

# INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/260/2025

06 January 2025

## Order

This Order disposes of the Show Cause Notice (SCN) No. COMP-11015/90/2023-IBBI/867/234 dated 15.05.2024 issued to Ms. Bhavi Shreyans Shah who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00915/2017-2018/11521 and a Professional Member of the Indian Institute of Insolvency Professionals of ICAI (IIIP-ICAI) .

### 1. Background

- 1.1. The NCLT Ahmedabad Bench (AA) *vide* order dated 27.05.2020 admitted the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) filed by Union Bank of India for initiating Corporate Insolvency Resolution Process (CIRP) of the M/s. Greendiamz Biotech Limited (CD) and appointed Mr. Chandra Prakash Jain as Interim Resolution Professional (IRP) who was later appointed as Resolution Professional (RP). The two resolution plans received by the RP were placed before the CoC. However, after due consideration the CoC did not approve any of those two plans and passed a resolution for liquidation of the CD. In the 11<sup>th</sup> meeting of the CoC, Union Bank of India, being the sole member of the CoC, passed resolution for liquidation of the CD. Subsequently, the AA *vide* order dated 28.06.2022 directed liquidation of the CD and appointed Ms. Bhavi Shreyans Shah as the Liquidator.
- 1.2. The Board was in receipt of complaints dated 27.10.2023 against Ms. Bhavi Shreyans Shah in the liquidation proceeding of the CD from Employees' Provident Fund Organisation (EPFO). The Board *vide* email dated 22.11.2023 sought her reply on the allegation raised by the EPFO. Her reply thereof was received on 28.11.2023.
- 1.3. The Board examined the allegations in the above *complaint vis-à-vis* her reply to the same and based on such examination, the Board formed a *prima facie* view that Ms. Bhavi Shreyans Shah contravened provision of the Code and Regulations made thereunder and issued the Show Cause Notice (SCN) to her on 15.05.2024. Ms. Bhavi Shreyans Shah replied to the SCN on 25.05.2024.
- 1.4. The Board referred the SCN, response of Ms. Bhavi Shreyans Shah to the SCN to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Ms. Bhavi Shreyans Shah availed the opportunity of personal hearing through virtual mode before the DC on 19.11.2024. Ms. Bhavi Shreyans Shah provided her additional written submissions on 25.11.2024

1.5. The DC has considered the SCN, the reply to SCN, and submissions of Ms. Bhavi Shreyans Shah and proceeds to dispose of the SCN.

## **2. Alleged Contraventions, Submissions, Analysis and Findings.**

The contravention alleged in the SCN, Ms. Bhavi Shreyans Shah's written and oral submissions thereof and analysis and findings of the DC are summarized as follows.

### **2.1 Contravention.**

- 2.1.1 It was observed that after appointment of Ms. Bhavi Shreyans Shah as Liquidator in the liquidation process of the CD, she published Public Announcement on 01.07.2022 as per which last date for submission of claim was 27.07.2022. The EPFO, Regional Office Ahmedabad vide letter dated 27.07.2022 filed its claim in Form F which is proforma for proof of claim by creditors other than Financial Creditors and Operational Creditors under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), for an amount of Rs.40,956/- on the last day of submission of claim. In response to the said claim, Ms. Bhavi Shreyans Shah *vide* email dated 01.08.2022 informed the EPFO to submit claim in Form C of IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations).
- 2.1.2 It was further observed that the EPFO *vide* letter dated 12.08.2022 again requested Ms. Bhavi Shreyans Shah to accept their claim as submitted by them on 27.07.2022 and she *vide* email dated 16.08.2022 replied by informing them to submit claim in prescribed form under Liquidation Regulations.
- 2.1.3 In the meantime, the assets of the CD were sold through two E-auctions dated 18.11.2022 and 31.03.2023 and the proceeds of sale were distributed amongst the stakeholders after which bank account of the CD was closed on 25.10.2023. It was further noted from her reply to the Board *vide* letter dated 28.11.2023 that she received claim from the EPFO under correct form on 30.10.2023 and in response thereof, she replied to them that claim could not be accepted as the properties of the CD have already been sold off and proceeds of sale has already been distributed to the stakeholders
- 2.1.4 As per Regulation 16(1) of Liquidation Regulations, a person, who claims to be a stakeholder, shall submit its claim, or update its claim submitted during the corporate insolvency resolution process, including interest, if any, on or before the last date mentioned in the public announcement. Section 35(1)(a) of the Code requires a Liquidator to verify claim of the all the creditors. Further, Regulation 30 of the Liquidation Regulations provides that the Liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be.

