

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/184/2023

13th July, 2023

Order

In the matter of Mr. Ananda Rao Korada, Insolvency Professional (IP) under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/7/2023-IBBI/715/331 dated 07.03.2023 issued to Mr. Ananda Rao Korada, who is a Professional Member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional (IP) registered with IBBI with Registration No. IBBI/IPA-002/IP-N00286/2017-18/10844 and has registered address as Flat-3, 400B/2F N S C Bose Road, Kolkata, West Bengal- 700047.

1. Background

The Hon'ble NCLT, Cuttack Bench (AA) vide order dated 04.06.2019 initiated the Corporate Insolvency Resolution Process (CIRP) of the Hirakud Industrial Works Limited (Corporate Debtor/ CD) and appointed Mr. Ananda Rao Korada as Interim Resolution Professional (IRP) who was later confirmed as Resolution Professional (RP).

- 1.1. The IBBI, in exercise of its powers under section 218 of the Code read with regulation 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations) appointed an Investigating Authority (IA) to conduct investigation in the matter of CD in respect of Mr. Ananda Rao Korada's role as IRP and RP. Thereafter, the IA served a notice of investigation as per Regulation 8(1) of the Inspection and Investigation Regulations on 13.01.2023. In response to the investigation notice Mr. Ananda Rao Korada submitted his reply vide e-mail dated 13.02.2023. IA submitted investigation report to the Board in accordance with regulation 10(1) of the Investigation Regulations.
- 1.2. The IBBI issued the SCN to Mr. Korada on 07.03.2023, based on the findings in the Investigation Report in respect of his role as IRP/RP. Mr. Ananda Rao Korada submitted his reply to the SCN on 23.03.2023.
- 1.3. The IBBI referred the SCN, response of Mr. Korada to the SCN and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Korada availed opportunity of personal hearing through virtual mode before the DC on 11.04.2023 along-with his advocate Sri K R Thacker. Mr. Korada further submitted written submissions on 19.04.2023.

- 1.4. The DC has considered the SCN, the reply to SCN, submissions of Mr. Korada, other material available on record and proceeds to dispose of the SCN.

2. Alleged Contraventions, Submissions, Analysis and Findings

The contravention alleged in the SCN and Mr. Korada's written and oral submissions thereof are summarized as follows.

3. Contravention

I. Constitution of CoC without verification of claims

- 3.1. Mr. Korada was appointed as IRP and had constituted the Committee of Creditors (CoC) of the CD, however, it is observed that CoC was formed without verification of the claims of the Financial Creditors (FC). It is observed that the FCs were admitted into the CoC based on the confirmation of debt letter of CD and not based on the verification of the books of account of CD. In this regard the AA vide its order dated 28.02.2020 had sought proof of claims of the FC and Mr. Korada was unable to furnish the same.
- 3.2. Further, the Hon'ble NCLAT vide its order dated 09.01.2023, also observed that in the minutes of the 5th CoC meeting dated 5.10.2019, Mr. Korada had ignored the request of one of the FC to defer the e-voting on the resolutions till the verification of voting percentage and compliance of CIRP proceedings. The AA also observed that claim of FC was not supported by any proof of disbursement of loan or by any agreement between parties or balance sheets of CD. Hence, it is seen that without substantiating the claim, Mr. Ananda Rao Korada had constituted the CoC.
- 3.3. In view of the above, the Board held the prima facie view that Mr. Korada has inter alia violated Sections 18(1)(b), 23(2), 25(2)(e), 208(2)(a) and (e) of the Code, Regulations 13 and 14 of the CIRP Regulations and Regulation 7(2)(h) of IP Regulations read with Clauses 1, 2, 11 and 14 of the Code of Conduct as given in Schedule-1 of the IP regulations (Code of Conduct).

Submissions:

- 3.4. Mr. Korada has submitted that he had duly verified the claims of the creditors with their ledger accounts maintained in the books of the CD and the audited balance sheets of the CD. It transpires that the pre-existing operational debts owed by the CD to the Government of Orissa and its agencies were settled by the suspended Board in terms of the Share Purchase Agreements by taking loans as the CD had suspended commercial production in 2007. He had also called upon the statutory auditor of the CD and the suspended Board to certify the existence and the quantum of claims. While the suspended Board did not respond, the statutory auditor provided particulars of the creditors of the CD. Mr. Korada vide letter dated 09.06.2019 addressed to the CA of the CD and a letter addressed to the suspended Board of the CD requested copies of the audited Balance Sheets of the CD from 01.04.2010 to 31.03.2019.
- 3.5. Mr. Korada submitted that the Hon'ble NCLAT erred in recording regarding the minutes of the 5th CoC meeting. There was no e-voting and thus, the question of any member of the CoC requesting to defer the e-voting did not arise. No CoC meeting of the CD was held on 05.10.2019

as erroneously recorded in the order. In para 99 of the order, the Hon'ble NCLAT has discussed the judgment in the case of Jayanta Banerjee vs Shashi Agarwal & Anr [CA(AT)(Insolvency) No. 348 & 720 of 2020]. The finding at para 100 of the order is actually the facts and findings of the Jayanta Banerjee case which will be clear from paragraph 81 of the order which has been set out in para 99 of the NCLAT order.

Analysis and Findings

- 3.6. As per section 18 of the Code, it is duty of IRP to receive and collate all the claims submitted by creditors to him, pursuant to the public announcement. Further as per section 21 of the Code, the IRP shall after collation of all claims received against the CD and determination of the financial position of the corporate debtor, constitute a committee of creditors. Section 23(2) of the Code provides that the RP shall exercise powers and perform duties as are vested or conferred on the IRP under the Code. Section 25(2)(e) of the Code also provides that it is the duty of the RP to maintain an updated list of claims.
- 3.7. The DC notes the submission of Mr. Korada that he had duly verified the claims of the creditors with their ledger accounts maintained in the books of the CD and the audited balance sheets of the CD. However, on perusal of the records submitted by Mr. Korada, the DC observes that various contractual documents pertaining to such claims were available with Mr. Korada but the same have been not taken into account for verification of such claims. Furthermore, Mr. Korada has not stated about any cross verification of such claims with the bank statements of the CD, particularly when such claims are submitted of financial creditors. Regulation 13 of CIRP Regulation mandates the IRP/RP to verify every claim with supporting documents and 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. Therefore, based on the materials available on record and submissions made by Mr. Korada, the DC finds that Mr. Korada has failed to verify the claims of the creditors with corroborating documents. Hence, Constitution of the CoC without verification of the claims of the financial is *per se* against the provisions of the Code.
- 3.8. The DC further notes the observations made by Hon'ble NCLAT in its order dated 09.01.2023 *"We now come to actions taken by RP during the progress of CIRP. The first and foremost striking instance of the act of omission by the RP is displayed when the Adjudicating Authority vide order dated 28.2.2020 directed the RP to produce before the Adjudicating Authority the financial debts and proof of such debts. We earlier noted that the RP failed to do so despite being reminded by the Adjudicating Authority. When we find that the purported debts and the proof of debts of the financial creditor included in the CoC are not established appropriately, the responsibility of the RP becomes very clear. The IBBI (Insolvency Resolution for Corporate Persons) Rules, 2016 places responsibility for verification of claims of the RP through Regulations 13. But in the present case the RP has neither verified the claims himself to a degree of authenticity, but when asked upon by the Adjudicating Authority to present the proof of claims before it, has repeatedly failed to do so. Such an act of omission of the RP cannot be overlooked, particularly when the proof of*

the financial debts claimed by the financial creditor Nandakini itself was engraved out and the RP was required to look into the proof of the debts rather than accepting it as the financial creditor Nandakini had claimed.”

