

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/12/2018
12th November, 2018

Order

In the matter of Mr. Martin S. K. Golla, Insolvency Professional under sub-regulations (7) and (8) of regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 read with section 220 of the Insolvency and Bankruptcy Code, 2016.

Appearances before Disciplinary Committee on 30th July, 2018

For Noticee	Mr. Martin S. K. Golla, In Person, and Mr. Davesh Bhatia, Advocate.
For Board	Mr. Umesh Kumar Sharma, Chief General Manager, and Ms. Poonam Shukla, Research Associate.

Background

This order disposes of the show cause notice dated 3rd July, 2018 (SCN) issued to Mr. Martin S. K. Golla, 1704, Tower 3, Raheja Tipco Heights, Rani Sati Marg, Malad (East) Mumbai City - 400097, Maharashtra. Mr. Golla is a professional member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-002/IP-N00095/2017-2018/10238. Mr. Golla replied to the SCN vide his letter dated 10th July, 2018. The Board referred the SCN, response of Mr. Golla to the SCN and other material available on record to the Disciplinary Committee (DC) for disposal. Mr. Golla appeared for a personal hearing along with the learned Advocate, Mr. Davesh Bhatia before the DC on 30th July, 2018. He has submitted written submission vide mail dated 8th August, 2018 after the personal hearing.

Preliminary Issues

2. First things first. Mr. Golla has raised four preliminary issues, as under:

2.1 Mr. Golla has submitted that he has not been supplied copies of documents relied upon by the Board for issuing the SCN. The DC, however, notes that the SCN in the opening Para states that it relies on the following documents submitted by him vide letter dated 15th June, 2018:

- a. Order C.P.No.1214/I&BP/NCLT/MB/MAH/2017 dated 24th August, 2017 of the Adjudicating Authority (AA) commencing corporate insolvency resolution process (CIRP);
- b. Letter dated 14th September, 2017 of Mr. Golla appointing valuers;
- c. Public announcement dated 15th September, 2017 made by Mr. Golla;
- d. Minutes of the 1st meeting of the committee of creditors (CoC) held on 16th October, 2017;
- e. Minutes of the 2nd meeting of the CoC held on 5th February, 2018;
- f. Minutes of the 3rd meeting of the CoC held on 5th April, 2018;
- g. Minutes of the 4th meeting of the CoC held on 20th April, 2018;
- h. Invitation of Expression of Interest (EoI) dated 4th April, 2018;
- i. Application dated 19th February, 2018 seeking extension of CIRP period;
- j. 1st Monthly Progress Report dated 10th October, 2017 submitted to the AA;
- k. 2nd Monthly Progress Report dated 13th April, 2018 submitted to the AA;

- l. Final Progress Report dated 25th April, 2018 submitted to the AA;
- m. Resolution plan approved by the CoC and subsequently by the AA; and
- n. Submissions of Mr. Golla to the AA in support of the resolution plan.

Since copies of all the above documents have been provided by Mr. Golla himself to the Board only a fortnight before the issue of SCN, the DC does not find any merit in his submission that he has not been supplied documents relied upon by the Board. The DC further observes that no other material or document has been relied upon by the Board for the contraventions alleged in the SCN.

2.2 Mr. Golla has submitted: *“The SCN itself is not in accordance with regulation 11(1) and did not disclose:*

- a. The various provisions of the code under which it was issued.*
- b. Details of the alleged facts / evidence in support of alleged facts.*
- c. The provisions of the code allegedly violated, or the manner in which the public interest is allegedly affected.*
- d. The actions or directions that the Board proposes to take or issue if allegations are established.*
- e. The SCN failed to enclose copies of documents relied upon and extracts or relevant portions from the report of investigation or inspection or other records.*
- f. The constituent/quorum of the Disciplinary Committee and whether they were whole time members of the board.”*

The DC finds that the SCN is in accordance with regulation 11(1) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations), as explained seriatim hereunder:

- a.: The subject line of the SCN clearly states that it is a SCN under regulation 11(1) of the IP Regulations.
- b. & c.: The SCN clearly states the alleged facts as well as the provisions violated. For example, Para 3(i) of the SCN reads: *“The CIRP commenced on 24th August, 2017. The public Announcement was required to be made immediately, i.e., on or before 27th August, 2017. However, it was made on 15th September, 2017 in contravention of Regulation 6 of the Regulations.”*
- d.: The SCN clearly states the actions the Board proposes to take. Para 9 of the SCN states that the Board proposes to take action as permissible under section 220(2) of the Code, including cancellation of registration. Section 220(2) of the Code lists out several permissible actions.
- e.: It has been dealt in Para 2.1 above.
- f.: The constitution of the DC is available on the website of the Board. In any case, it is not a requirement to be specified in the SCN.

2.3 Mr. Golla has submitted that the Board cannot *suo moto* take cognisance without a complaint made under sections 217 and 218 of the Code against an IP. The DC notes that section 218 allows the Board to order inspection or investigation either on receipt of a complaint or when it has reasonable ground to believe that an IP has contravened any provision of the law. Thus, the Board can take cognisance of a contravention *suo moto* and order an inspection. The DC further notes that the Board is not a Court, which takes cognisance of a matter based on a complaint and decides the matter through an adversarial proceeding. It is a regulator having quasi-legislative, executive and quasi-judicial functions to ensure that the regulated entities conduct themselves in accordance with the law. It cannot

always be on reactive mode to deliver on its mandate, as it deals with dynamic and evolving economic freedom.

