs.

**9.2.2** DC further notes the submission of the respondent that the costs were presented for ratification during the 14th CoC meeting. In the said meeting, the CoC members stated that the costs are ratified subject to approval of higher authorities and that the same will be released by them upon such ratification. Since respondent had not been informed by the banks of receipt of approval of their higher authorities, he once again put up such costs for ratification of the CoC members so as to ascertain if their internal approvals have been received. To which, PNB assured that the proposal for ratification of the costs has been shared with the appropriate authority and that the approvals shall be received in the coming few days.

**9.2.3** DC further notes the submissions of the respondent that in the 15th CoC meeting, he was informed by the banks of receipt of their internal approvals pursuant to which the CoC members themselves released and contributed the CIRP costs (including Tranche 1 and Tranche 2). Given that the CoC members had ratified the costs subject to internal approvals and further given that the CoC members, after the 15th CoC meeting, themselves released the costs after obtaining their approvals, respondent was under the belief that no further ratification or approval of the CoC members was required.

**9.2.4** In view of the foregoing, DC accepts the submissions of the respondent. However, advises the respondent to be more careful and diligent while fulfilling any obligation under the Code.

**10.0 Contravention-** Section 12 of the Code states that:-

*(1) “subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.”*

*(2) “The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred*

*and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 1 [sixty-six] per cent. of the voting shares.*

*(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:*

*Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once:*

*Further section 25 (1) of the Code provides that "It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor."*

In view of the foregoing provision, it is apparent that the CIRP is a time bound process and thus Code and its allied Regulations casts a duty upon an insolvency professional that he must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan its actions, and promptly communicate with all stakeholders involved for the timely discharge of its duties. However, in the CIRP of Lakshmi Energy and foods Limited it is noted that respondent was appointed as resolution professional (RP) vide NCLT order dated 27-02-2020 and he filed an application u/s19(2) against the suspended management on 23-06-2020 after a lapse of 4 months, despite the fact that the erstwhile IRP informed him about the hostile attitude of the promoters of the CD.

**10.1 Submissions by Mr. Kuldip Kumar Bassi** - Respondent submitted that he was appointed as the RP only vide NCLT Order dated 27 February 2020. Post his appointment, he had proceeded to take charge of the CIRP by entering into discussions with the IRP and the advisors appointed for handover of the documents.

**10.1.1** Respondent further submitted that accordingly post his appointment on 27 February 2020, he proceeded to inform the Promoter of his appointment and shared an information request list vide email dated March 03, 2020. Vide the said e-mail he also informed the Promoter that respondent will be visiting the factory site at Khamanon Punjab on 07 March 2020 and requested the promoter to be present during the visit as well. This has also been recorded in the Minutes of the 8th CoC Meeting (March 06, 2020).

**10.1.2** Respondent further submitted that he visited the Site at Khamanon Punjab on 07 March 2020, following which, vide email dated 20 March 2020, he sought certain information from the Promoter of the CD.

**10.1.3** Respondent further submitted that vide email dated 23 March 2020 he once again requested the Promoter to provide him with requisite information along with another information request which was given to the respondent by the valuers conducting the valuation of the CD.

