INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/37/2020

29th October, 2020

Order

In the matter of Mr. Sundaresh Bhat, Insolvency Professional (IP) under Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/INSP/2019/34 dated 30th June, 2020 issued to Mr. Sundaresh Bhat, Level 9, the Ruby, North West Wing, Senapati Bapat Road, Dadar West, Mumbai City, Maharashtra - 400028, who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI ("**IIIP-ICAI**") and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (**Board**/**IBBI**) with Registration No. IBBI/IPA-001/IP-P00077/2017-2018/10162.

Background

The CIRP in the matter of Mack Soft Tech was initiated *vide* order dated 11th August, 2017 of NCLT, Hyderabad ('AA') and consequently, a moratorium was declared as per section 14 of the Code. Mr. Sundaresh Bhat was appointed by the AA as an IRP. He was confirmed as RP by the CoC in the meeting held on 19th September, 2017. However, the CoC in its second meeting held on 08th January, 2018 decided to replace Mr. Sundaresh Bhat and appointed Mr. Mohan Lal Jain as RP who took over the charge on 7th February, 2018.

1.1 The Board had issued the SCN dated 30th June, 2020, to Mr. Sundaresh Bhat based on material available on record including Final Inspection Report, dated 13th March, 2020, in respect of his role as the Interim Resolution Professional (IRP) in the CIRP of Mack Soft Tech Private Limited ('CD') who was appointed as such vide order dated 11th August, 2017 by NCLT, Hyderabad. The SCN alleged contraventions of section 14(1) (b) and section 208 (2) (a) & (e) of the Insolvency and Bankruptcy Code, 2016 (Code), regulation 7(2) (a) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 2, 5, 10 and 14 of the Code of Conduct contained in the First Schedule of the IP Regulations, Circular No. IP/005/2018 dated 16th January 2018 and Circular No. IBBI/IP/013/2018 dated 12th June 2018 issued by IBBI. Mr. Sundaresh Bhat replied to the SCN *vide* letter dated 21st July, 2020.

1.2 The Board referred the SCN, response of Mr. Bhat to the SCN and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Bhat availed an opportunity of personal e-hearing before the DC on 21st September, 2020 wherein he was represented by Mr. Zubin Mehta, Advocate. Thereafter, Mr. Bhat submitted an Addendum to the Reply to the SCN *vide* email dated 25th September, 2020 in support of

submissions made during the course of e-hearing.

2. **Alleged Contraventions and Submissions**
Contraventions alleged in the SCN and Mr. Sundaresh Bhat's written and oral submissions thereof are summarised as follows.

I. Contravention

2.1 The Hon'ble NCLT, Hyderabad Bench (AA) vide order dated 11th August 2017 admitted the application for CIRP in the matter of Mack Soft Tech Pvt. Ltd. (CD) and declared moratorium as per section 14 of the Code. It has been observed from the minutes of 1st CoC meeting dated 19th September, 2017 that Mr. Bhatt had placed the cash flow statement for the period 11th August, 2017 to 18th September, 2017 showing that loan repayment of Rs. 2,74,92,240/- was made to HDFC Limited during the CIRP, which is the financial creditor. It was also observed from the minutes of 2nd CoC meeting, dated 8th January, 2018, that the IRP had placed agenda for ratification and approval of payment of EMI towards principal loan along-with interest to HDFC Limited. Thus, regular payments were made from the assets of CD to HDFC Ltd.

2.1.1 Further**,** it has been observed from the minutes of 1st CoC meeting that Mr. Bhat informed the CoC members that since the Company is a going concern, all expenses/payments pertaining to the period prior to the commencement of CIRP has also been paid. Some instances of pre-CIRP expenses made by Mr. Bhat during CIRP are as follows:

- Retainership fee of Rs. 21,300/- for the month of May and June 2017 to M. Bhaskara Rao & Co.
- Property maintenance charges of Rs. 11,39,906/-for the month of May 2017 and Security Charges of Rs. 9,48,455/- for the month of May, 2017 to Cushman and Wakefield Property Management Services India Pvt. Ltd.
- Property maintenance charges of Rs. 8,422/- for the month of May 2017 and water tanker hiring charges of Rs. 39,881/- for the month of June 2017 to Tropical Ecology Pvt. Limited.
- Electrical consumables of Rs. 26,891/- for the month of July 2017 to Vaagdevi Enterprises.
- Accounting Services of Rs. 72,000/- for the month of July and August 2017 to Peregrine Guarding Pvt. Ltd.

2.1.2 Thus**,** Mr. Bhat made payment towards routine expenses pertaining to the period prior to CIRP commencement date after initiation of CIRP. In view of the above, the Board is of *prima facie* view that Mr. Bhat violated section 14(1)(b), 208 (2) (a) and 208 (2)(e) of the Code, regulations 7(2)(a) and (h) of the IP Regulations and clauses 5 and 14 of the Code of Conduct in the First Schedule of the said IP Regulations.

Submissions

2.2 Mr. Sundaresh Bhat *vide* his reply, dated 21st July 2020, and additional submissions, dated 25th September, 2020, has submitted that approval of the CoC was taken both in case of the payments made to HDFC Limited and payments of outstanding dues to the vendors/service providers of CD as is evident from the minutes of the First and the Second meetings of CoC and payments made to HDFC Limited were not in violation of moratorium as set out in section 14(1)(b) of the Code. He submitted that prohibition under section 14(1)(b) of the Code is not applicable to the CD and in respect of the assets of the CD. He relied on the judgment by the Hon'ble High Court of Delhi in *Power Grid Corporation of India Limited vs. Jyoti Structures Limited (2018) 246 DLT 485* wherein, it has been observed that as long as an action does not harm the interest of the parties, the object of the Code shall be preserved rather than defeated. He further submitted that any action of the RP taken with consent of the CoC and which would lead to following benefits cannot fall within the prohibition of moratorium:

(a) Avoidance of Non-Performing Asset (NPA) status for the loan account of the Corporate Debtor leading to the Corporate Debtor staying eligible for availing any further financial assistance from the banking system and avoid cross-defaults across various contracts of the Corporate Debtor;

(b) Avoidance of interest for delayed payments (18%) which it is understood led to saving more than Rs. 3.9 crores for the Corporate Debtor and avoiding leakage of excess cash on account of default interest which was avoided and at the same time maximised the value; and there was no loss which was caused to the Corporate Debtor or any of its stakeholders;

(c) Ensuring business as usual with the Corporate Debtor, *i.e.*, with the lending institution and operational creditors without any stress or turbulence in its activities;

(d) Ensuring the Corporate Debtor is run as a going concern and therefore, has a good prospect of getting resolution plans.

