

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/189/2023

13th September 2023

ORDER

In compliance of the directions of Hon’ble High Court of Bombay *vide* its Order dated 18th July 2023, this Order, after giving fresh notice of personal hearing, disposes the Show Cause Notice No. IBBI/IP/INSP/2021/67/3366/508 dated 8th April 2022 (hereinafter referred as ‘SCN’) issued to Mr. Partha Sarathy Sarkar, afresh. Mr. Partha Sarathy Sarkar is an Insolvency Professional (hereinafter also referred as ‘IP’) registered with the Insolvency and Bankruptcy Board of India (hereinafter referred as ‘Board/IBBI’) with Registration No. IBBI/IPA-002/IP-N00239/2017-2018/10690.

1. Premise of Order

- 1.1. The Disciplinary Committee of IBBI (hereinafter referred as “DC”) had disposed of the SCN *vide* its Order dated 24th June 2022 and thereby suspending the registration of Mr. Partha Sarathy Sarkar for a period of three years. Hon’ble High Court of Bombay *vide* its Order dated 18th July 2023 gave the following directions:

“.....we asked the learned advocate appearing on behalf of the IBBI-Respondent No.1 whether the Disciplinary Committee would give a fresh hearing to the Petitioner and pass a fresh order. The learned advocate appearing for the IBBI, after taking instructions, has stated that the Disciplinary Committee appointed by the IBBI shall give a fresh hearing to the Petitioner after giving him adequate notice and thereafter pass a fresh order.

7. Considering the stand taken by the IBBI, we direct that the impugned order dated 24th June, 2022 is hereby quashed and set aside. The Disciplinary Committee of the IBBI shall give a fresh notice for hearing to the Petitioner. Once the notice is given, the Disciplinary Committee shall hear the Petitioner and thereafter pass an appropriate order.”

- 1.2. In compliance with the directions of Hon’ble Court, the notice of fresh hearing was sent to Mr. Partha Sarathy Sarkar on 27th July 2023 for personal hearing before the DC on 16th August 2023. He appeared before the DC along with his advocate Mr. Pratik Sarkar for personal hearing. Mr. Partha Sarathy Sarkar, at the outset, questioned the legality and

validity of the fresh hearing . During the hearing he was told that this being accorded to him in compliance of Hon’ble High Court’s direction. The IP vide his mail dated 11th August 2023 to the Board stated that -

“...Axiomatic to state, as per Regulation 13(2) of IBBI (Inspection & Investigation) Regulations, 2017 prevailing during the time when the Show Cause Notice dt/- 8th April 2022 was issued, it was mandatory for the Disciplinary Committee to dispose of the Show – Cause Notice within a period of 180 days of the issue of the show-cause notice (which ended on 5th Oct.’ 2022). Thus ex-facie an ultra vires instruction was given by IBBI, for the Hon’ble Bombay High Court to pass an order aliunde to the known position in law.

Pertinent to indicate, as a consequence of the instruction ex-facie contrary to the known position in law, the Show Cause Notice dt/- 8th April 2022 is kept alive beyond the timelines specified in the governing Regulations & the undersigned is kept deprived of the Authorization For Assignment (AFA) without any hearing, in contravention to the basic tenets of the Principles of Natural Justice.”

- 1.3. It is pertinent to mention here that the SCN was issued to the IP on 08th April 2022 and subsequently the Order was passed on 24th June 2022, i.e. well within the timelines provided under Regulation 13(2) of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017. The regulations do not provide, and rightly so, any additional timeline for possible litigation challenging the issues as contained in the DC Order, hence there is no violation of timelines as stipulated in the *op cited* Regulation 13(2). When the Order was challenged by the IP in Hon’ble High Court of Bombay, the Hon’ble Court during the hearing had asked the counsel of Board that whether the Board would consider passing fresh order, which the Board humbly accepted in the interest of principles of natural justice.
- 1.4. Hence, the timelines fixed under the above-said regulation for disposal of show cause notice cannot be construed to be applicable in the present case since after initial disposal of the SCN well within the timeline, fresh disposal of the SCN is being done in compliance of the order passed by Hon’ble High Court.

2. Background

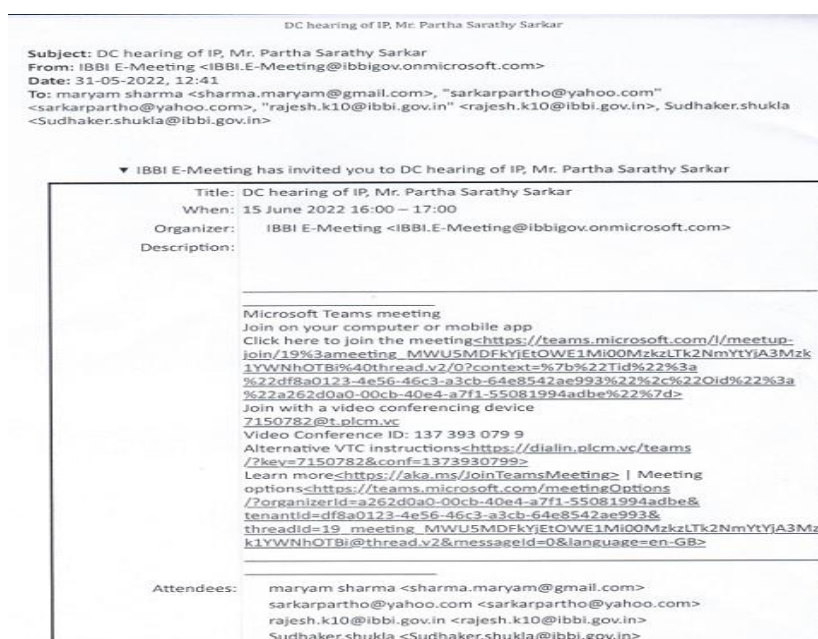
- 2.1. The IBBI, in exercise of its powers under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017 appointed an Inspecting Authority (‘IA’)

vide order dated 09.03.2021 to conduct the inspection of the IP in his assignment in Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor - Innovari Technologies Private Limited (hereinafter also referred as 'CD'), on having reasonable grounds to believe that Mr. Partha Sarathy Sarkar had contravened provisions of the Code and Regulations made thereunder.

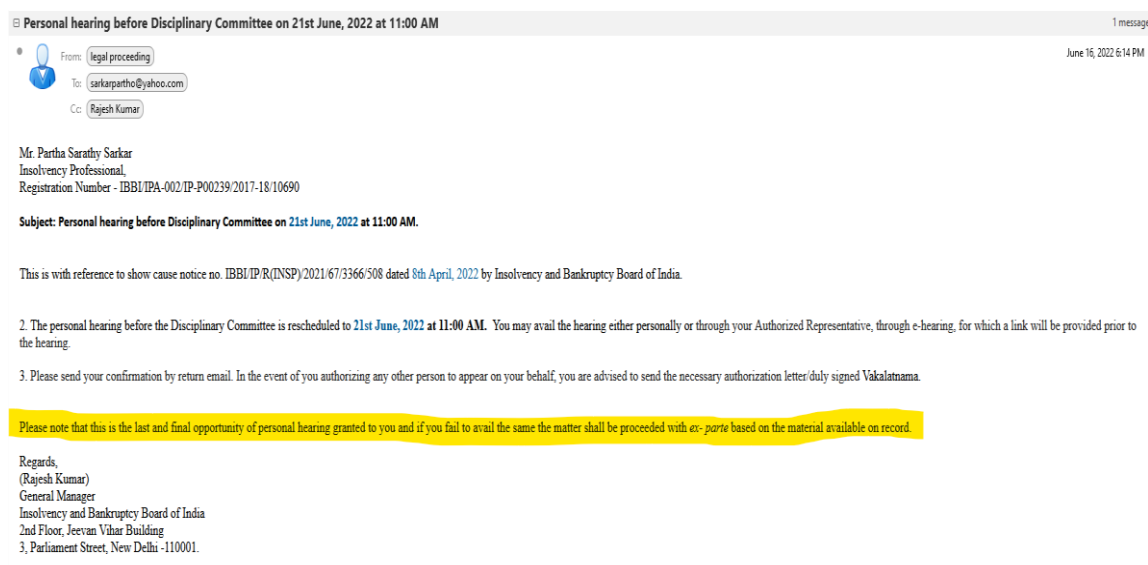
- 2.2. The draft of the Inspection Report was shared with the IP by the IA *vide* email dated 20th April 2021, for his reply and comments on the allegations made therein by 05th May 2021. The IP responded *vide* his email dated 29th April 2021.
- 2.3. The IA submitted the final inspection report to the Board on 10th May 2021. Based on the findings of the IA in its final inspection report, the SCN was issued to the IP on 8th April 2022, substantiating the allegations against the IP and seeking his response to show cause as to why suitable action including cancellation of registration should not be taken against him. The IP *vide* his letter dated 29th April 2022 replied to the SCN.

