

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/194/2023

1st November, 2023

ORDER

This Order disposes the Show Cause Notice (SCN) No. COMP-11012/39/2023-IBBI/779/1260 dated 25.08.2023 issued to Mr. Sandeep Bhatt, Insolvency Professional under section 219 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 11 and 12 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Investigation Regulations). Mr. Sandeep Bhatt is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with registration No. IBBI/IPA-002/IP-N01064-C01/2017-2018/10298 and a Professional Member of Insolvency Professional Agency (IPA) of the ICSI Institute of Insolvency Professionals (ICSI-IIP) having residential address registered with IBBI at 83 B, Pocket 4, Mayur Vihar, Phase -1, Delhi- 110091.

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

1.1. The Hon'ble NCLT, New Delhi Bench (AA) *vide* order dated 03.08.2017 admitted the application under section 9 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of GTHS Retail Private Limited (CD). Mr. Sandeep Bhatt was appointed as the Interim Resolution professional (IRP) on 25.08.2017 and was later confirmed as Resolution Professional by AA on 20.12.2017. The resolution plan was filed before AA for consideration, but resolution applicant withdrew the resolution plan after objection were raised by the ex-directors of CD as their properties were included in the resolution plan. Consequently, the liquidation order was passed on 16.10.2019 and Mr. Ramit Rastogi was appointed as Liquidator by AA on 16.10.2019 after Mr. Sandeep Bhatt sought discharge. Subsequently, after disposal of assets of CD, the liquidator has filed application for dissolution of CD before AA, and the same is pending.

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

2.1. While hearing the application filed for dissolution of CD by liquidator, the AA made the observation that against the liquidation value of the asset of the CD amounting to Rs.4,28,98,000/-, how, the meagre amount realised amounting to Rs.13,32,042/- could be accepted. In view of the observation of AA, while examining the process of CIRP and liquidation process of the CD, *prima facie* some issues were observed. 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. Sandeep Bhatt. The investigation notice was issued to Mr. Sandeep Bhatt by IA on 25.04.2023. Mr. Sandeep Bhatt submitted his reply to investigation notice *vide* email dated 25.04.2023, 23.06.2023 and 04.07.2023. Thereafter, the IA submitted the investigation report to the Board.

- 2.2. Based on the material available on record including the investigation report, the SCN was issued to Mr. Sandeep Bhatt on 25.08.2023. The SCN alleged contravention of sections 25(1), 25(2)(a), 25(2)(b), 208 (2)(a) and (e) of the Code, regulation 40B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 1, 2, 14 and 19 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct). Mr. Sandeep Bhatt replied to the SCN *vide* email dated 15.09.2023.
- 2.3. The Board referred the SCN, written submissions of Mr. Sandeep Bhatt, 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. Sandeep Bhatt availed an opportunity of personal hearing before DC on 12.10.2023 through physical mode. Mr. Sandeep Bhatt submitted further written submissions on 13.10.2023 and 20.10.2023.

3. Alleged contraventions and submissions of the IP

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

Contravention-I

3.1. Failure to preserve and protect the assets of the CD.

(a) Recovery of Security Deposits

- 3.1.1. It is observed that the CD was engaged in manufacturing and trading of ladies' garments and had paid security deposit for the premises taken on rent for franchise stores. However, as per the valuation report dated 11.11.2017, the CD was unable to supply materials to the franchisees and the security given by the CD was adjusted against the rent for premises housing franchise stores. It is further observed from balance sheet for the year 2016-2017 that the security deposits were of the worth of Rs. 1,77,01,489 which decreased to Rs. 53,43,668 for the year 2017-2018. It is further noted that the two valuation reports dated 11.11.2017 and 13.11.2017 conducted during CIRP of the CD indicated the recoverable security deposit as on 03.08.2017 i.e. as on the insolvency commencement date, at Rs. 5,88,000 and Rs. 6,12,000 respectively. Further, as per the balance sheet as on 31.03.2019 prepared during CIRP, the value of the said security deposits drastically reduced to Rs. 15,000. Value of Security deposits as per balance sheets is indicated in below-mentioned table:

Particulars	31.03.2017	31.03.2018	31.03.2019
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Security deposits	1,77,01,489	53,43,668	15,000
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3.1.2. It is observed that no action was taken by Mr. Sandeep Bhatt as IRP/RP in the CIRP of the CD towards recovery of the security deposit. Consequently, it continued to decline drastically over the period of time, leading to erosion of value of assets of the CD, the testimony of which is realisation of only Rs. 13,32,042 in the liquidation process.

