

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/257/2024

18.12.2024

ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11011/27/2023-IBBI/875/388 dated 09.07.2024, issued to Mr. Jitender Kumar Jain, an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-002/IP-N00033/2016-2017/10070, who is a Professional Member of the Insolvency Professional Agency of ICSI Institute of Insolvency Professionals and having residential address recorded with IBBI as Level 11, Platina, C-59, G-Block, Bandra Kurla Complex, Bandra (East), Mumbai City, Maharashtra-400051.

1. Background

- 1.1 The National Company Law Tribunal, Mumbai Bench (AA) *vide* its Order dated 31.03.2022, admitted the application filed under Section 7 of the Code by State Bank of India (FC) for initiating Corporate Insolvency Resolution Process (CIRP) of M/s. Aaj ka Anand Papers Limited (Corporate Debtor / CD). Ms. Vineeta Maheshwari was appointed as the Interim Resolution Professional (IRP) *vide* the above-said Order and later confirmed as the Resolution Professional (RP) of the CD. The AA *vide* its Order dated 12.04.2023 had initiated Liquidation against the CD and appointed Mr. Jitender Kumar Jain as the Liquidator of the CD.
- 1.2 The IBBI in exercise of its powers under Section 218 of the Insolvency and Bankruptcy Code (Code), read with Regulations 7(1) and 7(2) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to conduct investigation in the CIRP of the CD.
- 1.3 Accordingly, a notice under Regulation 8(1) of the Investigation Regulation was issued to Mr. Jitender Kumar Jain on 02.04.2024 with a request to provide reply along with relevant documents. Mr. Jitender Kumar Jain submitted his reply to the investigation notice.
- 1.4 Based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the Board formed a, *prima facie*, view that Mr. Jitender Kumar Jain has

contravened several provisions of the Code, the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and issued the SCN to Mr. Jitender Kumar Jain on 09.07.2024 with a request to furnish reply by 24.07.2024. Mr. Jitender Kumar Jain had sought extension in submitting his reply to the SCN and the reply of Mr. Jitender Kumar Jain on the SCN was received by the Board on 30.08.2024.

- 1.5 The SCN and response of Mr. Jitender Kumar Jain to the SCN, were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Jitender Kumar Jain availed the opportunity of personal hearing before the DC through virtual mode on 19.09.2024. Pursuant to the personal hearing, Mr. Jitender Kumar Jain had submitted the written submissions *vide* email dated 10.10.2024.

2. Alleged Contraventions, Submissions of Mr. Jitender Kumar Jain and Findings of DC

The contravention alleged in the SCN, submissions by Mr. Jitender Kumar Jain and findings of the DC are summarized as follows:

2.1 Irregular constitution of SCC.

Alleged Contravention.

- 2.1.1 Regulation 31A (1) of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) provides that the liquidator shall constitute a consultation committee (SCC), comprising of all creditors of the CD, within sixty days from the liquidation commencement date (LCD), based on the list of stakeholders prepared under Regulation 31, to advise him on various matters. Further, Regulation 31A (3) of the Liquidation Regulations specifies that the liquidator may facilitate the stakeholders of each class namely financial creditors in a class, workmen, employees, government departments, other operational creditors, shareholders, partners, to nominate their representative for participation in the consultation committee.
- 2.1.2 It is, however, observed from the constitution of SCC filed by Mr. Jitender Kumar Jain before the AA, that he has considered only one financial creditor (FC) i.e. State Bank of India (SBI) as the representative of all FCs. While other FCs have attended the SCC meetings, however,

the constitution of SCC including only SBI as the sole representative of FCs in SCC is not as per the Regulation 31A (1) of Liquidation Regulations.

Submissions by Mr. Jitender Kumar Jain.

2.1.3 Mr. Jitender Kumar Jain submitted that in terms of Regulation 31A (3) of the Liquidation Regulations, the stakeholders of each class are entitled to nominate their representative for participation in the SCC. Accordingly, in the present case, the SCC was constituted with SBI as representative of all of the financial creditors in a class (i.e. secured creditors having relinquished their security interest, namely Bank of Baroda (BOB) and Edelweiss Asset Reconstruction Company (EARC). Both BOB and EARC, who are the only parties who can have any grievance with respect to alleged improper constitution of the SCC, have not raised any objection to the constitution of SCC with SBI as their representative. In fact, BOB and EARC have been invited and have been attending all SCC meetings and have been participating in all discussions pertaining to the liquidation process of the Corporate Debtor which fact has also been noted in the SCN. Thus, issuing the SCN without obtaining the views of BOB and EARC in this regard is unfair and unjust on the part of IBBI.

2.1.4 Mr. Jitender Kumar Jain further submitted that Regulation 31A (1) of the Liquidation Regulations provides that the SCC shall comprise of all creditors of the Corporate Debtor and does not specifically provide for all financial creditors to be made a part of the SCC. Regulation 31A of Liquidation Regulation, being delegated legislation, cannot override the provisions of Section 35(2) of the IBC as supposed to be done by the Investigating Authority. The question on interpretation of Regulations 31A(1) and 31A(3) of the Liquidation Regulations and Section 35 of the Code, 2016 cannot be interpreted by IBBI but needs proper interpretation by a court of law.