3.9. In view of the above, the DC holds the contravention and finds that Mr. Korada has *inter alia* violated Sections 18(1)(b), 23(2), 25(2)(e), 208(2)(a) and (e) of the Code, Regulations 13 and 14 of the CIRP Regulations and Regulation 7(2)(h) of IP Regulations read with Clauses 1, 2, 11 and 14 of the Code of Conduct as given in Schedule-1 of the IP regulations (Code of Conduct).

II. Non-compliance of AA’s order for submission of proof of claims of CoC members

4.1. The Board has observed that the AA passed an order dated 28.02.2020 directing Mr. Korada to produce sufficient proof of debts but this order was not complied by Mr. Korada. The AA again vide order dated 12.11.2020 noted that the previous order has not been complied by Mr. Korada and gave a last chance to comply. However, it is observed in the Hon'ble NCLAT order dated 09.01.2023 that Mr. Korada filed an IA (IB) No. 341 of 2020 for modification of the order dated 12.11.2020 rather than complying with the same. Hence, it is noted that Mr. Korada did not comply with the order of AA dated 28.02.2020 till 12.11.2020 i.e. for 9 months and thereafter, made an attempt to modify the order dated 12.11.2020 that required Mr. Korada to submit proof of debts of FCs included in CoC and did not readily submitted the required details to the AA. It is further noted that as per Hon'ble NCLAT order dated 09.01.2023, Mr. Korada had merely sent the details by e-mail dated 05.03.2020 to the registry of AA instead of properly filing it with the Registry. Therefore, the Hon'ble NCLAT also held in this regard that compliance was supposed to be made before the AA bench hearing the matter and not before any other office.

4.2. In view of the above, the Board is of the *prima facie* view that Mr. Korada has *inter alia* violated Sections 25(2)(b), 208(2)(a) and (e) of the Code, Regulations 39A(4) of the CIRP Regulations and Regulation 7(2)(h) of IP Regulations read with Clauses 12 and 14 of the Code of Conduct.

Submissions:

4.3. Mr. Korada has submitted that he had duly complied with the order dated 28.02.2020 by e-filing the documents in a .zip file with the Registry of the AA by email on 05.03.2020. This was followed up by filling of the physical copies of the document under the cover letter of RP’s advocate dated 13.03.2020. However, it transpires that the filings done by him with the Registry were not placed before the AA by the Registry and the advocate who was representing the RP inadvertently incorrectly submitted at the time of hearing on 12.11.2020 that the order dated 28.02.2020 could not be complied with on account of Covid-19. Mr. Korada stated that that he could not have gained any benefit from not disclosing documents available with him and in fact he had filed them with the Registry of the AA in strict compliance with the order dated 13.03.2020 which expressly directed him to file the documents with the Registry.

4.4. Mr. Korada further submitted that when he was informed of the order dated 12.11.2020, he immediately instructed his advocate to file IA IB No. 341 of 2020 for modification of a portion of the order dated 12.11.2020 wherein the Hon'ble Tribunal recorded that he had not complied with the Order dated 28.02.2020 made by the AA. While making the observations that he should have filed the documents before the Bench and not with the Registry, the Hon'ble NCLAT has overlooked the direction given in order dated 28.02.2020 which is extracted below : “*Direction to Resolution Professional: - The Ld. Resolution Professional Mr. Ananda Rao Korada is directed to file copy of the claims received from Financial Creditors, proof of debt of each claimant, and other proof of debts of Corporate Debtor, Book Debts, Balance Sheets for relevant period, Bank Statement, with the NCLT, Cuttack Bench registry on or before 04.03.2020...*”. The Hon'ble NCLAT has not considered that IA No 341/2020 was filed by him for modification of a portion of the order dated 12.11.2020 and not the order dated 28.02.2020 which he had already complied with.

Analysis and Findings

4.5. Mr. Korada has submitted that he had e-filed the documents in a .zip file with the Registry of the AA by email on 05.03.2020 and also filed the physical copies of the document under the cover letter of RP's advocate dated 13.03.2020. Mr. Korada has submitted copy of receipt on perusal of which it is evident that Mr. Korada had filed the documents with the registry of NCLT. But when the documents filed by Mr. Korada did not reach the AA, Mr. Korada should have taken up the matter with the registry so that the documents filed by him could have been placed before AA and observation of non-compliance by AA in this regard could have been avoided.

III. Inclusion of related parties of CD into CoC

5.1. The Board has observed that the CD was acquired by three companies of the same group, namely, Varsha Fabrics (P) Ltd., Mudrika Commercial Ltd. and India Finance Pvt. Limited in 2006. A tripartite agreement dated 02.06.2006 with CD's Workers Union, Varsha Fabrics (P) Ltd and CD and undertook the obligation to make payments towards outstanding dues of the workers of the CD whereafter a share purchase agreement dated 10.07.2006 was also executed whereby 100% shareholding of CD was transferred in the name of these three companies named above. That the three companies failed to make payment of workers' dues which was crystallized at Rs. Rs.45,66,67,133/- by Labour Commissioner and in the meanwhile the CD closed down its business operation in the year 2007. Also in the year 2007, these companies transferred their entire shareholding in the CD to Indo Wagon Engineering Limited (Indo Wagon), in which Adishwar Nivesh Pvt. Ltd. holds 100% shareholding. Thus, Adishwar Nivesh Pvt. Ltd. is the corporate entity controlling the CD. The shareholding of Adishwar Nivesh Pvt. Ltd. is as follows:

Sl No.	Name of Company	Shares %	Name of Directors
1.	Divya Merchantile Pvt. Ltd.	28.44%	Rajesh Kumar Sharma, Sovan Sengupta, Sujit Dutta Roy

2.	Sheetal Exports Pvt. Ltd.	15.79%	Shyam Sundar Dhand, Tanima Mondal, Gautam Chanda, Sovan Sengupta Past Director- Sujit Dutta Roy
3.	Goldman Stocks and Share Brokers Pvt. Ltd.	12.26%	Ritabrata Adhak, Shyam Sundar Dhand Past Director- Sujit Dutta Roy, Sovan Sengupta
4.	Fragment Nivesh Pvt. Ltd.	25.94%	Dipanker Dey Bhowmick, Parnasri Mitra
5.	Enormous Nivesh Pvt. Ltd.	18.19%	Dipanker Dey Bhowmick, Parnasri Mitra

5.2. The directorship of Indo Wagon and Regus Impex Pvt. Ltd.(Regus Impex), Successful Resolution Applicant is as follows:

Sl No.	Name of Company	Name of Directors
1.	Indo Wagon Engineering Ltd.	Amit Kumar Joshi, Satyadeo Mishra, Parnasri Mitra
2.	Regus Impax Pvt. Ltd.	Sujit Dutta Roy, Tanima Mondal

5.3. The directors of various members of the CoC are as under:

Sl No.	Name of Company	CoC Voting %	Name of Directors
1.	Bank of India	0.56%	--
2.	Dahisar Traders Pvt. Ltd.	3.51%	Sujit Dutta Roy, Pranab Kumar Das
3.	Dunlop Polymers Pvt. Ltd.	0.03%	Ashok Kumar Goenka, Utpal Majumder
4.	Gain E-Commerce Pvt. Ltd.	31.59%	Ramkrishna Das, Sujit Dutta Roy
5.	Luni Housing & Developers Pvt. Ltd.	8.81%	Pranab Kumar Das, Tanima Mondal
6.	Mekong Rubber Pvt. Ltd.	0.13%	Sovan Sengupta, Pranab Kumar Das
7.	Miller Traders Pvt. Ltd.	0.02%	Sovan Sengupta, Sujit Dutta Roy
8.	Nandakini Contractors Pvt. Ltd.	0.1%	Ramkrishna Das, Sujit Dutta Roy
9.	SubhLaxmi Compusis Pvt. Ltd.	55.25%	Sujit Dutta Roy, Pranab Kumar Das, Sidh Nath Mishra

5.4. In view of the foregoing, it is observed that, Mr. Sujit Dutta Roy, a present director of the CD after the resolution plan was approved, is also a director in Subhlaxmi, FC since 31.3.2019. He is also a director in five of the CoC members, namely, Miller Traders, Nandakini, Gain E-Commerce, Subhlaxmi Compusis and Dahisar Traders along with being present in Divya Mercantile, Sheetal Exports, Enormous Nivesh and Goldman Stocks & Share Brokers. Further, it is observed that Mr. Sujit Dutta Roy is also a director of SRA. Hence, there is connection between the CD, Nandakini (the applicant FC), members of the CoC and the SRA through network of common directors,

different levels of shareholdings, thereby making it apparent that the various members of the CoC are related parties of CD and have been unduly assigned voting rights. Further, the SRA is also ineligible as per the section 29A of the Code to submit resolution plan being related party of CD by having common Director.

5.5. Further, the Hon'ble NCLAT also in its order dated 09.01.2023 observed that the CoC members Dahisar Traders and Luni Housing & Developers have 50% shareholding of the SRA and that Mr. Sujit Dutta Roy was also a director in Varsha Fabrics/Purbanchal Power (which is connected with the CD as one of the original three companies that bought the CD after disinvestment). It is further noticed that allegations of related parties among various CoC members and CD had been brought to Mr. Korada's notice by Hindalco Industries Ltd. (HIL) and Workers' Union of CD but Mr. Korada failed to conduct any due diligence to ascertain the veracity of these allegations. Instead, Mr. Korada continued to run the process with improper constitution of CoC. Hence, it is observed that Mr. Korada has constituted the CoC with various related parties of CD and unjustifiably assigned voting rights in violation of the proviso to the section 21(2) of the Code.

5.6. In view of the above, the Board held the prima facie view that Mr. Korada has inter alia violated Sections 21(2) and 208(2)(a) of the Code and Regulation 7(2)(h) of IP Regulations read with Clauses 1, 2, 3, 9, 11 and 12 of the Code of Conduct.

Submissions:

- 5.7. Mr. Korada has submitted that as per his understanding, section 21 of the IBC does not bar members of the CoC from being inter-related with each other as long as there is no relation to the CD nor is there any bar in the PRA being related to the members of the CoC as long as the PRA is not related to the CD. He has not found that the directors of the CD at the time of admission of CIRP viz Mr. Gautam Chanda, Mr. Gautam Kayal & Mr. Uttpal Majumdar were directors of any member of the CoC or PRA. He has not found that any member of the CoC or PRA was a shareholder of the CD. Bank of India, a member of the CoC has not raised any objection regarding the constitution of the CoC and voted in favor of the plan.
- 5.8. In the order of the Hon'ble NCLAT it is recorded that Sujit Dutta Roy was a director in the CD. Sujit Dutta Roy was inducted as Director of CD on 23.12.2021 that is, after approval of the resolution plan submitted by Regus. Post such order, and upon payment of the first instalment of Rs.40 crores to the creditors, he was duty bound to relinquish control of CD in favour of the SRA. Post relinquishment of office of RP, the SRA had appointed Sujit Dutta Roy who was a director of the SRA, to be a director of CD. He cannot be held liable for the appointment of Sujit Dutta Roy as such appointment was made after he remitted office of RP post the order of the AA dated 22.12.2021 approving the plan. Dahisar Traders and Luni Housing & Developers are not shareholders of the CD nor do they have any common director with CD. As for Mr Sujit Dutta Roy being a director in Varsha Fabrics / Purbanchal Power, it may be noted that Varsha

Fabrics/Purbanchal Power had sold its stake in the CD in 2007 as will be evident from the MGT of the CD. Thus, Varsha Fabrics / Purbanchal Power ceased to be shareholders of CD more than 10 years before admission of CIRP.

5.9. Further, as per his understanding, even if one director is common between two companies, it does not make the two companies related as per section 5(24) of the IBC. As per sub clause (d) if one director is common and the same director holds more than 2% of the paid-up capital, in that event it can only be said to be a related party. Or as per clause (m)(ii) having more than two directors common between the corporate debtor and such person. HIL had filed its first application being IA 01/2020 in first week of January only after its belated attempt to participate in CIRP by submitting a plan which was unanimously rejected by CoC on 16.12.2022. The reliefs sought in IA are as follows: -

- I. Direct the IRP. to provide the applicant detailed invitation for expression of interest in terms of Regulation 36A (1) of the IBBI Regulations, 2016.
- II. Direct the IRP to allow the applicant to submit the resolution plan in the matter of the CIRP of the Corporate Debtor and place the same before the committee of creditors of the corporate Debtor and in the meanwhile stay the CIRP.
- III. Further to allowing prayer no. II, Direct the committee of creditors of the Corporate Debtor to consider then resolution plan submitted by the Applicant,
- IV. Pass any other orders in the facts and circumstances of the matter.

5.10. The AA observed in its order dated 13.01.2020 that this application was meritless. It is after the hearing held on 13.01.2020 when AA indicated that it would not interfere with CoC's decision to not allow HIL to submit plan, that HIL filed IA 50 of 2020 on last week of January 2020 to the reply dated 28.01.2023 alleging that members of CoC were related to CD and seeking following reliefs:

- a) Set aside the resolutions and approvals passed in the CoC's meetings conducted by the Resolution Professional/ Chairman of the CoC, till date, as the same are contra/ without complying with the provisions of the IBC;
- b) Declare that the members of the CoC i.e. (a) Subhalaxmi Compusis Pvt. Ltd., (b) Gain E-Commerce Pvt. Ltd., (c) Luni Housing and Developers Pvt. Ltd., (d) Mekong Rubber Pvt. Ltd., (e) Miller Traders Pvt. Ltd., (f) Mandakini Contractors Pvt. Ltd., (g) Dahisar Traders Pvt. Ltd., (h) Dunlop Polymers Pvt. Ltd. are falling within the definition of "Related Party" under the IBC and therefore restrain them from in any manner exercising any right of representation/ participation or voting as a member of the CoC;
- c) Consequentially declare all the actions of the Resolution Professional based on the approval with the voting of related parties, as null and void;
- d) Pass any other orders in the facts and circumstances of the matter.

5.11. Even by IA 01/2020 filed in early January, HIL sought to participate in CIRP and never alleged that CIRP was fraudulently initiated which allegation was raised for first time before the Hon'ble NCLAT. However, before receipt of IA 01/2020 filed by HIL, CoC had approved the resolution plan of Regus on 16.12.2019 and he had filed IA 197/2019 under section 30 (6) of the IBC on 19.12.2019.

Analysis and findings

5.12. It may be noted that it is duty of IRP/RP to constitute a CoC in accordance with Section 21(1) of the Code after compiling all claims made against the CD and assessing its financial situation. According to Section 21(2) of the Code, the CoC must comprise of all CD's financial creditors i.e. any person to whom a financial debt is owed and to include a person to whom such a debt has been legally assigned or transferred. A financial creditor, however, does not have the right to representation, participation, or vote in a CoC meeting if it is a related party of the corporate entity, according to the proviso to Section 21(2) of the Code.

5.13. Indo Wagon holds 99.9% shares in the CD and Adishwar Nivesh Pvt. Ltd. holds 99.9% in Indo Wagon. Thereby, Adishwar Nivesh Pvt. Ltd (Adishwar Nivesh) is the corporate entity controlling the CD. The shareholding of Adishwar Nivesh as on 31.03.2019 is as follows:

Sl No.	Name of Company	Shares %
1.	Divya Mercantile Ltd.	28%
2.	Sheetal Exports Ltd.	15%
3.	Goldman Stocks and Share Brokers Pvt. Ltd.	12%
4.	Fragment Nivesh Pvt. Ltd.	17%
5.	Enormous Nivesh Pvt. Ltd.	25%

5.14. The CoC was constituted by Mr. Korada on 27.06.2019 with the following members:

Sl No.	Name of Company	CoC Voting %
1.	Bank of India	0.56%
2.	Dahisar Traders Pvt. Ltd.	3.51%
3.	Dunlop Polymers Pvt. Ltd.	0.03%
4.	Gain E-Commerce Pvt. Ltd.	31.59%
5.	Luni Housing & Developers Pvt. Ltd.	8.81%
6.	Mekong Rubber Pvt. Ltd.	0.13%
7.	Miller Traders Pvt. Ltd.	0.02%
8.	Nandakini Contractors Pvt. Ltd.	0.1%
9.	SubhLaxmi Compusis Pvt. Ltd.	55.25%

5.15. Based on the documents made available and MCA data records as on 31-3-2019, it is observed that:

- (a) Gain E-commerce Pvt. Ltd. having 31% voting rights in CoC, was owned by Adishwar Nivesh with 22%, Fragment Nivesh Pvt. Ltd. (shareholder of Adishwar Nivesh) with 19%, Divya Mercantile Ltd. (shareholder of Adishwar Nivesh) with 25% and Hardcore Viniyog Pvt Ltd. (owned by Adishwar Nivesh with 26% and also holding shares in Adishwar Nivesh through multiple layers) with 21% share.
- (b) i. The connected shareholders of Dahisar Traders Pvt. Ltd. (having 3.51% voting rights in CoC and 50% shareholder of Regus Impex Pvt. Ltd (SRA)) were as under:
- *Adishwar Nivesh -9.01% (controlling entity of CD)*
 - *Brawny Nivesh Pvt. Ltd.-8 %.* It's 28% shares are held by Adishwar Nivesh and it is also connected to Adishwar Nivesh through other multiple layers of cross shareholdings. Similar cross-shareholding patterns exist w.r.t. the following shareholders of Dahisar Traders Pvt. Ltd.
 - *Divya Mercantile Ltd.-1%*
 - *Enormous Nivesh Pvt. Ltd.-9%*
 - *Fragment Nivesh Pvt. Ltd.-1%*
 - *Mayank Services Ltd - 9%*
 - *Fabulous Nivesh Pvt. Ltd.-4%*
 - *Miller Traders Pvt. Ltd.-0.7%*
 - *Shalimar Towers Private Ltd. -4%*
 - *Sheetal Exports Ltd. -31%*
- ii. Surjit Dutta Roy, a director of Dahisar Traders Pvt. Ltd., was also a director of entities connected to CD through multiple layers of cross shareholdings such as Divya Mercantile Ltd., Miller Traders Pvt. Ltd., Nandakini Contractors Pvt Ltd., Gain E-Commerce Pvt. Ltd., Mahan Tyres and Tubes Private Ltd. and of SRA.
- iii. Pranab Kumar Das, a director of Dahisar Traders Pvt. Ltd, was also a director of entities connected to CD through multiple layers of cross shareholdings such as Gain E-Commerce Pvt. Ltd., Luni Housing & Developers Pvt. Ltd. and Lateral Traders Pvt. Ltd.
- (c) i. The major shareholder of Luni Housing & Developers Pvt. Ltd. (having 8.81% voting rights in CoC and 50% shareholder of SRA) was Lateral Traders Pvt. Ltd. with 99.99% shares. The shareholding pattern of Lateral Traders Pvt. Ltd is comprised of following:
- *Luni Housing & Developers Pvt. Ltd - (33%)*
 - *Dahisar Traders Pvt. Ltd - (33%)*
 - *Nandakini Contractors Pvt Ltd. (own by Lateral Traders with 99.99%) - (33%)*
- ii. Sovan Sen Gupta, a director of Lateral Traders Pvt. Ltd, was also a director of entities connected to CD through multiple layers of cross shareholdings such as such as Mayank

Services Ltd, Sheetal Exports Ltd., Shalimar Towers Private Ltd., Divya Mercantile Ltd., Grebes Commercial Pvt Ltd., Miller Traders Pvt. Ltd., and Goldman Securities Ltd.

iii. Tanima Mondal, a director of *Nandakini Contractors Pvt Ltd.*, also a director of entities connected to CD through multiple layers of cross shareholdings such as Mayank Services Ltd., Sheetal Exports Ltd., Mahan Tyres and Tubes Private Ltd., Grebes Commercial Pvt Ltd., India Finance Ltd.

(d) The shareholding pattern of Miller Traders Pvt. Ltd., CoC member was comprised of Adishwar Nivesh (controlling entity of the CD) with 22% share and entities connected to CD through multiple layers of cross shareholdings namely (a) Fabulous Nivesh Pvt. Ltd. with 20%, (b) Brawny Nivesh Pvt. Ltd. with 19%, (c) Divya Mercantile Ltd. with 6%, (d) Mayank Services Ltd. with 2%, (e) Kanti Commercial Pvt. Ltd. with 9%, (f) Suryamani Financing Co. Limited with 18% share.

(e) Similarly, the CoC members - Mekong Rubber Pvt. Ltd. and Nandakini Contractors Pvt. Ltd., are connected to CD through multiple layers of cross shareholdings via Lateral Traders Pvt. Ltd., and Dunlop Polymers Pvt. Ltd through Suryamani Financing Co. Ltd.

