

ICSI Institute of Insolvency Professionals

(Disciplinary Committee)

ICSI IIP/DC/01/2023

6th June, 2023

ORDER

(Under Part III of Disciplinary Policy read with Clause 24(2) of Bye Laws of ICSI Institute of Insolvency Professionals)

1. Background

This order disposes of the Show Cause Notice dated 10th October, 2022 (SCN) issued to Mr. Santanu T Ray, 144, 14th Floor, Mittal Court, B Wing, Nariman Point, Mumbai, Maharashtra -400021, a professional member of ICSI Institute of Insolvency Professionals (ICSI IIP) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-002/IP-N00360/2017-2018/11055

The inspecting authority (IA) of ICSI IIP conducted online inspection of 7(seven) assignments handled by Mr. Santanu T Ray and prepared final inspection report, which was duly mailed to IP on 5th September, 2022. The final inspection report was placed before the Monitoring Committee on 12th September, 2022. The Monitoring Committee in its meeting directed the Secretariat to issue a SCN, based on the findings in the inspection report.

The SCN was issued by the Secretariat on 10th October, 2022. Mr. Santanu T Ray sent his reply to the SCN through e-mail dated 21st October, 2022.

The SCN along with the reply and supporting documents were placed before the Disciplinary Committee of ICSI IIP for its disposal in accordance with the Code and Regulations made thereunder. Mr. Santanu T Ray availed an opportunity of personal hearing before the DC on 17th May, 2023 along with Mr. Umesh Chand Goyal, Insolvency professional.

The DC has considered the SCN, the reply to the SCN, submissions of Mr. Santanu T Ray and other material available on record.

2. Alleged Contravention, Submissions, Analysis and Findings

The contraventions alleged in the SCN and submissions by the IP are summarized as under:

2.1 CONTRAVENTION

In the matter of **Conros Steels Private Limited**, the Liquidation process was initiated on 21st August, 2018. During Liquidation, Invoices related to fees of Liquidator amounting to Rs. 11,55,155/-, 7,86,330/- were raised in the name of **AAA Insolvency Professionals LLP**. However, IBBI circular dated 16th January, 2018 states that an insolvency professional shall render services for a fee which is a reasonable reflection of his work, *raise bills / invoices in his name towards such fees*, and such fees shall be paid to his bank account. Accordingly, ICSI IIP held the prima facie opinion that the IP has not complied with IBBI circular dated 16th January, 2018, clause 25, and 25B of Code of Conduct for IPs as per IBBI (Insolvency Professionals) Regulations, 2016.

Submissions made by the IP

The IP submitted that he is a Partner of AAA Insolvency Professionals LLP (AAA IP) i.e., the IPE. The basic constitution of the IPE is governed by Regulation 12 of the IBBI (Insolvency Professionals) Regulations, 2016 wherein the main objective of IPE is to provide support services to its partners who have pooled their resources and formed an IPE which is registered with IBBI. Since the IPEs are duly recognized by the Board for providing support services to its partners for the assignments undertaken

by them, the fee paid to the respective IPE of the Insolvency Professional shall constitute the Insolvency Resolution Process Cost ('IRPC'). In the present case, the assignment was collectively handled by the IP and the IPE during CIRP. The fee paid to the IPE by the Corporate Debtors were in lieu of the support services being provided to the IP herein for the CIRP assignments. Hence, the fee paid to the IPE being 'DIRECTLY RELATED' to the Liquidation Process are to be considered as the 'Expenses' and thus, therefore be included in the IRPC.

The relationship between the Partner(s) and IPE is governed by a Memorandum of Understanding (MOU)/LLP Agreement, whereby the scope of services to be rendered by IPE and the IP are very well clarified. The IP has nominal shareholding in the AAA Insolvency Professionals LLP of which he is a Designated Partner however, he is entitled to share in the specified revenue of each assignment which are in his name and are executed by him with the support of the IPE AAA IP in which he is a Designated Partner.

The invoices raised by IP and IPE are raised in accordance with the provisions of the Code and Regulations and the liquidation order. IPE has not charged any additional fees. In fact, the fees charged as per Regulation 4(3) of Liquidation Regulations has been divided into 30:70 ratio where 30% of the remuneration shall be paid to IP and 70% of the remuneration shall be paid to AAA IP LLP.