2.4 Mr. Golla has submitted that sections 217 and 218 envisage the Board to issue a SCN after an inspection or investigation. In this case, the Board has issued the SCN without an inspection or investigation and hence the SCN is not tenable, according to him. The DC observes that regulation 11 of the IP Regulations enables the Board to issue a SCN based on the findings of an inspection or investigation, or on material otherwise available on record. One conducts inspection or investigation to gather material in support of alleged contraventions. If adequate material is available otherwise, there is no reason to waste time and effort on inspection or investigation. In any case, the DC disposes of the SCN, as required under regulation 11(7) of the IP Regulations, by a reasoned order in adherence to the principles of natural justice. Therefore, the noticee (Mr. Golla) is not prejudiced in any manner whatsoever.

Facts

3. This Para briefly captures the undisputed facts in this matter:

3.1 The corporate debtor (CD), namely, Wig Associates Private Limited (WAPL), incorporated in September, 2007, has only two shareholders, namely, Ms. Dolly Mahendra Wig and Mr. Puneet Mahendra Wig, each holding 50% of shares. Its Board comprises only two directors, namely, Ms. Dolly Mahendra Wig and Mr. Puneet Mahendra Wig. There is no other shareholder or director of WAPL. Ms. Dolly Mahendra Wig and Mr. Puneet Mahendra Wig are the wife and son of Mr. Mahendra Wig respectively and all of them are residents of Flat No. 702, Amar Residency, 7th Floor, Punjab Wadi, Sion Trombay Road, Deonar, Mumbai - 400088.

3.2 The CD, WAPL availed of a loan facility from Bank of Baroda (BoB) vide sanction dated 31st July, 2009 for a period of 12 months, against security of stock, book debt and machineries and factory and land and building of WAPL, and a flat belonging to Mr. Japal Amardas Wig and Ms. Indira Japal Wig and personal guarantees by Mr. Mahendra Wig, Mr. Japal Amardas Wig and Ms. Indira Japal Wig. On failure to repay the loan, it was declared a non-performing account on 9th February, 2012. With an outstanding amount of Rs.4.6 crore on 17th February, 2012, BoB issued notice dated 17th February, 2012 under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Act, 2002 (SARFAESI), and took physical possession of the factory, land and building of WAPL on 24th July, 2017. It also moved a petition before the Debt Recovery Tribunal (DRT) for realisation of debt of Rs.4.9 crore plus interest thereon.

3.3 In the meantime, WAPL filed an application under section 10 of the Code on 19th July, 2017 for initiation of CIRP of itself. BoB objected to the application on the ground that it was *malafide*. However, the AA, vide order dated 24th August, 2017, admitted the application and imposed moratorium under section 14 of the Code. It appointed Mr. Golla as the interim resolution professional (IRP).

3.4 Mr. Golla conducted CIRP of the CD, namely, WAPL. He admitted a claim of Rs.10.67 crore of BoB, the only financial creditor (FC). The sole FC constituted the CoC. In its first meeting, the CoC decided to appoint Mr. Golla as RP.

3.5 Mr. Mahendra Wig proposed a one-time settlement (OTS) with BoB vide his letter dated 30th October, 2017 and followed it up till its approval by BoB on 27th March, 2018 under which BoB would get Rs. 3.55 crore, as against an admitted claim of Rs.10.67 crore, in full and final settlement. BoB submitted the said OTS in the meeting of the CoC held on 5th April, 2018 with instruction to Mr. Golla to treat it as resolution plan. Mr. Mahendra Wig submitted the said OTS in the meeting of the CoC on 20th April, 2018 as resolution plan which was approved by the CoC and subsequently by the AA. Consequently, the Wig family (Mr. Mahendra Wig, Mr. Puneet Mahendra Wig, and Ms. Dolly Mahendra Wig) remained shareholders, directors and in the control of WAPL, and property of WAPL, Mr. Japal Amardas Wig and Ms. Indira Japal Wig given as security, and personal guarantee given by Mr. Mahendra Wig, Mr. Japal Amardas Wig and Ms. Indira Japal Wig were discharged, while BoB took a hair-cut of 66% and other creditors took haircut of different degrees.

3.6 The Board issued the SCN to Mr. Golla alleging various contraventions of the provisions of the Code and regulations. The SCN carries a table to present the timeline of various activities and facts in respect of the CIRP of WAPL, for which Mr. Golla was IRP initially and RP subsequently. The said table is reproduced hereunder for better appreciation of facts:

<i>Date</i>	<i>Description</i>
24.08.2017	<i>Commencement of CIRP</i>
15.09.2017	<i>Public Announcement</i>
14.09.2017	<i>Appointment of Valuers</i>
16.10.2017	<i>1st Meeting of the CoC</i>
30.10.2017	<i>Letter by Mr. Wig to BoB seeking OTS</i>
14.12.2017	<i>Further Letter by Mr. Wig pursuing OTS</i>
05.02.2018	<i>2nd Meeting of the CoC, which approved (seeking) extension of time</i>
19.02.2018	<i>Application for Extension Filed</i>
27.03.2018	<i>Approval of OTS by BoB</i>
04.04.2018	<i>Invitation of Expression of Interest</i>
14.04.2018	<i>Last date for receipt of EoI</i>
05.04.2018	<i>3rd Meeting of the CoC</i> <i>Where</i> <i>a. Information Memorandum was presented</i> <i>b. Invitation of resolution plan was approved</i> <i>c. Evaluation Matrix was approved</i> <i>d. BoB submitted OTS with an instruction to treat it as resolution plan</i> <i>e. RP stated that he would explore every possibility to address the issue</i>
20.04.2018	<i>4th Meeting of the CoC</i>
25.04.2018	<i>Application to AA for approval of resolution plan</i>
04.06.2018	<i>Approval of resolution plan by the AA</i>

