

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/69/2021

15th March, 2021

Order

In the matter of Mr. Kiran Chinubhai Shah, Insolvency Professional (IP) under Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 read with section 220 of the Insolvency and Bankruptcy Code, 2016.

Background

1. This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/R(INSP)/2019/19/230/821 dated 24th September, 2020 issued to Mr. Kiran Chinubhai Shah, 608, Sarkar 1, Near Gandhigram Railway Station, Opp. Nehru Bridge, Ashram Road, Ahmedabad, Gujarat ,380009, who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI (IPA) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00480/2017-18/10868.
 - 1.1 Mr. Shah was appointed as an interim resolution professional (IRP) and/ or resolution professional (RP) in corporate insolvency resolution process (CIRP) of 5 Corporate Debtors (CDs), viz., ORG Informatics Limited (CD 1) vide order dated 27.11.2018 passed by Hon'ble NCLT, Ahmedabad Bench, UIC Corporation Private Limited (CD 2) vide order dated 19.02.2019 passed by Hon'ble NCLT, Ahmedabad Bench, API Industries Private Limited (CD 3) vide order dated 19.02.2019 passed by Hon'ble NCLT, Ahmedabad Bench, Hardik Industrial Corporation Private Limited (CD 4) vide order dated 19.02.2019 passed by Hon'ble NCLT, Ahmedabad Bench and Shri Jalaram Rice Industries Private Limited (CD 5) vide order dated 12.04.2019 passed by Hon'ble NCLT, Ahmedabad Bench.
 - 1.2 In exercise of its power under section 196 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations), the IBBI vide Order dated 3rd October, 2019 appointed an Inspecting Authority (IA) to conduct an inspection of Mr. Kiran Chinubhai Shah, for the purposes as provided under sub-regulation (4) of regulation (3) of the Inspection Regulations.
 - 1.3 The IA, in its report dated 31st January, 2020 observed that Mr. Shah has violated section 208(2)(a) of the Insolvency and Bankruptcy Code, 2016 (Code) and Regulations 27 and 34 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), Regulation 7(2)(a) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 2, 10, 12, 13, 14 and 25 of the First schedule to the IP Regulations.
 - 1.4 The IBBI had issued the SCN on 24th September, 2020 to Mr. Shah, on the basis of material available on record including report of IA, in respect of his role as an IRP and/ or RP in the CIRPs of the aforesaid CDs. The SCN alleged contraventions of section 208(2)(a) of the Code, regulation 27 and 34 of CIRP Regulations, regulation 7(2)(a) and

(h) of the IP Regulations, read with clauses 2, 10, 12, 13 and 14 of the Code of Conduct under regulation 7(2) thereof. Mr. Shah replied to the SCN *vide* letter which was received by IBBI on 26th October 2020.

- 1.5 The IBBI referred the SCN, his reply and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Shah availed an opportunity of personal virtual hearing before the DC on 16th December, 2020.

Alleged Contraventions and Submissions

Contraventions alleged in the SCN and Mr. Shah's written and oral submissions thereof are summarized as follows.

Contraventions

The contraventions alleged in the SCN are summarized as follows.

2. Regulation 27 of the CIRP Regulations requires a RP to appoint two registered valuers within seven days of his appointment but not later than forty-seventh day from the insolvency commencement date (ICD). Valuation is a quintessential part of the CIRP and is crucial to formulate a compliant resolution plan. Timely appointment of valuers is vital to completion of CIRP in a time bound manner. However, it has been observed that there has been inordinate delay in appointment of valuers by Mr. Shah in the following 4 assignments, the details of which are as under:

Assignment (Insolvency commencement date)	Valuer	Appointed on	Delay in appointment
ORG Informatics Limited (ICD taken as 15 th January 2019)	Chirag Shah	27 th May 2019	132
	Rakesh Shah	27 th May 2019	132
	Kedar Chikodi	27 th May 2019	132
	Harshad Deshpande	3 rd June 2019	139
UIC Corporation Private Limited (19 th February 2019)	Kedar Chikodi	27 th May 2019	49
	Harshad Deshpande	3 rd June 2019	56
	Puneet Tyagi	3 rd June 2019	56
	Dharam Pal Bhatia	31 st October 2019	206
	Gunjan Agarwal	31 st October 2019	206
API Industries Private Limited (19 th February 2019)	Kedar Chikodi	27 th May 2019	49
	Harshad Deshpande	3 rd June 2019	56
	Puneet Tyagi	3 rd June 2019	56
	Dharam Pal Bhatia	31 st October 2019	206
	Gunjan Agarwal	31 st October 2019	206
Hardik Industrial Corporation Private Limited (19 th February 2019)	Kedar Chikodi	27 th May 2019	49
	Harshad Deshpande	3 rd June 2019	56
	Puneet Tyagi	3 rd June 2019	56
	Dharam Pal Bhatia	31 st October 2019	206
	Gunjan Agarwal	31 st October 2019	206

In view of the above, the Board is of *prima facie* view that Mr. Shah has violated section 208(2)(a) of the Code, regulation 27 of the CIRP Regulations and regulation 7(2)(a) and (h) of the IP Regulations, read with clauses 10, 13 and 14 of the Code of Conduct as given in the First Schedule of the IP Regulations.