2.1.5 It was noted that the claim of the EPFO was received within the prescribed time limit, as also admitted by Ms. Bhavi Shreyans Shah in her reply to the Board. Hence, the requirement of Regulation 16(1) of Liquidation Regulations was met. Although Regulations 17 to 20 of the Liquidation Regulations do provide for form in which different types of creditors are required to file claim but these provisions are in furtherance and for giving effect to the provisions of the Regulations 16(1) and cannot be read in isolation so as to reject a claim merely on the basis of claim not filed in prescribed form. Through various judicial pronouncements, the directory nature of forms prescribed for claim submission has been settled. The Hon'ble Supreme Court in the matter of *Greater Noida Industrial Development Authority versus Prabhjit Singh Soni and another* vide order dated 12.02.2024 has held as under:

*"22. As it could be noticed from the CIRP Regulations, 2016, on submission of a claim with proof, the IRP or the RP, as the case may be, has to verify the claim and prepare a list of creditors containing names of creditors along with the amount claimed by them and security interest, if any, the logical conclusion derivable from the provisions analysed above would be that the Form in which a claim is to be submitted under the CIRP Regulations 2016 is directory and not mandatory. What is important is, the claim must be supported by proof.*  
54.----

*a. "The resolution plan disclosed that the appellant did not submit its claim, when the un rebutted case of the appellant had been that it had submitted its claim with proof on 30.01.2020 for a sum of Rs.43,40,31,951/- No doubt, the record indicates that the appellant was advised to submit its claim in Form B (meant for operational creditor) in place of Form C (meant of financial creditor). But, assuming the appellant did not heed the advice, once the claim was submitted with proof, it could not have been overlooked merely because it was in a different Form. As already discussed above, in our view the Form in which a claim is to be submitted is directory. What is necessary is that the claim must have support from proof. Here, the resolution plan fails not only in acknowledging the claim made but also in mentioning the correct figure of the amount due and payable."*

2.1.6 It was, thus, noted that Ms. Bhavi Shreyans Shah failed to verify the claim submitted by the EPFO within the prescribed time limit as per Section 35(1)(a) of the Code read with Regulation 30 of the Liquidation Regulations. Ignoring the claim of the EPFO received within the prescribed timeline, she went on to distribute the proceeds of sale without making any provision for the EPFO, as required under the provisions of the Code and Regulations thereunder. By ignoring the claim of statutory authority, received within the time limit, for the superficial reasons, she has not only contravened the provisions of the Code and relevant Regulations mandating her to verify the claim so received and either admit in full or part or reject the claim but such ignorance of claim may cause avoidable litigations which may led to delay in completion of liquidation process which is a time bound process.

2.1.7 In view of the above, in terms of Regulation 7(7) of the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 read with

Regulations 10A and 11 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection and Investigation Regulations), the Board held the *prima facie* view that by her aforesaid acts and omissions during the Liquidation process of CD, she has *prima facie* contravened the provisions of Section 35(1)(a) and Section 208(2)(a) of the Code, Regulation 30 of Liquidation Regulations, Regulation 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and Clause 10 of the Code of Conduct specified under IP Regulations.

## 2.2 Submissions by Ms. Bhavi Shreyans Shah.

2.2.1 Ms. Bhavi Shreyans Shah placed the events and facts pertaining to the CIRP of the Corporate Debtor as under:

Sr.	Date	Particulars
1.	28.06.2022	The Liquidation order came to be passed by the AA against the CD and further appointed her as the Liquidator of the CD replacing the RP, Mr. Chandra Prakash Jain.
2.	01.07.2022	That in compliance of the duties, the Liquidator published Form B (Public announcement under the Liquidation Regulation).
3.	14.07.2022	That The Liquidator had sent intimation to the EPFO through an email intimating them that the CD is under Liquidation alongwith the liquidation order and copy of Form B and requested them to submit the claim in appropriate form.  That on account of non-receipt of the Claim by the EPFO, she approached the office of the EPFO with an intimation, reminder and request to submit their claim.
4.	27.07.2022	The Liquidator received one claim from the EPFO in incorrect Form being Form F (Proof of claim by Creditors other than Financial Creditors and Operational Creditors under CIRP Regulations) on the last day of receipt of the claim as mentioned in Form B i.e. on 27.07.2022.  The EPFO has filed their claim wrongly considering the CD into CIRP as the claim was in Form F under CIRP Regulations. As per the Liquidation Regulations, the Claim Form has to be notarised, and the form received by her was not notarised.
5.	01.08.2022	The Liquidator <i>vide</i> its email informed the EPFO that the CD is under liquidation and further the claim form submitted by them is not in consonance with the requirements of the provisions of the Code and Regulations. That the Liquidator further explained the EPFO that instead of Form F under CIRP and they need to submit Form C as per the Liquidation Regulations.

		It was her duty to inform the EPFO department that the claim form is incorrectly filed.
6.	12.08.2022	That pursuant to the email dated 01.08.2022, the Liquidator was in receipt of another email from the EPFO, wherein it directed to accept their claim as submitted by them on 27.07.2022 which was under CIRP Regulations.
7.	16.08.2022	That once again Liquidator <i>vide</i> its email informed the EPFO to submit the correct form as prescribed under Liquidation Regulation as CD was under liquidation as per order dated 28.06.2022. She also provided the contact details/mobile number so that any clarification can be sought by the department through a phone call also.
8.	18.11.2022 31.03.2023	The Liquidator sold the assets of the CD through two public e-auctions dated 18.11.2022 and 31.03.2023.
9.	28.06.2023	In the 5 <sup>th</sup> SCC meeting held on 28.06.2023, the Liquidator informed SCC members that extension for 6 months in liquidation period is required for completion of legal formalities like sale deed and other issues as same remain pending. That in the same meeting, the SCC members approved to file the liquidation extension and subsequently filing of dissolution of the CD.
10.	20.10.2023	As all the proceedings of the sale were distributed amongst the stakeholders and sale deed being executed, the Liquidator in terms of the requirements under the provisions of the Code and Regulations therein, had requested the bank for closure of liquidation bank account
11.	25.10.2023	The bank account was closed on 25.10.2023.
12.	30.10.2023	The Liquidator received the claim under the correct form, Form C (dated 27.10.2023) under Liquidation Regulations, as suggested by the Liquidator after the lapse of 490 days of the liquidation process.  Note: The EPFO department neither chose to file the correct claim nor approached her until the lapse of 461 days from the last date of submission of claim. Moreover, the provisions of the Code do not authorise her to accept the belated claims.
13.	02.11.2023	The Liquidator replied through an email that the claim cannot be accepted as the properties of the CD have already been sold off and amount had already been distributed to the stakeholders.
14.	10.11.2023	The Liquidator has filed the dissolution application with the AA.
15.	22.12.2023	Subsequently, the EPFO has filed an application being IA 1472 of 2023 against her challenging the non-consideration of claim before the AA and the said application is still pending adjudication.  Note: The issue with respect to the treatment of the claim of the EPFO is <i>sub judice</i> before the AA.

- 2.2.2 Ms. Bhavi Shreyans Shah submitted that the EPFO had submitted the incorrect Form being Form F (Proof of claim by Creditors other than Financial Creditors and Operational Creditors under CIRP Regulations) on the last day of receipt of the claim as mentioned in Form B i.e. on 27.07.2022.
- 2.2.3 She submitted that she had informed the claimant the EPFO that the CD is under liquidation and not CIRP and therefore the Claim needs to be filed under the Liquidation Regulations. She herself had approached the EPFO to submit their claim *vide* email dated 14.07.2022 and most importantly, the claim of the department was not rejected by her at that stage rather the claimant was duly informed about the status of the liquidation and was provided with an opportunity to file the revised claim as per the requirement under the provisions of the Code.
- 2.2.4 She submitted that the observations by the Hon'ble Supreme Court in the judgment rendered on 12.02.2024 of *Greater Noida Industrial Development Authority v. Prabhjit Singh Soni & Anr.* are not applicable to the facts and circumstances of the present case primarily on account of the fact that in that case the Hon'ble Supreme Court has dealt with the CIRP Regulation and the role and function of the IRP/RP not the Liquidator and most importantly it was in the context of the treatment of the Claim in the Information Memorandum and consequently in the Resolution Plan.
- 2.2.5 She submitted that her understanding prior to the judgment rendered by the Hon'ble Supreme Court on 12.02.2024, was to the effect that all the claims are to be submitted in the prescribed Form and Format as provided and intended by the Board. Furthermore, usage of prescribed forms ensures that all claims are submitted in a standardized and uniform format. This uniformity facilitates the comparison and verification of claims, enabling a streamlined and efficient review process. Therefore, these prescribed claim forms ensure that creditors comply with statutory requirements as outlined in the Code and related regulations. This compliance is crucial for the legal validation of claims. Moreover, these standard claim forms promote transparency in the claim's submission process, ensuring that all creditors have equal opportunity to assert their claims. This helps prevent any unfair advantage or discrimination among creditors and further facilitate the orderly distribution of assets during liquidation or CIR process. This ensures that creditors receive their due share based on the established priority of claims. Therefore, these prescribed claim forms during the liquidation process were designed to bring order, fairness, and efficiency to the process and provide a structured and standardized method for creditors to assert their claims, ensuring compliance with legal requirements and facilitating transparent and equitable treatment of all stakeholders. Hence, streamlining the submission, verification, and prioritization of claims, these forms play a critical role in the effective administration of liquidation processes.
- 2.2.6 She submitted that despite repeated requests, reminders and follow ups, the EPFO submitted the claim form after the assets of the CD was liquidated by her. The AA in several orders has ruled in favor of the Liquidator's decision to not admit a claim that was submitted after the

liquidation of the assets of the CD and the distribution of the sale proceeds to the stakeholders. Once the assets of the CD have been sold and the proceeds distributed, reopening the process to admit belated claims would disrupt the certainty and stability required for the liquidation process. She seeks the liberty to rely upon the decision passed by the NCLT, Hyderabad Bench in the case of *Aditya Birla Finance Limited v. CS Padma Appana, Liquidator of M/s RE Cables and Conductors Private Limited* wherein the NCLT has held that the Liquidator is correct in rejecting the belated claims as she does not have any authority to entertain the same when the distribution of assets has been completed by the Liquidator and an Application seeking the dissolution of the Corporate Debtor is pending before the NCLT.

- 2.2.7 That there was a lack of procedural compliance on the part of the EPFO since the claim from the EPFO was not received in the prescribed Form and Format within the timeline prescribed under the relevant Code and Regulations. Despite efforts to ensure all stakeholders were notified, the claim from the EPFO did not arrive in the expected timeframe in the prescribed form and the same is evident from the records and repeated emails done by her. Moreover, the Liquidator made an attempt to notify the EPFO to submit their claim in the prescribed form during the liquidation process of the CD. Subsequently, they failed to comply within the stipulated time frame and submitted the claim after the assets of the CD was liquidated. It is further submitted that no provisions of the Code and Regulations therein, empowers the Liquidator to *suo moto* admit the claims of any creditor without the receipt of claim in the prescribed form as provided under the Code & Regulations therein. The said view is also observed by the Hon'ble Appellate Tribunal *vide* its judgement dated 19.09.2022 in *CoC of Associated Decor Ltd. through Union Bank of India Vs. State of Karnataka*.
- 2.2.8 Ms. Bhavi Shreyans Shah further submitted that the claim raised by the EPFO had been fully satisfied. A demand draft dated 29.06.2024 was issued in accordance with the instructions of SCC members in favour of the EPFO, covering the entire outstanding amount. That pursuant to the receipt of the amount, the EPFO had also acknowledged the same.
- 2.2.9 She submitted that the CD had not created any specific fund/corpus or provision for Provident Fund (PF) dues before the initiation of the CIRP. Consequently, no separate PF fund was available when she, in the capacity of Liquidator, took the charge of the CD's assets.
- 2.2.10 She further submitted that the liquidation order was passed on 28.06.2022, and she promptly notified the EPFO on 14.07.2022, requesting submission of claims in the appropriate form. Despite follow-ups and reminders, the department submitted its initial claim only on 27.07.2022, which was not only in an incorrect format but was also submitted under the wrong provisions/ regulations of the Code. That the claim form submitted by the EPFO was though addressed to her as the Liquidator, but it was under the CIRP regulations instead of Liquidation Regulations. At that juncture, it was crucial to state that she acted in *bonafide* manner and had promptly conveyed and clarified to the department that the CD is not under

CIRP, therefore, they may submit under the provisions of liquidation regulations. The EPFO had ultimately submitted its claim in the correct format on 30.10.2023, after a delay of 490 days. During that period, liquidation proceedings were actively conducted, and all assets of the CD were sold by 31.03.2023. It was pertinent to consider the conduct of the EPFO wherein they for a period of 490 days, chose neither to appeal against the non-consideration of their claim nor submitted a revised claim before her.

- 2.2.11 She submitted that the position of law as to how the PF dues were to be treated during liquidation had undergone a tremendous and significant overhaul in the recent past particularly from the year 2019-2023 until the Hon'ble Supreme Court in the year 2023 had finally crystallized the position of law that the PF dues were to be paid in priority.
- 2.2.12 She submitted that she could not accept the claim of the department as firstly it was altogether in a different regulation and secondly at the relevant point of time from 2022 to early 2023, there was lack of clarity as to whether the PF dues are to be considered as a part of liquidation estate or not, whether the PF dues are to be paid in priority even if the CD, before CIRP has not made a separate provision and account for the PF dues.
- 2.2.13 On the issue of not replying various letters sent by the EPFO where it referred certain judgement by the Courts and Tribunals, she submitted that there was a clear dichotomy and contradictory positions existing till 07.02.2023 when the Hon'ble Supreme Court finally settled the position of law in the case of Moser Bear. stating that the PF dues were to be paid in priority. The judgments relied upon by the EPFO should be considered in this light. She relied on the judgement of the NCLAT, dated 19.08.2019, in the matter of *State Bank of India v. Moser Baer Karamchhari Union* (decided by Hon'ble NCLAT on 19.08.2019) in which the NCLAT had, *inter alia*, held that PF dues, Pension funds and gratuity funds should be prioritized and for the purposes of distribution these funds cannot be included. She further relied on the order of the NCLAT in the matter of *Savan Godiawala v. Apalla Siva Kumar* (decided dated 11.02.2020) in which the NCLAT had, *inter alia*, while taking a deviation from the earlier position, held that PF dues cannot be treated as part of the liquidation estate if no separate fund or corpus exists and the Hon'ble Supreme Court (decided on 07.02.2023) settled the legal position, holding that PF dues are to be paid in priority regardless of fund creation.
- 2.2.14 She further submitted that in light of the above-mentioned judgments, some contradiction and lack of clarity existed at the relevant time until the Hon'ble Supreme Court clarified the same in terms of its order dated 07.02.2023. She submitted that the time of processing claims, she initially relied on the position in *Savan Godiawala*, as it was binding law.
- 2.2.15 She further submitted that analysis of the judgments submitted by the EPFO, as under: -
- a. *Precision Fasteners v. EPFO (passed by the Hon'ble NCLT Mumbai on 07.09.2018)*: That in the aforementioned case, it was held that PF dues to be paid from the liquidation estate in priority before distributing the liquidation estate of the CD to the claimants.



However, the said case was of the year 2018 and in 2022 the law laid down in *Savan Godiawala* was amply clear that if a separate fund is not maintained by the Liquidator for the EPFO, the Liquidator cannot consider the same as a part of the liquidation estate. Hence, the Liquidator did not deem fit to consider the said judgment at the relevant point of time. Further, this judgment nowhere deals with the case as to improper form submission by the PF department.

- b. *Regional P.F. v. Ramchandra Choudhary (passed by the Hon'ble NCLAT on 19.12.2019)*: That in the aforementioned case, the SRA was directed to release full provident fund and interest as the same is not included as an asset of 'Corporate Debtor' and the Resolution Plan stands modified to the extent above. That at the relevant point of time the said judgment was not applicable as the facts of the said judgment were different from the facts of the CD as in the said judgment the CD had maintained a separate PF account but in this case there was no separate PF account and therefore *Savan Godiawala* was amply clear that if a separate fund is not maintained by the Liquidator for the EPFO, the Liquidator cannot consider the same as a part of the liquidation estate. Further, this judgment nowhere dealt with the case as to improper form submission by the PF department.
- c. *V-Con Integrated Solutions Pvt. Ltd. v. Acharya Techno Solutions (India) Pvt. Ltd.*: That in the aforementioned case, it was held contribution, interest and damages payable under Section 7A, 7Q and 14 B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 were statutory dues and not claims which can be submitted to the Liquidator in Form G. Subsequently, directed the Liquidator to consider the claims of the EPFO and the said judgment was passed in the year 2019 and in the said case also the CD had created a separate account for the PF dues. However, the law laid down in *Savan Godiawala* was amply clear that if a separate fund is not maintained by the Liquidator for the EPFO, the Liquidator cannot consider the same as a part of the liquidation estate. Hence, she did not deem fit to consider the said judgment at the relevant point of time. Further, this judgment nowhere deals with the case as to improper form submission by the PF department. Further, this judgment nowhere deals with the case as to improper form submission by the PF department.
- d. *Sikander Singh Janwal v. Vinay Talwar*: That in the aforementioned case, SRA was directed to release full provident fund dues in terms of the provisions of the Employees Provident Funds and Miscellaneous Provident Fund Act, 1952 immediately as same was not forming the part of the resolution plan. The facts of the said case were not applicable to the present CD as the present CD was under liquidation and secondly the said judgment was sent by the department to her on 19.05.2023 when the assets of the Corporate Debtor were already sold and the sale proceeds were already distributed.
- e. *Sunil Kumar Jain v. Sundaresh Bhatt (2021)*: That in the aforementioned case, the issue before the court was with respect to wages/salaries of the workmen/employees during the CIRP period and the amount due and payable to the respective workmen/employees towards pension fund, gratuity fund and provident fund. That the Hon'ble Supreme Court held that the concerned workmen/employees shall be entitled to provident fund, gratuity fund and pension fund from such funds which are specifically kept out of liquidation

estate assets and further the wages/salaries of the workmen/employees of the CD for the period during CIRP can be included in the CIRP costs provided it is established and proved that the IRP/RP managed the operations of the CD as a going concern during the CIRP. The facts of the said case were not applicable to the present CD as the present CD was under liquidation and secondly the said judgment was sent by the department to her on 19.05.2023 when the assets of the CD were already sold and the sale proceeds were already distributed.

- 2.2.16 She submitted that the aforementioned cases were distinguished from the issue at hand, as the same didn't deal with the claim in wrongful format as prescribed in CIRP Regulations filed by the EPFO during the liquidation process of the CD. The aforementioned cases, re-affirms Section 36(4) of the Code which specifically excludes "all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund", from the ambit of "liquidation estate assets" and therefore shall be excluded from the ambit of waterfall mechanism under Section 53 of the Code and further necessitate provisioning in the resolution plan of the CD.
- 2.2.17 She further submitted that she did not *ipso facto* pay the EPFO dues at the relevant point of time as the position laid down in *Savan Godiawala* case was amply clear that if a separate fund was not maintained by the Liquidator for the EPFO, the Liquidator cannot consider the same as a part of the liquidation estate which got overturned by the Hon'ble Supreme Court only on 07.02.2023 when the liquidation proceedings against the CD were almost complete.
- 2.2.18 Regarding the clarification on non-consideration of the claim when Discussion Paper dated 14.06.2022 specifically elaborate on the point "*The liquidator shall consider the claims collated during the CIRP in respect of claimant who have not submitted their claim during liquidation*", she submitted that discussion paper (which was at the stage of discussion) published by the Board cannot be given due preference unless the same is published in the official gazette by Central Government and subsequently, given effect of the law. Therefore, the discussion paper cannot be considered as rule of law and further doesn't bind the stakeholder of insolvency ecosystem to do or act in furtherance of the proposed agenda unless the same is approved and gazetted by the governing board and brought as amendment to the existing provisions of the Code & Regulations, therein. It is further humbly submitted that the said amendment was brought forward in the IBBI (Liquidation Process) Regulations, 2016 by way of Notification IBBI/2022-23/GN/REG094, dated 16.09.2022 and cannot be given a retrospective effect unless specifically stated in the regulation. That as on 16.09.2022, the claims were already collated as per the regulations existing at that point of time and she could not have been burdened with revisiting all the claims.
- 2.2.19 She was asked during the course of personal hearing why she did not follow the reply given in Frequently Asked Questions on Claims in the "Handbook on Claims under IBC" issued by Committee on Insolvency & Bankruptcy Code, ICAI which stated that "*claim will not be rejected on the basis that the claim is filed in wrong form*". Further, she was also asked during

the course of personal hearing why she did not follow the reply given in **FAQ on Claims** in the Resolve, December, 2020-Quarterly Journal of ICSI-IIP stating that “*Claim will not be disqualified just because it has been filed in an incorrect form.*” She submitted that the said handbook only served as a guiding light as to how to deal with the claim but was not binding on any of the stakeholders. Further, she herein is bound by the Code and Liquidation Regulations and there was no provision in the Code or the Liquidation Regulations which suggested that claim filed in the wrong form shall not be rejected. It is pertinent to note that Liquidator is an officer of the court which is a result of the creature of the statute, and it cannot travel beyond the boundaries of the statute when no power was conferred in the statute in this regard on the Liquidator. Further, the EPFO, at the relevant point of time could have filed an appeal under Section 42 of the Code when the form was not considered by her and the said position of law could have been determined by the AA. However, no such step was taken by the department.

- 2.2.20 She submitted that in light of what is stated above, she submitted that there was no ill intention on her part to not admit the claim of the EPFO. She had exercised reasonable prudence and due diligence and had not considered the claim of the department accordingly at the relevant point of time as per the prevailing position of law which has gone a sea change in the recent years. Therefore, the same may be considered before passing any order in the present proceedings.

## 2.3 Analysis and Findings.

- 2.3.1 The timelines of the events which transpired with respect to the claim of the EPFO is tabulated as below:

Liquidation commencement date	28.06.2022
Public Announcement	01.07.2022
Email by Liquidator to the EPFO requesting submission of claim	14.07.2022
Claim received from the EPFO in Form F under regulation 9A of the CIRP Regulations along with email which stated that PF dues are not part of the assets of the CD and that PF dues shall have first charge on the assets of the CD and shall be paid in priority to all other debts (including secured debts) and referred order dated 12.09.2018 in matter of <i>M/s Precision Fasteners Ltd. vs EPFO</i> , and judgement dated 19.12.2019 in matter of <i>Regional P.F. Commissioner-I Vs Ramchandra D. Chaudhary</i> .	27.07.2022
Email by Liquidator to the EPFO intimating about wrong form and requesting to submit Form C under Liquidation Regulation. There is no reply with reference to the judgment quoted by the EPFO.	01.08.2022
Email by the EPFO informing that as per Code, claim Form ‘C’ is required to be submitted in respect of OCs which is accorded lower priority compared to the dues of Employees Provident Fund. It stated that as per EPF & MP Act, 1951 PF dues which basically reflect the amount which in future will become payable to employees in the form of PF/ Pension/ Insurance benefits, are to be paid in priority to all other debts in the	12.08.2022