2.1.5 Mr. Jitender Kumar Jain submitted that SBI holding 63.61% of class, namely, secured financial creditor was willing to join SCC and thus selected as the representative. Notably, as SBI holds more than 50% voting rights in their classes as mentioned in Regulation 31A(4) of the Liquidation Regulations, no one could have challenged them had there been a contest. Notably, the constitution of SCC was intimated to SBI, BOB and EARC on 14.07.2023 and none of them objected to the same till date as recorded in the minutes of 9th SCC meeting.

2.1.6 Mr. Jitender Kumar Jain submitted that assuming, without admitting that the Regulation 31A(3) refers to class of creditors like depositors, etc., however, the list of stakeholders to be prepared as per IBBI circular dated 04.03.2021 No. IBBI/LIQ/40/2021 read with regulation 31(5)(d) of Liquidation Regulations has no such category of creditors, viz., class of creditors. Mr. Jitender Kumar Jain placed reliance on Hon'ble Supreme Court in V.S. Palanivel v. P. Sriram, CS Liquidator, (92024 INSC 659, para 34.2) to support his contention with respect to the formation of SCC.

Analysis and Findings of the DC.

2.1.7 The relevant extract of Regulation 31A of the Liquidation Regulations, 2016 is reproduced below:-

31A. Stakeholders' consultation committee

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

(a).....

(2).....

(3) The liquidator may facilitate the stakeholders of each class namely financial creditors in a class, workmen, employees, government departments, other operational creditors, shareholders, partners, to nominate their representative for participation in the consultation committee.

(4) If the stakeholders of any class fail to nominate their representatives, under sub regulation (3), such representatives shall be selected by a majority of voting share of the class, present and voting.

(4A) the representative under sub-regulation (3) or (4) shall vote in proportion to the voting share of the stakeholders it represents.”

2.1.8 The DC notes that as per Regulation 31A (1), the SCC should comprise of all creditors based on the list of stakeholders, to advise the liquidator on various matters. Regulation 31A (3) allows the liquidator to facilitate stakeholders from different classes, including financial creditors in a class, workmen, employees, and government departments, to nominate

representatives for the SCC. So, the representatives of only the above categories of creditors which normally include larger number of individual creditors are to be nominated to facilitate effective participation in the SCC. The financial creditors other than financial creditors in a class i.e., secured financial creditors are to be present in the SCC individually.

- 2.1.9 The DC notes that in the present case it has been observed that Mr. Jitender Kumar Jain, the liquidator, constituted the SCC by including only the State Bank of India (SBI) as the representative of all the secured financial creditors (FCs). Other secured financial creditors, namely Bank of Baroda (BOB) and Edelweiss Asset Reconstruction Company (EARC), were not formally included as the part of the SCC, however, they were attending the SCC meetings.
- 2.1.10 The DC further notes that the list of stakeholders to be prepared for filing as per IBBI circular No. IBBI/LIQ/40/2021 dated 04.03.2021 is to be filed under Regulation 31(5)(d) of Liquidation Regulations which requires that the liquidator shall file the list of stakeholders on the electronic platform of the Board for dissemination on its website. The purpose of this requirement is to improve transparency and enable stakeholders to ascertain the details of their claims at a central platform and therefore had nothing related to the nomination of representative for participation in the consultation committee.
- 2.1.11 The DC notes Mr. Jitender Kumar Jain has placed reliance on para 34.2 of the Hon'ble Supreme Court judgement in V.S. Palanivel v. P. Sriram, CS Liquidator, 2024 INSC 659 which provides about the constitution of the SCC from the list of stakeholders on a category-wise basis, as prescribed under Regulation 31 within a period of sixty days from the date of commencement of liquidation and the binding nature of the SCC advisory. The DC further notes that Mr. Jitender Kumar had stressed reliance on the Hon'ble Supreme Court's observation that, "The Stakeholders' Consultation Committee is to be drawn from the list of stakeholders on a category-wise basis, as prescribed under Regulation 31."
- 2.1.12 The DC notes that the Regulation 31A (1) provides that SCC to be constituted based on the list of stakeholders prepared under Regulation 31. Regulation 31 provides that liquidator shall prepare a list of stakeholders, category-wise, on the basis of proofs of claims submitted and accepted. The DC notes that the observation of the Hon'ble Supreme Court in the Para 34.2 of the judgement relied upon is with regard to the constitution of SCC. The relied

judgment further discussed about the nomination on behalf of the director/ shareholders in the SCC which is indeed one of the categories of stakeholders as provided under Regulation 31A (3). Financial Creditors not pertaining to financial creditors in a class are not mentioned in Regulation 31A (3). Therefore, the judgement being based on different set of facts does not help the case of Mr. Jitender Kumar Jain.

2.1.13 The DC notes that Mr. Jitender Kumar Jain has considered only one financial creditor (FC) i.e. State Bank of India (SBI) as the representative of all Secured financial creditor who had relinquished their security interest u/s 52 of the Code, 2016 for the purpose of constitution of the SCC under Regulation 31A of the Liquidation Process. The DC had during the hearing and *vide* e-mail dated 21.09.2024 had requested Mr. Jitender Kumar Jain to provide evidence of explicit agreement or approval from other FCs to appoint SBI as their representative. In response, Mr. Jitender Kumar Jain stated that he had informed SBI, BOB, and EARC of the SCC's composition on 14.07.2023, and that none of these parties had raised any objections to date, as documented in the minutes of the 9th SCC meeting.