3. Disposal of SCN by Order dated 24th June 2022

- 3.1. The IP was also provided with an opportunity of personal hearing before the DC and was scheduled on 15th June 2022. However, the IP did not turn up for hearing and subsequently informed that he had not received the VC link for personal hearing. Although, the electronic record reflect otherwise that the notice was indeed served on him through his registered email id. The snapshot of the email communication is as hereunder:



- 3.2. Notwithstanding the same, one more opportunity was provided to the IP for hearing to be scheduled on 21st June 2022 and it was intimated to him that this was last opportunity to avail the same. The relevant mail sent by the Board to IP is as follows.



- 3.3. However, he again opted to stay away from the proceedings. As it being the second and last chance accorded to him, Mr. Partha Sarathy Sarkar was requested vide e-mail dated 20th June 2022 to make himself available to attend personal hearing virtually on 21st June 2022 and make submission before DC. However, he neither responded nor turned up to participate in the DC proceedings.
- 3.4. Therefore, the DC left with little option, went ahead to dispose of the SCN on the basis of response submitted by the IP and other materials available on record. Accordingly, after examining the allegations made in the SCN, material available with the Board and submissions made by the IP, the DC passed the Order dated 24th June 2022 thereby suspending his registration for three years on grounds of apparent contraventions.

4. Re-examination of SCN vis-à-vis reply of the IP

The contraventions alleged in the SCN is re-examined, *inter-alia*, considering the fresh submissions made by the IP during the hearing held on Hon'ble High Court's direction. The details are as under:

4.1. Non-Cooperation with IA

- 4.1.1. The SCN observes that the IA *vide* email dated 17th March 2021, served a copy of the

inspection notice to Mr. Partha Sarathy Sarkar and requested all the documents pertaining to the aforementioned assignment. However, Mr. Partha Sarathy Sarkar *vide* email dated 19th March 2021, termed the Inspection Notice dated 17th March 2021, as misleading/defective/vitiated notice/communication and also as non-est/ void ab initio.

- 4.1.2. The SCN further observes that *vide* email dated 31st March 2021, Mr. Partha Sarathy Sarkar provided a few documents and links to the IA. However, Mr. Partha Sarathy Sarkar did not provide crucial documents and necessary documents including notices of all CoC meetings, documents evidencing that the minutes of all CoC meetings were circulated within 48 hours in terms regulation 24(7) of the CIRP Regulations, minutes of all the CoC meetings, e-voting results etc. at the time of inspection to the IA.
- 4.1.3. Regulation 4(4) of the IBBI (Inspection and Investigation) Regulations, 2017 provides that it shall be the duty of the service provider to produce before the IA documents, record, or information in his custody or control and furnish to the IA such statements and information relating to its activities within such time as the IA may require.
- 4.1.4. The SCN alleges that Mr. Partha Sarathy Sarkar has not provided crucial information/ documents/ requisite details as sought by the IA, which is his duty under regulation 4(4) of the Inspection regulations.
- 4.1.5. Accordingly, a *prima facie* view was formed that Mr. Partha Sarathy Sarkar has *inter alia* violated Section 208(2)(a) and (e) of the Insolvency and Bankruptcy Code, 2016 (Code), Regulation 4(4) and 4(7) of Inspection Regulations, Regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clause 18 and 19 of the Code of Conduct as specified in the First Schedule of IP Regulations.

Submissions by the IP

- 4.1.6. Mr. Partha Sarathy Sarkar in his written submission and also during the personal hearing stated that the captioned notice was not specific as to what were the crucial documents being adverted by the IA. He submitted that in the inspection notice on 17th March 2021, copy of notice, agenda and minutes of meeting of the CoC convened by the IRP and copy of progress reports submitted to NCLT were sought. Mr. Partha Sarathy Sarkar submitted that the said documents were sought during the peak of the second wave of COVID-19 when several restrictions were imposed by the local administration and access to the office was impossible. He stated that the said difficulties were intimated to IA *vide* mail dated

17th March 2021 as in the circumstances, the records in totality could not be provided. He further stated that subsequent to the said communication, no further communication was received from the Board seeking any further documents as was required under Regulation 4 (4) of IBBI (Grievance & Complaint Handling Procedure) and therefore, he has maintained that in totality of circumstances, no violation has been made.

Findings of the DC

- 4.1.7. The DC notes the chronology of the events following the issuance of inspection notice to Mr. Partha Sarathy Sarkar. The notice of inspection under regulation 4 (1) of the Inspection Regulations was served upon Mr. Partha Sarathy Sarkar by the IA on 17th March 2021. Through the notice, the IA intimated Mr. Partha Sarathy Sarkar that inspection will be undertaken in respect of his assignment of CIRP of the Corporate Debtor - Innovari Technologies Private Limited and that all documents pertaining this assignment may be sent to the IA through email on or before 31.03.2021. The IA had also provided a checklist of information and the list of documents required from the IP.
- 4.1.8. Mr. Partha Sarathy Sarkar, however submitted that the notice dated 17th March 2021 was misleading/defective/vitiated notice/communication and termed the same as non-est/void ab initio. The IP vide his email dated 31st March 2021, provided a few documents and links to the IA. However, as mentioned above, the SCN alleges that crucial documents and necessary documents including notices of all CoC meetings, documents evidencing that the minutes of all CoC meetings were circulated within 48 hours, minutes of all the CoC meetings, e-voting results etc. was not provided by the IP to the IA at the time of inspection. The DC therefore notes that although the IA had provided the IP with the list of all the documents required for inspection, the IP provided only few of them.
- 4.1.9. The IP has in turn submitted that the said documents were sought during the peak of the second wave of COVID-19 when several restrictions were imposed by the local administration and access to the office was impossible. The DC has perused the email communication dated 17th March 2021 of the IP, addressed to the IA as follows:

“Madam/Sir’

Yours truly acknowledges the trail mail, though Maharashtra is in the midst of lockdown, with multiple restrictions of travel, consequent skeleton team attendance, yet would endeavour to stick to the timelines of 31st March, 2021.”

4.1.10. The DC notes that in view of the checklist of information and the list of documents required for inspection, communicated by the IA to the IP along-with the inspection notice sent *vide* email dated 17th March 2021, the contention of the IP that the notice was not specific as to what were the crucial documents being adverted by the IA is not tenable. Moreover, it appears that the IP has chosen to provide limited documents, as suitable to him, to the IA. It was the duty of the IP in terms of section 218(3) of the Code r/w regulation 4(4) and 4(7) of the Inspection Regulations to provide all the necessary documents sought by the IA. The snapshot of the mail sent by IA to IP is as follows:

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
7th Floor, Mayur Bhawan, Shankar Market, Connaught Circus, New Delhi -110001

File No. IBBI/IP/R(INSPI)/2021/67 **17th March, 2021**

Mr. Partha Sarathy Sarkar,
IBBI/IPA-002/IP-N00239/2017-2018/10690
Office No-7, 2nd Floor, Vikas Bhawan,
26-A, Cawasji Patel Street, Fort,
Mumbai, Maharashtra – 400 001

Dear Sir,

Subject: Notice of Inspection

This Inspecting Authority has been tasked to conduct an inspection under the Insolvency and Bankruptcy Code, 2016 in accordance with the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 of **CIRP of Innovari Technologies Private Limited**.

2. A copy of the pre-inspection questionnaire, checklist for Corporate Insolvency Resolution Process, and list of documents for inspection for Corporate Insolvency Resolution Process, are enclosed herewith, and you are advised to submit the same through e-mail to the Inspecting Authority on or before **31st March, 2021**.

3. Depending on the COVID-19 situation in the country, a visit to your office may also be proposed as per mutually convenient schedule to carry out the physical verification of records (if required). In this case, you are required to keep the documents as listed in the enclosure ready for the physical verification.

4. Further, you are also required to render all necessary assistance to the Inspecting Authority in carrying out its duties as may be assigned by the Board. The Inspecting Authority may ask further documents/records / information from time to time.

5. This may be noted for compliance.

Sd/-
(Debajyoti Ray Chaudhuri)
Chief General Manager
Inspecting Authority

Sd/-
(Anshul Agrawal)
Assistant Manager
Inspecting Authority

4.1.11. Further, the limitation in respect of documents was also mentioned in the draft of the Inspection Report shared with the IP by the IA on 20th April 2021. The IP responded *vide* his mail dated 29th April 2021 where he did not address the allegations made in the draft inspection report and also did not provide any documentary evidence or comments on the observations made against him by the IA. The reply of the IP is as hereunder:

“Annexed herewith the copy of the RTIs filed by the understated Resolution Professional, so that basis the replies to the RTIs, the undersigned can adequately provide point-wise comments on the Draft Inspection Report.

