

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

DC. No. - IIIPI/DC/225/2025-26

ORDER

In the matter of Mr. Umesh Poddar (Respondent) under Clause 15 of the Disciplinary Policy of IIIPI read with Clause 24(1)(c) of Byelaws of Indian Institute of Insolvency Professionals of ICAI (IIIPI).

- 1.0** This order disposes of the Show Cause Notice (SCN) dated 29-04-2025 issued to the respondent Mr. Umesh Poddar, FD71, Saltlake Sector III, Kolkata, West Bengal- 700106. Respondent is a professional member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-001/IP-P01912/2019-2020/12962.
- 2.0** The Disciplinary Committee of IIIPI (DC) issued SCN to respondent, based on the reference received from the Monitoring Committee of IIIPI including the findings in the Inspection report of Inspection Authority (IA), pertaining to Liquidation process of **RDH Technologies Private Limited**. The SCN alleged the contravention of the provisions of section 35 (1) (a), 208 (2) (a) and (e) of the Insolvency and Bankruptcy Code, 2016, Regulation 4, 6 (2) and 7(1) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 7(2) (a), (h) and (i) of IBBI (Insolvency Professional) Regulation, 2016, read with clauses 2, 3, 14 and 16 of the Code of Conduct for Insolvency Professionals, specified under First Schedule of IBBI (Insolvency Professionals) Regulations, 2016.
- 3.0** The DC referred to 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 21-07-2025 to which respondent sought adjournment. Given the circumstances respondent matter was adjourned to 25-03-2026. The respondent chooses to be represented through his counsel, Mr. G. P. Madaan, before the DC of IIIPI. Accordingly, on date respondent appeared before the DC virtually, along with his counsel, wherein the respondent counsel reiterated the submissions made in the written reply and made few additional submissions.
- 3.1 Preliminary Objections:** Before dealing with contraventions per se, the DC takes note of the preliminary objections raised on behalf of Mr. Poddar regarding the veracity of the SCN issued to Mr. Poddar by IIIPI on 29-04-2025. In this regard Mr. Poddar (respondent) submitted that:
 - (i) The IIIPI inspected the liquidation process of RDH Technologies Private Limited (RDH), based on a grievance received by the IBBI against me vide email dated 15th December 2022 (Paragraph 2 of the Executive Summary of the Inspection Report). Pursuant to this, the draft inspection report was shared with me on 12th May 2023, and the final inspection report was

provided on 25th August 2023. The accompanying letter dated 25th August 2023, forwarding the final inspection report, stated that the action was undertaken in accordance with section 208(2)(c) of the Insolvency and Bankruptcy Code, 2016, read with Clause 18 of the Code of Conduct set out in the First Schedule of the IBBI (Insolvency Professionals) Regulations, 2016, and adopted by the IIIPI.

- (ii) The inspection report, after considering his response on each finding, concluded with advices and warnings, such as: ‘The Liquidator should be vigilant and comply with the order of NCLT’; ‘The Liquidator should be more diligent w.r.t. defining scope of work mentioned in the appointment letters of the professionals appointed to avoid overlapping / duplication’; ‘the liquidator is advised to maintain written contemporaneous records w.e.t. engagement of professionals’; ‘.. Liquidator is advised to be more diligent while carrying out his duties, including verification of claims’; etc. Respondent accepted these observations in the right spirit and have earnestly undertaken corrective actions to align with the expectations of the IIIPI. Believing that the inspection process stood concluded with the issuance of these advisories, he have since made every effort to enhance the quality and diligence of his professional conduct.
- (iii) Soon after, the IBBI itself investigated the same liquidation process of the same corporate debtor, based on a grievance from the same individual. The investigation culminated in a report finalised on 8th October 2024, and based on the same, IBBI issued a show cause notice dated 6th November 2024. Following the due process and adherence to the principles of natural justice, the IBBI disposed of the show cause notice through its order dated 26th March 2025 with advice and direction: “*..hereby warns to Mr. Umesh Poddar to be extremely careful in all his assignments. Mr. Umesh Poddar is directed to undergo pre- registration educational course.*”. Respondent accepted the warning and direction in the right spirit and have since diligently strived to meet the expectations of the IBBI. Respondent proceeded with the understanding that the investigation stood concluded with the issuance of the said order.
- (iv) As soon as IBBI closed its investigation and passed the order on 26th March 2025, the IIIPI reopened the inspection, 20 months after issuing the inspection report that had concluded with advice and warning, by issuing the instant SCN on 29th April 2025.
- (v) A comparative reading of the show cause notices issued by IIIPI and IBBI reveal that, while they may differ in detail, the substance of the allegations is materially the same.
- (vi) Section 11 of the Civil Procedure Code, 1908 reads: “No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”
- (vii) The present matter squarely attracts the doctrines of res judicata, constructive res judicata, and finality of proceedings, as envisaged in section 11 of the Civil Procedure Code. Res judicata is a well-established legal principle that bars the re-litigation of a dispute that has already been conclusively decided by a competent authority. It ensures that no party is vexed twice for the same cause and upholds the finality of adjudication. The principle of constructive res judicata further extends this bar to matters which ought to have been raised and decided in the earlier proceeding but were not. It treats any causes of action that could have been addressed earlier as

if they were already adjudicated, preventing their subsequent reconsideration. The doctrine of finality of judgments emphasises that once a court has rendered a decision, it should be considered final and binding on the parties involved. It seeks to prevent endless litigation and ensure legal certainty.