2.2.1 Mr. Bhat submitted that he was discharging his duties under section 20 of the Code. He submitted that in order to maximize the value, regular payments were permitted to HDFC Limited with the consent of the CoC. With respect to the issue of payment of outstanding dues to other vendors, he submitted that since Cushman and Wakefield Property Management Services India Pvt. Ltd. ('Cushman') was providing essential services to the business of the CD and was historically a steady service provider, he, in the best interest of the CD and in order to avoid any interruptions in the business as usual setting of the CD, settled its outstanding dues. Similarly, M. Bhaskara Rao and Co., the GST and accounts consultant performing duties on monthly basis had categorically informed him that he would withhold data if his past dues were not cleared. Tropical Ecology and Peregrine were providers of property maintenance, water tanker services and security services, which are essential services to run the CD as going concern and non-payment of their outstanding dues may have led to termination of services by this vendor, which would have in turn hampered the quality of services by the CD, thereby hampering the going concern status of the CD. Therefore, the outstanding dues of these service providers/vendors were paid by him to ensure that the CD continued to function

as a going concern, as part of discharging the duties attributed to him in terms of section 20(2)(e) of the Code and the same do not come in conflict with section 14(1)(b) of the Code.

2.2.2 Mr. Bhatt submitted that the CD had steady cash flows and by paying the outstanding dues, no harm to the financial position or loss was caused to the CD and on the contrary, this ensured the continuance of going concern status of the CD. No harm was caused to the rights of any of the stakeholders of the CD and no loss has been incurred by any of the stakeholders, and that he has had no gains or derived no benefits as a result of regular payments being made to HDFC Ltd and clearing of outstanding dues.

2.2.3 Mr. Bhatt stated the he acted in good faith while discharging his duties and that he had taken approval of the CoC both in case of the payments made to HDFC Ltd. and payment of the outstanding dues to the vendors/service providers of the CD. He acted in a diligent way. Mr. Bhat drew the attention of the DC towards the following agreements entered into by the CD and HDFC Limited in relation to escrow account from which the regular payments have been made to HDFC Limited:

(a) Facility Agreement, dated 11th January 2012.

(b) Assignment and Administration agreement (**"Assignment agreement"**) dated 11th January 2012 and Power of Attorney dated 11th January 2012 ("**POA**"), and

(c) Escrow Agreement dated 11th January 2012 ("**EA**").

2.2.4 It was submitted by Mr. Bhat that the beneficial ownership, and overriding title at the source of income and control over the amounts in the escrow account is that of HDFC Limited to the extent of its loan dues and till the same are repaid in full, as the IRP has not applied the income. The receivables would come in directly in the escrow account and shall be transferred to the account of HDFC Limited on instructions of HDFC Limited. Therefore, transfer of amounts from escrow account to the account of HDFC Bank would technically not amount to transfer of assets of the CD. He placed reliance on the Explanation to Section 17 of the Code to submit that the payments made to HDFC Limited falls within the exclusion of section 17 as the same were made automatically (pursuant to the Escrow Account) from the rental receivables collected in the Escrow account which is pledged to HDFC Ltd. He submitted that the escrow bank holds the amount in the escrow account in trust and for the benefit of HDFC Limited to the extent of its dues Therefore, such amounts which have been paid to HDFC Ltd. did not qualify as 'asset' within the meaning of the Code.

2.2.5 Mr. Bhat further submitted that CoC has unanimously approved the payments made to HDFC Ltd. & payments of the outstanding dues in its commercial wisdom and in this regard, law has been settled by the Apex court in the case of *Essar Steel India Limited and K. Shashidhar vs. Union of India India* that the decision taken in commercial wisdom of the CoC is non-justiciable. He submitted that the act of paying the EMIs ensured savings of Rs. 3.9 Cr approximately which the CD would have had to bear as default interest charges. He further submitted that the intent as set out in BLRC Report

which specifically states that very purpose of moratorium is to ensure that there be no additional stress on Corporate Debtor. Therefore, his actions ensure preservation of his assets and no erosion of the value of the CD.

II. Contravention

2.3 Mr. Bhat had raised invoice, dated 26th July, 2017 in respect of IRP fees in the name of BDO Restructuring Advisory LLP (BRAL), which is an IPE instead of in his own name. The expression "Insolvency Resolution Process Costs" includes under Section 5(13)(b) of the Code, "the fees payable to any person acting as a resolution professional". Therefore, only RP/IRP is entitled to directly receive the fee payable along-with the out-of-pocket-expenses in relation to a resolution process for which he has been appointed as IRP/RP.

2.3.1 Further, it is observed that the invoice for 100% IRP fees has been raised on 26th July, 2017, i.e., prior to CIRP commencement date, i.e., 11th August 2017 in advance and billed to the applicant (a financial creditor). However, the appointment of Mr. Bhat as IRP is confirmed only by the order of the Adjudicating Authority and not merely by giving of written consent by IP to the applicant or by entering into any agreement with the applicant.

In view of the above, the Board is of *prima facie* view that he had violated section 208(2)(a) and 208(2)(e) of the Code, regulations 7(2)(a) and (h) of the IP Regulations and Clauses 2, 5, 10 and 14 of the Code of Conduct thereof.

