

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/223/2024

25 June 2024

Order

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/121/2022-IBBI/753/595 dated 17.05.2023 issued to Mr. Pinaki Sircar, who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with registration No. IBBI/IPA-002/IP-N00063/2017-18/10141 and a Professional Member of the ICSI Institute of Insolvency Professionals (ICSI-IIP) residing at R/o A31/7, N.C. Chowdhury Road, Kolkata, West Bengal-700042.

1. Background

1.1 Mr. Pinaki Sircar 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	Ashoka Multiyarn Mills Limited (CD-1)	IRP	15.11.2017
		RP	
		Liquidator	16.11.2018
2	Bansal Refineries Private Limited (CD-2)	RP	13.09.2019
		Liquidator	17.01.2020

1.2 The IBBI, in exercise of its powers under Section 218 of the Code read with Regulation 3(2) and 3(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection and Investigation Regulations) appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Pinaki Sircar in the matter of CD-1. In compliance with Regulation 6(1) of Inspection Regulations, IA shared the Draft Inspection Report (DIR) with Mr. Pinaki Sircar on 14.10.2021 to which response was received on 02.12.2021 and 09.12.2021. Thereafter, IA submitted the Inspection Report (IR) to the Board in accordance with Regulation 6(4) of the Inspection and Investigation Regulations.

The IBBI, in exercise of its powers under Regulation 11(2) of the Inspection and Investigation Regulations, has also taken cognizance of certain adverse observations against Mr. Pinaki Sircar in the order dated 19.04.2022 passed by the National Company Law Tribunal, Kolkata Bench (Adjudicating Authority/AA) in the matter of CD-2. The Board sought clarification from Mr. Pinaki Sircar regarding the adverse observations made by the AA. However, no reply/clarification was received from him.

- 1.3 The IBBI issued the SCN to Mr. Pinaki Sircar on 17.05.2023 based on the findings in the inspection report and the materials available on record in respect of his role as an IRP/RP/Liquidator in the CIRP of CD-1 and CD-2.
- 1.4 The IBBI referred the SCN and reply to the SCN from Mr. Pinaki Sircar to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Pinaki Sircar submitted his reply to SCN *vide* email dated 24.06.2023. The Board also forwarded copy of final inspection report dated 03.01.2022 to Mr. Pinaki Sircar on 15.01.2024. Mr. Pinaki Sircar availed opportunity of personal hearing through virtual mode before the DC on 18.01.2024 wherein he appeared with Advocate Utsav Mukherjee. Mr. Pinaki Sircar submitted his additional written submissions to the queries raised by the DC during the personal hearing.
- 1.5 The DC has considered the SCN, the reply to the SCN, submissions of Mr. Pinaki Sircar, and proceeds to dispose of the SCN.

2. Alleged Contraventions, Submissions, Analysis and Findings

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

In the CIRP of Ashoka Multiyarn Mills Limited (CD-1)

3. Contravention-I

Failure to ascertain first charge holder of the asset of CD-1.

- 3.1 On perusal of the Asset Memorandum, the Board observed that the land & building and plant & machinery are only properties of the CD-I. In the 1st Committee of Creditors (CoC) meeting held on 19.12.2017, Mr. Pinaki Sircar informed the CoC that Union Bank of India holds second charge on the assets of the CD-1 as per the records of the ROC but Mr. Pinaki Sircar expressed ignorance as to who holds the first charge.
- 3.2 It is also noted that in the 2nd Progress Report filed with the AA, Mr. Pinaki Sircar stated that Union Bank of India, holding second charge on the property of the CD-1 had relinquished its security interest in terms of Section 52 of the Code but the said progress report does not mention about the first charge holder. However, he proceeded with the sale of the property of the CD-1 without determining the holder of the first charge of the said asset of CD-1. The public notice regarding the auction of the property of the CD-1 was published in the newspapers on 14.03.2019.

3.3 Section 35(1)(c) of the Code provides that a liquidator shall evaluate the assets and property of the CD in the manner as may be specified by the Board and prepare a report. The conduct of Mr. Pinaki Sircar in proceeding with the sale of assets of the CD-1 only on the basis of relinquishment of charge by second charge holder without ascertaining the first charge holder is not appropriate as it could not only lead to avoidable litigation but it also shows failure on his part as liquidator to ensure proper evaluation of assets and property of the CD as required.

3.4 In view of the above, the Board held the *prima facie* view that Mr. Pinaki Sircar has contravened Sections 35(1)(c) and 208(2)(a) of the Code, Regulations 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 1 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations. (Code of Conduct).

3.5 Submissions by IP

3.6 Mr. Pinaki Sircar submitted that as per the provisions of the Code, 2016 and Liquidation Process Regulation, 2016, the Liquidator is entitled to verify the claims as per the information provided by the claimant/ creditors. In the matter of CD-1, the Union Bank of India in its claim form has claimed to be a second charge holder and based on such information the undersigned maintained the records of the charge holder. He cross checked the charge registered with the MCA. The liquidator can only verify the claims received and cannot presume anything contrary until new claims are received claiming charge which is contrary to the records. Despite there being no claim by the first charge holder, he put efforts and conducted due diligence in determining the existence of the first charge in favour of the Odisha Government but due to lack of documents and compliances he could not declare the Odisha Government as first charge holder., The series of events were summarised as:

a) That at the time of the initiation of the CIRP of CD-1, no evidence of charge in favour of Odisha State Cooperative Spinning Mills Federation Limited was found. Even the ROC charge statement does not reflect any existing charge in favour of the Odisha State Cooperative Spinning Mills Federation Limited.