- 2.1 In the matter of ORG Informatics Limited, it was noted that Mr. Shah did not file an application under section 19 of the Code despite non-cooperation by the ex-directors as recorded in the minutes of 3rd and 4th CoC meetings. The minutes provided that records and data related to CD has not been provided by the ex-directors of CD. Non-cooperation by ex-directors was also noted in the minutes of 5th CoC meeting. Further, in the 4th and 5th CoC meetings, CoC suggested to Mr. Shah to approach Adjudicating Authority (AA) for necessary directions, in case of non-cooperation by ex-directors. Hence, there was established and acknowledged non-cooperation from the ex-directors of CD. Despite this, Mr. Shah failed to file an application under section 19 of the code before AA. The submissions made by Mr. Shah that the ex-directors extended required assistance and the delay was on account of absence of employees/ workers in the CD as it was closed since 2010 and all the staff members were relieved in 2014, were found to be contradictory to the CoC minutes and hence not acceptable. This is in violation of section 208(2)(a) of the Code and regulation 7(2)(a) and (h) of the IP Regulations, read with clause 14 of the Code of Conduct as given in the First Schedule of the IP Regulations.
- 2.2 It has been observed that Mr. Shah inflated CIRP costs in the matter of Shri Jalaram Rice Industries Private Limited since appointment as well as the fee of valuers was neither approved nor ratified by CoC. Mr. Shah submitted that the quotations received from valuers were sent to CoC members by email and the same was inadvertently left out to be ratified in the CoC meeting. However, the submission of Mr. Shah is not tenable as only the costs which are duly approved by the CoC can be a part of CIRP costs and sending quotations of various valuers to CoC members by email does not amount to approval of CoC. This is in violation of section 208(2)(a) of the Code, regulation 34 of the CIRP Regulations and regulation 7(2)(a) and (h) of the IP Regulations, read with clause 10 and 14 of the Code of Conduct as given in the First Schedule of the IP Regulations.
- 2.3 Clause 12 of the Code of Conduct requires that an IP must not conceal any material information or knowingly make a misleading statement to the Board, the AA or any stakeholder, as applicable. However, it has been observed that Mr. Shah made incorrect cost disclosures to the IPA as in respect of fees of valuers approved/ ratified by CoC. In the matter of Shri Jalaram Rice Industries Private Limited, the whole amount of valuers' expenses was shown as ratified/ approved by CoC in the cost disclosure submitted by Mr. Shah to the IPA while the valuers' fee was not ratified by the CoC. Further, it was observed that in the matter of UIC Corporation Pvt. Ltd., API Industries Pvt. Ltd. and Hardik Industrial Corporation Pvt. Ltd., cost disclosures, as submitted by Mr. Shah to his respective IPA in respect of valuers' fees, were not made in accordance with the approval of CoC. This is in violation of section 208(2)(a) of the Code, regulation 34 of CIRP Regulations and regulation 7(2)(a) and (h) of the IP Regulations, read with clauses 2, 12 and 14 of the Code of Conduct as given in the First Schedule of the IP Regulations.

Submissions by Mr. Shah

- 3.1 Mr. Shah submitted that in the matter of **ORG Informatics Limited (CD 1)**, the CIRP was admitted on 27.11.2018 which was revised on 15.01.2019 and upon obtaining the

order of the AA on 17.01.2019, Mr. Shah immediately visited the registered office of the CD 1, which was shown to be situated at Vadodara, for the purpose of taking over the charge from the ex-directors. But during the visit, he found that the premise was a rented premise and the same was closed. From the information obtained from ex-employees of the CD, Mr. Shah came to know that the operations of CD 1 were shut down since 2010-2011 and the financial creditors of the CD 1 has already classified the account of CD 1 as NPA since then. Mr. Shah also found the books of account in sheer dumped position alongwith certain other scrap electronic items.

- 3.1.1 Thereafter, Mr. Shah approached Mr. B.V. Suryakumar, the Managing Director of CD 1, who requested for further time for gathering information and relevant accounting records as sought by Mr. Shah. This was necessary for obtaining details required for conduct of CIRP including appointment of RVs which could not be done without reasonable and sufficient information which includes description of assets, its specifications, locations and book value. Further, the RVs were also asking for requisite data prior to giving their quotation which is required before taking up any assignment for valuation of assets of the CD 1 and Mr. Shah was unable to force the RVs to compromise on the said requirements only to comply with CIRP timelines. Hence, the process of appointment of RVs had begun only on receipt of details and records from ex-directors, and upon verification of physical existence of assets to be valued, which was concluded on receipt of email dated 12.04.2019 from the ex-director.
- 3.1.2 Further, Mr. Shah submitted that after receiving quotations from several valuers, the same were placed before CoC in the 4th meeting held on 02.05.2019. The CoC members observed that the fee quoted by prospective valuers was on a higher side and asked Mr. Shah to invite more quotations and fix the fee of individual valuers in the range of Rs. 30,000-35,000/- each. Accordingly, some more quotations were invited and those RVs were appointed who had quoted lowest fees which was in consonance with the instructions of CoC. The quotation was also intimated to the CoC members *vide* emails dated 16.05.2019 and 20.05.2019, i.e., prior to issue of appointment letters and since, there was no objection from CoC, appointment of RVs was done.
- 3.1.3 Considering the above facts, if number of days are calculated from the receipt of details and records, it can be observed that appointment of 3 RVs (Mr. Kedar Chikodi, Mr. Chirag Shah and Mr. Rakesh Shah) was done in 47 days and appointment of one RV (Mr. Harshad Deshpande) was done in 52 days. Further, Mr. Harshad Deshpande was considered to be an associate of Mr. Kedar Chikodi by Mr. Shah and an appointment letter dated 27.05.2019 was earlier issued in the name of Mr. Kedar Chikodi for valuation of P&M as well as Financial Assets. However, on realising the mistake, a fresh appointment letter was *suo moto* issued to Mr. Harshad Deshpande for valuation of Financial Assets on 03.06.2019, i.e., within a short span of 7 days. Hence, it can be sufficiently noticed that there was no delay even in the appointment of Mr. Harshad Deshpande. Thus, the delay in appointment of RVs was beyond Mr. Shah's control and there was no *malafide* intention or negligence on his part.
- 3.1.4 Further, with respect to the issue of non-filing of an application under section 19 of the Code for non-cooperation by the ex-directors as recorded in the minutes of 3rd, 4th and 5th CoC meeting, Mr. Shah submitted that the ex-directors had submitted the books of accounts in electronic form on 12.04.2019 while arrangement of certain physical records was being done, as also duly noted in successive CoC meetings. On perusal of the

minutes of CoC meetings, it is evident that there was no sufficient number of persons/ employees willing to engage themselves in relation to the work of CD 1 and there was no consensus in respect of fee/ remuneration quoted by the ex-employees of CD 1. Instead, there was non-cooperation by the CoC members for engagement of persons/ employees for completion of the work regarding the CD 1 since they were only inclined to replace the IRP owing to which Mr. Shah could not reach to any logical conclusion except for making the ex-directors aware of their duties and responsibilities.