Submissions

2.4 With respect to the issue of raising of an invoice dated 26th July, 2017 of 100% of the IRP fees in advance prior to insolvency commencement date, it was submitted by Mr Bhat *vide* his reply dated 21st July 2020that as per the market practice prevalent back in July-August 2017, the invoices for the fees payable to the Mr. Bhat were raised in the name of IPE of which Mr. Bhat was a partner and that he and the applicant of the CIRP (Quinn Logistics India Pvt. Ltd.) also decided to have the invoicing for the fees payable to him done in the name of BRAL and the same was approved by the CoC during the second meeting of the CoC held on 6th January, 2018. Mr. Bhat further submitted that the invoices for the fees payable to him were raised and fees were paid to BRAL's account as there was no specific prohibition in law in July, 2017 in nominating the beneficiary account of IP, *i.e.*, the account of IPE, for payment of fees. The guidelines of the IBBI came for the first time in the Circular dated 16th January, 2018, However, the said invoices were raised much prior to the issuance of the Circular and hence, the act of raising the invoice for the fee payable to the IP and receipt of fees in BRAL's account could not have been changed in retrospect.

2.4.1 Mr. Bhat submitted that a commercial arrangement was entered between him, BRAL

and the applicant for appointment of Mr. Bhat to act as IRP for the CD in CIRP. The said arrangement stipulated that the payment of professional fee of Rs. 47 lakhs is payable upon signing of contract, which was the fees applicable for the tenure of the IRP of the CD, *i.e.*, first 30 days of the CIRP. Therefore, invoice for the fees payable to Mr. Bhat was raised by BRAL in advance on the applicant on 26th July, 2017.

2.4.2 Mr. Bhat stated that CIRP of Mack Soft Tech (CD) was one of the first assignment of the IP and it was being undertaken within first 9 months of the Code coming into force, therefore, the IRP was guided by the commercial arrangement with the applicant which was based on prevalent market practice back then. He further stated that the CIRP commenced on 11th August, 2017 and the said invoices dated 26th July, 2017 was cleared by the applicant on 22nd August, 2017 and 7th September, 2017, *i.e.,* after commencement of the CIRP. Thus, Mr. Bhat stated that he did not act with *malafide* or negligently and caused no loss to the CD or to any of the stakeholders due to this matter nor did he gain anything unlawfully out of this.

III. Contravention

2.5 The Circular No. IP/005/2018 dated 16th January, 2018 (IBBI Relationship Disclosure Circular) required IP to disclose his relationship, if any, with (i) the Corporate Debtor, (ii) other Professionals engaged by him, (iii) Financial Creditor(s), (iv) Interim Finance Provider(s), and (v) Prospective Resolution Applicant (s) to the Insolvency Professional Agency of which he is a member, within three days of his appointment or appointment of professional by him. The disclosures shall be made in respect of the ongoing resolution processes as on date and all subsequent resolution processes. The disclosures due on date in respect of the ongoing processes shall be made to the respective Insolvency Professional Agency by 31st January, 2018.

2.5.1 Mr. Bhat has made a delay of around eight months in submitting relationship disclosure pertaining to his appointment as an Interim Resolution Professional of the CD. He was appointed as IRP on 11th August, 2017 till 16th January, 2018 while relationship disclosure was submitted on 20th September, 2018. Similarly, there has been a delay of more than one year in submitting relationship disclosure pertaining to appointment of Veritas Legal Advocates and Solicitors and a delay of around eight months in submission of relationship disclosures pertaining to the appointment of other professionals by the IP.

2.5.2 In the SCN, Mr. Bhat's attention was drawn regarding delay through the following table:-

Name of Professional	**Date of appointment**	**Date of Disclosure**
RBSA Valuation Advisors LLP (Valuer)	24th August 2017	20th September 2018
Rakesh Narula and Co.	24th August 2017	20th September 2018

(Valuer)		
Link Legal India law Services (Advocate)	23rd August 2017	20th September 2018
BDO Restructuring Advisory LLP (IRP Support Entity)	11th August 2017	20th September 2018
Veritas Legal Advocates & Solicitors (Advocate)	8th October 2017	10th February 2020

In view of the above, the Board is of *prima facie* view that Mr. Bhat has violated section 208 (2) (a) and 208 (2) (e) of the Code, regulations 7(2) (h) of the IP Regulations read with Clause 14 of the Code of Conduct in the First Schedule of the said IP Regulations and Circular No. IP/005/2018, dated 16th January, 2018 issued by the IBBI.

Submissions

2.6 Mr. Bhat submitted that his team attempted to upload the disclosure of relationship of various professionals on the website of IIIPI on 30th January 2018 in compliance with the IBBI Relationship Disclosure Circular, however due to some technical issue, the said disclosures could not be uploaded on the website of IIIPI. Thereafter, his team sent the said disclosures via email to IIIPI and the Board on 30th January 2018 at the following email ids: ipa@icai.in and Proceeding@ibbi.gov.in ('**Disclosure email**').

2.6.1 He further submitted that after sending the Disclosure Email, Mr. Bhat was under a *bonafide* belief that the IBBI and IPA would take cognizance of the Disclosure Email and hence no further action was required by him. The delay in making disclosures by him and of various professionals appointed by him appeared in the records of the Board. However, he later realized that the disclosures sent by him to IPA and the IBBI through the Disclosure email have not been taken cognizance of and that he needed to upload the same on the website of IPA. He further submitted that he could not place the Disclosure email in his records at the time of submission of responses to the Draft Inspection Report, therefore, he has mentioned the details of the disclosures in his reply to the SCN.

2.6.2 Mr. Bhat further confirmed that full disclosure was made by him as required in terms of the IBBI Disclosure Circular albeit with a procedural glitch and sought an apology in respect of the same. He has stated in his reply that his action has not resulted in any harm or caused any prejudice to any party as there was no conflict of interest in the appointments made by him in the CIRP of the CD.