b) That even the Union Bank of India at the time of the CIRP did not intimate him about the charge in favour of the Odisha State Cooperative Spinning Mills Federation Limited.

c) That the erstwhile management of the CD-1 for the very first time in the 7th meeting dated 04.08.2018 of the CoC disclosed about the One Time Settlement with Gangpur Weavers Co-op. Spinning Mills Limited. The Union Bank of India expressed that they were not aware about this development earlier.

d) That as per the charge documents the name of Union Bank of India is reflecting who is holding the charge in it's favour.

e) The erstwhile management of the CD-1 provided the documents relating to the settlement and related letters submitted by the CD-1 for ending all sort of disputes. The excerpts of the communication dated 18.07.2018 received from the erstwhile management of the CD were informed as:

Letter no. 211-C/2001 dated 18.06.2001 issued by The Gangpur Weavers Co-op. Spinning Mills Limited to the CD intimating, inter alia, that “..I am directed to inform you that the Government of Orissa having decided to make a one time settlement with your company. As per instructions of the Govt. of Orissa, I hereby call upon you to make one time payment of the balance principal amount of Rs. 442.50 lacs in one instalment towards full and final settlement of principal claim on or before 26th July 2001. The matter of waiver of interest will be taken up for consideration only thereafter.

The CD, under cover of letter no. 06757/Admin/ASL dated July 18, 2001 paid the aforesaid settlement amount of Rs. 442.50 Lacs “...by Bank Demand Draft No. 256900 dated 17th July 2001 drawn on Union Bank of India, Kolkata, payable at Bhubaneswar towards final settlement of principal claim,”

The Gangpur Weavers Co-op. Spinning Mills Limited vide Letter No. 215/--/2001 dated 18/07/01 duly acknowledged receipt of the balance payment.

Thereafter, The Gangpur Weavers Co-op. Spinning Mills Limited vide their letter No. BBS 217(A)/2001 dated 20.07.2001 advised the CD to apply to the appropriate authorities for waiver of interest, which was done by the CD.

Vide Memo No. 377/06 dated 11/08/06, The Gangpur Weavers Co-op. Spinning Mills Limited wrote to the Under Secretary to the Government of Orissa, for release of mortgage deed of Gangpur Weavers Co-op. Spinning Mills Limited.

3.7 Vide an order dated 21.02.2023 the AA passed the following order:

Heard Mr. Pinaki Sircar, Liquidator present in person. Mr. Francis Xavier Kachhuwa, Chief Manager of UBI present in person. Ms. Akshita Koolwal, proxy counsel appearing on behalf of the learned counsels. It is stated by the Liquidator that auction notice has been published on 18.02.2023 and date of auction is scheduled for 10.03.2023. Liquidator is directed to file an affidavit within 7 days enumerating the reserve price for the forthcoming auction. In the said affidavit, Liquidator has to represent whether any charge of Orissa Government is still

pending with regard to immovable property. On the next date of hearing, Liquidator, Representative of the Bank and the Suspended Director of the Corporate Debtor shall remain present in the proceedings. List the matter on 01.03.2023.

- 3.8 That in compliance to the directions given by AA, he filed an affidavit dated 10.05.2023. The relevant excerpts of the affidavit are as follows:

“CHARGE OF ORRISA GOVERNMENT:

1. *I state that the Gangpur Weavers cooperative Spinning Mills Ltd., a cooperative society was running a spinning mill situated at Kirei, Dist: Sundargarh. The mill was closed down during the year 1990-91. The Govt. of Odisha decided in principle to sale out the said mill. Maintaining all procedural formalities the mill was sold to the Corporate Debtor M/s. Ashoka Synthetics Ltd. (presently Ashoka Multi Yarn Ltd..) on 31.05.1993 and a sale deed along with mortgage deed was executed and registered on 08.03.1995. The asset of the mill was sold and the same was mortgaged with the Financial Creditor i.e., the Gangpur Weavers Cooperative Spinning Mills Ltd.*
2. *I state that as per the terms of agreement, the Corporate Debtor was to pay the sale consideration amount to the tune of Rs.13.16 Crores to Gangpur Weavers Cooperative Spinning Mills Ltd. out of which a sum of Rs 2.51 Crores was paid at the time of taking over possession of the mill and it was agreed that the balance amount i.e. Rs. 10.65 Crores in 10 annual instalments after availing a moratorium period of 3 years as per 3rd schedule of the Sale Deed & Mortgage Deed dated 08.03.1995.*
3. *I state that when the instalment became due in 1998 the buyer on the contrary filed a title suit along with a Misc. case on 05.03.1998 in the Hon'ble court of Civil Judge, Sr. Division, Sundargarh. The buyer preferred to file the suit claiming the losses sustained by them to the tune of Rs.400.57 Lakhs alleging non-performance of obligation on the part of the Seller (the mill/ Govt.)*
4. *I state that during the pendency of the suit, the buyer deposited a sum of Rs.106.50 lacs on the court on 25.07.2000 towards 3rd instalment. That thereafter the buyer subsequently came forward for an out of court settlement on 14.08.1999.*
5. *I state that the High-Power Committee was constituted under the chairmanship of Special Chief Secretary to Govt, Industries Deptt. and it was decided in the meeting held on 14.02.2000 to consider the OTS proposal for recommendation to the Govt. under the following terms and condition.*
 - a. *The principal amount as arrived by the Finance Department. was to be of Rs.800.00 lacs.*