2.1.14 The DC also notes the submission of Mr. Jitender Kumar Jain that since, SBI holding 63.61% of the class, therefore, no other party could have contested their representation if challenged. The DC also notes the submission of Mr. Jitender Kumar Jain that BOB and EARC had not raised any objection to the constitution of SCC. However, the DC finds it pertinent to note that BOB and EARC's lack of objection regarding SBI's nomination as the sole FC representative does not grant Mr. Jitender Kumar Jain the authority to structure the SCC in contravention of Regulation 31A (1) of the Liquidation Regulations. Furthermore, the lack of objection on the part of BOB and EARC cannot be construed as their explicit approval of SBI's nomination to the SCC.

2.1.15 The DC, after perusal of all the SCC minutes, notes that the representatives of all the three FCs i.e., State Bank of India, Bank of Baroda and Edelweiss Asset Reconstruction Company Limited were invited in the SCC meetings and were also present in all the SCC meetings from 1st SCC meeting to 10th SCC meeting. The DC further notes that the constitution of SCC filed by Mr. Jitender Kumar Jain before the AA, shows that he has considered only one financial creditor (FC) i.e. State Bank of India (SBI) as the representative of all FCs.

2.1.16 The DC notes that the stand of Mr. Jitender Kumar Jain is inconsistent as on one hand, he contends that SCC was constituted with SBI as the representative of secured financial creditor but on the other hand he has called all secured financial creditors i.e., SBI, BOB and EARC in all the meetings of the SCC.

2.1.17 In light of the above, the DC finds that Mr. Jitender Kumar Jain has considered only one financial creditor (FC) i.e. State Bank of India (SBI) as the representative of all FCs, which is in violation of Regulation 31A (1) of Liquidation Regulations. Therefore, the DC finds Mr. Jitender Kumar Jain is in contravention of Regulation 31A(1) of the Liquidation Process, Regulations, 2016 even though the same has not been objected by any concerned financial creditors.

2.2. Auction process document finalised without consultation with SCC.

Alleged Contravention.

2.2.1. The provisions of Regulation 31A(1)(b) of the Liquidation Regulations require the liquidator to consult the SCC *inter alia* on matters relating to sale process including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process

2.2.2. It is observed that post conduct of 3rd SCC meeting, Mr. Jitender Kumar Jain sent an email dated 04.12.2023 to SBI seeking its views and comments on the auction process document. SBI gave its go ahead to release of the document on 07.12.2023. The opinion of other FCs and SCC members was not sought for. By not discussing the auction process document in SCC and seeking only the views of SBI, only one of the stakeholders, on mail, Mr. Jitender Kumar Jain has contravened Regulation 31 A(1)(b) of the Liquidation Regulations.

Submissions by Mr. Jitender Kumar Jain

2.2.3. Mr. Jitender Kumar Jain submitted that the said allegation did not form part of the Complaint and/or the said Letter filed by the Complainant and therefore this purported allegation cannot form a part of the SCN.

2.2.4. Mr. Jitender Kumar Jain further submitted that in the 3rd SCC meeting, it was decided that the draft auction process document will be provided to the financial creditors (who were the only SCC members present in the 3rd SCC meeting) representing 99.79% of all stakeholders

of the Corporate Debtor. Mr. Jitender Kumar Jain also submitted that *vide* email dated 04.12.2023, the auction process document was sent to the SCC members, including all of the financial creditors, which was confirmed/approved by SBI, holding 62% share of the total claims of the Corporate Debtor (as against requisite majority of 51%) and the other financial creditors *viz.* BOB and EARC did not raise any objection to the auction process document at any point of time (as confirmed by them in 9th SCC meeting as well) and therefore, the same was issued by him.

2.2.5. Mr. Jitender Kumar Jain submitted that since none of the stakeholders of the Corporate Debtor except the secured financial creditors *viz.* SBI, BOB and EARC had attended the 3rd SCC meeting, the email dated 04.12.2023 was sent to the above stakeholders requesting for their comments on the auction process documents. None of the other stakeholders of the Corporate Debtor have raised any objection with respect to the process followed in relation to issuing and releasing the auction process document.

2.2.6. Mr. Jitender Kumar Jain further submitted that since, the stakeholder consultation committee is a non-binding advisory body and Liquidation Regulation, being delegated legislation, cannot override the provisions of Section 35(2) of the IBC.

Analysis and Findings of the DC.

2.2.7. The DC notes that in terms of section 218 of the Code read with Inspection and Investigation Regulations, the Board is empowered to take into account any material made available to it, regarding any alleged misconduct by the service provider. Section 196 of the Code bestows various powers and functions on the Board, including to carry out inspection and investigation on service providers and pass such orders as may be required for compliance of provisions of the Code and Regulations, monitoring of performance of service providers, etc. The conduct of an Insolvency Professional in CIRP or Liquidation has wide implications and affects the rights and interests of all the stakeholders. Therefore, to effectively discharge its statutorily mandated duties and functions, under the Code, the Board can very well examine the conduct of the IP via investigation or inspection either suo moto or whenever any information about the conduct related issue is received by the Board by any person. Accordingly, the submission of Jitender Kumar Jain that the said allegation did not form part of the Complaint and/or the said Letter filed by the Complainant and therefore this purported allegation cannot form a part of the SCN, cannot be accepted.