3.1.3. In this regard the AA in its order dated 15.07.2022 observed that,

“Apparently, the realised value is Rs.13.32 lakh only against the Rs.04.29 crores worth of assets. It is also admitted by the Ld. Counsel for the Liquidator at during the course of the entire CIR/Liquidation proceedings, no application for realisation of the book debts have been made, which creates serious doubt about the conduct of the CIRP/liquidation proceedings. It is also not clear whether the security deposits for rented premises is received back?”

3.1.4. Section 25(2)(a) of the Code provides that the RP is to take immediate custody and control of all the assets of the CD, including the business records of the CD. Section 25(2)(b) of the Code states that the RP has the duty to represent and act on behalf of the CD with third parties, exercise rights for the benefit of the CD in judicial, quasi-judicial or arbitration proceedings. It is observed that Mr. Sandeep Bhatt was obligated to inform the AA and take swift action regarding the adjustment of security deposits against rent for the franchise stores as any adjustments from the security deposits including pre-CIRP dues amounted to breach of moratorium. However, in the present matter he did not seek to pursue the matter before AA and failed to protect the interests of the CD.

(b) Recovery of Work-in-Progress

3.1.5. It is also observed that as per the Valuation Reports of CMA Manish Chanda dated 11.11.2017 and Vinai K Singh & Co. dated 13.11.2017, the book value of the Work-in-Progress (WIP) materials have been shown to be Rs. 79.54 lakhs. However, the realisable value for the same as on 03.08.2017 i.e., the insolvency commencement date has been shown therein as ‘nil’. The valuation report dated 11.11.2017 mentions that the WIP shown in the books were not present on the site as it is reported that the same is lying with different petty job workers. In this regard, it is observed that Mr. Sandeep Bhatt did not take any steps to recover the Work-in-Progress materials lying with different petty job workers. Section 25(1) of the Code mandates the RP to preserve and protect the assets of the CD, including the continued business operations of the CD. Section 25(2)(a) of the Code provides that the RP is to take immediate custody and control of all the assets of the CD, including the business records of the CD. Hence, his conduct shows a casual approach in conducting the CIRP proceedings as you failed to protect and preserve the assets of the CD.

(c) Failure to take control and custody of Bank Account of CD.

3.1.6. It is observed from the bank statement of the CD that Mr. Harsh Manchanda (suspended director) transferred amount of Rs. 50,480 and Rs. 61,104 aggregating to Rs. 1.11 lakh to his personal SBI account on 22.10.2019 and 29.10.2019 respectively from the CD's account, just after the initiation of the liquidation of the CD. In this regard Mr. Ramit Rastogi, liquidator in the preliminary report and the 3rd progress report filed with AA informed that Mr. Sandeep Bhatt had authorized the ex-director to operate the bank account of the CD and he later delayed providing access of the bank account of CD to the liquidator despite follow ups.

3.1.7. In this regard, the AA in its order dated 12.10.2020 was constrained to direct the ex-director to return of monies within a period of 10 days as follows:

“During the course of hearing, the Counsel for the Liquidator submitted that an amount of Rs. 1 lakh has been taken away from the accounts of the company by Mr. Harish Manchanda. Again the Suspended Director, Mr. Harish Manchanda was given an opportunity to confirm the refund by raising his hand. He raised his hand and indicated to return the amount of Rs. 1 lakh within 10 working days. Therefore, he is directed to deposit Rs. 1 lakh to the accounts of the Company under liquidation within 10 working days.”

3.1.8. By authorising the suspended Director of the CD to operate the CD's bank account leading to unauthorised withdrawal of Rs. 1.11 lakh by him from CD's account to his personal account during the process of liquidation, Mr. Sandeep Bhatt has acted in contravention of section 25(1) of the Code which states that it is duty of RP to preserve and protect the assets of the CD. In view of the above, the Board held the *prima facie* view that Mr. Sandeep Bhatt has contravened sections 25(1), 25(2)(a) & (b), 208(2)(a) and (e) of the Code, regulation 7(2)(a) & (h) of the IP Regulations and Clauses 1, 2 and 14 of the Code of Conduct as specified in the First Schedule of IBBI (Insolvency Professionals) Regulations, 2016 (Code of Conduct).