- b. The committee recommended foregoing interest amount of Rs.1119.00 lacs and laid down that the buyer will not claim any incentive under different IPR.*
 - c. The buyer had to pay the balance amount of Rs.442.50 lacs as they had already paid Rs.251.00 + Rs. 106.50 lacs out of the above Rs.800 lacs with a request for redemption of the mortgage deed.*
 - d. After the deposit of Rs.442.50 lacs the buyer was to furnish his application for waiver of interest.*
 - e. The buyer had to file the OTS as a comprising petition before the Court of Civil Judge, Sr. Division, Sundargarh for withdrawal of the title Suit No. 21/1998.*
- 6. I state that as per the decision of the Finance Department, the recommendation of the High-Power Committee for waiver of interest as One Time Settlement was supposed to be ratified and approved by the State Cabinet. It was analysed to have re-look and found that the High-Power Committee had not opined any view on the abatement of govt. loans and dues towards principal and interest calculated to be Rs.1406.11 lacs as well as other dues payable by the society. Consequently, in absence of the Cabinet approval the OTS matter could not reach to finality. And in the meantime, the title suit was dismissed in the year 2008 was again been restored by the Corporate Debtor in 2012.*
- 7. That on 30.09.2014 the Title Suit was finally heard and order has been passed by the Hon'ble Civil Judge Sr.Division, Sundargarh. The Hon'ble Court dismissed the Civil Suit on the ground that the mere recommendation of the Special High Power Committee who is neither a party in the suit nor any authority to finalize the dispute, the claim of the plaintiff on the basis of said recommendation to redeem the mortgage deed is without basis, as such stands rejected, hence the plaintiff is not entitled to get any relief in this suit. Copy of the order dated 30.09.2014 passed by Civil Judge is annexed herewith and marked as ANNE.KURE A-4.*
- 8. I state that the Corporate Debtor being aggrieved by the above order again preferred to file an appeal before the Hon'ble High Court of Orissa, Cuttack vide RFA No.105 of 2014 and the same is pending for adjudication. Since the matter is sub-judice in the Hon'ble High Court of Orissa neither the mortgage deed could be redeemed nor the Sale deed was released till the settlement of the dispute.*
- 9. I state that when all of the above dispute was pending for adjudication, the Corporate Insolvency Resolution Process was initiated and subsequently, the Liquidation Order was passed by this Hon'ble Adjudicating Authority on 16.11.2018.*
- 10. I state that the Deponent sent various letters/ emails to the Odisha State Cooperative Spinning Mills Federation Limited requesting for release of the mortgage deed and*

relinquishment of charge as the Deponent has to sell the property being an asset of the Corporate Debtor in accordance with the provisions of the Code, 2016 and the Regulations framed thereunder.

11. I state that the following due diligence was conducted by the Deponent to endure the existence of any charge of the Odisha Government in their favour.

- a. That at the time of the initiation of the Corporate Insolvency Resolution process of the Corporate Debtor, no evidence of charge in favour of Odisha State Cooperative Spinning Mills Federation Limited was found. Even the ROC charge statement does not reflect any existing charge in favour of the Odisha State Cooperative Spinning Mills Federation Limited.*
- b. That even the Union Bank of India at the time of the CIRP did not intimate the Deponent about the charge in favour of the Odisha State Cooperative Spinning Mills Federation Limited.*
- c. That the erstwhile management of the Corporate Debtor for the very first time in the 7th meeting dated 04.08.2018 of the CoC disclosed about the One Time Settlement with Gangpur. The Union Bank of India expressed that they were not aware about this development earlier. Copy of minutes of 7th meeting dated 04.08.2018 is annexed herewith and marked as ANNEXURE A-6.*
- d. That as per the charge documents the name of Union Bank of India is reflecting who is holding the charge in their favour. Copy of the charge document reflecting the name of the Union Bank of India is annexed herewith and marked as ANNEXURE A-7.*
- e. The erstwhile management of the Corporate Debtor has also provided the documents relating to the settlement and related letters submitted by the Corporate Debtor for ending all sort of disputes. The excerpts of the communication dated 18.07.2018 received from the erstwhile management of the Corporate Debtor are reproduced below:*

Letter no. 211-C/2001 dated 18.06.2001 issued by The Gangpur Weavers Co-op. Spinning Mills Limited to the CD intimating, inter alia, that "... I am directed to inform you that the Government of Orissa having decided to make a one time settlement with your company. As per instructions of the Govt. of Orissa, I hereby call upon you to make one time payment of the balance principal amount of Rs. 442.50 lacs in one instalment towards full and final settlement of principal claim on or before 26th July 2001. The matter of waiver of interest will be taken up for consideration only thereafter. "

The CD, under cover of letter no. 06757/Admin/ASL dated July 18, 2001 paid the aforesaid settlement amount of Rs. 442.50 Lacs "... by Bank Demand Draft No. 256900 dated 17th July 2001 drawn on Union Bank of India, Kolkata, payable at Bhubaneswar towards final settlement of principal claim, "

The Gangpur Weavers Co-op. Spinning Mills Limited vide Letter No. 215/--/2001 dated 18/07/OJ duly acknowledged receipt of the balance payment.

Thereafter, The Gangpur Weavers Co-op. Spinning Mills Limited vide their letter No. BBS 217(A)/2001 dated 20.07.2001 advised the CD to apply to the appropriate authorities for waiver of interest, which was done by the CD

Vide Memo No. 377/06 dated 11/08/06, The Gangpur Weavers Co-op. Spinning Mills Limited wrote to the Under Secretary to the Government of Orissa, for release of mortgage deed of Gangpur Weavers Co-op. Spinning Mills Limited.

