

# INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/224/2024

26 June, 2024

## Order

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/R(INSP)/2020/1/866/232 dated 14.05.2024 issued to Mr. Shashi Agarwal, an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with registration No. IBBI/IPA-001/IPP00470/2017-2018/10813, (presently registration cancelled by order of Disciplinary Committee dated 13.05.2022), and a Professional Member of the Indian Institute of Insolvency Professionals of ICAI (IIIP-ICAI), having residential address recorded with IBBI as R/o Subarna Apartment, 21 N Block-A, New Alipore, Kolkata, West Bengal – 700053.

### 1. Brief Background

1.1.Mr. Shashi Agarwal was appointed as interim resolution professional (IRP)/ resolution professional (RP)/liquidator in the following matters:

S. No	Name of Corporate Debtor	Appointed as	Date of Appointment by Adjudicating Authority (AA)
1	Falcon Consultancy Pvt Ltd (CD-1)	IRP	23.02.2018
		RP	25.04.2018
2	Global Coke Ltd. (CD-2)	IRP	10.05.2018
3	Sarswati Sales Pvt. Ltd (CD-3)	IRP	24.06.2019
		RP	29.07.2019
		Liquidator	07.11.2019
4	Dayal Commercial Co. Pvt. Ltd. (CD-4)	IRP	29.11.2018
		RP	31.12.2018
5	Yash Smelter Pvt. Ltd (CD-5)	IRP	25.07.2019
		RP	16.09.2019
		Liquidator	27.01.2020

1.2. Mr. Shashi Agarwal was also appointed as an Interim Resolution Professional (IRP) in the matter of Corporate Insolvency Resolution Professional of M/s. Incab Industries Limited vide AA, Kolkata order dated 07.08.2019 and was later confirmed as the Resolution Professional (RP). With regard to the conduct of Mr. Shashi Agarwal in the CIRP of M/s. Incab Industries

Limited, the Board had issued a SCN dated 10.09.2021 to Mr. Shashi Agarwal and the same came to be disposed of by the Disciplinary Committee (DC) of IBBI vide order dated 13.05.2022, cancelling the registration of Mr. Shashi Agarwal having Registration No. IBBI/IPA-001/IP-P00470/2017- 18/10813.

**2. Issuance of Show Cause Notice (SCN) and hearing before the Disciplinary Committee(DC) with regard to the conduct of Mr. Shashi Agarwal in the CD-1, CD-2, CD-3, CD-4 & CD-5 (Corporate Debtors)**

- 2.1. The IBBI, in exercise of its powers under Section 196 of the Code read with Regulations 3(1) and 3(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Shashi Agarwal. In compliance with Regulation 6(1) of Inspection Regulations, the IA shared the Draft Inspection Report (DIR) with Mr. Shashi Agarwal on 09.02.2021 to which response was received on 06.03.2021. Thereafter, the IA submitted the Inspection Report (IR) on 02.06.2021 in accordance with the Regulation 6(4) of the Inspection Regulations.
- 2.2. The IBBI issued the SCN to Mr. Shashi Agarwal on 13.01.2023 in respect of his role as an IRP/RP in the CIRP of CD-1, CD-2, CD-3, CD4 and CD-5. Mr. Shashi Agarwal submitted his reply to the SCN vide email dated 04.10.2023. The DC considered the SCN, the reply to the SCN, and submissions of Mr. Shashi Agarwal, and disposed of the SCN dated 13.01.2023 vide its order dated 26.02.2024 by imposing a penalty of Rs.2,00,000 (Rupees two lakhs only) and directed Mr. Shashi Agarwal to deposit the amount of the penalty to the Consolidated Fund of India (CFI) under the head of “penalty imposed by IBBI”.
- 2.3. The aforesaid DC order dated 26.02.2024 was challenged by Mr. Shashi Agarwal vide W.P.A./9662/2024 before the Hon’ble High Court of Kolkata. The aforesaid W.P.A./9662/2024 was disposed of by Hon’ble High Court of Kolkata vide order dated 30.04.2024 wherein the show cause notice dated 13.01.2023, was set aside, with the liberty to Board to issue fresh show cause notice. The relevant part of Hon’ble High Court of Kolkata order dated 30.04.2024 in W.P.A./9662/2024 is reproduced herein below: -
- “4. Accordingly, WPA 9662 of 2024 is disposed of, thereby setting aside the impugned show cause notice dated January 13, 2023 and all consequential steps taken pursuant thereto, including the final order against the petitioner.*
- 5. The respondent nos.2 to 4 shall issue a fresh show cause notice to the petitioner, if the said respondents so deem fit and they are otherwise entitled to do so in law, within a fortnight from date.”*
- 2.4. Further, the Board issued a fresh Show Cause Notice (SCN) dated 14.05.2024 to Mr. Shashi Agarwal based on the findings in the inspection report in respect of his role as an IRP/RP in the CIRP of CD-1, CD-2, CD-3, CD4 and CD-5.