The billing was done by the IP and by AAA IP LLP to the extent of their share as per the LLP agreement and MOU. This was done with the sole purpose of avoiding duplication in taxation.

Hence, there is no loss either to the Corporate Debtor or to the stakeholders of the Corporate Debtor.

Analysis and Finding

The DC notes that IBBI circular dated 16th January, 2018 clearly states that an insolvency professional shall render services for a fee, which is a reasonable reflection of his work, raise bills / invoices in his name towards such fees, and such fees shall be paid to his bank account.

Further, as admitted by IP that the billing was done by IP and by the IPE to the extent of their share as per the LLP agreement and MOU, which is not allowed as per the circular and IBBI in its various orders has reiterated that the fees of the IP and any third party appointed must be raised for their respective services through proper engagement of the third party.

In view of the above, the IP has not complied with IBBI circular dated 16th January, 2018, Clause 25, and 25B of Code of conduct for IPs as per Regulation IBBI (Insolvency Professionals) Regulations, 2016.

2.2 CONTRAVENTION

In the matter of **Conros Steels Private Limited**, all the assets of the corporate debtor were sold and distributed to the stakeholders from the realisation of the assets, however, the IP did not file the application for the dissolution of the Corporate Debtor. As per Regulation 44 of IBBI (Liquidation) Regulations, 2022, the liquidator shall liquidate the corporate debtor within a period of one year from the liquidation commencement date, notwithstanding pendency of any application for avoidance of transactions under Part II of the Code, before the Adjudicating Authority or any action thereof. Accordingly, ICSI IIP held the prima facie opinion that the IP has not complied with Regulation 44 of IBBI (Liquidation) Regulations, 2016.

Submissions made by the IP

The IP submitted that apart from the Avoidance Applications/PUFE Transactions, the Liquidator was pursuing various proceedings and litigations pending before various Hon'ble Courts and Tribunals hence, the Liquidator was unable to file a dissolution application with the Hon'ble Adjudicating

Authority as per Section 54 of the Code. Further, there was no clear provision on whether dissolution application can be filed during the pendency of the transaction avoidance application, an amendment has been brought in the Liquidation Regulations vide Regulation 44A which has been inserted by Notification IBBI/2022-23/GN/REG094, dated 16th September, 2022. The IP submitted that, he, in view of the amended provisions shall call for a consultation committee meeting for seeking advise on the pursuing of the avoidance application and for dissolution of the Corporate Debtor.

The IP submitted that the liquidator is not taking any fee during the present time (after selling of all assets of Corporate Debtor) and other than legal expenses of pursuing the various applications the expenses are negligible. He also submitted that it is my duty and responsibility to close the case.

The IP in the past has made various endeavours to find parties who can take assignment of the PUFEE Transaction Application and had also engaged in a discussion with Legal Pay (litigation funding, interim financing company). However, they declined to take the assignment.

Analysis and Finding

The DC notes that as per the Regulation 44 of IBBI (Liquidation) Regulations, 2016, prevalent at the time of the liquidation process, it is clearly mentioned that the liquidator shall liquidate the corporate debtor within a period of one year from the liquidation commencement date, notwithstanding pendency of any application for avoidance of transactions under Part II of the Code, before the Adjudicating Authority or any action thereof.

The IP should have approached the Adjudicating Authority for necessary directions in case of any confusion or clarity. All the sale proceeds were distributed by 12th February, 2021, however till date no application for dissolution has been filed. The DC considered the subsequent amendment to the regulations and also the point that the Liquidator has clarified that no fees is being charged after the sale of assets. Hence, DC is of the view that in future the IP shall be careful and wherever there is difficulty in complying the legal provisions, the IP must seek directions of the Adjudication Authority.

2.3 CONTRAVENTION

In the matter of **Conros Steels Private Limited**, during Corporate Insolvency resolution process (CIRP), in the 2nd CoC meeting dated 6th March, 2018, all the members of the CoC were not present, however, the agenda to approve the “evaluation matrix” was not placed for e-voting. It was approved in the meeting itself with the members present. As per Regulation 25(5) of IBBI (CIRP) Regulations, 2016; “If all members are not present at a meeting, a vote shall not be taken at such meeting and the resolution professional shall (a) Circulate the minutes of the meeting and (b) Seek a vote on the matters listed for voting in the meeting, by electronic voting system.”. ICSI IIP held the prima facie opinion that the IP has not complied with Regulation 25(5) of IBBI (Corporate Insolvency resolution process) Regulations, 2016.