Based on the above, the claim of the government as 'secured operational creditor' was also rejected.

f. That it has also been observed that the concern department of the Odisha Government has failed to file the claim, if any with the Deponent/ Liquidator of the Corporate Debtor.

12. I state that based on the above there seems to be no existing charge lying in favour of the Odisha Government. Even if for the matter of argument, it is considered that the Odisha Government (Claim not filed) is a secured operational creditor then also as per subsection (3) of Section 77 of the Companies Act, 2013 the liquidator cannot consider the charge created by the Corporate Debtor unless certificate of registration of such charge is given by the Registrar. The relevant excerpts of the Section 77 of the Companies Act, 2013 are reproduced below for the ready reference:

Section 77. Duty to register charges:

(2) Where a charge is registered with the Registrar under sub-section(1), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.

(3) Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator]{appointed under this Act or the Insolvency and Bankruptcy Code, 2016 (31 of 2016), as the case may be,] or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar under sub-section (2).

13. I state that the Deponent herein has sent an email dated 20.02.2023 to the Managing Director of Odisha state Cooperative Spinning Mills Federation Limited to release of the mortgage deed and to issue a letter of relinquishment of charge and no dues certificate so that the Deponent can proceed with the effective auction process and to attract more bidders for the benefit of the stakeholders. Copies of an email dated 20.02.2023 and note

on actions taken by the liquidator are annexed herewith and marked as ANNEXURE A-9(COLLY).

14. That the subject asset under auction is a part of the liquidation estate created by the Liquidator and in the event of the auction of the asset under question, the Odisha Government will not receive any amount under waterfall mechanism as provided under Section 53 of the Code, 2016 in any event.

15. That in view of the above, there is no sufficient evidence to show that the Odisha Government have any charge in their favour and in terms of the principles of the insolvency law there seems no charge existing in favour of the Odisha Government.”

- 3.9 That the after satisfying the conscience of the AA, he proceeded with the auction of the subject sole asset of the CD-1. He requested the Odisha Government to grant NOC and the said request is pending. Even, the bidders were informed prior to the auction about the charge of the Odisha Government on the asset. It was well within the knowledge of the bidders, i.e. M/s. Shree Hari Sponge Pvt. Ltd. about the charge of the Odisha Government and post auction the successful auction purchaser is pursuing the application to avail the NOC.
- 3.10 In response to the queries raised by the DC, Mr. Pinaki Sircar submitted that the affidavit dated 10.05.2023 was inadvertently annexed to the reply dated 24.06.2023. He submitted that *vide* deed of lease dated 31.07.1984 between the State of Orissa (Lesssor) and The Gangpur Weavers Co-operative Spinning Mills Limited (Lessee) 54.74 acres of the land was leased out to the lessee for a period of 99 years. The deed of lease dated 31.07.1984 provided, *inter alia*, that on expiry of the 99-year period, the State of Orissa shall upon the request of the lessee consider a renewal of the lease for the like period and on the same terms and conditions other than rent. By an indenture of lease dated 19.04.1986 made between the State of Orissa and The Gangpur Weavers Co-operative Spinning Mills Limited, the State of Orrissa for the construction on the said land, granted, conveyed, transferred and assigned to Gangpur, absolutely (i.e., in perpetuity) the several parcels of land in the area 5.37 Acres.
- 3.11 He submitted that Deed of Assignment-cum-Sale No. I-192 dated 08.03.1995 was executed on 13.03.1995 between The Gangpur Weavers Co-operative Spinning Mills Limited (Vendor) and Ashoka Synthetics Limited (Purchaser) and Mortgage Deed No. I-193 dated 13.03.1995 between The Gangpur Weavers Co-operative Spinning Mills Limited (Mortgagor) and Ashoka Synthetics Limited (Mortgagee). Based on the above, Gangpur set up and established a Spinning Mill known as ‘Gangpur Spinning Mills’.
- 3.12 *Vide* a Tripartite Agreement entered into on 31.05.1993 between Gangpur, the CD and the State of Orissa, Gangpur with due consent of and concurrence of the State Government, agreed to sell assign convey and transfer to the CD all the properties and assets of the Gangpur

Spinning Mills. Gangpur delivered possession of the said Spinning Mill to the CD on 26.07.1993. The CD has been in possession of the above-mentioned property and assets since then. During CIRP, Gangpur lodged a claim, initially as an FC, which upon detailed interactions and deliberations at the CoC was considered as Secured Operational Creditor. This was accepted by Gangpur and they attended CoC meetings in that capacity since it held more than 10% of the total debts. At the fag end of the CIRP and just before its conclusion, it came to light that Gangpur and the CD had already entered into a one-time-settlement regarding the balance payments due to Gangpur. The facts are captured in the 7th CoC minutes held on 04.08.2018, extracts of which are produced above. The RP submitted that he raised a query as to why the aforesaid one-time settlement (OTS) papers were not submitted earlier. The CD, *vide* letter AMML/CIRP/18899 dated 04.08.2018, stated that “.... kindly be informed that the file containing OTS papers was misplaced at the Mill and has been traced back only in July 2018 with lots of efforts.” Hence, the CoC unanimously, in supersession of its earlier decision to consider the claim submitted by The Gangpur Weavers Co-op. Spinning Mills Limited as a claim from a ‘secured operational creditor’, decided to reject the claim outrightly. Consequent to the above, during the Liquidation proceedings, Gangpur has not lodged any claim.