IV. Contravention

2.7 The Circular No. IBBI/IP/013/2018 dated 12th June 2018 (IBBI Cost Disclosure

Circular**)** regarding fees and other expenses incurred for CIRP, *inter alia*, states as follows:

"*…Further, the IP is directed to disclose fee and other expenses in the relevant Form in Annexure C to the Insolvency Professional Agency of which he is a member:*

(a) for all concluded CIRPs by 15th July 2018; and

(b) for ongoing and subsequent CIRPs within the time as specified in the relevant Form…".

2.7.1 Mr. Bhat submitted cost disclosures with his respective IPA Indian Institute of Insolvency Professionals of ICAI on 8th January, 2019 (Form I) and 15th March, 2019 (resubmitted on 6th January, 2020) (Form II) while he had served as IRP in the said assignment from 11th August, 2017 till 16th January, 2018. Thus, there has been a delay of around 6 months in submitting Form I and delay of eight months in submitting Form II in accordance with the said circular dated 12th June, 2018 regarding fee and other expenses incurred for CIRP.

In view of the above, the Board is of *prima facie* view that Mr. Bhat has violated section 208 (2) (a) and 208 (2) (e) of the Code, regulations 7(2) (h) of the IP Regulations read with Clause 14 of the Code of Conduct in the schedule 1 of the said IP Regulations and Circular No. IP/013/2018 dated 12th June 2018 issued by IBBI.

Submission

2.8 Mr. Bhat has submitted in his reply that he had initially interpreted the IBBI Cost Disclosure Circular to be applicable to only *ongoing* assignments of IRPs and therefore, he did not submit the same within the stipulated timeframes, as he was replaced by the CoC as an IRP of the CD as recorded in the minutes of its meeting held on 8th January 2018 which is before the issuance of the IBBI Cost Disclosure Circular. However, after learning more about the same and observing the market practice, he submitted the said forms later albeit with delay of few months. He further submitted that neither was any harm or loss caused to any party due to the delay in submission of cost disclosures nor did he gain any undue advantage on account of delay.

Analysis and Finding

3. After considering the allegations in the SCN and submissions made by Mr. Bhat and the provisions of the Code, regulations and the relevant circulars, the DC finds as follows.

3.1 In respect of the first issue regarding payment made during the moratorium period, the DC notes that section 14 of the Code provides in express terms, prohibition of certain actions against the corporate debtor which may interrupt the resolution process except the supply of essential and critical services. Section 14 of the Code reads as follows:

*"**14. Moratorium**.*

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b)transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d)the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances

(3) The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of

corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

3.1.1 The said provision on moratorium envisages prohibition on institution of suits by or against the CD, transfer, alienation or disposal of any of the assets or legal right or beneficial interest of the CD, action to foreclose, recover or enforce any security interest created by CD in respect of his property. The moratorium period is till the completion of the insolvency resolution process. However, the provisions of moratorium do not apply for supply of essential goods and services as also critical services which are important for ensuring orderly completion of the process and for keeping the CD as a going concern.

3.1.2 The basic objective of the Code is to protect the value of the assets of the insolvent entity against diminution of the same by the actions of the various parties to the insolvency proceedings. This objective is attained by the mechanism of 'moratorium'. The prohibition on initiation and continuation of legal proceedings, including debt enforcement action during moratorium ensures a calm period during which creditors cannot resort to individual enforcement action which may frustrate the object of balancing the interest of all the stakeholders during CIRP period. The moratorium also extends to recovery of any property occupied by or in possession of CD. The moratorium mechanism facilitates the continued operation of the business and allows the debtor a breathing space for reorganising its affairs.

3.1.3 The UNCITRAL Legislative Guide on Insolvency Law describes the mechanism as follows:

"*With regard to creditors, one of the fundamental principles of insolvency law is that insolvency proceedings are collective proceedings, which require the interests of all creditors to be protected against individual action by one of them. Many insolvency laws include a Mechanism to protect the value of the insolvency estate that not only prevents creditors from commencing actions to enforce their rights through legal remedies during some or all of the period of the liquidation or reorganization proceedings, but also suspends action already underway against the debtor. Such a mechanism is variously termed a "moratorium", "suspension" or "stay", depending on the effect of the mechanism" [paras 26]*

3.1.4 The BLRC in its report states as follows:

"*…One of the goals of having an insolvency law is to ensure the suspension of debt collection actions by the creditors, and provide time for the debtors and creditors to re-negotiate their contract. This requires a moratorium period in which there is no collection or other action by creditors against debtors.*"

The Joint Committee on Insolvency and Bankruptcy Code, 2015 Bill, while considering the said Bill in its Report stated as follows:

"The Committee are of the opinion that it is important to keep the debtor's assets together during the moratorium period. In this regard, one of the stakeholders in

the memorandum submitted before the Committee has stated that the Code places enough restrictions on the actions that can be taken against the debtor, with no thought on the restrictions that must be put on the debtor with respect to his assets. It has, therefore, been suggested that the Code must explicitly preclude the debtor from alienating any of his assets during the moratorium."

3.1.5 The moratorium under the Code is automatic. The adjudicating authority is required to declare moratorium under section 14(1) of the Code which commences with the commencement of the CIRP. The purpose of automatic stay is to prevent dissipation of the debtor's assets before orderly distribution to creditors can be effected. This is a mechanism that restrains the CD from disposing of the business assets which may hamper the resolution process. In other jurisdictions also similar mechanism is provided. The UK Insolvency Act, 1986 also provides for an automatic moratorium on insolvency proceedings on enforcement of security over the company's property, repossession of goods in the company's possession under a hire-purchase agreement (defined to include retention of title arrangements), exercise of a right of forfeiture by a landlord by peaceable re-entry and institution of legal proceedings against the company. In the United States, the Bankruptcy Code provides, under section 362 (2), for an automatic moratorium upon the filing of a Chapter 11 petition on the enforcement of claims against the company and its property, judicial and administrative proceedings, enforcement of judgments against the company or its estate, acts to obtain possession/control of estate property, acts to create, perfect or enforce liens, acts to collect claims, exercise of right of set off, tax court proceedings, etc.

