

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)**

No. IBBI/DC/104/2022

3rd June, 2022

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2020/48/510/3368 dated 9th April 2022 issued to Mr. Arun Kumar Khandelia, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) and regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 (IP Regulations). Mr. Arun Kumar Khandelia is a Professional Member of ICSI Institute of Insolvency Professionals (ICSI-IIP) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-002/IP-N00514/2017- 18/11592.

1. Developments in relation to resolution/liquidation of the CD

- 1.1. The Hon'ble NCLT, Kolkata Bench (AA) vide order dated 01.05.2017 admitted the application under section 9 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of Ajudhia Distributors Private Limited (CD). The AA appointed Mr. Arun Kumar Khandelia as an Interim Resolution Professional (IRP) who was later confirmed as the Resolution professional (RP). In absence of submission of any resolution plan within 180 days from date of admission, AA *vide* order dated 15.12.2017 ordered liquidation of the CD and appointed Mr. Khandelia as liquidator.
- 1.2. Mr. Khandelia filed final report on 28.01.2020 informing that there was only one asset of the CD which has been sold for Rs. 85,00,000/- Out of this realized value Rs. 29,93,730/- was received by the financial creditor and no payment was received by the operational creditor. Remaining amount which constitutes 64.78% of the value realized was earmarked as professional fee, insolvency resolution process and liquidation cost.
- 1.3. Consequently, AA *vide* order dated 28.02.2022 dissolved the CD.

2. Issuance of Show Cause Notice (SCN) and hearing before DC

- 2.1. On having reasonable grounds to believe that Mr. Arun Kumar Khandelia had contravened certain provisions of the Code, Regulations and Circulars issued thereunder, the Board, in exercise of the powers conferred to it under section 218 of the Code read with the Inspection Regulations, appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Arun Kumar Khandelia *vide* order dated 24.09.2020. A draft inspection report (DIR), prepared by the IA, was shared with Mr. Arun Kumar Khandelia on 23.03.2021, to which Mr. Arun Kumar Khandelia submitted reply *vide* email dated 07.04.2021. The IA submitted the Inspection Report to Board on 09.04.2021.
- 2.2. Based on the material available on record including the Inspection Report, the Board issued the SCN to Mr. Arun Kumar Khandelia on 09.04.2022. The SCN alleged contravention of sections 13(2), 208(2)(a) and (e) of the Code, regulations 6(1), 6(2)(c), 33, 34 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulation 4(1) and 4(2) of the Insolvency and Bankruptcy Board of

India (Liquidation Process) Regulations, 2016 (Liquidation Regulations), and clause 13, 16, 25 and 26 of the Code of Conduct as specified in the First Schedule of the IP Regulations. Mr. Arun Kumar Khandelia replied to the SCN on 27.04.2022.

2.3. The Board referred the SCN, response of Mr. Arun Kumar Khandelia to the SCN 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. Arun Kumar Khandelia availed an opportunity of personal hearing before DC on 30.05.2022 through virtual mode where along with him he preferred to be represented by his legal councillor Mr. Arani Guha, Advocate.

3. Consideration of the SCN

The DC has considered the SCN, response of Mr. Arun Kumar Khandelia to the SCN and other material available on record and accordingly, proceeds to dispose the SCN.

4. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Mr. Arun Kumar Khandelia's submissions thereof are summarized below:

Contravention – I

4.1. Withdrawal of Professional fees in capacity of IRP, RP and Liquidator without due approvals

4.1.1 The minutes of the first Committee of Creditors (CoC) meeting dated 09.06.2017 record only an in-principal approval of CoC for the proposed remuneration of Rs. 2,50,000/- per month which was subject to the approval of banker's higher authorities. Even in the subsequent CoC meeting dated 18.07.2017, no professional fee was fixed for the RP. Despite the same, the 13th Progress Report reflects that Mr. Khandelia deducted Rs. 15,00,000/- as remuneration in capacity of IRP and RP during the CIRP period.

