

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/192/2023

9th October, 2023

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INVS/2022/02/821 dated 11.07.2023 issued to Mr. Kamal Agarwal, 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 (Investigation Regulations). Mr. Kamal Agarwal is a Professional Member of Insolvency Professional Agency of the Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with registration No. IBBI/IPA-001/IP-P00868/2017-18/11466.

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

1.1. The Hon'ble NCLT, New Delhi Bench-III (AA) *vide* order dated 14.06.2019 admitted the application under section 9 of the Code, filed by the Ms. Suman Chadha (Operational Creditor/OC), for initiating Corporate Insolvency Resolution Process (CIRP) of Lifestyle Fitness Private Limited (CD) where Mr. Shyam Arora was appointed as Interim Resolution Professional (IRP). The admission order dated 14.06.2019 was challenged by shareholder of CD before Hon'ble NCLAT who dismissed the appeal CA(AT)(Ins) 771/2019 on 26.11.2019. The said order of Hon'ble NCLAT was challenged before Hon'ble Supreme Court who also dismissed on 16.12.2019. In the meantime, the Committee of Creditors (CoC) passed resolution for replacement of the IRP and appointment of Mr. Kamal Agarwal as Resolution Professional (RP) who was further confirmed by AA *vide* order dated 05.11.2019. Since no resolution plan was received, AA ordered liquidation of CD *vide* order dated 21.09.2020 and Mr. Kamal Agarwal was appointed as liquidator.

1.2. The AA *vide* order dated 14.02.2023 allowed the application for amalgamation, compromise and arrangement and directed the liquidator to conduct a meeting with all the stakeholders and put the scheme on voting and submit its report within 30 days. Mr. Kamal Agarwal filed a report on 18.04.2023 submitting that all the stakeholders have given their consent in favour of the scheme of compromise, amalgamation. The AA *vide* order dated 16.06.2023 directed to make payment to the stakeholders and liquidation costs.

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

2.1. In the meantime, an appeal was filed by Ms. Suman Chadha (OC) against the rejection of her claim by Mr. Kamal Agarwal in liquidation of CD. The AA while disposing of the appeal *vide* order dated 27.05.2022 directed Mr. Kamal Agarwal to accept the claim of OC and referred the matter to the Board for investigation. Accordingly, the Board, in exercise of the powers conferred to it under section 218 of the Code read with the Investigation

Regulations, appointed an Investigating Authority (IA) to conduct the investigation of Mr. Kamal Agarwal *vide* order dated 09.06.2022. The investigation notice was issued to Mr. Kamal Agarwal by IA on 15.06.2022. Mr. Kamal Agarwal submitted his reply to investigation notice *vide* email dated 29.06.2022. Thereafter, the IA submitted the investigation report to the Board.

- 2.2. Based on the material available on record including the investigation report, the Board issued the SCN to Mr. Kamal Agarwal on 11.07.2023. The SCN alleged contravention of section 208(2)(a) & (e) of the Code, regulation 7(2)(b)(iii) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulation 17(2)(b)(iii) of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations), regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clause 14 of the Code of Conduct for IPs under First Schedule to IP Regulations (Code of Conduct). Mr. Kamal Agarwal submitted his reply to the SCN on 25.07.2023.
- 2.3. The Board referred 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.
- 2.4. Mr. Kamal Agarwal availed an opportunity of personal hearing before DC on 24.08.2022 virtually where he requested for physical hearing. The DC permitted for physical personal hearing which took place on 25.08.2023. Apart from oral submission made on 25.08.2023, Mr. Kamal Agarwal submitted additional written submissions on 25.08.2023 and 29.08.2023.

3. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Mr. Kamal Agarwal's submissions thereof are summarized below:

Contravention

3.1. Rejecting the claim of Operational Creditor.

- 3.1.1. The Board observed that initially the claim filed by Ms. Suman Chadha as Operational Creditor (OC) was admitted by the IRP, Mr. Shyam Arora. However, after appointment of Mr. Kamal Agarwal as RP, he reviewed and rejected her claim on the ground that the claim was not supported by invoices. The OC, being aggrieved by the rejection of the claim, challenged the same before the AA. However, during the pendency of her application, the liquidation of the CD was ordered by the AA.
- 3.1.2. It was further observed that after the liquidation order, the OC again filed the claim with the Mr. Kamal Agarwal on 29.10.2020 which was again rejected by him on the same ground that

the OC had failed to provide the invoices for the debt and the documents furnished for the claim did not establish the existence of a debt. Therefore, the OC filed an application under section 42 of the Code against her rejection of the claim. AA *vide* order dated 27.05.2022, directed Mr. Kamal Agarwal to accept the claim of the OC and made the following adverse observations:

"During the course of hearing, the Ld. Counsel appearing on behalf of Liquidator as well as the Liquidator in person, continued to harp upon the fact that there were no invoices, hence, the claim of the operational creditor was rightly rejected. At this stage, their attention was also invited to the provisions of Regulation 17(2)(iii) of Liquidation Process Regulations, 2016, which state that the existence of debt due to an operational creditor, may be proved on the basis of an order of a Court or Tribunal that has adjudicated upon the non-payment of a debt, if any and the order of admission passed by this Adjudicating Authority, being a Tribunal falls into this category. Even then, the Liquidator continued to state that the stand taken by him was justified.

Thus, in this case, there is an adamant approach of RP who has not even bothered to take note of the fact that he is functioning as Liquidator in the present case only because of such outstanding liability being found to be payable by the corporate debtor by an order of Adjudicating Authority, being NCLT. We further note that the Liquidator is handling many more assignments as IRP, RP as well as the liquidator, which is evident from the IBBI website, hence, such unethical/ unprofessional conduct of the RP cannot be accepted at any cost."

3.1.3. As per regulation 7(2) of CIRP Regulations, as well as regulation 17 (2) of the Liquidation Regulations, existence of debt due to OC may be proved on the basis of:

- (a) the records available with an information utility, if any; or*
- (b) other relevant documents, including -*
 - (i) a contract for the supply of goods and services with corporate debtor;*
 - (ii) an invoice demanding payment for the goods and services supplied to the corporate debtor;*
- (iii) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; or (emphasis supplied)***
- (iv) financial accounts.*

3.1.4. In the said matter, the application for initiation of CIRP of the CD was filed before AA under section 9 of Code and AA while admitting the CD under CIRP observed that *"The operational creditor has established the existence of debt and default by the corporate debtor Company. The tribunal is of the view that the Corporate Debtor is unable to give satisfactory explanation in relation to any pending dispute or the claim being paid and that this petition requires to be admitted"*.

3.1.5. Thus, AA had already established existence of debt *vide* order dated 14.06.2019, and based on such determination, the application for initiation of CIRP was allowed. Despite existence of debt having been established by AA's order dated 14.06.2019, Mr. Kamal Agarwal first disallowed the claim of OC initially admitted by the IRP during CIRP of the CD and again rejected later when the claim was re-submitted by the OC after liquidation order was passed by the AA in complete disregard to regulation 7(2) of CIRP Regulations and regulation 17(2) of Liquidation Regulations.

3.1.6. In view of the above, the Board held the *prima facie* view that Mr. Kamal Agarwal has contravened section 208(2)(a) & (e) of the Code, regulation 7(2)(b)(iii) of the CIRP

Regulations, regulation 17(2)(b)(iii) of the Liquidation Regulations, regulation 7(2)(a) & (h) of the IP Regulations read with clause 14 of the Code of Conduct.

3.2. Submissions by Mr. Kamal Agarwal.

3.2.1. Mr. Kamal Agarwal submitted that AA in the Admission Order, observed that, "*...The Operational Creditor has established the existence of debt and default by the Corporate Debtor Company...*". He submitted that he has not disputed the existence of the debt at any stage before any forum including AA, the Board or Hon'ble NCLAT. A plain reading of the admission order passed by the AA also illustrates that an adjudication has been made with respect to the establishment of the existence of debt, and not the quantum of debt which has to be further determined on the basis of supporting documents by the IRP/RP.

3.2.2. Mr. Kamal Agarwal submitted that admission order was challenged by the suspended board of directors (SBD) of CD before the Hon'ble NCLAT. The Hon'ble NCLAT, *vide* judgment dated 26.11.2019, while adjudicating upon the dispute between the SBD and the OC remarked as under:

"9 ... Learned Counsel for the Appellant stressed upon this Tribunal on the payment of Rs. 25 lakhs in "cash" to one Shri Ritesh Vijhani and contended that the said Shri Ritesh Vijhani was an authorized representative of the Operational Creditor. Neither the Adjudicating Authority nor this Appellate Tribunal will go into the veracity and authenticity of such document since the proceedings before the Adjudicating Authority are summary in nature and cannot adjudicate upon seriously disputed documents which need to examine the persons involved to be cross-examined in a regular trial before competent Court of Jurisdiction and if necessary, the documents need to be sent to Forensic Department for its genuineness...