- (viii) In the present case, the IBBI, being the apex regulatory authority, has already examined the same liquidation process of the same corporate debtor under the same provisions of the law, and has rendered its decision after observing the principles of natural justice. The issuance of a fresh SCN by IIIPI, on substantially the same grounds and under the same legal provisions, undermines the principle of finality of proceedings, which holds that once a matter has been duly adjudicated, it must not be reopened, except through a legal process of appeal or review. Permitting a parallel or successive disciplinary action on the same cause of action not only violates these settled principles but also exposes the professional to double jeopardy and regulatory overreach, thereby eroding the certainty, fairness, and efficiency that the legal process is meant to ensure. Assume for the sake of the argument that the earlier show cause notice of the IBBI did not cover everything that the instant SCN covers. This is not permissible because the law prohibits raising the issues that ought to have been raised and decided in the earlier proceeding but were not, or the issues that were necessary for decision in the earlier litigation.
- (ix) Para 23A of the Model Byelaws, as specified under the IBBI (Model Byelaws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 provides that the authorisation for assignment (AFA) shall stand suspended upon initiation of disciplinary proceedings, whether by the Agency or by the IBBI. Respondent submitted that in his case, when the IBBI issued its show cause notice, his AFA was suspended and remained so until the proceedings were concluded. Now, following the issuance of a fresh SCN by IIIPI in the same matter, his AFA has been suspended again. This repeated suspension, triggered by successive proceedings on the same cause of action, effectively operates as a penalty. It deprives him of the ability to take up new assignments, thereby impacting his means of livelihood, which is protected under Article 21 of the Constitution of India.
- (x) Both the IIIPI and the IBBI are arms of the State, entrusted with regulatory responsibilities under the Code. The IIIPI is registered with the IBBI and functions under its oversight, exercising delegated authority to regulate insolvency professionals. While the IBBI serves as the principal regulator, the IIIPI acts as the frontline regulator, both drawing their powers from the same statutory framework and operating within a unified regulatory ecosystem. As integral components of the same regulatory architecture, they cannot initiate or sustain parallel disciplinary proceedings on the same cause of action. Such duplication undermines regulatory coherence, creates uncertainty, and exposes professionals to double jeopardy, contrary to the principles of fairness, proportionality, and responsible governance.

3.2 Observations of DC: On raising such objection, the DC asked the legal representative of Mr. Poddar whether he wishes to continue his submissions on merit to which Mr. G.P. Madaan expressed his intention to submit arguments to the observations on merits.

- 3.2.1** The Disciplinary Committee (DC) has carefully considered the submissions of the Respondent with regard to the plea of *res judicata* and has examined the scope, nature, and objective of the proceedings initiated by the Insolvency and Bankruptcy Board of India (IBBI) vis-à-vis the inspection carried out by the Indian Institute of Insolvency Professionals of ICAI (IIPI).
- 3.2.2** The DC notes that the Show Cause Notice (SCN) issued by IBBI dated 06.11.2024, at paragraph 3, records that IBBI had appointed an Investigating Authority to conduct an investigation into the allegations made against the Respondent. Thus, the exercise undertaken by IBBI was clearly investigation-specific and confined to examining the veracity of the allegations forming part of the complaint against the Respondent.
- 3.2.3** In contrast, the DC takes note of the Inspection Report issued by IIPI dated 25.08.2023, wherein under the heading “Executive Summary” (paragraph 3), the objectives of inspection have been set out comprehensively, namely:
- (a) to ascertain whether the provisions of the Code, rules, regulations, guidelines, and directions issued by the Board are being complied with;
 - (b) to ensure that the records are being maintained in the manner prescribed under the relevant regulations;
 - (c) to ascertain whether adequate internal control systems, procedures, and safeguards have been established and are being followed by the insolvency professional; and
 - (d) to ascertain whether any circumstance exists which would render the insolvency professional unfit or ineligible.
- 3.2.4** Upon a conjoint reading of the above, the DC observes that the scope of the inspection conducted by IIPI is significantly broader in nature and is not restricted merely to examining specific allegations arising out of a complaint. The inspection is a comprehensive review of the professional conduct, regulatory compliance, and overall functioning of the insolvency professional.
- 3.2.5** The DC, therefore, finds merit in the distinction that while the IBBI investigation was confined to examining specific allegations against the Respondent, the IIPI inspection was an independent regulatory exercise with a wider ambit, encompassing all aspects of compliance and professional functioning. Consequently, any deficiencies, non-compliances, or lapses observed during such inspection were duly recorded in the inspection report, irrespective of whether they were part of the original complaint.
- 3.2.6** The DC further notes that the Respondent himself, in paragraph 6 of his reply to the SCN, has acknowledged that “*a comparative reading of the show cause notices issued by IIPI and IBBI reveal that, while they may differ in detail...*”. This admission, in the considered view of the DC, reinforces the position that the two proceedings are not identical in scope, content, and purpose.
- 3.2.7** In light of the above, the DC rejects the contention of the Respondent invoking the principle of *res judicata*, as the essential requirements for its applicability namely, identity of cause of action, subject matter, and scope of adjudication are not satisfied in the present case.

3.2.8 The DC further records that prior to the issuance of the SCN to the Respondent, it had independently examined and deliberated upon the issues arising from the inspection findings as well as the investigation material placed on record. The DC, after due application of mind and in exercise of its statutory mandate, consciously proceeded with the issuance of the SCN.

3.2.9 It is also observed that the Respondent, notwithstanding his preliminary objections, has made submissions on merits with respect to the alleged contraventions. Accordingly, the DC proceeds to examine and determine the alleged contraventions on merits, in accordance with law.

