

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/85/2022

31st March, 2022

ORDER

In the matter of Mr. Rajiv Chakraborty, Insolvency Professional under Section 220 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 and Regulation 13 of Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.

1. Background

- 1.1 This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/INSP/2019/37/390/2288 dated 9th August, 2021 issued to Mr. Rajiv Chakraborty, 1st Floor, 12 Sukhdev Vihar, New Delhi- 110025 who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00602/2017-2018/11053.
- 1.2 Mr. Rajiv Chakraborty was appointed as an Interim Resolution Professional (IRP) in corporate insolvency resolution process (CIRP) of Su-Kam Power Systems Limited, the Corporate Debtor (CD) *vide* order dated 5th April, 2018 passed by Hon'ble National Company Law Tribunal, New Delhi Bench, the Adjudicating Authority (AA). Mr. Rajiv Chakraborty was appointed as a Resolution Professional (RP) on 11th May, 2018 which was confirmed by the AA *vide* its order dated 7th June, 2018.
- 1.3 The IBBI in exercise of its power under section 218 of the Insolvency and Bankruptcy Code, 2016 (Code) read with the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations), appointed an Inspecting Authority (IA) *vide* order dated 11th February, 2020 to conduct the inspection of Mr. Rajiv Chakraborty, on having reasonable grounds to believe that Mr. Chakraborty had contravened provisions of the Code, Regulations, and directions issued thereunder. The inspection report was submitted to IBBI on 27th January, 2021.
- 1.4 The IBBI had issued the SCN on 9th August, 2021 to Mr. Rajiv Chakraborty based on findings in the inspection report in respect of his role as an IRP/RP in the CIRP of Su-Kam Power Systems Limited. The IBBI was of the *prima facie* opinion that sufficient cause exists to take action against Mr. Chakraborty in terms of section 220 of the Code read with regulations 11 and 12 of the Inspection Regulations and regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations). The SCN alleged contravention of sections 20(1) read with section 25(1), section 20(2)(a), section 23(2), and section 208(2)(a) and (e) of the Code, regulation 4(4) of the Inspection Regulations,

regulation 7(2)(h) and (i) of the IP Regulations read with IBBI Circular No. IBBI/IP/013/2018 dated 12th June, 2018 along with clauses 3, 5, 14, 18, 19 and 27 of the First Schedule to the IP Regulations. Mr. Chakraborty replied to the SCN *vide* letter dated 13th September, 2021.

- 1.5 The IBBI referred the SCN, reply of Mr. Chakraborty 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. Chakraborty availed an opportunity of personal virtual hearing before the DC on 8th December, 2021, wherein he reiterated the submissions made in his written reply and made a few additional submissions. Thereafter, Mr. Chakraborty submitted some additional written submissions *vide* email dated 15th December, 2021 in support of his submissions made during the personal hearing.

Alleged Contraventions and Submissions

2. The contraventions alleged in the SCN and the submissions by Mr. Chakraborty in his reply are summarized as follows.

2.1 Contravention I

- 2.1.1 It is observed from the minutes of the first CoC meeting dated 11th May 2018 that the agenda was approved in the CoC meeting to pay the remuneration of Rs. 14,57,192.86/- to Shardul Amarchand Mangaldas & Co. (SAM) for services rendered for filing application under Section 7 of the Code on behalf of State Bank of India (SBI), the Financial Creditor, for initiating CIRP with respect to the CD.

- 2.1.2 Section 5(13) provides that - "*insolvency resolution process costs*" means –

- (a) *the amount of any interim finance and the costs incurred in raising such finance;*
- (b) *the fees payable to any person acting as a resolution professional;*
- (c) *any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;*
- (d) *any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and*
- (e) *any other costs as may be specified by the Board;"*

Further regulation 31 of the CIRP Regulations stipulates that "*Insolvency resolution process costs*" under Section 5(13)(e) shall mean-

- (a) *amounts due to suppliers of essential goods and services under Regulation 32;*
- (b) *amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);*
- (c) *expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33:*

- (d) expenses incurred on or by the resolution professional fixed under Regulation 34; and*
- (e) other costs directly relating to the corporate insolvency resolution process and approved by the committee."*

It is observed that the re-imbursalment of cost incurred towards filing of CIRP is not covered under any of the provisions. Further, circular no. IBBI/IP/013/2018 dated 12th June 2018 (June 2018 circular) explicitly prescribes that the Insolvency Resolution Process Costs (IRPC) shall not include any fee or other expense incurred before the commencement of CIRP. Therefore, the cost incurred by the FC for initiating CIRP should not have formed a part of insolvency resolution process costs.