3.2. Submissions made by the IP

3.2.1. Mr. Sandeep Bhatt submitted that he took immediate possession of all the assets including WIP, finished goods, bank accounts, records, visited franchisee's places and wrote letters to the statutory authorities. The CD was a going concern, and it was his duty to keep the CD going. The CD was kept as a going concern till the order of liquidation with good profit margin. The RP recovered all WIP and finished goods by October 2017, sold as per price tag with good profit and recovered proceeds in the Bank accounts of the CD.

3.2.2. That the Bank accounts were being operated by the RP and not by the directors. All the cheque books and important records were kept in the office of the RP as there was no locker at the CD's premises and the cheque books were handed over to the liquidator on 29.10.2019 when he visited the office of the RP proving control of the RP. Only bills, vouchers and accounting data, few other records were being maintained by the staff of the CD under strict supervision and control of the RP. To run the business, all approvals were made by the RP with operations of the Bank account self and not by any other person. The

standing instructions were sent to all banks by personal visits/registered post/speed post not to make/ release any payment till it is approved by him and the cheques are counter signed by him. The banks adhered to the instructions of the RP. Maximum transactions were done online by the team RP after approval of expenses by the RP followed with CoC approvals. For all expenses, the approvals were given in hard copy as the office of CD was just 500 meters away from his office to the staff and then only, payment was released by his office only by online banking meaning thereby that full control of the RP was there.

3.2.3. Mr. Sandeep Bhatt submitted that the suspended director Mr. Harsh Vikas Manchanda was appointed as CEO to run the CD as a going concern along with his team and his remuneration was reduced from Rs 2.00 lakhs PM to Rs 0.90 lakhs PM in the 3rd CoC meeting dated 15.01.2018. In the 6th CoC meeting dated 28.05.2018, Mr. Harsh Vikas Manchanda was appointed director in the CD with two other directors being nominated by the CoC as was proposed in the resolution plan. From the minutes of 7th CoC meeting dated 11.03.2019, it is clear that all the CIRP expenses were duly approved and the outstanding salary of Mr. Harsh Vikas Manchanda was Rs 11,91,400 /- till March 2019. The dues of Mr. Harsh Vikas Manchanda amounting to Rs 11,91,400/- was paid never by him as salaries of staff and other expenses were unpaid for want of sufficient funds. During the CIRP, Mr. Harsh Vikas Manchanda was paid only part salary and expenses during the CIRP.

3.2.4. Mr. Sandeep Bhatt submitted that the liquidator had filed the application for non-cooperation against the directors and not against him. He required certain more documents from the CD, which as per Code is not required to be kept in custody of the RP. Whatsoever documents were required by the liquidator from the CD were related to the audited financials till LCD, AGM records, debtors list, director minutes book and fixed assets register. The records being demanded by the liquidator from the CD is not required to be kept in custody of the RP as per regulation 39A of the CIRP Regulations. As per this regulation, the RP maintained all records and handed over it to the liquidator on 08.09.2019 and 09.09.2019 much before the liquidation order as AA had proposed his name as liquidator on 26.08.2019 (recorded in the order dated 12.09.2019). These records were lying with the CD and there was obligation of the liquidator to take all records in his custody of which RP sent several reminders.

(a) Dip in security Deposit given against rent of shops.

3.2.5. Mr. Sandeep Bhatt submitted that the business was a going concern with several commercial deals. In running business, accounts are reconciled as it cannot be in recovery mode only. At the time of insolvency commencement date, only five stores were operative. The shops were taken on rent with valid rent agreements wherein the CD was required to pay the regular rent & maintenance and in case, it fails to pay the rent and maintenance, then the rent shall be recovered from the security. In commercial deals, security equivalent to 3-6 months' rent is given. The CD created its own infrastructure, placed staff and

material at shops and was required to pay monthly rental, maintenance and electric dues on continued basis in almost all franchisee Models.