10. ... Apart from above, even if Rs. 25 lakhs is held to be paid was to be accepted, admittedly Corporate Debtor held back Rs. 1 lakh. If the default is Rs. 1 lakh, the insolvency can be triggered against the Corporate Debtor as per Section 4 of IBC. The Appellant in grounds of appeal has stated that the balance of Rs. 1 lakh was withheld by the Appellant. Thus the default is admitted."

Thus, the Hon'ble NCLAT also highlighted that the proceedings before the Adjudicating Authority are 'summary' in nature and thus, they cannot adjudicate upon seriously disputed issues between the parties which needs further determination from a competent court of justice. As discernible from the above judgment by Hon'ble NCLAT, there was lack of clarity on the amount of claim due to the OC by the CD and the judgment did not provide any determination of the amount of claim due to the OC by the CD. It can thus be inferred that the same needs determination based on supporting evidence which has to be adduced/substantiated by the OC himself.

3.2.3. He further submitted that as can be seen from para 8 of the admission order dated 14.06.2019 wherein the AA observed that "*The Corporate Debtor has filed its Reply to the petition, on 23.04.2019 and represents that when the respondent received a notice (under*

section 138 of NI Act) dated 15.10.2018 sent by the operational creditor through one Mr Siddharth Arora, Advocate, within a period of 15 days from the date of receipt of the said notice, a sum of Rs 25,00,000/- was paid to one Mr Ritesh Vijhani on behalf of the applicant and also a written acknowledgement was also signed by him, which is also annexed to the petition. It is further represented that the only liability to return is the balance amount of Rs 1,00,000/- after the Operational Creditor returned the cheques in his possession". This clearly indicates that there is an admission of debt on behalf of the corporate debtor.

- 3.2.4. He further submitted that a similar stand has been taken in a catena of decisions before multiple fora wherein it has been categorically observed that while the jurisdiction of the AA has been interpreted to exclude the determination of the value of a disputed claim, this role has been given to courts outside the CIRP framework. He submitted that keeping in background the decision of the Hon'ble NCLAT, while scrutinising the documents submitted by the OC in support of their claim noticed several deviations and thus, in his prudence, he thought it appropriate to reject the claim of the OC.
- 3.2.5. He submitted that that the rejection of the claim was in compliance with the direction of AA *vide* its oral instruction on 10.01.2020 where IA 116 of 2020 was filed for taking on record the status report dated 30.12.2019. He further submitted a direction was specifically sought from AA on 10.01.2020 as to how to proceed further in view of the fact that the claim of OC is not supported by any documents. The AA directed him to act in accordance with the provisions of the law and read out regulation 14(2) of the CIRP Regulations under which the RP can revisit the claim. Hence, he revised and rejected the claim of the OC *vide* email dated 14.01.2020. This rejection was based on merits and was also in line with the oral instructions issued by AA directing him to use the power under regulation 14(2) of the CIRP Regulations.
- 3.2.6. He submitted that further clarification was also sought from the OC regarding her claim on 16.02.2020 which was duly responded by her on the same date. The direction dated 10.01.2020 of the AA is also recorded in the clarification email dated 16.02.2020 sent to the OC. Post rejection of the claim, the AA was apprised of the final rejection of the claim under regulation 14(2) of the CIRP Regulations 2016 on 26.02.2020 while presenting the status report filed *vide* IA 1455 of 2020 and the same is also recorded in the order sheet dated 26.02.2020 which record as follows "*under consideration is the status report filed by the Resolution Professional. Under Para- 9, it is stated that the IRP has admitted one of the claims of the Operational Creditor without supporting documents and under Regulation 14(2) of the CIR Process Regulations, 2016, the scrutiny has been done and the claim of the Operational Creditor is rejected, against which, the Operational Creditor has already filed CA no. 1441/2020. The issue can be looked into the said IA. Therefore, the present CA stands closed*".
- 3.2.7. He submitted the claim of OC was also discussed at length in the 5th meeting of CoC held on 28.12.2019 and 6th CoC meeting held on 20.01.2020 when it was seen that OC is not appearing in the audited accounts of the CD for the FY 2016-17 and FY 2017-18, It was

questioned from the suspended board of directors of the CD in the 5th meeting of CoC as to why is the name of the OC is not appearing in the list of creditors to which the suspended board replied that "because no invoices were issued" and the same was also confirmed by the representative of the OC Mr Siddharth Arora stating that "*as no invoices were demanded therefore no invoice were issued*". He then raised a query as to whether it is the discretion of the parties to raise an invoice or is an invoice mandatorily required before a debt can be legally acknowledged to which there was no answer.

3.2.8. He submitted that in order to verify the claim of the OC, he examined the Form B and the documents attached therewith. It was observed that in support of the claim, the OC annexed the ledger account. A comprehensive scrutiny of the said ledger account indicated that the document was manufactured and not generated from any accounting software. There was no address, VAT/Service Tax details of either the supplier or recipient of services, the voucher numbers were serially mentioned from 1 to 11 indicating that there were no other transactions undertaken by the OC between 20.11.2016 to 20.09.2018. Further, the ledger showed only one closing balance (the date of which is not mentioned) and no consistent pattern has been followed in the format.

3.2.9. He submitted that apart from the above observation, he also observed that the liability mentioned in the documents attached with the claim form was *qua* the suspended board of directors personally rather than *qua* the CD. He further made an attempt to obtain any document substantiating the claim amount of the OC, enquired regarding the basis of claim approval from the IRP *vide* email dated 02.01.2020. However, even after detailed inputs were sought from the IRP, no response to the same was received by the Insolvency Professional. A similar email was addressed to the statutory auditors as well, however, no response was received from them as well. He submitted that as can be seen from the above series of events, he made all efforts to seek documents/ information from the OC so as to determine the claim amount which can be admitted. However, it is only when he received no inputs, that he was constrained to reject the claim of the OC.

3.2.10. Mr. Kamal Agarwal emphasised on regulation 7(1) of the CIRP Regulations which mandates (the use of word 'shall') the operational creditors to submit their claims with proof for the purpose of substantiating the claim amount which is due to them from CD. Regulation 7 of the CIRP Regulations makes no exception for submission of claims with proof in cases where CIRP is initiated under section 9 of the Code. If the intention of the legislature was to exclude the submission of claims with proof in such cases, then a specific provision of this effect might have been added to regulation 7 of the CIRP Regulations. He further highlighted Regulation 7(2) of the CIRP Regulations suggesting that the same applies only for the limited purpose of proving the '*existence of the debt*' and not the '*amount of debt owed to the operational creditor by the CD*'.

3.2.11. Mr. Kamal Agarwal submitted that the authority of a resolution professional to apply his mind while collating and verifying the information to justify a claim when the same is not supported with documentary evidence has been recognised by the Hon'ble NCLT Mumbai

in the matter of *IDBI Bank limited Vs. Deegee Cotsyn Private Limited*. Further, the CIRP Regulations allow the IRP/RP to call for evidence/clarifications in order to substantiate claims. The CIRP Regulations under regulation 10 and 12 also provide for the requirement of submission of proof when claims are submitted by the respective claimants.

3.2.12. Mr. Kamal Agarwal submitted that the OC filed an application IA 1441/2020 before AA challenging the rejection of her claim by RP. However, during the pendency of the said application, the CD went into liquidation and RP was appointed as the liquidator. Consequently, the OC was allowed to withdraw the said application and the Tribunal vide the same Order dated 23.10.2020, gave the following directions to the RP with respect to admission of claims of the OC during Liquidation:

"In case the claim is filed by the applicant along with valid documentary evidence then the Liquidator may decide the claim on merits."

He submitted that there is a specific direction to the liquidator to decide the *"claims on merits"* in case the claim is filed by the applicant along with *"valid documentary evidence"*. It is the duty of liquidator to decide the claim on merit and adjudicate the same based upon the valid documentary evidence filed along with the claims. Thereafter, the OC filed her claim with the liquidator on 29.10.2020. which was subsequently rejected by him vide email dated 22.11.2020 stating *"in view of the fact that no invoice were ever issued by you for the services (if any) rendered by you to the corporate debtor and all other documents as annexed by you with your claim Form C dated 29.10.2020 fails to adequately establish the debt against the corporate debtor."*

3.2.13. In compliance with the directions of the AA, he perused all the provisions with respect to claim verification under the Code and the Liquidation Regulations relevant for admission of claim of a stakeholder claiming to be an operational creditor. He referred section 39 of the Code read with regulation 30 of the Liquidation Regulations, section 35, 38(3), 40 of the Code, regulation 17 of the Liquidation Regulations which governs the treatment of claims submitted by operational creditors during the liquidation process. Regulation 17(1) of the Liquidation Regulations mandates a person claiming to be an OC to submit proof of claim to the liquidator for the purpose of substantiating the claim amount while regulation 17(2) applies for the purpose of proving the existence of the debt. Thus, the language of the provision contained in regulation 17(2) of the Liquidation Regulations suggests that the same applies only for the limited purpose of proving the *'existence of the debt'* and not the *'amount of debt owed to the operational creditor by the CD'*. Hence, he rejected the claim of the OC after due consideration of the documents adduced by the OC, the relevant provisions of the Code, Liquidation Regulations and the extant instructions of the Hon'ble NCLT also relied on the decision of Hon'ble NCLAT in Company Appeal (AT)(Insolvency) No. 1354/2019 in the matter of *Flipkart India Private Limited Vs. Cloudwalker Streaming Technologies Private Limited*. Vide email dated 22.11.2020 he stated that *"in view of the fact that no invoice were ever issued by you for the services (if any) rendered by you to the corporate debtor and all other documents as annexed by you*

with your claim Form C dated 29.10.2020 fails to adequately establish the debt against the corporate debtor." He submitted that the claim had been rejected by him due to inadequacy in substantiation of the debt by way of valid documentary evidence.

- 3.2.14. Mr. Kamal Agarwal submitted that the OC filed an appeal under Section 42 of the Code bearing Company Appeal no. 11/2020 before AA challenging the rejection of the claim of the OC by him. He submitted before AA that there was no ulterior motive and rejection was done only after oral instruction of AA on 10.01.2020 while presenting the status report in IA 116 of 2020. The AA asked whether the same is recorded in any order to which he could not answer. The AA further asked if any legal opinion was taken before rejection of the claim, to which he replied that no legal opinion was taken in the matter as it was not felt necessary post specific direction of AA.
- 3.2.15. The appeal was disposed of by AA *vide* order dated 27.05.2022 and pursuant to the said order, he was given clear directions to admit the claim of the OC and, therefore, the IP has included the entire claim of the OC in consonance with regulation 17(2)(b)(iii) of the Liquidation Regulations and filed an application under regulation 31 of the Liquidation Regulations *vide* IA No. 2687 of 2022, amending the list of stakeholders and the same has also been taken on record by AA on 09.06.2022
- 3.2.16. Mr. Kamal Agarwal further submitted that there exists no debt payable by the CD to the OC as adjudicated by the Hon'ble MM (NI Act) -03/ RACC/NDD Anshul Singhal *vide* order dated 20.02.2023 in CT Cases 16882/2018 titled as "Suman Chadha Vs Poonam Gupta and Ors" wherein the CD was arrayed as accused no 3. The complaint was filed for the same debt with the same set of documents as was prayed for by the OC in the petition before AA, i.e., CP(IB) 310 of 2019. It was the submission of the complainant (Ms Suman Chadha) before the Hon'ble MM that accused no. 3 should be summoned in the present matter as it is for the liability of accused no. 3 that the present cheque has been issued by the accused no 1 (Poonam Gupta i.e., the Ex-director). The Hon'ble MM after pursuing the entire complaint held that *"The cheque in question has been issued by accused no 1, namely, Ms Poonam Gupta in her personal capacity. It is a settled law that only the issuer of the cheque is liable u/s 138 NI Act"*.
- 3.2.17. Mr. Kamal Agarwal submitted that the ex-directors had moved a compromise application vide IA 389 of 2021 under section 230 of the Companies Act, 2013 which was also heard and reserved for order first on 25.04.2022 by AA along with CA 11 of 2020, However, order in this IA 389 of 2021 was never pronounced and therefore it was de-reserved and heard afresh and was allowed *vide* order dated 14.02.2023 with a direction to call a meeting of the stakeholders and put the scheme to voting. The same was complied with and a status report was filed vide IA 2219 of 2023 which was heard and allowed with certain directions to the liquidator.

3.3. Analysis and Findings.

- 3.3.1. Mr. Kamal Agarwal rejected the claim of the OC on 14.01.2020 during CIRP of CD. The AA *vide* order dated 26.02.2023 while considering a status report filed by Mr. Kamal Agarwal referred about rejection of the claim of OC by Mr. Kamal Agarwal and IA 1441/2020 has been filed by OC against rejection. AA observed that the issue of rejection may be examined while deciding the said IA.
- 3.3.2. While IA 1441/2020 was pending, the CD was ordered into liquidation on 21.09.2020. Thereafter, IA 1441/2020 was disposed on 23.10.2020 giving liberty to OC to file claim before liquidator, ie Mr. Kamal Agarwal, and it was directed that liquidator may decide the claim on merits. In light of the directions, of the AA. Mr. Kamal Agarwal further rejected the claim of OC on 22.11.2020.
- 3.3.3. The DC notes that the claim of OC was rejected by Mr. Kamal Agarwal on ground that there was no invoice issued by the OC in the name of CD and there is no outstanding in the audited balance sheet of CD ending 31.02.2017 and 31.03.2018 and rejected the claim under regulation 14(2) of CIRP Regulations. The similar ground was raised while rejecting the claim during liquidation.
- 3.3.4. Regulation 14(2) of the CIRP Regulations, under which Mr. Kamal Agarwal acted, provides that RP shall revise the amounts of claims admitted when he comes across additional information warranting such revision. The question arises whether revision can mean rejection of claim. On this issue, regulations are silent but it can be logically inferred that the power revision of claim can be construed to rejection of claim if evidence is compelling enough to do so. Furthermore, power of revision or rejection of claim cannot extend to cases where the claim is considered to be settled by the courts under regulation 17(2) (b)(iii) of liquidation regulation.
- 3.3.5. The AA while admitting the CD into CIRP *vide* order dated 14.06.2019 observed that OC has established the existence of debt and its default by CD. The said admission was challenged before Hon'ble NCLAT where it was observed that ...”*We are of the view that the said dispute is not a bonafide dispute and the therefore the Adjudicating Authority has rightly admitted the application. Apart from above, even if Rs. 25 lakhs is held to be paid was to be accepted, admittedly Corporate Debtor held back Rs. 1 lakh. If the default is Rs. 1 lakh, the insolvency can be triggered against the Corporate Debtor as per Section 4 of IBC. The Appellant in grounds of appeal has stated that the balance of Rs. 1 lakh was withheld by the Appellant. Thus the default is admitted.*” Thus, the existence and quantum of debt of OC on which basis of CD admitted into CIRP on 14.06.2019 has been settled by AA and Hon'ble NCLAT.
- 3.3.6. The AA overturned the rejection of claim by liquidator *vide* order dated 27.05.2022 in CA 11/2020 after considering submissions by Mr. Kamal Agarwal. Subsequently, Mr. Kamal Agarwal admitted the claim of OC. Thus, the rejection of claim by Mr. Kamal

Agarwal on 20.11.2020 is an issue of wrong interpretation of applicable provisions on behalf of the liquidator. He should have been careful in carrying out the orders of AA, in letter and spirit, which were delivered on the issue from time to time.

4. Order

- 4.1. It is evident from above discussion that, Mr, Kamal Aggarwal kept on insisting on the documentary evidence related to debt and default as claimed by OC as appellant despite the same issue was settled by the AA in no uncertain terms. Insolvency Professionals working as IRP, RP or liquidator are not allowed to cross the *Laxman Rekha* in the name of due diligence. Due diligence is an important aspect of his functioning, but in its name, activities or actions which are contemptuous in nature need to be avoided at any cost. Further, clause 14 of the Code of conduct also states that *an IP must not act with mala fide or be negligent while performing its functions and duties under the Code*. Not observing the dictate of the AA is surely a negligent behaviour. However, keeping in view that his act of omission has not altered the course of the process anyway, a lenient view is being taken.
- 4.2. In view of the forgoing discussion, the DC, in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the Investigation Regulations disposes of the SCN with stern warning to Mr. Kamal Agarwal to be more careful and vigilant while conducting his current as well as future assignments. Since the above issues involves error of judgement, therefore, Mr. Kamal Agarwal, is henceforth required to extend rigorous due diligence on his handling of various procedures being performed by him under the Code.
- 4.3. This Order shall come into force immediately in view of para 4.1 of the order.
- 4.4. A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Kamal Agarwal is providing his services, if any.
- 4.5. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Kamal Agarwal is enrolled as a member.
- 4.6. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.
- 4.7. Accordingly, the show cause notice is disposed of.

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(Sudhaker Shukla)
Whole Time Member, IBBI

Date: 9th October, 2023
Place: New Delhi