2.5.The IBBI referred the SCN and reply to the SCN by Mr. Shashi Agarwal dated 30.05.2024 to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Further Mr. Shashi Agarwal availed opportunity of personal hearing before the DC on 14.06.2024, through virtual mode. He submitted additional written submissions on 14.06.2024.

2.6.The DC has considered the SCN, the reply to the SCN, and submissions of Mr. Shashi Agarwal, and proceeds to dispose of the SCN.

### **3. Alleged Contraventions, Submissions of Mr. Shashi Agarwal, Analysis and Findings**

The contraventions alleged in the SCN and Mr. Shashi Agarwal's written and oral submissions thereof are summarized as follows:

#### **3.1.Preliminary Objections**

##### **a) The proceedings in this matter can be combined with the proceedings initiated against the IP in the matter of M/s. Incab Industries Limited.**

3.1.1. Mr. Shashi Agarwal submitted that he was in receipt of a SCN dated 10.09.2021 relating to M/s. Incab Industries Ltd., wherein the Disciplinary Proceeding was initiated by the Board and concluded on 12.05.2022. In the cases, as enumerated in the present show cause notice, in respect of which the final inspection report was available to the Board on 02.06.2021, the Board could have issued a combined show cause notice and proceeding if any could have been completed in the year 2022.

#### **Observations of the DC**

3.1.2. The present SCN referred to the DC in respect to the CD-1, CD-2, CD-3, CD-4 & CD-5 is based on a routine inspection ordered by Board on 06.08.2020 and the SCN dated 10.09.2021 disposed of on 13.05.2022 was related to M/s. Incab Industries Limited. Thus, there are different facts and contraventions alleged in aforesaid two SCNs. Hence, the DC finds that there was no infirmity in issuing separate SCNs.

##### **b) Submission of the Inspection Report after due date**

3.1.3. Mr. Shashi Agarwal submitted that present SCN issued is based on the Inspection Report dated 02.06.2021 and the inspection was carried out based on the inspection order dated 06.08.2020 wherein IA was supposed to submit the inspection report by 30.09.2020, whereas the final inspection report is dated 02.06.2021.

### **Observations of the DC**

3.1.4. The DC observes that the inspection was conducted in accordance with functions of the Board provided under Section 196 of the Code.

#### **c) SCN is bad in law and nullity**

3.1.5. The show cause has to be within the four corners of the Inspection Report and any allegation made beyond the final finding/ conclusion of the final inspection report will be hit by the Principle of Natural Justice, and said Show Cause has to be set aside. The charges have been framed beyond the final observation of the IA, documents submitted to the IA, orders of the AA and other material papers available in the records. The SCN is bad in law, it is not in accordance with the Regulation 12(2), Regulation No. 12(5) and other Regulations of the Inspection Regulation.

### **Observations of the DC**

3.1.6. The draft of the Inspection Report was shared with the IP by the IA vide email dated 09.02.2021, for his reply and comments on the allegations made therein. The IP responded vide his email dated 06.03.2021. After considering the comments/explanations of IP, the IA submitted the final inspection report to the Board on 02.06.2021. On receipt of order of Hon'ble High Court of Calcutta, the Board had issued a fresh SCN to Mr. Shashi Agarwal on 14.05.2024. Mr. Shashi Agarwal has submitted his reply to the SCN vide email dated 04.10.2023. The DC has considered the new SCN, the reply to the SCN, and submissions of Mr. Shashi Agarwal.