Along-with the response to the RTI requests, so as to enable the understated RP to comment on the Draft Inspection Report, kindly share us the copies of documents/material on record and other details which was relied by Inspecting Authority to prepare the Draft Inspection Report, as stated below:

1. *In respect of complaint dt/- 31st December 2020 by Late Sh. Ch. Mohd. S. Tariq, was the 'Complainant' an aggrieved under Regulation 2(a) of IBBI (Grievance & Complaint Handling Procedure) Regulations, 2017 AND a 'Stakeholder' as per Regulation 2(j) of IBBI (Grievance & Complaint Handling Procedure) Regulations, 2017. If No, then under which enabling provision did IBBI take cognisance of the complaint from someone who neither is a 'Complainant' NOR a 'stakeholder'.*
2. *Kindly let us know, under which enabling provision did IBBI take cognisance of a 'complaint' which was filed in December 31, 2020 against a cause-of-action which occurred in October 2019, when Regulation 3(4) of IBBI (Grievance & Complaint Handling Procedure) Regulations, 2017 clearly states that complaint can be filed only within 45 days of the occurrence of the cause-of-action.*
3. *Kindly let us know, under which enabling provision can IBBI - Inspecting Authority seek extension of timelines, when the order Under Regulation 3 (3) of IBBI (Inspection & Investigation) Regulations, 2017 has already been passed, which mandated the Draft Inspection Report was to be submitted within 10th April' 2021 and the Final Report to be completed by 30th April' 2021. to put it in other words, which legal provision permitted the Inspecting Authority to breach the timelines, against the original order.*
4. *If there is no enabling provision for Pt. No. 3 (supra), as a corollary, no order could have been passed by IBBI for granting extension of timelines nor timelines could be extended arbitrarily, then under which enabling provision did IBBI - Inspecting Authority submit draft Inspection Report, in violation of timelines duly ordered by IBBI Under Regulation 3 (3) of IBBI (Inspection & Investigation) Regulations, 2017.*
5. *If the Procedural Safeguards as stated in IBBI (Grievance & Complaint Handling Procedure) Regulations, & IBBI (Inspection & Investigation) Regulations have not been adhered to by IBBI, kindly let us know that under which Statute or Regulation, the proceedings in their entirety are maintainable.*
6. *Kindly let us know under which provision of which statute was the 'documentary formalities' conditions imposed by HDFC Bank to hand-over the Operation of Bank Account lawful and was required by the understated RP to be fulfilled.*

Further, under which provision of which statute is the understated RP accused of misconduct when he has sought adequate remedy vide IA 1138/2020 IN IB-569/ND/2018 has been sought from NCLT, U/Regulation 30 of CIRP Regulations to direct HDFC to hand-over operations of the Bank Account with the understated RP.

Notwithstanding my challenge as to the maintainability of the entire proceedings which IBBI has reasons to believe of being based on 'stolen/misappropriated documents' (IBBI has recorded the information as received by me in RTI reply) which itself is a subject matter of investigation, how these proceedings by IBBI is continued. Another pertinent point, when the order of Hon'ble NCLT dt/- 12th April, 2021, settled the issue of taking over of the HDFC Bank A/c by the RP and even the Bank during the course of proceedings in NCLT, did not raise any issues as contended by them earlier. IBBI Inspecting Authority had in its record that

HDFC had been issued notice to make their submission to NCLT, thus knowingly under what authority is Inspecting Authority of IBBI tending or attempting to interfere the course of proceedings in NCLT.

The issue of maintainability be decided first, since if the proceedings at the root level is vitiated, all other subsequent proceedings fall – There are catena of rulings in this regard and I am sure IBBI Inspecting Authority cannot act in contravention of Article 141 of the Constitution and it is further the settled provision of law (even if any reply has been earlier made by me, it was because all along I was earlier suppressed of the vital information of the complainant and the source of complaint and importantly IBBI suppressed that it was acting ex-facie on a stolen/misappropriated document/s) that no indulgence granted by me can unsettle the Settled Position in LAW – as propounded by Hon'ble Constitutional Courts.

The point-wise detailed reply to the above-mentioned are important, since they go to the root-level of the proceedings. Further, IBBI – Inspecting Authority is bound to provide the details/documents in its entirety, as per the ratio of the Hon'ble Supreme Court Ruling in Vijay Kurle, In re, (2019) 9 SCC 521 reproduced as under:

Para 1. Heard the learned counsel for the parties. We direct the Registry to supply three sets of Annexures P-1 to P-15 attached with the complaint sent to the Hon'ble the Chief Justice of India, to Mr Jai Ram Yadav, who shall receive the same on behalf of Respondents 1 and 2 as well as Respondent 3 in person on 4-10-2019 at 2 p.m. from the office of the Registrar concerned.

Para 2. Fresh reply to the contempt petition after going through the annexures may be filed within three weeks thereafter.

Para 4. Registry to handover complete set of copies of the paper book including the annexures along with the complaint, filed by the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society to the Hon'ble Chief Justice of India, to the learned Amicus Curiae.”

4.1.12. Mr. Partha Sarathy Sarkar has cited Covid-19 as one of the reasons for non-submission of the records, but the same does not hold water as Mr. Partha Sarathy Sarkar could have submitted the relevant documents during the window opportunity as it unfolded from time to time and he was able to get access to his office. Instead of waiting for reminder/further communication from IA, he could have opted to immediately submit reply/documents to IA as soon as it was possible.

4.1.13. The DC notes that section 218(3) of the Code r/w regulation 4(4) and 4(7) of the Inspection Regulations vests an Insolvency Professional with duty to extend all cooperation to the IA. But, in the instant case, the IP, by not providing the necessary documents to the IA during the inspection, has not cooperated in the inspection process. The relevant provisions are as follows:

“218. Investigation of insolvency professional agency or its member or information utility.

(3) The Investigating Authority may, in the course of such inspection or investigation, require any other person who is likely to have any relevant document, record or information to furnish the same, and such person shall be bound to furnish such document, record or information:”

“4. Conduct of Inspection.

(4) It shall be the duty of the service provider and an associated person to produce before the Inspecting Authority such records in his custody or control and furnish to the Inspecting Authority such statements and information relating to its activities within such time as the Inspecting Authority may require.

(7) It shall be the duty of the service provider and an associated person to give to the Inspecting Authority all assistance which the Inspecting Authority may reasonably require in connection with the inspection.”

4.1.14. It is noteworthy to mention here that non-submission of requisite documents at the time of COVID restrictions might not, at first stance, seem to be a grave error on the part of the IP. However, rather than looking in fragmented parts, it is important to analyse and take a holistic view, the conduct of the IP in true perspective by considering the complete chronology of events and acts of the IP as hereunder:

1) The Notice of Inspection was served upon the IP through email dated 17th March 2021 requesting thereby to submit necessary documents pertaining to the CIRP of CD. The IP in turn demanded the copy of the Inspection Order which was the basis of the inspection notice. Although not mandated under the law, the same was provided to the IP in good faith by the Inspecting Authority. However rather cooperating with the IA in the inspection by providing the necessary documents, the IP chose to engage the Board in legal quagmires in every possible manner presented as follows:

a) The IP challenged the inspection notice itself on a flimsy ground of file number of inspection order and inspection notice being the same. The IP informed that he has also filed two RTI applications in this respect. The relevant excerpts of the communication from IP is as hereunder:

“Gratitude for sharing the Inspection Order (per the tail mail) under the

signature of Mr. Mayank Mehta (AGM). As a measure of transparency yours' truly has filed 2 RTI's (information sought therein is self-explanatory), and the instant communication is copied to Mr. Mayank Mehta for the Inspection Order being under his signature.

Re-referring to your trail mail dt/- 17th March 2021... excepted from therein - 'Please find attached the Inspection Notice No. IBBI/IP/R(INSPI)/2021/67 dated 17.03.2021 along with attachments, for your kind information and necessary action...'

It appears from the afore excerpt, that the Inspection Notice No. IBBI/IP/R(INSPI)/2021/67 dated 17.03.2021, is incorrect prima-facie both on facts and law - since IBBI/IP/R(INSPI)/2021/67 is not inspection notice rather it is an Inspection Order and is dated 9th Mar, 2021 (under the signature of Mr. Mayank Mehta) - I may be excused for non-comprehending the reasons for sending an ex-facie misleading communication with inconsistencies loaded - the same can't be wished away as Typographical or Clerical mistake/error, since the genre of the same goes at the root cause vitiating the communication/ notice (dt/- 17th Mar, 2021) in its entirety."