2.2.8. The DC notes that the issue revolves around whether Mr. Jitender Kumar Jain, the liquidator, violated Regulation 31A(1)(b) of the IBBI (Liquidation Process) Regulations, 2016 by finalizing the auction process document without consulting all members of the SCC. Regulation 31A(1)(b) requires the liquidator to consult the SCC on various matters, including the sale process, reserve price, pre-bid qualifications, marketing strategy, and auction procedures. The relevant extract of Regulation 31A(1)(b) of the IBBI (Liquidation Process) Regulations, 2016 is reproduced below: -

“31A. Stakeholders’ consultation committee.

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

(a) remuneration of professionals appointed under regulation 7;

(b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process.;

.....

(10) The advice of the consultation committee shall not be binding on the liquidator:

Provided that where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing and submit the records relating to the said decision, to the Adjudicating Authority and to the Board within five days of the said decision; and include it in the next progress report.”

2.2.9. The DC notes that under the liquidation process, the SCC’s role is advisory, as specified in Regulation 31A (10). The liquidator is not bound to act on the SCC’s recommendations but is required to consult the committee on key decisions. However, if the liquidator makes a decision that differs from the advice given by the SCC, the liquidator must record the reasons for doing so in writing. Accordingly, the SCC’s recommendations are advisory and do not impose binding obligations on the liquidator.

2.2.10. The DC notes that the requirement to take the SCC’s advice on the specified matters, as envisaged under Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016, cannot be bypassed on the argument that the SCC’s advice is not binding on the liquidator. This is a well-established legal principle; if a particular procedure is to be followed, it must be complied with in both letter and spirit. The submission of Mr. Jitender Kumar Jain, stating that since the SCC is a non-binding advisory body, consultation with the SCC is not required

as it cannot override the provisions of Section 35(2) of the IBC, not only goes against the spirit of the Code and the Regulations but also demonstrates the contemptuous attitude of Mr. Jitender Kumar Jain in disregarding the opinions of other stakeholders in the process.

2.2.11. The DC had perused the minutes of the 3rd SCC meeting dated 28.11.2023, wherein it was noted that the liquidator is still working on the terms and conditions for the sale of immovable properties and the same will be circulated to lenders for their review. The DC further noted that in the 9th SCC meeting dated 19.07.2024, the issue whether first auction notice discussed in the SCC meeting was addressed and it was minuted as follows:-

“Issue 2 - First auction notice not discussed in SCC meeting: The Chairperson stated that pursuant to discussion in third SCC meeting the terms and conditions were sent to all three lenders. Out of which SBI holding 62% voting rights approved the same. The representative of BOB clarified that since they did not have any objection to the same, they did not reply on the same. The Chairperson stated that he had taken the confirmation of the representative of EARC over the phone that was confirmed by the representative of EARC.”

2.2.12. The DC notes that BOB and EARC, in the 9th SCC meeting dated 19.07.2024, provided clarification regarding the response to Mr. Jitender Kumar Jain’s email dated 04.12.2023, which sought review and comments on the auction process documents. The DC also notes that SBI, holding 62% of the voting rights, replied via email on 07.12.2023: *"You may proceed with the publication."* Additionally, the representative of BOB and EARC provided clarification regarding why they had not responded to the email dated 04.12.2023.

2.2.13. The DC notes that, undoubtedly, while there may be concerns about the lack of documentation regarding the review or advice from all the SCC members, Mr. Jitender Kumar Jain’s action of proceeding with the auction documents without the documentation from all the SCC members is contrary to the best practices and vigilance expected from the IP. However, based on SBI’s email dated 07.12.2023 and the absence of objections from other SCC members, along with the further clarification noted in the 9th SCC meeting, the action of proceeding with the auction documents appears to be in line with the regulatory framework of the Code, 2016, and the Liquidation Regulations made thereunder. Accordingly, the DC accepts Mr. Jitender Kumar Jain’s submission with an advisory to exercise more caution in future assignments.

2.3. Failure to present liquidation cost in SCC meetings.

Alleged Contravention.

2.3.1. Regulation 31A(6B) of the Liquidation Regulations requires the liquidator to present the actual liquidation cost along with reasons for exceeding the estimated cost, if any, in every SCC meeting.

2.3.2. It is, however, observed on perusal of minutes of 4th, 5th and 6th SCC meeting, that Mr. Jitender Kumar Jain had failed to present the liquidation cost and other details relating to the same to the SCC in these SCC meetings. Thus, Mr. Jitender Kumar Jain has contravened Regulations 31 A(6B) of Liquidation Regulations read with Clause 27 of the Code of Conduct as specified in the First Schedule of IP Regulations.

Submissions by Mr. Jitender Kumar Jain.

2.3.3. Mr. Jitender Kumar Jain submitted that this regulation was inserted with effect from 12.02.2024 and the notice of the 4th SCC meeting held on 15.02.2024 was issued to the SCC members on 10.02.2024 i.e. even before Regulation 31 (A) (6B) was brought into force and therefore the allegation that Mr. Jitender Kumar Jain has contravened the said regulation by not disclosing the actual liquidation cost in the 4th SCC meeting is completely baseless and is liable to be disregarded.