- 3.2.6. After opening the shop, the CD approached different persons named as franchisees and accepted advance payment from them ranging from Rs 10.00 Lac to Rs 25.00 Lac. The different agreements were termed as franchisee agreement, management agreement, licence and operating management agreement, distributorship agreement etc. To secure the funds received from these franchisees, the CD had given post-dated cheques and also billed (sold) the stock equivalent or more than the advance taken from them apart from post-dated cheques meaning thereby that these franchisees were owners of the material. Now, the CD was required to sell the goods under the control and supervision of the franchisee and franchisees were paid commission on sale ranging from 7% to 45% on sale. As per agreement, the CD was required to take back all unsold material and also ensure supply of fresh material within 3-5 days of indent.
- 3.2.7. When material was transferred to stores by the CD then it was booked as sale in the books and the franchisees were booked as debtors whereas the advance taken from them was booked separately under the head trade security deposit received by the CD from franchisees and such advances were Rs 6,16,78,120/- as on 31.03.2017 as per audited accounts. In case, the material is not sold, then it was required to be taken back by the CD and also to ensure supply of fresh material equivalent or more than the security advance taken.
- 3.2.8. In this way the shop owners were being paid rent and the franchises were being paid commission on sale. There are two sets of agreement. One is rent agreement with the owners of shops and second was franchisee agreement with the other persons.
- 3.2.9. Mr. Sandeep Bhatt submitted that after initiation of CIRP on 03.08.2017, he noted during physical visits to different shops that only two were working and rest were closed. There was no staff on the stores and the material belonging to franchisees were seized by the shop owners for want of pending rents and maintenance. The franchisees asked to refund their advances and also asked to take back material. The team RP tried to convince them to file their claim and few filed also. The discussions started with the different shop owners and the meantime, the reconciliation of major accounts was done.
- 3.2.10. Mr. Sandeep Bhatt submitted that during FY 2008-09 to 2011-12, certain shops were booked in malls which were under construction. When the malls were completed particularly during FY 2017-18 & 2018-19, then the CD was required to occupy the shop by paying remaining amount as per agreement. The RP had talked with the shop owners but seeing the terms of agreement, such refund was not possible as such failure was on account of the CD, hence the advance totalling to Rs. 18,28,668/- was forfeited. The details were discussed while presenting accounts to the CoC and it was revealed that when the agreements are totally clear and the amount pertains to approx. 8 years back, so it cannot

be recovered. Moreover, the CoC never resolved to file civil suit and incurring expenses on that. Moreover, the limitation period of commercial disputes is 3 years only. Further, in Code, during summary proceedings, the commercial disputes and trials cannot be entertained, hence the same was reversed by the auditors in FY 2018-19.

3.2.11. Mr. Sandeep Bhatt submitted that regrading Rs. 35 lakhs which was advance paid for purchase of property, the CD failed to pay further. When the terms of the agreement were clear and all attempts of the RP failed, hence the auditors while auditing books of accounts as for FY 2018-19 booked the same under the head trade/security deposit and corrected the rent security account. Actually, this would have been shown as property advance in the books but it was wrongly shown as security against rent and the same was detected by him after verification during FY 2018-19. Moreover, the recovery is done in liquidation and not in the CIRP. The RP took all the best possible attempts but the clauses of agreements did not permit. The same advance is existing in the books of accounts of the CD as on LCD too.

3.2.12. Mr. Sandeep Bhatt submitted that the CoC never resolved to file the civil suit and incur expenses on that. Needless to mention that commercial disputes are out of purview of the AA in the summary proceedings as resolved in several cases. Further, the pending rent was paid out of security before the initiation of CIRP. He submitted that Hon'ble NCLAT, New Delhi in the matter of *Shri Ramachandra D. Choudhary RP of M/s. Oasis Tradelink Ltd. Vs. Bansal Trading Company in CA (AT) (Insolvency) Nos. 810-812 & 815 of 2020* passed the judgement on 01.09.2022 that recovery application against book debts or any other is out of purview of the AA and for such recovery, the CoC and the RP needs to approach the appropriate Court. Further, in the recent matter of Associated Appliances Ltd wherein he is working as liquidator, the AA rejected the application moved by us for recovery against book debts pre CIRP period taking the same view expressed by the Hon'ble NCLAT in the above matter.