- b) The IP then proceeded to initiate criminal proceedings against the employees of the Board discharging their official duties in relation to the inspection of the IP – the Inspecting Authority, the issuer of Inspection Order and the employee who communicated the Inspection Order to the IP. The IP accused the concerned employees of relying on stolen documents for issuing inspection notice to the IP and therefore alleged the concerned employees of several offences punishable under the Indian Penal Code. After examination of the complaint, it was rejected by the Addl. Chief Metropolitan Magistrate, Mumbai on the ground *inter alia* that no prima facie case has been made out by the complainant IP against the accused employees.
- 2) The IP has then challenged the SCN itself issued to him *vide* his letter dated 29th April 2023 by stating that the SCN does not disclose whether factors as mandated *inter alia* under regulation 12(2) of IBBI (Inspection and Investigation) Regulations, 2017 have been considered for issuance of SCN, including the nature and seriousness of the alleged contravention, any unfair advantage gained by the IP, loss caused or likely to

be cause to any person as a result of the alleged contravention.

- 3) On the writ application filed by the IP, Hon'ble High Court of Bombay *vide* its Order dated 18th July 2023 had directed the IBBI to give fresh hearing to the petitioner IP and pass appropriate orders. However, when the notice for personal hearing was sent to the IP, vide mail dated 11th August 2023, he questioned the provisions under which advocate of the Board before High Court of Bombay Mr. Pankaj Vijayan was instructed to submit before the High Court that DC will give fresh hearing. Further vide mail dated 12th August 2023, the IP sought to cross examine the inspecting officials.
- 4) After conclusion of the virtual hearing on 16th August 2023, the IP sent an e-mail to the Secretary, Ministry of Corporate Affairs with copy to the DC, questioning the jurisdiction of DC on the ground that the previous order had been passed by the same DC and alleged that DC is biased. This is when it is settled principle that when the matter is remanded back, it is heard by the same authority. Interestingly, during the hearing, neither Mr. Partha Sarathy Sarkar, nor his advocate raised the issue of jurisdiction of DC. After conclusion of the hearing, addressing such mail to DC is nothing less than contemptuous act.

4.1.15. It becomes imperative for the DC to address the issues raised by the IP in para 4.1.14 above, other than those which are in the exclusive domain of judicial authorities.

a) The DC notes that it is the administrative prerogative of the Board basis its convenience to assign any reference number to any matter it deals with. It is the internal administrative issue which should not be of much concern of the IP so much so that the IP refuses to cooperate with the Inspecting Authority. Rather than providing the necessary required documents as sought by the IA, the IP tried to evade from his responsibility by taking cover of RTI applications filed by him.

b) Further, the DC refers to regulation 12(2) of the IBBI (Inspection and Investigation) Regulations, 2017 which provides as follows:

(2) For the purposes of clause (e) of sub-regulation (1), the Board shall take into account, but not limited to, the following factors: -

(a) the nature and seriousness of the alleged contraventions, including whether it was deliberate, reckless or negligent on the part of the noticee;

- (b) the consequences and impact of the alleged contravention, including –*
 - (i) unfair advantage gained by the noticee as a result of the alleged contravention;*
 - (ii) loss caused, or likely to be caused, to stakeholders or any other person as a result of the alleged contravention; and*
 - (iii) the conduct of the noticee after the occurrence of the alleged contravention, and prior to the alleged contraventions.*

The DC on perusal of the SCN finds that the SCN in detail alleges nine different contraventions by the IP. For each contravention, the SCN presents the specific facts and then details the provisions of Code and Regulations violated by the IP through such alleged wrongful act. The SCN on the basis of such alleged contraventions has then concluded that the allegations are serious in nature which makes the IP not ‘fit and proper’ to continue as IP.

4.1.16. The DC observes that the conduct of the IP in the whole disciplinary proceeding has been far from what can be termed as professional conduct. The Code vests the Insolvency Professional with crucial powers and functions to be performed for insolvency resolution of a distressed company. The Code also vests the Board with statutory duty to exercise monitoring powers over the Insolvency Professionals to ensure that the conduct of the Insolvency Professionals is in consonance with the provisions of the Code and Regulations with an overall objective of meeting the objectives of the Code. The effective functioning of such a regulatory framework is in the interests of all the stakeholders, including the Insolvency Professional himself. Therefore, it becomes a bounden duty of all to extend all cooperation to the Board to facilitate its statutory duty.

4.1.17. However, in the instant case, the DC observes that the IP has shown utter disregard to the systems and processes put in place by the Board to effectively carry out its monitoring activity. The IP has, at every step, tried to question the veracity of the well-established contours of monitoring mechanism of the Board through whatever means he could, including attempt to intimidate the officials of the Board by initiating criminal proceedings against the employees of the Board, non-appearance in personal hearing, questioning the directions of Hon’ble High Court of Bombay regarding fresh hearing, and sending mail to various authorities, including DC, after conclusion of the personal hearing on 16th August 2023, etc.

4.1.18. Therefore, in view of the foregoing, the DC is not inclined to take lenient view on the non-

cooperation of the IP with the IA. Accordingly, the DC holds the allegations made against the IP in SCN with respect to his violation of section 208(2)(a) and (e) of the Insolvency and Bankruptcy Code, 2016 (Code), Regulation 4(4) and 4(7) of Inspection Regulations, Regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clause 18 and 19 of the Code of Conduct as specified in the First Schedule of IP Regulations holds valid and no additional facts/documents/arguments were presented by the IP to counter the allegations made in the SCN.

4.2. Delay in making public announcement

4.2.1. The SCN observes that the AA *vide* its order dated 21st August 2019 admitted the CD into CIRP. Regulation 6(1) the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') specifies that an insolvency professional shall make a public announcement immediately on his appointment as an interim resolution professional and the term immediately for the purpose of the aforesaid regulation has been clarified as not later than three days from the date of the appointment of the insolvency professional. However, the public announcement was made by Mr. Partha Sarathy Sarkar only on 27th September 2019. Thus, there is a delay of 33 days in making the public announcement.

4.2.2. In view of the above, a *prima facie* view was formed that Mr. Partha Sarathy Sarkar has *inter alia* violated Sections 13(2), 15(2), 208(2)(a) and 208(2)(e) of the Code, Regulation 6(1) of CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clause 13 of the Code of Conduct.

Submissions by the IP

4.2.3. Mr. Partha Sarathy Sarkar stated that it was a matter of record that communication of the order dated 21st August 2019 was not received by him from NCLT Registry till 26th September 2019. Mr. Partha Sarathy Sarkar submitted that certified copy of the order was communicated by the Advocate of the petitioner on 26th September 2019 and the public announcement was made by him on 27th September 2019. In view of the same, Mr. Partha Sarathy Sarkar stated that he was not guilty of any violation.

Findings of the DC

4.2.4. The prime objective of the Code is the time bound resolution of the distressed assets. Accordingly, section 12 of the Code provides a timeline one hundred and eighty days for

completion of insolvency resolution process, which can be extended only once by the AA for a maximum period of ninety days. To achieve this objective, timeline associated with each and every critical activity has been provided in the regulations and needed to be adhered strictly.

- 4.2.5. The DC notes that Mr. Partha Sarathy Sarkar was appointed *vide* order of AA dated 7 21.08.2019 and the public announcement was made on 27.09.2019, i.e., after more than a month of ICD. The DC notes the submission of Mr. Partha Sarathy Sarkar that communication of the order dated 21st August 2019 was not received by him from NCLT Registry till 26th September 2019. The contention of Mr. Partha Sarathy Sarkar on this count is acceptable and therefore the allegations made out in the SCN was dropped by the DC in its earlier Order dated 24th June 2022. The same is therefore not interfered in this order as well.

4.3. **Control and custody of assets of the CD**

- 4.3.1. Section 25(1) of the Code mandates an IP to preserve and protect the assets of the CD, including the continued business operations of the CD. It is the duty of the IP in view of Section 25(2)(a) to take immediate custody and control of all the assets of the CD including the business records of the CD. The SCN observes that Mr. Partha Sarathy Sarkar did not appoint the registered valuers since the assets of the CD were untraceable. The SCN however states that the supplementary forensic audit report dated 3rd March 2020, the forensic auditor has mentioned about the details of certain assets received by them from Mr. Partha Sarathy Sarkar. Furthermore, from the minutes of the 3rd CoC meeting, it was observed that Mr. Partha Sarathy Sarkar was aware that certain assets of the CD were lying with one of the creditors. Therefore, Mr. Partha Sarathy Sarkar failed to take appropriate control and custody of the assets of the CD.
- 4.3.2. In view of the above, a *prima facie* view was formed that Mr. Partha Sarathy Sarkar has *inter alia* violated Section 25(1), Section 25(2)(a), Section 208(2)(a) and 208(2)(e) of the Code, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clause 2 and 3 of the Code of Conduct

Submissions by the IP

- 4.3.3. The IP has submitted that as the CIRP cost was not paid for, the IRP/RP cannot be expected to be a money-lender to the CIRP. And if the IP has to fulfil the duty as per Section 25 of

the Code, then the CIRP cost has to be paid as per the mandate of NCLAT ruling in Sajeve Bhushan Deora V/s Axis Bank Ltd. - Company Appeal (AT) (Ins) No.741 of 2019. The IP concluded that in the absence of fulfilment of the mandate of the said Hon'ble NCLAT ruling, he was not guilty of any violation of the code

Findings of the DC

4.3.4. The alleged contraventions with respect to not taking control and custody of the assets of the corporate debtor and non-appointment of registered valuers by the IP are inter-related and therefore shall be examined by the DC collectively in para 4.4.5 onwards.