- 3.1.5 Mr. Shah submitted that the cooperation extended by the ex-directors has to be understood in the context of the feasibility of work as CD 1 was not in operation for more than 7-8 years and had no employee except the aged Managing Director, Mr. Suryakumar. Further, Mr. Suryakumar was taking help/ assistance of the long back retired employee, an erstwhile accountant, namely Mr. Vadilal Khokhara, who is also aged above 70 years. In such circumstances, mere filing of an application for non-cooperation would have been non-productive and would have resulted in more delay in accumulating the data and records. Further, Section 19(2) of the Code gives a discretion to IRP for taking a call on filing of application or not by the use of word 'may'. The IRP has to be responsible to take a balanced view on the basis of the prevailing situation and then decide an appropriate action.
- 3.1.6 Further, Mr. Shah submitted that he made every endeavour that the records of CD 1 are properly and satisfactorily maintained so as to conduct forensic audit but the same could not be fulfilled due to non-cooperation of CoC members. Further, there was also a limitation since the data for 8-10 years was voluminous and huge, and it was difficult to complete the records within a short span of time by the aged director and his supporting personnel. Further, Mr. Shah was not inclined to claim exemption/ exclusion in conduct of CIRP by filing an application for non-cooperation against the suspended management and thereby, divert the CIRP period of 180 days into litigation in consequence wasting a lot of effective time, in such a case wherein support from suspended management was available. He further submitted that he is well aware of proceedings before AA and had filed application for non-cooperation in other matters. Regarding the discussions relating to CoC meetings which were covered in SCN, it is amply clear that CoC members have left the decision to file an application for non-cooperation to the discretion of IRP since he has a better understanding with regard to the procedural aspects and the practical outcome of the same, and in none of the meetings, CoC members directed IRP to file an application for non-cooperation.
- 3.1.7 Mr. Shah further submitted that the ex-management of CD was extending cooperation except for the fact that the same was delayed cooperation, but the ex-management was present in CoC meetings and was also replying to the satisfaction of CoC members. Hence, there is no negligence or inefficiency in the duties of IRP.
- 3.2 In the matter of **UIC Corporation Private Limited (CD 2)**, Mr. Shah submitted that the CIRP was admitted on 19.02.2019 and on receiving the order of the AA on 05.03.2019, Mr. Shah visited the registered office of the CD 2 for the purpose of taking over the charge from the ex-directors. But during the visit, he found that the premise was a factory premise and the same was under the possession of SBI, financial creditor of CD 2. After some efforts, he came in contact with Mr. Pankaj Valia, ex-director of CD 2 and came to know that the operations of CD 2 were shut down since 2017 and that financial creditors of CD 2 had already classified their as NPA and thereby, taken possession of their assets

as well as PGs of CD 2 in terms of provisions of SARFAESI Act, 2002. No complete set of books of account of CD 2 was found at the registered office which may be useful to Mr. Shah for the appointment of RVs.

- 3.2.1 Mr. Shah submitted that thereafter, he again approached Mr. Pankaj Valia, who *prima facie* showed his readiness but requested further time for accumulating/ gathering information and relevant accounting records as were sought by Mr. Shah for the details required in relation to the conduct of CIRP including appointment of RVs. However, since the approach of Mr. Valia was not found to be satisfactory as no appropriate and requisite records of the CD 2 were maintained even before taking over of the possession by the SBI, Mr. Shah found it appropriate to initiate proceedings against the suspended management of the CD 2 by filing application for non-cooperation.
- 3.2.2 Mr. Shah further submitted that the appointment of RVs could not be done without reasonable and sufficient information available on hand which would include description of class of assets, its specification, location and book value. The RVs were also asking for requisite data prior to giving their quotation and Mr. Shah could not force the RVs to compromise on the said requirements only to comply with CIRP timelines. Hence, the process of appointment of RVs in real sense had begun only on receipt of the details and records from the suspended management, i.e., vide email dated 16.04.2019. Thereafter, Mr. Shah had sought certain explanation from the suspended management which was furnished on 08.05.2019 and thus, he was then able to invite quotation from the RVs. It is important to note that the latest Audited Financial Statements available from MCA portal were for financial year 2013-14 which had no significance since the ICD was 19.02.2019.
- 3.2.3 Considering the above facts and circumstances, if number of days are calculated from the date of receipt of the details and records till the date of appointments of the RVs, it can be observed that the appointments of the RVs were done within 19 days from the date on which Mr. Shah was actually eligible to appoint the RVs. If the appointment is considered by communication through email, then the appointment of RVs was done within 9 days from the date on which Mr. Shah was actually eligible to appoint the RVs.
- 3.2.4 The original appointments were intended to be made by 27.05.2019 in respect of all the RVs for all the class of assets. The appointments were made in the name of M/s Adroit Valuation Services Private Limited and Mr. Kedar Chikodi for carrying out the work through their associates. However, on realising the mistake that M /s. Adroit Valuation Services Private Limited and Mr. Kedar Chikodi were not RV entities (although they were providing services through individuals who were RVs), fresh appointments letters were *suo moto* issued in the names of individual RVs on 03.06.2019 i.e., within a short span of 7 days. Hence, there was no delay in the appointment of all the RVs and the appointments of Mr. Harshad Deshpande, Mr. Puneet Tyagi, Mr. Brahm Pal Bhardwaj and Mr. Anoop Kumar Goyal were also made within the prescribed time limit with an observation that the fresh appointment letters were issued on 03.06.2019.
- 3.2.5 Further, Mr. Shah submitted that earlier the appointments were made in the names of the RVs – Mr. Brahm Pal Bhardwaj and Mr. Anoop Kumar Goyal on 03.06.2019 through rectification of the error relating to the original appointment letter issued to M/s. Adroit Valuation Services Private Limited. However, the work allotted to the said RVs was neither taken up nor fulfilled by them within due course of time even though the said

persons were RVs who are expected to be aware of the sanctity of the CIRP and hence, Mr. Shah was constrained to replace the said RVs and appoint other RVs. Accordingly, the appointments of the RVs – Mr. Dharam Pal Bhatia and Ms. Gunjan Agarwal were made on 31.10.2019. Hence, the delay of 206 days as reflected in respect of the aforementioned RVs is factually incorrect and the same is owing to the replacements made of the erstwhile RVs who were appointed vide appointment letters dated 03.06.2019 which were made within the prescribed time limit.

3.2.6 Further, Mr. Shah submitted that the IRP/ RP has absolute authority in appointment of the RVs in terms of Section 25(2)(d) of the Code, read with Regulation 27 of CIRP Regulations, but the professional fees / remuneration in respect of the RVs are required to be approved/ ratified by the CoC members in terms of Regulation 34 of the CIRP Regulation. Even though, Mr. Shah is vested with the power of appointment of RVs according to his best estimate as per the provisions of the Code and Regulations made thereunder, Mr. Shah submitted that he showed his *bona fide* to represent every factual position before the CoC members and made every endeavour to keep the CoC members updated in respect of every event.

3.3 In the matter of **API Industries Private Limited (CD 3)**, Mr. Shah submitted that the CIRP was admitted on 19.02.2019 and on receiving the order of the AA on 05.03.2019, Mr. Shah visited the registered office of the CD 3 for the purpose of taking over the charge from the ex-directors. But during the visit, he found that the premise was locked and sealed by certain statutory authorities and the factory premise at Bhavnagar was found to be under possession of a financial creditor of CD 3, namely, SBI. After some efforts, he came in contact with Mr. Pankaj Valia, ex-director of CD 3 and derived certain information on account of which he came to know that the operations of CD 3 were shut down and that the financial creditors of CD 3 have already classified the account of CD 3 as NPA and thereby, taken possession of the assets of the CD 3 as well as PGs of CD 3 in terms of provisions of SARFAESI Act, 2002. No complete set of books of account of CD 3 was found at the registered office of the CD 3 which may be useful to Mr. Shah for the appointment of RVs. Thereafter, Mr. Pankaj Valia, accumulated/ gathered information and relevant accounting records as were sought by Mr. Shah for details required in relation to the conduct of CIRP including appointment of RVs.