3.2.13. Mr. Sandeep Bhatt submitted that the remarks given by the AA *vide* order dated 15.07.2022 is due to wrong liquidation value filed by the liquidator. Further, there had been no adjustment of security deposit against rent during RP period and the RP successfully managed the business with a view to maximize the interest of the stakeholders. No moratorium was vitiated. The interest of the CD was fully protected.

(b) Recovery of Work-in-Progress (WIP)

3.2.14. Mr. Sandeep Bhatt submitted that there has been understanding error as the closing WIP as on 31.03.2017 was Rs 59,24,622/- and it was Rs 79,54,622/- as on 03.08.2017 whereas it was Nil as on 31.03.2018 meaning thereby either WIP has been sold or written off. The assets cannot be written off without permission of the AA/ CoC. Actually, it has been sold by him by taking possession of all the assets. The RP visited each and every job worker's place and recovered the material and sold it at a very good price. 98% job workers were

placed at Delhi NCR Region. Seeing the condition of material, some material was converted to finished too.

- 3.2.15. He submitted that on insolvency commencement date, ie, 03.08.2017 and the RP by convincing the job workers, recovered all material and asked them to file their claims and also assisted them. The job workers were not qualified, hence their claims could not be processed and admitted but the job workers were convinced on the verdict of team RP that there is a law, hence they have to cooperate failing which action shall be taken, so they cooperated after resistance. All these processes were completed by October 2017. Few job workers were convinced to convert the WIP to finished goods, in few cases, the material was sold from their premises only and rest goods were brought back and were placed at second room of the office of the CD and all were sold in the regular course of business by 31.10.2017. For the FY 2017-18, it can be easily verified from the audited books of accounts that sale during 2017-18 was Rs 5,23,98,889 /- whereas the purchase of trading material was Rs 1,06,84,824 and raw material consumed was Rs 69,82,693/- only aggregating to Rs 1,76,67,517. The WIP of Rs. 79,54,622/- as on 03.08.2017 were recovered and sold at a good profit margin.
- 3.2.16. He submitted that with effect from 03.08.2017 to 31.10.2017 and thereafter too, no raw material was consumed/purchased and only trading material was purchased. The trading material purchased during 03.08.2017 to 31.10.2017 remained at Rs 30,19,489. It was sold at approximately 40% profit margin, i.e., 42,20,000 meaning thereby that out of total sale of Rs. 1,28,35, 123 w.e.f. 03.08.2017 to 31.10.2017, the WIP was sold for Rs 86, 15,123 approximately whereas value of WIP as on 03.08.2017 was Rs 79,54,522/- only thus giving the profit margin of Rs 6,61,123. As it was WIP and old stock, hence any how it could be sold on a profit margin of 8.23% approximately. All the sales proceeds were duly deposited in the following bank accounts of the CD.
- 3.2.17. When the valuers visited the places of job workers during first week of November 2017, then they could not find any material there as they were recovered and sold by the RP. The valuer's report is dated 11.11.2017 and 13.11.2017 which is after all actions taken by him, hence they did not find any WIP. If the petty job workers could not be traced by the valuers, so the RP is not responsible for that. Moreover, no enquiry was made with him with respect to the same. When valuation report was submitted to him, he overlooked. By mistake, the verdict of the valuers was copied in reply to the IA.
- 3.2.18. Mr. Sandeep Bhatt submitted that he enquired from the valuers about such wrong submissions in their valuation reports and sent mail on 04.09.2023 with reminder dated 13.09.2023. After follow-up, the valuers vide mail dated 14.09.2023 replied as under:

CMA Manish Chandra: We have visited the selected 3-4 job workers premises in first week of November 2017 and found no WIP with them and few job Workers were not traceable. We have visited on sample basis and same is given in the report.

CA Vinai K Singh: The stock of job workers could not be found during visit in October 2017 last and the accounts team has given the list but he could not visit each and every job workers place. He could not get satisfactory replies from the job workers and concluded that they had sold the material, however Mr. Sandeep Bhatt was running the business so the fact is known to him only.

(c) Failure to take control the bank accounts of the CD.