- 2.1.3 Accordingly, IA is of the view that Mr. Chakraborty has contravened sections 208 and 25 (1) of the Code.

2.2 Submission

- 2.2.1 With regard to the aforesaid contravention, Mr. Rajiv Chakraborty submitted that CIRP Regulations provides guidance on the aspect of reimbursement of expenses incurred by the applicant. Regulation 33(3) clearly provides that the applicant shall bear expenses which shall be reimbursed by the committee to the extent it ratifies. Further, Regulation 33(4) states that the amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.
- 2.2.2 Mr. Chakraborty submitted that the payment to SAM was made as reimbursement of expenses incurred towards the initiation of the corporate insolvency resolution process for which all stakeholders were beneficiaries. The filing of the application for the commencement of the CIRP is directly related to the CIRP as expressly envisaged under Regulation 31(e) of the CIRP Regulations. This reimbursement was approved by the CoC in the first CoC meeting held on 11th May, 2018 in line with the guidance outlined in the CIRP Regulations and in their commercial wisdom by a vote of 83.5 %.
- 2.2.3 Mr. Chakraborty submitted that in this instance the body which is designated by the regulations themselves to exercise its commercial wisdom in approving such costs has discussed, applied their commercial wisdom, and approved these costs in compliance with the requirements of the regulations. Therefore, in consonance with the details herein abovementioned, Mr. Chakraborty as the IRP/RP acted in compliance with section 25(1) read with section 5(27) and section 208(2)(a) of the Code.
- 2.2.4 Mr. Chakraborty submitted that as on the date of the approval of the reimbursement, *i.e.*, 11th May 2018, there was no guidance or circular from IBBI setting out a contrary interpretation of such provisions. The June 2018 circular which was more

than a month after the approval of the expenses incurred by SAM for filing application under section 7 of Code on behalf SBI for initiating CIRP was approved. It is an established position of law that retrospective application ought not be given to the June 2018 circular.

- 2.2.5 Mr. Chakraborty submitted that the payment made to SAM was not only directly relating to the CIRP but was also in line with the decision taken by the CoC in its commercial wisdom and was not contrary to any provision/ interpretation of law or regulation in force at the relevant time.

2.3 Contravention II

- 2.3.1 It is observed from the minutes of first CoC meeting dated 11th May, 2018, that PwC was appointed through a limited RFP process run by SBI in which EY, KPMG, Deloitte, PwC, GT and RBSA also participated. According to sections 20(2)(a) and 25(2)(d) of the Code, it is the duty of the IRP and RP to appoint professionals, as may be necessary, but it is observed that SBI as one of the members of the CoC had appointed the firms, PwC LLP and PwC Pvt Ltd as advisors in the CIRP, rather than the IRP. The IP has continued the engagement of these firms. Involvement of FC in decision making of appointment of professional makes the decision likely to be influenced by stakeholders, who may have vested interests.
- 2.3.2 Accordingly, IA is of the view that Mr. Chakraborty has contravened sections 208(2)(a) of the Code and clauses 3, 5, 14 and 16 of the Code of Conduct as mentioned in IP Regulations.