4.0 Contravention: - Based on the observation of IA, DC observed that NCLT while commencing the liquidation of the CD vide order dated 09-11-2021, directed that public announcement (PA) w.r.t liquidation shall be made in the same newspapers in which the advertisements were issued during CIRP i.e., Financial Express (English) and Aajkal (Bengali) of Kolkata edition stating that the Corporate Debtor is in liquidation. However, it is observed that the public announcement made/published by respondent on 16-11-2021 was made in Business standard (English) instead of Financial express (English). Additionally, on 19-11-2021, the public announcement was made again in the Financial Express newspaper to meet the directions given by NCLT vide its order dated 09-11-2021.

In view of the above, the DC held the prime facie view that respondent has contravened the provisions of Section 208(2) (a) & (e), of the Code 2016, Regulation 7(2)(a), (h) & (i) of IBBI (Insolvency Professional) Regulation, 2016 read with Clause 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct), as by releasing public announcement on two different dates/occasions may have incurred an extra cost in liquidation process, whereas under the provisions of the Code and its allied Regulations it is the duty of an IP that he should take reasonable care and diligence while performing his duties, including incurring expenses.

4.1 Submission by the respondent: - In response to the observation, respondent submitted Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 mandates that the liquidator to publish a public announcement in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor, and at any other location where, in the opinion of the liquidator, the corporate debtor has material business operations. Since the Business Standard is the English business newspaper with the widest circulation in Kolkata, where the registered office of the corporate debtor is located, the public announcement ought to be made in the Business Standard.

4.1.1 Respondent further submitted that the NCLT, in its liquidation order, directed that “public notice” shall be issued in the same newspapers in which the advertisements were issued earlier, i.e., Financial Express (English) and Aajkal (Bengali) of Kolkata edition of the said newspapers stating that the Corporate Debtor is in liquidation. While the Regulations require a "public

announcement," the NCLT order referred to a "public notice." It was unclear whether these terms were intended to be synonymous or represented distinct requirements

4.1.2 Respondent further submitted that there was no clarity on whether compliance with the NCLT's direction would be deemed sufficient compliance with the regulatory requirement of issuing a public announcement under regulation 12.

4.1.3 Respondent further submitted that given the ambiguity, lack of time to seek clarification from the NCLT, and the negligible cost involved (approximately ₹ 3,000), he chose, acting in good faith and with prudence, to comply with both the NCLT's directive and the regulatory requirement, erring on the side of caution to avoid non-compliance.

4.1.4 Respondent further submitted that an additional cost of ₹ 3,326 is inconsequential in the broader context of the total liquidation expenses. This nominal expenditure, representing a minuscule fraction (0.05%) of the overall costs involved, cannot reasonably be construed as a lapse, warranting disciplinary action. Regulatory scrutiny must maintain a sense of proportion and avoid penalizing trivial deviations that have no material impact on the process or stakeholders.

4.2 Analysis & Findings: - DC notes that respondent has been able to provide satisfactory justification for releasing public announcement on two different dates/occasions. Hence DC cannot hold respondent liable for the contravention as alleged.

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

Regulation 7 (1) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provides that "*a liquidator may appoint professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of liquidation cost.*"

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, it is apparent that an IP should take reasonable care and diligence while performing his duties, including incurring expenses. As per the engagement letters provided by respondent to IA in respect of Ms. Dipika Singhal and Mr. Jainendra Jain, it is noted that the scope of work of both the professional appointed includes certain tasks in overlapping nature, such as "*to advise in preparation of various reports, to investigate financial affairs of the CD etc.*" Further from the invoices provided by respondent to IA it is observed that amount of Rs. 60,000 was separately paid to Mr. Jainendra Jain for drafting Legal Documents, apart from the monthly fee of Rs. 40,000 p.m. while the same was not part of the Engagement letter.

In this connection, upon clarification sought by the IA respondent submitted to IA that *“the appointment of Ms. Dipika Singhal was done based on requirement of work. The liquidator did the proper need assessment of the work and found that there was a requirement for one more professional to complete the work given to Mr. Jainendra Jain, therefore the additional appointment of Ms. Dipika Singhal was made by the liquidator...”*

In respect of the payment of Rs. 60,000 to Mr. Jainendra Jain respondent submitted to IA that *“during a period of winter vacation in the city, certain documents, including the preliminary report, asset memorandum, progress report, and list of stakeholders, were required to be prepared within a specific timeframe and required to be filed before hon’ble Tribunal. Unfortunately, the advocates approached for this task did not ensure the timely preparation and filing of these documents. In this situation Mr. Jainendra Jain, acting as the advisor with extensive experience, took the initiative to prepare and file these documents before the Hon’ble Tribunal. It should be noted that this task was not within his scope of work for which he was hired. Therefore, he raised a separate bill for these additional services provided.”*

In view of the foregoing, it is observed that though Ms. Dipika Singhal was appointed by respondent on requirement basis, however, allocating work of a similar nature to both the professionals appointed may have incurred an extra cost in the liquidation process. In the present matter, Mr. Jainendra Jain was appointed for Rs.40,000 per month while Ms. Dipika Singhal was appointed for Rs. 35,000 per month. In the given circumstances, based on the material available on record it is prima-facie reflecting that there may be occurrence of unreasonable cost. It is prima facie, taken as a violation because respondent failed to provide sufficient explanation/supporting evidence for the diligence which he had exercised while allocating the same set of tasks to two (2) different professionals and non-maintenance of written contemporaneous record in respect of payment made to Mr. Jainendra Jain amounting to Rs. 60,000. Thus, DC held prima facie view that respondent have inter-alia violated the provisions of Section 208(2) (a) & (e), of the Code 2016, Regulation 7 (1) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 7(2) (a), (h) & (i) of IBBI (Insolvency Professional) Regulation, 2016 read with Clause 14 and 16 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

5.1 Submission by the respondent: Respondent submitted that CA Jainendra Jain was engaged for a period of one year, from 15th November 2021 to 15th November 2022, at a monthly fee of ₹40,000. CS Dipika Singhal was engaged for a similar tenure from April 2022 to March 2023, at a monthly fee of ₹35,000. However, her engagement was curtailed in sync with the volume of work, and she was released two months before the completion of the contractual term.

