

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)**

No. IBBI/DC/171/2023

19th May, 2023

ORDER

This Order disposes the Show Cause Notice (SCN) No. COMP-11015/8/2023-IBBI/740/537 dated 21.04.2023 issued to Mr. Konduru Prasanth Raju, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Investigation Regulations). Mr. Konduru Prasanth Raju is a Professional Member of Insolvency Professional Agency (IPA) of the ICSI Institute of Insolvency Professionals (ICSI-IIP) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with registration No. IBBI/IPA-002/IP-N00708/2018-19/12200.

1. Developments in relation to resolution/liquidation of the CDs

1.1. The Hon'ble NCLT, Bengaluru Bench (AA) *vide* order dated 02.08.2019 admitted the application under section 7 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of Base Corporation Limited (CD) where Mr. Aashish Gupta was appointed as the Interim Resolution professional (IRP) who was later confirmed as Resolution Professional (RP). Later due to non-approval of resolution plan with required majority, the AA initiated liquidation process of the CD *vide* order dated 26.04.2022 and Mr. Konduru Prasanth Raju was appointed as the Liquidator.

2. Issuance of Show Cause Notice (SCN) and hearing before DC

2.1. The Board, in exercise of the powers conferred to it under section 218 of the Code read with regulations 7(1) and 7(2) of the Investigation Regulations, appointed an Investigating Authority (IA) to conduct the investigation of Mr. Konduru Prasanth Raju in the matter of CD. The IA served a notice of investigation to Mr. Konduru Prasanth Raju on 12.04.2023. Pursuant to the said notice, the IP replied *vide* emails dated 15.04.2023. The IA submitted the Investigation Report to the IBBI on 21.04.2023.

2.2. Based on the material available on record including the Investigation Report, the Board issued the SCN to Mr. Konduru Prasanth Raju on 21.04.2023. The SCN alleged contravention of sections 35(1)(d), (e), (k) and (o), 208(2)(a) and (e) of the Code, regulations 15, 31A(1)(a), (b), 31A(3), proviso to 31A and 47 of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) and regulation 7(2)(a), (h) and (i) of IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clause 1, 2, 13, 14 and 15 of the Code of Conduct specified thereunder and circular No. IBBI/IP/013/2018 dated 12th June 2018. Mr. Konduru Prasanth Raju replied to the SCN on 02.05.2023 and 27.02.2023.

2.3. The Board referred the SCN, written and oral submissions of Mr. Konduru Prasanth Raju, 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.

2.4. Mr. Konduru Prasanth Raju availed an opportunity of personal hearing before DC on 18.05.2023 through virtual mode where he and his Advocate Mr. Nipun Singhvi, were present.

3. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Mr. Konduru Prasanth Raju's submissions thereof are summarized below:

4. Contravention – I

4.1. Non-consultation with the SCC

4.1.1. The Board observed that, in the 1st Stakeholders Consultation Committee (SCC) meeting dated 14.09.2022 the sale of the CD was discussed with SCC and the following was recorded in the minutes,

“The Process Memorandum for E-Auction of the Corporate Debtor and discussions with the E-Auction Agency are in progress and shall be finalized at the earliest and in the next SCC Meeting discussion/deliberation shall be regarding the E-Auction Notice and further progress towards Value Maximization during the Liquidation Process.”

4.1.2. However, 1st auction notice was issued on 08.11.2022, without consulting the SCC. Subsequently, objection was raised by the members of SCC in the 3rd SCC meeting dated 16.11.2022 as follows:

“The Liquidator herein has published E-Auction Sale Notice dated 08-11-2022 and however certain anomalies were found in the Liquidation Valuations of CIRP and Liquidation.

The stakeholders herein have expressed their opinion that the present E-Auction Sale Notice dated 08-11-2022 shall be withdrawn.”

4.1.3. The regulation 31A(1)(b) of the Liquidation Regulations requires that liquidator shall constitute a SCC within sixty days from the liquidation commencement date, to advise him on matters relating to - sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process. Thus, from the foregoing it is observed that various details such as pre-bid qualifications, reserve price etc. were not discussed with the SCC. Consequently, the 1st e-auction had to be withdrawn *vide* corrigendum dated 16.11.2022 after objection of SCC.

4.1.4. In view of the above, the Board held the *prima facie* view that Mr. Konduru Prasanth Raju has *inter alia* violated section 35(1)(d) and 35(1)(o) and 208(2)(a) and (e), regulation

31A(1)(b) of the Liquidation Regulations and regulation 7(2)(h) of IP Regulations read with clauses 1, 14 and 15 the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

4.2. Submissions made by the IP

4.2.1. Mr. Konduru Prasanth Raju submitted that AA vide order dated 26.04.2022 while appointed him as a liquidator observed that:

“b. Assessment of Sale as a going concern [Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016- The Code has not made any recommendation regarding sale of the Corporate Debtor as a going concern. Therefore, the liquidator is directed to refer Regulation 32A of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulation, 2016 and take necessary action.”