Submissions made by the IP

The IP submitted that in the 2nd CoC meeting, only 1 (one) CoC member was not present namely **Edelweiss** having voting share of 15.93% and as per unamended Section 21(8) of the Code, all decisions of the CoC shall be taken by a vote of not less than **seventy-five per cent** voting share of the financial creditors, therefore Evaluation Matrix was voted upon physically and approved.

The IP further submitted that in the 2nd CoC Meeting, after due deliberations and discussions, the evaluation matrix was approved physically by more than 75% of votes as per Law and thereafter, the agendas viz. (i) to approve and ratify CIRP cost and its funding and (ii) to appoint forensic and investigating auditor for evaluation of the preferential, undervalued, extortionate and fraudulent transactions of the Corporate Debtor were put to e-vote and were passed with voting of 87.56% and 93.48% respectively.

Analysis and Finding

The DC notes that it is clearly mentioned in Regulation 25(5) of IBBI (CIRP) Regulations, 2016 that “If all members are not present at a meeting, a vote shall not be taken at such meeting and the resolution professional shall (a) circulate the minutes of the meeting by electronic means to all members of the committee and the authorised representative, if any, within forty-eight hours of the conclusion of the meeting; and (b) seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes.

The DC considered that the vote of Edelweiss (having 15.93% voting share) would not have impacted the decision since it was already approved, nonetheless when other two agendas related to (i) to approve and ratify CIRP cost and its funding and (ii) to appoint forensic and investigating auditor for evaluation of the preferential, undervalued, extortionate and fraudulent transactions of the Corporate Debtor were put to e-vote in the same CoC meeting, this agenda should also have been put to e-vote.

In view of the above, the IP has not complied with Regulation 25(5) of IBBI (CIRP) Regulations, 2016.

2.4 CONTRAVENTION

In the matter of **Conros Steels Private Limited**, during CIRP, in the 2nd CoC meeting dated 6th March, 2018, it was mentioned that *“we have received updated financial claim from Invent Assets Securitization & Reconstruction Pvt. Ltd. and Bank of Baroda. Due to admission of Updated claim from financial creditor, committee of creditors has been revised. An updated list of claims received from financial creditors along with the admitted amount and revised voting share was presented before the members in the second meeting of COC.*

As per Regulation 13(1) of IBBI (CIRP) Regulations, 2016, the IRP/RP shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

Further as per Regulation 13(2) of IBBI (CIRP) Regulations, 2016, The list of creditors shall be –(d) filed with the Adjudicating Authority.

However, no records of submission of the updated list of creditors to Adjudicating Authority was found by the IA. Accordingly, ICSI IIP held the prima facie opinion that the IP has not complied with Regulation 13(2) of IBBI (CIRP) Regulations, 2016.

Submissions made by the IP

The IP submitted that the IP after receipt of updated financial claim(s) has duly updated the list and apprised the members of CoC. The Regulation per se does not mandate the IRP/RP to file updated list of creditors with the AA but only states that the list of creditors shall be filed with AA, which was already done by the IP on 10.03.2018. The voting share of the creditors and COC members were updated and as such there was no reconstitution of the COC.

Analysis and Finding

The DC considered the submissions made by the IP and agreed to this submission.

2.5 CONTRAVENTION

In the matter of **Conros Steels Private Limited**, during Corporate Insolvency resolution process (CIRP), A document was provided to the Inspecting Authority named “*Terms & Conditions of Bidding process*” which stated that “*An agreement would be signed between the H1 and H2 regarding acceptance of terms and conditions, earnest money deposit (EMD) and forfeiture thereof in case of certain non-compliances including becoming ineligible under section 29A of IBC, 2016*”.

As per Regulation 36A(7)(f) of IBBI (CIRP) Regulations, the forfeiture of EMD is restricted to very limited circumstances, which does not cover the aforementioned statement. Accordingly, ICSI IIP held the prima facie opinion that the IP has not complied with Regulation 36A(7)(f) of IBBI (CIRP) Regulations, 2016.