distribution of the property of the insolvent. In the circumstances, the request for Filing of dues in claim application Form C cannot be acceded to in view of the priority which is accorded to the said application form.	
It stated that as per various judgements PF dues are not part of liquidation estate and are to be paid in priority of other dues and referred judgement of dated 18.02.2021 in the matter of <i>V-con Integrated Solution Pvt. Ltd vs Acharya Techno Solution (India) Pvt Ltd &amp; others</i> .	
Email by Liquidator stating that CD is in liquidation and not under CIRP and form has been filled under CIRP. It requested to submit the claim in Form C under Liquidation Regulation. There is no reply with reference to the judgment quoted by the EPFO.	16.08.2022
Regulation 30 of Liquidation Regulation was amended providing that the liquidator shall also verify the claims collated during the corporate insolvency resolution process but not submitted during the liquidation process, within thirty days from the last date for receipt of claims during liquidation process and may either admit or reject the claim, in whole or in part.	16.09.2022
The Liquidator sold the assets of the CD through first public e-Auction	18.11.2022
Letter from the EPFO stating that no communication has been received from Liquidator after email dated 16.08.2022 and that any delay will attract penal damages and penal interest. It reiterated that under Section 36(4) of the Code, dues towards Provident Fund, Pension and Gratuity constitute third party assets and in the consequence, thereof, are excluded from the liquidation estate of the CD and referred judgment dated 11.03.2022 in the matter of <i>Sikandar Singh Jamwal vs Vinay Talwar</i> , and judgement dated 19.04.2022 by the Hon'ble Supreme Court in the matter of <i>Sunil Kumar Jain Vs Sundaresh Bhatt</i> .	26.12.2022
Letter from the EPFO again reiterating the contents of letter dated 26.12.2022.	20.03.2023
The Liquidator sold the assets of the CD through second public e-Auction	31.03.2023
Letter from the EPFO again reiterating the contents of latter dated 26.12.2022.	19.05.2023
Sale proceeds distributed by the Liquidator.	20.10.2023
Bank account of the CD was closed	25.10.2023
Complaint filed by the EPFO before IBBI	27.10.2023
Form C under regulation 17 of Liquidation Regulations was received from the EPFO	30.10.2023
Application for dissolution of CD filed by the Liquidator before the AA.	02.11.2023
IA 1472/2023 filed by the EPFO before the AA for consideration of its claim by the Liquidator.	22.12.2023
The AA disposed of IA/1472/2023 on submission of the Liquidator that she will reconsider the claim of the EPFO	10.06.2024
Claim of the EPFO has been satisfied by the Liquidator	02.07.2024

From the events tabulated above it has been observed that Ms. Bhavi Shreyans Shah prolonged the issue of admission of claims unnecessarily when the issue could have been resolved. The DC is aware that the handbook issued by Committee on Insolvency &

Bankruptcy Code by ICAI as well as journal dated December, 2020 of ICSI IIP and IBBI discussion paper dated 14.06.2022 is not binding on an IP, however, the guidance was available to her right in the beginning for accepting the claim even when the same was submitted initially.

2.3.2 For accepting a claim, the ingredients which need to be satisfied are whether the identity of the claimant is genuine or whether the origin of claim is a genuine, i.e., based on contract between parties or demand raised by statutory authorities. In this case, claimant was filed by the EPFO. So, there cannot be any doubt about the genuineness of claimant. In respect of genuineness of claim amount, no doubt has been raised ever by Ms. Bhavi Shreyans Shah. Also, she has not been able to point out that any information was missing in the details submitted by the EPFO which could have been available only in the correct form. The facts that the claim of the same amount has been admitted during CIRP makes the rejection of the claim in the wrong form technical in nature. This rejection of claim on the technical ground only increased litigation wherein an application was filed by the EPFO before the AA to get their claim. This led to stretching the process even after its completion. Further, she submitted before the AA to reconsider the claim of the EPFO and on the basis of such submission, the application filed by the EPFO was disposed of by the AA which could have been done in the first instance itself as the claim was same as admitted during CIRP.

2.3.3 The DC further notes the submission of Ms. Bhavi Shreyans Shah that the claim raised by the EPFO has been fully satisfied. A demand draft dated 29.06.2024 was issued in accordance with the instructions of the SCC members in favour of the EPFO, covering the entire claim amount and the EPFO has acknowledged the same.

2.3.4 The DC observes that the assets of the CD were sold in the auction on 18.11.2022 and 31.03.2023 and sale proceeds were distributed on 20.10.2023. Much before the sale of the assets of the CD and distribution of the sale proceeds, the Liquidation Regulation had been amended to take care of the claim which is filed during CIRP but not during Liquidation proceeding. Ms. Bhavi Shreyans Shah failed to act as per the amended Liquidation Regulation which provided as under :- .