4.2.2. Therefore, after appointment he conducted first SCC meeting on 14.09.2022 and discussed about sale of the CD as a going concern with SCC in detail. Discussion is reproduced herein below:

“the liquidator is of the opinion that the Options of "Sale of the entire Corporate Debtor as a Going Concern" "Unit Wise Sale" and "Asset Wise Sale" fetches better value rather than individual miniscule sale of assets

Hence, in view of the above, the Assets of the Corporate Debtor as a Going Concern or Business of the Corporate Debtor as a Going Concern couldn't be completed within Ninety (90) Days from the Liquidation Commencement Date.

In spite of the above challenges, there is still a higher chance of revival of the Assets or Business of Corporate Debtor to sell as a Going Concern.

Hence, the Liquidator herein contemplates to exercise the Options sequentially as mentioned herein:

- 1) Sale of the Business of the Corporate Debtor as a Going Concern.*
- 2) Sale of the Assets of the Corporate Debtor as a Going Concern.*
- 3) Sale of the UNIT WISE i.e., HOSUR UNIT and/or SOLAN UNIT Both these UNIT's can Auction independently and can be sold as a Going Concern.*
- 4) Sale of the Combined Similar Assets i.e., Land and Building of HOSUR and/or SOLAN.*
- 5) Sale of the Combined Similar Assets i.e., Plant and Machinery of HOSUR and/or SOLAN.*
- 6) Sale of the Residential Flat at Bhoomi Classic Apartment Malad (West) Opp. Inorbit Mall. This Flat can be combined with every option sequentially from the beginning of Sl. No. 1*

Some of the Stake Holders have advised that there are certain vehicles and other equipment's which are not required and shall be disposed, but however the cost of the sale of these vehicles and equipment fetches a small value which outweighs the cost and could affect the sale of the corporate debtor as a going concern.

The Process Memorandum for E-Auction of the Corporate Debtor and discussions with the E-Auction Agency are in progress and shall be finalized at the earliest and in the next SCC Meeting discussion/deliberation shall be regarding the E-Auction Notice and further progress towards Value Maximization during the Liquidation Process.”

4.2.3. He submitted that thereafter, he had sent notice and agenda for the 2nd SCC Meeting wherein, it was mentioned as follows:

“6.4) The marketing efforts are being executed along with the Battery Manufacturing Consultants and specialists. The marketing efforts are being made to reach out all the Battery industry experts and decision makers including the CEO's, Business houses and relevant Potential Purchasers.

6.5) There are several inquiries being made across all over India from all segments of business people. This includes the end-users of Battery Manufacturers to the Top Tier-I Manufacturers. Few enquiries have been received from Dubai, Bangladesh and Africa also.

6.6) The website of the Corporate Debtor is not functioning and hence a brand new website https://www.basecorp.in/marketing_profile is opened which is being accessed across all the business verticals and segments of battery industry by all the professionals, business man accordingly.”

4.2.4. He submitted that he conducted 2nd CoC on 02.11.2022 and further discussed sale as a going concern as reproduced herein below:

“Hence, as the Ninety Days is substituted vide the above Notification, the sale of the assets of the Corporate Debtor shall be auctioned at the first auction itself

Hence in the Sale/E-Auction Notice, the Liquidator herein shall sell the assets of the Corporate Debtor as a Going Concern. Hence, in order to maximise the value of the assets of the Corporate Debtor as a Going Concern only at the first auction, the below shall be held consequently for two days (2) even though there are bidders for the first option as mentioned below:

1.	<i>Entire Corporate Debtor as a Going Concern.</i>
2.	<i>UNIT-HOSUR as a Going Concern.</i>
3.	<i>UNIT-SOLAN as a Going Concern.</i>

Accordingly, necessary -modifications shall be incorporated in the Process Document also for the purpose of Value Maximisation. Liquidator has to identify and group assets and liabilities to be sold as going concern in consultation with Stakeholder Consultation Committee.

Hence, the Liquidator herein contemplates to exercise the Options sequentially as mentioned herein:

- 1) Sale of the Business of the Corporate Debtor as a Going Concern.*
- 2) Sale of the Assets of the Corporate Debtor as a Going Concern.*
- 3) Sale of the UNIT WISE i.e., HOSUR UNIT and/or SOLAN UNIT Both these UNIT's can function independently and can be sold as a Going Concern.*

- 4) *Sale of the Combined Similar Assets i.e., Land and Building of HOSUR and/or SOLAN.*
- 5) *Sale of the Combined Similar Assets i.e., Plant and Machinery of HOSUR and/or SOLAN.*
- 6) *Sale of the Residential Flat at Bhoomi Classic Apartment Malad (West) Opp. Inorbit Mall. This Flat can be combined with every option sequentially from the beginning of Sl. No.1 .*
- 7) *Trade Marks of BASE CORPORATION LTD. This Trade Marks also can be combined with the Sl. No.1 ,2,3,4,5.”*

4.2.5. Thereafter as discussed in 2nd SCC dated 02.11.2022, he published e-auction sale notice on 08.11.2022. that the company/ assets of the CD is being proposed to be sold as a going concern basis or Mode of Sale basis.