Submissions made by the IP

The IP submitted that CIRP of the Corporate Debtor namely, Conros Steels Private Limited commenced on 19.12.2017 and **Regulation 36A** was introduced on 3rd July, 2018, accordingly, it was not applicable to the resolution process of this Corporate Debtor. Therefore, it is submitted that the terms and conditions for bidding process were prepared with a view so that the prospective Resolution Applicants does not leave the process of revival of the corporate debtor midway thereby a speedy and healthy resolution of the Corporate Debtor may be achieved.

Analysis and Finding

The DC noted that the provisions of unamended regulations would be applicable on the corporate debtor. The committee considered the submissions made by the IP and agreed to the same.

2.6 CONTRAVENTION

In the matter of **Nakshatra World Limited**, during Liquidation, as per the preliminary report filed with AA, the list of stakeholders did not include statutory claims. Accordingly, ICSI IIP held the prima facie opinion that the IP has not complied with Regulation of 31 of IBBI (Liquidation) Regulations, 2016.

Submissions made by the IP

The IP submitted that on perusal of the provisions it is clear that Regulation 31 of the Liquidation Regulations, 2016 mandates for filing of list of stakeholders before the Hon’ble Adjudicating Authority. It is again reiterated that as per Regulation 31 of Liquidation Regulations, 2016 a list of stakeholders including a list of statutory claims was filed before the AA on 09.09.2021 i.e., within 45 days from the last date for receipt of claims. Hence, there is no violation of Regulation 31 of IBBI (Liquidation) Regulations, 2016.

Analysis and Finding

The DC on perusal of records submitted by the IP considered the submission made and agreed to the submission.

2.7 CONTRAVENTION

In the matter of **Euro Pallets Private Limited**, AAA Capital Services Private Limited, a related party to the IP was engaged for taking custody and control on the assets of the Corporate Debtor. As per clause 23B of Code of conduct for IPs under IBBI (Insolvency Professionals) Regulations, 2016, *an insolvency professional shall not engage or appoint any of his relatives or related parties, for or in connection with any work relating to any of his assignment.*

Accordingly, ICSI IIP held the prima facie opinion that the IP has not complied with clause 23B of Code of conduct for IPs as per IBBI (Insolvency Professionals) Regulations, 2016.

Submissions made by the IP

The IP submitted that AAA Capital Services Pvt. Ltd. (AAACS) is a related concern of AAA Insolvency Professionals LLP and IP is a Director in AAACS. AAACS is one of the largest SARFAESI enforcement agents in the country and has extensive experience of taking control and custody of Assets of Corporates under SARFAESI and has an all-India presence. He further submitted that since the invoices raised by AAACS were solely in the nature of reimbursements qua the expenditure incurred by AAACS for rendering assistance/services to the IP for the ongoing CIRP, it does not fall under the term Related Party Transaction and therefore does not attract provisions of Section 28 (2)(f). Moreover, in the 1st meeting of CoC itself it was duly disclosed that AAA Insolvency Professionals LLP, the IPE of which the IP is a designed Partner has related interest in AAACS, being the sister concern of AAA IPE, but CoC did not raised any objection to that.

Analysis and Finding

The DC noted that clause 23B of Code of conduct for IPs as per IBBI (Insolvency Professionals) Regulations, 2016 was introduced on 23rd July, 2019 and from the perusal of records submitted by IP, no invoice has been raised after the date of amendment. Accordingly, he has not violated clause 23B of Code of conduct for IPs as per IBBI (Insolvency Professionals) Regulations, 2016.

2.8 CONTRAVENTION

The last date for submission of resolution plans was 9th November, 2018 which was extended by 2 weeks till 23rd November, 2018 in the 3rd CoC meeting. However, no record of issuance of revised Expression of Interest was found in records provided by IP to the Inspecting Authority. Accordingly, ICSI IIP held the prima facie opinion that the IP has not complied with Regulation 36A(2) of IBBI (CIRP) Regulations, 2016.