3.1.6 In the present case, the DC notes that Mr. Bhat has made payment of EMIs to the HDFC and payment of the outstanding dues to the vendors/ service providers of the CD pertaining to pre-CIRP period during CIRP from the assets of the CD and that too in preference to other creditors. The issue is whether such payments can be made during the period of moratorium in CIRP. It has been submitted by Mr. Bhat that the decision to make payment of regular EMIs out of rental receipts of CD in the ordinary course of business was taken by CoC and was a part of CoC's commercial decision taken in the interests of CD. It was further submitted by Mr. Bhat that payment of EMIs was a routine business transaction undertaken by him in order to keep the CD as a going concern and thus, cannot be regarded as a transfer of asset under section 14.

3.1.7 The DC notes that the CD has entered into a facility agreement dated 11th January 2012 with the FC and also Escrow Account Agreement dated 11th January 2012 executed between the CD and HDFC Bank, whereby it has been agreed that the CD *(borrower) will open an escrow account and designated account for this facility with a Bank acceptable to HDFC. will inform its tenants to draw all cheques in favour of MSTPL escrow account and ensure that all receivables by way of rental accruals are deposited in escrow account only. The borrower has agreed that, the payments to be collected/received by the borrower from the lessee/allottee of various units/properties built and sold or leased on the property, shall be credited to the said Escrow account and the lender shall adjust all the amounts to be paid by the borrower to the Lender under the Loan agreement from time to time, out of the amounts credited in the said Escrow account. The residual amount in the escrow account would be transferred into the designated account of borrower for its use."*

3.1.8 The submissions advanced by M. Zubin Mehta, counsel for Mr. Bhat, that transfer of the amount from escrow account to the account of HDFC Bank would not amount to transfer of assets of the CD is not tenable. It is evident from a bare perusal of the minutes of 1st and 2nd CoC meeting that payment of EMIs has regularly been made from the assets of the CD to HDFC. It is clear from the terms of the agreement that it was a mechanism for loan repayment and receivables to be adjusted against the amount to be paid by the borrower and residual amount to be transferred to the account of the CD. It further clears that the payments are to be collected or received by the CD and instructions are to be given to the tenants by the CD to draw all cheques in favour of MSTPL escrow account. Instructions can be given in respect of assets which a person owns it. Hence, rental income is the asset of CD and it was not a third-party asset. Therefore, transfer of such assets during moratorium period is in violation of section 14(1)(b).

3.1.9 The Hon'ble National Company Law Appellate Tribunal in the matter of *Indian Overseas Bank Vs Mr. Dinkar T. Venkatsubramaniam, Resolution Professional for Amtek Auto Ltd.* (Company Appeal (AT) (Insolvency) No. 267 of 2017) observed as follows:

> *"Having heard learned counsel for the Appellant, we do not accept the submissions made on behalf of the Appellant in view of the fact that after admission of an application under Section 7 of the 'I&B Code', once moratorium has been declared it is not open to any person including 'Financial Creditors' and the appellant bank to recover any amount from the account of the 'Corporate Debtor', nor it can appropriate any amount towards its own dues".*

Thus, once the moratorium is in force, the financial creditor including the bank has to prefer its claim before IP, which is considered along with other claims as per law.

3.1.10 Mr. Bhat in his written submissions has submitted that the payment of EMI was a routine business transaction in order to keep the CD as a going concern. However, the DC finds that continuing of loan repayment arrangement cannot be regarded as "ordinary course of business of the CD" nor it can be regarded as an essential or critical service for keeping it as a going concern. In view of the provisions of section 14, it is very much clear that the FC and the CD cannot, by virtue of a clause in the Facility Agreement, take the assets of the CD during CIRP on the pretext of approval granted by the members of CoC.

3.1.11 The contention of Mr. Bhat that the payment of EMIs to HDFC and payment of the outstanding dues to the vendors/ service providers of the Corporate Debtor was approved by the CoC is not sustainable because CoC cannot take a decision in violation of the express provisions of the Code. Commercial decision of CoC cannot violate or supersede the express provisions of law. The Supreme Court in ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta (2019)*** reinstated the existence of certain intrinsic assumptions relating to the CoC on which the principle of 'commercial wisdom' has been recognised. The assumptions are: that the CoC has taken into account the fact that the corporate debtor needs to maintain itself as a going concern during the insolvency resolution process; that it needs to maximize the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. Therefore, the Hon'ble Court held that when the CoC exercises its commercial wisdom to arrive at a business decision to revive the CD, it must necessarily take into account these key features of the Code before it arrives at a commercial decision to pay off the dues of financial and operational creditors.

3.1.12 Thus, any action approved by the CoC must strictly be in compliance of the provisions of the Code and the rules and regulations made thereunder. The CoC while exercising their commercial wisdom to arrive at a business decision must necessarily take into account the provisions of the Code and regulations made thereunder. Therefore, the decision of the CoC to ratify and approve the payment of EMI to FC and payment of the outstanding dues to the vendors/ service providers of the CD, in preference to other creditors, can by no stretch of imagination come within the purview of commercial wisdom of CoC.

3.1.13 It is the duty of the IP to take reasonable care and diligence while performing his duties and to observe the compliance of the provisions of the Code and the regulations. There are various obligations which the IP needs to perform under the Code. Section 208 (2) provides that every insolvency professional shall abide by the Code of conduct. It reads as follows:

"*208. Functions and obligations of insolvency professionals.*

(2) Every insolvency professional shall abide by the following code of conduct: –

(a) to take reasonable care and diligence while performing his duties;

(b) to comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member;

(c) to allow the insolvency professional agency to inspect his records;

(d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and

(e) to perform his functions in such manner and subject to such conditions as may be specified."