5.1.1 The appointment letters issued to both professionals clearly delineate their respective responsibilities. Specifically, three items of work were assigned exclusively to Professional 1 (CA Jainendra Jain), two items exclusively to Professional 2 (CS Dipika Singhal), and three items jointly to both. Thus, it is evident that the scope of work was not the same for both professionals, as reflected in the following comparative table derived from their appointment letters:

Table: Scope of work as per the appointment letters:

Professional 1 (CA Jainendra Jain)	Professional 2 (CS Dipika Singhal)
To assist in the meeting of the Stakeholders Consultation Committee of the Corporate Debtor.	NA
To assist the liquidator in taking into his custody or control all the assets, property, effects, and actionable claims of the corporate debtor.	NA
To assist the liquidator and provide support to conduct auctions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator.	NA
To interact and coordinate with different professionals appointed for the process, to provide the requisite information for completion of the job, and to obtain their report.	To interact and coordinate with different professionals appointed for the process, to provide the requisite information for completion of the job, and to obtain their report.
To advise in the preparation of Asset Memorandum, Preliminary Reports, Progress Reports, and to coordinate all the information required.	To advise in the preparation of Asset Memorandum, Preliminary Reports, Progress Reports, and to coordinate all the information required.
To investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions.	To investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions.
NA	To take all such actions, steps, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator

NA	To communicate with all stakeholders, such as the Stakeholders Consultative Committee, other claimants, promoters and directors, Key Managerial Personnel, statutory authorities, auditors, employees of Corporate Debtor, etc, for the purpose of seeking information, informing them about the commencement of the Liquidation Process.
----	---

5.1.2 Respondent further submitted that the engagement of the two professionals was a result of careful planning and consideration of the nature and timeline of the liquidation process. The first professional was assigned tasks typically required during the initial stages of liquidation and was, therefore, engaged from the commencement of the process and released midway as those tasks were completed. The second professional was allocated responsibilities more relevant to the later stages of liquidation and was engaged mid-way, continuing until the conclusion of the process. Both professionals were jointly responsible for tasks that spanned the entire duration of liquidation. This phased engagement strategy was adopted to optimize efficiency and minimize costs. Considering the flow and nature of work, he initially engaged in a more experienced and higher-cost resource, added a second resource when the workload peaked, and retained only the lower-cost professional towards the end. Even, she was released two months before the end of her contractual term, as the remaining work did not justify her continued engagement. This approach ensured prudent cost management throughout the liquidation process.

5.1.3 The engagement letters issued to the professionals are contemporaneous records that clearly outline the scope and timing of their respective assignments. In addition to these, internal office notes were maintained documenting the progress of work, assessment of the remaining workload, and the rationale for engaging an additional professional. These records reflect a thoughtful and transparent decision-making process aimed at effective resource allocation.

5.1.4 In respect of payment of Rs. 60,000 made to Mr. Jainendra Jain apart from monthly fee of Rs. 40,000, respondent, during the personal hearing submitted that, during a period of winter vacation in the city, certain documents, including the preliminary report, asset memorandum, progress report, and list of stakeholders, were required to be prepared within a specific timeframe and required to be filed before hon'ble Tribunal. Unfortunately, the advocates approached for this task did not ensure the timely preparation and filing of these documents. In this situation Mr. Jainendra Jain, acting as the advisor with extensive experience, took the initiative to prepare and file these documents before the Hon'ble Tribunal. It should be noted that this task was not within his scope of work for which he was hired. Therefore, he raised a separate bill for these additional services provided.

5.2 Analysis & Findings: - The DC notes that Regulation 7 (1) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, specifically empowers the liquidator to appoint professionals, to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of liquidation cost.

5.2.1 In respect of observation pertaining to inclusion of certain tasks in overlapping nature in the engagement letters of CA Jainendra Jain and Ms. Dipika Singhal (*such as to advise in preparation of various reports, to investigate financial affairs of the CD etc.*) which may have incurred an extra cost in liquidation process, the DC notes the submission of the respondent that the engagement of the two professionals was a result of careful planning and consideration of the nature and timeline of the liquidation process. The first professional was assigned tasks typically required during the initial stages of liquidation and was, therefore, engaged from the commencement of the process and released midway as those tasks were completed. The second professional was allocated responsibilities more relevant to the later stages of liquidation and was engaged mid-way, continuing until the conclusion of the process. Both professionals were jointly responsible for tasks that spanned the entire duration of liquidation. This phased engagement strategy was adopted to optimize efficiency and minimize costs. Considering the flow and nature of work, he initially engaged in a more experienced and higher-cost resource, added a second resource when the workload peaked, and retained only the lower-cost professional towards the end. Even, she was released two months before the end of her contractual term, as the remaining work did not justify her continued engagement. This approach ensured prudent cost management throughout the liquidation process.