2.3.4. Mr. Jitender Kumar Jain further submitted that as per Regulation 5 (3) (c) of the Liquidation Regulations, he was required to *inter alia* share the progress reports and minutes of the SCC meetings with the stakeholders on receipt of a confidentiality undertaking. By email dated 14.07.2023, the draft confidentiality undertaking was shared with SCC members, however, there was no response to the same by SCC members other than financial creditors. Therefore, Regulation 31 A (6)(b) of the Liquidation Regulations directing him to discuss and disclose the liquidation cost in SCC meeting even when confidentiality undertaking is not received from all the stakeholders is contradictory to Regulation 5 (3) (c) of the Liquidation Regulations. Thus, the alleged non-disclosure of liquidation cost in the SCC meeting could not have been a ground for issuance of the SCN against him when there is a direct contradiction between the regulations framed by IBBI. The liquidation cost was always informed to the financial creditors and other SCC members (who provided the confidentiality undertaking in accordance with Regulation 5 (3) (c) of the Liquidation

Regulations) on a regular basis through quarterly reports which were shared with them since the initiation of liquidation process of the Corporate Debtor. This fact was also discussed in 9th SCC meeting wherein it was recorded that the Liquidator has since beginning shared the cost with the Lenders who are relevant stakeholders as per the clause 27 of Code of Conduct.

2.3.5. Mr. Jitender Kumar Jain further submitted that he has shared the cost and related papers with the Lenders (who are likely to get distribution from the assets of the Corporate Debtor and thus relevant stakeholders under clause 27 of the Code of Conduct) and representing 99.79% of stakeholders even before new regulation came into existence.

Analysis and Findings of the DC.

2.3.6. The DC notes the submission of Mr. Jitender Kumar Jain that Regulation 31 (A) (6B) was brought into force *w.e.f* 12.02.2024 *vide* Notification No. IBBI/2023-24/GN/REG112. The DC also notes the submission of Mr. Jitender Kumar Jain that since the beginning Mr. Jitender Kumar Jain is sharing progress process having receipt and payment wherein full cost is being disclosed with the SCC members who have given confidentiality undertaking.

2.3.7. Regulation 5 (3) (c) of the Liquidation Regulations, 2016 is reproduced below :-

(3) Subject to other provisions of these Regulations, the liquidator shall make the reports and minutes referred to sub-regulation (1) available to a stakeholder in either electronic or physical form, on receipt of

(a) an application in writing;

(b) costs of making such reports and minutes available to it; and

(c) an undertaking from the stakeholder that it shall maintain confidentiality of such reports and minutes and shall not use these to cause an undue gain or undue loss to itself or any other person.

2.3.8. Regulation 31A(6B) of the Liquidation Regulations, 2016 reads thus:-

“31A. Stakeholders’ consultation committee.

(6B) In every meeting, the liquidator shall present to the consultation committee:

(a) the actual liquidation cost along with reasons for exceeding the estimated cost, if any;

(b) the consolidated status of all the legal proceedings; and

(c) the progress made in the process.”

2.3.9. The DC notes that there is no contradiction between Regulation 5(3) and Regulation 31A(6B) of the Liquidation Regulations, 2016, as both provisions serve distinct purposes. Regulation 5(3) is in respect of ***making available to stakeholders*** reports and minutes to stakeholders upon request, subject to the submission of confidentiality undertaking so as to

ensure that the information is not used for undue gain or loss. These reports and minutes can be shared in electronic or physical form, ensuring transparency while safeguarding sensitive information and preventing misuse. In contrast, Regulation 31A(6B) pertains to meetings of the SCC, wherein the liquidator is required to ***present during the meeting key updates***, including the actual liquidation costs (along with reasons for exceeding estimated costs, if any), the consolidated status of ongoing legal proceedings, and the overall progress of the liquidation process. Unlike Regulation 5(3), there is no requirement for a formal confidentiality undertaking, as the SCC operates within a defined framework of transparency and accountability.

2.3.10. Regulation 5(3) ensures ***access to specific reports*** for stakeholders while maintaining confidentiality and accountability, whereas Regulation 31A(6B) emphasizes ***presentation of key updates*** to the SCC during the meeting allowing active participation of stakeholders in the liquidation process.

2.3.11. The DC notes that even after the introduction of Regulation 31 (A) (6B) *vide* amendment dated 12.02.2024, SCC meetings were conducted five times i.e., 4th, 5th, 6th, 7th, 8th, and 9th SCC meetings conducted on 15.02.2024, 19.03.2024, 25.04.2024, 31.05.2024, 27.06.2024 and 19.07.2024 respectively. During the 4th, 5th, 6th, 7th and 8th SCC meetings, the required key updates regarding the liquidation cost, receipts, and payments were not made before the SCC in accordance with Regulation 31A(6B) of the Liquidation Regulations. Nevertheless, in the 9th SCC meeting, Mr. Jitender Kumar Jain while informing the SCC about the issuance of SCN had clarified the SCC that the receipts and payment details had been shared *via* proper emails with stakeholders who had submitted the confidentiality undertaking.