4.1.2 Regulation 4 (1) of Liquidation Regulations provides that the fee payable to the liquidator shall be in accordance with the decision taken by the CoC under regulation 39D of CIRP Regulations. In all other cases, the liquidator's fees shall be drawn as specified in regulation 4(2) of Liquidation Regulations. However, Mr. Khandelia failed to ensure compliance with regulation 4 of Liquidation Regulations for determination of his fees as a liquidator. 13th Progress report reflects that he deducted Rs. 25,00,000/- as his remuneration in capacity of a liquidator. Mr. Khandelia in his reply dated 07.04.2021 to the DIR, *inter alia*, stated that during the liquidation period in view of reduction of work, he voluntarily reduced his remuneration from Rs. 2.5 lakhs per month to Rs. 1 lakh per month.

4.1.3 Therefore, he has avoided the due process for fixing of remuneration for his services and drawn the fee from the account of the CD without due authorisation. In view of the above, the Board is of the *prima facie* view that Mr. Khandelia has *inter alia* violated section 208(2)(a), 208(2)(e) of Code, regulation 33, 34 of CIRP Regulations, regulation 4 of Liquidation Regulations, clauses 16, 25, 26 of Code of Conduct of IP Regulations.

4.2. Submissions made by the IP

- 4.2.1 On the CIRP period fee related contravention, Mr. Khandelia submitted that in the first Meeting of the CoC held on 09.06.2017, the remuneration and expenses were approved in principle and the statement of proposed remuneration for the CIRP period and expenses incurred till that date was tabled and taken over by Mr. Nayak, Assistant General Manager of Oriental Bank of Commerce (OBC), being the sole FC for the approval of higher authorities. Further, on 18.07.2017, the second adjourned first CoC meeting was held. Under item No. 3 of the minutes of the said meeting, proposed remuneration and expenses were specifically approved based on the statement of expenses and remuneration placed earlier on the first COC Meeting held on 09.06.2017. Furthermore, the authorized representative of the OBC being the sole FC has also confirmed the appointment of IRP as RP and his remuneration as per the statement placed in the earlier meeting through polling paper under the signature of Mr. Krishna Chandra Panda (Chief Manager). In view of the aforementioned facts and circumstances he submits that the remuneration was firstly approved in principle and thereafter was confirmed in the adjourned first COC meeting.
- 4.2.2 With respect to fees during liquidation period, Mr. Khandelia submitted that during CIRP period and Liquidation period, despite approaching the COC several times issue could not be resolved. Further, keeping in view the volume of work he has also voluntarily reduced his remuneration of Rs. 2.5 lakhs per month to Rs. 1 lakh per month.
- 4.2.3 Mr. Khandelia submits that he also opted for the alternate option available to him to pray the Hon'ble NCLT by making an interim application no. CA(IB) No. 402/KB/2019 asking direction against the Financial Creditors (FCs) to pay his remuneration and the expenses incurred. The Hon'ble NCLT asked him to serve the copy to the FC which was served multiple times to them. In spite of all these the FC did not bother to reply to the application. Hence he explored both the avenues apart from which he found no other option/avenue under the Code.
- 4.2.4 Regarding another option of table based dispensation, Mr. Kandelialia mentioned that his remuneration as Liquidator which works out to be Rs. 1,16,818/- as per regulation 4(2) of Liquidation Regulations amounts to Rs. 4,673/- per month. He has submitted that everyone will agree in terms of the work & the stature of a liquidator and also giving credence to the Circular (IBBI) No. IBBI/IP/013/2018 dated 12.06.2018 regarding reasonable remuneration, Rs. 4,673/- per month is not something that is maybe drawn as a liquidator. Mr. Khandelia submitted that if such remuneration was agreed to, then it would be surely a contravention in relation to reasonableness of the fee.
- 4.2.5 Mr. Khandelia further submitted that he has never avoided the due process of fixing remuneration as it is clear from the above stated facts and circumstances and has never violated any of the stated sections and have never intended to do so. He has always informed the constraints and limitations faced by him to the Hon'ble NCLT by submission of the progress reports and various Interlocutory application and have also shared all the documents/data with IBBI.

4.3. Summary Findings

- 4.3.1 In respect to the issue of withdrawal professional fees by Mr. Khandelia without due approval, the DC will deal with the issue of fees in capacity of IRP/RP separately from fees in capacity of liquidator.
- 4.3.2 Regarding fees withdrawn by Mr. Khandelia for performing his role as IRP/RP in CIRP of CD, the DC notes his submission that CoC in its meeting dated 18.07.2017 approved through poll the proposed remuneration and expenses specifically based on the statement of expenses and remuneration placed earlier on the first COC Meeting held on 09.06.2017. The resolution read as *“To take note and approve the remuneration and expenses made by the Interim Resolution professional including that on professional advisors which shall constitute Corporate Insolvency Process costs, till the date of the meeting.”* The DC notes that the fees of IRP/RP was approved by CoC with 100% majority. In light of reasonable and sufficient cause explained made by Mr. Khandelia and approval accorded by CoC, DC accepts the submissions made by Mr. Khandelia.
- 4.3.3 Regarding fees withdrawn by Mr. Khandelia for performing his duties as Liquidator of CD, the DC notes that fees of Rs. 1 lakh per month fixed and deducted by Mr. Khandelia from sale proceeds received after sale of asset of CD has not been approved or assented either by CoC or by AA.
- 4.3.4 The DC notes that the interim application CA(IB) No. 402/KB/2019 which was filed by Mr. Khandelia for seeking directions from AA to direct Oriental Bank of Commerce (OBC), sole FC, to release his payment or to adjust his expenses and remuneration from the sale proceeds. Through this IA, Mr. Khandelia further prayed that direction may be issued to OBC for fixing the monthly remuneration in respect of the Liquidation procedure in addition to the fees as percentage of the amount realized as prescribed under regulation 4(3) of Liquidation Regulation excluding the payments made to the registered valuers, the e-auction agency, and other related expenses towards agent and broker of properties. The FC appeared before AA on 24.01.2020 in said IA which was disposed of as *“not pressed”* vide order dated 24.01.2020. The said order says as under:
- “Ld. Liquidator with his Counsel appears. Ld. Counsel for the Chief Manager, Oriental Bank of Commerce, appears. Chief Manager, Oriental Bank of Commerce also appears in person.*
- CA(IB) No. 402/KB/2018 is not pressed by the Liquidator and disposed of as “not pressed”. We hereby dispensed with the appearance of the Chief Manager, Oriental Bank of Commerce. ...”*
- 4.3.5 Mr. Khandelia filed final progress report on 28.01.2020 which was opposed by OBC. AA vide order dated 28.02.2020 observed that there is force in submissions made by FC with regards to IRP/RP/Liquidator’s claim of fees and cost and directed Mr. Khandelia to submit list of dates stating the event along with supporting documents/vouchers with regard to fees and costs. Mr. Khandelia filed the events chart along with annexures before AA. On 01.12.2022 AA observed that *“Since this matter has come up for hearing after a long hiatus, Registry is directed to issue notice to the applicants for appearance in the matter.”* The AA after hearing the Mr. Khandelia passed order of dissolution of CD on 28.02.2022.

4.3.6 The DC observes the following provisions of CIRP Regulations regarding liquidation cost and fees of liquidator:

“39B.Meeting liquidation cost.

(1) While approving a resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.

(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).

(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.”

“39D. Fee of the liquidator.

While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee payable to the liquidator, if an order for liquidation is passed under section 33, for –

(a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;

(b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and

(c) the balance period of liquidation.”

Further regulation 4 of Liquidation Regulations provides as follows:

“4. Liquidator’s fee.

(1) The fee payable to the liquidator shall be in accordance with the decision taken by the committee of creditors under regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(2) In cases other than those covered under sub-regulation (1), the liquidator shall be entitled to a fee-

(a) at the same rate as the resolution professional was entitled to during the corporate insolvency resolution process, for the period of compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013); and

(b) as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation, as under:”

<i>Amount of Realisation / Distribution (In rupees)</i>	<i>Percentage of fee on the amount realised / distributed</i>		
	<i>in the first six months</i>	<i>in the next six months</i>	<i>thereafter</i>
<i>Amount of Realisation (exclusive of liquidation costs)</i>			
<i>On the first 1 crore</i>	<i>5.00</i>	<i>3.75</i>	<i>1.88</i>
<i>On the next 9 crore</i>	<i>3.75</i>	<i>2.80</i>	<i>1.41</i>
<i>On the next 40 crore</i>	<i>2.50</i>	<i>1.88</i>	<i>0.94</i>

<i>On the next 50 crore</i>	<i>1.25</i>	<i>0.94</i>	<i>0.51</i>
<i>On further sums realized</i>	<i>0.25</i>	<i>0.19</i>	<i>0.10</i>
<i>Amount Distributed to Stakeholders</i>			
<i>On the first 1 crore</i>	<i>2.50</i>	<i>1.88</i>	<i>0.94</i>
<i>On the next 9 crore</i>	<i>1.88</i>	<i>1.40</i>	<i>0.71</i>
<i>On the next 40 crore</i>	<i>1.25</i>	<i>0.94</i>	<i>0.47</i>
<i>On the next 50 crore</i>	<i>0.63</i>	<i>0.48</i>	<i>0.25</i>
<i>On further sums distributed</i>	<i>0.13</i>	<i>0.10</i>	<i>0.05</i>

4.3.7 The DC observes that Mr. Khandelia has withdrawn fees of Rs. 1 Lakh per month as per his own sweet will, without adhering the regulation 39D of CIRP Regulations and regulation 4 of Liquidation Regulations. The DC notes the submission of Mr. Khandelia that he has not withdrawn fees as per regulation 4 of Liquidation Regulation as entitlement under the provided table could have very low. The submission of Mr. Khandelia that neither FC nor AA has confirmed his exact remuneration does not hold water as sole FC, i.e., OBC appeared before AA in CA(IB) No. 402/KB/2019 on 24.01.2022 which was dismissed as 'not pressed' implying thereby, that Mr. Khandelia himself did not pursue the said application. Hence it can be concluded that Mr. Khandelia has contravened section 208(2)(a), 208(2)(e) of Code, regulation 4 of Liquidation Regulations, clauses 16, 25, 26 of Code of Conduct of IP Regulations.

Contravention-II

4.4. Delay in Public announcement and reduced time to stakeholders for submission of claims

Mr. Khandelia was appointed as IRP vide order dated 01.05.2017. Regulation 6(1) of CIRP Regulations requires public announcement to be made within three days of appointment as an IRP. However, the public announcement was made by Mr. Khandelia with a delay of 5 days i.e. on 09.05.2017. Regulation 6(2)(c) of CIRP Regulations requires a period of 14 days from the date of appointment to be provided for submission of proofs of claim. However, the public announcement dated 09.05.2017 made by Mr. Khandelia provided last date for submission of claims as 14.05.2017, thereby reducing the time to only 6 days. In view of the above, the Board was of the *prima facie* view that Mr. Khandelia *inter alia* violated section 13(2), 208(2)(a), 208(2)(e) of Code read with regulation 6(1) and 6(2)(c) of CIRP Regulations, clause 13 of Code of Conduct of IP Regulations.

4.5. Submissions made by the IP

Mr. Khandelia admitted that there is a delay of 5 days in public announcement and submitted his explanation that the Code was newly enacted and perhaps it was one of the first cases to have been admitted in the Kolkata NCLT. Being new concept, a marginal time was lapsed. However, no person either contacted him nor filed any application to the Hon'ble NCLT for seeking direction upon him for accepting their claim. Hence, no interest of any creditors has been affected because of this delay as per the records in this matter. The delay was unintentional and did not cause any prejudice to anyone.

4.6. Summary Findings

In respect to the issue of delay in public announcement, the DC observes that public announcement was published on 09.05.2017 while it was required to be published by 04.05.2017, i.e., not later than three days from the date of his appointment, i.e., 01.05.2017 as provided in Explanation to regulation 6(1) of CIRP Regulations. The delay has been admitted by Mr. Khandelia in his submissions. Viewing the circumstances of the delay and acceptance of the mistake by Mr. Khandelia, DC does not intend to labour on this point further.

5. Order

- 5.1. On pursual of summary findings with regard to Contravention related to non-adherence of the procedure as enunciated in regulation 4 of the IBBI (Liquidation Process) Regulations, 2016, it is evident that in contravention to available options under the statute, Mr Khandelia, not only *suo moto* fixed his fee but also arbitrarily went ahead to realize the same from the liquidation proceeds.
- 5.2. Though Mr. Khandelia has highlighted that in relation to the workload, he has reduced the fee from Rs. 2.5 lakh per month being charged by him as IRP/RP to Rs 1.00 Lakh per month. However, either through his written submissions or during oral hearing he could substantiate under what provisions, he derived the authority to decide his own fee and what was economic rationale for the same. Further charging an uniform fee throughout the liquidation period again is against the spirit of procedural architecture built around the fixation of the liquidator's fee. The Bankruptcy Law Reforms Committee in its final report mentioned that ; *“The fees that the Liquidator can charge must be a decreasing function of time. Under such a fee structure, the same realisation obtained in the second year will mean a smaller fee for the liquidator than the fee for the realisation in the first year.”*
- 5.3. Further, Mr. Khandelia has made his defence on the grounds of “reasonableness” and in this regard he has sighted Circular no. IBBI/IP/013/2018 dated 12.06.2018. In this regard it is to mention that the said circular refers to fees and expenses incurred during the CIRP and is issued under Regulation 34A of the CIRP Regulations which related to “Disclosure of Costs”. Further fee fixation issue during CIRP is governed by Regulation 33 and 34 of the CIRP Regulations, which does not authorize IRP or RP as the case may be to fix his own fee. For clarity regulation 33 and 34 is reproduced below:

“33. Costs of the interim resolution professional.

(1) The applicant shall fix the expenses to be incurred on or by the interim resolution professional.

(2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).

(3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.

(4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the interim 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 interim resolution professional.”

“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.”

- 5.4. Not only fee has to be fixed in a manner prescribed under the regulations by the stakeholders authorized to do so as highlighted above, the reasonableness has to be with reference to work performed and should not have disproportionate effect on the interests of other claimants. In the current case, the fee of drawn by Mr. Khandelia in various capacities works out to over 47% of the realized amount. Hon'ble NCLAT in matter of Jayesh N. Sanghrajka, R.P. of Ariisto Developers Pvt. Ltd. vs. The Monitoring Agency nominated by the Committee of Creditors of Ariisto Developers Pvt. Ltd., CA AT (Ins.) No. 392 of 2021 in its judgement dated 20.09.2021 inter-alia observed:

“...The role of the Resolution Professional has to be like a dispassionate person concerned with performance of his duties under the Code for reasonable fees and it cannot be result oriented..... Fees cannot be disproportionate to eat into the percentage of other claimants of the Corporate Debtor and the Corporate Debtor about to be resolved.”

- 5.5 Though it has been argued that monetary appropriation of fee by Mr. Khandelia is not significant, nevertheless, in case a lenient view is taken in the instant case, then it shall be sending a wrong message to the market that one can get away even with serious charge of violating the set procedure under the statute and fix and appropriate fee for oneself in one context or the other without due authorization.
- 5.6 Accordingly, the DC finds that the actions of Mr. Arun Kumar Khandelia are in violation of section 13(2), 208(2)(a), 208(2)(e) of Code, regulation 4 of Liquidation Regulations, regulation 6(1) and 6(2)(c) of CIRP Regulations, clauses 13, 16, 25, 26 of Code of Conduct of IP Regulations.
- 5.7 In view of the foregoing contraventions, the DC, 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 the IBBI (Inspection and Investigation) Regulations, 2017, hereby, suspends the registration of Mr. Arun Kumar Khandelia having registration no. IBBI/IPA-002/IP-N00514/2017- 18/11592, for a period of 12 months.
- 5.8 In addition, the DC hereby imposes a penalty on Mr. Khandelia of Rs five lakh and directs him to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of “penalty imposed by IBBI” on <https://bharatkosh.gov.in> within 45 days from the date of issue of this order and submit a copy of the transaction receipt to the Insolvency

and Bankruptcy Board of India. Failing to deposit the amount within 45 days, his suspension will be extended by another six months.

5.9 This Order shall come into force on expiry of 30 days from the date of its issue.

5.10 During the suspension period, Mr. Khandelia can carry out his duties as IRP/RP or liquidator, as the case may be, in respect of assignments which have already awarded to him subject to fresh decision of CoC for continuation of his services. A copy of this order shall be sent to CoC of all the Corporate Debtors in which Mr. Khandelia is providing his services, if any. The CoC may decide whether to continue his services or not. In case CoC decides to discontinue his services, CoC may file an appropriate application before AA.

5.11 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Arun Kumar Khandelia is enrolled as a member.

5.12 A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.

5.13 Accordingly, the show cause notice is disposed of.

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(Sudhaker Shukla)
Whole Time Member, IBBI

Dated: 3rd June, 2022

Place: New Delhi