5.2.2 As far as issue in respect of non-maintenance of written contemporaneous record for the separate payment made to Mr. Jainendra Jain amounting to Rs. 60,000 is concerned, DC notes the submission/clarification made by respondent wherein he explained the circumstances under which he hired/appointed Mr. Jainendra Jain (point 5.1.4). At the same time DC notes clause 16 of the Code of Conduct specified under First Schedule of IBBI (Insolvency Professionals) Regulations, 2016, which casts a duty on insolvency professional that he must ensure to maintain written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. Whereas, in the instant matter DC notes that respondent had only submitted invoice amounting to Rs. 60,000 raised by Mr. Jainendra to IA and apart from this he could not produce any documentary evidence to substantiate his submissions to show that for what purpose he appointed Mr. Jainendra Jain, such as a any separate letter issued to Mr. Jainendra Jain demarcating additional work allocated or any communication in this respect or any other evidence to prove otherwise. Therefore, in absence of any specific evidence, the DC finds that clause 16 of the Code of Conduct of IP Regulations provided in the first Schedule of IP Regulations has not been complied with by the respondent in this case.

6.0 Contravention : Section 35 (1) (a) of the Code provides that *(1) subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties namely-*
(a) to verify claims of all the creditors;.....”

Further section 5 (8) of the code provides as under:

(8) “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes–

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

Explanation. -For the purposes of this sub-clause, -

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

In the liquidation process of CD, it is noted that Indian Bank filed its claim in Form C amounting to Rs. 8,32,68,667 during the CIRP period with the erstwhile IRP (no claim was filed by Indian Bank during liquidation). In this connection, based on the list of creditors provided by respondent

to IA it is observed that the name of the Indian Bank was mentioned under the category of “list of creditors (*other than financial creditors and operational creditors.*)”

Upon clarification sought by IA in this regard, respondent submitted before IA that the claim of Indian bank was not received during the liquidation process. The Indian Bank has submitted their claim in CIRP process as financial creditor and the same was accepted by the IRP. Further the IRP/RP re-examined the claim and shifted the said claim into the category of other claims on the basis of order passed by the Hon’ble Supreme Court in the matter of Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited Vs Axis Bank Limited Etc. Etc. [Civil Appeal Nos. 8512-8527 of 2019 and other petitions].

Respondent in his further reply dated 26-07-2023 to IA submitted before that the erstwhile RP has initially added Indian bank as financial creditor but after going through the Supreme Court judgement the same was treated as other stakeholders and respondent have adjudicated the said claim based on the same grounds. Based on the observation of IA, DC in the SCN contended that respondent misconstrued the judgement referred and did not categorize the claim under the correct head and included Indian Bank in the list of other creditors merely based on the list prepared by erstwhile IRP/RP.

Further in respect of the claim submitted by Pandey Chemicals, amounting to Rs. 8,06,83001.10, it is observed that respondent admitted the amount claimed by Pandey Chemicals including the interest at the rate of 18% per annum on Rs. 1,78, 00,000. Upon clarification sought by IA in this regard, respondent submitted that the queries were raised by him from Pandey Chemicals pertaining to the rate of interest calculated in the claim form and in his additional reply to IA respondent pointed out that there is no clause that allows claimant Pandey Chemicals to calculate the interest at the rate of 18% per annum. In this connection it is noted that despite highlighting the discrepancy in the interest calculation no explanation / documentary evidence has been provided by respondent substantiating the basis of admitting the claim including the rate of interest at the rate of 18% per annum. In view of the foregoing facts, as stated above, prima-facie reflects that respondent did not exercise due diligence while verifying claims under the Code. Thus, DC held prime facie view that respondent have *inter alia* violated the provisions of Section 35 (1) (a), 208(2) (a) and (e) of the Code, Regulation 7(2)(a) and (h) of the IBBI (Insolvency Professional) Regulations 2016 read with clause 2, 3 and 14 of the Code of Conduct for Insolvency Professionals, specified under First Schedule of IBBI (Insolvency Professionals) Regulations, 2016.

6.1.1 Submission by the respondent: In response to SCN respondent submitted that as regards the claim of the Indian bank, he respectfully submits that the allegation is speculative and misconceived. It is correctly noted that due diligence is required in scrutinizing claims submitted by creditors; however, in this case, the Indian bank did not submit any claim during the liquidation process. Consequently, the question of scrutinising its validity simply did not arise. Moreover, since the Indian bank had no claim, it was not entitled to any distribution from the liquidation estate, and hence, there was no risk of unfair distribution. Respondent merely adopted the status of the claim as finalised by the Resolution Professional (RP) during the CIRP, which was based on sound reasoning and had no bearing on the liquidation process. Respondent did so in

compliance with the amended regulation 12 (2)(c) of the IBBI (Liquidation Process) Regulations 2016, inserted on 16th September 2022, which permitted the Liquidator to use the claims collated during CIRP where a stakeholder fails to submit a claim during liquidation.