4.4. Non-appointment of registered valuers

4.4.1. The SCN states that the AA *vide* its order dated 21st August 2019 appointed Mr. Partha Sarathy Sarkar as IRP. Further, CoC in the 1st meeting dated 22nd October 2019 confirmed his appointment as the RP in the CD.

4.4.2. Regulation 27 of the CIRP Regulations requires an insolvency professional to appoint two registered valuers within forty-seven days of insolvency commencement date. It is Mr. Partha Sarathy Sarkar's submission to IA that *"the assets of the Corporate Debtor are untraceable as informed by the CoC members to the RP. Moreover, none of the CoC members are willing to contribute towards CIRP cost, hence no Registered Valuers could have been engaged."* Section 25(2)(d) of the Code casts the duty on an insolvency professional to appoint accountants, legal or other professionals in the manner specified by the Board. The obligation of appointment of registered valuers under Regulation 27 of the CIRP Regulations is on the RP and not the CoC. The SCN observes that Mr. Partha Sarathy Sarkar failed to appoint registered valuers which is in violation of Regulation 27 of CIRP Regulations.

4.4.3. Thus, in view of the above, a *prima facie* view was formed that Mr. Partha Sarathy Sarkar has *inter alia* violated Section 25(2)(d), 208(2)(a) and 208(2)(e) of the Code, Regulation 27 of CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IP Regulations and Clause 3.5 and 13 of Code of Conduct.

Submissions by the IP

4.4.4. The IP in his written submission has submitted that the assets of the CD were untraceable as informed by the CoC members (the erstwhile employees of the CD) & no one was

willing to contribute towards the CIRP Cost. He stated that the Code & any Regulation framed therein also does not conceive of any situation, wherein the IRP/RP shells the CIRP Cost out of his own pocket. The IP during his personal hearing on 16th August 2023 stated that the only asset he found of the CD was movable properties such as broken table, chairs, cooler etc. The IP also stated before the DC that due to non-availability of funds, even he has not received any fee for his professional services.

Findings of the DC

- 4.4.5. As stated in para 4.3.4 above, the DC shall in following paragraphs examine and present its findings on two related contraventions of not taking control and custody of the corporate debtor and also non appointment of registered valuers.
- 4.4.6. The DC notes that the IP had issued a legal notice dated 10th October 2019 through Mr. Kauser Hussain to M/s Perfect Accounting and Shared Services Pvt. Ltd. for handing over the books of accounts and documents in respect of CD. Against this, M/s Perfect Accounting and Shared Services Pvt. Ltd. sent a reply *vide* letter dated 11th October 2019 stating that *‘we are handing over all the documents and records including Common Seal available in our custody today October 11, 2019 to your representative advocate V.S.V.N.D.S Bhanumathi. Detail of documents is enclosed herewith as Annexure 1’*. It clearly indicates that certain documents were in fact shared with Mr. Partha Sarathy Sarkar.
- 4.4.7. The DC further notes from the perusal of the minutes of the 3rd CoC meeting that Mr. Partha Sarathy Sarkar was aware that certain assets of the CD were lying with one of the directors of the CD - Ms. Preetha Nair along with data stored in computers. The presence of assets was also mentioned in the supplementary audit report dated 03rd March 2020. However, the same was not taken by Mr. Partha Sarathy Sarkar in his custody and control.
- 4.4.8. Further, Mr. Partha Sarathy Sarkar had disclosed the following fact in his application bearing CA No. 1138(ND)/III/2020:

“27. The last known value of assets as per the audited financial statements of 31st Mar, 2017 is around INR 8.16 Crores; which are at multiple locations, the CoC be directed to fix the fees/expenses to be incurred in terms of Regulation – 34 of IBBI (Insolvency resolution process for corporate persons) Regulations, 2016...”

- 4.4.9. In view of the above, it is observed that Mr. Partha Sarathy Sarkar had not taken control and custody of the assets of the CD and “did not preserve and protect them” as they were

with the CoC member Ms Pretha Nair. Accordingly, there is violation of Section 25 (1) and Section 25 (2) of the Code. Further, as Mr. Partha Sarathy Sarkar has not taken reasonable care and diligence while performing his duties of taking control and custody of assets of the CD, there is also violation of Section 208(2)(a) of the Code.

4.4.10. Further, regulation 27 of the CIRP Regulations, 2017 casts an obligation on the Resolution Professional to appoint registered valuers. The relevant provision is as follows:

“27. Appointment of registered valuers.

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

4.4.11. Mr. Partha Sarathy Sarkar was appointed as Resolution Professional by the CoC in its first meeting dated 22nd October 2019. The obligation of appointment of registered valuers under regulation 27 of the CIRP Regulations is on the RP and not the CoC. The DC notes that no registered valuers have been appointed during the CIRP of the CD.

4.4.12. The DC also notes the response of Mr. Partha Sarathy Sarkar to the list of documents for inspection, where he stated that *‘the assets of the Corporate Debtor are untraceable as informed by the CoC members to the RP. Moreover, none of the CoC members are willing to contribute towards CIRP cost, hence no Registered Valuers could have been engaged.’*

4.4.13. It must be kept in mind that the whole insolvency resolution process under the aegis of Code deals with the distressed assets. The Code casts crucial duties and responsibilities on the Resolution Professional with the objective of effective insolvency resolution process. The Code also empowers the Adjudicating Authority to issue necessary directions in case of any difficulty faced by Resolution Professional during the CIRP. Section 19 of the Code provides that if the promoters or any other person does not provide assistance during the CIRP, application may be moved to AA for necessary directions. Apart from this, section 60(5) of the Code empowers the AA with jurisdiction to deal with any matter related to the CIRP.

4.4.14. In the instant case, the DC finds no material on record to prove that whether the IP had moved application under section 19 of the Code to trace the assets of the corporate debtor. Further, the IP has also not approached the AA with respect to non-funding by CoC

members for appointment of registered valuers. Furthermore, the cost incurred during the ongoing CIRP, forms part of the CIRP cost, the payment of which is made in priority to all other claims, both in case of either resolution or liquidation of the corporate debtor. Had the IP carried out his duties under the Code and regulations diligently and timely, the CIRP could have reached its logical conclusion with either resolution or liquidation of the CD. In both these situations, the CIRP cost incurred, including the fee of registered valuers, would have been paid in priority. The IP could also have apprised the AA for not pursuing the CIRP as CD has no assets and instead recommendation for liquidation needed to be considered. Therefore, non-availability of funds being main reason for non-appointment of valuers does not appear to be tenable in perspective of provisions and overall scheme of the Code.

4.4.15. Furthermore, in his submissions, the IP has mentioned that he had no funds at hand for any activity, however on perusal of his application filed with the AA, it appears that he has withdrawn around 8.70 lacs towards expenditure and his fee. As per available information, it is not clear whether the source of these funds has been intimated to the CoC. However, it is clear from the correspondence received from liquidator who took over the charge from him after liquidation of CD was ordered on 02nd November 2022 that any information regarding source of income of CD was not intimated to the liquidator while handing over the charge. The liquidator is on record to state that necessary cooperation and documentation were not made available by the IP during the process of handing over the charge. For easy reference, the mail received from the Liquidator of the CD is pasted below:

From: "a mittal" <a.mittal@gmail.com>
 To: "Nish Saini" <nish.saini87@gmail.com>
 Cc: "Rajesh Tiwari" <rajesh.74@bbi.gov.in>, "Om Prakash" <op.verma92@bbi.gov.in>, "Liquidation Division (BB)" <liq.cirp@bbi.gov.in>
 Sent: Tuesday, September 12, 2023 1:48:38 PM
 Subject: Re: In the matter of Innovari Technologies Pvt. Ltd.