2.4 Submission

- 2.4.1 With regard to the issue of appointment of PricewaterhouseCoopers Private Limited (PwC Pvt Ltd) and PricewaterhouseCoopers Professional Services LLP (PwC LLP) as advisors, Mr. Chakraborty submitted that IBC and related regulations had come into force only in 2016 and have been evolving rapidly from then on and the market practices have also been evolving to align to these changes. In this matter, SBI had invited bids so as to shortlist the IRP and the advisors who would be supporting the IRP for the CIRP. This process was entirely in line with the established market practice at that time (October 2017). Multiple entities submitted bids and were evaluated for the said assignment. On the basis of a competitive bidding process, Mr. Chakraborty along with the advisors, PwC LLP and PwC Pvt Ltd were selected by SBI as the IRP and the advisors respectively for the said assignment.
- 2.4.2 Mr. Chakraborty submitted that the appointment of PwC LLP and PwC Pvt Ltd as advisors to the IRP was included in the agenda of the 1st meeting of the CoC for ratification. The item was also discussed in the first CoC meeting held on 11th May 2018. In the said meeting, the CoC members discussed and agreed that PwC LLP

and PwC Pvt Ltd were appointed on the basis of their stronger technical credentials and better financial offer compared to the other bidders.

- 2.4.3 Mr. Chakraborty submitted that he decided to continue to avail the services of PwC LLP and PwC Pvt Ltd. as advisors for the CIRP while acting as RP because this allowed continuity in the CIRP which was of critical importance in a timebound, complex and contentious process like the one in question.

2.5 Contravention III

- 2.5.1 According to section 208(2)(a) of the Code, an IP is obliged to take reasonable care and diligence while performing his duties, including incurring expenses. He must, therefore, ensure that not only fee payable to him is reasonable, but also other expenses incurred by him are reasonable. It is observed from the minutes of first CoC meeting, that CoC ratified Mr. Chakraborty's fee as RP at Rs one lakh per month, whereas fees of PwC LLP and PwC Pvt Ltd were ratified at Rs 20 lakhs and Rs. 10 Lakhs respectively per month. It is also observed that PwC LLP and PwC Pvt Ltd was appointed as Mr. Chakraborty's advisors with a limited scope of work, *i.e.*, providing assistance to the RP for discharging his duties. According to the cost disclosure filed by Mr. Chakraborty, it is observed that an amount of Rs. 3,99,80,545 has been paid to the advisors which is 30 times RP's fee (*i.e.*, Rs. 12,58,000).
- 2.5.2 It is noted that section 20(1) of the Code provides that the interim resolution professional shall make every endeavor to protect and preserve the value of the property of the CD and manage the operations of the CD as a going concern. Section 23(2) reasserts this responsibility.
- 2.5.3 IA was of the view that Mr. Chakraborty was a partner in one of these firms and the engagement of firms with such scope of work seem to be fraught with issues of conflict of interest. Also, as observed above and from the engagement letters of the advisors, the scope of work of these firms were only in nature of providing assistance to Mr. Chakraborty to carry out his functions. Therefore, the amount of fee payable to these firms is not reasonable in light of such scope of work.
- 2.5.4 It is noted that to the June 2018 circular provides guidance on the fee payable to IP and fee payable to other professionals, and other expenses incurred by him during the CIRP are reasonable.
- 2.5.5 Accordingly, IA is of the view that Mr. Chakraborty has contravened clauses 3, 5 and 27 of the Code of Conduct as mentioned in IP Regulations.

2.6 Submission

- 2.6.1 Mr. Chakraborty submitted that in the first CoC meeting, the CoC members agreed that PwC LLP and PwC Pvt Ltd were appointed on basis of their strong technical

credentials and better financial offer compared to the other bidders. It was only after the CoC members were satisfied on these aspects, the fees of PwC LLP and PwC Pvt Ltd as advisor to the IRP was ratified by the CoC by a majority vote of 85 %.