3.3.1 However, since the approach of the said suspended director was not found to be satisfactory by Mr. Shah and no appropriate and requisite records of the CD 3 were maintained even before taking over of the possession by SBI, Mr. Shah found it appropriate to initiate proceedings against the suspended management of CD 3 by filing application for non-cooperation. The appointment of RVs could not be done without reasonable and sufficient information available on hand which would include the description of class of assets, its specification, location and book value. The RVs were also asking for requisite data prior to giving their quotation and Mr. Shah could not force the RVs to compromise on the said requirements only to comply with CIRP timelines. Hence, the process of appointment of RVs in real sense had begun only on receipt of the details and records from the suspended management, which was through receipt of the email dated 16.04.2019.

3.3.2 Mr. Shah had sought certain explanations from the suspended management of the CD 3 regarding certain assets which was furnished on 08.05.2019. Thereafter, Mr. Shah was able to invite quotation from the RVs. It is important to note that the latest Audited

Financial Statements available from MCA portal were for the financial year 2013-14 which had no significance since the ICD was 19.02.2019.

- 3.3.3 Considering the above facts and circumstances, if number of days are calculated from the date of receipt of the details and records till the date of appointments of the RVs, it can be observed that the appointment of the RVs was done within 19 days from the date on which Mr. Shah was actually eligible to appoint the RVs. If the appointment is considered by communication through email, then the appointment of RVs was done within 9 days from the date on which Mr. Shah was actually eligible to appoint the RVs.
- 3.3.4 The original appointments were intended to be made by 27.05.2019 in respect of all the RVs for all the class of assets. The appointments were made in the name of M/s Adroit Valuation Services Private Limited and Mr. Kedar Chikodi for carrying out the work through their associates. However, on realising the mistake that M/s Adroit Valuation Services Private Limited and Mr. Kedar Chikodi were not RV entities (although they were providing services through individuals who were RVs), fresh appointment letters were *suo moto* issued in the names of individual RVs on 03.06.2019, i.e., within a short span of 7 days. Hence, there was no delay in the appointment of all the RVs and the appointments of Mr. Harshad Deshpande, Mr. Puneet Tyagi, Mr. Brahm Pal Bhardwaj and Mr. Anoop Kumar Goyal were also made within the prescribed time limit with an observation that the fresh appointment letters were issued on 03.06.2019.
- 3.3.5 Further, Mr. Shah submitted that the appointments were earlier made in the name of the RVs – Mr. Brahm Pal Bhardwaj and Mr. Anoop Kumar Goyal on 03.06.2019 through rectification of the error relating to the original appointment letter issued to M/s Adroit Valuation Services Private Limited. However, the work allotted to the said RVs was neither taken up nor fulfilled by them within due course of time even though the said persons were RVs who are expected to be aware of the sanctity of the CIRP and hence, Mr. Shah was constrained to replace the said RVs and appoint other RVs.
- 3.3.6 Accordingly, the appointments of the RVs – Mr. Dharam Pal Bhatia and Ms. Gunjan Agarwal were made on 31.10.2019. Hence, the delay of 206 days as reflected in respect of the aforementioned RVs is factually incorrect and the same is owing to the replacements made of the erstwhile RVs who were appointed vide appointment letters dated 03.06.2019, i.e., within the prescribed time limit.
- 3.3.7 Further, the IRP/ RP has absolute authority for appointment of the RVs in terms of Section 25(2)(d) of the Code, read with Regulation 27 of CIRP Regulations, but the professional fee/ remuneration in respect of the RVs is required to be approved/ ratified by the CoC members in terms of Regulation 34 of the CIRP Regulations. Even though, Mr. Shah is vested with the powers of the appointment of the RVs according to his best estimate as per the provisions of the Code and Regulations made thereunder, Mr. Shah submitted that he showed his *bona fide* to represent every factual position before the CoC members and made every endeavour to keep them updated in respect of every event.
- 3.4 In the matter of **Hardik Industrial Corporation Private Limited (CD 4)**, Mr. Shah submitted that the CIRP was admitted on 19.02.2019 and on receiving the order of the AA on 05.03.2019, Mr. Shah visited the registered office of the CD 4 for the purpose of taking over the charge from the ex-directors. But during the visit, he found that the premise was locked and sealed by certain statutory authorities and the factory premise at

Bhavnagar was found to be under possession of a financial creditor of CD 4, namely, SBI. After some efforts, he came in contact with Mr. Pankaj Valia, ex-director of CD 4 and derived certain information on account of which he came to know that the operations of CD 4 were shut down and that the financial creditors of CD 4 have already classified the account of CD 4 as NPA and thereby, taken possession of the assets of the CD 4 as well as PGs of CD 4 in terms of provisions of SARFAESI Act, 2002. No complete set of books of account of CD 4 was found at the registered office of the CD 4 which may be useful to Mr. Shah for the appointment of RVs. Thereafter, Mr. Pankaj Valia, accumulated/ gathered information and relevant accounting records as were sought by Mr. Shah for details required in relation to the conduct of CIRP including appointment of RVs.

- 3.4.1 However, since the approach of the said suspended director was not found to be satisfactory by Mr. Shah and no appropriate and requisite records of the CD 4 were maintained even before taking over of the possession by SBI, Mr. Shah found it appropriate to initiate proceedings against the suspended management of CD 4 by filing application for non-cooperation. The appointment of RVs could not be done without reasonable and sufficient information available on hand which would include the description of class of assets, its specification, location and book value. The RVs were also asking for requisite data prior to giving their quotation and Mr. Shah could not force the RVs to compromise on the said requirements only to comply with CIRP timelines. Hence, the process of appointment of RVs in real sense had begun only on receipt of the details and records from the suspended management, which was through receipt of the email dated 16.04.2019. Mr. Shah had sought certain explanations from the suspended management of the CD 4 regarding certain assets which was furnished on 08.05.2019. Thereafter, Mr. Shah was able to invite quotation from the RVs. It is important to note that the latest Audited Financial Statements available from MCA portal were for the financial year 2013-14 which had no significance since the ICD was 19.02.2019.
- 3.4.2 Considering the above facts and circumstances, if number of days are calculated from the date of receipt of the details and records till the date of appointments of the RVs, it can be observed that the appointment of the RVs was done within 19 days from the date on which Mr. Shah was actually eligible to appoint the RVs. If the appointment is considered by communication through email, then the appointment of RVs was done within 9 days from the date on which Mr. Shah was actually eligible to appoint the RVs.
- 3.4.3 The original appointments were intended to be made by 27.05.2019 in respect of all the RVs for all the class of assets. The appointments were made in the name of M/s Adroit Valuation Services Private Limited and Mr. Kedar Chikodi for carrying out the work through their associates. However, on realising the mistake that M/s Adroit Valuation Services Private Limited and Mr. Kedar Chikodi were not RV entities (although they were providing services through individuals who were RVs), fresh appointment letters were *suo moto* issued in the names of individual RVs on 03.06.2019, i.e., within a short span of 7 days. Hence, there was no delay in the appointment of all the RVs and the appointments of Mr. Harshad Deshpande, Mr. Puneet Tyagi, Mr. Brahm Pal Bhardwaj and Mr. Anoop Kumar Goyal were also made within the prescribed time limit with an observation that the fresh appointment letters were issued on 03.06.2019.
- 3.4.4 Further, Mr. Shah submitted that the appointments were earlier made in the name of the RVs – Mr. Brahm Pal Bhardwaj and Mr. Anoop Kumar Goyal on 03.06.2019 through