2.3.12. The DC notes that Mr. Jitender Kumar Jain's reliance on the 9th SCC meeting, wherein it was recorded that he had shared the cost with the lenders who are relevant stakeholders since the beginning, and therefore claimed compliance with Regulation 31A(6B) of the Liquidation Regulations, cannot be accepted. This is because the requirement under Regulation 31A(6B) is to present key updates including the actual liquidation cost and other related details to all the stakeholders which was not fulfilled in the 4th, 5th, 6th, 7th, and 8th SCC meetings, as evidenced by the minutes of the respective SCC meetings. The stakeholders other than those who had given confidentiality undertaking have been deprived of these key updates to be presented during the course of SCC meetings thereby limiting their active involvement. The

DC further notes that Mr. Jitender Kumar Jain's approach reflects a disregard for the involvement of stakeholders and contemptuous attitude towards them besides misinterpretation of the provisions.

2.3.13. In light of the above, the DC observes that there was non-compliance with Regulation 31A(6B) regarding the presentation of liquidation costs in the SCC meetings conducted after the insertion of Regulation 31A(6B) of the Liquidation Regulations i.e., 12.02.2024. Therefore, the DC finds Mr. Jitender Kumar Jain is in contravention of Regulations 31 A(6B) of Liquidation Regulations read with Clause 27 of the Code of Conduct as specified in the First Schedule of IP Regulations.

2.4. Delayed issue of first auction notice

Alleged Contravention.

2.4.1. Clause 1(1 A) of Schedule I to Liquidation Regulations requires the liquidator to issue a public notice of an auction for sale under Regulation 32 within forty-five days from liquidation commencement date (LCD) unless the consultation committee advises to extend the timeline.

2.4.2. As per the material available on record, the first auction notice was issued by Mr. Jitender Kumar Jain on 08.12.2023 i.e. after 240 days from LCD. Further, the delay in issuing auction notice was not discussed with the SCC. Hence, Mr. Jitender Kumar Jain has contravened Clause 1 (1 A) of Schedule I of Liquidation Regulations.

2.5. Delay in conducting second auction after failure of first auction.

2.5.1. Clause 1 (IB) of Schedule I to Liquidation Regulations requires the liquidator to issue public notice for the next auction, in case of failure of the auction, within fifteen days from the last failed auction unless the consultation committee advises to deviate from the specified time period.

2.5.2. It is noted that the first auction in the instant matter was scheduled on 10.01.2024. The said auction notice failed. Subsequently, the second auction notice was issued on 16.02.2024 i.e. after more than a month from the date of first auction. It is, thus, seen that 2nd auction notice after the failure of first auction was not issued within the prescribed timeline of 15 days.

Further, the delay in issuing auction notice was not discussed with the SCC. Hence, Mr. Jitender Kumar Jain has contravened Clause 1(1B) of Schedule I to Liquidation Regulations.

Combined Submissions by Mr. Jitender Kumar Jain

- 2.5.3. Mr. Jitender Kumar Jain submitted that in each of the applications enclosing a copy of the Progress Report of the ongoing liquidation process filed before the AA, a specific prayer was made to condone the delay(s) in the Liquidation process of the Corporate Debtor, if any. The aforesaid I.A.'s were allowed in their entirety by the AA and therefore, the delays, if any, in carrying out the Liquidation Process of the CD is already condoned by the AA.
- 2.5.4. Mr. Jitender Kumar Jain further submitted that it is settled law that the timelines under the Liquidation Regulations are only directory in nature and cannot be considered as a deadline as held by the Hon'ble National Company Law Appellate Tribunal in the case of Standard Surfa Chem India Pvt Ltd v. Kishore Gopal Somani (Company Appeal (AT) (Ins) No. 684 of 2021) and therefore the SCN could not have been issued on the basis of alleged delay in issuance of the 2nd auction notice.
- 2.5.5. Mr. Jitender Kumar Jain further submitted that as per Regulation 34(2) of the Liquidation Regulations, the asset memorandum is to be prepared within 75 days from the liquidation commencement date and therefore the auction could not have been conducted within 45 days from liquidation commencement date.
- 2.5.6. Mr. Jitender Kumar Jain also submitted that no objections have been raised by any of the members of the SCC in respect of alleged non-adherence to the timelines prescribed under the Code, 2016 and allied regulations. Importantly, the delay was due to three public notices issued by the ex-promoters/directors of the Corporate Debtor and its fronts to frustrate the auction notice issued in December 2023. Therefore, it was necessary to find out the correctness of such public notices before issue next auction notice.
- 2.5.7. Mr. Jitender Kumar Jain submitted that in view of above, it required more time to examine the issues raised in these public notices specially with respect to mezzanine floor because as per earlier rent agreement with Equitas Small Finance Bank Ltd ("Equitas") signed by the promoter it has carpet area of 2,043 square feet but promoter of the Corporate Debtor issued a public notice to contrary. Due to this issue, the auction was delayed and in next auction, mezzanine floor was removed from auction as issue remained unresolved despite best

efforts. This was also discussed in the 5th SCC meeting. Thus, on the one hand, the ex-promoters/directors of the Corporate Debtor and its fronts to frustrate the e-auction and on the other hand they don't comply with the directions of the AA by providing requisite information even after being directed by the AA in IA 1623/2023.

- 2.5.8. Mr. Jitender Kumar Jain also submitted that the SCC is a non-binding advisory body and Liquidation Regulation, being delegated legislation, cannot override the provisions of Section 35(2) of the IBC as is to be done by the IA by making this allegation.