- 2.6.2 Mr. Chakraborty submitted that when PwC LLP and PwC Pvt. Ltd were appointed as advisors to the RP in May of 2018, the Code was still novel and very few RPs/ process advisors had the requisite experience in running the IBC processes. PwC came with relevant experience of having supported RPs in running IBC processes.
- 2.6.3 Mr. Chakraborty submitted that the CD was an operating consumer facing company with a large distribution and service network and was operating from multiple manufacturing locations. He further submitted that running such a business with the overhang of the ongoing CIRP and in the face of working capital shortage was a complex exercise, which required significant expertise which was provided by PwC LLP and PwC Pvt Ltd.
- 2.6.4 Mr. Chakraborty submitted that from a commercial perspective, the terms of fees during the RP period were renegotiated and PwC LLP and PwC Pvt Ltd together agreed to reduce fees by INR 6 lakh per month compared to the fees charged by them during the IRP period.
- 2.6.5 Mr. Chakraborty submitted that June 2018 circular came into effect on 12th June 2018, which more than a month after the first CoC meeting held on 11th May 2018. It is an established position of law that retrospective application ought not be given to the June 2018 circular. Further, the para 3 of the June 2018 circular itself states that what fees is reasonable is context specific and is not amenable to a precise definition. Further the June 2018 circular lays down the following guidance on determination of “reasonable fee” that the reasonability of fees may depend on various factors as included in Annexure B of the June 2018 circular including the complexity of the case, unusual effort to run the business as a going concern etc. Hence, even considering the guidance of the June 2018 circular in light of the complexities of the CIRP in this instance, the fees of PwC LLP and PwC Pvt. Ltd as the advisors to the IRP/RP were reasonable.
- 2.6.6 Mr. Chakraborty further submitted that during the period of the CIRP the CD earned close to Rs. 200 crores of revenues and the fees of PwC LLP and PwC Pvt. Ltd, in total, constituted 1.76% of the expenses incurred by the CD during the CIRP period.

2.7 Contravention IV

- 2.7.1 It is observed that Mr. Chakraborty appointed M/s Kirtane & Pandit for conducting due diligence for compliance of Section 29A of the Code at a fixed fee of Rs. 1,30,000 for one resolution applicant and Rs. 50,000 for every additional resolution applicant. However, according to the minutes of the ninth CoC meeting, the identification of resolution applicants for the CIRP was already included in the scope of PwC LLP and

SAM whose services were availed at a fee of Rs. 20,00,000 per month and Rs. 6,00,000 for 60 hours and Rs. 12,000 for additional hours respectively. Considering the same, the fee paid to M/s Kirtane & Pandit was additional burden on already distressed CD.

2.7.2 Accordingly, IA is of the view that Mr. Chakraborty has contravened sections 208 and 25(1) of the Code.

2.8 Submission

2.8.1 Mr. Chakraborty submitted that the scope of work of PwC LLP and PwC Pvt Ltd were distinct, in their capacity as advisors to RP, they were providing support in overseeing the management of affairs of CD as going concern, monitoring the assets of CD, overseeing the management of operations of CD, support in receiving, collating, and verifying all the claims submitted by the creditor, support in coordinating meetings of CoC, preparation of information memorandum, identification of resolution applicant etc. The work involving research for eligibility of resolution applicant being a specialized service, *i.e.*, section 29A diligence was specifically excluded from the scope.

2.8.2 Mr. Chakraborty submitted that M/s Kirtane & Pandit was engaged by him specifically to support him in conducting diligence on prospective resolution applicants under section 29A of the Code, and with a detailed scope of work which included conducting an all-round independent factual due diligence basis the information available in the public domain and information obtained from the prospective resolution applicants as well as their connected persons in order to assess their eligibility under Section 29A of the Code.

2.8.3 Mr. Chakraborty submitted that the scope of work for M/s Kirtane & Pandit included independent fact finding on all the clauses of section 29A in order to submit their observations on the eligibility of any resolution applicant. Therefore, the scope of work of SAM and M/s Kirtane & Pandit were mutually exclusive, *i.e.*, the scope of M/s Kirtane & Pandit was to ascertain facts while SAM was to provide legal advice on a presented set of facts. The scope of work for PwC LLP as advisor covered an entirely different area of providing services to support Mr. Chakraborty to conduct his duties, with a specific exclusion regarding conducting due diligence under section 29A of the Code.

2.8.4 Mr. Chakraborty submitted that engaging these professionals with different scope of work was required by him to discharge his duties effectively and accordingly, the expenses incurred were in line with reasonability of costs.