3.1.14 Section 25 of the Code provides that IP shall preserve and protect the assets of the CD and must take immediate custody and control of all the assets of the CD. Section 25 reads as follows:

"*25. Duties of resolution professional. –*

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), 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;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

(c) raise interim finances subject to the approval of the committee of creditors under section 28;

(d) appoint accountants, legal or other professionals in the manner as specified by Board;

(e) maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;

(g) prepare the information memorandum in accordance with section 29;

(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.

(i) present all resolution plans at the meetings of the committee of creditors;

(j) file application for avoidance of transactions in accordance with Chapter III, if any; and

(k) such other actions as may be specified by the Board."

3.1.15 Mr. Bhat failed to bring to the notice of the CoC that moratorium has been imposed on the transfer of assets of CD during CIRP under section 14 of the Code. In the CIRP of the CD, the outstanding dues of the FCs and the vendors prior to CIRP were recorded as claims and on the basis of which CoC was comprised and voting share determined. Payment of EMIs to the FC and payment of the outstanding dues to the vendors/ service providers of the CD (pertaining to pre-CIRP period) during CIRP from the assets of the CD and that too in preference to other creditors certainly had the effect of continuous change in claim status of those creditors every month and consequential changes too thereby causing disturbance in the stand-still position as envisaged in the provision of section 14 to facilitate resolution. The amount due to one creditor cannot be paid to him at the expense of other creditors as the same disturbs the balance amongst stakeholders. The resolution process will be rendered meaningless, if the assets of the CD are allowed to be disintegrated during the process. Thus, Mr. Bhat has acted in contravention of section 14 and Section 208(2) (a) and (e) of the Code.

3.2 With regard to the second issue in respect of raising of the invoices of IRP's fee by Mr. Bhat, the DC notes that the provisions of the Code and regulations are spelt out in a plain and simple language. There appears to be no ambiguity in understanding the provisions. Section 23 read with section 5(27) of the Code requires that an insolvency professional, who is appointed as an interim resolution professional or a resolution professional, shall conduct the entire corporate insolvency resolution process, including fast track process. Section 5 (13) of the Code defines the expression "Insolvency Resolution Process Costs" which includes under its clause (b) "*the fees payable to any person acting as a Resolution Professional*". Thus, it is clear from the said provision that only IRP/RP is entitled to directly receive the fee payable along with the out-of-pocket expenses in relation to a resolution process for which he has been appointed as the IRP/RP.

3.2.1 In this regard, Mr. Bhat has submitted that the invoices for the fees payable to him were raised in the name of IPE of which he was a partner as per the commercial arrangement arrived at by him as per the then prevailing market practice. Following the same practice, Mr. Bhat and the applicant of the CIRP (Quinn Logistics India Pvt. Ltd.) also decided to have the invoicing for the fees payable to him done in the name of BRAL and the same was approved by the CoC during the second meeting of the CoC held on 6th

January 2018. However, the said submission of Mr. Bhat is untenable as the market practices and commercial arrangement between the parties cannot override the express provisions of the Code. It is clear from the express provisions that an IP is required under the Code to raise bills/invoices in his own name towards fees for services rendered by him.

3.2.2 The submission of Mr. Bhat that the invoices for the fees payable to him were raised much prior to the issuance of the IBBI Fees Circular dated 16th January 2018 also does not hold ground as the Circulars are issued from time to time by the Board to clarify and explain the existing provisions of the Code. In view of the provisions mentioned hereinabove, it was clarified via said IBBI Fees Circular that an insolvency professional shall render services for a fee which is a reasonable reflection of his work, and raise bills / invoices in his name towards such fees, and such fees shall be paid to his bank account. Any payment of fees for the services of an insolvency professional to any person other than the insolvency professional shall not form part of the insolvency resolution process cost. In respect of the issue that the invoice of 100% of the IRP fees has been raised in advance by Mr. Bhat prior to the insolvency commencement date, it is pertinent to note here that the appointment of IP as IRP is confirmed only by the adjudicating authority generally in the admission order of CIRP and not merely on the basis of written consent given to the applicant or by entering into any agreement with the applicant. In view of the express provision and clarification laid down in the circular dated 16th January, 2018, the IP need to perform his duties with utmost care and diligence and act in accordance with the provisions of the Code as also provided in section 208.

3.2.3 During the course of e-hearing, it was stated by Mr. Bhat that the assignment of Mack Soft Tech (CD) was one of the first assignment of the IP and it was being undertaken within first 9 months of the Code coming into force, therefore, the IRP was guided by the commercial arrangement with the applicant which was based on the then prevalent market practice. He further stated that the CIRP commenced on 11th August, 2017 and the said invoices dated 26th July, 2017 was cleared by the applicant only after commencement of the CIRP, *i.e.*, on 22nd August, 2017 and 7th September, 2017. The DC also notes that it was also stated by Mr. Bhat in his written submissions that he regrets and seeks apology and condonation from the Board for the oversight. Besides, the said invoices had been cleared by the applicant only after the commencement of CIRP. Hence, DC takes a lenient view in this regard that he may not be held responsible.

3.3 Regarding the third issue of failure by Mr. Bhat to disclose as per the IBBI Relationship Disclosure Circular dated 16th January, 2018, this DC notes that, in addition to the provisions of section 208(2), Regulations made under the Code require an IP to follow, at all times, the provisions of the Code and Regulations and the bye-laws of Agency of which the IP is a member. Regulation 7(2)(a) and (h) of the IP Regulations provide as follows:

"7. Certificate of registration.

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

professional shall –

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

i. abide by the Code of Conduct specified in the First Schedule to these Regulations;"

Further, Clause 13 and 14 of First Schedule of Code of Conduct for Insolvency Professionals under Regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016 provide as under:

"13. An insolvency professional must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan his actions, and promptly communicate with all stakeholders involved for the timely discharge of his duties.