- 3.2.19. Mr. Sandeep Bhatt submitted that he was having control of all the bank accounts and immediately on confirmation from the Board telephonically on 13.09.2017, he sent letters by speed post to all the banking authorities on 13.09.2017 asking them not to clear any payments till the cheques or payment notes are counter signed by us. The ICICI Bank account no 025305007616 was newly opened on 15.07.2019 because of wrong transfer of some amount by the bank to the old account of the CD. In most of the cases, the payment was made by online transactions/NEFT after his approval on each and every expense and all bank accounts were being operated from his office. The password of the account and user id was with him and the same was given to the liquidator during his visit to his office on 29.10.2019. The approval of expenses was carried out at approximately at every 15 days. The complete sheet of expenses, budget of sale & purchase were prepared, discussed and then was approved by him followed with presentation and approvals by the CoC in different meetings.
- 3.2.20. He submitted that on his request, the director paid the part salary of Rs 1.00 to the staff in between 10.07.2019 to 12.07.2019 from his bank account namely State Bank of India, A/c no 51012214182 and also paid certain expenses amounting to Rs. 66,838 in between 10.07.2019 to 12.07.2019. He could not transfer the funds to the account of the CD as the running ICICI Bank account was freezed due to some wrong transfer of amount by the bank to the CD's account and new account with the ICICI Bank could be opened on 15.07.2019. The above expenses were paid by Mr Harsh Vikas Manchanda by taking loan from his son Shayan Manchanda on dated 08.07.2019 amounting to Rs 2,00,000. Such operations were done from his personal bank account no 51012214182 of the SBI. Such bank account was given by the suspended director to the office of the RP along with his claim on 18.07.2019. Further on 23.09.2019, Mr. Harsh Vikas Manchanda delivered letter appealing to reimburse Rs. 1.66 Lac spent by him during CIRP and on his letter the payment order was issued with instructions to pay him immediately on receipt of funds.
- 3.2.21. He submitted that the CD received payment of such supplies from Manjis on 22.10.2019 and 29.10.2019 against goods sold to him so the part payment of Rs 1,11,584 /- was released by the RP till 29.10.2019 against the dues of Rs 1,66,838/- belonging to Harsh Manchanda and the proceeds were credited to his bank account as expenditure was incurred by him in running the CIRP process of which bills were approved. As it was the transition face of handing over and taking over the records and information to the

liquidator, so the RP released payment as per approved note dated 23.09.2019 after receipt of payment and told the facts to the liquidator also.

3.2.22. Mr. Sandeep Bhatt submitted that the CIRP Cost has to be paid first as per section 53 of the Code either by the RP or by the liquidator. This payment has caused no harm to the CD. The RP fee of Rs 3. 50 Lac approx. was also pending but on that there was no payment order and nothing was paid. Subsequently on AA's order, the RP fee was paid by the CoC. The intention was good however procedural mistakes may happen in working being the case pertaining to early era of the Code. Subsequently, the liquidator asked the suspended director to remit back such funds to the account of the CD of which explanation was given by Harsh Manchanda to the liquidator, but he did not agree. The RP did not know the conversation between the liquidator and the suspended director and also about any application filed with respect to the same to the AA.

3.2.23. Mr. Sandeep Bhatt submitted that when the SCN was issued, he came to know about such developments and sent mail to Mr. Harsh Vikas Manchanda on 12.09.2023 and asked that why he did not tell facts to the Hon'ble Tribunal. His reply dated 14.09.2023 is mentioned as under:

*“Sir I had explained everything to liquidator and I was not able to engage a lawyer due to lack of funds a lawyer and any accounts help. Hearing was online and I was Not able to explain my self properly due to poor connectivity.
Under duress I accepted to pay back the amt I had spent on behalf of company.”*

He submitted that the suspended director Mr. Harsh Vikas Manchanda did not engage any counsel due to the cost factor and could not explain the facts to the AA. Accordingly, the AA ordered us to pay back and the same was paid back by the suspended director Mr. Harsh Manchanda to the account of the CD. If he could not explain properly, then he is not at fault.

3.3. Summary Findings

(a) Dip in security Deposit given against rent of shops.