2.8.5 Mr. Chakraborty further submitted that the scope of services of M/s Kirtane & Pandit were submitted to the members of the CoC along with financial quotations procured from a number of agencies for the said scope. The members of CoC approved the appointment and fees of M/s Kirtane & Pandit within their

commercial wisdom under regulation 34 of the CIRP Regulations.

2.9 Contravention V

- 2.9.1 It is observed that Mr. Chakraborty did not share the copy of invoices raised by him as the RP in the CIRP of the CD with the IA. According to regulation 4(4) of the Inspection Regulations, the IP is duty bound to furnish documents, record, or information as required by the IA.
- 2.9.2 By not providing the information and documents, as sought by the IA, Mr. Chakraborty has contravened section 208(2) of the Code read with regulation 4(4) of the Inspection Regulations.

2.10 Submission

- 2.10.1 Mr. Chakraborty submitted that the copy of invoices raised by him in his capacity as the RP during the CIRP were submitted by him to the IA. He was appointed RP of the CD with effect from 7th June, 2018 but on account of a clerical error the invoices were raised by him as IRP up to 11th August, 2018. This fact was also mentioned in the Reply to the Draft Inspection Report dated 25th December, 2020.
- 2.10.2 Mr. Chakraborty submitted that in view of the cashflow position of the CD, he did not raise any invoices for his fees post 11th August, 2018 and hence, the invoices for the period post 11th August, 2018 are not available.
- 2.10.3 Mr. Chakraborty further submitted that any information or documents as may be sought in respect of the ongoing proceedings have been submitted by him to the IA in compliance with regulation 4(4) of the Inspection Regulations.

3. Analysis and Findings:

- 3.1 The role of the RP is crucial and critical to fulfil the objective of the Code. It is imperative that the RP functions and discharges his/ her duties independently in a fair and transparent manner and facilitate fulfilment of the objectives of the Code. It is the duty of an IRP/ RP to perform and discharge his/ her duties in accordance with the Code and the Regulations made thereunder, in letter and spirit.
- 3.2 The Bankruptcy Law Reforms Committee in its report has laid emphasis on the role of an IP in Chapter 4 titled Institutional Infrastructure, at point 4.4 titled Insolvency Professional, which are as follows:

“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. The role of the IPs is thus vital to the efficient operation of the insolvency and bankruptcy resolution process. ...”

- 3.3 The responsibilities of the IRP/RP under the Code require highest level of standards, caliber and integrity which inspire confidence and trust of the stakeholders and the society. The role of the RP is vital to the efficient operation of the insolvency and bankruptcy resolution process. The IP forms a crucial pillar upon which rests the credibility of the entire resolution process. For that purpose, the Code provides for certain duties, obligations for undertaking due diligence in the conduct of the insolvency process to establish integrity, independence, objectivity and professional competence in order to ensure credibility of both the process and profession as well.
- 3.4 Section 208 of the Code provides for the functions and obligations of the IP which provides *inter alia* that the IP shall abide by the Code of Conduct to take reasonable care and diligence when performing his duties and to perform his functions in such manner and subject to such conditions as may be specified.
- 3.5 In the instant matter, Mr. Rajiv Chakraborty was appointed as an IRP in CIRP of Su-Kam Power Systems Limited, the CD *vide* order dated 5th April, 2018 passed by the AA. Mr. Rajiv Chakraborty was resolved to be appointed as a RP which was confirmed by the AA *vide* its order dated 7th June, 2018. A number of times the resolution plans were invited and time period of CIRP was extended by the AA upto 27th March, 2019. As no compliant resolution plan was received within the extended time, hence, the order for liquidation of the CD was passed by the AA *vide* its order dated 3rd April, 2019. Mr. Raj Kumar Ralhan has been appointed as the Liquidator *vide* the same order and the liquidation proceedings are pending in this matter.
- 3.6 With regard to the issue of including pre-CIRP cost of filing the application in the insolvency process cost, the DC notes that regulation 1(3) of the CIRP Regulations specifies the extent of applicability of CIRP Regulations as "*These Regulations shall apply to the corporate insolvency resolution process*". Therefore, the provisions of the CIRP Regulations apply only when the CIRP has commenced and not for those matters prior to commencement of CIRP. In view of this, the scope of regulation 31(e) of the CIRP is limited to the cost incurred after the commencement of CIRP and approved by the CoC. The DC notes that insolvency process cost as defined under section 5(13) means (i) the amount of any interim finance and the costs incurred in raising such finance; (ii) the fees payable to any person acting as a resolution professional; (iii) any costs incurred by the resolution professional in running the business of the corporate debtor as a going

concern; (iv) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and (v) any other costs as specified by the Board under CIRP Regulations. All these items indicate that they relate to expenditure incurred during CIRP and not prior to it.