Submissions made by the IP

The IP submitted that there is only a typographical error in the heading of Agenda No. 1 whereby instead of writing “extending the time period for submission of resolution plan”, it is inadvertently stated as “extending the time period for expression of interest”. However, on the conjoint reading of the agenda and resolutions passed, even on bare perusal it is clear that the extension of time period was only for submission of resolution plan by the prospective resolution applicants. It is submitted that since it was merely an extension of time for submission of resolution plan, there was no need for issuance of revised Expression of Interest.

Analysis and Finding

The DC noted that as per amendment dated 30th September, 2021, it was clarified that any modification in the invitation for expression of interest may be made in the manner as the initial invitation for expression of interest was made. Before that, no such provision was available in the Regulations. Accordingly, he has not violated Regulation 36A(2) of IBBI (CIRP) Regulations, 2016.

2.9 CONTRAVENTION

In the matter of **Euro Pallets Private Limited & Sacos Indigo Private Limited**, there was no record with the insolvency professional for taking non-disclosure undertaking from the CoC members which is a pre-requisite before issuing information memorandum, RFRP, evaluation matrix, fairvalue/liquidation value etc. as per CIRP Regulations. In the matter of Sacos Indigo Private Limited, only the non-disclosure undertaking of PNB was provided.

Accordingly, ICSI IIP held the prima facie opinion that the Insolvency professional has not complied with Regulation 35(2), 36(4) of IBBI (Corporate Insolvency resolution process) Regulations, 2016.

Submissions made by the IP

The IP submitted that in the matter of Euro Pallets Private Limited, Edelweiss ARC was the only financial creditor holding 100% share in the CoC of Corporate Debtor. Non-Disclosure undertaking as per Regulation 35(2) and 36(4) of IBBI (CIRP) Regulations, 2016 was taken physically in hard copy by the IP. However, the hard copy of undertaking is not traceable at this moment. The IP apologizes for the inconvenience caused. He further submitted that as per Regulation 39(1)(c) of IBBI (CIRP) Regulations, 2016 the prospective Resolution Applicant has to submit an undertaking stating that the information and records provided in the Resolution Plan are true and correct. Pertinently, the said undertaking is not to be submitted.

In the matter of SACOS INDIGO PRIVATE LIMITED, the IP submitted that CoC constituted of only three Financial Creditors namely Punjab National Bank with voting share of 13.52 %, State Bank of India with voting share of 77.78 % and Canbank Factors Limited with voting share of 8.70%. It is submitted that the Non-Disclosure Undertaking as per Regulation 35(2) and 36(4) of IBBI (CIRP) Regulations, 2016 was taken physically in hard copies by the IP from all the members of CoC. However, the hard copy of undertaking submitted by State Bank of India and Canbank Factors Limited is not traceable at this moment. The IP apologizes for the inconvenience caused. He further submitted that as per Regulation 39(1)(c) of IBBI (CIRP) Regulations, 2016 (approval of Resolution Plan) only the prospective Resolution Applicant has to submit an undertaking stating that the information and records provided in the Resolution Plan are true and correct. Pertinently, the said undertaking is not to be submitted by the CoC Member.

Analysis and Finding

The DC noted that the IP has himself accepted the violation. Accordingly, the IP has not complied with Regulation 35(2), 36(4), 39(1)(c) of IBBI (Corporate Insolvency resolution process) Regulations, 2016.

2.10 CONTRAVENTION

In the matter of **AML Steel and Power Limited**, during CIRP, the IP issued Form G approximately 10 times. Only 3-4 advertisements published in English language newspaper were provided to the inspecting authority. Form G published in regional language newspaper were not provided to Inspecting Authority. Further, form G was only filed twice with the IBBI. The inspecting authority was unable to ascertain, whether fresh EOIs were advertised.

Accordingly, ICSI IIP held the prima facie opinion that the Insolvency professional has not complied with Regulation 36A(2), 36B(6) of IBBI (CIRP) Regulations, 2016 and Clause 19 of the Code of conduct for IPs as per Regulation IBBI (IP) Regulations, 2016.

Submissions made by the IP

The purpose of the Insolvency & Bankruptcy Code, 2016 is to revive the business of the corporate debtor and therefore, the IP in compliance to the provisions of the Code, has made efforts to revive the business of the corporate debtor. It is pertinent to mention that since the order initiating Corporate Insolvency Resolution Process of the Corporate AML Steel Private Limited was approved by the Hon'ble NCLT, Chennai vide order dated 12.03.2018. The unamended provisions were applicable to the CIRP of AML Steel Private Limited.