Dear Sir,

Please find the below pointwise reply of your below mail:-

i) Details of documents shared by erstwhile RP with the Liquidator; - No documents have been handed over by the RP to the Liquidator till date except advance copy of petition of IA 271/2023 and claim for G for CIRP Cost/RP Fees for the CIRP.

ii) Details of documents not shared by erstwhile RP with the Liquidator; - The status of possession of records and documents with erstwhile RP or otherwise is not known. Further, no documents have been handed over by the RP to the Liquidator. The RP has not confirmed the status of the assets in his possession.

iii) Whether the details of HDFC Bank Account of the CD were shared by the RP with the Liquidator; - No, but we have received the account detail from one of the IA filed with NCLT.

iv) Who is operating the aforesaid account and details of its authorized signatory. Till date the erstwhile RP is the authorized signatory of the said account, Liquidator sent letter to HDFC bank to change the Authorized signatory on 24.09.2023 and 05.09.2023, and also furnished all the relevant documents asked by Bank after collecting from MCA site. The bank is in process to change the Authorized signatory.

Regards,
 Atul Mittal
 Liquidator
 In the matter of Innovari Technologies Private Limited

4.4.16. In view thereof, the DC finds that Mr. Partha Sarathy Sarkar has not exhibited any intention by taking some concrete steps that can instill some degree of confidence in the earnestness of the IP. It is plain for anyone willing to see that Mr. Partha Sarathy Sarkar has not done anything to show that he intended to complete the CIRP with required diligence. Continuing with the assignment without following the due processes establishes, willful

contravention of procedures provided in the Code. Thus, the DC is of the view that there was a violation of Section 208(2)(a) of the Code and Regulation 27 of the CIRP Regulations by Mr. Partha Sarathy Sarkar.

4.5. Inconsistency in the insolvency commencement date

4.5.1. The SCN mentions that section 208(2)(a) of the Code specifies that every insolvency professional must take reasonable care and diligence while performing his duties. It was observed that there was inconsistency in the insolvency commencement date (ICD) in the documents filed before AA by Mr. Partha Sarathy Sarkar. ICD in public announcement and in an interlocutory application has been mentioned as 26th September 2019 while in the progress report dated 31st October 2019 filed by him before the AA states that CIRP was admitted on 21st August 2019.

4.5.2. In view of the above, a *prima facie* view was formed that Mr. Partha Sarathy Sarkar has *inter alia* violated section 208(2)(a) and 208(2)(e) of the Code, Regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clause 2 and 12 of the Code of Conduct.

Submissions by the IP

4.5.3. Mr. Partha Sarathy Sarkar submitted that the charge of violation was *ex-facie* in disregard to the binding precedent as has been settled by Hon'ble NCLAT in Velamur Anand vs. Union Bank of India, 2018 SCC Online NCLAT 258, wherein as per the ratio of the ruling the time period till which the IRP was not informed about the order was excluded. As per the Hon'ble Bombay High Court ruling in K.K. Singh V/s Uol & Ors. Writ Petition (L) NO. 3250 OF 2019, which has reiterated Rule 150 of NCLT Rules, an order can be taken cognizance of only when the order or judgment or notice bears the seal of the Tribunal. Mr. Partha Sarathy Sarkar submitted that he is not guilty of any violation.

Findings of the DC

4.5.4. Section 5(12) of the Code defines the term 'insolvency commencement date' as follows –

“(12) “insolvency commencement date” means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be:”

4.5.5. The DC notes that the ICD is mentioned as 26th September 2019 in the copy of the Public Announcement. Moreover, in some communications of the IP with the AA, the ICD has

been stated as 26th September 2019 . However, in the Progress Report filed by Mr. Partha Sarathy Sarkar, it was mentioned that *“the application for Corporate Insolvency Resolution Process filed by operation creditor Mr. Anil Kheaterpal, under Section 9 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was admitted by Hon’ble NCLT, Delhi vide Order dated 21.08.2019 wherein Mr. Partha Sarathy Sarkar.... was appointed as Interim Resolution Professional (IRP).”*

- 4.5.6. The DC has perused the records available with the Board and found that ICD in Form 7 submitted by him is mentioned as 21st August 2019. In case, there was some confusion in this regard, necessary clarificatory application could have been filed by him with the AA. However, since this is not a material lapse and does not have any material implication on the CIRP, the DC is inclined to take a lenient view on this lapse by the IP with a cautious warning that the IP must be more careful and diligent while performing functions under the Code.

4.6. Timeline Violation of CIRP

- 4.6.1. Section 12(1) of the Code provides that CIRP shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate CIRP. Further, Section 12(2) of the Code provides that an insolvency professional shall file an application to AA to extend the period of CIRP beyond one hundred and eighty days on the prior approval from CoC. It is noted that CIRP commenced on 21st August 2019, however, it is observed from the reply of Mr. Partha Sarathy Sarkar to the IA wherein he has stated *"no application for extension of CIRP period has been filed"*. Thus, it is noted that no application for extension of CIRP has been filed by Mr. Partha Sarathy Sarkar before AA.
- 4.6.2. In view of the above, a *prima facie* view was formed that Mr. Partha Sarathy Sarkar has *inter alia* violated Section 12(1) and (2), Section 208(2)(a) and 208(2)(c) of the Code, Regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clause 2 and 12 of Code of Conduct.

Submissions by the IP

- 4.6.3. Mr. Partha Sarathy Sarkar has submitted that the given the traverse of events qua CIRP of the CD & given the expiry of the CIRP period, appropriate directions have been sought from Hon'ble AA vide IA 1996/2020 which was pending adjudication. Mr. Partha Sarathy

Sarkar submitted that the application for extension u/s 12(2) of the Code can be filed only if instructed to do so by CoC by a resolution passed with 66% of the votes. In the absence of any resolution qua the same, there can be no violation.

Findings of the DC

- 4.6.4. The DC notes that the CIRP was initiated by the AA on 21st August 2019. The 180 days period calculated from the date of admission of application came to an end on 17th February 2020. Section 12 of the Code provides for completion of CIRP within one hundred and eighty days from the commencement of CIRP. The relevant provision is as follows:

“12. Time-limit for completion of insolvency resolution process. –

(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 sixty-six per cent. of the voting shares.”

- 4.6.5. The DC notes that the IP had not provided any reply to the IA with respect to whether any application has been filed seeking extension of CIRP period. Only in his written submission the IP has mentioned the IA which he has claimed is filed for seeking appropriate directions from the AA and is still pending with the AA.
- 4.6.6. The scheme of the Code vests duty on the Resolution Professional to carry out the activities under the Code, in accordance with the procedure mentioned therein, to ensure effective and timely completion of the CIRP. In terms of section 23 of the Code, the duty to conduct insolvency resolution process is vested with the resolution professional. Further, clause 13 of the Code of Conduct of IP provides as follows:

“Timeliness.

13. An insolvency professional 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.”

- 4.6.7. The conduct of meetings of CoC is one such duty to be performed by the Resolution Professional. In terms of sections 24(2) and 25(2)(f) of the Code, the duty to conduct and convene the meetings of CoC vests with the Resolution Professional. Regulation 18 of the CIRP Regulations empowers the Resolution Professional to convene the meeting of CoC as and when he considers necessary. Further, in terms of regulation 21 of the CIRP Regulations, the Resolution Professional decides the matters to be discussed in the upcoming meeting of CoC and the same is circulated to all members through the notice.
- 4.6.8. Therefore, the contention of the IP that the application for extension u/s 12(2) of the Code can be filed only if instructed to do so by CoC by a resolution passed with 66% of the votes is misleading and incorrect reading of the relevant provisions as mentioned above. Being an ‘Insolvency Professional’ entrusted with the duty to ensure effective insolvency resolution process, it was the duty of the IP to move agenda before CoC regarding filing of application with AA for extension of timelines.
- 4.6.9. Hence, the DC holds the violation of section 12 of the Code, Regulation 7 (2)(h) of the IP Regulations and Clause 13 of the Code of Conduct provided in the First Schedule to the IP Regulations

4.7. Non-compliance of regulation 21(3) and (4) of the CIRP Regulations

- 4.7.1. Regulation 21(3) and (4) of CIRP Regulations specifies that the notice of the meeting shall contain list of matters to be discussed at the meeting, a list of issues to be voted at the meeting, copies of all relevant documents to be discussed and the issues to be voted upon at the meeting, the process and manner for voting by electronic means and time schedule, including time period during which the votes may be casted, the login ID and the details for generating password etc. The SCN states that *vide* email dated 31st March 2021, Mr. Partha Sarathy Sarkar provided a few documents and links to the IA. However, he did not provide crucial documents and necessary documents including notices of all CoC meetings, documents evidencing minutes of all CoC meetings were circulated within 48 hours in terms of regulation 24(7) of the CIRP Regulations, minutes of the CoC meetings, e-voting results etc. at the time of inspection to the IA.
- 4.7.2. The SCN notes from the notice of the 1st CoC meeting dated 17th October, 2019 that the

notice contained only date, venue and timings of the said meeting. Whereas mandatory details such as (i) list of matters to be discussed at the meeting. (i) list of issues to be voted, (in) the process and manner for voting by electronic means, etc. were not mentioned as required in the notice dated 17th October 2019.