- 3.7 The DC further notes that the appointment of professionals is made by the IRP/RP after admission of the application for CIRP under section 20(2) (a) and section 25(2) (d) under the Code. Section 20(2)(a) of Code reads as follows: -

".....the interim resolution professional shall have the authority to appoint accountants, legal or other professionals as may be necessary"

Further, Section 25(2)(d) of the Code provides as follows:

"....the resolution professional shall undertake the following actions - ...appoint accountants, legal or other professionals in the manner as specified by the Board."

- 3.8 The DC notes that section 5(13) defines insolvency resolution process costs to include as under –

- (a) the amount of any interim finance and the costs incurred in raising such finance;
- (b) the fees payable to any person acting as a resolution professional;
- (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;
- (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and
- (e) any other costs as may be specified by the Board;

- 3.9 Further, regulation 31 of the CIRP Regulations stipulates that Insolvency resolution process cost under section 5(13)(e) means-

- (a) amounts due to suppliers of essential goods and services under Regulation 32;
- (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);
- (c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;
- (d) expenses incurred on or by the resolution professional fixed under Regulation 34: and
- (e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.

Thus, it is clear from the conjoint reading of section 5(13) and regulation 31 of the CIRP Regulations that amounts due or expenses incurred are during the CIRP period and not prior to CIRP.

- 3.10 The DC further notes that regulation 33 of the CIRP regulations deals with insolvency resolution process cost which, *inter alia*, states that the applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies. The explanation to this regulation explicitly clarifies what expenses will form part of IRPC. The explanation reads as follows:

“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.”

The intent is very clear that expenses incurred by the IRP during the CIRP will be part of IRPC. Thus, regulation 33(3) of the CIRP Regulations does not include any of the expenses that might have been incurred by the applicant before commencement of CIRP. Further, IBBI clarified *vide* June 2018 circular in para 8(c) that any fee or other expense incurred before the commencement of CIRP shall not be included in the IRPC. Hence, the DC is of the view that the cost incurred towards filing of CIRP is not a part of the IRPC and Mr. Chakraborty should not have put up the same before the CoC as it was in contravention of the provisions of the Code, regulations and circular as stated above. Therefore, Mr. Chakraborty has contravened section 208 (2) (a) of the Code, regulation 31 of CIRP Regulations read with June 2018 circular and also regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clauses 3 and 5 of the Code of Conduct as given in the First Schedule of the IP Regulations.

- 3.11 With regard to the issue of appointment of professionals by financial creditor, SBI, the DC notes that as per sections 20(2)(a) and 25(2)(d), it is the authority of the IRP and RP to appoint any professional for the CIRP. The DC notes that in the instant matter, Mr. Chakraborty has not provided any appointment / engagement letter to these firms. He has provided only the letters sent by PwC LLP and PwC Pvt Ltd, dated 28th May 2018, addressed to the IRP stating that the said letter confirms that the respective firm has been retained by the IRP in the matter of CIRP of CD. Therefore, it is observed that in the instant case, SBI as one of the members of the CoC had appointed these firms as advisors in the CIRP, rather than the IRP. The DC further notes that Mr. Chakraborty is a partner in one of the firms, *i.e.*, PwC LLP. Further, he has not made available to the IA, any appointment letter given to PwC LLP and PwC Pvt Ltd. He has provided only the letters sent by PwC LLP and PwC Pvt Ltd. addressed to RP stating that the said letter confirms that the respective firm has been retained by the RP in the matter of CIRP of CD. It is however, observed that these letters are also dated 28th May 2018, *i.e.*, same date as the letters addressed to IRP. The letters cannot, at the same instance of time, be addressed to the IP in his capacity both, as IRP as well as RP. The DC further notes that Mr. Chakraborty was appointed as RP only on 07th June 2018. Similarly, he has not made available to the IA any appointment letter given to the SAM for the engagement of their services. Mr. Chakraborty has provided the letter dated 30th August, 2018 from SAM to