All the extensions in timelines for submission of resolution plans were made by the RP after approval of the CoC Members and published in English language newspapers. IP further submitted that

Notification No. IBBI/2018-19/GN/REG031, dated 3rd July, 2018 (w.e.f. 04-07-2018), Regulation 36 A, by which inter alia the RP was to publish Form G in one English and one Regional Language Newspaper with wide circulation at the location of the registered office and principal office of the Corporate Debtor. However, the said amendment was applicable only to cases wherein the Corporate Insolvency Resolution Process commenced on or after 03.07.2018. Hence, on perusal of the above unamended Regulation 36A of CIRP Regulations, it is abundantly clear that there was no such provision in law which mandated publication of Expression of Interest both in 'English' as well as in 'Regional language' newspapers. Hence, the IP submitted that there has not been any non-compliance under Regulation 36A of the CIRP Regulations and Clause 19 of the Code of conduct for IPs as per Regulation IBBI (Insolvency Professionals) Regulations, 2016.

Analysis and Finding

The DC noted the submissions made by the IP and agreed to this submission.

2.11 CONTRAVENTION

In the matter of **AML Steel and Power Limited**, during CIRP, one of the terms of one of the Form G published was "The prospective resolution applicant will have to pay a non-refundable application fees of Rs. 1 Lakh". Pursuant to the same, Five Resolution Applicants submitted the application making the total Non-Refundable Application Money to be Rs. 5 Lacs. In the minutes the of 5th CoC meeting held on 21st August, 2018, the IP informed CoC members that some application money is lying in the account of the corporate debtor maintained with IDBI Bank and he has used a part of the funds to pay lawyer's fees. The IP sought the permission of the COC members to use the fund from the application money to meet urgent expenses.

Regulation 36A (Invitation for expression of interest) of IBBI (CIRP) Regulations, 2016 was amended on 3rd July, 2018 and included a condition that "*The detailed invitation referred to in sub-regulation (3) shall not require payment of any fee or any non-refundable deposit for submission of expression of interest.*"

The IA was unable to ascertain from which Form G EMD was received.

Submissions made by the IP

The IP submitted that Since the CIRP of AML Steel Private Limited commenced on 12th March, 2018, therefore the provisions of Regulation 36A, prior to the amendment by Notification No. IBBI/2018-19/GN/REG031, dated 3rd July, 2018 was applicable. It is important to mention that prior to the amendment, no provision was mentioned where a non-refundable deposit could not be accepted by the Resolution Professional. Therefore, in order to understand the seriousness of the prospective Resolution Applicant, the said term was inserted as was discussed and approved by the COC. The IP sought the permission of the COC members to use the fund from the application money to meet urgent expenses.

Further, it was the first case and at that time everyone was accepting the application money to see the seriousness of the prospective applicant.

Analysis and Finding

The DC noted that the application monies were received consequent to the EOI issued before the amendment. The DC after analysing all the records found out that out of 5 EOIs, application money of 5 Lac in respect of 1 EOI was received on 6th August, 2018 i.e. after the amendment.

However, since the criteria was set before the amendment, the DC cannot hold IP at fault for its utilisation. Though, as a matter of good code of conduct, the IP should have acted in different manner after the amendment.

2.12 CONTRAVENTION

In the matter of **AML Steel and Power Limited**, during CIRP, the Insolvency professional placed the matter to appoint a chartered accountant Firm for reconstruction of the Financial Statements of the Corporate Debtor for FY 2016-17, FY 2017-18 and 2018-19 in the last CoC meeting wherein the resolution plan was approved, held on 1st March, 2019 (*after 11 months and 17 days of initiation of Corporate Insolvency resolution process*). Accordingly, ICSI IIP held the prima facie opinion that the Insolvency professional has not complied with Clause 13 of the Code of conduct for IPs as per Regulation IBBI (Insolvency Professionals) Regulations, 2016.

Submissions made by the IP

The IP submitted that the suspended Directors of the corporate debtor have remained non-cooperative since the inception of CIRP. IRP filed an application under Section 19 of the Code (bearing MA No. 586/2018 in CP IB No. 632/2017) before the Hon'ble NCLT Chennai, seeking suspended Directors of the corporate debtor. Even though favourable directions were passed by the Hon'ble NCLT Chennai, however despite after several follow ups by the RP, the suspended Directors had filed an affidavit dated 26.11.2018 with the Hon'ble NCLT Chennai stating the following: (i) All records of the company was washed away due to Chennai Floods in November 2015, and (ii) The Statutory auditor has claimed that he has resigned and has handed over all records to the company and the audit was carried out in the company and hence he has no records with him. However, the RP after making efforts had received some unaudited unsigned Financial Statements for FY 16-17 and 17-18 from the suspended Director. The statements were made available almost during the expiry of CIRP period. The RP on receipt of above data placed the matter before the CoC and proposed appointment of CA firm for reconstruction of accounts.

Analysis and Finding

The DC taken note of the fact that Section 19 application for non-cooperation was filed by the IP, hence agreed to the submissions.

2.13 CONTRAVENTION

In the matter of **Zicom Saas Private Limited**, during CIRP, the suspended management appointed NPA Consultants Private Limited during Corporate Insolvency Resolution Process for legal advice and the IP placed their fees before CoC Meeting for their approval. However, the CoC did not approve it. The power to appoint professionals in the process is vested with the Insolvency professional only, the suspended management cannot appoint professionals and fee paid to them cannot be made part of CIRP cost.

Accordingly, ICSI IIP held the prima facie opinion that the Insolvency professional has not complied with Section 25(2)(d) of the Code, Regulation 34 of IBBI (Corporate Insolvency resolution process) Regulations, 2016.

Submissions made by the IP

The IP submitted that the said matter was for the purpose of discussion and no resolution to that effect was proposed. Although the corporate debtor was a going concern during the CIRP and no interim finance or contribution from the COC was required during the entire CIRP, however, since the members of COC never ratified the professional fees of NPA Consultants Private Ltd., it was never included as CIRP cost by the IP. The IP has not paid any amount to NPA Consultants Private Limited and has not

made any payment to any party without ratification and approval of CoC. Therefore, it is respectfully submitted that, there is no violation of section 25(2)(d) of the Code and Regulation 34 of CIRP Regulations, 2016.

Analysis and Finding

The DC was of the view that the power to appoint professionals is vested with the Insolvency professional only, the suspended management cannot appoint professionals. The agenda itself should not be placed before the committee of creditors for discussions or ratifications, as the case may be. However, the DC noted the fact that CoC did not approve the agenda.

2.14 CONTRAVENTION

In the matter of **Oneworld Industries Private Limited**, during CIRP, Ms. Monica Agarwal was appointed as the valuer on 15th February, 2019, however she got IBBI registration as registered valuer on 27th November, 2019. Ms. Monica Agarwal was appointed by the erstwhile IRP. The IP was appointed as the Resolution Professional by the Hon'ble NCLT, Mumbai Bench vide its order dated 21.02.2019 and the certified copy of the order was received to me by on 05.03.2019. Ms. Monica Agarwal was appointed by the erstwhile IRP, however she conducted the valuation during the tenure of IP. She submitted her valuation report on 05.08.2019 much after the appointment of IP as Resolution professional.

Accordingly, ICSI IIP held the prima facie opinion that the Insolvency professional has not complied with Regulation 27 of IBBI (CIRP) Regulations, 2016 read with IBBI circular dated 17th October, 2018.

Submissions made by the IP

The IP submitted that vide order dated 21st February, 2019 passed by Hon'ble NCLT Mumbai Bench, the IP was appointed as the Resolution Professional of the Corporate Debtor. The certified copy of the said order was received by the IP on 05.03.2019. As per Regulation 27 of CIRP Regulations, Ms. Monica Agarwal was appointed by erstwhile IRP. There was no reason for the IP to re-check the IBBI registration or other details of Ms. Monica Agarwal, as the IP was under a bonafide belief that appointment of valuer was made by the erstwhile IRP after due diligence.

Analysis and Finding

The DC was of the view that benefit of doubt may be given to the IP as the registered valuer was appointed by the erstwhile IRP not by the IP. However, he should be more diligent in performing the functions.