- 4.7.3. Thus, a *prima facie* view was formed that Mr. Partha Sarathy Sarkar has *inter alia* violated Section 208(2)(a) and 208(2)(e) of the Code, Regulation 21(3) and (4) of the CIRP Regulations, and Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clause 2 and 12 of the Code of Conduct.

Submissions by the IP

- 4.7.4. Mr. Partha Sarathy Sarkar submitted that the 1st meeting of the CoC being referred to was conducted in strict conformity to the mandate of Section 22 of the Code and it is nowhere stated that the meeting as specified in Section 22 of the Code is to be conducted in the manner as specified by the Board. He submitted that matters specified in section 240 of the Code to be under the powers of the Board to make regulations has excluded Section 22 of the Code. He stated that the issue made out is in contemptuous disregard of Hon'ble Delhi High Court ruling in Subhash Aggarwal Vs Uol 2011 SCC On Line Del 3033, which relied upon the Hon'ble Supreme Court ruling in State of Tamil Nadu Vs P. Krishnamurthy, wherein it was ruled that subordinate legislation which does not conform to the Parent Act is invalid and as was ruled by Hon'ble Supreme Court in KS Bhoir Vs State of Maharashtra (2001) 10 SCC 264, there cannot be a direction to disobey laws. Hence, Mr. Partha Sarathy Sarkar submitted that there is no violation on his part in non-compliance of any regulation which is not in conformity to section 240 of the Code.

Findings of the DC

- 4.7.5. Regulation 21(3) of the CIRP Regulations provides as follows:

“21. Contents of the notice for meeting

(3) The notice of the meeting shall contain the following-

(i) a list of the matters to be discussed at the meeting;

(ii) a list of the issues to be voted upon at the meeting; and

(iii) copies of all documents relevant to the matters to be discussed and the

issues to be voted upon at the meeting.”

- 4.7.6. The above-mentioned regulation does not carve out any exception from fulfilment of these requirements in any of the CoC meeting. The contention of the IP that the meeting was conducted in strict conformity to the mandate of section 22 of the Code is misleading as section 22 only lays out substantial aspect with respect to the appointment of Resolution Professional. It does not deal with procedural aspects as to how such meeting has to be conducted. Section 24(8) of the Code specifically provides that the meetings of the committee of creditors shall be conducted in such manner as may be specified. This provision does not create any exception or limitation on the powers of the Board *vis-à-vis* section 22 of the Code which only prescribes the mandatory work to be taken up in first CoC meeting.
- 4.7.7. Since, the IP has challenged the powers of Board to frame regulations with respect to the conduct of CoC meeting, including the meeting conducted under mandate of section 22 of the Code, it is pertinent to explain the powers of Board to frame regulations with respect to the insolvency resolution processes as follows:
- a) Section 196(t) of the Code vests the Board with function of make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code.
 - b) Section 240(1) of the Code vests the Board with general power to make regulations consistent with the Code to carry out the provisions of the Code.
 - c) In addition to the general power under section 240(1), the section 240(2)(r) of the Code empowers the Board to frame regulations the manner of conducting the meetings of the committee of creditors.
- 4.7.8. Therefore, the submission made by Mr. Partha Sarathy Sarkar that section 22 has been excluded from the matters specified in section 240 of the Code, and therefore the regulation is invalid is untenable and shows his impertinence towards the procedures laid down in the provisions and regulations of the Code.
- 4.7.9. The DC notes from the notice of CoC meeting dated 17th October 2019 sent by Mr. Partha Sarathy Sarkar to the CoC members that mandatory details like (i) list of matters to be discussed at the meeting, (ii) list of issues to be voted, etc. were missing from the Notice. Accordingly, the DC is of the opinion that Mr. Partha Sarathy Sarkar has violated section

208(2)(a) and 208(2)(e) of the Code read with Regulation 21(3) and (4) of the CIRP Regulations.

4.7.10. Also, the DC notes that Mr. Partha Sarathy Sarkar has not provided IA with evidence to substantiate that the copy of the all the minutes of all the CoC Meetings were circulated within 48 hours of the meeting to the participants of the meeting of the CoC. Mr. Partha Sarathy Sarkar has not provided the IA with evidence of circulation of minutes of all the CoC Meetings within 48 hours of the meeting to participants of the meetings of the CoC. Even during his reply to the SCN or submissions to the DC during personal hearing, the IP has not provided any documents to prove otherwise. Accordingly, the DC has drawn adverse inference. From the conduct of Mr. Partha Sarathy Sarkar, it is apparent that he has frustrated the object of the Code and Regulations made thereunder. Thus, Mr. Partha Sarathy Sarkar has violated section 208(2)(a) and 208(2)(e) of the Code read with Regulation 24(7) of the CIRP Regulations.

4.7.11. Further, Mr. Partha Sarathy Sarkar has conveniently ignored the section 208(2)(e) which obligates an IP to perform his functions in the manner and subject to such conditions as are specified in the Code and Regulations framed thereunder. In the instant case, it is evident from conduct of Mr. Partha Sarathy Sarkar that he has failed to follow the provisions of the Code and regulations made therein and the contravention is willful. Thus, the DC is of the opinion that Mr. Partha Sarathy Sarkar is liable for violation of section 208(2)(a) and 208(2)(e) of the Code also.

4.8. Non-maintenance of list of creditors in terms of regulation 13 of CIRP Regulations

4.8.1. Regulation 13(1) of the CIRP Regulations requires an IP to maintain a list of creditors specifically including details such as the names of creditors, amount claimed by them, amount of claims admitted and security interest, if any. The SCN states that it is observed from the report certifying constitution of CoC filed before AA that, Mr. Partha Sarathy Sarkar has maintained only name of creditor, profile of creditor and amount of operational debt and have failed to include the amount claimed by the creditors, amount of claim admitted and security interest, if any.

4.8.2. Thus, a *prima facie* view was formed that Mr. Partha Sarathy Sarkar has *inter alia* violated Section 208(2)(a) and 208(2)(c) of the Code, Regulation 13(1) of the CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clause 2 and 12 of the Code of Conduct.

Submissions by the IP

- 4.8.3. Mr. Partha Sarathy Sarkar has submitted that regulation 17(1) of CIRP Regulations nowhere mandates that while filing a report certifying the formation of CoC with the AA, the amount claimed by creditors, amount of claim admitted and any security interest has to be necessarily mentioned and hence, the same was not specified by him. He stated that list of documents for inspection also did not specify that the particulars of the amount claimed by creditors, amount of claim admitted and any security interest was to be necessarily mentioned. That as it only asked for the list of creditors, the same was provided.

Findings of the DC

- 4.8.4. Regulation 13 of the CIRP Regulations provides as follows:

“13. Verification of claims.

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

(2) The list of creditors shall be –

(a) available for inspection by the persons who submitted proofs of claim;

(b) available for inspection by members, partners, directors and guarantors of the corporate debtor;

(c) displayed on the website, if any, of the corporate debtor;

(d) filed with the Adjudicating Authority; and

(e) presented at the first meeting of the committee.”

- 4.8.5. The DC notes that regulation 13(1) of the CIRP Regulations mandates IRP/RP to maintain list of creditors containing certain mandatory information as mentioned above. Now, the contention of the IP that regulation 17(1) of CIRP Regulations nowhere mandates that while filing a report certifying the formation of CoC with the AA, these mandatory details

are to be mentioned is completely misleading. In absence of any specific provision, an IRP is not expected to maintain different lists of creditors for different purposes. The IP has also not provided any document to the IA to prove otherwise that the list of creditors is maintained in accordance with Regulation 13. Therefore, the reliance of IA on list of creditors submitted by the IP to the AA along with the report certifying constitution of committee is valid. Even during his reply to the SCN or submissions to the DC during personal hearing, the IP has not provided any documents to prove otherwise. Accordingly, it can be safely concluded that the list of creditors maintained by the IP was bereft of the mandatory details.

- 4.8.6. The DC notes that by referring to regulation 17(1), the IP is trying to mislead the DC by comparing two different legal provisions. It is evident that the IP has failed to adhere his obligations and compromised with the explicit provisions of the Code and regulations provided therein. Therefore, the DC is of the view that since the list was not maintained as provided in the CIRP Regulations, there is violation of Section 208(2)(a) of the Code and Regulation 13(1) of the CIRP Regulations.