rectification of the error relating to the original appointment letter issued to M/s Adroit Valuation Services Private Limited. However, the work allotted to the said RVs was neither taken up nor fulfilled by them within due course of time even though the said persons were RVs who are expected to be aware of the sanctity of the CIRP and hence, Mr. Shah was constrained to replace the said RVs and appoint other RVs.

3.4.5 Accordingly, the appointments of the RVs – Mr. Dharam Pal Bhatia and Ms. Gunjan Agarwal were made on 31.10.2019. Hence, the delay of 206 days as reflected in respect of the aforementioned RVs is factually incorrect and the same is owing to the replacements made of the erstwhile RVs who were appointed vide appointment letters dated 03.06.2019, i.e., within the prescribed time limit.

3.4.6 Further, the IRP/ RP has absolute authority for appointment of the RVs in terms of Section 25(2)(d) of the Code, read with Regulation 27 of CIRP Regulations, but the professional fee/ remuneration in respect of the RVs is required to be approved/ ratified by the CoC members in terms of Regulation 34 of the CIRP Regulations. Even though, Mr. Shah is vested with the powers of the appointment of the RVs according to his best estimate as per the provisions of the Code and Regulations made thereunder, Mr. Shah submitted that he showed his *bona fide* to represent every factual position before the CoC members and made every endeavour to keep them updated in respect of every event.

3.5 With respect to the issue that Mr. Shah inflated CIRP costs in the matter of **Shri Jalaram Rice Industries Private Limited (CD 5)**, Mr. Shah submitted that the disclosures made to the IPA were on the basis of appointment letters issued to the RVs after following the due procedure of negotiations and communication of the same to the CoC members. However, Mr. Shah admitted that there was one technical lapse on his part that he had not put the same for approval / ratification by the CoC members due to inadvertence. However, no payment was made to the RVs unless approval/ ratification was received from the members of the Stakeholders' Consultation Committee (SCC), who were none other than the members of the erstwhile CoC. The said members duly passed a resolution relating to the approval / ratification of the remuneration payable to the RVs, which was inadvertently left out to be ratified as CIRP costs. The approval of the members of the SCC was obtained in the 3rd meeting held on 07.02.2020.

3.5.1 Further, Mr. Shah submitted that the CoC members not only approved/ ratified the remuneration payable to the RVs as CIRP costs but also reimbursed the sum as a contribution to the CIRP costs which they would have not done, if they had any objection to the quantum of the remuneration of the RVs. Mr. Shah submitted that there was no *mala fide* intention on his part otherwise he would not have made every endeavour to keep the CoC members updated by way of written emails to them intimating them about the quotations received from various RVs. Also, Mr. Shah had considered the suggestion made by one of the CoC members and had invited quotations from several other RVs for reducing the cost of CIRP. It should also be observed that while conducting CIRP in respect of the other CDs, Mr. Shah had duly taken the approval / ratification of the CoC members with regard to remuneration of the RVs. Hence, it can be sufficiently noticed that there is no *mala fide* intention on his part and it was only because of oversight that the remuneration of the RVs was not ratified which was a genuine mistake.

3.5.2 With respect to the issue that Mr. Shah made incorrect cost disclosures to his IPA, Mr. Shah submitted that although the IRP/RP has absolute authority in appointment of the

RVs in terms of Section 25(2)(d) of the Code read with Regulation 27 of CIRP Regulations, the professional fees/ remuneration in respect of the RVs are required to be approved/ ratified by the CoC members in terms of Regulation 34 of the CIRP Regulations, However, on perusal of the Code and Regulations made thereunder, he is not able to fetch the provisions of law that the names of the RVs should be approved alongwith their remuneration for which it is proposed to be concluded as a violation.

- 3.5.3 Mr. Shah submitted that he had issued consolidated appointment letters in the names of entities engaged in the valuation services considering the RVs so appointed as their associates. Earlier, it was a practice to invite quotations from various entities who were offering valuation services for multiple classes of assets as it would be convenient and fast to invite quotations, issue appointment letter as well as for effective monitoring and communicating for executing the valuation exercise. As per this practice, quotation from various agencies as well as individual valuers was invited and a comparative chart was prepared on the basis of the quotations received. The same chart was circulated amongst the CoC members for their consideration and suggestions with regard to the quantum of the professional fees/ remuneration to be approved/ ratified by the CoC members but the same was not circulated with an intent to deviate the same from the disclosures made with the IPA. The chart relating to the quotations and other requisite details were part of the notice and the relevant draft resolutions were approved accordingly. However, after the CoC meetings, which were held on 01.06.2019, the error which crept in the appointment letters relating to the RVs was realized and immediately on 03.06.2019, fresh and revised appointment letters were *suo moto* issued in the name of the respective RVs.
- 3.5.4 Mr. Shah also clarified the quantum/ total amount of professional fees/ remuneration payable to the RVs which was approved/ ratified by the CoC members and as disclosed to the IPA in a table. Since the cost was already approved by the CoC members in the CoC meeting in terms of Regulations 34 of the CIRP Regulations, the same was not put for re-voting before the CoC members considering that the provisions of Section 25(2)(d) of Code read with Regulation 27 of the CIRP Regulations, requires only professional fees/ remuneration to be approved/ ratified by the CoC members and that the appointment of professionals including the RVs was absolutely the prerogative of IP which shall be exercised independently without the interference of the CoC members.
- 3.5.5 Hence, Mr. Shah submitted that the above instance was a genuine mistake and it was not done with and intent to misrepresent or mislead any stakeholder in any manner whatsoever as the respective RVs appointed were indeed working in association with M/s Adroit Valuation Services Private Limited and Mr. Kedar Chikodi. Further, there is also no intention of making any misleading statement of concealment of material knowledge as at the time of approval/ ratification of the professional fees/ remuneration of the RVs, the error in appointments was not realized and only after the meetings, the error was realized by Mr. Shah and the same was rectified *suo moto*.