- 6.1.2** Respondent further submitted that it is also alleged that he misconstrued the Supreme Court judgment in Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited ([2020] 8 S.C.R. 291) and wrongly categorised the Bank's claim. Respondent respectfully submit that he applied the judgment correctly. The SCN does not explain how the judgment was misapplied; it merely reproduces section 5(8) of the Code defining a financial debt. Presumably, the reference is to clause (h) of the said section, which includes counter-indemnity obligations in respect of guarantees. However, in Anuj Jain, the Supreme Court held that where the corporate debtor merely provides a mortgage for a third party's debt without receiving any credit or benefit, such obligation does not constitute a "financial debt" under section 5(8). "54. For what has been discussed hereinabove, on the issue as to whether lenders of JAL could be treated as financial creditors, we hold that such lenders of JAL, on the strength of the mortgages in question, may fall in the category of secured creditors, but such mortgages being neither towards any loan, facility or advance to the corporate debtor nor towards protecting any facility or security of the corporate debtor, it cannot be said that the corporate debtor owes them any 'financial debt' within the meaning of Section 5(8) of the Code; and hence, such lenders of JAL do not fall in the category of the 'financial creditors' of the corporate debtor JIL."
- 6.1.3** Respondent further submitted that in the instant matter, the corporate debtor provided only collateral for a credit facility extended to Jagrati Trade Services. This is evident from the claim Form C submitted by the Indian Bank on 9th September 2019. It did not receive any loan, facility, or advance from the Indian bank. Thus, consistent with Anuj Jain ruling, the Bank's claim does not qualify as that of a financial creditor. The Indian bank appears to have accepted this position, as it did not challenge the RP's treatment of its claim.
- 6.1.4** Respondent further submitted that as regards the claim of Pandey Chemical, it has been alleged that, despite the discrepancy in interest calculation being highlighted, no explanation or documentary evidence was provided to justify the admission of interest at 18%. On the contrary, this reflects the diligence exercised by respondent in the process. The claim was initially admitted on a provisional basis on 13th January 2022, explicitly subject to further verification for final admission. Thereafter, respondent sought relevant records to satisfy himself regarding the applicability of 18% interest and the basis for its calculation. Several rounds of correspondence ensued (Annexure 9), and the agreement was examined internally. Clause 15 of the agreement appeared to permit an interest rate of 18%. Given that the claimant was an unsecured creditor and was not expected to receive any distribution, it was considered prudent to avoid incurring additional costs to obtain a legal opinion. While my interpretation could be open to question, it has resulted in neither any loss to stakeholders nor any gain to the claimant. Incidentally, in the course

of time, the claim lost relevance as it was withdrawn after completion of registration of property in the month of January, 2025

6.2 Analysis & Findings: - In respect of observation that respondent misconstrued the judgement referred and did not categorize the claim of Indian Bank under the correct head and included it in the list of other creditors merely based on the list prepared by erstwhile IRP/RP, DC notes that respondent has been able to provide satisfactory justification/clarification and hence, DC cannot hold respondent liable for the contravention as alleged.

6.2.1 As far as issue in respect of verification of claim of Pandey chemicals (unsecured creditor) is concerned, DC notes that the Respondent has submitted that the claim was initially admitted on a provisional basis on 13.01.2022, explicitly subject to further verification before its final admission. It is further submitted that the Respondent sought relevant records and clarifications to satisfy himself regarding the applicability of interest @18% and the basis of its computation. The Respondent has also submitted that several rounds of correspondence were undertaken and the agreement forming the basis of the claim was examined internally.

6.2.2 The DC further notes the contention of the Respondent that Clause 15 of the agreement appeared to permit an interest rate of 18% and considering that the claimant was an unsecured creditor with no expected distribution, the Respondent deemed it prudent to avoid incurring additional costs for obtaining a legal opinion. The Respondent has also contended that his interpretation did not result in any loss to stakeholders or gain to the claimant, and that the claim subsequently lost relevance upon withdrawal after completion of registration of property in January, 2025.

6.2.3 However, the DC does not find the aforesaid submissions to be fully acceptable. The DC observes that vide email dated 07.02.2022, the Respondent himself raised specific queries to M/s Pandey Chemicals seeking clarification and supporting documents regarding the basis of inclusion of interest @18%. The queries raised demonstrate that the Respondent was not satisfied with the applicability of Clause 15 to the facts of the case. The relevant extract of the communication is reproduced below:

“...Thus, we request you to kindly provide us with the following documents/details for acceptance or rejection of the claim:

- 1. The claim raised by you is based upon clause 15...*
- 2. Please provide an explanation for the claim raised by you.*
- 3. Please provide for basis on which the refund amount... is agreed upon...*
- 4. In the present case, there is no acquisition or requisition... Kindly suffice your claim...*
- 5. ...As there is no such case of acquisition, how is the interest liability ascertained...”*

6.2.4 The DC further notes that in response, M/s Pandey Chemicals, vide email dated 09.02.2022, submitted that the claim had been raised based on Clause 17 of the agreement. Thereafter, several rounds of correspondence took place between the Respondent and the claimant, culminating in a physical verification of the agreement, which was examined internally by the Respondent.

6.2.5 The DC has perused Clauses 15 and 17 of the agreement dated 06.12.2012. Clause 15 provides for refund of consideration along with interest @18% p.a. in the event of acquisition or requisition of the property by a governmental or statutory authority. Clause 17 provides for compensation in the form of a fixed monthly amount in case of delay in handing over possession or execution of the sub-lease deed beyond the stipulated period. Clause 15 and 17 of the agreement dated 06-12-2012 are reproduced hereunder:

“..15. That before execution of the Deed of Sub-Lease, if the Said space or any part thereof is acquisitioned or requisitioned by Government or any other Statutory Authority or Authorities, in such case this agreement for sub-lease shall be treated as cancelled then the sub-lessor shall be liable to refund a sum of Rs 5,49,76,000/- (Rupees five crore forty nine lacs seventy six thousand) only along with Interest @ 18% p.a. to be calculated proportionately on the Original Consideration Money/ Sale price as mentioned in Point 2 above to the sub-lessee purchaser within 7 (seven) days from the date of receipt of such notice of requisition or acquisition.

17.The sub-lessor is entitled to a grace period of four months from 31.03.2013 i.e. up to 31.07.2013 for handover the peaceful vacant khas possession of the said space and also execute and register the deed of sub-lease in favour of provided if the sub-lessor fails to do the same after expiry of the grace period then in that event the sub-lessee shall be entitled to a sum of Rs 8,16,000/- (Rupees eight lac sixteen thousand) only per month for the period of delay (commencing from 01.08.2013 up to the date of handover of possession or execution of the registered deed of sub-lease whichever is earlier..”