4.2.6. He submitted that he conducted 3rd SCC meeting on 16.11.2022 and informed SCC members that:

“The Liquidator herein has published E-Auction Sale Notice dated 08-11-2022 and however certain anomalies were found in the Liquidation Valuations of CIRP and Liquidation.

The stakeholders herein have expressed their opinion that the present E-Auction Sale Notice dated 08-11-2022 shall be withdrawn.

In order to have a Value Maximization for all the stakeholders, the Stake Holders herein are requesting to consider the earlier CIRP 's Liquidation Valuation Figures as it is required for the Sale of the Corporate Debtor as a Going-Concern.

The reason and rationale behind this is that as the IBC Code, 2016 enshrines Value Maximization which is beneficial for all the stakeholders and accordingly the relevant Liquidation Values may be considered for the Sale of the Corporate Debtor as a Going-Concern.

As the Sale of the Corporate Debtor as a Going-Concern is still evolving and is being explored and also IBBI Regulations ensure that the Sale of the Corporate Debtor as a Going-Concern is to be given first priority.

Hence the discussion regarding the E-Auction Sale Notice is considered as withdrawn and necessary publication in the form of CORRIGENDUM shall be issued immediately today itself and further course of action shall be finalized accordingly.

The Liquidator under the powers vested with him in the IBC Code, 2016 hereby accords to the above opinion expressed by the Stake Holders and will issue the CORRIGENDUM immediately on 16.11-2022 to the News Paper Publications published earlier along with the website of the Corporate Debtor (www.basecorp.in) and to the IBBI Website accordingly. The Sale Notice cum Auction Strategy shall be discussed in advance accordingly and shall be finalized in consultation with the stakeholders.”

4.2.7. He submitted that as discussed in SCC meeting, he published a corrigendum on 16.11.2022 that the e-auction sale notice dated 08.11.2022 shall be withdrawn in earlier newspaper along with the website of the CD (www.basecorp.in) and to the IBBI website accordingly.

4.2.8. He submitted that from the above quoted paras of minutes of 1st SCC meeting, 2nd SCC Notice and Agenda, Minutes of 2nd SCC Meeting and Minutes of 3rd SCC Meeting, it is

clear that he discussed the sale of the CD as a going concern with SCC in detail in every meeting and SCC did not point out any issue before publication of e-auction notice and after publication of e-auction notice when issues were raised by the SCC members he on same day issued corrigendum that the e-auction sale notice dated 08.11.2022 shall be withdrawn. Therefore, allegation that liquidator did not consult and issued e-auction notice is wrong and *prima facie* invalid as liquidator regularly consulted SCC in every meeting as quoted above.

4.2.9. He further submitted that the issue pointed out by most of the SCC members is pertaining to the anomalies in the valuation and not pertaining to the pre-bid qualifications, reserve price, marketing strategy and auction process, and these anomalies in the valuation are because the factory's building, plant and machinery at both the locations of Solan- unit and Hosur-unit are stretched over the personal guarantor's/corporate guarantor's land and hence, the valuers have considered that it could diminish the value and this was also informed to SCC members in every meeting.

4.2.10. He further submitted that as a result of withdrawal of the 1st e-auction notice, no prejudice or any loss has been caused to any of the stakeholder nor to the prospective bidder nor anybody's rights were affected in the liquidation Process.

4.3. Summary Findings

4.3.1. Regulation 31A(1)(b) of Liquidation Regulations clearly provides that a liquidator shall consult SCC for sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process. The above deliberations quoted by Mr. Konduru Raju highlights discussions regarding sale of CD as going concern. However, needed details as per stipulation provided under Regulations 31 A (1) (b) were not adhered to.

4.3.2. During the hearing, it was conceded that information submitted to SCC was not complete and he will be careful in dealing such matters carefully in future. He further added that as per objections raised in the 3rd meeting of the SCC, the auction notice was withdrawn and hence there is no adverse economic impact of his decision on the realizable auction proceeds and hence his lapses may be condoned. In view of admission of this procedural lapse, DC is inclined to take a lenient view on this specific contravention.

5. Contravention-II

5.1. Failure to represent CD before AA

5.1.1. The Board observed in the present matter that an application was filed by Mr. Aashish Gupta, RP during the CIRP stage to cancel e-auction process dated 19.10.2021 for the auctioning of the immovable properties belonging to the promoter of CD on which the factory building of the CD was located. The said application was filed by the erstwhile RP against Pegasus Assets Reconstruction Company Private Limited (Pegasus), since Pegasus

had issued e-auction notice dated 09.09.2021 and pursuant to the said notice had auctioned the immovable properties which drastically affected the value of the asset of CD. The application was heard on several occasions by AA.

5.1.2. However, the aforesaid application was dismissed *vide* order dated 05.01.2023 and the AA had held that the properties being e-auctioned by Pegasus now belonged to third parties. Therefore, the assets which were in possession of the CD and directly affected its value was not to be used for the recovery in the liquidation as it was owned by a third-party. Further, upon perusal of the order it is noted that, Mr. Konduru Prasanth Raju failed to appear before AA to represent the interests of CD on 05.01.2023 in a matter which had material impact on the value of the CD, which shows a casual approach in conducting the liquidation process.

5.1.3. As per section 35(1)(k) of the Code, the liquidator is duty bound to defend any suit, prosecution or other legal proceedings, civil or criminal, on behalf of the CD and Mr. Konduru Prasanth Raju's conduct of failing to appear and not representing the CD adequately, prejudiced the interests of the CD and its stakeholders. Therefore, he failed to protect and preserve the value of the CD in terms of Section 35(1)(d) of the Code. In view of the above, the Board held the *prima facie* view that Mr. Konduru Prasanth Raju has *inter alia* violated section 35(1)(d), 35(1)(e) and 35(1)(k) of the Code and Regulation 7(2)(h) of IP Regulations read with Clauses 1 and 14 the Code of Conduct.

5.2. Submissions made by the IP

5.2.1. Mr. Konduru Raju submitted after he took charge from the RP, it came into his knowledge that an IA bearing no. IA 373 of 2021 titled as Base Corporation Limited Vs Pegasus Assets Reconstruction Company Pvt Ltd filed by RP to cancel e-auction dated 19.10.2021 as sale of land would diminish the value of the asset of CD. He immediately appointed Ms. Neha Shetty, Advocate to represent him in IA 373 of 2021 and to continue the application Ms. Neha Shetty appeared on his instructions and proceeded the matter as her appearance is reflected in various orders of IA 373 of 2021. On 05.01.2023, IA 373 of 2021 was listed for pronouncement of orders as no further arguments could be advanced and therefore, Ms, Neha Shetty attended matter through video conference, however, her attendance was not recorded properly in the attendance sheet. Ms. Neha Shetty attended the pronouncement of order and informed him on 05.01.2023 through whatsapp that IA 373 of 2021 was listed today and IA has been dismissed. Therefore, it is clear from the message sent by Adv. Ms. Neha Shetty that on 05.01.2023 she attended the matter however, her attendance has not marked in order and usually this happen in NCLT that attendance of Advocates who appear virtually not recorded in order many times. Hence, he properly represented CD before AA.

5.2.2. He further submitted that AA rejected IA 373 of 2021 *vide* order dated 05.01.2023 on the ground that "*the properties which are e-auctioned by the Respondent belongs to the third parties and as per Section 36 of the Code, the assets owned by third party which are in*

possession of the Corporate Debtor shall not be used for the recovery in the liquidation. Therefore, the assets which are already e-auctioned by the assignee, being the Respondent herein, cannot be sold by the applicant liquidator. Accordingly, the prayer for cancellation of the e-auction is not tenable.”

The order dated 05.01.2023 of rejection of IA 373 of 2021 is challenged by him before Hon'ble NCLAT, Chennai *vide* Company Appeal (AT) (CH) (Ins) No. 73/2023 and the same is pending for adjudication.

- 5.2.3. He submitted that in case if the matter was not represented then the order would have been specifically mentioning *ex parte* / non-prosecution. Further, AA rejected the application on merits not because of non-prosecution of application this itself proves that case is presented before AA and after rejection of IA 373 of 2021 by AA, he approached appellate forum by filing appeal which is pending for adjudication.

5.3. Summary Findings

- 5.3.1. On perusal of records, the DC notes that non-appearance on behalf of liquidator was recorded in order dated 04.11.2022 when order in said IA was reserved and on 05.01.2023 when order was pronounced. The Order, dated 05.01.2023 in para 9 mentions that “*None appeared for the Applicant*”. Specific mention of no one appearing on behalf of Applicant, conclusively proves that statement made by Mr. Konduru Prasanth Raju that his counsel appeared online but, somehow, name has been missed out is not correct. Needless, to point out that decision on adjoining location was of vital importance as it disposal was rendering the plant and land at Hosur in landlock status; thereby, seriously impacting the price of the assets adversely. It has not made clear without any approach available to the road, how he could think of disposing of the assets as going concern as per the advice taken by the SCC.

- 5.3.2. Mr. Konduru Prasanth Raju realized this possible adverse impact and moved to Hon'ble NCLAT for its direction 17.02.2023 Again there was delay in filing this application too. The DC further notes that appeal CA(AT)(INS) 73/2023 was filed before Hon'ble NCLAT, Chennai Bench with delay of 14 days which was condoned *vide* order dated 21.03.2023. Mr. Konduru Raju through said appeal prayed to set aside the order of AA dated 05.01.2023 submitting as follows:

“...the sale of the assets of the Guarantors namely Mr. Girish Arora and Mr. Ranjit Dogra, being the land on which the Hosur factory is located to a third party, has significantly diminish the valuation of Corporate Debtor. Such acts of the financial creditor are in the teeth of the stated objective of the IBC i.e maximize the valuation of the assets of the Corporate Debtor. Also, this particular action of the Respondent herein has reduced the possibility of any sort of recovery by the other creditors State Bank of India, Phoenix, Bank of Baroda, Bank of India, Union Bank of India, Punjab National Bank, Axis Bank, Idbi Bank, Bank of Maharashtra, Central Bank of India, and they will not receive any significant amounts from liquidation and as a result, the entire Liquidation process may become infructuous, except for sale of Solan Plant, which again is located on a land owned by a third plant. It is most humbly submitted that the value of the assets of the Corporate

Debtor being the Factory Building and the machinery that are in good working condition that are in the premises of the land will be reduced to a negligible scrap value thereby significantly reducing the value of the Liquidation Estate of the Corporate Debtor.”

5.3.3. It was further stated in the appeal that:

“XXVI. It is submitted that the said auction process if not set aside will practically and for all reasons make the present Liquidation process of the Corporate Debtor a mere formality and will sabotage the entire purpose of the Liquidation process under the Insolvency & Bankruptcy Code, 2016 as there will be no interest from bidders or potential auction purchasers of the assets of the Corporate Debtor which will become unusable after the transfer of the land to the auction purchasers are and once the auction purchasers are takes possession of the same.”

Relief Sought

- A. The Hon’ble Appellate Tribunal would be pleased to quash and set aside the impugned order dated 05.01.2023 passed in IA 373/2020 in CP 220/2018 passed by the Hon’ble National Company Law Tribunal bench at Bengaluru;*
- B. The Hon’ble Appellate Tribunal would be pleased to cancel and set aside the e-auction process conducted by the Respondent and the subsequent sale certificate issued by the Respondent;*
- C. The Hon’ble Appellate Tribunal would be pleased to direct the Respondent to allow the Appellant herein to conduct a join sale of the land along with building and machinery to maximize the value of the assets of the Corporate Debtor;*

5.3.4. The above strong submissions before Hon’ble NCLAT highlights that Mr. Konduru Raju was fully aware that pending appeal was crucial for auctioning the CD as a going concern and meeting the value maximization objectives as enunciated under the Code.

5.3.5. The DC further notes that RP Mr. Ashish Gupta had challenged before AA the auction of the property belonging promoter of CD, as it reduces the value of the asset of the CD. The said challenge was dismissed by AA. Mr. Raju filed appeal before Hon’ble NCLAT wherein following ground was taken “...the sale of the assets of the Guarantors namely Mr. Girish Arora and Mr. Ranjit Dogra, being the land on which the Hosur factory is located to a third party, has significantly diminish the valuation of Corporate Debtor...”. The appeal filed before Hon’ble NCLAT is still pending. Hence ideally, during the pendency of the appeal before Hon’ble NCLAT, the property in question should not have been put to auction, as per the own admission of Mr. Raju, the value of the property had diminished significantly. But ignoring this important and vital fact, Mr. Raju put the property in question to auction on 20.03.2023. Mr. Raju was fully aware that after the positive outcome from the appeal before Hon’ble NCLAT, the value of the property in question would have significantly improved. Filing appeal for cancelling the auction so as to maximise the value, while at the same time putting the property on auction is contradictory and *mala fide* on the part of Mr. Raju.

5.3.6. Hence, the DC finds Mr. Konduru Raju in violation of section 35(1)(d) and 35(1)(o) and 208(2)(a) and (e), regulation 31A(1)(b) of the Liquidation Regulations and regulation 7(2)(h) of IP Regulations read with clauses 1, 14 and 15 the Code of Conduct.

6. Contravention-III

6.1. Delay in filing Progress Report

6.1.1. The Board observed that the 1st, 2nd and 3rd Progress Report was filed on 14.03.2023 after a delay of 242 days, 150 days and 58 days respectively. Further, the 4th progress report has not been submitted to Board till date. The regulation 15 of the Liquidation Regulations provides that the liquidator shall submit Progress Reports, in the format stipulated by the Board, to the AA and the Board for the first Progress Report within fifteen days after the end of the quarter in which he is appointed and for subsequent Progress Report(s) within fifteen days after the end of every quarter during which he acts as liquidator. The liquidator is mandated to make regular reporting to the AA and the Board regarding the status of the liquidation process. In view of the above, the Board held the *prima facie* view that Mr. Konduru Prasanth Raju have contravened regulation 15 and 47 of the Liquidation Regulations read with Clauses 13, 14 and 15 of the Code of Conduct.

6.2. Submissions made by the IP

6.2.1. Mr. Konduru Prasanth Raju submitted that he prepared the Progress Reports within time period as provided under Liquidation Regulation and notarized it to file it before AA as per the directions of Hon'ble President, NCLT dated 25.07,2022 that *report of the IRP (Interim Resolution Professional)/ RP (Resolution Professional) /Liquidator should be filed as a separate interlocutory application*. List of progress reports along with date of notary is reproduced herein below:

Sr no.	Progress Report	Date of notary
1.	1st Progress Report for quarter 26.04.2022 to 30.06.2022	01.08.2022
2.	2nd Progress Report for quarter 01.07.2022 to 30.09.2022	14.10.2022
3.	3rd Progress Report for quarter ending 01.10.2022 to 31.12.2022	12.01.2023

6.2.2. He submitted that from the above represented table it is clear that progress reports were already prepared by him as per the provided regulations and then he notarized it and sent it to his Advocate for the filing of application to take progress report of record however, inadvertently

he couldn't file the same before AA. Therefore, it is not the case that he did not prepare the progress report, he prepared and tried to file it timely however, unfortunately it was not filed.

- 6.2.3. That, the 4th Progress Report for quarter ending 31.03.2023, requires the accounts to be audited and hence, the same could not be provided on time and it was in the process of finalisation and shall be provided immediately.

6.3. Summary Findings

- 6.3.1. The DC notes that Mr. Konduru Raju has not forwarded the progress reports even to the Board which is done by the IP and not the advocate. The same were reminded to him *vide* email dated 14.03.2023. Hence, the DC finds it hard to accept the submission of Mr. Konduru Raju that progress reports were prepared and notarized but were not filed by his advocate. Hence, the DC finds Mr. Konduru Raju in contravention of regulation 15 and 47 of the Liquidation Regulations read with clauses 13, 14 and 15 of the Code of Conduct.

7. Contravention-IV

7.1. Irregular constitution of the SCC with representatives of stakeholders

- 7.1.1. In regard to the re-constitution of the SCC in pursuant to the amendment to the Liquidation Regulations w.e.f 16.09.2022, it is observed that the proviso of the regulation 31A of Liquidation Regulations provides that where SCC under regulation 31A has been constituted before the commencement of IBBI (Liquidation Process) (Second Amendment) Regulations, 2022, the liquidator within thirty days of the commencement of the said Regulations, shall re-constitute the SCC as required under the said Regulations and provisions provided under amended Regulation 31A shall come into effect only after such constitution.
- 7.1.2. However, upon perusal of minutes of the 2nd meeting dated 02.11.2022 and 3rd SCC meeting dated 16.11.2022, it is observed that Mr. Konduru Prasanth Raju failed to abide by the above stipulated regulation for re-constitution of SCC and as per the above regulation the IP had time up to 16.10.2022 to comply with the amended regulation.
- 7.1.3. Further, regulation 31A(3) of Liquidation Regulation provides that the liquidator may facilitate the stakeholders of each class namely financial creditors in a class, workmen, employees, government departments, other operational creditors, shareholders, partners to nominate their representative for participation in the consultation committee. Despite the same, the minutes of the 4th SCC meeting dated 09.02.2023 and 5th SCC meeting dated 28.03.2023 does not show the correct constitution of the SCC as only financial creditors have been made participants of the said meetings. Hence, Mr. Konduru Prasanth Raju have not conducted the 4th and 5th SCC meetings according to the Regulation 31A of the Liquidation Regulations. In view of the above, the Board held the *prima facie* opinion that Mr. Konduru Prasanth Raju has contravened proviso to regulation 31A and regulation

31A(3) of the Liquidation Regulations read with clauses 13, 14 and 15 of the Code of Conduct.

7.2. Submissions made by the IP

7.2.1. Mr. Konduru Prasanth Raju submitted that amended regulation 31A(1) of IBBI (Liquidation Process) Regulations, 2022 substituted by Notification No. IBBI/2022-23/GNU REG094. dated 16th September, 2022 (w.e.f. 16-09-2022) reproduced herein below:

(1) The liquidator shall constitute a consultation committee, comprising of all creditors of the corporate debtor, within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to-

.....

Provided that where a consultation committee under Regulation 31A has been constituted before the commencement of Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022, the liquidator within thirty days of the commencement of the said Regulations, shall re-constitute the consultation committee as required under the said Regulations and provisions provided under amended Regulation 31A shall come into effect only after such constitution.]

7.2.2. Mr. Konduru Prasanth Raju submitted that as per new amended regulation 31A (1) he reconstituted SCC and sent 4th SCC meeting notice through mail dated 06.02.2023 to all the stakeholders. However, in 4th SCC meeting held on 09.02.2023 only FCs were present and other stakeholders were not present.

7.2.3. He further submitted that he sent 5th SCC meeting notice and agendas to all the stakeholders through mail dated 24.03.2023 and in 5th SCC meeting held on 28.03.2023 except financial creditors, authorised representative of EPFO Himachal Pradesh was present.

7.3. Summary Findings

7.3.1 The DC notes the list of claims admitted by Mr. Konduru Raju comprises of secured FCs, employees, government authorities and other operational creditors. However, perusing the notice of 4th and 5th SCC sent by him reflects name of FCs and EPFO only. Mr. Konduru Raju did not show any material to inform the employees and other operational creditors to nominate their representative for participation in the SCC. Hence DC finds Mr. Konduru Raju in contravention of proviso to regulation 31A and regulation 31A(3) of the Liquidation Regulations read with clauses 13, 14 and 15 of the Code of Conduct.

8. Contravention-V

8.1. Burdening stressed CD with unreasonable expenses

8.1.1. The Board noted that Mr. Konduru Prasanth Raju took an opinion dated 30.01.2023 from Ms. Medha Kulkarni for calculation of enterprise value on the basis of previous valuation

done during CIRP. It is observed that Ms. Medha Kulkarni is a registered valuer with the Board in the Securities or Financial Assets category only. It is observed that the Code and the Regulations do not require the liquidator to seek opinion or appoint another valuer to review the subject matter of the previous valuation exercise conducted during the CIRP. Moreover, the appointment of a registered valuer for the Securities or Financial Assets category to examine the valuation report of the other two asset categories of CD, is a futile appointment only serving to increase the liquidation cost. It is also observed that Ms. Medha Kulkarni was appointed on 10.11.2022 by Mr. Konduru Prasanth Raju but he had not sought the advice of the SCC through voting on the remuneration to be paid to the said professional in terms of regulation 31A(1)(a) of Liquidation Regulations.

8.1.2. Thus, Mr. Konduru Prasanth Raju's conduct in appointing another valuer to examine the entire valuation exercise done during CIRP burdens an already ailing CD with unreasonable expenses. An IP is obliged under section 208(2)(a) of the Code to take reasonable care and diligence while performing his duties, including incurring expenses. The IBBI Circular dated 12.06.2018 (No. IBBI/IP/013/2018) clearly specifies that not only fee payable to IP is reasonable but also other expenses incurred by him are reasonable. In view of the above, the Board held the *prima facie* view that Mr. Konduru Prasanth Raju have contravened section 208(2)(a) of the Code, regulation 7(2)(a), (h) and (i) of the IP Regulations, regulation 31A(1)(a) of Liquidation Regulations read with clauses 2, 3 and 14 of the Code of Conduct and Board Circular dated June 12, 2018.

8.2. Submissions made by the IP

8.2.1. Mr. Konduru Prasanth Raju submitted that valuation during CIRP was done in 2019 and liquidation was initiated on 26.04.2022 so there was a gap of almost three years. Hence, valuation was not apropos to the situation and hence to be transparent and fair, expert opinion was sought. Further the Liquidation Regulations are silent as to which values shall be adapted/ considered for reserve price and there must be a basis for considering the proper reserve price. Compared to the claims received and the loss FC have suffered, it is imperative to have an effective value maximization for the stakeholders hence, the CIRP Values i.e., Fair Market Value which is the highest value has been considered.

8.2.2. He further submitted that during CIRP, IRP appointed three independent valuers' category wise however for effective value maximization there is a need to have a valuation for CD as a whole therefore, an independent opinion has become imperative. This independent opinion is provided for assessing and analysing the enterprise value of the entire CD, the businesses of the CD as a Going Concern. The below mentioned challenges/ambiguities existed for considering the appropriate Reserve Price which are as follows:

- a) To have a Consensus among the Stakeholders an Independent Opinion has become imperative.
- b) That there were three (3) Valuers appointed during CIRP by the RP Mr. Aashish Gupta.
- c) To apportion the Plant and Machinery values at Head Office.

- d) That the sale by the Pegasus ARC has reduced the chances of the Sale of the Entire Corporate Debtor as a Going Concern and its businesses/units as a Going Concern.
- e) Further it has become evident later that as a result of the above sale, there was no EMD submitted by any of the bidders for the entire Corporate Debtor as a Going Concern.
- f) Due to the above-mentioned challenges/ambiguities, there was no proper basis for considering the Reserve Price.