- 10.1.4** Respondent further submitted that in March, the whole of India started coming under the grip of COVID 19 and Central Government announced a nationwide lockdown from 24 March 2020 due to COVID 19. There was large scale disruption of business and human tragedies started mounting.
- 10.1.5** Respondent further submitted that On 20 April 2020 (w.e.f. 29 March 2020), the IBBI introduced Regulation 40C in the CIRP Regulations which provided that *“Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”* As well as the Supreme Court also passed a suo-moto order, excluding Covid period from limitation for filing any suits/ proceedings etc.
- 10.1.6** Respondent further submitted that all courts immediately got shut on account of COVID-19 lockdown and thereafter, slowing started putting protocol and procedures for online hearings for very urgent matters as far as the Hon’ble NCLT is concerned, initially there was no procedure to file an application and the e-filing portal got introduced in 2020-2021. Once the Hon’ble NCLT procedure got streamlined, the Hon’ble NCLT started hearing urgent applications and also started granting exclusion of timelines in light of difficulties faced by the litigants.
- 10.1.7** Respondent further submitted that despite various hurdles, the respondent file an application (through email to the Registrar, National Company Law Tribunal Chandigarh, as there was no prescribed procedure to file applications) on 26 May 2020. The said application also details the efforts taken by the RP to gather information before filing the Section 19 Application. Kindly note that despite the restrictions in the lockdown (which also included the restrictions on functioning of NCLTs and filing of documents) Section 19 application was duly filed before the NCLT in a timely manner.
- 10.1.8** Respondent further submitted that in such circumstances, the 4 months period (of which more than 3 months were part of first wave of COVID) from appointment of RP till filing of application under Section 19 cannot be considered as a ‘delay’ on the part of the RP so as to invite penalties.
- 10.2 Findings-** The DC notes the submission of respondent that he was only appointed as RP in the said CIRP and post his appointment as RP on 27 February 2020, he informed the Promoter of his appointment and shared an information request list vide email dated March 03, 2020. Vide the said e-mail he also informed the Promoter that respondent will be visiting the factory site at Khamanon Punjab on 07 March 2020 and requested the promoter to be present during the visit as well. This has also been recorded in the Minutes of the 8th CoC Meeting (March 06, 2020).
- 10.2.1** The DC further notes the submission of the respondent that in March, the whole of India started coming under the grip of COVID 19 and Central Government announced a nationwide lockdown from 24 March 2020 due to COVID 19. There was large scale disruption of business and human tragedies started mounting.
- 10.2.2** The DC further notes the submission of the respondent that all courts immediately got shut on account of COVID-19 lockdown and thereafter, slowing started putting protocol and

procedures for online hearings for very urgent matters as far as the Hon'ble NCLT is concerned, initially there was no procedure to file an application and the e-filing portal got introduced in 2020-2021. Once the Hon'ble NCLT procedure got streamlined, the Hon'ble NCLT started hearing urgent applications and also started granting exclusion of timelines in light of difficulties faced by the litigants.

**10.2.3** The DC further notes the submission of the respondent that despite various hurdles, the respondent file an application (through email to the Registrar, National Company Law Tribunal Chandigarh, as there was no prescribed procedure to file applications) on 26 May 2020. The said application also details the efforts taken by the RP to gather information before filing the Section 19 Application. Kindly note that despite the restrictions in the lockdown (which also included the restrictions on functioning of NCLTs and filing of documents) Section 19 application was duly filed before the NCLT in a timely manner. The DC notes that the pandemic situation is as an exceptional circumstance and accepts respondents' contention as the pandemic situation was beyond his control and the same appears to have caused interruption in filing section 19(2) application. Therefore, the DC takes a lenient view.

**11.0 Contravention-** As per Regulation 46 of the SEBI (LODR) regulations, 2015, *the list entity shall maintain a functional website containing the basic information about the listed entity*

Further Section 17 (2) (e) of the Code provides that the "interim resolution professional vested with the management of the corporate debtor shall be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor."

In view of the foregoing provision, it is noted that the website of the CD was not operational, and CD being a listed entity must have a functional website containing the basic information about the listed entity. In this connection respondent submitted before IA that he formed a new website during CIRP and since the website maintenance entails monthly expenses and the CD did not have cash flows, the website was discontinued after the CIRP of the CD. In this regard DC notes that respondent failed to provide the requisite information/records to prove the compliance of the above provisions.

**11.1. Submissions by Mr. Kuldip Kumar Bassi** - In response to this allegation respondent submitted the following:

- a. That the CIRP of CD ended and its liquidation commenced *vide* NCLT Order dated 26 July 2021. Further, respondent was discharged as the Liquidator of the CD *vide* Order dated 07 July 2022 passed by the NCLT.
- b. That since the access to the earlier website of the Company was not provided to respondent by the Promoter, respondent had engaged a vendor to create the website of the Company so that compliances can be done and Form G, list of creditors and other information can be uploaded on the website in compliance with the provisions of the Code.
- c. That it appears that the website created for the CD was discontinued after I was discharged as the Liquidator. (*emphasis supplied*).

- d. That the DC cannot reasonably require a former RP / Liquidator to maintain a website of the Corporate Debtor at his own expense after he has been duly discharged from such responsibilities under the Code.
- e. That as regards the allegation that respondent had not provided evidence of creation of a new website of the Corporate Debtor, following are the evidence proving creation of the website:

- I. Communication sent to (an operational creditor) dated August 26, 2020, wherein the creditor has been asked to refer to the website of the Corporate Debtor for the status of claims and other documents regarding the ongoing CIRP.
- II. Communication sent to Punjab State Warehousing Corporation (an operational creditor) dated February 25, 2021 wherein the creditor has been asked to refer to the website of the Corporate Debtor for the status of claims and other documents regarding the ongoing CIRP.
- III. The Minutes of the 15th CoC Meeting record that a ratification of the cost incurred during CIRP was sought by the RP. The notes for ratification of cost expressly state as under:

*The Code stipulates for the RP to upload various documents such as Public Announcement, Status of Claims on the website of the CD. The promoter has not uploaded the documents on the website despite requests and later the website has been disabled. The RP has accordingly created a new website of the CD to maintain compliances with the Code and regulations.*
- IV. The Minutes of the 15th CoC also reflect that the cost for creation of the website was placed for ratification.
- V. The Minutes of the 14th CoC also reflect that the cost for creation of the website was placed for ratification. Further the discussion deck and ratification of cost as shared with the CoC members post the 14th CoC Meeting also records as under:

*The Code stipulates for the RP to upload various documents such as Public Announcement, Status of Claims on the website of the CD. The promoter has not uploaded the documents on the website despite requests and later the website has been disabled. The RP has accordingly created a new website of the CD to maintain compliances with the Code and regulations.*
- VI. The cost disclosure in Form 3 reflects the cost for creation of a website.
- VII. The invoice issued by the website developer – Mr. Mridul Goel.

**10.1.1** Respondent further submitted that since the website of the Corporate Debtor is not operational post his replacement as the liquidator of the Corporate Debtor, such action/-in-action for not maintaining the website by any other person cannot be attributed to respondent, as he is not the liquidator of the Corporate Debtor any-more.

**10.1.2** Respondent further submitted that, all requisite evidence of creation of website was shared by respondent with the IO and the same are enclosed again for the DCs ready reference.

**11.2 Findings-** Under the Code, RP plays a central role in resolution process of the CD, he is appointed by the AA as an officer of the Court to conduct the resolution process and it is the duty of RP to conduct CIRP with integrity and accountability in the process and to take reasonable care and diligence while performing his/her duties. Therefore, it becomes imperative for an IP to perform his duties with utmost care and diligence.

**11.2.1** In the instant matter DC notes the submissions made by the respondent and notes that respondent has been able to provide satisfactory justification for the alleged contravention. DC also notes that the documents as required has now been provided by the respondent. Hence, DC cannot hold respondent guilty for the contravention, as alleged.

**12.0 Contravention-** As per Regulation 26(1) of the Insolvency Resolution Process for Corporate Persons Regulation 2016, “the resolution professional shall provide each member of the committee the means to exercise its vote by either electronic means or through electronic voting system in accordance with the provisions of this Regulation-:

*Explanation — For the purpose of these regulations —*

*(a) the expressions “voting by electronic means” or “electronic voting system” means a “secured system” based process of display of electronic ballots, recording of votes of the members of the committee and the number of votes polled in favour or against, such that the voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security;*

*(b) the expression “secured system” means computer hardware, software, and procedure that —*

*(i) are reasonably secure from unauthorized access and misuse;*

*(ii) provide a reasonable level of reliability and correct operation;*

*(iii) are reasonably suited to perform the intended functions; and*

*(iv) adhere to generally accepted security procedures.....*

Further Regulation 23 (3) (c) of the Insolvency Resolution Process for Corporate Persons Regulation 2016 states that:

*(3) The resolution professional shall take due and reasonable care-*

*(a) ...*

*(b)...*

*(c) to record proceedings and prepare the minutes of the meeting..”*

Further Regulation 24 (6) of the of the Insolvency Resolution Process for Corporate Persons Regulation 2016 states that:

*“24 (6) The resolution professional shall ensure that minutes are made in relation to each meeting of the committee and such minutes shall disclose the particulars of the participants who attended the meeting in person, through video conferencing, or other audio and visual means...”*

In the CIRP of Lakshmi Energy & Foods Limited, from the minutes of the 5<sup>th</sup> CoC meeting it is noted that CoC was agreed to conduct voting through NSDL/CDSL portal or any other similar service provider. However, it is observed that respondent failed to provide the voting

platform as envisaged under the Code also the voting results were called on respondents personal email address i.e. kkbassi@gmail.com; which does not appear to be the process id of the CIRP. Further it is also noted that the information recorded in the minutes are not in consonance with the actual process carried out by respondent. The minutes captures the details of e-voting window whereas the results were called on your personal email id thus, it is reflecting that either the process adopted by respondent is not as per the requirements as envisaged under the Code or he had not maintained the contemporaneous records for the decisions taken by him.

**12.1 Submissions by Mr. Kuldip Kumar Bassi** - Respondent in this regard submitted that in the 5th CoC meeting, CoC was agreed to conduct voting through NSDL/ CDSL portal or any other service provider and that he failed to provide the voting platform as per the Code. It may be noted that the 5th CoC meeting was conducted by the IRP and not by respondent. Further, the records shows that no voting was conducted after 1st, 2nd and 3rd CoC meeting. Thereafter, in the 4th CoC meeting, CoC members agreed to conduct the voting through email. In the 5th CoC meeting, the CoC members specially requested for voting on certain items to be conducted through NSDL/ CDSL portal or any other service provider. I understand that IRP did conduct the said voting through an authorized voting agency (called Righ2Vote). Records further shows that voting in 6th CoC meeting was through e-mail voting while in the 7th CoC meeting, certain members voted on person while one member sought voting through electronic voting. In the minutes of the 7th CoC meeting, it is also recorded that when the said member sought voting through electronic means, the IRP informed that he will not be able to facilitate electronic voting through NSDL/ CDSL since the CD did not have the financial resources to pay them. The IRP suggested that e-voting may be conducted through email and the members agreed that they are willing to undertake electronic voting through email.

**12.1.1** Respondent further submitted that the IRP conducted voting through an authorized voting agency (called Right2Vote) only for items referred in the 5th CoC meeting as per request of the CoC in the meeting. Further, the records show that the said agency could not be paid for almost a year since their fee was ratified by the CoC much later. As mentioned, the said e-voting was conducted by the IRP and not by respondent.

**12.1.2** Respondent further submitted that as an RP, respondent started chairing the CoC meetings only from 8th CoC meeting onwards. Since no authorized voting agency was willing to provide services on credit and since CD did not have the financial resources to pay, it was suggested in the said CoC that the e-voting may be facilitated through e-mail, as per the practice being followed earlier. The CoC was agreeable to the same and hence voting during the CIRP was conducted on basis of the procedure as discussed in the CoC meeting.

**12.1.3** Respondent further submitted that for a substantial period of time, the professionals engaged by him were rendering services without getting paid and the actual contribution of funds by CoC commenced after a substantial point of time. While the legal and certain other advisors agreed to continue providing services to him at his request without any certainty of time for payment, as stated earlier, e-voting agencies which were contacted were not amenable to providing e-voting services on a credit basis.

**12.1.4** Respondent further submitted that in the absence of any voting agency willing to provide its services, the RP had discussed this issue in the CoC Meeting and the same is duly recorded in the CoC meetings. You may note that the voting on e-mail was conducted in the following manner:

1. The CoC members were informed in the CoC meeting of the voting window (i.e. the period for which the voting will be opened).
2. The e-voting items were shared with the CoC Members in advance of the voting;
3. The CoC Members were asked to submit their approval / rejection during the voting window;
4. In the event any CoC member wanted an extension on the voting timelines, they were asked to communicate the same over e-mail;
5. After the conclusion of the voting, the voting results were shared with the CoC Members. The said voting results also mentioned the period for which e-voting window was open.

**12.1.5** Respondent further submitted that he denies that the process for voting carried out by him was not as per what was recorded in the CoC minutes. The voting process followed by respondent was duly intimated to the members of the CoC and was followed only on account of non-availability of any funds in the Corporate Debtor. Therefore, respondent deny that he violated any provisions of the Code, underlying regulations and the Code of Conduct as the process undertaken by him was due to special circumstances of the present case and due to non-availability of funds in the Corporate Debtor.

**12.1.6** Respondent further submitted that as regards the allegation that minutes capture details of e-voting window while the results were called on respondent personal id, it may be noted that:

- (a) Reference to e-voting window merely means the time-period for which the voting was opened. As explained, the CoC was duly informed and willingly agreed that the electronic voting will be conducted through e-mail voting on account of lack of funds.
- (b) At the time when the said voting was being conducted by respondent, there was no mandatory requirement to communicate through process id as the said concept was mandated only vide an amendment to the CIRP Regulations notified on 16 September 2022. The personal email id being referred in the SCN is actually respondents registered email id with the IBBI.

**12.1.7** Respondent further submitted that the allegations in relation to conduct of voting process by Respondent (which process was in fact agreed by the CoC members) are completely erroneous, wrong and denied. Further, no loss can be said to be caused to any member of CoC on account of such voting method adopted since CoC members themselves were ok with such e-voting process.

**12.2 Findings** -DC notes the submission of the respondent that as an RP, respondent started chairing the CoC meetings only from 8th CoC meeting onwards. Since no authorized voting agency was willing to provide services on credit and since CD did not have the financial resources to pay, it was suggested in the said CoC that the e-voting may be facilitated through e-mail, as per the practice being followed earlier. The CoC was agreeable to the same and hence voting during the CIRP was conducted on basis of the procedure as discussed in the CoC meeting.

**12.2.1** The DC further notes the submissions of the respondent that the voting process followed by respondent was duly intimated to the members of the CoC and was followed only on account of non-availability of any funds in the Corporate Debtor. Further, no loss has said to be

caused to any member of CoC on account of such voting method adopted since CoC members themselves were ok with such e-voting process.

**11.2.2** The DC further notes the submission of the respondent that in the absence of any voting agency willing to provide its services on credit, this fact was duly discussed by the respondent with CoC and the same is also recorded in the minutes.

**12.2.3** In view of the foregoing, DC accepts the submissions of the respondent.

**13.0 Contravention-** As per the regulation 13 of CIRP regulations, 2016, “The IRP or the RP, as the case maybe, shall verify every claim, as on the ICD, 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.”

In view of the foregoing provision, it is the duty of the IP to verify every claim, as on the insolvency commencement date, within seven days from the last date of receipt of the claims, whereas from the list of creditors dated 28-04-2020 submitted by respondent, it is observed that the claims pertaining to 9 operational creditors (OC’s) were shown as under verification. In this regard, respondent was asked by the IA to submit the copy of correspondences exchanged with the OCs where communications were sent, apprising them about the status of their claims. However, it is noted that respondent failed to furnish the documents, as sought by the IA. This reflects that the claims of the OCs remained under verification throughout the CIR Process without making any information to the concerned OCs with respect to the status of their claims.

**13.1 Submissions by Mr Kuldip Kumar Bassi-** Respondent in this regard submitted that the relevant documents showing communications with the OCs were not shared with the IA are factually incorrect. Where required, requisite communications regarding their claims were made with OCs. Enclosed again are the relevant communications with the concerned OCs in relation to the claim submitted by them.

**13.1.1** Respondent further submitted that it is his understanding that neither the Code nor the applicable Regulations required an RP to individually update the claimants on the status of their claims. The CIRP Regulations only provide that the RP is required to maintain a list of creditors and update it from time to time. Further, the list of creditors is required to be available for inspection by the person who have submitted proofs of claims.

**13.1.2** Respondent further submitted that Regulation 13 (2) of the CIRP Regulations require that the list of creditors:

1. **Shall be available for inspection by persons who have submitted proof of claims -** Persons who had sought information regarding the claims were duly informed.
2. **Displayed on the website of the Corporate Debtor** – The respondent maintained a website of the Corporate Debtor and the same had the adequate information qua the CIRP of the Corporate Debtor.
3. **Filed with the Adjudicating Authority** – list of claims was duly filed with the Adjudicating Authority.

4. **Presented at the 1st CoC meeting** – Since respondent did not conduct the first CoC meeting, he is not answerable to this, however the records shows that claims were presented by IRP.

**13.1.3** Respondent further submitted that it is clear from the above that the RP has complied with Regulation 13 (2) of the CIRP Regulations as regards the list of creditors and the status of their admission/ verification/ rejection.

**13.1.4** Respondent further submitted that the allegations made by the DC are completely wrong and denied. It is also denied that requisite documents were not provided to the IO as the relevant correspondence and documents were duly shared with the IO. Respondent also deny any breach of Clauses 14, 16 and 19 of the Code of Conduct.

**13.2 Findings** -DC notes the allegation that respondent did not provide certain information /documents asked for by the IA. It is duty of an IP to produce all records in his custody or control and furnish such statements and information relating to its activities within such time as the IA may require. Respondent was asked to provide certain documents of the assignments being handled by him. Respondent was unable to submit the required documents to the IA in the stipulated timelines, as provided by IA.

**13.2.1** The DC notes the submission of the respondent that he had sent all the records to IA and where required, requisite communications regarding their claims were made with OCs. DC also noted the fact that the documents required has now been provided by the respondent. Therefore, the DC takes a lenient view

**14.0 Contravention:-**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 were noted: -

- A. Disclosure of appointment of RP to be made by 01-03-2020, however same was made on 03-03-2020.
- B. Relationship Disclosure in respect of appointment of Protech Insurance Surveyors & Loss Assessors was required to be filed on 03-07-2020, however same was filed on 23-07-2020.

**14.1 Submissions by Mr. Kuldip Kumar Bassi** - The respondent submitted that these delays of a few days were not intentional and therefore as prayed to the IA, the DC may most humbly condone these delays in filing of these disclosures. Also consider that with respect to disclosure for respondents' appointment as RP, the 2 out of 3 days were Saturday and Sunday. Further, with respect to disclosure of appointment of Protect Insurance, the same was undertaken during COVID period and this may also be considered as a factor for giving me leniency in the matter.

**14.2 Findings-** 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. The DC in the instant matter notes the submission of the respondent and finds that the delays occurred in filing the disclosure forms are of minor nature which appears to be an unintentional lapse on the part of respondent. Thus, in view of the foregoing DC takes a lenient view. However, respondent is cautioned to be more careful in future while filing disclosure forms.

**15.0** 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 IIIPI, DC hereby disposes of the SCN without any adverse directions against the respondent. However, DC hereby advises the respondent as follows: -

- (i) That the respondent should take reasonable care and be extremely careful, diligent while performing his duties under the Code.
- (ii) That respondent should maintain and upgrade his professional knowledge and skills to render competent professional services.
- (iii) That respondent must adhere to the time limits prescribed in the Code and the rules, regulations, and guidelines thereunder for insolvency resolution, liquidation, or bankruptcy process, as the case may be, and must carefully plan his actions, and promptly communicate with all stakeholders involved for the timely discharge of his duties.

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

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

**CERTIFIED TRUE COPY**

**Sd/-**

**Date: 22-10-2024**

**Place: New Delhi**

**Mr. Satish Marathe, (Chairman)**

**Dr Debashis Mitra, (Member)**

**Mr. Rajvir Singh, (Member)**

**CA Rahul Madan, (Member)**

Copy to:

1. Insolvency and Bankruptcy Board of India.

2. Indian Institute of Insolvency Professionals of ICAI- Members Record