3.3.1. The DC notes that Mr. Sandeep Bhatt adjusted Rs. 1,51,64,091/-, Rs. 1,52,20,146/- and Rs. 18,28,668/- as rent payable against the security deposit on 03.08.2017, 31.03.2018 and 31.03.2019 respectively. However, such adjustments were neither reported to the AA or shown transparently in the yearly financial account. This was important as CD was being run as going concern, and the rent needed to be adjusted from the business operations. The due drawn of rent and its impact on dwindling of security deposits has also not demonstrated conclusively. Mere statements about efforts made is not sufficient. More importantly the AA was not prayed for any action against the vendors for non-cooperation despite many of the shops were non-operational and many were reportedly not even ready

for operational purposes. The certificate of auditors regarding such adjustment was obtained only on 14.09.2023 pointing to afterthought by Mr. Sandeep Bhatt. Instead of permitting adjustment of such security deposit, Mr. Bhat should have informed holders of such security deposits about the moratorium in force and should have guided such security deposit holders to submit claim in the prescribed format. In fitness of things, he should have informed the matter for the forfeiture of advance of Rs. 18,28,668/- and Rs. 35,00,000/- paid for purchase of shops at mall with the AA, the moment he became aware of it, along with steps being taken by him for its recovery at the appropriate forum. Further, the minutes of CoC meeting does not reflect any decision by the CoC to pursue or not pursue the recovery of aforesaid advances. In a transparent manner, Mr. Bhatt should have informed the issue of security deposit to CoC which he failed to do.

(b) Recovery of Work-in-Progress (WIP)

- 3.3.2. The submissions of Mr. Sandeep Bhatt that when the valuers visited the places of job workers during first week of November 2017, they could not find any WIP as they were recovered and sold by the RP. This is an erroneous statement as provisions of the Code mandates valuation is to be done as on Insolvency Commencement date. Then prevailing relevant provision reads as under:

2(k) “liquidation value” means the amount determined in accordance with Regulation 35;”

“35. Liquidation value.

(1) Liquidation value is the estimated realizable value of the assets of the corporate debtor if the corporate debtor were to be liquidated on the insolvency commencement date.”

As an afterthought, Mr Sandeep Bhatt, solicited endorsements from the valuers, and one of the valuers Mr CA Vinai K Singh while stating that he could not get satisfactory replies from the job workers and concluded that they had sold the material. However, he added that **“Mr. Sandeep Bhatt was running the business so the fact is known to him only.”** This points to the fact that RP has not shared the complete information to the valuers for arriving at valuation estimates.

- 3.3.3. Further, no enquiry has been made by the valuers with respect to the location of WIP or the job workers. However, Mr. Sandeep Bhatt admitted that he overlooked this aspect. However, no genuine effort appears to have been made by Mr. Bhatt for tracing other job workers and Mr. Bhatt did not ascertain the amount of WIP lying with such job workers.

(c) Failure to take control the bank accounts of the CD.

3.3.4. Section 23(2) of the Code provides that "*The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.*"

Section 25(2)(a) of the Code provides that "*...the resolution professional shall undertake the following actions, namely: - (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;*"

3.3.5. Apart from making promoter director as CEO, the DC was apprised during the hearing that Bank account of the CD was jointly held by him along with the suspended director Mr Manchanda. This puts the question mark on the independence of Mr. Sandeep Bhatt in taking key decisions including financial decisions independently.

3.3.6. Furthermore, DC observes that money was transferred to Mr. Harsh Manchanda account from the CD's account on 22.10.2019 and 29.10.2019. More surprisingly against the spirit of financial probity these amounts were transferred from the joint account by the RP and his co-signer promoter director acting as CEO despite knowing fully well the company was under liquidation with approval of the AA. Drawing the money from the liquidation estate by Mr. Sandeep Bhatt as erstwhile RP after the liquidation commencement date, ie, 16.10.2019 is bereft of any financial prudence or proprietary. Hence, despite CD being under liquidation estate holding the control of account of CD and making withdrawals transgressed his authority to operate the said Bank account. It has been pleaded that transfer has been effectuated as it was pre-approved and payment was to be released. Even if some pre-approved transfer were to be made, the same was to be informed to the Liquidator and as RP he has no locus standi to go ahead the release the amount on the day when technically he had no authority over it. It is conclusive that Mr. Sandeep Bhatt operated the Bank account of the CD unauthorisedly.