*“Provided that the liquidator shall also verify the claims collated during the corporate insolvency resolution process but not submitted during the liquidation process, within thirty days from the last date for receipt of claims during liquidation process and may either admit or reject the claim, in whole or in part.”*

The Hon’ble NCLAT in matter of Mr. Sundaresh Bhat, Liquidator of ABG Shipyard Limited, CA (AT) (Ins) No. 398 of 2021 was faced with an issue regarding whether payment of consideration for sale of assets through public auction should be made within 15 days of conclusion of e-auction after declaration of the highest bidder or within 90 days as per the amendment dated 25.07.2019 in the Schedule I Clause 12 of the Liquidations Regulations. The Circular dated 26.08.2019 provided that the amendment dated 25.07.2019 will be

applicable to liquidation process commencing after 25.07.2019 while in case before the NCLAT the liquidation commenced on 25.04.2019 which was before the amendment dated 25.07.2019. The NCLAT while analysing the issue observed as follows:-

*“13. Perusing the Liquidation Regulations and Clause 12 of Schedule I as was subsequently introduced on 25.07.2019, the substituted Regulation which has been brought by way of amendment does not show that the Regulation is to be applied only prospectively. It is open ended provision relating to procedural law which in no way states that it will not apply to pending liquidation processes on the date of substitution....”*

It further observed in para 13 that

*“....Reading the Regulation as amended we find it must be held to be applicable to liquidation process which are pending, and the provision can be applied considering stage of the process, irrespective of the date whether the liquidation process started before 25.07.2019 or on or after 25.07.2019 when Clause 12 Schedule I of the Regulations was substituted. This is not to say that sales already cancelled before 25.07.2019 for default of payment under earlier existing clause 12 can be reopened. Liquidators can rely on the amendment at the time of issue of Auction Notice being issued, irrespective of date of liquidation order of Adjudicating Authority.”*

Thus, the NCLAT allowed the amended time period of 90 days to be applied for payment for consideration of sale even when the liquidation process commenced after aforesaid amendment. The NCLAT allowed the procedural amendment to be applied retrospectively depending on the stage of liquidation. Since, the amendment in Regulation 30 of the Liquidation Regulations is procedural in nature, the same will apply to all claims which have not yet attained finality. After the amendment in the Liquidation Regulations on 16.09.2022, the EPFO sent multiple letters to Ms. Bhavi Shreyans Shah on 26.12.2022, 20.03.2023 and 19.05.2023 for consideration of their claim. Ms. Bhavi Shreyans Shah did not admit claim of EPFO even after communications were made again and again by EPFO to consider its claim. The submission of Ms. Bhavi Shreyans Shah that the claim submitted in wrong form is as good as not submitted is incorrect in view of the amended regulation 30 as per which the claim admitted during CIRP should have been admitted even when the same was not filed during liquidation process. In the present case, the claim was filed and was repeatedly being followed by EPFO and even then, the same was not being admitted though all information related to the claim was available with the liquidator. Therefore, action of not accepting the claim of EPFO by Ms. Bhavi Shreyans Shah after the communication of EPFO after amendment of regulation 30 was not in compliance with the provisions of regulation 30 of the Liquidation Regulations.

### 3. Order

- 3.1 In view of the forgoing discussion, SCN, reply to the SCN, oral and written submission made by Ms. Bhavi Shreyans Shah and the other materials made available to the DC, the DC finds Ms. Bhavi Shreyans Shah in contravention of Section 35(1)(a) and Section 208(2)(a) of the Code, Regulation 30 of Liquidation Regulations, Regulation 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and Clause 10 of the Code of Conduct specified under IP Regulations.
- 3.2 The DC, in exercise of the powers conferred under Section 220(2) of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby imposes penalty of the amount equivalent to the claim amount of the EPFO, which had not been admitted by Ms. Bhavi Shreyans Shah, i.e. Rs.40,956(Rupees forty thousand nine hundred fifty six) and she is directed to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of “penalty imposed by IBBI” on <https://bharatkosh.gov.in> within 45 days from the date this order.
- 3.3 This Order shall come into force immediately in view of the para 3.2 of this order.
- 3.4 A copy of this order shall be sent to the CoC/ Stake Holders Consultation Committee (SCC) of all the corporate debtors in which Ms. Bhavi Shreyans Shah is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Ms. Bhavi Shreyans Shah.
- 3.5 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Ms. Bhavi Shreyans Shah is enrolled as a member.
- 3.6 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.

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: 06 January 2025

Place: New Delhi