Analysis and finding

- 4 The DC after considering the SCN, oral and written submissions of Mr. Shah and also the provisions of the Code and the regulations made thereunder, proceeds to dispose of the SCN.

- 4.1 The DC notes that the Code casts strenuous responsibilities on an IRP/ IP to run the affairs of the CD in distress as a going concern and to maximize the value of the assets. Such responsibilities of an IP require the highest level of professional excellence, dexterity and integrity. As the key objective of the Code is maximization of the value of the assets, one needs credible determination of value of assets to facilitate comparison and informed decision making. The valuations serve as reference for evaluation of choices, including liquidation, and selection of the choices that decides the fate of the firm.
- 4.2 The UNCITRAL Legislative Guide on Insolvency Law also recognized that effective and efficient insolvency regimes should aim to achieve the key objectives including maximization of value of assets:

“5. Participants in insolvency proceedings should have strong incentives to achieve maximum value for assets, as this will facilitate higher distributions to creditors as a whole and reduce the burden of insolvency. The achievement of this goal is often furthered by achieving a balance of the risks allocated between the parties involved in insolvency proceedings.

...

6. The first key objective of maximization of value is closely linked to the balance to be achieved in the insolvency law between liquidation and reorganization. An insolvency law needs to balance the advantages of near-term debt collection through liquidation (often the preference of secured creditors) against preserving the value of the debtor’s business through reorganization (often the preference of unsecured creditors and the debtor). Achieving that balance may have implications for other social policy considerations, such as encouraging the development of an entrepreneurial class and protecting employment. Insolvency law should include the possibility of reorganization of the debtor as an alternative to liquidation, where creditors would not involuntarily receive less than in liquidation and the value of the debtor to society and to creditors may be maximized by allowing it to continue. This is predicated on the basic economic theory that greater value may be obtained from keeping the essential components of a business together, rather than breaking them up and disposing of them in fragments.”

- 4.3 During CIRP, the management of the affairs of the CD vests in the IRP and the powers of the Board of Directors of the CD is exercised by the IRP. For all practical purposes, the IRP is the alter ego of the CD undergoing CIRP. Every decision of the CD and in respect of the CD is taken by the IRP. The BLRC, the recommendations of which has led to the enactment of the Code, in its Final Report, has also laid emphasis on the role of an IP as follows:

“The Insolvency Professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process. ...In administering the resolution outcomes, the role of the IP encompasses a wide range of functions, which include adhering to procedure of the law, as well as accounting and finance related functions. The latter include the identification of the assets and liabilities of the defaulting debtor, its management during the insolvency proceedings if it is an enterprise, preparation of the resolution proposal, implementation of the solution for individual resolution, the construction, negotiation and mediation of deals as well as distribution of the realisation proceeds under bankruptcy resolution. In performing these tasks, an IP acts as an agent of the

adjudicator. In a way the adjudicator depends on the specialized skills and expertise of the IPs to carry out these tasks in an efficient and professional manner...This creates Role of Resolution Professionals in CIRP the positive externality of better utilisation of judicial time.”

- 4.4 The role of an IP encompasses a wide range of functions and it is incumbent upon an IP, under section 208(2)(a) of the Code, to take reasonable care and diligence while performing his functions and duties. Section 208(2)(a) reads as under:

“208. Functions and obligations of insolvency professionals.

*(2) Every insolvency professional shall abide by the following code of conduct: –
(a) to take reasonable care and diligence while performing his duties; ...”*

- 4.5 Section 25(2)(d) of the Code empowers the RP to appoint accountants, legal or other professional in the manner as specified by the IBBI. The requirement of appointment of two registered valuers for determination of the fair value and liquidation value of the any CD and manner of their appointment is provided in regulation 27 of CIRP Regulations which provides as follows:

“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 persons 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.”*

- 4.6 During CIRP, an IP also needs to pay fee or incur other expenses for various goods and services required for conducting the CIRP and or managing the operations of the corporate debtor as a going concern. Regulation 34 of the CIRP Regulations contains provision regarding resolution professional costs and provides as under:

“34. Resolution professional costs.

The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.

Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.”

- 4.7 It is the duty of the IP to ensure that his conduct would not undermine the credibility of

the process. Therefore, while granting certificate of registration to an IP they are subjected to follow the Code of Conduct specified in the First Schedule to the IP Regulations. In this regard, clauses (a) and (h) of regulation 7(2) of the IP Regulations provides as follows:

“7. Certificate of registration.

(2) The registration shall be subject to the conditions that the insolvency professional shall –

(a) at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled;

...

(h) abide by the Code of Conduct specified in the First Schedule to these Regulations; ...”

In the matter of ORG Informatics Limited (CD 1)

4.8 With respect to the first issue regarding delay in appointment of registered valuers, the DC notes that the CIRP of CD 1 was admitted *vide* order of Hon’ble NCLT, Ahmedabad Bench dated 27.11.2018 wherein the Hon’ble NCLT, *inter alia*, directed the applicant operational creditor to make public announcement which was inconsistent with the provisions of the Code. Therefore, the admission order was subsequently modified on 15.01.2019 with the directions that the IRP shall make public announcement. Further, the Hon’ble NCLT also exempted the period from 27.11.2018 till 15.01.2019 for the purpose of computation of CIRP period. Currently, CD 1 is under liquidation *vide* order dated 20.11.2019 passed by Hon’ble NCLT, Ahmedabad Bench.