him, confirming its terms of engagement for the present CIRP. It also stated that the terms of engagement shall be same when the IRP is confirmed as RP. It is not comprehensible that when the services of SAM were being undertaken before CIRP (*i.e.*, 5th April, 2018) and when the RP in the case was already appointed on 07th June 2018, then why the letter dated 30th August, 2018 by the SAM, addressed to IRP, with such content was received. Mr. Chakraborty continued the services of PwC LLP, PwC Pvt Ltd and SAM which were initially appointed by SBI. The DC of the view that it is the duty of the IP to comply with the rules and regulations as established by the Board to achieve the objective of the Code underlined in its various provisions. The rules and regulations are made to bring a clarity, transparency and professionalism in the profession of IPs and the IPs are expected to follow them in that spirit. Thus, he violated section 20(2) (a) and section 25(2) (d) of the Code.

3.12 With regard to the issue of fee payable to PwC LLP and PwC Pvt Ltd, the DC notes that section 20(1) of the Code provides that the IRP shall make every endeavor to protect and preserve the value of the property of the CD and manage the operations of the CD as a going concern. Section 23(2) reasserts this responsibility. The DC, after perusing the letters of engagement of PwC LLP and PwC Pvt Ltd., notes that the scope of work only involved assisting of IP in carrying out his duties and a wide range of services were already excluded from the scope of PwC LLP and PwC Pvt Ltd. The fee payable for PwC LLP was INR 20 lakhs per month and for PwC Pvt Ltd. was INR 10 lakhs per month. The DC notes the submission of Mr. Chakraborty that the firms were already appointed by the CoC but that does not bound him to continue the same firms as his advisor. Therefore, it becomes crucial to monitor the expenses by the RP to ensure that a CD, who is already entangled in a web of unsustainable liabilities is not further overburdened with exorbitantly high IRPC. The DC notes that Mr. Chakraborty as RP continued to engage to both PwC LLP and PwC Pvt Ltd. despite the contractual terms for rendering services by both of them are overlapping.

3.13 The DC notes following overlapping of work in engagement letters of various firms:

- (a) The scope of work of PwC Pvt Ltd. included assistance to IRP to take custody and control of all assets of the CD whereas the scope of work of PwC LLP included support IP in monitoring the assets of the CD and overseeing the management of its operations. The DC notes that controlling the assets includes monitoring of the assets, hence, there appears to be overlapping.
- (b) Similarly, the scope of work of PwC Pvt Ltd. included assistance to IRP in receiving, collating, and verifying all claims submitted by creditors whereas the scope of work of SAM included assistance to the IRP/RP with legal principles of verifying and accepting the claims submitted by the creditors.
- (c) The scope of work of PwC LLP included helping the IP to prepare the information memorandum, with necessary inputs from other advisors of the IP. The scope of work of SAM included assistance to IRP/RP in drafting the information

memorandum in compliance with the Code including meetings with IRP/RP on discussions in relation to the information memorandum.