2.15 CONTRAVENTION

In general, in all the assignments inspected, it was observed that the IP did not submit the relationship disclosure of appointment of AKG & Co, Chartered Accounts on ICSI IIP website. Further, no appointment letters were issued to AKG & Co, Chartered Accounts, AAA IPE, AAA Capital Services Private Limited.

Accordingly, ICSI IIP held the prima facie opinion that the Insolvency professional has not complied with IBBI circular dated 16th January, 2018, IBBI circular dated 12th June, 2018, clause 16 of the Code of conduct for IPs as per Regulation IBBI (Insolvency Professionals) Regulations, 2016.

Submissions made by the IP

The IP submitted that AAA Capital services Private Ltd. is an associate concern of the AAA Insolvency LLP, the IPE in which the IP a Designated Partner. Further, the IP is a Director of AAACS. It is

submitted that the IP in all the cases handled by him has disclosed this information to the COC members and the COC Members being satisfied of the Bonafede nature of the IP's actions have approved the same. There was no intent on the part of the IP to either enrich himself or any of his associate concerns and such assistance of his associate concerns were utilized for the sake of convenience and tax efficiency.

Further, that few of the Directors of AAA Insolvency Professionals LLP have related interest in AKG & Co. The IP to discharge his duties under section 18 of the Insolvency and Bankruptcy Code, 2016, thereby has availed services from AKG & Co., Chartered Accounts for filing of TDS and Tax Returns on behalf of the CD, which would have otherwise required hiring a full time Accounting Professional which would have been costlier. The services were utilized only in few of its assignments, after making complete disclosures to the CoC and their approvals.

In view of the above, no separate appointment letters were given to the said Firms, since the IP was either a Partner or Director of the same.

For AAA, the assistance provided by AAACS to the IP has been on a cost-to-cost basis involving no margins of profits at all.

Analysis and Finding

The IP has agreed to the fact that the appointed entities were related to him. Still, necessary appointment letters and invoices were not issued which indicates lack of transparency in the process. Further, in the matter of Conros Steels Private Limited & AML Steel and Power Limited, relationship disclosure of M/s AKG & Co, Chartered Accounts still not submitted.

Under the Code, RP plays a central role in resolution process of the CD, he is appointed by the Adjudicating Authority as an officer of the Court to conduct the resolution process and it is the duty of RP to conduct CIRP with integrity, accountability and transparency in the process and to take reasonable care and diligence while performing his duties.

Accordingly, the IP has not complied with 16th January, 2018, IBBI circular dated 12th June, 2018 and clause 16 of the Code of conduct for IPs as per Regulation IBBI (Insolvency Professionals) Regulations, 2016.

3 ORDER

After considering the allegations in the SCN and submissions made by Mr. Santanu T Ray in light of the provisions of the Code, Regulations and the relevant Circulars, the DC, in exercise of the powers conferred under Part III of the Disciplinary Policy of ICSI IIP observed that Mr. Santanu T ray have violated certain provisions of the Code and Regulations and have acted negligently in forming the duties.

Therefore, the DC hereby directs and directed the following:

- i. Levy of penalty of Rs. 1,00,000/- (Rupees One Lac only) for contravention of the Code, its Regulations and Circulars and deposit the same by a demand draft payable in favour of the ICSI Institute of Insolvency Professionals within 30 days of the issue of this order. The Agency shall in turn deposit the said penalty amount in the Fund constituted under Section 222 of the Code.
- ii. IP to undergo 50 hours Pre-Registration Educational Course (PREC) to improve his understanding of the Code and the Regulations made thereunder.

- iii. The Authorisation for assignment (AFA) shall stand suspended from the date of issuance of show cause notice till the completion of compliance of above-mentioned points (i) & (ii)
- iv. that Mr. Santanu T Ray should be careful and take due care in the future.
- v. Mr. Santanu T Ray shall, however, continue to conduct and complete the assignments/ processes he has in hand as on date of this order.

3.2 This order shall come into force after 30 days from the date of its issue.

3.3 A copy of this order shall be forwarded to the Insolvency and Bankruptcy Board of India.

CERTIFIED TRUE COPY

Sd/-

MR. GOPAL KRISHAN AGARWAL
(CHAIRMAN)