6.2.6 On a conjoint reading of Clauses 15 and 17, the DC observes that the condition precedent for applicability of Clause 15, i.e., acquisition or requisition of the property by a government or statutory authority(es), was admittedly not fulfilled, as also noted by the Respondent himself in his communication dated 07.02.2022. Further, Clause 17 does not provide for interest at any rate, including 18%, but merely stipulates a fixed monthly compensation for delay.

6.2.7 In these circumstances, the DC finds that the defence taken by the Respondent that Clause 15 formed the basis for admitting the claim of M/s Pandey Chemicals is not justified. The Respondent’s own correspondence raises doubt about the applicability of the clause relied upon. In the absence of cogent supporting documents or a legally tenable basis, the admission of interest component of the claim lacks adequacy of verification.

6.2.8 The DC notes that under Section 35(1)(a) of the Insolvency and Bankruptcy Code, 2016, the Liquidator is mandated to verify claims of all creditors. Further, in terms of Regulation 17, 18 or 19 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, a claimant is required to submit its claim with proof in the prescribed Form. Regulation 23 empowers the Liquidator to call for additional evidence or clarification as deemed fit, and Regulation 30 mandates that the Liquidator shall verify the claims and may admit or reject the same.

- 6.2.9** The DC observes that the process of verification of claims by a Liquidator carries a higher degree of responsibility in the liquidation process as compared to the role of a Resolution Professional in the Corporate Insolvency Resolution Process (CIRP).
- 6.2.10** The DC notes that in a CIRP, the role of a Resolution Professional in collating and verifying claims is primarily administrative in nature. The Resolution Professional is required to undertake a prima facie verification based on documents submitted, without entering into adjudication of rights and liabilities. The exercise is limited to establishing the truth, accuracy, or validity of the claim and cannot be equated with adjudication.
- 6.2.11** However, in the liquidation process, the Liquidator, upon verification, is vested with the discretion to admit or reject claims. This entails a more substantive assessment as compared to the role of the Resolution Professional, thereby imposing a higher standard of diligence and scrutiny.
- 6.2.12** The DC further observes that in liquidation, the verification of claims is undertaken with the primary objective of determining the actual quantum of dues and their priority for distribution from the liquidation estate. The Liquidator is therefore required to ascertain the true nature and validity of claims whether fixed or contingent, disputed or undisputed, legal or equitable and ensure that only those claims which are substantiated, lawful, and justifiable are admitted. Claims that are hypothetical, uncertain, or unsupported by valid contractual or legal basis cannot be admitted without proper verification.
- 6.2.13** Accordingly, the DC holds that the Respondent failed to verify and admit the claim of M/s Pandey Chemicals private Limited in a diligent manner, particularly with respect to the applicability of interest @18% in absence of fulfilment of contractual conditions.
- 7.0 Contravention:** Regulation 6 (2) of the Liquidation Regulations 2016 provides that :
- “(1)...*
- (2) The liquidator shall maintain the following registers and books, as may be applicable, in relation to the liquidation of the corporate debtor, and shall preserve them for a period of eight years after the dissolution of the corporate debtor-*
- (a) Cash Book;*
 - (b) Ledger;*
 - (c) Bank Ledger;*
 - (d) Register of Fixed Assets and Inventories;*
 - (e) Securities and Investment Register;*
 - (f) Register of Book Debts and Outstanding Debts;*
 - (g) Tenants Ledger;*
 - (h) Suits Register;*
 - (i) Decree Register;*
 - (j) Register of Claims and Dividends;*
 - (k) Contributories Ledger;*

(l) Distributions Register;
(m) Fee Register;
(n) Suspense Register;
(o) Documents Register;
(p) Books Register;
(q) Register of unclaimed dividends and undistributed proceeds; and
(r) such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate debtor....”

In this regard respondent submitted before IA that the necessary registers were provided by him. However, based on the document register provided by respondent to IA, it is noted that it does not contain any details and thus it appears that he failed to maintain the records as required under the Code. It is prima facie taken as a violation as respondent have failed to provide the necessary documents to the IA. Thus, DC prima facie held that respondent have *inter-alia* violated the provisions of Section 208(2)(a) & (e) of the Code, Regulation 6(2) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 7(2) (a), (h) & (i) of IBBI (Insolvency Professional) Regulation, 2016 read with Clause 14 of the Code of Conduct for Insolvency Professionals, specified under First Schedule of IBBI (Insolvency Professionals) Regulations, 2016.

7.1 Submission made by the respondent: Respondent submitted that the document register did not contain detailed entries but merely listed the registers maintained by him.

7.1.1 Respondent further submitted that it is incorrect to allege that registers were not maintained. There may be some deficiencies, and respondent remain open to rectifying them if specific guidance is provided.

7.1.2 Respondent further submitted that he has duly maintained all registers and books required in connection with the liquidation of the corporate debtor. The following is a list of books and registers maintained by him, mapped against the requirements under Regulation 6(2) of the IBBI (Liquidation Process) Regulations, 2016:

Table: Registers and Books Maintained

Sl. No	Registers and Books required to be maintained under the Regulations	Maintained (Yes / No / Not Applicable)
a.	Cash Book	Yes
b.	Ledger	Yes
c.	Bank Ledger	Yes
d.	Register of Fixed Assets and Inventories	Yes
e.	Securities and Investment Register	Not applicable
f.	Register of Book Debts and Outstanding Debts	Yes
g.	Tenants Ledger	Yes

h.	Suits Register	Yes
i.	Decree Register	Yes
j.	Register of Claims and Dividends	Yes
k.	Contributories Ledger	Not applicable
l.	Distributions Register	Yes
m.	Fee Register	Yes
n.	Suspense Register	Not applicable
o.	Documents Register	Not applicable
p.	Books Register	No
q.	Register of unclaimed dividends and undistributed Proceeds	Not applicable

7.2 Analysis and Findings: DC notes that respondent has been able to provide satisfactory justification against the requirement of maintaining certain registers during liquidation process. Hence DC cannot hold respondent liable for the contravention as alleged.