- 3.13 In light of the above, it is stated that any issue regarding the claim or charge of State Government/Gangpur is *non est* in light of satisfaction of such a charge and non-filing of claim during the liquidation process and hence, there is no violation on the part of the Liquidator in respect of any allegations on the aspect. It is also submitted that the aforesaid issue was informed to the AA *vide* affidavit dated 27.02.2023 which was filed pursuant to the order of the AA dated 21.02.2023. Thus, Odisha government neither submitted any claim during the Liquidation process nor was any claim for any interest amount was submitted at any stage.

Analysis and Findings.

- 3.14 The CIRP against CD-1 was admitted *vide* order dated 15.11.2017 of the AA and subsequently, order for liquidation was passed by the AA on 16.11.2018. Mr. Pinaki Sircar in 2nd Progress Report filed with the AA, submitted that the Union Bank of India is holding second charge on the property of the CD and had relinquished its security interest in terms of section 52 of the Code, but the said progress report does not mention about the first charge holder.
- 3.15 The DC notes the submission of Mr. Pinaki Sircar that Gangpur Weavers cooperative Spinning Mills Ltd. was sold to the Corporate Debtor M/s. Ashoka Synthetics Ltd. (presently Ashoka Multiyarn Ltd.) on 31.05.1993. As per the terms of agreement, the CD was to pay the sale consideration amount to the tune of Rs.13.16 Crores to Gangpur Weavers

Cooperative Spinning Mills Ltd. out of which a sum of Rs 2.51 Crores was paid at the time of taking over possession of the mill and it was agreed that the balance amount i.e. Rs. 10.65 Crores in 10 annual instalments after availing a moratorium period of 3 years as per 3rd schedule of the Sale Deed & Mortgage Deed dated 08.03.1995. There was dispute on the terms of payment and civil suit was filed before Civil Judge Senior Division, Sundargarh (District Court). The dispute was alleged to be finalized on basis of OTS done in 2001 where Government of Orissa acknowledged receipt of balance principal amount Rs. 442.50 lakh as full and final settlement. The issue of waiver of interest was to be decided between CD and Government of Orissa and there is no evidence of the issue to have reached any conclusion.

- 3.16 However, the said settlement was not regarded as finalized to redeem the mortgage deed by the District Court in its order dated 30.09.2014. The CD filed an appeal before the Hon'ble High Court of Orissa which is *sub judice*.
- 3.17 The DC notes that during CIRP the claim of The Gangpur Weavers Co-operative Spinning Mills Limited was admitted as secured OC who even attended meeting as it held more than 10% of the total debt. When during the 7th CoC dated 04.08.2018 the details of settlement was furnished by the director of the suspended board, the CoC rejected the claim of The Gangpur Weavers Co-operative Spinning Mills Limited and it has not submitted claim during the liquidation proceedings of the CD.
- 3.18 The DC notes that above factual position was informed to the AA after its' direction vide order dated 21.02.2023.
- 3.19 From above facts, it is clear Mr. Pinaki Sircar became aware of the charge of Odisha Government before the initiation of liquidation and that the OTS has not been finalised. Moreover, the charge on the assets was created as part of the deed of assignment dated 08.03.1995. So, no separate document or intimation was required for the IP to be aware of the charge. Further, he was aware of the judgement of District Court and pending appeal before the High Court of Orissa. The DC also notes that Mr. Pinaki Sircar sent an email dated 20.02.2023 to the Managing Director of Odisha state Cooperative Spinning Mills Federation Limited to release the mortgage deed and to issue a letter of relinquishment of charge and no dues certificate so that he can proceed with the effective auction process and to attract more bidders for the benefit of the stakeholders.
- 3.20 The stand of Mr. Pinaki Sircar in respect of charge on the asset is not clear. On the one hand he claimed that there was no evidence of charge in favour of Odisha State Cooperative Spinning Mills Federation Limited found because the claim was not filed or the same was not registered with MCA etc. and on the other hand, he submitted that he requested the Odisha Government to grant NOC and the said request is pending and has informed the bidders prior to the auction about the charge of the Odisha Government on the asset. It is clear that he has

not been transparent on this issue and did not disclose proper information in the asset memorandum. Hence, the DC holds the contravention.

4. Contravention-II

Incorrect preparation of Asset Memorandum

- 4.1 Regulation 34 of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) requires the liquidator to prepare an Asset Memorandum containing details regarding the assets of the CD and the same should contain details regarding, *inter alia*, the intended mode of sale, expected amount of realization and the value of assets. However, as per the Asset Memorandum submitted by Mr. Pinaki Sircar, no such details have been mentioned therein. He has merely listed the various assets of the CD-I and details of the assets in terms of Regulations 34(2) and (3) of the Liquidation Regulations have not been provided.
- 4.2 In his reply to the draft inspection report (DIR), Mr. Pinaki Sircar submitted that due to non-availability of the records and non-cooperation from the suspended directors of the CD-I, such details could not be provided. It is observed from Form CIRP-2 that he had appointed two valuers to value the assets of the CD-I and hence, the details of value of the assets of CD-1 should be available. Despite claiming non-cooperation from the suspended management, no application under section 19(2) was filed by him, as evident from CIRP-2 and his reply to questionnaire submitted to the IA.
- 4.3 In view of the above, the Board held the *prima facie* view that Mr. Pinaki Sircar has contravened Sections 35(1)(o), 208(2)(e) of the Code, Regulation 34 of the Liquidation Regulations, Regulations 7(2)(a) and (h) of the IP Regulations read with clauses 1 and 15 of the Code of Conduct.