Alleged Contraventions, Submission and Findings

4. A summary of contraventions alleged in the SCN, Mr. Golla's written and oral submissions thereon and the findings of the DC are as under:

4.1 **Contravention:** The AA admitted an application under section 10 of the Code for initiation of CIRP of WAPL vide order dated 24th August, 2017, which appointed Mr. Golla as IRP. Accordingly, the CIRP commenced on 24th August, 2017. The IRP was required under the law to complete certain tasks such as issue of public announcement, appointment of

valuers, constitution of the CoC, first meeting of the CoC, appointment of RP, etc., within prescribed number of days from the date of commencement of CIRP. However, Mr. Golla failed to do so.

Submission: Mr. Golla received a copy of the order dated 24th August, 2017 on 11th September, 2017. He completed the tasks mostly within the prescribed time considering the date of receipt of the order by him as the date of commencement of the CIRP. He cited a few orders of the AA and the NCLAT, where they have allowed the CIRP to commence from the date of receipt of the order by IRP. However, a slight delay in making public announcement was because the CD expressed its inability to make payment for public announcement due to financial constraints.

Finding: There has been contravention of the provisions of the Code in a strict sense, as the date of order is the date of commencement of CIRP. Under the circumstances, the DC ignores the contravention as an IRP cannot commence the work unless he receives the order of admission of a CD into CIRP. However, it is difficult to accept that the CD expressed its inability to make the payment due to financial constraints, particularly when the CIRP was triggered by the CD itself, and after CIRP has commenced, the management of the affairs of the CD vests in the IRP and the powers of the board of directors of the CD are exercised by the IRP. This means that the IRP was not effectively in management and control of the CD after the CIRP commenced and this is in contravention of the provisions of section 17(1) of the Code.

4.2 Contravention: Mr. Golla presented information memorandum (IM) at the 3rd meeting of the CoC, after about 8 months of the commencement of the CIRP.

Submission: Mr. Golla presented IM at the 1st meeting of the CoC held on 16th October, 2017 and presented the complete IM at the 3rd meeting of the CoC, in compliance with applicable provisions of the Code and regulations.

Finding: The minutes of the 1st meeting and 3rd meeting of the CoC indicate that Mr. Golla has submitted IM. The DC does not find any lapse on this count.

4.3 Contravention: Mr. Golla issued the invitation of EoI on 4th April, 2018 without the approval of the CoC.

Submission: Mr. Golla circulated the EoI via e-mail to the CoC on 2nd April, 2018. BoB, being the only FC, approved the draft EoI through email dated 3rd April, 2018. The same was published on 4th April, 2018 and was ratified on 5th April, 2018 in the meeting of the CoC.

Finding: The DC finds the submission of Mr. Golla as untenable:

(a) The minutes of the 3rd meeting of the CoC held on 5th April, 2018 has no mention whatsoever of invitation of EoI. The submission that the EoI was ratified on 5th April, 2018 is false.

(b) The submission of Mr. Golla that he sent an e-mail to the CoC is misleading. How does one send an e-mail to the CoC? A hard copy of the e-mail dated 2nd April, 2018 of Mr. Golla and the e-mail dated 3rd April, 2018 of BoB, provided by Mr. Golla along with his response dated 10th July, 2018, indicate that he sent an e-mail to a FC, albeit the sole FC, in the CoC. And the invitation of EoI was approved by the sole FC by e-mail and not by the CoC in a meeting. The Code provides for an institutional mechanism in the form of CoC to take decisions and prescribes that such decisions shall be taken in a meeting of the CoC in accordance with regulations 18 to 26 of the CIRP Regulations. If the law provides for a certain manner of doing something, it must be done in that manner only. If Mr. Golla could conduct CIRP through e-mail to the sole FC in the CoC, there was no need for him to have four meetings of the CoC.

(c) Section 25(2)(h) of the Code requires the CoC to lay down the eligibility criteria for resolution applicant (RA) keeping in view the complexity and scale of operations of business of the CD. There is no evidence of such eligibility criteria in either the mail dated 2nd April, 2018 of Mr. Golla seeking approval of BoB for invitation of EoI, mail dated 3rd April, 2018 of BoB approving the invitation of EoI, the invitation of EoI issued on 4th April, 2018 or the minutes of the meeting of the CoC held on 5th April, 2018.

The conduct of Mr. Golla is, therefore, in contravention of the provisions of section 25(2)(h) of the Code, regulations 18 to 26 and 36A of the CIRP Regulations and regulation 7(2)(a) and (h) of the IP regulations read with clauses 1, 2, 3, 10, 13 and 14 of the Code of Conduct appended to the said Regulations.

4.4 Contravention: Mr. Golla failed to publish brief particulars of the invitation in Form G of the Schedule to the CIRP Regulations, as required under regulation 36A(5) of the said Regulations.

Submission: The requirement of Form G came into effect from 6th February, 2018. The requirement of publishing Form G was not applicable to the ongoing CIRP, where less than 37 days were available for submission of resolution plans as on 6th February, 2018. Therefore, the allegation is not tenable.

Finding: As regards legal provisions, the DC agrees with Mr. Golla. However, as regards fact, the submission of Mr. Golla is misleading, as explained hereunder:

(a) The submission of Mr. Golla is not consistent with his conduct. He cannot assert that the requirement of Form G was not applicable, yet he sought approval of the CoC for the same. His conduct implies that the requirement of Form G was applicable, and he knew it well. If it was not applicable, his conduct (seeking approval of the CoC for Form G) amounts to gross abuse of the forum of CoC by an IP.

(b) Form G carries brief particulars of invitation of resolution plans. As per regulation 36A(1) of the CIRP Regulations, the RP needs to allow at least one month from the issue of Form G to prospective RAs to submit resolution plans. The CoC approved Form G on 5th April, 2018, obviously to receive resolution plans at the earliest by 5th May, 2018. It is seen that 5th May, 2018 was three months (more than 37 days) away from 5th February, 2018. The submission that less than 37 days were available for submission of resolution plans is not correct and the requirement of Form G was squarely applicable in this matter.

(c) It is unimaginable that the resolution plan was submitted to the CoC in its meeting held on 5th April, 2018, when the Form G was being considered.

Thus, Mr. Golla contravened the provisions of section 25(2)(h) of the Code, regulation 36A of the CIRP Regulations, and regulation 7(2)(a) and (h) of the IP Regulations read with clauses 1, 2, 3, 5, 9, 10, 13 and 14 of the Code of Conduct appended to the said Regulations.

4.5 Contravention: Mr. Golla failed to submit to the Board a copy of the records of every proceeding before the AA.

Submission: There were no proceedings before the AA that were required to be reported to the Board. Only miscellaneous application was filed by him for approval of resolution plan.

Finding: As evident from records, Mr. Golla approached the AA for the extension of CIRP period and for approval of the resolution plan. He did not submit copies of these proceedings in contravention of the provisions of section 208(2)(d) of the Code and regulation 7(2)(a) and (h) of the IP Regulations read with clauses 12 and 15 of the Code of Conduct appended to the said Regulations.

4.6 Contravention: Mr. Golla did not carry on the process during the entire period of CIRP. As RP, he convened only one meeting, that too, with only one agenda, that is, to seek approval for extension of time.

Submission: Mr. Golla carried on the CIRP to the best of his ability. Further, there was no significant business of the CD.

Finding: The fact remains that as the CIRP period was coming to an end on 19th February, 2018, Mr. Golla organised a meeting of the CoC on 5th February, 2018 to transact only one business, that is, extension of time for conclusion of the CIRP. Even after extension was granted, Mr. Golla did not display any sincerity towards his duty. He organised the next meeting of the CoC on 5th April, 2018, after two months of the preceding meeting. In the said meeting, the CoC considered the IM, Invitation of resolution plans, Form G, Evaluation Matrix (EM), etc. It is surprising as to why these items were not presented earlier to the CoC for consideration. Admittedly, the CD did not have significant business to keep Mr. Golla busy otherwise. He did not need an extension and further two months after extension to present basic documents to the CoC for its consideration. This is in contravention of the provisions of sections 23 and 208(2)(a) of the Code, regulation 36A of the CIRP Regulations and regulation 7(2)(a) and (h) of the IP Regulations read with clauses 13 and 14 the Code of Conduct appended to the said Regulations.

4.7 Contravention: Mr. Golla allowed BoB, the sole financial creditor to recover its loan during moratorium.

Submission: The resolution plan does not allow the BoB to recover any amount prior to its approval by the CoC and the AA.

Finding: The Code prohibits any payment to a creditor from the assets of the CD during moratorium. It does not prohibit payment to creditors through a resolution plan. Therefore, the DC does not find any merit in this allegation.

4.8 Contravention: Mr. Golla permitted a recovery plan to be considered as resolution plan.

Submission: The resolution plan was not only in accordance with the law, but also approved by the AA. Further, every resolution plan is an OTS.

Finding: The submission of Mr. Golla is untenable for the following reasons:

(a) As stated in its long title, the Code envisages reorganisation or insolvency resolution of a CD in a time bound manner for maximisation of value of its assets. It is not a settlement or recovery plan. In fact, the Code prohibits and discourages recovery in several ways. For example, section 14 of the Code prohibits any action to foreclose, recover or enforce any security interest during CIRP and thereby prevents any creditor from recovering its dues.

(b) Several judicial pronouncements reiterate prohibition on recovery or settlement. In the matter of *Innoventive Industries Limited Vs. ICICI Bank and ANR* [Civil Appeal Nos. 8337-8338 of 2017], the Supreme Court summed up the Code: “*The scheme of the Code, therefore, is to make an attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency, to continue the business of the corporate body as a going concern until a resolution plan is drawn up, in which event the management is handed over under the plan so that the corporate body is able to pay back its debts and get back on its feet. All this is to be done within a period of 6 months with a maximum extension of another 90 days or else the chopper comes down and the liquidation process begins.*” In several matters, the AA and the NCLAT have made it clear that CIRP is not a recovery process. In the matter of *Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd.* [CA (AT) (Insol.) No. 89 of 2017], the NCLAT reiterated: “*It is made clear that Insolvency Resolution Process is not a recovery proceeding to recover the dues of the creditors. I & B Code is an Act relating to reorganisation and insolvency resolution of corporate persons...*” In the matter of Parker

Hannifin India Private Limited Vs. Prowess International Private Limited [I.A. No. 226/KB/2017 in CP 150 of 2017], the AA observed: “After admission of Petition under IBC 2016, the *nature of petition changes to representative suit and the lis does not remain only between Operational Creditor and Operational Debtor.*” Therefore, what the Code envisages is resolution, not a recovery or settlement between the CD and a FC.

(c) Section 30(4) of the Code requires that the CoC shall approve a resolution plan after considering its feasibility and viability. An OTS does not entail consideration of feasibility or viability of resolution plan. There is nothing whatsoever on record, whether in minutes of the CoC held on 20th April, 2018 where the OTS was approved or elsewhere, indicating that the CoC considered the feasibility or viability of any resolution plan of the CD.

(d) The contention of Mr. Golla that every resolution plan is an OTS is not correct. It is, however, important to note that though the Code does not envisage a recovery plan, it does not prohibit recovery through a resolution plan.

(e) The parties have many options to settle or recover a loan. The Code is not one of those. An OTS cannot write off dues of third parties. In this matter, the OTS was used as resolution plan to write off dues of other claimants.

Thus, Mr. Golla contravened the provisions of section 30(4) of the Code and regulation 7(2)(a) and (h) of the IP regulations read with clauses 10 the Code of Conduct appended to the said Regulations.

4.9 Contravention: Mr. Golla sought an extension of time, vide application dated 19th February, 2018 to the AA, on the ground that he and the promoter were actively seeking out investors to formulate resolution plan and talks were in very advanced stage. However, there was no such talk except the effort by the RA to reach an OTS with BoB. Therefore, Mr. Golla obtained approval for extension of time by making a false statement to the AA.

Submission: The steps were taken by Mr. Golla to come to an amicable resolution of the insolvency of the CD.

Finding: The Code envisages that the RP invites resolution plans, RAs submit competing resolution plans in response, and the CoC chooses the best of them. It does not envisage a mechanism for any kind of amicable settlement. Further, there is no evidence whatsoever to the effect that either he or the promoter was seeking out investors to formulate a resolution plan, contrary to the contention of Mr. Golla. The fact remains that Mr. Golla, by his conduct and action, allowed Mr. Mahendra Wig to pursue an OTS with BoB and only after the OTS was approved by BoB, he issued invitation of EoI. Therefore, Mr. Golla contravened the provisions of sections 25(2)(h) and 208(2)(a) of the Code and regulations 36A and 37 of the CIRP Regulations, and regulation 7(2)(a) and (h) of the IP regulations read with clauses 1, 3, 5, 9, 10, 12, 14, and 15 of the Code of Conduct appended to the said Regulations.

4.10 Contravention: BoB, which is the sole constituent of the CoC, submitted the OTS in the 3rd meeting of the CoC on 5th April, 2018. It “*instructed the Resolution Professional to explore the possibilities of treating this OTS as Resolution Plan*”. In response, Mr. Golla informed the CoC that he will explore every possibility to address the issue. He appreciated the efforts put by the officer of BoB for sanctioning the OTS for the CD. In the next meeting of the CoC held on 20th April, 2018, the same OTS was approved as resolution plan by the CoC.

Submission: There was no other RA. Further, in the past, a FC and the CD have reached settlement and sought to withdraw CIRP, which has been allowed by the Supreme Court under Article 142 of the Constitution.

Finding: Mr. Golla has not contested the allegation. The material available on record read with the above submission of Mr. Golla make it clear as under:

a. The FC, the RA and Mr. Golla were sure that there was a difficulty in considering the OTS as a resolution plan. That is why BoB instructed Mr. Golla to somehow consider the OTS as resolution plan and Mr. Golla assured that he would explore every possibility to do so. There is no indication as to how the issue was addressed, except through written submission of Mr. Golla before the AA. The said written submission, as discussed in subsequent paragraphs, is misleading.

b. The Code and regulations thereunder provided neither settlement nor withdrawal. By an amendment to the Code with effect from 6th June, 2018, withdrawal has been allowed under a stringent procedure with the approval of the AA. That was not available at the material time to Mr. Golla. Further, it is not open for Mr. Golla to assume the role of the Supreme Court himself and to do complete justice under Article 142 of the Constitution.

Therefore, Mr. Golla contravened the provisions of sections 25(2)(h) and 208(2)(a) of the Code and regulation 7(2)(a) and (h) of the IP regulations read with clauses 5, 10, 14, 15 and 16 of the Code of Conduct appended to the said Regulations.

4.11 Contravention: Mr. Golla sought extension of time only to facilitate BoB and Mr. Wig to arrive at the OTS and Mr. Golla allowed the OTS to be considered as resolution plan. The EM and request for resolution plan were approved after the resolution plan was received and considered by the CoC. This is in contravention of every provision of Chapter II of Part II of the Code, including section 30.

Submission: The EM is for evaluation and to be used by the CoC for approving or rejecting a resolution plan. Its approval after receipt of resolution plan is not material.

Finding: The EM is required to be provided at least 15 days before submission of resolution plan under regulation 36A(2) of the CIRP Regulations so that the RA can structure its plan to take best advantage of the EM and the CoC cannot tailor-make an EM to select a particular RA. In this case, the OTS was agreed between the parties, the RA and the sole FC, on 27th March, 2018. Since both parties (CoC and RA) considered the OTS as resolution plan, the resolution plan was approved on 27th March, 2018 for all practical purposes. In any case, Mr. Golla has vehemently argued that the approval (of the invitation of EoI) by BoB is the approval by the CoC. What was left was only a confirmation of RP, Mr. Golla that the OTS was in compliance with all applicable laws in terms of section 30(2)(e) of the Code. Mr. Golla committed in the meeting of the CoC on 5th April, 2018 that he would explore every possibility to do so and he did it. The actions after 27th March, 2018, such as invitation of EoI, approval of EM, Form G, etc. were only a façade to give an impression that various tasks under the CIRP were carried out. This leaves the DC with the inescapable conclusion that there was meeting of minds of the RA, the sole FC in the CoC and the RP. The conduct of Mr. Golla is in contravention of provisions of sections 23, 25(2)(h), 30, and 208(2)(a) of the Code, regulations 36A and 39 of the CIRP Regulations and regulation 7(2)(a) and (h) of the IP Regulations read with clauses 1, 2, 3, 5, 10, 11, 12 and 14 of the Code of Conduct appended to the said Regulations.

4.12 Contravention: In the written submission before the AA, Mr. Golla submitted that section 29A is not applicable to the CIRP.

Submission: The AA has treated Mr. Golla's submission as correct law and this can not be visited in disciplinary proceeding.

Finding: This further substantiates the nexus and collusion between the RA, the sole FC in the CoC and the RP to frustrate the solemn objectives of the Code:

(a) Section 29A of the Code prohibits an ineligible person from submitting a resolution plan. It reads: "*A person shall not be eligible to submit a resolution plan...*". Thus, the RA must be

eligible at the time of submitting a resolution plan. It is not whether he was eligible at the time of commencement of the CIRP.

(b) Mr. Golla submitted before the AA that section 29A was inserted into the Code through the Insolvency and Bankruptcy Code (Ordinance), 2017 (Ordinance) promulgated on 23rd November, 2017 to provide for ineligibility at the time of submission of resolution plan. He further submitted that it is not possible for the legislature to make a law that affects the rights that accrued to the parties on the date of commencement of CIRP, before the promulgation of the Ordinance. Mr. Golla not only rejected the explicit unambiguous mandate of the law, but also questioned the authority of legislature to make such a law.

(c) Mr. Golla cited, in his written submission before the AA, several case laws to contend that an amendment to a statute affecting the legal rights of a person must be presumed to be prospective unless it is made expressly or is impliedly retrospective. He submitted that rights of persons are crystallised at the time of commencement of CIRP, and any such vested/crystallised rights cannot be taken away by an amendment unless stated so specifically. The Code, however, nowhere confers any legal rights on any person to submit a resolution plan. No rights accrued in favour of Mr. Mahendra Wig or any other person with admission of an application under section 7, 9 or 10 of the Code. Assuming that the rights have accrued, the legislature can make express provisions to make a law retrospective, as claimed by Mr. Golla. In this matter, when the legislature has made an explicit provision on the applicability of section 29A, Mr. Golla cannot have any quarrel.

(d) The Ordinance was promulgated to prohibit certain persons from submitting resolution plans, who on account of their antecedents, may adversely impact the credibility of the process under the Code. As stated in the Statement of Objects and Reasons appended to the Insolvency and Bankruptcy Code (Amendment) Bill, 2017, section 29A aimed to prevent rewarding unscrupulous persons at the expense of creditors. While replying to the debate on the Insolvency and Bankruptcy Code (Amendment) Bill, 2017, the Finance Minister stated: *“In the case of resolution also, all type of creditors may take some haircut and the man who created the insolvency pays a fraction of the amount and comes back into management. Should we allow that to continue? The overwhelming view, as expressed by the Members, is that it should not be allowed. This was a gap which was there in the original Bill and by bringing in 29(a) we have tried to fill in that gap. That is the objective. **In order that this provision must apply to all existing cases of resolution which are pending**, that is the case for urgency. If we had not done this, then all such defaulters would have rejoiced because they would have merrily walked back into these companies by paying only a fraction of these amounts. That is something which besides being commercially imprudent would also be morally unacceptable. That is the real rationale behind this particular Bill.”* (<http://164.100.47.194/Loksabha/Debates/Synopsis.aspx>). Thus, it was made clear by the Parliament that the provision must apply to all ongoing cases of CIRP.

Thus, Mr. Golla ensured that Mr. Mahendra Wig, who is an undesirable and ineligible under section 29A of the Code, submits a resolution plan and takes over the CD belonging to his wife and son, against the explicit mandate of the Parliament, in flagrant contravention of the provisions of section 29A and 30(2)(e) of the Code and regulation 7(2)(a) and (h) of the IP Regulations read with clauses 1, 2, 3, 5, 12, and 14 of the Code of Conduct appended to the said Regulations.