4.8.1 In the CIRP of CD 1, Mr. Chirag Shah, Mr. Rakesh Shah and Mr. Kedar Chikodi were appointed as valuers *vide* appointment letter dated 27.05.2019 while Mr. Harshad Shamkant Deshpande was appointed as a valuer *vide* appointment letter dated 03.06.2019 by Mr. Shah. The DC notes that regulation 27 of the CIRP Regulations mandates upon an IP to appoint two registered valuers within seven days of his appointment, but not later than forty-seventh day from the ICD. In the present case, the appointment of valuers was made by Mr. Shah *vide* appointment letters dated 27.05.2019 and 03.06.2019, i.e., after a delay of 132 and 139 days respectively even if ICD is taken to be 15.01.2019. However, the DC notes from the submissions of Mr. Shah that the delay in appointment was due to non-availability of reliable data pertaining to the operations of CD 1 without which appointment of RVs could not have been made. The DC further notes that without requisite data and records, the RVs cannot commence their work and if such data/ record is unavailable, it will become difficult for them to complete the assignment at hand. In the present case, Mr. Shah submitted that he received the details and records from ex-directors *vide* email dated 12.04.2019 and thereafter, appointment of 3 RVs, i.e., Mr. Chirag Shah, Mr. Rakesh Shah and Mr. Kedar Chikodi was done in 47 days whereas the appointment of one RV, i.e., Mr. Harshad Deshpande was done in 52 days. Thus, if the date of receipt of details and records from the ex-directors is considered, it can be held that there was no delay in the appointment of 3 RVs, i.e., Mr. Chirag Shah, Mr. Rakesh Shah and Mr. Kedar Chikodi. Further, the delay in appointment of Mr. Harshad Deshpande was because of the fact that he was considered to be an associate of Mr. Kedar Chikodi by Mr. Shah and initially, an appointment letter dated 27.05.2019 was issued in the name of Mr. Kedar Chikodi for valuation of P&M as well as financial assets. However, upon realization of the mistake, a fresh appointment

letter was issued to Mr. Harshad Deshpande for valuation of financial assets by Mr. Shah on 03.06.2019, i.e., within 7 days. Thus, in the present matter, Mr. Shah realized his mistake and took corrective action by issuing a fresh appointment letter in the name of Mr. Harshad Deshpande. Hence, DC is of the view that his conduct reflects his *bonafide* intent and therefore, DC takes a lenient view.

- 4.9 With respect to the issue regarding non-filing of an application under section 19(2) of the Code, the DC notes from the submissions made by Mr. Shah that CD 1 was not in operation for more than 7-8 years and had no employee except the aged Managing Director, Mr. Suryakumar. Further, Mr. Suryakumar was taking help/ assistance of the long back retired employee, an erstwhile accountant, namely Mr. Vadilal Khokhara, who is also aged above 70 years. Additionally, the data was also voluminous in nature relating to several years for which the CD 1 was not in operation. In such circumstances, the DC accepts the submission of Mr. Shah that filing an application under Section 19(2) of the Code must not have served much purpose and might have also resulted in further delay in the CIRP process. Hence, alleged contravention in this regard is not made out.

In the matter of UIC Corporation Private Limited (CD 2), API Industries Private Limited (CD 3) and Hardik Industrial Corporation Private Limited (CD 4)

- 4.10 The DC notes that the CIRPs of CD 2, CD 3 and CD 4 was admitted on 19.02.2019 and they are currently under liquidation vide order dated 23.10.2019, 23.09.2019 and 23.09.2019 respectively passed by Hon'ble NCLT, Ahmedabad Bench. In the CIRPs of CD 2, CD 3 and CD 4, the initial appointment letters for conducting valuation were issued in the name of M/s Adroit Valuation Services Private Limited and Mr. Kedar Chikodi on 27.05.2019. However, upon realization of mistake that M/s Adroit Valuation Services Private Limited is not an RV entity and Mr. Harshad Shamkant Deshpande is not associated with Mr. Kedar Chikodi, Mr. Shah issued fresh appointment letters in the names of Mr. Puneet Tyagi, Mr. Brahm Pal Bhardwaj, Mr. Anoop Kumar Goyal and Mr. Harshad Shamkant Deshpande on 03.06.2019. Since the work allotted to Mr. Brahm Pal Bhardwaj and Mr. Anoop Kumar Goyal was neither taken up nor fulfilled by them within due course of time, Mr. Shah was constrained to replace the said RVs and appoint other RVs, i.e., Mr. Dharam Pal Bhatia and Ms. Gunjan Agarwal vide appointment letters dated 31.10.2019.
- 4.10.1 With respect to the issue of delay in appointment of valuers in the CIRP of CD 2, CD 3 and CD 4, the DC notes that the appointment of valuers was made by Mr. Shah *vide* appointment letters dated 27.05.2019, 03.06.2019 and 31.10.2019, i.e., after a delay of 49, 56 and 206 days respectively. However, the DC also notes from the submissions of Mr. Shah that the delay in appointment was due to non-availability of reliable data pertaining to the operations of CD 2, CD 3 and CD 4 without which appointment of RVs could not have been made. The DC further notes that without requisite data and records, the RVs cannot commence their work and if such data/ record is unavailable, it will become difficult for them to complete the assignment at hand. In the present case, Mr. Shah submitted that he received the details and records from ex-directors vide email dated 16.04.2019 and further information sought by Mr. Shah was furnished on 08.05.2019. Thus, if number of days are calculated from the date of receipt of the details and records till the date of appointments of the RVs, it can be observed that the appointment of M/s Adroit Valuation Services Private Limited and Mr. Kedar Chikodi as RVs was done within 19 days from the date on which Mr. Shah was actually eligible

to appoint the RVs. Thus, if the date of receipt of details and records from the ex-directors is considered, it can be held that there was no delay in the appointment of RVs.

4.10.2 The DC also notes from the submissions made by Mr. Shah that upon realization of mistake that M/s Adroit Valuation Services Private Limited is not registered with IBBI as a RV and Mr. Harshad Shamkant Deshpande was not an associate of Mr. Kedar Chikodi, fresh appointment letters were issued by Mr. Shah in the names of individual RVs, i.e., Mr. Puneet Tyagi, Mr. Brahm Pal Bhardwaj, Mr. Anoop Kumar Goyal and Mr. Harshad Shamkant Deshpande on 03.06.2019. Thus, the individual RVs were also appointed within 26 days from the date of receipt of details and records from the ex-directors. Hence, there is no delay in appointment of valuers in the CIRPs of CD 1, CD 2 and CD 3.

4.10.3 With respect to the appointment of Mr. Dharam Pal Bhatia and Ms. Gunjan Agarwal on 31.10.2019, the DC notes that the appointment of Mr. Dharam Pal Bhatia and Ms. Gunjan Agarwal was in the nature of replacement because of non-performance of work by the RVs, i.e., Mr. Brahm Pal Bhardwaj and Mr. Anoop Kumar Goyal and no fresh appointment was made by Mr. Shah. Hence, alleged contravention with regard to delay in appointment is not made out.