- (d) The scope of work of PwC LLP included support to the IP in coordinating the meeting of the CoC whereas the scope of work of SAM included assistance to IRP/RP with drafting of notice and agenda of CoC meetings, conducting the meetings and voting in compliance with the Code.
 - (e) The scope of work of PwC LLP included support to IP in identifying resolution applicants whereas the scope of work of M/s Kirtane & Pandit included to check if the resolution applicants and connected persons are not ineligible persons under section 29A.
- 3.14 The DC further notes that Mr. Chakraborty continued the services of PwC LLP and PwC Pvt Ltd. while their scope of work, did not include any legal advice, valuation services, audit services, executive search services, operations consultancy, specialists research for eligibility of resolution applicants or other specialist. He engaged firms SAM and M/s Kirtane & Pandit for other services. Engaging multiple professional agencies for similar task does not appear to be reasonable which may also further lead to rise in the stress of the CD. It is trite to mention that the IRP/RP is an additional financial stress on a CD. Therefore, Mr. Chakraborty has contravened provisions of section 208(2) (a).
- 3.15 With regard to the issue of appointment of M/s Kirtane & Pandit for the purposes of conducting due diligence for compliance of section 29A of the Code, the DC notes that M/s Kirtane & Pandit was appointed as auditors for assisting the RP in conducting the due diligence in relation to section 29A of the Code.
- 3.16 DC further notes that as per item no. 9 of the minutes of the first CoC meeting and the letter dated 30th August, 2018 pertaining to engagement of SAM as legal advisor, the identification of resolution applicants for CIRP was already included in the scope of PwC LLP and SAM. The DC further notes that the cost of the firm of PwC LLP was approved by the CoC on the basis of the scope of work of the firm, presented to them by Mr. Chakraborty in the first CoC meeting which included identifying potential resolution applicants. The necessary due diligence to be undertaken for vetting the eligibility of the resolution applicants was well within the scope of PwC LLP. The IRP/RP under section 20(2) (a) and section 25(2) (d) of the Code may engage professionals so that the special task requiring special knowledge are performed by those professional after taking necessary due diligence. Merely engaging professionals for due diligence does not appear to be justified. Furthermore, in accordance with its scope of work, SAM examined the eligibility of Mr. Kunwer Sachdev (one of the Resolution Applicants) in terms of Section 29A(h) of the Code. Thus, the DC is of the opinion that the examination of eligibility of resolution applicants in terms of Section 29A of the Code was well within the scope of work of PwC LLP and SAM whose services were availed at a fee of Rs. 20,00,000 per month, and Rs. 6,00,000 for 60 hours and Rs. 12,000 for additional hours respectively.

3.17 The DC notes that as per sub-regulation (8) and (9) of regulation 36A of CIRP Regulations, it is the duty of the RP to conduct due diligence relating to resolution applicant which read as under:

“(8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies

(a) the provisions of clause (h) of sub-section (2) of section 25;

(b) the applicable provisions of section 29A, and

(c) other requirements, as specified in the invitation for expression of interest.

(9) The resolution professional may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence under sub-regulation (8).”

In the instant matter, Mr. Chakraborty appointed PwC LLP to support him in identifying resolution applicants whereas the scope of work of M/s Kirtane & Pandit included to check if the resolution applicants and connected persons are not ineligible persons under section 29A. Identification of resolution applicants certainly includes checking their eligibility under section 29A. Engaging two firms for the same task appears to be unreasonable. It appears that the IRP/RP did not exercise due diligence as per regulation 36A (8) and (9) of CIRP regulations. Therefore, he has contravened provisions of section 208(2) (a) and (e) of the Code.

3.18 With regard to the issue relating to the invoices raised by the RP, the DC notes that in accordance regulation 4(4) of the Inspection Regulation, the IP is duty bound to furnish documents, records or information as required by the IA. The DC notes the submission of Mr. Chakraborty that in view of cash flow position of CD, he did not raise any invoices for his fee post 11th August, 2018. Hence, copy of invoices could not be produced before IA. The DC accepts his submission.

4. Order

4.1 In view of the above, 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 IBBI (Inspection and Investigation) Regulations, 2017, hereby issues the following directions:

- (a) Mr. Rajiv Chakraborty shall arrange to get the pre-CIRP cost of Rs. 14,57,193/- credited in the account of the CD within 30 days from the date of coming into force of this Order and this amount will form part of the liquidation estate.
- (b) Mr. Chakraborty shall not undertake any assignments for a period of one year from the date of coming into force of this Order.
- (c) This Order shall come into force after 30 days from the date of its issue.

- 4.2 A copy of this Order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Rajiv Chakraborty is enrolled as a member.
- 4.3 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, for information.
5. Accordingly, the Show Cause Notice is disposed of.

Dated: 31st March, 2022
Place: New Delhi

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(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI