

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

No. IBBI/DC/164/2023

10th May 2023**Order**

In the matter of Mr. Kanwal Goyal, 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. IBBI/IP/R(INSP)/2021-22/16/4173/643 dated 17.10.2022 issued to Mr. Kanwal Goyal, R/o E10A, Kailash Colony, New Delhi- 110048 who is a Professional Member of ICSI Institute of Insolvency Professionals (ICSI-IIP) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00007/2016-17/10007.

1. Background

1.1. Mr. Kanwal Goyal was appointed as interim resolution professional (IRP)/ resolution professional/liquidator in the following matters:

S. No	Name of Corporate Debtor	Appointed as	Date of Appointment by Adjudicating Authority (AA)
1	Sonear Industries Limited (CD-1)	IRP	16.05.2018
		RP	13.06.2018
2	Amrapali Infrastructure Private Limited (CD-2)	IRP	25.09.2017
		RP	03.11.2018
3	OSIL Exports Limited (CD-3)	IRP	08.02.2018
		RP	01.03.2018
		Liquidator	17.10.2019

1.2. The IBBI, in exercise of its powers under section 196 of the Code read with regulation 3(1) and 3(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Kanwal Goyal. In compliance with regulation 6(1) of Inspection Regulations, IA shared the Draft Inspection Report (DIR) with Mr. Kanwal Goyal on 15.05.2022 to which response was received on 18.06.2022. Thereafter, IA submitted the Inspection Report (IR) on 27.06.2022 in accordance with regulation 6(4) of the Inspection Regulations.

1.3. The IBBI issued the SCN to Mr. Kanwal Goyal on 17.10.2022, based on the findings in the inspection report in respect of his role as an IRP/RP in the CIRP of CD-1, CD-2 and CD-3 and material available on record. Mr. Kanwal Goyal submitted his reply to SCN *vide* email dated 09.11.2022.

1.4. The IBBI referred the SCN, response of Mr. Kanwal Goyal 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. Kanwal Goyal availed opportunity of virtual hearing before the DC on 28.02.2023 where he was represented by advocates Mr. Aditya Gauri, Mr. Amar Vivek and Ms. Shalya Agarwal. He further submitted written submissions dated 02.03.2023.

- 1.5. The DC has considered the SCN, the reply to SCN, oral and written submissions of Mr. Kanwal Goyal, other material available on record and proceeds to dispose of the SCN.

2. Alleged Contraventions, Submissions, Analysis and Findings

The contraventions alleged in the SCN and Mr. Kanwal Goyal's written, and oral submissions thereof are summarized as follows.

In the CIRP of Sonar Industries Limited (CD-1)

3. Contravention-I

Undermining the independence of IRP/RP

- 3.1 On perusal of the minutes of 1st meeting of Committee of Creditors (CoC) held on 12.06.2018 the Board noted that terms of engagement of IRP/RP in the CIRP of CD-1 had been negotiated with Oriental Bank of Commerce (OBC), the sole financial creditor, by AAA Insolvency Professional LLP (AAA). The said minutes under resolution 2 state that AAA submitted the quotation dated 28.11.2017 to OBC and quoted for professional fee of Rs 6.00 lakh for IRP and additional lump sum fees for appointment as the RP at Rs. 19 lakhs. The said minutes under resolution 4 further states as under:

“As per Regulation 25A of the Insolvency and Bankruptcy board of India (Insolvency professionals) Regulation 2016 effective from 01-04-2018, an insolvency professional has an obligation to disclose the fee payable to him, the fee payable to the professional entity, and the fee payable to professionals engaged by him.

It is proposed that remuneration of IRP/RP as approved by CoC shall be distributed in the ratio of 70:30 where 70% of the remuneration shall be paid to AAA Insolvency Professional LLP and 30% of the remuneration shall be paid to IRP/RP.”

- 3.2 It is, thus, evident that it is not Mr. Kanwal Goel who appointed or engaged AAA for providing support services but it is the AAA which negotiated his appointment thereby undermining the independence in professional relationship which an IP is supposed to conduct the process independent of external influences. The distribution of fee between AAA and Mr. Kanwal Goyal in the ratio of 70:30 further reinforces the point that he undermined the independence as an IRP/RP in the process. This distribution also does not present reasonable reflection of the work undertaken by him as he has proposed more than double his fees for support services without any defined scope of work. In view of the above, the Board held the *prima facie* view that he has, *inter alia*, violated section 208(2)(a) and (e) of the Code and clauses 1, 2, 3, 5 and 25 of the Code of Conduct.

In the CIRP of Amrapali Infrastructure Private Limited (CD-2)

4. Contravention-II

Raising of invoice for IP's professional charges in the name of the IPE

- 4.1 As per clause 25 of the Code of Conduct, an IP must provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken and is not inconsistent with the applicable regulations. Clause 5 of the Code of Conduct mandates an IP to maintain complete independence in his professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences.
- 4.2 The Board observed from the minutes of the 1st meeting of CoC held on 03.11.2017 that Mr. Kanwal Goyal would be raising the invoice for his professional charges in his capacity as IRP and RP in the CIRP of the CD-2 in the name of IPE of which he was a partner and also that payment would be received in the name of such IPE.
- 4.3 In reply to DIR, he justified raising invoice and receiving payment in the name of IPE of which he was partner by stating, *inter alia*, that “An Insolvency Professional requires support services from the day he decides to take some cases in his name. He requires secretarial staff for making his profile; making his applications for empanelment with various banks and financial institutions; managing his social media for spreading around that he has started the practice of an Insolvency Professional; fixing his appointments with lenders to whom he wants to meet for giving a presentation about himself as an Insolvency Professional; printing his profile; and other computer related work. AAAIP started providing all the support services to all the partners and all the expenses on salaries, office rent, office maintenance, communication, internet, electricity and all other expenses on social media, brand building, subscription to various knowledge portals, accountants, auditing, compliances of GST, MCA, Income tax, etc. AAAIP started making all the expenses and made huge investment till cases started coming to its partners.”
- 4.4 The Board noted that in CIRP form 5 under Srl. No. M, his response to “Support services sought from IPE, if any” is “No”. It is, thus, evident that fee charged by him in the name of IPE was not for the purpose of taking any support services for CIRP. His reply to DIR rather indicates that the said fee takes into account services not connected with CIRP of the CD-2. In fact, his reply to DIR indicates that it included expenses incurred by IPE on promoting him as IP.
- 4.5 It is also noted from his reply to DIR that his share of revenue was 30% of fees being charged as IRP/RP. This indicates that instead of him, the IPE was primarily in control of the whole process and that he delegated his independence in favour of IPE. This distribution also does not present reasonable reflection of the work undertaken by him as he has proposed more than double his fees for IPE without any defined scope of work.

- 4.6 In view of the above, the Board held the *prima facie* view that he has, *inter alia*, violated section 20(2)(a), 25(2)(d), 208(2)(a), 208(2)(e) of the Code, clauses 1, 2, 3, 5, 25 and 26 of the Code of Conduct and circular No. IP/004/2018 dated 16.01.2018 issued by the Board.

In the CIRP of OSIL Exports Limited (CD-3)

5. Contravention-III

Undermining the independence of IRP/RP

- 5.1 The Board noted that on perusal of the minutes of 1st meeting of CoC held on 01.03.2018 that terms of engagement of IRP/RP in the CIRP of CD-3 had been negotiated with Bank of India on behalf of consortium member banks by AAA Insolvency Professional LLP (IPE/AAA). The said minutes under resolution 3 state that AAA submitted the quotation dated 10.06.2017 to Bank of India, which is much prior to insolvency commencement date and quoted professional fee of Rs 4.00 lakh for IRP. As per the said minutes, the fee for RP was not quoted and IPE in the CoC meeting itself proposed the fee of RP at the same level, i.e., at Rs. 4.00 lakh.
- 5.2 It is further observed from the minutes of the 2nd CoC meeting held on 07.04.2018 that a resolution was passed to approve the division of professional fees payable between him and the IPE as Rs. 80,000 per month for IRP/RP and Rs. 3,20,000 per month for the IPE.
- 5.3 It is, thus, evident that it is not Mr. Kanwal Goyal who appointed or engaged AAA for providing support services in the CIRP of the CD-3 but it is the AAA which negotiated his appointment with consortium of banks thereby undermined the independence in professional relationship which an IP is supposed to maintain and the requirement of conducting the process independent of external influences. The distribution of fees between AAA as stated above further reinforces the point that his independence as an IRP/RP has been compromised. This distribution also does not present reasonable reflection of the work undertaken by him as he has proposed more than double his fees for support services without any defined scope of work.
- 5.4 In view of the above, the Board held the *prima facie* view that Mr. Kanwal Goyal has, *inter alia*, violated section 208(2)(a) and (e) of the Code and clauses 1, 2, 3, 5 and 25 of the Code of Conduct.

Submissions

- 5.5 Mr. Kanwal Goyal submitted that an IP derives its powers to practice from the grant of certificate of registration by the Board as per regulation 7 of the IP Regulations. Further an Insolvency Professional Entity (IPE) is recognized vide its registration certificate issued by the Board as per the provisions enumerated in Chapter V of the IP Regulations.

- 5.6 He submitted that an IP as per the laws in force can be a Partner or Director of an IPE. In terms of applicable regulations, the sole objective as defined in the IP Regulations, an IPE is to provide support services to IPs who are its partners or directors, as the case may be.
- 5.7 He submitted that he is a Partner of AAA, i.e., the IPE. The basic constitution of the IPE is governed by regulation 12 of the IP Regulations wherein the main objective of IPE is to provide support services to its partners who have pooled their resources and formed an IPE which is registered with IBBI. The relevant provision of the IP Regulations reads as follows:-
- “12. Recognition of Insolvency Professional Entities.*
- (1) A company, a registered partnership firm or a limited liability partnership may be recognised as an insolvency professional entity, if – (a) its sole objective is to provide support services to insolvency professionals, who are its partners or directors, as the case may be”*
- 5.8 He submitted that at the time of formation of IPE, the main purpose of IPE was to disseminate information about the Code and making the bankers know about the benefits of the Code. The IPE i.e. AAA, was founded by three family members namely CA Anil Goel, CA Ankit Goel and CS Kanwal Goyal. Advocate Sanjay Gupta was also added as founder partner as he was associated with the family since last 18 years. The IPE was recognised by IBBI with these founding partners and it started spreading around the knowledge, experience of relevant field being associated with resolution of financially stressed businesses.
- 5.9 He submitted that there is no provision in the act or regulations which prohibits approaching the lenders for assignment. The IPE first started doing seminars, education talks, training sessions, etc. with banks and financial institutions. Since it was a new law, AAA got good recognition and became popular in the profession of the Code.
- 5.10 He submitted that an IP as per the laws in force can be a member of an IPE. It is pertinent to mention that the Board has institutionalized the concept of an IPE whereby several IPs can come together and pool their resources and capabilities to form an IPE so as to handle insolvency proceedings involving very high stakes or where complex issues of law or practical difficulties are involved. In terms of applicable regulations, the sole objective as defined in the IP Regulations of IPE is to provide support services to IPs who are its partners or directors, as the case may be.
- 5.11 He submitted that since the IPEs are duly recognized by the Board for providing support services to its partner for the assignments undertaken by them, the fee paid to the respective IPE of the IP shall constitute the Insolvency Resolution Process Cost (IRPC). The law as stated in Chapter IX, Regulation 33 & 34 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) is trite that the ‘Expenses’ as incurred while performing the activities of an IP shall include the fees to be paid to an IPE which pertinently shall form part of the IRPC.

- 5.12 He submitted that as mentioned in the clause 8 of the circular vide No. IBBI/IP/013/2018 dated 12.06.2018, it has been clarified by the Board herein that the IRPC shall not include any 'Expense', which are not approved by the CoC and which are further not 'Directly Related' to the CIRP.
- 5.13 He submitted that an IP requires support services from the day he decides to take some cases in his name. He requires secretarial staff for making his profile; making his applications for empanelment with various banks and financial institutions; managing his social media for spreading around that he has started the practice of an IP, fixing his appointments with lenders to whom he wants to meet for giving a presentation about himself as an IP, printing his profile and other computer related work. AAA started providing all the support services to all the partners and all the expenses on salaries, office rent, office maintenance, communication, internet, electricity and all other expenses on social media, brand building, subscription to various knowledge portals, accountants, auditing, compliances of GST, MCA, Income tax, etc. AAA started making all the expenses and made huge investment till cases started coming to its partners.
- 5.14 He further submitted that the creditors, banks, financial institutions or NBFCs were not aware of the law that the cases can be assigned to individual IP and not to IPE and initially, at the start of the IBC in India, the AAA was getting emails from creditors for submission of EOI or Fee quote for assignment of cases. AAA used to provide the fee quote and EOI to prospective customers and name of partner was being selected between the partners mutually based on the complexity of proposed case, pre-occupation of a partner, efforts and travel required, experience and willingness of the partner of take the assignment, etc.
- 5.15 The share of a partner in an assignment is the gross amount from the fee of that case and the partner is not supposed to spend any amount from his share. The AAA, the IPE is under obligation as per agreement with partners that all the expenses would be borne by AAA out from its share of the revenue. In this case, AAA need to bear all expenses incurred before the assignment is given to me by the creditors and even after the assignment is given in his name. He has not incurred any expenses out of his share of revenue which was 30% in this case. All the expenses on salaries, office rent, office maintenance, training of staff, communication, travel, local conveyance of staff, books and periodicals, computer hardware and software, subscription to education and portals, etc. are borne by AAA.
- 5.16 He submitted that in the present case, the assignment was collectively handled by him and the IPE during CIRP. The fee paid to the IPE by the CD-1 were in lieu of the support services being provided to him herein for the CIRP assignments. Hence the fee paid to the IPE being 'Directly Related' to the CIRP are to be considered as the 'Expenses' and thus, therefore be included in the IRPC.
- 5.17 He submitted that as per the code of conduct enumerated in the First Schedule of the IP Regulations, he has maintained written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision.

He mentioned that during the 1st CoC meeting of all the three CDs the members were informed that prime responsibility of handling the assignment remained with him, Partner of AAA and all the duties were carried out during the CIRP as prescribed under the Code by using the common knowledge base, infrastructure and experience of AAA for execution of the assignment. The extract of the 1st COC Meeting of CD-1 is as under:

“..RESOLVED FURTHER that the primary responsibility of handling the assignment will remain with Mr. Kanwal Goyal, Partner of AAA Insolvency Professionals LLP (AAAIP), however, he would be using the common knowledge base, infrastructure and experience of AAA Insolvency Professionals LLP (AAAIP) for execution of the assignment.”

- 5.18 Further, in accordance with Regulation 25A of IP Regulations effective from 01.04.2018, an IP has an obligation to disclose the fee payable to him, the fee payable to the professional entity, and the fee payable to professionals engaged by him. The relevant clauses of the Code of Conduct under the Regulations as mentioned in the SCN read as under:

“25. An Insolvency Professional must provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken and is not inconsistent with the applicable regulations.”

“25B. An insolvency professional shall raise bills or invoices in his name towards his fees, and such fees shall be paid to him through banking channel.”

(Inserted by Notification No. IBBI/2022-23/GN/REG088, dated 4th July, 2022 (w.e.f. 04.07.2022))

- 5.19 In this regard, the RP proposed following resolution in the 1st COC meeting of CD-1 which was passed unanimously by members of the COC as below:

“RESOLVED THAT, remuneration of IRP/RP as approved by CoC shall be distributed in the ratio of 70:30, where 70% of the remuneration shall be paid to AAA Insolvency Professional LLP and 30% of the remuneration shall be paid to IRP/RP.”

- 5.20 In this regard, the RP proposed following resolution in the 2nd CoC meeting of CD-3 held on 07.04.2018 which was passed unanimously by members of the COC as below:

“RESOLVED THAT, with effect from 01-04-2018, monthly remuneration of resolution professional stands revised at Rs.80,000 per month plus applicable taxes.

“RESOLVED FURTHER THAT, with effect from 01-04-2018, AAA Insolvency Professionals LLP will be entitled to charge fees to provide support services at Rs.3,20,000/- per month plus applicable taxes.

“RESOLVED FURTHER THAT, with effect from 01-04-2018, resolution professional and AAA Insolvency Professionals LLP will continue to be entitled for reimbursement of expenses like publication of public announcement, expenses for conducting COC meeting, travel expenses, incurred during corporate insolvency resolution process.”

- 5.21 He mentioned that the Circular No. IP/004/2018 dated 16.01.2018 which directed all the IPs to raise invoices/bills in their respective names and thereby the amendment to the CIRP Regulations, which provided for payment to IP and IPE to be shown separately, was only effective from 01.04.2018. The relevant extract of the said circular reads as:

“3. In view of the above, it is clarified that an insolvency professional shall render services for a fee which is a reasonable reflection of his work, raise bills / invoices in his name towards such fees, and such fees shall be paid to his bank account. Any payment of fees for the services of an insolvency professional to any person other than the insolvency professional shall not form part of the insolvency resolution process cost.

4. Similarly, any other professional appointed by an insolvency professional shall raise bills / invoices in his / its (such as registered valuer) name towards such fees, and such fees shall be paid to his / its bank account.”

- 5.22 It is further most relevant to mention therein that the relationship between him and IPE is governed by a Memorandum of Understanding (MOU)/LLP Agreement, whereby the scope of services to be rendered by IPE and the IP are very well clarified.

- 5.23 He executed a LLP Agreement by the IPE dated 23.02.2017 by virtue of which he became the designated partner of the IPE i.e., AAA and started working in partnership. The purpose of AAA is to provide support services to its designated partners who are insolvency professionals by using the common pool of resources of the IPE. Hence, he has shareholding in the AAA of which he is a Designated Partner however, he is entitled to a share in the specified revenue of each assignment which are in his name and are executed by him with the support of the IPE AAA in which he is a designated partner. It is of pertinence to mention that all the expenses were incurred by AAA for conducting the process e.g. salaries, office expenses, infrastructure expenses, marketing expenses, Administration expenses, etc. It is further submitted that AAA provides support services to the partner in terms of qualified staff to assist the partner for carrying out his duties as an IRP/ RP such as preparation of notices, minutes, RFRP, EOI, Bid Evaluation, communications with Stakeholders, verifies claims etc. The entire infrastructure cost is borne by the IPE and hence the consolidated fee approved by the COC for the IRP/RP is shared as per the LLP Agreement and MOU between the IP and IPE and no additional cost over and above the agreed fee is charged.

- 5.24 He submitted that regulation 12 of the IP Regulations, 2016, prior to substitution (by Notification No. IBBI/2020-21/GN/REG061, dated 30.06.2020 (w.e.f. 01.07.2020)) in Clause (a) of Sub-Regulation (1) of the law in existence, stood as: *“its sole objective is to provide support services to insolvency professionals, who are partners or directors, as the case may be,”* Hence, prior to the said amendment, there was no other option available with an IPE to provide support services to any other IP who is not a Partner or director of its IPE. Similarly, an IP was also not permitted to seek support services from any other IPE, to whom the said IP is not its partners or directors, as the case may be. Therefore AAA on behalf of its Partners sent quotations for the various assignments.

- 5.25 That all the 3 assignments were collectively handled by the him and the AAA during CIRP. In all the present assignments, the fee paid to the IPE by the Corporate Debtors were in lieu of the support services provided by it to him in respective CIRP assignments. That as per the code of conduct enumerated in the First Schedule of the IP Regulations, he has duly maintained written contemporaneous records for all decisions, the reasons for taking the decision, and the information and evidence in support of such decisions.
- 5.26 He has duly apprised the members in the CoC meetings that the prime responsibility of handling the assignment(s) remains with him, Partner of AAA and all the duties were carried out during the CIRP process as prescribed under Code by using the common knowledge base, infrastructure and experience of AAA for execution of the assignment. The Resolutions in this regard have been duly approved by the CoC members.
- 5.27 The division of professional fees payable between the him and IPE in the ratio of 30:70 was disclosed and approved by the CoC members. Thus, there has been proper disclosures and approvals by him to the CoC members qua the fee which was payable to him, the fee payable to the AAA, and the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member.
- 5.28 It is further submitted that his fees in the original quotation was inclusive of the fees of the IPE to be bifurcated between the him and the IPE and no additional or extra fee has been quoted/ raised by him
- 5.29 He further mentioned that he has attained an age of 87 years now and he required more support services from IPE as compared to other younger partners. He has complied with all the provisions of section 208(2) of the Code and have not defaulted in any manner. He has worked with complete independence on this assignment. It is therefore, respectfully denied that he has violated section 208 of the Code and Clause 1, 2, 3, 5 and 25 of the Code of Conduct for IPs as specified in First Schedule to IP Regulations as he has always maintained integrity by being honest, straightforward, and forthright in all professional relationships and maintained complete independence in his professional relationships and conducted all insolvency resolution and liquidation process, independent of external influences. He has never influenced the decision or the work of the CoC or debtor, or other stakeholders under the Code, so as to make any undue or unlawful gains for himself or his related parties, or caused any undue preference for any other persons for undue or unlawful gains and have not adopted any illegal or improper means to achieve any mala fide objectives. He has also provided services for remuneration which has been charged in a transparent manner, has been a reasonable reflection of the work necessarily and properly undertaken, and has not been inconsistent with the applicable regulations. He further respectfully stated that the above items of the Code of Conduct are not applicable in the instant factual position as the distribution of fee between AAA and him in the ratio 70:30 has been approved by CoC.

Analysis & Findings

- 5.30 Since the above issues pertains to similar contraventions, hence the DC proceeds to club them. The resolution passed at 1st meeting of CoC dated 12.06.2018 of CD-1 clearly highlights the dominant role of IPE in the CIRP where more than double the fees of RP has been proposed to be paid to IPE. Similarly, resolution passed at 3rd meeting of CoC dated 07.04.2018 of CD-3 highlights four times the fees of IRP to be paid to IPE. Moreover, as highlighted in SCN the appointment with banks was done by IPE not by Mr. Kanwal Goyal.
- 5.31 In case of CD-2, it was resolved by the CoC that Mr. Kanwal Goyal may raise invoice in name of IPE and receive payment in name of IPE. While in Form-5, Mr. Kanwal Goyal did not disclose regarding support services sought from any IPE.
- 5.32 The above conduct in all above CIRPs highlights the conduct of CIRP by the IPE rather than being run by Mr. Kanwal Goyal. Clause 5 of the Code of Conduct clearly provides that an IP should maintain complete independence in its professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences. The conduct of Mr. Kanwal Goyal does not seem to be independent and he allowed IPE to control CIRP activities instead of doing it himself, which is not expected from an IP. Hence, the DC finds Mr. Kanwal Goyal in violation of section 20(2)(a), 25(2)(d) 208(2)(a) and (e) of the Code, clauses 1, 2, 3, 5, 25 and 26 of the Code of Conduct and circular No. IP/004/2018 dated 16.01.2018.

In the CIRP of Sonar Industries Limited (CD-1)

6. Contravention-IV

Availing the services of Auditor of the CD for bookkeeping and accounting

- 6.1 Section 128 of the Companies Act, 2013, provides that every company shall prepare and maintain books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company. Section 144 of the Companies Act, 2013 further, *inter alia*, provides that an auditor appointed under the Act shall not provide accounting and book-keeping services (whether such services are rendered directly or indirectly to the company), or its holding company or subsidiary company. Combined reading of these two sections of the Companies Act, 2013 makes it clear that the accounting and bookkeeping services cannot be availed from an auditor appointed under the Act.
- 6.2 It is noted that Mr. Sunny Thukral who was working as statutory auditor in the CIRP of the CD-1 has also been entrusted with the responsibility of preparing financial statement of the CD-1. E-mail dated 25.09.2018 from Mr. Sunny Thukral forwarding draft financial statements of the CD-1 to Mr. Kanwal Goyal proves this. Further, his statement in the 4th CoC meeting held on 27.09.2018 that Statutory Auditor has commenced the statutory audit of CD-1 for financial year 2017-18 and also placed the financial statements received from the Statutory Auditor on table also indicate the same conclusion that services of

auditors were availed for preparing financial statement of the CD-1 also. In the 5th CoC meeting he apprised CoC that he would be asking the statutory auditor to revise the financial statement based on observations of Forensic Auditor regarding avoidable transactions.

- 6.3 As per section 17(2)(e) read with section 23(2) of the code, IRP/RP is responsible for complying with the requirements under any law for the time being in force on behalf of the CD. By utilising the services of auditor for preparing financial statements of the CD, he has failed to ensure that the audit remains to be separate and independent process as required under sections 128 and 144 of the Companies Act, 2013.
- 6.4 In view of the above, the Board is of the *prima facie* view that he has, *inter alia*, violated section 17(2)(e) read with section 23(2), section 208(2)(a), 208(2)(e) of the Code and Clause 14 of the Code of Conduct.

Submissions

- 6.5 Mr. Kanwal Goyal submitted that Mr. Sunny Thakral, who was appointed as statutory auditor during the CIRP period of the CD-1 was also intimated about commencement of the CIRP and the appointment of IRP through email dated 02.06.2018. He submitted that in accordance with section 18(2) (d) of the Code, the management of the CD-1 shall be vested with the IRP/RP, who shall also have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified. As per the powers vested under section 18 (2)(d) of the code, he requested Ms. Priya Gupta, Company Secretary of the CD-1 to provide the all the company records. Despite all the efforts no records were provided from her good office since 01.04.2017. It was later informed that Ms. Priya Gupta expressed her inability to further contact to him and stated that records would be provided by the statutory auditor. Therefore, as per the available documents with him, the statutory auditor was asked to provide all the necessary details including the tally data for the period from 01.04.2016 to 16.05.2018. He submitted that the statutory auditor informed that they are not in possession of any documents of the CD-1 and the same would be in possession of the management of the company or any other authorized officer. He submitted that during the visit to office of the CD-1 on 23.05.2018, no records were available and it was stated by the management that the records are unavailable at the office. Also, no records were provided even after repeated reminders. He further requested that the documents are required to be presented before the COC members for discussion, however, it was informed by the Statutory Auditor that necessary documents were not provided within due course of time for completion of the audit. He submitted that *vide* email dated 25.06.2018 sent to Mr. Thakral, it was stated that being appointed as the statutory auditor of the CD-1 it was apprised that CIRP process has commenced which is a time bound process, thus it was requested to initiate the audit work on urgent basis as it would be discussed in the 2nd CoC Meeting dated 05.07.2018. To this, Mr. Thakral replied that they were awaiting the documents and details which are to be provided by the management of the CD-1 based on which the audit work would be initiated and the same was assured by them to be provided in 10-12 days' time

period. Further, during the conduct of the 2nd CoC meeting, it was decided that there are chances of some suspicious transaction; therefore, for the purpose of identifying the same, the RP proposed to appoint the forensic auditor as per the provisions of the code. In pursuant to the same, the RP sought quotations from various auditing firms.

- 6.6 Further, the RP *vide* email dated 05.09.2018, provided the tally backup data and provisional balance sheets, which was received from the management/company secretary of the CD-1, to Mr. Thakral and requested him to finish the audit process for the financial year ending 31.03.2018, on an urgent basis. In the meantime, the statutory auditor *vide* email dated 17.09.2018 raised certain queries and requested certain details to be imparted for the purpose of completion of the audit process. The request for all the information was further shared with the management of the CD-1, but there was no response to any of the queries. Further, Ernest & Young was appointed as the forensic auditor for the purpose of finding various suspicious transactions.
- 6.7 He submitted that documents were also sought from Mr. Sunny Thakral, the statutory auditor of the CD-1 appointed by the promoters during the pre CIRP period. That though initially Mr. Sunny Thakral informed he is not in possession of any documents of the CD-1 but later upon specific directions of the Promoters, he *vide* email dated 25.09.2017 provided the Financial Statements of the CD-1.
- 6.8 Thereafter, the statutory auditor based on the available information worked on the completion of the audit process and provided the financial statements of the CD-1 (in the absence/lack of the certain data as requested from the CD-1). Thereafter, the details/documents were sent across to the forensic auditor for the purpose of verifying suspicious transactions, if any. Thus, based on reply and the annexures attached, it can be clearly seen that there has not been any violation of any provision of the code, as the entire process of the audit of the books and accounts of the CD-1 has been carried out in a transparent manner and he has personally coordinated with the ex-management of the CD-1 to provide all the necessary details required by the statutory auditor to cover the scope of their work. That the ex-management of the CD-1 has provided available information which were there in their possession and the same was provided to Mr. Thakral for the purpose of the audit, which was well within the powers of the RP which was carried out diligently and without any hindrance in the entire process of the audit. He further submitted that the board has referred to the minutes of the 5th CoC meeting dated 25.10.2018, wherein agenda no. 6 states that statutory auditor would be asked to revise the reports after taking the views of the forensic auditor. He submitted that the agenda was not discussed in the meeting. Thus there has been no interference of the RP in the given matter. The factory was not working at the time of CIRP and no record was made available. The case was filed before AA under section 19 for non-cooperation and in spite of many hearings the records were not provided during CIRP period. Therefore the audit was conducted on the basis of available records. He submitted that it is the duty of the RP to complete the books of accounts of the CD-1. Since minimal data was available with the RP, therefore, the auditor was asked to provide the

financials on basis of the tally data provided to them. It is normal and mandatory to provide all information to auditor as received by auditee from any other source. In this case, sharing of transactional audit report with the statutory auditors is standard process which all the auditees are required to follow. All the auditors generally seek copies of all kinds of inspection reports and audit reports conducted by any authority by the accounts or operations of the auditee company.

- 6.9 It would be clear from the foregoing paras that statutory auditors was appointed as per company law since he had not completed five years and management was trying to supply all the documents available to him for audit and since the full documents were not made available by erstwhile management the case was filed before AA under section 19(2) of the Code. Hence, the statutory auditor was never appointed for maintenance of accounts books.

Analysis & Findings

- 6.10 The DC notes that the efforts of Mr. Kanwal Goyal in obtaining information from the management of CD-1 including filing of application under section 19 of the Code. Mr. Kanwal Goyal admits that ex-management of the CD-1 has provided the information available in their possession which he in turn forwarded to Mr. Thakral for the purpose of the audit. He further admitted that it is the duty of the RP to complete the books of accounts but still he asked the auditor to provide the financials on basis of the tally data provided to them. The DC notes that Mr. Kanwal Goyal was aware of his duties to prepare book of accounts of the CD-1. Further section 144 of the Companies Act, 2013 is very clear on excluding auditor of a company for providing certain services including accounting and book keeping services. In light of the above facts, the DC finds Mr. Kanwal Goyal in violation of section 17(2)(e) read with section 23(2), section 208(2)(a), 208(2)(e) of the Code and clause 14 of the Code of Conduct.

In the CIRP of Amrapali Infrastructure Private Limited (CD-2)

7. Contravention-V

Inclusion of Pre-CIRP expenses incurred by Bank under insolvency resolution process costs (IRPC)

- 7.1 Section 5(13) of the Code, defines IRPC as (a) the amount of any interim finance and the costs incurred in raising such finance; (b) the fees payable to any person acting as a resolution professional; (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern; (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; (e) and any other costs as may be specified by the Board.
- 7.2 Regulation 31 of the CIRP Regulations, 2016, lays down that IRPC under Section 5(13)(e) shall mean (a) amounts due to suppliers of essential goods and services under Regulation 32; (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d); (c) expenses incurred on or by the interim

resolution professional to the extent ratified under Regulation 33; (d) expenses incurred on or by the resolution professional fixed under Regulation 34; (e) and other costs directly relating to the corporate insolvency resolution process and approved by the committee.

- 7.3 The Board observed that in the 2nd meeting of CoC held on 08.12.2017 under Agenda Item No. 5, legal expenses incurred by Bank of Baroda towards fee of Rs. 15,01,780 plus GST paid to Legal Counsel engaged by it for filing application under section 7 was discussed and resolution for ratification of this expenditure by CoC was put to e-voting.
- 7.4 As per the definition of IRPC provided under section 5(13) of the code read with Regulation 31 of CIRP Regulations, the expenditure incurred by a financial creditor for initiation of CIRP cannot be termed as IRPC. Hence, inclusion of the same in the IRPC even though ratified by CoC is in contravention of the provisions of the Code and regulations thereunder.
- 7.5 In view of the above, the Board held the prima facie view that Mr. Kanwal Goel has, *inter alia*, violated section 5(13) of the Code read with regulation 31 of the CIRP Regulations, 2016 and clause 3, 5, and 10 of the Code of Conduct.

Submissions

- 7.6 Mr. Kanwal Goel submitted that Bank of Baroda, the lead banker had availed the services of law firm namely, Cyril Amarchand Mangaldas as its legal counsel for filing application under section 7 of the Code and thereby incurred legal expenses amounting to Rs. 15 lakhs. It was understanding of the Bank that the said legal expenses will be reimbursed and shared by other consortium members/ Banks since the expenses incurred by Bank of Baroda pertained to CIRP. Thus, the bank was of the considered view that the said expenses incurred by itself shall be shared by other consortium members/ Banks either as Joint Lender's Meeting Cost or as a CIRP Cost.
- 7.7 He submitted that there was no clarification about the CIRP cost and it is a tradition in consortium financing that one of the member of the consortium incurs some expenditure, which are shared by other consortium members.
- 7.8 In this regard, Mr. Kanwal Goel submitted that he duly apprised the Bank of Baroda that the above is not permissible under the provisions of the Code and the pre-CIRP expenses incurred by itself cannot be included as CIRP cost. However, due to certain pressure, repeated queries by the Bank of Baroda, he considering the commercial wisdom of the CoC put up an agenda for discussion in the 2nd CoC meeting pertaining to the payment of the legal cost incurred on filing the legal application for initiating the CIRP and the same put to vote.
- 7.9 He submitted that the agenda was put up for discussion in the 2nd CoC meeting before the consortium in the CoC Meeting, wherein an agenda pertaining to the payment of the legal cost incurred on filing the legal application for initiating the CIRP was put to vote for the ratification and approval of the incurred amount as part of the CIRP Cost. He submitted that even during the CoC meeting, he duly apprised the members that there is no provision under the Code for inclusion of pre-CIRP expenses under CIRP Cost and accordingly, upon his

guidance the said agenda no.05 '*To Approve and Ratify the Legal Fees Paid to Legal Counsel of Bank of Baroda*' was rejected with a voting of 47.36% votes.

- 7.10 He submitted that the pre-CIRP expenses were never made part of CIRP cost and no amount has been disbursed or refunded by him to the Bank of Baroda. The bank statement of the CD-2 has been duly verified by him and no such transaction has been made out by the CD-2 or the RP. Thus, no such amount was disbursed or refunded by the RP to the banks.
- 7.11 He further submitted that he has always maintained utmost honesty and has been fully compliant with all the regulations, rules and provisions as envisaged in the Code while working for all the assignments where he has been appointed as the RP/IRP/Liquidator. He requested to consider the submissions made in the current reply as true and correct.

Analysis & Findings

- 7.12 The DC notes that issue of ratification of pre-CIRP expenses to legal counsel of Bank of Baroda was first discussed by CoC in its 1st meeting dated 03.11.2017 where representatives of other bank objected to include such expenses in IRPC on ground that IRPC should include costs incurred after initiation of the CIRP and not before that and matter was deferred for next CoC meeting. During 2nd CoC meeting dated 08.12.2017 the resolution was put for e-voting by CoC. The DC notes that the resolution could only fetch 52.08% votes in favour during e-voting. Consequently, it was not formed part of IRPC. DC finds that though expenses prior to commencement of CIRP has not been paid from the account of CD, but the RP should not have put the same for voting at its first place itself.

8. Order

- 8.1 In view of the submission made by Mr. Kanwal Goyal, and materials available on record, the DC finds that Mr. Kanwal Goyal has compromised independence of IRP and surrendered the same to IPE. The DC further notes that at present Mr. Goyal neither has valid AFA nor he is entitled to get fresh AFA due to his age,
- 8.2 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 imposes a penalty of Rs.2,00,000 (Rupees two lakh only) on Mr. Kanwal Goyal and directs him to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of "penalty imposed by IBBI" on <https://bharatkosh.gov.in> within 45 days from the date of issue of this order and submit a copy of the transaction receipt to the Insolvency and Bankruptcy Board of India.
- 8.3 This Order shall come into force immediately in view of para 8.2 of the order.
- 8.4 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Kanwal Goyal is providing his services, if any.

- 8.5 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Kanwal Goyal 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/-
(Jayanti Prasad)
Whole-time Member, IBBI

Dated: 10th May 2023
Place: New Delhi