8.2.3. He submitted that considered the above-mentioned challenges/ issues being faced by him and also to have a consensus with the divergent stakeholders. Therefore, he sought independent opinion from Ms. Medha Kulkarni who is also a Chartered Accountant and the same was discussed with stakeholders in 4^{1-h} SCC conducted on 09.02.2023. Relevant discussion is reproduced herein below:

“It is explained to the stakeholders present in the meeting that as per the independent opinion on valuation report received from expert, the assets of the Company fetch a valuation of Rs.104,59,21,905/- (Rupees One Hundred and Four Crores Fifty Nine Lakhs Twenty One Thousand Nine Hundred and Five Only) under fair market value and Rs.76.54,96,450/- (Rupees Seventy-Six Crores Fifty-Four Lakhs Ninety- Six Thousand Four Hundred and Fifty Only) as a Liquidation Value and after discussions, it was decided that amongst the stakeholders present at the meeting that the Company shall go ahead with the fair market value for e-auction, which would fetch better value for all stakeholders.”

8.2.4. He submitted that as valuation fetched during CIRP was of 2019 and almost more than three years have been passed since the valuation was done and further during CIRP category wise valuation was obtained therefore, to achieve the objective of value maximisation expert opinion with respect to valuation of Corporate Debtor as a whole was necessary to be obtained and hence, expert opinion from Ms. Medha Kulkarni was sought by liquidator and discussed with the stakeholders in 4th SCC meeting dated 09.02.2023 as reproduced above and the same was never objected by any stakeholder. Hence, the alleged allegation of burdening stressed CD with unreasonable expenses has no substance.

8.3. Summary Findings

8.3.1. Mr. Konduru Raju appointed two registered valuers for each category of assets on 10.05.2022. Still, he appointed Ms. Medha Kulkarni to analyse valuation reports received by IRP during CIRP. The DC observes that whatsoever may be the cause or challenges faced by the liquidator, he should have sought advice of SCC on the remuneration of any professional appointed by him when registered valuers were already appointed by him. Since, there is only narration of independent opinion sought on the valuation report and no discussion was done on the fees of Ms. Medha Kulkarni, the DC finds Mr. Konduru Prasanth Raju in contravention of section 208(2)(a) of the Code, regulation 7(2)(a), (h) and (i) of the IP Regulations, regulation 31A(1)(a) of Liquidation Regulations read with clauses 2, 3 and 14 of the Code of Conduct and Board Circular dated June 12, 2018.

9. Order

- 9.1 From the discussion above, particularly in the context of Contravention II, it is evident that the Liquidator has demonstrated very strange approach devoid of any economic rationale. On the one hand he appointed advocate to pursue IA 373/2021 filed by RP which was correct thing to do in the given circumstances, on the other his efforts do not give the confidence that he was earnestly serious to get it defended as his advocate was absent during material days of proceedings. Again after getting the adverse judgement on his IA, he had remedial steps at hand to file an appeal with Hon'ble NCLAT within prescribed time period. It is unfathomable why he moved appeal belatedly. Anyway, Hon'ble NCLAT took a magnanimous approach to admit the case after condoning the delay. The real twist came after this stage, as auctions were carried out without even waiting for Hon'ble NCLAT's final decision. It is important to note that his appeal with Hon'ble NCLAT was filed on 17.02.2023 and auction was carried out on 20.03.2023 just in a month's time without even intimating SCC about the reasons for this undue haste and in what grounds he is not inclined to wait for Hon'ble NCLAT directions. It also surprising that in case he was apprehending any delay in getting the directions, then why he had not utilized an option to file an application for early hearing. After having filed appeal, putting the property in question to auction has virtually made the appeal filed before Hon'ble NCLAT infructuous.
- 9.2 In view above, DC notes that Mr. Konduru Prasanth Raju has contravened sections 35(1)(d), (e) and (k), 208(2)(a) and (e) of the Code, regulations 15, 31A(1)(a), (3), proviso to 31A and 47 of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) and regulation 7(2)(a), (h) and (i) of IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clause 1, 2, 13, 14 and 15 of the Code of Conduct specified thereunder and circular No. IBBI/IP/013/2018 dated 12.06.2018.
- 9.3 The DC, in exercise of the powers conferred under section 220(2) of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Mr. Konduru Prasanth Raju for a period of two years.
- 9.4 This Order shall come into force on expiry of 30 days from the date of its issue. As per information made to the Board, the successful bidder of Hosur unit had paid 25% of the sale price and sought certain relief from the AA. An application is pending before AA for confirmation of sale and balance 75% of sale consideration remains to be paid. Since the liquidation process is at critical stage, DC restrains Mr. Konduru Prasanth Raju from taking the process forward in the instant case during these 30 days also, without presenting all the facts before AA and seeking its directions.
- 9.5 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Konduru Prasanth Raju is enrolled as a member.
- 9.6 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.

9.7 Accordingly, the show cause notice is disposed of.

-sd-

(Sudhaker Shukla)
Whole Time Member, IBBI

Date: 19th May 2023

Place: New Delhi