Contravention-II

3.4. Delay in submission of CIRP Forms with the Board.

3.4.1. IBBI Circular No. IBBI/CIRP/023/2019 dated 14.08.2019 on '*Filing of Forms for the purpose of monitoring corporate insolvency resolution processes and performance of insolvency professionals under the Insolvency and Bankruptcy Code, 2016 and the regulations made thereunder*', mandates that, an IP shall file electronically the forms along with relevant information and records, in respect of all CIRPs, both closed and ongoing, conducted by him and the forms along with relevant information and records by the timelines as specified and for forms which became due on or before 15.09.2019 had to be submitted by 30.09.2019.

3.4.2. However, it is observed that CIRP Forms 1, 3 and 5 for the CD has been submitted by Mr. Sandeep Bhatt to the Board with a delay as follows:

Form	Due Date	Date of Submission	Delay (in days)
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CIRP Form 1	30.09.2019	17.11.2020	414
CIRP Form 3	30.09.2019	11.10.2019	11
CIRP Form 5	30.09.2019	11.10.2019	11

3.4.3. In view of the above, the Board held the *prima facie* view that Mr. Sandeep Bhatt have *inter alia* violated section 208(2)(e) of the Code, regulation 40B of the CIRP Regulations and regulation 7(2)(a) & (h) of IP Regulations read with clause 19 of the Code of Conduct also read with circular No. IBBI/CIRP/023/2019 dated 14.08.2019.

3.5. Submissions made by the IP

3.5.1. Mr. Sandeep Bhatt submitted that the forms were newly launched and he was filing monthly, quarterly and half yearly reports to the IPA on continued basis. When the forms were launched, then there were several operational issues and despite best attempts for login and uploading, the system did not respond perfectly and there had been delay of 11 days in uploading CIRP Form 3 & 5 which was beyond his control.

3.5.2. As regards CIRP Form 1, the same form was required to be filed by the IRP after making public announcement. The public announcement was issued on 01.09.2017. The forms were required to be uploaded by 30.09.2017 by the IRP and he was working as a RP at that time. For the running cases, he filed all forms in due time applicable to him as an IRP/ RP but in the given case, the form CIRP-1 was not applicable on him. He made enquiries telephonically from the Board and the IPA repeatedly, then they said to upload such CIRP-1 too and don't bother for the delay. He submitted that such CIRP-1 form was not applicable on us being the RP. However, on advice, we uploaded such form.

3.5.3. He submitted that if any error is found on his part, he prays condonation being the very initial phase of the Code with several system errors and his intent was good.

3.6. Summary Findings.

3.6.1. The DC notes that the understanding of Mr. Sandeep Bhatt that Form-I was not applicable to him as the same is not in consonance with the facts. Mr. Sandeep Bhatt was appointed as IRP on 25.08.2017. He made public announcement on 01.09.2017 and thereafter appointed as RP of CD on 20.12.2017. Hence, Mr. Sandeep Bhatt was required to file CIRP-I in the capacity of IRP even when he was appointed as RP of same CD. The circular No. IBBI/CIRP/023/2019 dated 14.08.2019 states that "*It is directed that an IP shall file electronically - a. the Forms along with relevant information and records, which have become due on or before 15th September, 2019 in respect of all CIRPs, both closed and ongoing, conducted by him, by 30th September, 2019;*" Hence, the contravention alleged by the Board is upheld.

Order

- 4.1. In view of the submission made by Mr. Sandeep Bhatt, and materials available on record, DC notes that Mr. Sandeep Bhatt has contravened the provisions of the Code and Regulations made thereunder, specially, sections 25(1), 25(2)(a), 25(2)(b), 208 (2)(a) and (e) of the Code, regulation 40B of the CIRP Regulations and regulation 7(2)(a) & (h) of the IP Regulations read with clauses 1, 2, 14 and 19 of the Code of Conduct.
- 4.2. Charges of operating the bank account of the CD, which was under liquidation estate, by the RP is of grave nature. Keeping in view the facts recorded in the summary findings, the Disciplinary Committee, in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the Investigation Regulations hereby hereby, suspends the registration of Mr. Sandeep Bhatt for two years.
- 4.3. This Order shall come into force after expiry of 30 days from the date of this order.
- 4.4. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Sandeep Bhatt is enrolled as a member.
- 4.5. A copy of this order shall be sent to the CoC/Stake Holders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Sandeep Bhatt is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Sandeep Bhatt.
- 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.

-sd/-

(Sudhaker Shukla)
Whole Time Member, IBBI

Date: 1st November, 2023

Place: New Delhi