Analysis and Findings of the DC.

- 2.5.9. The DC notes Mr. Jitender Kumar Jain's submission that each application, including the Progress Report of the ongoing liquidation process filed before the AA, contained a specific request to condone any delays in the liquidation process of the Corporate Debtor. These applications were allowed in their entirety by the AA, which, according to Mr. Jitender Kumar Jain, signifies that any delays in the liquidation process were condoned by the AA. However, the DC observes that seeking general condonation of delays through Progress Reports is not a substitute for discussing specific delays, such as the delay in issuing the auction notice, with the SCC. Generally, progress reports filed by liquidators are '*taken on record*' by the AA and do not imply that the prayers made within these reports are granted. It is well-established law that, if specific exemptions or condonations are sought, then each instance, should be addressed in a separate application before the AA. Therefore, the DC cannot accept this submission.
- 2.5.10. The DC notes Mr. Jitender Kumar Jain's submission that the timelines under the Liquidation Regulations are considered directory rather than mandatory deadlines, as held by the Hon'ble NCLAT in *Standard Surfa Chem India Pvt Ltd v. Kishore Gopal Somani* (Company Appeal (AT) (Ins) No. 684 of 2021). The DC notes that the said judgement does not apply to the facts of the present case as the case relates to the extension of time for completion of the auction process, a scenario distinct from the present case. Furthermore, the paragraph 31 of the said decision provides for extension on timelines in special circumstances of 2nd Wave of Covid 19 and with the permission of AA to extend the timeline, which is not the issue in the present case. Therefore, the relied judgement does not assist Mr. Jitender Kumar Jain in the current case.

- 2.5.11. The DC notes the submission of Mr. Jitender Kumar Jain that, as per Regulation 34(2) of the Liquidation Regulations, the asset memorandum is to be prepared within 75 days from the liquidation commencement date, and therefore, the auction could not have been conducted within 45 days of the liquidation commencement date. However, the DC observes that Mr. Jitender Kumar Jain has conflated two distinct requirements.
- 2.5.12. At this juncture, the DC is not inclined to delve into the matter of timelines concerning the preparation of the asset memorandum vis-à-vis the issuance of the auction notices which arise on account of the fact that these different timelines are on account of insertion of the provision for fresh valuation of assets of the CD at a later date and therefore, the timelines provided otherwise have to be read harmoniously. However, the DC notes that delay of more than 240 days in issuing public notices, without the advice of the SCC, is quite a long delay and is not explainable on account of difference of 30 days between 45 days and 75 days. Taking such an argument which does not explain the considerable delay and an attempt to explain his misconduct by pointing deficiencies in the Regulations does not augur well for Mr. Jitender Kumar Jain.
- 2.5.13. The DC further notes that Mr. Jitender Kumar Jain appears to be deflecting the issue by raising points related to the preparation of the asset memorandum, the issuance of public notices, and their respective timelines. However, the core issue remains the significant delay in the issuance of auction notices without obtaining the advice of the SCC on extended timelines. Even if the inconsistencies in his interpretation of the Regulations are considered in his favour, considerable period of delay still remains. The first auction notice was issued by Mr. Jitender Kumar Jain on 08.12.2023, i.e., 240 days after the Liquidation Commencement Date (LCD). The second auction notice was issued only on 16.02.2024, over a month after the first auction.
- 2.5.14. The DC further notes that the issue herein is not that there is simply delay in issuing the first and second auction notices, but rather that the extension of timeline in view of delay in publication of auction notices was not on the basis of advice by the SCC as provided under Clause 1(1B) and Clause 1(1A) of Schedule I to the Liquidation Regulations.

2.5.15. The DC highlights that the Clause 1(1B) and Clause 1(1A) of Schedule I to the Liquidation Regulations, provides a structured approach and adherence to regulatory procedures remain essential for transparency and accountability in the liquidation process. The relevant clause are reproduced below:-

“SCHEDULE I

1.(1A) Subject to provisions of regulation 2B, the liquidator shall issue a public notice of an auction for sale under regulation 32 within forty-five days from the liquidation commencement date unless the consultation committee advises to extend the timeline

(1B) The liquidator shall issue public notice for the next auction, in case of failure of the auction, within fifteen days from the last failed auction unless the consultation committee advises to deviate from the specified time period.”

2.5.16. The DC notes that Clause 1(1A) of Schedule to the Liquidation Regulations requires the liquidator to issue a public notice for the first auction within forty-five from LCD days unless the SCC advises the extension of timeline. Clause 1(1B) of Schedule I to the Liquidation Regulations requires the liquidator to issue a public notice for the next auction within fifteen days of the failure of previous auction, unless otherwise advised by the SCC. Mr. Jitender Kumar Jain also submitted that the SCC was apprised of the progress regarding the assets of the Corporate Debtor and the difficulties faced in sale of assets due to public notices issued by the suspended directors.

2.5.17. The DC further notes that Mr. Jitender Kumar Jain in the 9th SCC meeting held on 19.07.2023, while apprising the SCC about the issuance of SCN against him and noted that Mr. Jitender Kumar Jain in consultation with SCC in July 2023 and December 2023 had decided when to do the auction from time to time. The DC had gone through the minutes of 2nd SCC meeting held on 24.07.2023, 3rd SCC meeting held on 28.11.2023 and also the 4th SCC meeting held on 15.02.2024, to ascertain if, advice of SCC was taken in extending the timeline for the issue of public notice. The relevant extract of the SCC minutes are extracted below:-

“TO DISCUSS SALE OF ASSETS OF THE COMPANY INCLUDING MANNER OF SALE, PRE-BID QUALIFICATIONS, RESERVE PRICE, MARKETING STRATEGY AND AUCTION PROCESS

The Chairperson stated that as discussed earlier the valuation of three assets is ready but due to parking relating issue, e-auction will take some time. Therefore, the Chairperson stated that in between pre-bid qualifications, reserve price, marketing

strategy and auction process can be discussed and for this purpose the Chairperson will circulate the terms and conditions soon to the lenders for their review.”

(Extract from the 2nd SCC meeting)

“TO DISCUSS SALE OF ASSETS OF THE COMPANY INCLUDING MANNER OF SALE, PRE-BID QUALIFICATIONS, RESERVE PRICE, MARKETING STRATEGY AND AUCTION PROCESS

The Chairperson stated that he is still working on the terms and conditions of education for sale of immovable properties, viz., ground floor, mezzanine floor, and Office Nos. 211-213 (Lakme Academy premises) and office no. 214 (NMIMS premises) on second floor of Aaj Ka Anand Building and soon the same will be circulated to the lenders for their views by end of this week.”

(Extract from the 3rd SCC meeting)

“TO DISCUSS SALE OF CITIOTEL PREMISES OWNED BY THE COMPANY

The Chairperson informed to the meeting that it is also proposed to sale the Citiotel Premises for which draft of terms and conditions of e-auction was sent. It was clarified that as few investors approached to EARC (first charge holder of Citiotel premises), therefore, in consultation with EARC the reserve price is fixed at fair value to maximise the realisation to EARC.”

(Extract from the 4th SCC meeting)

2.5.18. The DC has perused the minutes of the all the SCC meetings and notes that no doubt, the SCC was regularly informed about the reasons of the delays caused in the sale of the properties of the CD and the steps taken by the Liquidator for the sale of the properties. However, the DC notes that the minutes do not reflect any advice or consent from the SCC regarding an extension of the timeline for issuing the auction notice, as required under Clause 1(1B) and Clause 1(1A) of Schedule I to the Liquidation Regulations. Furthermore, the DC notes that Mr. Jitender Kumar Jain has failed to place on record any other communication from the SCC Members, regarding the advice to extend the timelines for the issue of public notice.

2.5.19. The DC notes that while Mr. Jitender Kumar Jain had valid reasons for the delay in issuing the second auction notice, the DC finds that he did not adhere to the necessary regulatory procedures for seeking an extension of the timeline from the SCC. Under Clause 1(1B) of Schedule I to the Liquidation Regulations, the liquidator is required to issue a public notice for the next auction within fifteen days of the failure of the first auction unless the SCC advises otherwise. In the current case, the DC observes that while Mr. Jitender Kumar Jain

may have had valid reasons for the delay, he failed to take advice of SCC before extending the timeline for issuing the second auction notice. This constitutes a breach of the procedural requirements and shows disregard for the opinion of the members of SCC.

- 2.5.20. In light of the above, the DC finds that Mr. Jitender Kumar Jain has contravened the Clause 1(1A) and Clause 1(1A) of Schedule I to Liquidation Regulations.

3. Order.

- 3.1. In view of the foregoing, the DC in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the Inspection and Investigation Regulations and Regulation 11 of the IP Regulations hereby suspends the Authorisation for Assignment of Mr. Jitender Kumar Jain (Registration No. IBBI/IPA-002/IP-N00033/2016-2017/10070) for a period of three months.
- 3.2. Mr. Jitender Kumar Jain's actions reflect a clear technical violation of Liquidation Regulation, 2016. By failing to consider all the secured financial creditors as members of the SCC, he violated provisions of Regulation 31A of the Liquidation Process. By failing to disclose critical information to the SCC including the disclosure with regard to the actual liquidation cost, Mr. Jitender Kumar Jain has not kept the stakeholders adequately informed, thereby violating the principle of transparency and accountability essential to the liquidation process. Further, he has failed to take advice of SCC regarding the delay in conducting auction as merely providing information does not equate to taking their advice. These non-compliances undermine the stakeholders' ability to participate effectively in the decision-making process.
- 3.3. Mr. Jitender Kumar Jain is advised to comply fully with the requirement of liquidation regulations and involve all stakeholders in the SCC to the extent as mandated under Regulations as involvement of stakeholders is critical for maintaining transparency, trust, and fairness in the liquidation process.
- 3.4. A copy of this order shall be forwarded to the Insolvency Professional Agency of Institute of Company Secretaries of India where Mr. Jitender Kumar Jain is enrolled as a member.
- 3.5. A copy of this order shall be sent to the CoC/ Stakeholders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Jitender Kumar Jain is providing his services, if

any, and the respective CoC/SCC, as the case may be, shall decide about continuation of existing assignment of Mr. Jitender Kumar Jain.

3.6. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.

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

Dated:18.12.2024
Place: New Delhi

-sd/-
(Sandip Garg)
Whole Time Member
Insolvency and Bankruptcy Board of India