14. An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code.".

3.3.1 In the present matter, it has been alleged that Mr. Bhat failed to make disclosure as per the IBBI Relationship Disclosure Circular dated 16th January, 2018 within the timelines specified in that Circular as is evident from the table given in para 2.4.2. The Circular No. IP/005/2018, dated 16th January, 2018 relating to "Disclosures by Insolvency Professionals and other Professionals appointed by Insolvency Professionals conducting Resolution Processes" states that it has been decided that an insolvency professional and every other professional appointed by the insolvency professional for a resolution process shall make disclosures as specified in Para 3 to 5 hereunder.

(i) As per para 3 of the circular, an IP shall disclose his relationship, if any, with (i) the Corporate Debtor, (ii) other Professional(s) engaged by him, (iii) Financial Creditor(s), (iv) Interim Finance Provider(s), and (v) Prospective Resolution Applicant(s) to the Insolvency Professional Agency of which he is a member, within the time specified in that circular.

(ii) As per para 4, an IP shall ensure disclosure of the relationship, if any, of the other professionals i.e. Registered Valuer(s)/ Accountant(s)/ Legal Professional(s)/ Other Professional(s) engaged by him with (i) himself, (ii) the Corporate Debtor, (iii) Financial Creditor, (iv) Interim Finance Provider(s), and (v) Prospective Resolution Applicant(s) to the Insolvency Professional Agency of which he is a member, within the time specified therein.

(iii) Para 5 defines the nature of relationship for the purpose of Para 3 and 4 of the Circular at any time or during the three years preceding the appointment.

(iv) Para 6 provides that an Insolvency Professional Agency shall facilitate receipt of disclosures as required above and shall disseminate such disclosures on its web site within three working days of receipt of the disclosure.

(v) Para 7 of the Circular mandates an IP to provide a confirmation to the Insolvency Professional Agency to the effect that the appointment of every other professional has been made at arms' length relationship.

(vi) Para 8 provides that the disclosures shall be made in respect of ongoing resolution processes as on date and all subsequent resolution processes. Further, the disclosures due on date in respect of the ongoing processes shall be made to the respective Insolvency Professional Agency by 31st January, 2018.

(vii) Further, para 9 states that the IP shall ensure timely and correct disclosures by him and the other Professionals appointed by him. Any wrong disclosure and delayed disclosure shall attract action against the IP and the other Professional as per the provisions of the law.

3.3.2 Mr. Bhat has submitted that full disclosure was made by him on 20th September, 2018 as required in terms of the IBBI Disclosure Circular albeit with a procedural glitch and he, therefore, sought an apology in respect of the same. The DC noted that in circumstances where the IP did make an effort to submit the full disclosure, the IP cannot be held strictly liable for the undue delay.

3.4 Regarding the fourth issue of failure to disclose as per the IBBI Cost Disclosure Circular within the timelines specified in that circular, the DC notes that when a corporate debtor undergoes corporate insolvency resolution process, an IP is vested with the management of its affairs and he manages its operations as a going concern. He complies with the applicable laws on behalf of the corporate debtor. He conducts the entire CIRP. Such responsibilities of an IP require the highest level of professional excellence and integrity. He needs to be compensated for his professional services commensurate to his ability, duties and responsibilities. He also needs to pay fee or incur other expenses for various goods and services required for conducting the CIRP and or managing the operations of the corporate debtor as a going concern.

3.4.1 The relevant provisions of the Code and regulations made thereunder having a bearing on fee and other expenses of CIRP are section 5(13), regulation 34A of CIRP regulations, regulation 7(2)(h) and paras 16, 25, 25A, 26 and 27 of the Code of Conduct in the First Schedule to the IBBI (Insolvency Professionals) Regulations, 2016 (**'IP Regulations'**) as also the IBBI cost disclosure Circular are as follows:

Section 5(13) reads as under:

"*(13) "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;*"

3.4.2 The relevant Paras of the Code of Conduct under the IP Regulations are as under:

(i) Para 16 provides that an insolvency professional must ensure that he maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his decisions and actions.

(ii) Para 25 provides that an Insolvency Professional must provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken and is not inconsistent with the applicable regulations.

(iii) Para 25A provides that an insolvency professional shall disclose the fee payable to him, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

(iv) Para 26 provides that an insolvency professional shall not accept any fees or charges other than those which are disclosed to and approved by the persons fixing his remuneration.

(v) Para 27 provides that an insolvency professional shall disclose all costs towards the insolvency resolution process costs, liquidation costs, or costs of the bankruptcy process, as applicable, to all relevant stakeholders, and must endeavour to ensure that such costs are not unreasonable.

3.4.3 Regulation 34A of the CIRP Regulations also provides for 'Disclosure of Costs' by the IRP or the RP and states as under:

"34A. Disclosure of Costs. The interim resolution professional or the resolution professional, as the case may be, shall disclose item wise insolvency resolution process costs in such manner as may be required by the Board."

However, the above provision was inserted with effect from 1st April, 2018 and the CIRP in the present matter was initiated *vide* order dated 11th August, 2017 and thus, the above provision cannot be made effective retrospectively.

3.4.4 The Board issued the IBBI cost disclosure Circular No. IP/004/2018 dated, 16th January, 2018. It reads as follows relating to the fees payable to an insolvency professional and to other professionals appointed by an insolvency professional.

"3. In view of the above, it is clarified that an insolvency professional shall render services for a fee which is a reasonable reflection of his work, raise bills / invoices in his name towards such fees, and such fees shall be paid to his bank account. Any payment of fees for the services of an insolvency professional to any person other than the insolvency professional shall not form part of the insolvency resolution

process cost.

4. Similarly, any other professional appointed by an insolvency professional shall raise bills / invoices in his / its (such as registered valuer) name towards such fees, and such fees shall be paid to his / its bank account."