Submissions by IP

- 4.4 Mr. Pinaki Sircar submitted that the Asset Memorandum was prepared by him in compliance with the regulations. He mentioned all the available details and nothing has been concealed neither with the Board nor with the AA. It was due to non-cooperation from the directors of the suspended board, he was not able to fill entire details. If he had provided anything contrary, then it would have led to misleading the Board or the AA.
- 4.5 That while submitting the asset memorandum to the AA, he informed the AA about the duties performed and preparation of asset memorandum based on the available information after conducting all due diligence. After considering the submission, the AA took the asset memorandum report on record positively. That the AA had taken the asset memorandum on

record after satisfying its conscience based on information and answers to the queries provided by him.

- 4.6 He further submitted that the details of the assets as ascertained formed part of the asset memorandum though the valuation of the properties was inadvertently omitted.
- 4.7 He stated that at this juncture multiple auction rounds were held, and assets were sold in the 6th auction round where reserve price was notified all along and there was no demur in respect of valuation by any entity including the suspended management of the CD itself. Eventually the property has been sold and distribution amongst the creditors has also taken place. Furthermore, the entire sale process happened under the aegis of the AA and hence there was no loss which was caused to the CD and at present the successful liquidation of the CD is almost at an end.

Analysis and Findings

- 4.8 The DC notes that as per Form CIRP-2 Mr. Pinaki Sircar appointed two valuers to evaluate the assets of the CD-1 and hence, the details of value of the assets of CD-1 were available with him. However, he has only listed the assets of the CD-1 without providing any details with regards to the asset of CD. Regulation 34 of the Liquidation Regulations under clause 2 and 3 provides as follows:

(2) The asset memorandum shall provide the following details in respect of the assets which are intended to be realized by way of sale-

- (a) value of the asset, valued in accordance with Regulation 35;*
- (b) value of the assets or business(s) under clauses (b) to (f) of regulation 32, valued in accordance with regulation 35, if intended to be sold under those clauses;*
- (c) intended manner of sale in accordance with Regulation 32, and reasons for the same;*
- (d) the intended mode of sale and reasons for the same in accordance with Regulation 33;*
- (e) expected amount of realization from sale; and*
- (f) any other information that may be relevant for the sale of the asset.*

(3) The asset memorandum shall provide the following details in respect of each of the assets other than those referred to in sub-regulation (2)-

- (a) (b) (c) (d) value of the asset;*
- (b) intended manner and mode of realization, and reasons for the same;*
- (c) expected amount of realization; and*
- (d) any other information that may be relevant for the realization of the asset.*

- 4.9 The above enlist the elaborate details required to be furnished in the Asset Memorandum while Mr. Pinaki Sircar only stated the quantity of the asset bereft of any details regarding

value, manner of sale, expected amount of realization. Further, the non-cooperation of the suspended director cannot be taken as defence as he has admittedly not filed any application under section 19(2) of the Code.

- 4.10 Further, it has been the submission of Mr. Pinaki Sircar that he has been diligent while performing his duties, whereas in view of above, his actions does not support this submission. He has admitted that he has inadvertently omitted to include valuation in asset memorandum while also claiming that he has provided all necessary information. Such dual stand and contradiction show that he is not consistent in his submissions. In view of the above, the DC holds the above contravention.

In the matter of liquidation of Bansal Refineries Private Limited (CD-II)

5. Contravention-III.

Non-cooperation with the Board.

- 5.1 The Board *vide* e-mail dated 20.04.2022 sought clarification from Mr. Pinaki Sircar regarding the adverse comments made by the AA in the order dated 19.04.2022 in the matter of liquidation of CD-2. However, he failed to reply to the said e-mail from the Board. Subsequently, reminders were sent by the Board *vide* e-mails dated 28.04.2022, 04.05.2022, 11.05.2022, 18.05.2022 and 26.05.2022 seeking his response. However, despite the repeated requests, he failed to submit the required reply/clarification.
- 5.2 It is, thus, evident that Mr. Pinaki Sircar has not rendered necessary cooperation and assistance to the Board in submission of relevant records and providing requisite clarification thereby, frustrating the entire process.
- 5.3 Section 208(2)(a) of the Code requires an IP to take reasonable care and diligence while performing his duties. Clause 19 of the Code of Conduct mandates an IP to provide all information and records as may be required by the Board or the IPA with which he is enrolled. In view of the above, the Board held the *prima facie* view that Mr. Pinaki Sircar has contravened Sections 208(2)(a) & (e) of the Code, Regulations 7(2)(a) & (h) of the IP Regulations) read with clause 19 of the Code of Conduct.

Summary Findings

- 5.4 Since Mr. Pinaki Sircar did not provide any plausible reason on the issue of non-cooperation with the Board, the DC proceeds to make findings on the basis of material available on records. The DC notes that Mr. Pinaki Sircar was non-responsive to the communications made by the Board as stated above.

- 5.5 Mr. Pinaki Sircar in his reply dated 24.06.2023 to the SCN stated reasons for not appearing before the AA which issued adverse direction against him, but he has not submitted anything regarding no response to the email dated 20.04.2022 of the IBBI which was followed by various reminders.
- 5.6 Section 208(2)(a) of the Code requires an IP to take reasonable care and diligence while performing his duties. Moreover, no reason has been provided by him as to why he did not reply to email dated 20.04.2022 sent by IBBI to him. Such non-cooperation will make it difficult for the Board to perform its function of monitoring the process and conduct of IPs. An IP is bound to provide all information and records as required by the Board. Hence, the DC holds the contravention.

6. Contravention-IV

Non-prosecution of Avoidance Application filed before Adjudicating Authority in the matter of CD-2.