8.0 Contravention: Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provides that:

(1) The fee payable to the liquidator shall be in accordance with the decision taken by the committee of creditors under regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(1A) Where no fee has been fixed under sub-regulation (1), the consultation committee may fix the fee of the liquidator in its first meeting.

(2) In cases other than those covered under sub-regulation (1) and (1A), the liquidator shall be entitled to a fee-

(a) at the same rate as the resolution professional was entitled to during the corporate insolvency resolution process, for the period of compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013); and

(b) as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation,..... :

Clarification: For the purposes of clause (b), it is hereby clarified that where a liquidator realises any amount, but does not distribute the same, he shall be entitled to a fee corresponding to the amount realised by him. Where a liquidator distributes any amount, which is not realised by him, he shall be entitled to a fee corresponding to the amount distributed by him.

(3) Where the fee is payable under clause (b) of sub-regulation (2), the liquidator shall be entitled to receive half of the fee payable on realisation only after such realised amount is distributed. Clarification:

Regulation 4 of these regulations, as it stood before the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 shall

continue to be applicable in relation to the liquidation processes already commenced before the coming into force of the said amendment Regulations.

In view of the foregoing provisions and based on the calculation sheet provided by respondent to IA it is observed that the Liquidation cost was not considered before calculating his fee as Liquidator.

Further it is also noted that post sharing draft Inspection report with respondent, a revised calculation sheet was provided to IA after deducting the Liquidation cost for calculating the Liquidator fees and there is difference of Rs. 11,80,687/- in the amounts mentioned. In view of the given circumstances, it appears that respondent fee was not in line with the applicable provisions of the Code. Thus, DC held prima facie view that respondent have inter-alia violated the provisions of Section 208(2)(a) & (e) of the Code, Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 7(2) (a), (h) & (i) of IBBI (Insolvency Professional) Regulation, 2016 read with Clause 14 and 16 of the Code of Conduct for Insolvency Professionals, specified under First Schedule of IBBI (Insolvency Professionals) Regulations, 2016

8.1 Submission made by the respondent: Respondent submitted that it may be noted that the liquidator's fee is payable upon the realisation and distribution of assets. This fee is computed after deducting the liquidation cost, which continues to accrue until the conclusion of the process. Consequently, the fee calculation remains provisional until final closure, as the amounts realised, distributed, and incurred as liquidation costs are subject to change over time.

8.1.1 Respondent further submitted that as of 20th August 2022, most of the realisation had been completed, and the liquidation cost incurred up to that date was ₹15.46 lakh. Based on this, the fee was computed at ₹32.89 lakh, as shown in the table above. By the end of December 2022, most of the distribution had also been completed, and the cumulative liquidation cost had increased to ₹36.52 lakh. Accordingly, the fee was revised to ₹32.31 lakh. Since the liquidation process did not conclude in December 2022 and certain distributions remained pending, the fee position continued to evolve. As of August 2022, he had drawn ₹12,212 less than the amount due at that stage. However, as of January 2023, he had drawn ₹46,746 more than what was then due, based on the updated liquidation cost and extent of distribution. It is important to note that the liquidator's fee may increase as the pending distributions are completed. At the same time, ongoing liquidation costs will reduce the fee. These variables will continue to fluctuate until the process is formally and finally closed. Upon completion of the liquidation, respondent will undertake a final calculation, factoring in all further distributions and liquidation expenses. Based on this final computation, he will either draw any balance fee due or refund any excess amount drawn.

8.2 Analysis and findings: DC accepts the reply of respondent and finds that the allegation mentioned in the SCN, in this regard is not upheld.

Order

- 9.0** In view of the submission made by respondent, materials available on record and looking into overall situations and circumstances of the case, DC notes that respondent should have been more careful and vigilant in handling the liquidation process. The deficiencies as noticed and conceded by respondent appear to be inadvertent in nature and without any malafide intentions. The DC also notes that the Respondent's AFA was suspended upon issuance of the show cause notice (SCN) on 06-11-2024 by IBBI and remained so during the proceedings. When the AFA was due for restoration pursuant to the order therein, a fresh show cause notice was issued by IIIPI in the same matter, resulting in the continued suspension of the Respondent's AFA, which remains in force as on date. Therefore, DC is inclined to take lenient view.
- 10.0** Accordingly, in exercise of the powers conferred under Clause 24(1)(c) of the Bye-laws of the Indian Institute of Insolvency Professionals of ICAI 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 cautions/advises respondent to be more careful in future while handling assignment/process under the Code. In case such repetitive instances are noticed in future, the matter will be treated as willful negligence, and action will be taken accordingly.
- 11.0** This order shall come into force from the date of its issue.
- 12.0** A copy of this order shall be forwarded to the Insolvency and Bankruptcy Board of India.

Date: 02-06-2026

CERTIFIED TRUE COPY

Sd/-

Mr. Sunil Pant, (Chairman)

CA. Charanjot Singh Nanda (Member)

Mr. Sanjay Kumar, (Member)

CA. Rahul Madan, (Member)