4.13 Contravention: Mr. Golla sought extension of time to enable BoB and Mr. Wig to work out a settlement. The OTS was approved by the BoB on 27th March, 2018 and Mr. Golla issued notice the next day (28th March, 2018) to hold the 3rd meeting of the CoC on 5th April, 2018. He promised to explore every possibility to treat the OTS as resolution plan and thereby compromised his independence and sided with the parties and vitiated the entire CIRP.

Submission: The insolvency of a CD has the most chance of being resolved if the RP, the CoC and the RA work closely to identify common ground and the best way forward. Acting with the stakeholders cannot be called as 'siding with the parties' or compromising independence.

Finding: As explained earlier, Mr. Golla did nothing till expiry of normal CIRP period. He obtained extension of time as the approval of the OTS by the CD was under process. Going by reasoning of Mr. Golla that the approval (of the invitation of EoI) by BoB is the approval by the CoC, the approval of the OTS by the BoB vide its letter dated 27th March, 2018 is the approval by the CoC. After the OTS plan was approved by the CoC on 27th March, 2018, Mr. Golla issued the notice on 28th March, 2018 to hold the next meeting of the CoC on 5th April, 2018, sent draft invitation of EoI on 2nd April, 2018 to BoB for its consideration, issued invitation for EoI on 4th April, 2018, placed IM, EM, Form G, etc., in the meeting of the CoC on 5th April, 2018 for its consideration. In the meeting on 5th April, 2018, BOB instructed Mr. Golla to consider the OTS as resolution plan and admittedly, he explored every possibility to do so. Thus, the resolution plan was approved on 27th February, 2018, even before invitation for EoI was drawn up and the steps taken after the approval of resolution were mere formality. It is not just lack of independence of Mr. Golla as RP; it is active collusion of Mr. Golla with the RA and the CoC to vitiate the process and frustrate the solemn objective of the Code. Therefore, Mr. Golla contravened the provisions of sections 208(2)(a) and regulation 7(2)(h) of the IP Regulations read with clauses 1, 2, 3, 5, 10 and 14 of the Code of Conduct appended to the said Regulations.

Conclusion

5. It is unfortunate that an ineligible RA, the sole FC and the RP colluded to ensure that the people responsible for insolvency of the CD paid a fraction (33%) of the claim amount to the FC and wrested the control and management of the CD. They misused the CIRP to pass on an OTS as resolution plan and to wipe off claims of creditors, which was not possible otherwise. They did this against the explicit mandate of the Parliament and judicial pronouncements and in contravention of every provision of the Code and regulations relating to CIRP. It is worth recapitulating the matter to understand the nefarious design of the parties.

5.1 The CD took a loan from BoB, on personal guarantee of Mr. Mahendra Wig, who is husband of Ms. Dolly Mahendra Wig and father of Mr. Puneet Mahendra Wig, who are the only shareholders and directors of the CD. On the CD failing to repay the loan, BoB initiated proceedings under the SARFAESI and before the DRT. At this stage, the CD filed an application for initiation of CIRP of itself under section 10 of the Code. On admission of the said application, the proceedings under SARFAESI and proceeding before the DRT were halted against the CD. On the recommendation of the CD, Mr. Golla was appointed as IRP. Mr. Golla collected claims of creditors and admitted a claim of Rs. 10.67 crore of BoB. He constituted the CoC comprising only one FC, namely, BoB. The CoC resolved to continue Mr. Golla as RP.

5.2 As a personal guarantor, Mr. Mahendra Wig did not repay the loan before or after initiation of actions under the SARFAESI. He did not repay the loan before or after initiation of proceeding before the DRT. He did not repay even after initiation of CIRP of the CD. As soon as Mr. Golla was appointed as RP, Mr. Mahendra Wig approached BoB on 30th October, 2017 with a proposal for OTS, where he offered to pay Rs.3.55 crore for full and final settlement of the loan taken from BoB.

5.3 Mr. Golla, as RP, did nothing for the entire period of CIRP, except waiting for approval of OTS by BoB. As the permissible time for conclusion of CIRP was approaching, Mr. Golla as RP, organised the first meeting of the CoC on 5th February, 2018 only to seek approval for extension of CIRP period and obtained extension by making false statements to the AA. Even after extension of CIRP period, Mr. Golla did nothing.

5.4 After long follow up by Mr. Mahendra Wig, BoB approved the OTS on 27th March, 2018, with a clear understanding between them to implement the OTS as resolution plan. Thus, Mr. Mahendra Wig agreed to submit the OTS as resolution plan and BoB agreed to approve it as resolution plan, on 27th March, 2018. On the day after *de facto* approval of the resolution plan on 27th March, 2018, that is, on 28th March, 2018, Mr. Golla scheduled the next meeting of the CoC for 5th April, 2018. Without approval of the CoC and without specifying the eligibility criteria for RAs, as required under section 25(2)(h) of the Code, Mr. Golla issued invitation of EoI on 4th April, 2018.

5.5 In the meeting of the CoC held on 5th April, 2018, BoB submitted the OTS with an instruction to Mr. Golla to treat it as resolution plan and Mr. Golla committed to explore every possibility to do so. In the next meeting of the CoC held on 20th April, 2018, Mr. Mahendra Wig submitted the OTS as resolution plan. Mr. Golla confirmed that the resolution plan did not contravene any of the provisions of any law, even though he knew that Mr. Mahendra Wig was ineligible under section 29A of the Code to submit resolution plan. As orchestrated, the CoC, which comprised only BoB, approved it.