3.4.5 The Board issued the IBBI Cost disclosure Circular No. IBBI/IP/013/2018, dated 12th June, 2018, relating to the "Fee and other Expenses incurred for Corporate Insolvency Resolution Process". This circular clarified the existing provisions of regulations relating the IRP Cost. Its relevant paras are as follows: as follows:

"6. Keeping the above in view, the IP is directed to ensure that:- (a) the fee payable to him, fee payable to an Insolvency Professional Entity, and fee payable to Registered Valuers and other Professionals, and other expenses incurred by him during the CIRP are reasonable; (b) the fee or other expenses incurred by him are directly related to and necessary for the CIRP; (c) the fee or other expenses are determined by him on an arms' length basis, in consonance with the requirements of integrity and independence; (d) written contemporaneous records for incurring or agreeing to incur any fee or other expense are maintained; (e) supporting records of fee and other expenses incurred are maintained at least for three years from the completion of the CIRP; (f) approval of the Committee of Creditors (CoC) for the fee or other expense is obtained, wherever approval is required; and (g) all CIRP related fee and other expenses are paid through banking channel.

7. The Code read with regulations made thereunder specify what is included in the insolvency resolution process cost (IRPC). The IP is directed to ensure that:- (a) no fee or expense other than what is permitted under the Code read with regulations made thereunder is included in the IRPC; (b) no fee or expense other than the IRPC incurred by the IP is borne by the corporate debtor; and (c) only the IRPC, to the extent not paid during the CIRP from the internal sources of the Corporate Debtor, shall be met in the manner provided in section 30 or section 53, as the case may be.

8. It is clarified that the IRPC shall not include: (a) any fee or other expense not directly related to CIRP; (b) any fee or other expense beyond the amount approved by CoC, where such approval is required; (c) any fee or other expense incurred before the commencement of CIRP or to be incurred after the completion of the CIRP; (d) any expense incurred by a creditor, claimant, resolution applicant, promoter or member of the Board of Directors of the corporate debtor in relation to the CIRP; (e) any penalty imposed on the corporate debtor for non-compliance with applicable laws during the CIRP; [Reference: Section 17 (2) (e) of the Code read with circular No. IP/002/2018 dated 3rd January, 2018.] (f) any expense incurred by a member of CoC or a professional engaged by the CoC; (g) any expense incurred on travel and stay of a member of CoC; and (h) any expense incurred by the CoC directly;

[Explanation: Legal opinion is required on a matter. If that matter is relevant for the CIRP, the IP shall obtain it. If the CoC requires a legal opinion in addition to or in lieu of the opinion obtained or being obtained by the IP, the expense of such opinion shall not be included in IRPC.] (i) any expense beyond the amount

approved by the CoC, wherever such approval is required; and (j) any expense not related to CIRP.

9. Further, the IP is directed to disclose fee and other expenses in the relevant Form in Annexure C to the Insolvency Professional Agency of which he is a member: (a) for all concluded CIRPs by 15th July, 2018, and (b) for ongoing and subsequent CIRPs within the time as specified in the relevant Form.

10. An Insolvency Professional Agency shall - (a) disseminate the disclosures made by its IPs on an appropriate electronic platform within three working days of receipt of the same; (b) monitor disclosures made by its IPs and submit a monthly summary of non-compliance by its IPs with this circular to the IBBI by 7th of the succeeding month; (c) take appropriate measures to ensure compliance by its IPs."

3.5 In the present matter, Mr. Bhat failed to make the disclosure as per the IBBI Cost Disclosure Circular within the timelines specified in the circular. Evidently there was a delay of around 6 months in submitting Form I and delay of eight months in submitting Form II in accordance with the said circular regarding fee and other expenses incurred for CIRP. It has been submitted by Mr. Bhat that the said delay has occurred due to interpretational issues relating to the newly notified circular by IBBI in June 2018 as he was under a *bonafide* impression that the Circular was applicable to only on-going assignments of IRPs and since, he was replaced by the CoC as an IRP of the CD, he was not required to submit the prescribed Form I & II set out in the Cost Disclosure Circular within the stipulated timeframes. The DC noted that Mr. Bhat could have sought clarification in this regard. However, in view of the *bonafide* and inadvertent mistake of the IP, the DC finds that Mr. Bhat may not be held liable for such delay.

Order

4. In view of the above, and the fact of failure to bring to the notice of the CoC by Mr. Bhat as to the moratorium imposed on the transfer of the asset and to ratify and approve the payment of EMIs to the HDFC and payment of the outstanding dues to the vendors/ service providers of the CD pertaining to pre-CIRP period from the assets of the CD during CIRP and that too in preference to other creditors with the approval of CoC is in violation of section 14(2) and also section 208(2)(e) of the Code for not taking due diligence while performing duties under the Code as an IRP.

4.1 Therefore, this DC finds that Mr. Sundaresh Bhat, as an IRP, has contravened the following provisions of the Code and Regulations: -

i. Section 14(1) (b), section 208 (2) (a) & (e) of the Code;
ii. Regulations 7 (2) (a) & (h) of the IP Regulations read with clause 12 and 14 of the Code of Conduct contained in the First Schedule of the IP Regulations.

5. Accordingly, the Disciplinary Committee, in exercise of the powers conferred under Section 220 of the Code read with sub-regulations (7) and (8) of Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017, disposes of the SCN with the following directions:

(i) The DC imposes on Mr. Sundaresh Bhat a penalty equal to twenty five percent of the fee he has received in this process and directs him to deposit the penalty amount

by a crossed demand draft payable in favour of the "Insolvency and Bankruptcy Board of India" within 45 days from the date of issue of this order. The Board in turn shall deposit the penalty amount in the Consolidated Fund of India.

(ii) Mr. Sundaresh Bhat shall not accept any new assignment as an IP till he deposits the penalty amount with the Board and produces evidence to the Board of such deposit.

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

(iv) A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Sundaresh Bhat is enrolled as a member.

(v) A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, for information.

6. Accordingly, the show cause notice is disposed of.

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(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Dated: 29th October, 2020
Place: New Delhi