4.11 With respect to the issue that cost disclosures in respect of valuers' fee submitted by Mr. Shah to his IPA were not made in accordance with the approval of CoC, the DC notes that the IPs and the CoC constitute key institutions of public faith under the Code. When a corporate debtor is admitted into CIRP, the Code shifts the control of a corporate debtor to creditors represented by a CoC for resolving its insolvency. Several actions under the Code require approval of the CoC. Regulation 34 of the CIRP Regulations provides for resolution professional costs which must be fixed by the CoC. In the present matter, the DC notes that in the 2nd CoC meeting of CD 2, CD 3 and CD 4 dated 01.06.2019, Mr. Shah sought for ratification of fee of valuers for Adroit Valuation Services Ltd. and Mr. Kedar Chikodi. Adroit Valuation Services Ltd. is not registered as a valuer with IBBI and Mr. Kedar Chikodi is a registered valuer for land and building and plant and machinery but not for financial assets. The DC notes that every valuation under the Code is required to be conducted only by the valuers registered with IBBI and in the present case, unregistered valuers, i.e., Adroit Valuation Services Ltd. and Mr. Kedar Chikodi not being a valuer for financial assets, were initially appointed by Mr. Shah. However, DC also notes that Mr. Shah realized his mistake and took corrective action by issuing appointment letters in the name of individual valuers registered with IBBI, i.e., Mr. Puneet Tyagi, Mr. Brahm Pal Bhardwaj, Mr. Anoop Kumar Goyal and Mr. Harshad Shamkant Deshpande on 03.06.2019. But he failed to intimate the CoC regarding appointment of individual valuers as well as about the replacement of Mr. Brahm Pal Bhardwaj and Mr. Anoop Kumar Goyal with Mr. Dharam Pal Bhatia and Ms. Gunjan Agarwal *vide* appointment letter dated 31.10.2019. The DC observes that Mr. Shah should have taken due diligence to inform the CoC in this regard.

4.11.1 The DC further notes from the provisions of the Code that an IP is not required to take approval of the CoC for appointment or replacement of valuers or engaging other professionals under section 28 of the Code. The submission of Mr. Shah regarding appointment of valuers that he was not required to seek approval of CoC for appointment of valuers in the present matter is acceptable to that extent while only the fee to be paid to them has to be approved by CoC. In the instant case, the amount of fee was approved

by CoC for valuers in the second CoC meeting of CD 2, CD 3 and CD 4 dated 01.06.2019. Later, Mr. Puneet Tyagi, Mr. Harshad Shamkant Deshpande, Mr. Dharam Pal Bhatia and Ms. Gunjan Agarwal were appointed as valuers and amount paid to them did not exceed the total amount as approved by CoC in the second CoC meeting. However, Mr. Shah should have sought approval from CoC for payment of fee to each valuer which he failed to do so. The DC also notes that as the fee paid to valuers did not exceed the total amount approved for valuers by CoC, therefore was no additional stress on the CIRP cost. Hence, the DC takes a lenient view.

In the matter of Shri Jalaram Rice Industries Private Limited (CD 5)

- 4.12 With respect to the third and fourth issue in the SCN that Mr. Shah inflated CIRP costs in the matter of CD 5 by not seeking approval or ratification of the appointment as well as the fee of valuers by CoC and by including the same in the cost disclosures made to the IPA, the DC notes that the CIRP of CD 5 was admitted on 12.04.2019. CD 5 is currently under liquidation vide order dated 19.09.2019 passed by Hon'ble NCLT, Ahmedabad Bench.
- 4.12.1 In the CIRP of CD 5, Mr. Paresh Shah, Mr. Jagdishbhai Mistri, Mr. Dharmendra Takhatmal Dhelariya, Mr. Rakesh Pravinbhai Shah, Mr. Chirag Shah and Ms. Darshna Gajjar were appointed as valuers by Mr. Shah. However, the DC notes that the fee of the above-mentioned valuers was not approved/ ratified by the CoC under Regulation 34 of the CIRP Regulations. Mr. Shah has also admitted that there was a technical lapse on his part that he had not put the fee of valuers for the approval/ ratification by the CoC members due to inadvertence. The DC also notes from the submissions of Mr. Shah that no payment was made to the RVs unless approval/ ratification was received from the members of the Stakeholders' Consultation Committee, who were none other than the members of the erstwhile CoC.
- 4.12.2 The DC observes that the fee of the RVs must be approved/ ratified by the members of CoC during CIRP and not by the Stakeholders' Consultation Committee constituted by the liquidator under Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016. The Stakeholders' Consultation Committee only plays an advisory role during liquidation process and thus, does not have the power to approve/ ratify the fee of RVs as the CoC exercises during CIRP. Thus, the submission of Mr. Shah in this regard is not tenable. The DC further notes that Mr. Shah included the fee of RVs in the cost disclosures made to his IPA. However, unless the fee is not approved or ratified by the CoC, the same cannot be included in the disclosures made to IPA. Thus, the conduct of Mr. Shah is in contravention of the section 208(2)(a) of the Code, regulation 34 of the CIRP Regulations, regulation 7(2)(a) and (h) of the IP Regulations read with clauses 2, 10, 12 and 14 of the Code of Conduct contained in the First Schedule of the IP Regulations.
- 4.13 Professionals are persons having domain knowledge and experience. They lay down the benchmark for their quality, efficiency and good governance. Under the provisions of the Code, an IP is recognized as an important component of the ecosystem who has been entrusted with a wide range of functions so as to effectively strive to maximise the value of assets of debtor during the resolution process. The credibility of the whole process under the Code hinges upon the conduct and professional competence of IP who is required to comply with the provision of the Code and regulations and to observe the

code of conduct. A well-functioning system of resolution driven by a competent IP plays a significant role in cementing together the interests of the CD with those of the creditors and in establishing the credibility of the process. It is for this reason that the need of specialized professionals for processes under the Code has been unequivocally emphasized.

Order

5. In the aforesaid backdrop and on the basis of analysis and findings in para 4, the DC finds that Mr. Shah, in the matter of Shri Jalaram Rice Industries Private Limited, has contravened the provisions of section 208(2)(a) of the Code, Regulation 34 of the CIRP Regulations and 7(2)(a) and (h) of the IP Regulations, read with clause 2, 10, 12 and 14 of the Code of Conduct as given in the First Schedule of the IP Regulations for making cost disclosures to the IPA without approval/ ratification of fee by CoC, and also for obtaining the approval of valuers fee from the Stakeholders' Consultation Committee during liquidation process and not from CoC during CIRP process.
6. In view of the above, the Disciplinary Committee, in exercise of the powers conferred under Section 220 of the Code read with Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017, disposes of the SCN with the following directions: -
 - (i) Mr. Kiran Chinubhai Shah shall not seek or accept any process or assignment or render any services under the Code for a period of two months from the date of coming into force of this Order. He shall, however, continue to conduct and complete the assignments/ processes he has in hand as on date of this order.
 - (ii) This Order shall come into force on expiry of 30 days from the date of its issue.
 - (iii) A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where he is enrolled as a member.
 - (iv) A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, for information.
7. Accordingly, the show cause notice is disposed of.

-sd-

(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Dated: 15th March, 2021
Place: New Delhi