5.6 Thus, Mr. Golla connived with the parties to allow an OTS in the garb of resolution plan and to allow an ineligible RA to submit the OTS and did absolutely nothing either to run the business of the CD or to run the CIRP. As to how an OTS was considered as resolution plan, Mr. Golla justifies that even Supreme Court does it in exercise of its powers under Article 142 of the Constitution. As to how an ineligible person explicitly prohibited by law could submit a resolution plan, he justifies that the Parliament does not have competence to enact a law to make a person, who was eligible on the date of commencement of CIRP, ineligible on the date of submission of resolution plan.

5.7 An IRP or RP is appointed by the AA. He is an officer of the Court. He is duty bound to (i) conduct CIRP with fairness and diligence, (ii) confirm that the resolution plan does not contravene any of the provisions of the law for the time being in force, (iii) maintain absolute independence in discharge of his statutory duties, and (iv) assist the AA with the correct perspective of the law, including provisions of section 29A of the Code. The AA relies on the work of an IP, as an insolvency proceeding is mostly not adversarial in nature. It was rightly observed by the AA in the matter of DF Deutsche Forfait AG and Anr. vs. Uttam Galva Steel Ltd. [C.P. No.45/I&BP/NCLT/MAH/2017], “*no pleading or defending party, the terminology like petitioner/respondent or plaintiff/defendant is not present under this Code...*”. In an adversarial proceeding, the opposite party contests actions of the other party and the truth comes out. When there is no opposite party, as in this matter, the IP has a greater responsibility. Taking advantage of absence of an opposite party to the matter, Mr. Golla made misleading submission before the AA.

5.8 By using the CIRP as a facade and in connivance with Mr. Golla, Mr. Mahendra Wig successfully (a) thwarted actions, liabilities and obligations under the SARFAESI and proceeding before the DRT, released the personal guarantors, and the secured properties, (b) made himself eligible to submit a resolution plan by misrepresentation, (c) passed on an OTS

as resolution plan, and (d) used the resolution plan to wipe off claims of various creditors, including 66% of claim of BoB. He could not have done any of these if Mr. Golla as an RP played by the rule book and did not “*explore every possibility to address the issue (illegality)*”. He made several misleading and false statements before the DC to justify what he did. Behind the nefarious design of the CD and Mr. Mahendra Wig in this matter, there is one Mr. Golla. By his conduct and action, Mr. Golla has caused irreparable damage to the reputation of the institution of insolvency profession and rendered himself a person not fit and proper to continue as an IP.

5.9 By his conduct and action, Mr. Golla has contravened the provisions of –

(a) sections 17, 23, 25(2)(h), 29A, 30(2)(e), 30(4) and 208(2)(a) and (d) of the Insolvency and Bankruptcy Code, 2016;

(b) Regulations 18 to 26, 36A, 37, and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016; and

(c) Regulations 7(2)(a) and 7(2)(h) of the IBBI (Insolvency Professionals) Regulations 2016 read with clauses 1, 2, 3, 5, 10, 12, 13, 14, 15, and 16 of the Code of Conduct for insolvency professionals specified in the First Schedule to the said Regulations.

6. Order

6.1 Considering the above deliberate, blatant, orchestrated and collusive contraventions, the Disciplinary Committee, in exercise of the powers conferred under section 220 (2) of the Code read with sub-regulations (7) and (8) of regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016, hereby cancels the registration of Mr. Martin S. K. Golla as insolvency professional, having Registration Number IBBI/IPA-002/IP-N00095/2017-2018/10238 and debars him from seeking fresh registration as an insolvency professional or providing any service under the Insolvency and Bankruptcy Code, 2016 for ten years from the date of this order.

6.2 This order shall come into force with immediate effect.

6.3 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Golla is enrolled as a professional member.

6.4 A copy of this order shall be forwarded to the Secretary, National Company Law Tribunal, New Delhi for information.

-Sd-

(Dr. M. S. Sahoo)
Chairperson, IBBI

-Sd-

(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Date: 12th November, 2018

Place: New Delhi.

Abbreviations Used:

AA	Adjudicating Authority
Board / IBBI	Insolvency and Bankruptcy Board of India
BoB	Bank of Baroda
CD	Corporate Debtor
CIRP	Corporate Insolvency Resolution Process
CIRP Regulations	The IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016
CoC	Committee of Creditors
Code / IBC	The Insolvency and Bankruptcy Code, 2016
DC	Disciplinary Committee
DRT	Debt Recovery Tribunal
EM	Evaluation Matrix
EoI	Expression of Interest
FC	Financial Creditor
IM	Information Memorandum
IP	Insolvency Professional
IP Regulations	The IBBI (Insolvency Professionals) Regulations, 2016
IRP	Interim Resolution Professional
NCLAT	Appellate Authority / National Company Law Appellate Tribunal
Ordinance	The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017
OTS	One Time Settlement
RA	Resolution Applicant
RP	Resolution Professional
SARFAESI	The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
SCN	Show cause notice dated 3 rd July, 2018 issued to Mr. Martin S. K. Golla
WAPL	Wig Associates Private Limited