- 6.1 It is observed that Mr. Pinaki Sircar filed an avoidance application before the AA for undervalued and fraudulent transactions in terms of sections 45 and 66 of the Code. However, the AA in its order dated 19.04.2022 observed that he failed to put appearance before the AA since 09.08.2021 and because of the non-prosecution on his part the AA was constrained to dismiss the application. The relevant extracts of the AA's order are as follows:

“7. The Liquidator has stated in his application that the above transactions are undervalued and fraudulent in terms of sections 45 and 66 of the Code as the sale of inventory was entered into with the related parties at a price lower than the book value which clearly demonstrates the intent of the Corporate Debtor and that these transactions are within the definition of transactions to defraud creditors, i.e., sections 49 and 66 of the Code. However, these are allegations that cannot be made lightly, and the Liquidator has to prove the same before the Adjudicating Authority.

8. On perusal of the records, it is seen that the Liquidator has not entered appearance since 09 August 2021. Thereafter, the IA was listed on three dates i.e., on 01 November 2021, 12 January 2022 and 25 February 2022. Court notice had also been sent to the Liquidator, the Counsel for the Liquidator, and the Respondents on 18 January 2022. The notices have been duly delivered, yet neither did the Liquidator appear on 25 February 2022 nor did the Counsel appointed by the Liquidator appear.

9. The Liquidator should not expect that applications filed by him will be given due consideration even if he, as applicant, does not choose to appear. We do not see any reason to treat the Liquidator differently from other applicants whose applications will meet the same fate if they choose not to appear on multiple occasions.

10. In view of the above circumstances, we are constrained to dismiss IA (IB) No.295/KB/2020 in CP (IB) No.11/KB/2019, for non-prosecution.

11. We are also constrained to refer this matter to the IBBI for such lackadaisical behaviour of the Liquidator wherein he has filed an IA but has not shown any interest or intent to pursue the same.”

- 6.2 It was observed that Mr. Pinaki Sircar failed to appear before the AA to further argue the avoidance proceedings resulting in the dismissal of the application. Assets included in the avoidance application are the assets of CD-2 and if claw back of such asset is allowed by AA, CD-2 is benefitted. By not effectively pursuing the avoidance application resulting in dismissal of the same by AA, he has failed to protect and preserve the assets of the CD-2. It also displays negligence on his part as liquidator.
- 6.3 Section 35(1)(d) of the Code provides that a liquidator is to take such measures to protect and preserve the assets and properties of the CD as he considers necessary. Further, Section 35(1)(k) of the Code provides that a liquidator is to institute or defend any suit, prosecution, or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor. Further, Regulation 39 of the Liquidation Regulations provides that the liquidator shall endeavour to recover and realize all assets and dues to the CD in a time-bound manner for maximization of value for the stakeholders. In view of the above, the Board held the *prima facie* view that Mr. Pinaki Sircar contravened Sections 35(1)(d) & (k), 208(2)(a) and (e) of the Code, Regulation 39 of the Liquidation Regulations, Regulations 7(2)(a) and (h) of the IP Regulations read with clauses 1, 2 and 14 of the Code of Conduct.

Submissions by IP

- 6.4 Mr. Pinaki Sircar submitted that after the filing of the application, he was diagnosed with Type II Diabetes Mellitus and hyper-tension. He was also diagnosed with severe allergy to chemicals and certain medicines due to which he was unable to undergo the vaccination for Covid-19. Due to his age of 68 years, his presence at the hearing would have been risky and irresponsible and could have affected others and could cause a fatal situation for him. A perusal of the order would confirm that he has duly attended the hearing on 09.08.2021 and it was only after September that he was unable to attend the hearings due to health concerns.
- 6.5 Due to the urgency of the situation, Mr. Pinaki Sircar immediately contacted his engaged advocate and instructed him to attend hearings and do all things necessary for prosecuting the application on his behalf. He submitted that he was under the *bona fide* impression that his counsel would appear and represent the interest of the CD-2 before the AA as agreed upon. However, he was shocked to discover that his counsel has not attended the hearing for reasons best known to him. He submitted that his counsel never sought a NOC or discharge

from the matter, and he truly believed that he was representing his interests in his best professional capacity.

- 6.6 He submitted that there is a factually wrong observation in the order dated 19.04.2022 based on which the present proceedings have been initiated. That, paragraph 8 of the order states that *"Court Notice had also been sent to the Liquidator, the Counsel for the Liquidator and the Respondents on 18th January, 2022. The notices have been duly delivered yet neither did the Liquidator appear on 25th February, 2022 nor did the Counsel appointed by the Liquidator"*
- 6.7 He submitted that the Court notice was only dispatched to his counsel and no notice was ever delivered to him. He caused an inspection to be undertaken in the concerned department and the details of dispatch and delivery of notice is available with the department. He submitted that his counsel too did not inform him about the receipt of the said notice as he would have certainly entered appearance or filed a necessary application for excusing himself from the same in view of his medical situation. Thus, a combination of non-service of the court notice and non-communication by his Counsel about the receipt of court notice resulted in his absence. It further submitted that it is a settled law that no litigant should be made to undergo hardship on account of laches of his counsel. That, in *Rafiq and Anr. v. Munshilal and Anr. (AIR 1981 SC 140)* and *Smt. Lachi and Ors. v. Director of Land Records and Ors. (AIR 1984 SC 41)* while dealing with a similar issue held that a litigant cannot suffer for the fault of his counsel. The Hon'ble Supreme Court in the former case observed as under:

"What is the fault of the party who having done everything in his power expected of him, would suffer because of the default of his advocate.... The problem that agitates us is whether it is proper that a party should suffer for the inaction, deliberate omission, or misdemeanour of his agent.... We cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted".