(f) In 2018, CoC member - SubhLaxmi Compusis Pvt. Ltd., was owned by Mayank Services Ltd., Divya Mercantile Ltd. and Goldman Securities Ltd. (entities connected to CD with multiple layer shareholdings). In 2019, major shareholding of Subhlaxmi Compusis Pvt. Ltd. was transferred to Zeal Infotech Private Ltd. (owned by Varsha Fabrics/Purbanchal Power which is connected with the CD as one of the original three companies that bought the CD after disinvestment, and Miller Traders in 2018; and 10% by Pranam Das, an individual connected to CD through common directorship in various entities in 2019.

5.16. Thus, from the foregoing discussions, it can be established that the CoC members (a) Dahisar Traders Pvt. Ltd., (b) Gain E-Commerce Pvt. Ltd., (c) Luni Housing & Developers Pvt. Ltd., (d) Mekong Rubber Pvt. Ltd., (e) Miller Traders Pvt. Ltd., (f) Nandakini Contractors Pvt. Ltd., (g) Subhlaxmi Compusis Pvt. Ltd. (h) Dunlop Polymers Pvt. Ltd, and SRA (Regus Impex) are inter connected to CD through Adishwar Nivesh (controlling entity of CD) with complex shareholding patterns involving several layers of intertwined entities and common directorship controlling, managing and directing the affairs of aforementioned interconnected entities.

5.17. The DC also notes the observation of Hon'ble NCLAT in its order dated 09.01.2023 “85. *We find that Mr. Sujit Dutta Roy is a director in Nandakini (since 30.11.2015). In addition, he is a director of Varsha Fabrics, Subhlaxmi (since 31.3.2019), Gain e-Commerce (since 11.7.2017) and all the four companies (viz. Nandakini, Varsha Fabrics, Subhlaxmi and Gain e-Commerce) are members of the CoC. Additionally, Mr Sujit Dutta Roy is a director of Adishwar Nivesh, which is the holding company (with 99.98% shareholding) of Indo Wagon which in turn holds 99.98% shares of the corporate debtor HIWL. Thus, Mr. Sujit Dutta Roy, being a director of Adishwar Nivesh, is in a*

position to control the corporate debtor and he, being on the board of directors of Nandakini, Varsha Fabrics, Subhlaxmi and Gain E-Commerce (which are members of CoC) is in a position to advise, direct and instruct these four companies. Thus, by definition of clause (f) of section 5(24-A), the above mentioned four companies are 'related parties' of the corporate debtor and hence their position as members of CoC and to be represented, participate and vote in meetings of the CoC is completely untenable and infringes the first proviso of section 5(24) of IBC. This glaring instance of 'related parties' of the corporate debtor becoming members of the CoC is sufficient to make the constitution of CoC illegal and render all the decisions and resolutions adopted in CoC meetings with participation and voting of the four companies referred above null and void in the eyes of law.

86. It is necessary to look at the nature and conduct of companies involved in the initiation of CIRP and further proceedings in the CIRP to examine whether, after the fraudulent initiation of CIRP of the corporate debtor had taken place, the CoC constituted by the erstwhile RP was actually in accordance with the provisions of IBC. In doing so, it is useful to look at the shareholding pattern of various members of the CoC:-

- (i) Gain E-Commerce (Adishwar Nivesh has 22.48% shareholding in it)
- (ii) Miller Traders (Adishwar Nivesh has 22.45% shareholding in it)
- (iii) Dahisar Traders (Adishwar Nivesh has 9% shareholding in it)

Thus, two members of CoC, viz. Gain E-Commerce and Miller Traders are related parties of Adishwar Nivesh which is the holding company of Indo Wagon, which in turn is the holding company of the corporate debtor, and hence they are 'related parties' of the corporate debtor.

87. We also find that Nandakini, Varsha Fabrics, Subhlaxmi Compusis and Gain e-Commerce are associate or subsidiary companies of the corporate debtor and hence their participation as members of CoC is untenable. Moreover, Adishwar Nivesh, the holding company of Indo Wagon, which in turn is the holding company of the corporate debtor HIWL acts 'in concert' with following members of the CoC: -

- Divya Mercantile Pvt. Ltd. (Adishwar Nivesh has 28.44% shareholding)
- Fragment Nivesh Pvt. Ltd. (Adishwar Nivesh has 25.94% shareholding)

88. Adishwar Nivesh also some influence on the functioning of the following members of the CoC (though the level of 20% shareholding is not present):

- Sheetal Exports Pvt. Ltd. (Adishwar Nivesh has 15.79% shareholding)
- Goldman Stocks & Share Brokers Pvt. Ltd. (Adishwar Nivesh has 12.26% shareholding)
- Enormous Nivesh Pvt Ltd. (Adishwar Nivesh has 18.19% shareholding)

Thus, it is clear that the corporate debtor, through its holding company Indo Wagon's holding company Adishwar Nivesh is positioned to influence many members of the CoC, and hence their inclusion in the CoC is dubious, questionable and legally untenable.

90. Additionally, the following emerges from the examination of the charts submitted by the Appellant HIL regarding shareholding of various corporate entities: -

(i) Enormous Nivesh and Divya Mercantile both have more than 20% shareholding in Adishwar Nivesh and they are 'related parties' of Adishwar Nivesh which is the holding company of the corporate debtor through Indo Wagon.

(ii) Adishwar Nivesh, along with its shareholders (which are Sheetal Exports, Enormous Nivesh, Fragment Nivesh, Goldman Stocks and Divya Mercantile) control major shareholdings in at least four CoC members. Thus, Gain E-commerce, Subhlaxmi Compusis, Dahisar Traders, Miller Traders, Luni Housing and Developers and Mekong Rubber all are closely inter-connected through shareholdings with Adishwar Nivesh, which is the holding company of Indo Wagon which is the holding company of the corporate debtor.

(iii) Miller Traders, Gain E-commerce, Subhlaxmi Compusis, Mekong Rubber, Luni Housing & Developers and Dahisar Traders, which constitute six of the seven members of the CoC are intricately connected with Adishwar Nivesh, which controls the corporate debtor. Therefore, these six corporate entities as members of the CoC are closely connected parties of the corporate debtor.

91. We also note that, in addition, the same directors are present in the boards of many companies in the CoC. As pointed out earlier, taking just one illustrative example of Mr. Sujit Dutta Roy, who is a director of the corporate debtor, is also a director in Subhlaxmi since 31.3.2019. He is also a director in Varsha Fabrics/Purbanchal Power (which is connected with the corporate debtor as one of the original three companies that bought the corporate debtor after disinvestment) and five of the CoC members, namely, Miller Traders, Nandakini, Gain E-Commerce, Subhlaxmi Compusis and Dahisar Traders along with being present in Divya Mercantile, Sheetal Exports, Enormous Nivesh and Goldman Stocks & Share Brokers. Interestingly Mr. Sujit Dutta Roy is also a director of Successful Resolution Applicant Regus Impex. While this is clearly an infringement of clause (f) of section 5(24), whereby Mr. Sujit Dutta Roy has a say in the corporate debtor, CoC as well as Successful Resolution Applicant Regus Impex by virtue of being director of these companies.

92. The inter-connections between the corporate debtor, financial creditor Nandakini, members of the CoC and the holding companies of the Successful Resolution Applicant through common directors sitting on the board of more than one company, different levels of shareholdings and common registered addresses and working-email IDs thus adds strength to the argument that they belong to the same group of companies working towards common objective insofar as the CIRP in the instant case goes.

93. Therefore, looking at the events in this case from the lens of the nature, involvement and conduct of the companies, we find the inference inescapable that these companies were acting 'in concert' and being guided and led by a 'controlling mind as part of a fraudulent project to defraud the creditors of the corporate debtor by misusing the instrumentality of the IBC, completely against

its objectives and spirit and such actions, which are infringing the provisions of the IBC cannot be condoned or overlooked.”

5.18. On the basis of documents available on records and observations made by Hon’ble NCLAT, the DC finds that CD through its the controlling entity Adishwar Nivesh, the members of the CoC, and the Successful Resolution Applicant Regus Impex are acting in concert and all are connected in a complex web of relationships. The three-bench judgment of the hon’ble SC in the matter of Phoenix Arc Private Limited Vs Spade Financial Services Limited & Ors has observed:

“The purpose of excluding a related party of a corporate debtor from the CoC is to obviate conflicts of interest which are likely to arise in the event that a related party is allowed to become a part of the CoC. The logic underlying the exclusion has been summarised as follows: “The Committee was of the view that the disability under the first proviso to Section 21(2) is aimed at removing any conflict of interest within the CoC, to prevent erstwhile promoters and other related parties of the corporate debtor from gaining control of the corporate debtor during the CIRP by virtue of any loan that may have been provided by them.” (Insolvency Law Committee Report, 2020, pp 47-48, para 11.9).

5.19. The DC further notes that in the Resolution plan, it is mentioned that *“The corporate debtor along with any and or all of the guarantors shall be relieved and nothing else of whatsoever nature shall be payable by the company, corporate debtor or any of its guarantors. All the cases including criminal and civil cases against the corporate debtor or any of its directors will be closed on acceptance of Resolution Plan.”*

5.20. Explanation 2 to Section 30(2) mandates the RP to examine that the resolution plan does not contravene any of the provisions of the law for the time being in force. Further, Section 32A of the Code contemplates to extinguish the liability of the new management of the corporate debtor from the offences committed prior to the commencement of the CIRP of the corporate debtor but it does not extinguish the criminal proceeding initiated against the directors/promoters of the suspended board of the CD. The DC observes that the resolution plan of the CD examined by Mr. Korada relieves not only the debts of the guarantors but also the criminal proceedings against the directors of the CD. Hence, the DC finds that Mr. Korada had facilitated the erstwhile management/directors of the CD in extinguishment of all its past liabilities and also prosecution from the criminal offences, which in turn portrays the involvement of related parties of the CD in the CoC and SRA in the resolution of the CD. Thereby, Mr. Korada had conducted the resolution process of the CD in gross violation of his fiduciary duties entrusted upon him under the Code.

5.21. In view of the above, the DC holds the contravention and finds that various members of the CoC are related parties of CD and have been unduly assigned voting rights. Furthermore, the DC also observed that the SRA is also ineligible as per the section 29A of the Code to submit resolution plan being related party of CD.

IV. Signing affidavit under Section 29A on behalf of Resolution Applicant

- 6.1. The Board has noted that Mr. Korada had affixed his signature on an affidavit under section 30(1) read with section 29A, which was required to be submitted by the authorised representative of Regus Impex, SRA. It was further observed that despite the SRA being a 'related party' and ineligible under section 29A of the Code, Mr. Korada submitted compliance certificate in their favour finding them eligible for submission of resolution plan.
- 6.2. Affixing his signature on behalf of the SRA and also attesting the SRA is not a 'related party' even when they are ineligible under section 29A of the Code shows a malafide intent as well as lack of objectivity and a bias towards the promoters of CD and SRA.
- 6.3. In view of the above, the Board is of the prima facie view that Mr. Ananda Rao Korada has inter alia violated Sections 29A, 30(1) and 208(2)(a) and (e) of the Code and Regulations 36A (8) and 39(1)(a) of the CIRP Regulations and Regulation 7(2)(h) of IP Regulations read with Clauses 1, 2, 5 and 14 of the Code of Conduct.

Submissions:

- 6.4. Mr. Korada has stated that Regus Impex had submitted its 29A affidavit dated 24th October 2019 along with its resolution plan duly signed by Mr. Ranjay Singh, director of PRA and also being authorized by the board of PRA vide resolution dated 17.10.2019. The affidavit was however only titled as "Affidavit". He had asked the PRA to submit the affidavit again and only style it differently by having a heading "Affidavit under section 30(1) of the Insolvency and Bankruptcy Code, 2016 read with section 29A of the Insolvency and Bankruptcy Code, 2016".
- 6.5. Regus had sent to him an unsigned / not notarized print of the affidavit for approval. However, in the meantime, the resolution plan was approved by the CoC on the 16.12.2019. The unsigned /not notarized document sent by Regus Impex was lying in his office and due to inadvertence, when he was filing the application for approval of the plan which was submitted on 19.12.2019, he mistakenly signed the document sent by Regus Impex as well. He had no malafide intention and had only signed mistakenly due to inadvertence. There was already a proper signed 29A affidavit duly signed by the director of SRA.

Analysis and Findings

- 6.6. Regulation 39(1) of the CIRP Regulations provides that prospective resolution applicant to submit an affidavit stating that he is eligible under section 29A to submit resolution plan, along with resolution plan. Further, Regulation 36A(8) of the CIRP Regulations mandates the RP to conduct the due diligence of the same. However, in the present matter, Mr. Korada had affixed his signature on an affidavit under section 30(1) read with section 29A, which was required to be submitted by the authorised representative of Regus Impex, SRA. The DC further notes that the Hon'ble

NCLAT also in its order dated 09.01.2023 had observed as follows: “106. We also note that the RP Mr. Anand Rao Korada put his signature on an affidavit made in the name of Mr. Sujit Dutta Roy regarding the Successful Resolution Applicant not being ‘related party’ and therefore, not ineligible under section 29-A of the IBC to submit a resolution plan also, displayed his lackadaisical and casual attitude in the conduct of CIRP. Such an attitude or conduct should not be allowed to pass muster and we deprecate such action of the erstwhile RP.”

- 6.7. It may be noted that affidavit for eligibility under section 29A is one of the essential documents under the Code which ensures that the distressed CD resolved under the Code is not handed over to erstwhile management or related and connected parties, who are specifically barred under section 29A of the Code. It is duty of the RP to discharge his functions diligently and ensure that proper documents have been received for consideration of resolution plan including affidavit for eligibility under section 29A. Post due diligence of such records, it is duty of RP to submit such records before AA. Having paramount importance of such affidavit under the Code, the submission of Mr. Korada that it was signed mistakenly due to inadvertence, cannot be accepted. It becomes more grave as the SRA was not eligible under section 29A as observed above. Hence, the DC finds that Mr. Korada has contravened the Sections 29A, 30(1) and 208(2)(a) and (e) of the Code and Regulations 36A (8) and 39(1)(a) of the CIRP Regulations and Regulation 7(2)(h) of IP Regulations read with Clauses 1, 2, 5 and 14 of the Code of Conduct.

V. Failure to obtain claim from workers of the CD

- 7.1. The Board observed that Mr. Korada was aware of dues of workers of the CD as workers' Union were both raising this matter before AA, Hon'ble High Court of Odisha and Hon'ble Supreme Court. The dues of the workers had been crystalized at Rs. 45.66 crores by the Deputy Labour Commissioner in 2016 and proceedings regarding auction of the CD's assets for payment of workers' dues were being undertaken under the directions of the Hon'ble High Court of Odisha. Despite being aware of the substantial claims of the workers of the CD and ongoing proceedings before the High Court, Mr. Korada failed to consider the same and he also did not advise the workers of CD to file claim with him. Especially the statutory claims including the PF dues, gratuity etc. for the workers of the CD were not sought and no provision was made for the same in the resolution plan. Consequently, the Hon'ble NCLAT in its order dated 09.01.2023 also observed the same and raised question regarding your ‘non-partisan and neutral functioning’. The conduct of Mr. Korada for not advising the workers of CD despite being aware of the proceedings before the High Court appears to be malafide and this subsequently led to quashing of the resolution plan by the Hon'ble NCLAT as interests of all stakeholders were not taken into consideration.
- 7.2. In view of the above, the Board held the prima facie view that Mr. Korada has inter alia violated Sections 208(2)(a) and (e) of the Code and Regulations 9 and 12 of the CIRP Regulations and Regulation 7(2)(h) of IP Regulations read with Clauses 1 and 5 of the Code of Conduct.

Submissions

- 7.3. Mr. Korada has submitted that the tripartite agreement dated 02.06.2006 was executed by the new management of the CD, the Workers Union and Varsha Fabrics. The Labour Commissioner assessed the dues of the workers at Rs.20,72,15,956/- by an order dated 20.01.2012. The Hon'ble High Court passed an Order dated 20.11.2012 in Writ Petition No.7939 of 2011 directing compliance of the Order passed by the Deputy Labour Commissioner. Aggrieved thereby, a Special Leave Petition [being SLP (Civil) No.17645/2013] was filed by M/s. Varsha Fabrics whereby the Hon'ble Supreme Court vide order 03.08.2015 ordered that the issue of quantifying the compensation payable to the workmen should be determined by the Labour Court, relegating the parties to appear before the same and to canvas the issue of compensation payable. Subsequently, by an ex-parte order dated 11.11.2016, Labour Commissioner assessed dues of workers at Rs. 45 crores although plant was admittedly under suspension from 2007. This order was challenged by the CD in Writ Petition No.18747 of 2018 before the High Court of Orissa, inter alia, on the ground that no hearing was afforded.
- 7.4. He was aware that the Hon'ble High Court of Cuttack was in the process of auction of the assets of the CD on account of realization of the dues of Rs 45.66 crores. However, he was also made aware of a pending writ petition numbered WP 18923/2018 being filed by the CD in 2018 for contesting the said order of unilateral adjudication without giving notice and against the principles of natural justice. The said WP was pending adjudication. As per the provisions of the IBC, more specifically section 20(1), Mr. Korada was dutybound to protect and preserve the assets of the CD. Hence, he entered appearance in the Writ Petition and not just ensure that the writ challenging the order was brought on record to be heard analogously, but also sought stay on the auction as per Section 14 declaring moratorium. When his arguments did not find favour with the Hon'ble High Court, in continuation of his duty as per provisions of the IBC, he assailed the said order in the Hon'ble Supreme Court which finally allowed the appeals and set aside the order of the Hon'ble High Court for auction.
- 7.5. He caused publication of the admission of CIRP of the CD and invited claims on 07.06.2019 and public notices inviting expression of interest for the CD were published in the daily editions of Business Standard and a local newspaper on 07.08.2019. The last date of submission of EoI was 23.08.2019. Initiation of CIRP was also disclosed by him before the High Court in the workers writ petition on 19.09.2019. Moreover, he always made the workers union aware but for reasons best known to them they chose not to take part in the CIRP proceedings despite being fully aware of such proceedings. Moreover, the Hon'ble Supreme Court vide its final judgement dated 18.11.2019 had clearly ordered that workers union were free to submit their claims as per regulations 9. Despite that no claim was ever filed with him. He had to work in the best interest of the CD and its stakeholders. The public notice as per the relevant regulations, more specifically in Section 15 of the IBC was duly served when several creditors both financial and operational filed their claims which was accepted after verification. In this regard it is relevant to note the

timelines of the CIRP of the Corporate Debtor relevant for the Workers claims which is given below:

Date	Particulars
04.06.19	Order of Admission of CIRP, NCLT Cuttack.
07.06.19	Public notice in newspapers declaring CIRP initiation and calling for claims
01.08.19	RP represents in the Hon'ble High Court Cuttack in pending WP 7939/2011 where both HIWL Workers Union and Hindalco were appearing and files order of admission of CIRP which is reflected in the Hon'ble High Court order.
06.08.19	IA number 11156 of 2019 filed by RP in existing WP 7939 praying for moratorium in light of CIRP.
07.08.19	Public notice (newspaper advertisements) inviting Expression of Interest for HIWL
19.09.19	Fresh IA filed by RP in existing WP 7939/2011 praying for stay and/or adjournment in light of CIRP proceedings.
25.10.19	Date of submission of Resolution plan by Regus Impex Pvt. Ltd
18.11.19	Judgement of Hon'ble Supreme Court in SLP (Civil) 23349-23350/2019 and Civil Appeal number 8800-8801/2019 setting aside order for auction, directing CIRP to continue and stating that it is open to the Workers union to file claim in terms of Regulation 9 IBBI Regulations
19.11.19	Order of Hon'ble High Court Cuttack disposing off WP 7939/11 as per the order of the Hon'ble Supreme Court.
16.12.19	7th COC meeting held wherein HINDALCO's request for submission of E.O.I vide letter dated 5.12.19 was rejected and the resolution plan submitted by Regus Impex was accepted.
17.12.19	The RP received the Letter dated 14.12.19 issued by Workers Union seeking copy of Section 7 application, reply, minutes of CoC meeting on the said date.
19.12.19	RP replied to the Workers Union stating his inability to provide the documents sought by the letter dated 14.12.19
20.12.19	RP filed IA 197/2019 for acceptance of Resolution Plan under section 31 of IBC in NCLT Cuttack

7.6. From the above time chart, it would be clear that Workers Union had knowledge of the CIRP of the CD latest by 01.08.2019. Despite having full knowledge, public notice sent even earlier as per the provisions of the Code, Regulation 9 requiring the workers to file their claim, judgement of the Hon'ble Supreme Court of India stating they could file their claims, for reasons best known to the Workers Union, they chose to not file their claims with him.

7.7. The claim of the workers union was not accepted by the CD and is not reflected in the audited balance sheet of the CD. He could not have suo-moto included any debt of the workers and more so, in the absence of any claim having been filed by the workers. It is reiterated that the he had discharged his duty as RP of the CD in accordance with the statutory provisions with full honesty and objectivity and without any bias.

Analysis and Findings

- 7.8. To comprehend the issue in hand, the DC delves into the history of the long pendency of non-payment of workmen's dues. Post disinvestment of the stake of the Government of Orissa through Infrastructure Development Company Limited (in short 'IDCOL') in the CD, 100% of its stake was offered to three Companies namely Varsha Fabrics (P) Ltd., Mudrika Commercial Limited, and India Finance Pvt. Limited (in short 'three companies'). A tripartite agreement dated 02.06.2006 was signed to ensure the disbursement of pending dues to the workmen. Then the entire shareholdings of three companies were transferred to Indo Wagon, but the workmen's dues still remained unpaid. H.I.W. Workers' Union filed a Writ Petition WP(C) No. 12479/2009 before the Hon'ble High Court of Odisha seeking cancellation of the share purchase agreement and direction for payment of workmen's dues. The Hon'ble High Court of Odisha vide order dated 02.02.2010 directed the three companies to pay to the workers, however the same remained unpaid.
- 7.9. Workers again filed a writ petition bearing WP(C) No. 7939 of 2011 before the Hon'ble High Court of Odisha, inter-alia, seeking direction for payment of workmen's dues. The Hon'ble High Court vide order dated 14.03.2012 directed the Deputy Labour Commissioner to recover the workmen's dues through the public auction of the CD's assets. The DC notes the submission of Mr. Korada that *"The Labour Commissioner assessed the dues of the workers at Rs.20,72,15,956/- by an order dated 20.01.2012. The Hon'ble High Court passed an Order dated 20.11.2012 in Writ Petition No.7939 of 2011 directing compliance of the Order passed by the Deputy Labour Commissioner. Aggrieved thereby, a Special Leave Petition [being SLP (Civil) No.17645/2013] was filed by M/s. Varsha Fabrics whereby the Hon'ble Supreme Court vide order 03.08.2015 ordered that the issue of quantifying the compensation payable to the workmen should be determined by the Labour Court..."*
- 7.10. The DC further notes that the Hon'ble Supreme Court directed the workmen to file their claims before the Sambalpur Labour Court for determination of the compensation payable to them with further direction that if the three companies failed to pay the amount so determined to the workers, the Hon'ble High Court of Odisha's order for auction of CD's assets shall be implemented for recovery of workers' dues. Thereafter, the Labour Court in Sambalpur passed an order on 11.11.2016 quantifying the workmen's dues at Rs.45.66 crore to be paid to the workers within a period of three months from the date of order. Since the three companies failed to pay workers' dues, the Hon'ble High Court of Odisha passed an order for the auction of the assets of the CD on 08.04.2019. Meanwhile, on 04.06.2019, the CD was admitted into the CIRP.
- 7.11. The DC notes the submission of Mr. Korada and observes that Mr. Korada was fully aware about the long pendency of workmen dues and their continuous efforts for its payment before various forums. However, Mr. Korada has shown a casual and lackadaisical approach with regard to workmen dues, particularly the statutory claims including the PF dues, gratuity dues. The DC notes that in the Resolution plan, it is mentioned that *"On acceptance of Resolution Plan, the corporate*

debtor i.e., HIRAKUD INDUSTRIAL WORKS LIMITED will be relieved of all liabilities including but not limited to financial creditors, operational creditors, workmen liability, any statutory debt like VAT, Central Sales Tax, State Sales Tax, Custom & Excise duty, SEBI, any statutory liability pertaining to workers etc....” Furthermore, due to non-catering the interest of workmen in the Resolution plan, the DC notes that Hon’ble NCLAT has quashed the resolution plan, *inter alia* stating that “...the dues of workers including their PF dues have not been considered in the resolution plan and therefore, such a resolution plan is not in accordance with provisions of IBC and should be struck down.”

7.12. The DC also notes the observation of Hon'ble NCLAT in its order dated 09.01.2023 “We note that the duties of the IRP enshrined in section 18 and duties of the RP enshrined in section 25 of the IBC respectively place a responsibility on the IRP/RP to collect all information relating to assets, finance and operations of the corporate debtor for determining the financial position of the corporate debtor. More specifically, Regulation 9-A and 12 of the CIRP Regulations seek to provide opportunity to a creditor to submit his claim in specified format along with proof of claims. Further, the RP is responsible for maintaining an updated list of claims in Regulation 12-A and make them available for inspection in accordance with Regulation 13. In light of these provisions, when we look at the duties of IRP/RP and the detailed description regarding the workers' dues and their efforts to get payment of such dues in letter dated 14.12.2019, we feel that it was incumbent on the IRP to advise the workers' union to submit their dues in the requisite form so that they could be considered in the resolution plan of the proposed resolution applicant Regus Impex. Noticeably this letter was sent on 14.12.2019, which is a couple of days before the meeting of the CoC wherein, the resolution plan of the Successful Regulation Applicant Regus Impex was considered and approved by the CoC and any delay in such submission of claims by the workers could have been seen on merits in the proper context, Such advice could be given to the workers from the RP does not seem appropriate and therefore, we find that the conduct of the RP in this regard was found wanting and not in keeping his designated duties under IBC”

7.13. In view of the above, the DC finds that Mr. Korada has failed to act in accordance with sections 208(2)(a) and (e) of the Code and Regulations 9 and 12 of the CIRP Regulations and Regulation 7(2)(h) of IP Regulations read with Clauses 1 and 5 of the Code of Conduct.

8. Order

8.1. In view of the forgoing, the DC finds that:

- (a) Mr. Korada has failed to verify the claims of the creditors with corroborating documents to ascertain the existence and quantum of the debt.
- (b) The CD through its controlling entity, the members of the CoC, and the Successful Resolution Applicant Regus Impex were acting in concert and all were connected in a complex web of relationships. Thereby, various members of the CoC were related parties of CD and have been

unduly assigned voting rights. Hence, the Constitution of the CoC is in blatant violation of section 21 of the Code.

- (c) Mr. Korada had facilitated the erstwhile management/directors of the CD in extinguishment of all its past liabilities and also prosecution from criminal offences. Thereby, Mr. Korada had conducted the resolution process of the CD in gross violation of his fiduciary duties entrusted upon him under the Code.
- (d) Despite the SRA being a 'related party' and ineligible under section 29A of the Code, Mr. Korada submitted compliance certificate signed by himself, in their favour finding them eligible for submission of resolution plan.
- (e) Mr. Korada was fully aware about the long pendency of workmen dues and their continuous efforts for its payment before various forums. However, Mr. Korada has shown a casual and lackadaisical approach with regard to workmen dues.

8.2. In view of the above, the DC, in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017, hereby cancels the registration of Mr. Ananda Rao Korada Registration No. IBBI/IPA-002/IP-N00286/2017-18/10844.

8.3. This Order shall come into force on expiry of 30 days from the date of its issue.

8.4. A copy of this order shall be sent to the CoC/Stakeholders Consultation Committee of all the Corporate Debtors undergoing CIRP /Liquidation process respectively, and the Corporate Persons undergoing Voluntary Liquidation process, in which Mr. Ananda Rao Korada is providing his services under the Code, if any, to take necessary steps for his replacement.

8.5. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Ananda Rao Korada is enrolled as a member.

8.6. A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.

8.7. Accordingly, the show cause notice is disposed of.

Sd/-
(Ravi Mital)
Chairperson, IBBI

Dated: 13th July, 2023
Place: New Delhi