4.9. **Non-filing of PUF E applications**

- 4.9.1. The SCN notes that the IA had sought details of records relating to determination on preferential and other transactions covered under Section 43, 45, 50 and 60 under regulation 35A(2) of CIRP Regulation and any action taken thereof. Mr. Partha Sarathy Sarkar in his reply to IA at the time of inspection had submitted that *"No records of any preferential and other transactions are available. No application has been filed with the AA for avoidance of transactions"*.

- 4.9.2. The SCN however states that it is observed from the observation in the report of the forensic auditors dated 12th December 2019 wherein the auditors have noted transactions which could be under the provisions of Section 43, 45, 50 and 66 of the Code. As per regulation 35A of CIRP Regulations, IP should form an opinion on preferential and other transactions covered under section 43, 45, 50 or 66 of the Code within 75 days of ICD, make a determination within 115 days of ICD and file an application before AA within 135 days of ICD. The SCN alleges on observation from the material available on record that Mr. Partha Sarathy Sarkar has failed to form an opinion and accordingly failed to file the requisite applications before AA for necessary orders.

- 4.9.3. In view of the above, a *prima facie* view was formed that Mr. Partha Sarathy Sarkar has

inter alia violated Section 208(2)(a) and 208(2)(e) of the Code, Regulation 35A of CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clauses 3 and 5 of Code of Conduct.

Submissions by the IP

- 4.9.4. Mr. Partha Sarathy Sarkar submitted that he could not form any opinion in the absence of adequate material justifying PUF transactions, for which appropriate proceedings were filed *vide* IA 1138/2020 & IA 1996/2020. Hence, there is no violation.

Findings of the DC

- 4.9.5. The DC notes that Mr. Partha Sarathy Sarkar appointed M/s Shandiliya & Associates as forensic auditors for conducting forensic audit. The report was submitted by the forensic auditor to Mr. Partha Sarathy Sarkar and on perusal of the forensic audit report, it is noted that the report had following observations:

“Ms. Preetha Nair is cheque issuing authority as also the administrative authority of company”.

“The termination and resignation of employee from company has also contributed in stakeholder losses.”

“....after rendering services of approx.. 35 month further she has been paid salary of Rs. 3.10 crore approx..”

“.... It was found that Preetha Nair being the director of the company and also initial share subscriber of the company, she has been named into various contract on behalf of company with their prospective clients/customer”

“The reason of termination of Preetha Nair is not on records, however after being terminated on 12.02.2018, Nair has given her resignation to board of director of ITPL India quoting her resignation as pre-occupation elsewhere (Termination and resignation of Preetha Nair should need more explanation from Board of ITPL)”

“All traveling bills are blanketly approved and passed by Preetha Nair without ascertaining reason and outcome of travelling, crores of rupees could not be sanctioned in such casual manner as evident from documents.”

- 4.9.6. Further, during the personal hearing, the IP had submitted before the DC that there were certain fixed deposits of the company for which interest was being accrued. However, the receipts of such fixed deposits were not traceable. Mr. Sarkar asserted that he was very close to unearth the real possessor of these fixed deposit receipts. On being asked why he had not moved any application with AA, the IP replied that he didn't have any corroborative material to back his supposition of existence of avoidance transactions.
- 4.9.7. In view of the materials available on record, it is evident that there were transactions which could be under the provisions of Section 43, 45, 50 and 66 of the Code, which was highlighted by the Forensic Auditor Report. The IP had reasonable grounds to form an opinion with respect to the existence of avoidance transactions. Being an Insolvency Professional, it is reasonably expected of the IP to examine the available documents and form an informed opinion thereafter which he failed to do in the instant matter.
- 4.9.8. The DC is of the opinion that based on the findings of the Forensic Audit Report and after examination of such transactions, an application should have been made to the AA under Sections 43, 45, 50 and 66 of the Code. However, as this was not done, therefore, the DC is of the view that Mr. Partha Sarathy Sarkar has violated section 43, 45, 50 and 66 of the Code.

5. ORDER

- 5.1. The conduct of the IP has been far from satisfactory. Even during the hearing, Mr. Sarkar appeared to be excessively aggressive and used foul and contemptuous language casting allegations against all the officers of the Board dealing with the case and also tried to challenge the locus of the DC to hear the case despite clear directions of the Hon'ble High Court of Bombay.
- 5.2. The DC notes that the IP has shown utter disregard and contempt towards the established monitoring activity of the Board. Rather than cooperating with the IA in effective carrying out of the statutorily mandated monitoring functions of the Board, the IP had tried to evade his duties entrusted on him under the Code and regulations on one pretext or the other. Actions, bereft of logic, taken in utter disregard to laid down compliances are against the professional conduct and ought to be avoided by the IP.
- 5.3. Timebound resolution is the key objective of the Code. Hiding behind technicalities to delay

or not take any action to initiate the process needed to be discouraged at any cost. More so to negate the effect of any negative impediments, IP always has liberty to seek advice of the Adjudicating Authority. In case of Kridhan Infrastructure, Pvt. Ltd. V/s Venkatesan Sankaranarayan, and others, Hon'ble Supreme Court has opined that, *“Time is a crucial facet of the scheme under the IBC. To allow proceedings to lapse into an indefinite delay will plainly defeat the object of the statute. A good faith effort to resolve a corporate insolvency is a preferred course. However, a resolution applicant must be fair in its dealings as well.”*

- 5.4. The whole CIRP hinges on the effective functioning of its duties by the IP, entrusted on him by the Code and regulations. He is the driving force of an effective insolvency resolution system. An IP has a larger responsibility owed towards the whole insolvency ecosystem. The Code of Conduct as prescribed in the IBBI (Insolvency Professional) Regulations acts as a charter of professional norms which establishes the credibility of the whole process. The acts of an Insolvency Professional should therefore be in consonance with letter and spirit of the Code of Conduct.
- 5.5. Appointment of Registered Valuers is one of the important event of the CIRP as it helps to uncover the true worth of the CD. The estimation of fair value and liquidation largely determines the fate of the company as to whether the CD will be resolved or go for liquidation. If there is any issue in appointment of valuers or any other matter, the IP is free to approach AA for necessary directions which is adequately empowered under section 60(5) of the Code to deal with any question of law or facts arising out of or in relation to the insolvency resolution of the corporate debtor. As per material available on record, at no point of time, the IP has approached the AA for taking directions on any procedural aspects of the CIRP.
- 5.6. Similarly, the IP has failed to discharge his duties under the Code to bring to the notice of the AA the suspicious transactions. During the hearing, it was informed that there was evidence of avoidance transaction and he was in the process of finalizing the same for filing before the AA and in between the DC Order dated 24th June 2022 came which prevented him from filing the same. However, it is to be noted that insolvency proceedings against the CD commenced on 21st August 2019 ('ICD') and DC Order on his noted contraventions was issued on 24th June 2022. As per the provisions of the Code, IP is required to form an opinion within 75 days of ICD, make a determination within 115 days of ICD and file an application before AA within 135 days of ICD. These facts indicate that he has taken more than twice the permissible time for forming the opinion and even if he had some corroborative evidence he was required to hand over the details to the liquidator of the CD who could have pursued these transactions. Intimation received from the liquidator indicate that no such document or information has been made available by the IP while handing over the charge to the liquidator.

- 5.7. In view of the submissions made by Mr. Partha Sarathy Sarkar, and materials available on record, DC notes that Mr. Partha Sarathy Sarkar has conducted the entire CIRP of the CD in a brazen manner without having due regard the provisions of the Code and the regulations made thereunder. Keeping in view the grave nature of contraventions as detailed above, three years suspension is fully justified. However, keeping in view, that nearly a year has elapsed since last suspension, in exercise of the powers conferred under section 220(2) of the Code read with IBBI (Insolvency Professionals) Regulations, 2016 and the IBBI (Inspection and Investigation) Regulations, 2017, hereby, suspends the registration of Mr. Partha Sarathy Sarkar having registration no. IBBI/IPA-002/IP-N00239/2017-18/10690 for a period of two years.
- 5.8. The Order shall come into force on expiry of 30 days from the date of its issue.
- 5.9. A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Partha Sarathy Sarkar is providing his services, if any. The CoC may decide whether to continue his services or not. In case, CoC decide to discontinue his services, CoC may file an appropriate application before AA.
- 5.10. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals (ICSI-IIP) where Mr. Partha Sarathy Sarkar is enrolled as a member.
- 5.11. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information. Accordingly, the show cause notice is disposed of.

Sd/-

(Sudhaker Shukla)

Whole Time Member, IBBI

Dated: 13th September 2023

Place: New Delhi