- 6.8 He also submitted that he should not be held liable for the omission of his counsel and non-receipt of the court notice, contrary to the findings in the aforesaid order as that is the primary base on which the reference to the Board has been made. He further stated that no appeal from the order of the AA dated 19.04.2022 was filed by him.

Analysis and Findings

- 6.9 The DC notes that Mr. Pinaki Sircar, in the capacity of liquidator of CD filed an avoidance application before AA for undervalued and fraudulent transactions in terms of Sections 45 and 66 of the Code. As per the order of AA dated 19.04.2022, Mr. Pinaki Sirar marked his appearance before AA till 09.08.2021. He submitted that due to certain medical

complications he was not in position to appear before the AA and instructed his advocate to appear on his behalf.

- 6.10 The DC perused the orders of the AA in CD-1 and CD-2 after 09.08.2021 till 19.04.2022 on which date the order of AA dismissing the avoidance applications was pronounced and finding has been tabulated as under -:

Date	Matter listed	Appearance of Liquidator
09.08.2021	Company petition in CD-2	No appearance
07.09.2021	Company petition in CD-1	Through counsel
14.09.2021	Company petition in CD-1	Through counsel
01.11.2021	Company petition in CD-2	No appearance
03.11.2021	Company petition in CD-1	Through counsel
06.12.2021	Company petition in CD-1	In person along with counsel through video conference
10.01.2022	Company petition in CD-1	Through counsel
12.01.2022	Avoidance Application in CD-2	No appearance
25.02.2022	Avoidance Application in CD-2	No appearance
10.03.2022	Company petition in CD-1	Through counsel
08.04.2022	Company petition in CD-2	Through counsel
19.04.2022	Company petition and Avoidance Application in CD-2	No appearance
19.04.2022	Company petition in CD-1	Through counsel

- 6.11 The DC notes that Mr. Pinaki Sircar had medical condition since September 2021 which required him to stay indoors. However, he attended the proceedings before the AA virtually with respect to CD-1 on 06.12.2021. However, he did not make any such effort with respect to proceedings in CD-2 which continued unattended as observed by the AA. Moreover, he did not take any corrective measure to reinstate the avoidance application or file any appeal

against the order of the AA dismissing the avoidance application filed by him. He has not even stated that any effort was made by him to file appeal. Thus, it is clear that he has failed to pursue the legal proceedings while he was required to defend any suit, prosecution, or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor. Hence, the DC holds its contravention.

7. Contravention-V

Non-submission of Quarterly Reports

- 7.1 It is observed that Mr. Pinaki Sircar submitted the 1st Progress Report for the period from 17.01.2020 to 31.03.2020 and 3rd Progress Report for the period from 01.10.2020 to 15.01.2021 and there has been no further submission of progress reports thereafter by him. The Board *vide* e-mail dated 13.06.2022 requested him to send pending Progress Reports, however, he did not respond to the request of the Board.
- 7.2 The Section 208(2)(d) of the Code provides that an IP shall submit a copy of the records of every proceeding before the AA, to the Board as well as to IPA of which he is a member. Regulation 15 of Liquidation Regulation requires a liquidator to submit progress reports before AA within fifteen days after the end of every quarter. In view of the above, the Board held the *prima facie* view that Mr. Pinaki Sircar has, *inter alia*, contravened Sections 208(2)(a) & (d) of the Code, Regulations 15 and 47 of Liquidation Regulations, and clauses 13, 14, and 19 of Code of Conduct.

Analysis and Findings.

- 7.3 Since Mr. Pinaki Sircar did not provide any plausible reason on the issue of non-submission of quarterly reports, the DC proceeds to make findings on the basis of material available on records. Regulation 15 of Liquidation Regulation requires a liquidator to submit progress reports before the AA within fifteen days after the end of every quarter. Although Mr. Pinaki Sircar submitted the 1st and 3rd Progress Report but failed to submit further progress reports thereafter even after email dated 13.06.2022 was sent to him wherein it was requested to send pending Progress Reports. However, no reply was received. Even on further opportunities, he has not sent reply to the Board or provide any reason for such non-submission. Even in the reply to SCN, no reply has been submitted on this issue. Hence, the DC holds the above contravention.

8. Order

- 8.1 In view of the forgoing discussion, SCN, reply to the SCN, oral and written submission made by Mr. Pinaki Sircar and the other materials made available to the DC, the DC finds Mr.

Pinaki Sircar in contravention of Sections 35(1) (c), (d), (k) & (o), 208(2)(a), (d) & (e) of the Code, Regulations 15, 34, 39 and 47 of the Liquidation Regulations, Regulations 7(2)(a) & (h) of the IP Regulations read with clauses 1, 2, 13, 14, 15, and 19 of the Code of Conduct.

- 8.2 The DC in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the Investigation Regulations hereby, suspends the registration of Mr. Pinaki Sircar for a period of three years.
- 8.3 This order shall come into force after 30 days from the date of this order.
- 8.4 A copy of this order shall be sent to the CoC/Stakeholders' Consultation Committee (SCC) of all the corporate debtors in which Mr. Pinaki Sircar is providing his services, and the respective CoC/SCC as the case may be, will decide about continuation of existing assignment of Mr. Pinaki Sircar.
- 8.5 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Pinaki Sircar 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/-

(Sandip Garg)

Whole Time Member

Insolvency And Bankruptcy Board of India

-sd/-

(Jayanti Prasad)

Whole Time Member

Insolvency And Bankruptcy Board of India

Dated: 25 June 2024

Place: New Delhi