#### **d) SCN does not satisfy the test of reasonability**

3.1.7. Mr. Shashi Agarwal submitted that the SCN does not satisfy the test of reasonability and has not been issued within a reasonable time. There is delay in issuing the earlier show cause notice dated 13.01.2023 which is after 1 year and 7 months from the final inspection report and the present notice is about more or less 3 years from the date of the final inspection report.

3.1.8. The show cause notice is barred by Constructive *res judicata* as a show notice dated 10.09.2021 was issued much after the final inspection report dated 02.06.2021 was available with the Board.

### **Observations of the DC**

3.1.9. These preliminary objections have been dealt under paragraphs no. 3.1.2, 3.1.4, and 3.1.6.

**e) After order dated 13.05.2022, Board/DC becomes functus officio**

- 3.1.10. Initially IBBI issued Show Cause Notice dated 10.09.2021 and the disciplinary authority passed an order on 13.05.2022. After passing of the order, the Board/disciplinary Committee has become functus officio, hence, the show cause has been issued without authority, jurisdiction and power.

**Observations of the DC**

- 3.1.11. On consideration of the inspection/investigation report of the inspecting authority/ investigating authority, if any *prima facie* view is formed that there is contravention on the part of IP, then the SCN is issued by the Board and the matter is referred to DC for disposal.

**f) SCN dated 14.05.2024 being received on 22.05.2024 is beyond the time granted by the Hon'ble High Court, Calcutta**

- 3.1.12. Mr. Shashi Agarwal submitted that the Hon'ble High Court, Calcutta upon hearing and based on final findings in Final Inspection Report dated 02.06.2024, inter alia, ordered as follows:-  
*The respondent Nos- 2 to 4 shall issue a fresh show cause notice to the petitioner, if the said respondents so deem fit and they are otherwise entitled to do so in law, within a fortnight from date.* The show cause notice being received on 22.05.2024, is beyond the time granted by the Hon'ble High Court and therefore, is not sustainable

**Observations of the DC**

- 3.1.13. The Hon'ble High Court of Kolkata vide its order dated 30.04.2024 in W.P.A./9662/2024 had granted Board the liberty to issue a *fresh show cause notice to the IP, if the Board deems deem fit and they are otherwise entitled to do so in law, within a fortnight from date.* The relevant extract of the said order is reproduced herein below:-

*"4. Accordingly, WPA 9662 of 2024 is disposed of, thereby setting aside the impugned show cause notice dated January 13, 2023 and all consequential steps taken pursuant thereto, including the final order against the petitioner.*

*5. The respondent nos.2 to 4 shall issue a fresh show cause notice to the petitioner, if the said respondents so deem fit and they are otherwise entitled to do so in law, within a fortnight from date."*

On receipt of the Hon'ble High Court, Calcutta order dated 30.04.2024, the Board had issued a fresh SCN on 14.05.2024 to Mr. Shashi Agarwal within the timeline of 14 days from the date of order as prescribed by Hon'ble High Court of Calcutta. Further, the SCN dated 14.05.2024 was electronically sent to Mr. Shashi Agarwal on his registered e-mail address on 14.05.2024.

## **In the matter of M/s. Falcon Consultancy Pvt Ltd (CD-1)**

### **3.2. Contravention-I**

#### **Non-appointment of Valuers (CD – 1)**

- 3.2.1. It was observed that the AA, *vide* order dated 31.08.2018 directed Mr. Shashi Agarwal to, *inter alia*, get the assets of the CD-1 assessed. The AA in its subsequent order dated 05.12.2018, however, observed that Mr. Shashi Agarwal did not get the assets of the CD-1 assessed.
- 3.2.2. It was further noted that Mr. Shashi Agarwal in his reply to the DIR stated to have appointed two registered valuers and to have shared with IA the valuation report also. It was, however, observed that these two valuation reports were done at the behest of one Mr. Pravat Kumar Dash and owner of the property was mentioned as Aqua Gold Fin Tower Pvt Ltd., Jayanti Kumar Samal and Punia Behera & others in both the valuation reports. In the absence of name of CD-1 as owner of property under valuation and also after taking into account the fact that valuation has been done on the order of person other than Mr. Shashi Agarwal as RP in the CIRP of CD-1, this valuation report cannot be considered to be a report required under Regulation 27 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations).
- 3.2.3. It was also noted that in CIRP-2 form filed by Mr. Shashi Agarwal on 27.12.2019, he had mentioned "NA" against the expense head "Registered Valuer". Further, as per disclosures made by him in terms of Board circular dated 16.01.2018, he stated to have appointed two valuers on 02.09.2018 but there was nothing to indicate that any fee to such valuers had either been paid or approved by the CoC.
- 3.2.4. It was, thus, evident that Mr. Shashi Agarwal misled the Board both under disclosures made by him in terms of Board circular dated 16.01.2018 as well as in his reply to the DIR that he appointed two registered valuers whereas these valuers seem to have been appointed at the behest of Mr. Pravat Kumar Dash and owner of the property valued upon has been mentioned as Aqua Gold Fin Tower Pvt Ltd., Jayanti Kumar Samal and Punia Behera & others in both the valuation reports.
- 3.2.5. In view of the above, the Board held the *prima facie* view that Mr. Shashi Agarwal, *inter alia*, violated Regulation 27 of the CIRP Regulations read with clauses 2 and 12 of Code of Conduct under First Schedule to IBBI (Insolvency Professionals) Regulations, 2016 (Code of Conduct).

## Submissions by Mr. Shashi Agarwal

3.2.6. Mr. Shashi Agarwal submitted that the status of CD-1 prior to initiation of CIRP was "Struck-off" under Section 248 of Companies Act, 2013 and dissolved. The Financial Creditor (FC) (being the petitioner and sole member of Committee of Creditors (CoC) did not inform the AA before passing of order for admission of CIRP that the name of the CD is struck-off and accordingly dissolved. The relevant provisions of the Companies Act, 2013, *inter alia*, which are as follows:

Section 248 of the Companies Act, 2013:-

248. Power of Registrar to remove name of company from register of companies.

...

*(5) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.*

*(6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company: Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.*

*(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.*

3.2.7. Mr. Shashi Agarwal submitted that after he was appointed as an IRP, he immediately took steps to remove/change the status of the CD-1 from being stuck-off and dissolved by filing an application before the AA for restoration of its status to active under Section 252 of the Companies Act, 2013. There was no guideline and no reported judgement which would assist in the CIRP of CD-1.

3.2.8. The CoC of the CD-1 consisted of only one FC, and in the CoC meeting held on 03.07.2018, the CoC approved for liquidation of CD-1, as the status of the CD was struck off and dissolved. Thereafter he filed the application being IA No. 704/KB/2018 on 30/07/2018 for liquidation of the CD-1. Mr. Shashi Agarwal submitted that the AA vide order dated 04.06.2018, dismissed the application filed under Section 252 of the Companies Act, 2013 for changing the status of the CD-1 from 'Struck-Off' to 'Active'. This order was annexed with an application no. I.A. 704/KB/2018 filed under Section 33 of the Code for passing liquidation order. The AA vide

order dated 31.08.2018 kept the application for liquidation pending and directed the RP to initiate steps for CIRP. Thereafter, two valuers (i) Harpriya Associates Pvt. Ltd. and (ii) Er. Bidyadhar Panda were appointed, and Form G was published in Business Standard (Bhuneshwar Edition) and in Orissa Bhaskar on 19.09.2018.

- 3.2.9. Mr. Shashi Agarwal submitted that with respect to the registered valuer, two valuers, namely (i) Harpriya Associates Pvt Ltd and (ii) Er. Bidyadhar Panda, were duly appointed under the provisions of the Code. However, their fees were not ratified by the CoC, and as a result, it was not included in the CIRP cost and is therefore not shown under the "Fees" heading in the disclosures. Instead, "NA" is mentioned against the expense head "Registered Valuer." Nevertheless, the valuers have submitted their bills.
- 3.2.10. Mr. Shashi Agarwal submitted that disclosure of the appointment of both valuers was made on 20.11.2018 with IIP-ICAI and that too before order of the AA dated 05.12.2018. Mr. Shashi Agarwal submitted that in compliance of the order of the AA, two valuers appointed have valued the assets of the CD-1 but at the time of the inspection of the property, the valuers must have taken some persons' help and assistance from the locality and accordingly they must have stated their name. He has no control over the valuer, from whom he will take help or assistance for the valuation purpose. The valuer has valued the assets of the CD-1 as per available records from the local government and accordingly, he has stated the name of the owner of land whereas in compliance of Regulation 35 of the CIRP Regulations the valuers have stated both:-  
(i) Fair Value (i) Rs 21.88 Crores (ii) Rs 20.45 Crores and  
(ii) Liquidation value (i) Rs 16.41 Crores (ii) Rs 16.77 Crores respectively.  
Mr. Shashi Agarwal submitted that in the report of two valuers have also stated that the valuation report for which the valuation is made is "For Insolvency & Liquidation Purpose" by Er. Bidyadhar Panda, Valuer and "For Insolvency Purpose" by Harpriya Associates Pvt Ltd, Valuer.
- 3.2.11. Mr. Shashi Agarwal submitted that at that relevant point of time, the provisions and regulations relating to registered valuers were not applicable (i.e. neither notified nor applicable) due to which there was no fixed standard and guideline applicable to valuers. On receipt of the valuation report, he was interested in observing that both valuers have stated fair value and liquidation value or not. Details of the land including an area of land given in the respective valuer report matches with the schedule of land as stated in loan agreement between the FC and CD-1.
- 3.2.12. Mr. Shashi Agarwal submitted that in the reports of both valuers, it was stated that the lands are related to three individuals and other persons. It should be clarified that the valuation report is not on behalf of three individuals and other persons, as observed by the IA. Instead, it has been correctly stated that the land belongs to three persons and other individuals. It appears



that the valuer has submitted the valuation report based on documents available in the Government records and accordingly, he has given the name of the land owner as reflected in the Government records at the time of valuation from which it will appear that the owner of the land is "M/s Aqua Gold Fin Tower Pvt Ltd" (i.e. as stated in the the Valuation report - owner of :- Aqua Gold Fin Tower Pvt Ltd, Jayanti Kumari Samal, Punia Behera & Others). It was also reflected in the deed which was supplied by the FC that it is the same land as other details are same.

- 3.2.13. Mr. Shashi Agarwal denied having misled the board in the disclosures. He acknowledges that if there is any mistake, it is due to his failure to thoroughly review the valuation report, as pointed out by the IA. He submitted that his decisions were based on the status of the CD-1, which had been struck off and dissolved.

### **Summary Findings**

- 3.2.14. In the valuation report it is clearly mentioned that valuation was done on the behest of Mr. Pravat Kumar Dash and owners of the property were Aqua Gold Fin Tower Pvt Ltd., Jayanti Kumar Samal and Punia Behera & others. Had Mr. Shashi Agarwal perused the valuation report, he would have come to know that the valuation has not been done on his instruction and the property valued is not owned by the CD. The DC finds that the said valuation report cannot be said to be for the assets of the CD. Hence Mr. Shashi Agarwal has misrepresented the facts that the valuation of assets of the CD was conducted. Therefore, the DC holds the charge made in the SCN.

### **In the matter of M/s. Global Coke Ltd (CD-2)**

#### **3.3. Contravention-II**

##### **Non-appointment of Valuers (CD – 2)**

- 3.3.1. The Board observed that Mr. Shashi Agarwal was appointed as IRP in the CIRP of the CD-2 on 10.05.2018 and remained as IRP till he demitted office on 09.07.2018. It is, thus, noted that he remained IRP in the CIRP of the CD-2 for 60 days. However, he did not appoint any registered valuers to determine the valuation of the CD-2 during his tenure as IRP. Mr. Shashi Agarwal in his reply to DIR merely stated that RP was confirmed on 09.07.2018 and hence there was no delay but he did not deny of having not appointed any valuer during his tenure as IRP. In view of the above, the Board held the prima facie view that Mr. Shashi Agarwal had, *inter alia*, violated Regulation 27 of the CIRP Regulations read with clauses 13 and 14 of Code of Conduct.

## **Submissions by Mr. Shashi Agarwal**

- 3.3.2. Mr. Shashi Agarwal submitted that he was appointed as an IRP by an order dated 10.05.2018 of the AA. However, the CoC in a meeting held on 18.06.2018 replaced him and appointed Mr. Anil Agarwal as RP. The same was regularized by the AA on 09.07.2018. He quoted Regulation 27 of CIRP Regulation effective during his tenure as an IRP in the above matter viz. Global Coke Limited:

Substituted by Notification No. IB81/2017-18/GN/REG024, dated 06.02.2018 (w.e.f. 06-022018).

*Regulation - 27. Appointment of registered valuers.*

*The resolution professional shall within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date], appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with Regulation 35:*

*Provided that the following person shall not be appointed as registered valuers, namely:*

*(a) a relative of the resolution professional;*

*(b) a related party of the corporate debtor;*

*(c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or*

*{d) a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.*

- 3.3.3. He submitted that since the CoC had already appointed Mr. Anil Agarwal as the RP of the concerned CD on 18.06.2018 so he was never the RP of the CD. Hence it was the duty of new RP Mr Anil Agarwal, to appoint valuer and not of IRP. Accordingly, based on the above stated regulations and explanation it can be observed that it was only the RP who was required to appoint valuer and not the IRP.

## **Summary Findings**

- 3.3.4. As per Section 5(27) of the Code, as applicable then, the Resolution Professional is defined as: “*resolution professional*”, for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional.”. Further, Section 16(5) of the Code was amended in 2018 (w.e.f. 06.06.2018), which provides that “*The term of the interim resolution professional shall continue till the date of appointment of the resolution professional under Section 22.*”
- 3.3.5. In view of the above, although the CoC in a meeting held on 18.06.2018 replaced Mr. Shashi Agarwal and appointed Mr. Anil Agarwal as RP, it was the duty of Mr. Shashi Agarwal as IRP

to appoint the valuer in terms of Regulation 27 of CIRP Regulations. The contention of Mr. Shashi Agarwal that he was never the RP of the CD, and it was the duty of new RP Mr Anil Agarwal, to appoint valuers and not of him as IRP is not tenable. Hence, the DC finds that Mr. Shashi Agarwal has violated the provision of Regulation 27 of the CIRP Regulations read with clauses 13 and 14 of Code of Conduct.

### **3.4. In the matter of M/s. Sarswati Sales Pvt. Ltd (CD-3)**

#### **Contravention-III**

#### **Non-cooperation by Mr. Shashi Agarwal in conducting inspection (CD -3)**

- 3.4.1. In the second progress report dated 30.09.2019 filed during CIRP of CD-3, it was mentioned that two registered valuers were appointed during the second CoC meeting held on 08.08.2019. However, the minutes of the 2<sup>nd</sup> CoC meeting were not made available. The fact of non-availability of minutes of 2<sup>nd</sup> CoC was clearly mentioned in the DIR but Mr. Shashi Agarwal still did not provide copy of minutes of the 2<sup>nd</sup> CoC meeting to the IA. In view of the above, the Board held the prima facie view that he has violated Regulations 4(4) and 4(7) of the Inspection Regulations and clauses 18 and 19 of the Code of Conduct.

#### **Submissions by Mr. Shashi Agarwal**

- 3.4.2. Mr. Shashi Agarwal submitted that always cooperation was provided in the conduct of the inspection as and when the inspection team sought for the Information. On receipt of the draft inspection report, a reply was provided along with various annexures marked with A to V. But inadvertently, it seems that the 2<sup>nd</sup> CoC minutes were missed out to be annexed. Therefore, the same was provided with reply to SCN and prayed for condonation.

#### **Summary Findings**

- 3.4.3. Mr. Shashi Agarwal has accepted that he inadvertently missed to provide the minutes of 2<sup>nd</sup> CoC meeting. However, he has still not provided the said minutes and instead forwarded the minutes for 2<sup>nd</sup> SCC (Stakeholders' Consultation Committee) meeting dated 19.04.2022. Hence, the DC finds Mr. Shashi Agarwal in contravention of alleged provisions.

### **3.5. Contravention-IV**

#### **Delay in filing of relationship disclosure (CD -3)**

- 3.5.1. In the second progress report dated 30.09.2019 filed during CIRP of CD-3, it was mentioned that, in the 2<sup>nd</sup> CoC meeting held on 08.08.2019, two registered valuers, namely Mr Sanjai Kumar Gupta and Mr. Pranab Kumar Chakrabatry, were appointed. However, the disclosure

on the website of the IPA was filed on 09.10.2019 i.e. with a delay of two months. In view of the above, the Board was of the prima facie view that Mr. Shashi Agarwal has violated the circular dated 16.01.2018 and clause 13 of Code of Conduct.

#### **Submissions by Mr. Shashi Agarwal**

- 3.5.2. Mr. Shashi Agarwal accepted that there was a delay of two months in filing the disclosures from his end. He submitted that such delay did not cause any prejudice or financial loss to any of the stakeholders of the CD-3, no complaints were made and/or no one was aggrieved by such delay, be that as it may, and he tendered unconditional apology for such delay and prayed condonation.

#### **Summary Findings**

- 3.5.3. The DC notes that Mr. Shashi Agarwal has accepted the delay in filing the relationship disclosure, as alleged in the SCN.

#### **In the matter of M/s. Daval Commercial Co. Pvt. Ltd. (CD-4)**

##### **3.6. Contravention-V**

##### **Delay in filing of Relationship disclosure (CD-4)**

- 3.6.1. It was observed that Mr. Shashi Agarwal was confirmed as RP on 31.12.2018 but the submission of disclosure was made on the website of the IPA on 23.08.2019 i.e. with a delay of nearly eight months. In view of the above, the Board held the prima facie view that Mr. Shashi Agarwal violated the circular dated 16.01.2018 and clause 13 of Code of Conduct.

#### **Submissions by Mr. Shashi Agarwal**

- 3.6.2. Mr. Shashi Agarwal submitted that there was a delay in filing of relationship disclosure for confirmation of IRP to RP. He informed that at relevant point of time talks were going on for the settlement and finally on 05.04.2019 the application for withdrawal of the CIRP was filed before AA. It was therefore believed that the CIRP would be withdrawn as a result of the settlement, and as such, no disclosure was filed at that time. The intention was to file all necessary disclosures together after the settlement had been concluded. He stated that such delays did not cause any prejudice or loss to any of the stakeholders of the CD-3 and prayed for lenient view.

## **Summary Findings**

- 3.6.3. Mr. Shashi Agarwal accepted the delay in filing relationship disclosure and pleaded settlement negotiations as reason for such delay. Such delay reflects casual attitude of Mr. Shashi Agarwal towards regulatory compliances. Hence the DC holds the contravention alleged in the SCN that Mr. Shashi Agarwal filed relationship disclosure with delay.

### **In the matter of M/s. Yash Smelter Pvt. Ltd (CD-5)**

#### **3.7. Contravention-VI**

##### **Delay in appointment of Valuers (CD -5)**

- 3.7.1. The CIRP for CD-5 commenced on 25.07.2019. Appointment of two registered valuers and their remuneration was discussed and finalised in the 2<sup>nd</sup> CoC meeting dated 17.10.2019. This indicates that there was an inordinate delay of 84 days in appointment of registered valuers. In view of the above, the Board held the prima facie view that Mr. Shashi Agarwal has, *inter alia*, violated Regulation 27 of the CIRP Regulations and clauses 13 and 14 of Code of Conduct.

##### **Submissions by Mr. Shashi Agarwal**

- 3.7.2. Mr. Shashi Agarwal submitted that the delay of the total period was calculated from the date of initiation of CIRP (i.e. 25.07.2019) to the date of meeting of CoC wherein the appointment of valuer was approved (i.e. 17.10.2019). He submitted that he was appointed as IRP by CoC on 25.07.2019 and *vide* order dated 16.09.2019 of the AA, appointment as Resolution Professional was confirmed. In terms of Regulation 27 of CIRP Regulations, registered valuer is to be appointed within seven days of his (i.e. RP) appointment (i.e. 07.09.2023}, but not later than forty-seventh day from the insolvency commencement date (i.e. 10.09.2019). Hence, there was a delay of 37 days from 10.09.2019 (forty-seventh day from the insolvency commencement date) to 17.10.2019 (date of the meeting of COC wherein the appointment of the valuer was approved).
- 3.7.3. He submitted that the CD-5 was neither carrying any business activity nor having any tangible assets. It had only a few financial assets. Form - G (Invitation for Expression of Interest) was published, but no resolution plan was received. An application for liquidation was filed and an order of liquidation was passed by the AA on 27.01.2020 (i.e. within more or less than 6 months 3 days from the date of commencement of CIRP). The whole CIRP did not cause any prejudice or loss to any of the stakeholders of the CD-5 and the CIRP cost was always kept minimum. Be that as it may, he tendered his unconditional apology for the delay.

## Summary Findings

- 3.7.4. The DC observed that the AA appointed Mr. Shashi Agarwal as IRP in the CIRP of CD-5 on 25.07.2019. On perusal of the minutes of the 2<sup>nd</sup> CoC meeting dated 17.10.2019, it mentioned that Mr. Shashi Agarwal was appointed as RP in the CoC meeting held on 30.08.2019. The AA *vide* order dated 16.09.2019, confirmed the appointment of Mr. Shashi Agarwal as RP.
- 3.7.5. It is to be noted that as per Section 5(27) of the Code, as applicable then, the Resolution Professional is defined as: *“resolution professional”, for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional.*” Further, Section 16(5) of the Code was amended in 2018 (w.e.f. 06.06.2018), which provides that *“The term of the interim resolution professional shall continue till the date of appointment of the resolution professional under Section 22.”* Furthermore, Regulation 17(3) of CIRP Regulations provide that *“Where the appointment of resolution professional is delayed, the interim resolution professional shall perform the functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed under Section 22.”*. Considering the above provisions, Mr. Shashi Agarwal as IRP should have continued to perform the functions of RP till his confirmation as RP by the AA.
- 3.7.6. Further, Regulation 37 of the CIRP Regulations mandates the RP to appoint registered valuers within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date. In the instant matter, the CIRP was commenced on 25.07.2019, and the appointment of two registered valuers and their remuneration was discussed and finalised in the 2<sup>nd</sup> CoC meeting dated 17.10.2019, hence, the DC holds that there was delay in the appointment of valuers.

## 4. Order

- 4.1. In view of the forgoing discussion, SCN, reply to the SCN, oral and written submissions made by Mr. Shashi Agarwal, the DC finds that Mr. Shashi Agarwal failed to act as per the provisions of Code and Regulations made thereunder, while handling the assignments under the Code. The contraventions by the IP related to his conduct during the Corporate Insolvency Resolution Process/ Liquidation Process of the CDs 1 to 5 are as follows: -
- a) Non-appointment of registered valuers in the matter of Falcon Consultancy Private Limited (CD-1) and Global Coke Limited (CD-2)
  - b) Non-cooperation and non-filing of relationship disclosure in the matter of Sarswati Sales Private Limited (CD-3).

- c) Non-filing of relationship disclosure in the matter of Dayal Commercial Co Private Limited (CD-4)
- d) Delay in appointment of registered valuers in the matter of Yash Smelter Private Limited. (CD-5)

4.2. Thus, the DC, in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby imposes penalty of Rs.2,00,000 (Rupees two lakhs only) on Mr. Shashi Agarwal and directs him to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of “penalty imposed by IBBI” on <https://bharatkosh.gov.in> within 45 days from the date of issue of this order and submit a copy of the transaction receipt to IBBI.

4.3. This Order shall come into force immediately in view of the paragraph 4.2 of the order.

4.4. A copy of this order shall be sent to the CoC/ Stakeholders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Shashi Agarwal is providing his services, if any, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Shashi Agarwal.

4.5. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Shashi Agarwal is enrolled as a member.

4.6. A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.

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

Sd/-

(Jayanti Prasad)

Whole Time Member

Insolvency And Bankruptcy Board of India

Dated: 26 June, 2024

Place: New Delhi