

# INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

## (Disciplinary Committee)

No. IBBI/DC/253/2024

26 November 2024

### ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11018/01/2023-IBBI/822/1577 dated 04.12.2023, issued to Mr. Amit Gupta, an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-001/IP-P00016/2016-2017/10040, who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and having residential address recorded with IBBI as 101, Kanakia Atrium 2, Cross Road A, Chakala MIDC, Andheri East, Landmark Behind Courtyard Marriott, Mumbai City, Maharashtra-400093.

#### 1. Background

- 1.1. The Disciplinary Committee of IBBI *vide* para 3.1 of its Order dated 18.05.2023 while disposing of the Show Cause Notice No. COMP-11016/3/2022-IBBI/7/719/341 dated 14.03.2023 issued to Mr. Amit Gupta, in para 3.1 had directed the IBBI to conduct the inspection with regard to fee charged by Mr. Amit Gupta in all the liquidation process(es) handled/ being handled by him as the liquidator.
- 1.2. The IBBI, in exercise of its powers under Section 218 of the Insolvency and Bankruptcy Code (Code), read with Regulations 7(1) and 7(2) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Inspecting Authority (IA) to conduct inspection in all the liquidation process handled and being handled by Mr. Amit Gupta. The IA served the notice of inspection on 22.05.2023 and shared the draft inspection report with Mr. Amit Gupta on 27.07.2023. Mr. Gupta submitted his response on the draft inspection report on 04.09.2023 and thereafter the final inspection report was submitted by the IA to the Board on 15.09.2023.
- 1.3. Based on the findings of the inspection report submitted by the IA, the IBBI formed a *prima facie* view that Mr. Amit Gupta has contravened several provisions of the Code, the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations), and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and therefore issued the SCN to Mr. Amit Gupta on 04.12.2023. The reply of Mr. Amit Gupta on

SCN was received by IBBI on 15.01.2024. The SCN response of Mr. Amit Gupta to the SCN and other material available on record were referred to this Disciplinary Committee (DC) for disposal of the SCN.

- 1.4. Mr. Amit Gupta preferred a Writ Petition (No. WP(L) 34701 of 2023) before the Hon'ble High Court of Bombay challenging the IBBI Circular dated 28.09.2023, whereby various issues w.r.t. calculation of fee of liquidator were clarified. Since the issues involved in this Writ Petition and the SCN before DC were similar, the DC deemed it fit to await the decision of Hon'ble Bombay High Court in this regard. The judgment of Hon'ble Bombay High Court was pronounced on 04.04.2024.
- 1.5. The Hon'ble High Court of Bombay in its order had directed the IBBI to issue a written communication reconciling the coverage of two show cause notices. Accordingly, the letter dated 28.04.2024 was issued by IBBI to Mr. Amit Gupta informing him that the DC Order dated 18.05.2023 had disposed of the first SCN, however it had not disposed of the allegations therein on merits and was left open for further inspection.
- 1.6. Thereafter, Mr. Amit Gupta availed the opportunity of personal hearing before the DC through virtual mode on 07.06.2024 where he was represented by Advocate Ms. Pooja Mahajan. Mr. Amit Gupta. During the personal hearing, and again through successive email communications dated 18.06.2024, 06.08.2024, 09.08.2024, 13.08.2024 and 13.09.2024, requests were made to Mr. Amit Gupta to submit information of realizations and distribution made by him in the liquidation assignments of the CDs mentioned in the SCN. Mr. Amit Gupta responded *vide* his email communications dated 13.07.2024, 12.08.2024 and 21.09.2024, however most of the information was not submitted by him. Hence the DC has no option but to proceed to dispose of the SCN on the materials available on record.

## **2. Alleged Contraventions, Submissions of Mr. Amit Gupta and Findings of the DC**

The contravention alleged in the SCN, submissions by Mr. Amit Gupta and findings of the DC are summarized as follows:

### **2.1 Contravention I: Excess fee charged in the liquidation processes handled.**

- 2.1.1 On perusal of the Corporate Debtor's (CD) wise fee computation worksheet provided

by Mr. Amit Gupta to the IA and the computation arrived at by the IA, it was observed that Mr. Amit Gupta has charged excess liquidation fee to the tune of Rs. 6,29,95,701/- (Rupees Six crores twenty-nine lakhs ninety-five thousand seven hundred and one only) cumulatively in eight liquidation processes handled/being handled by Mr. Amit Gupta. The details of fee entitled, and fee charged in the said eight liquidation assignments are as under:

*Figures in INR*

Sl. No.	Name of CD	Fee charged	Fee entitled (incl. GST)	Excess fee charged
1	Padmavati Wires and Cables Private Limited	2,43,335	1,69,349	<b>73,986</b>
2	Nimit Steels and Alloys Private Limited	17,90,702	15,15,802	<b>2,74,900</b>
3	Winsome Diamonds and Jewellery Limited	2,69,67,775	2,09,62,269	<b>60,05,506</b>
4	Forever Precious Jewellery and Diamonds Limited	3,52,417	38,990	<b>3,13,427</b>
5	Provogue (India) Limited	3,47,82,000	1,71,65,587	<b>1,76,16,413</b>
6	Hindustan Dorr Oliver Limited	4,27,92,848	2,17,66,226	<b>2,10,26,622</b>
7	HDO Technologies Limited	3,05,63,362	1,36,40,750	<b>1,69,22,612</b>
8	Kohinoor Diamonds Private Limited	18,16,808	10,54,573	<b>7,62,235</b>
	<b>Total</b>	<b>13,93,09,247</b>	<b>7,63,13,546</b>	<b>6,29,95,701</b>

2.1.2 It was also noted that the Board *vide* Circular No. IBBI/LIQ/61/2023 dated 28.09.2023 had issued clarification regarding calculation of Liquidator's fees. Further, an opportunity was given to the Insolvency Professionals, handling or having handled any liquidation assignment, to ensure that the fee charged by them under Regulation 4(2)(b) of the Liquidation Regulations, was in accordance with the said clarification and inform the same to the Board accordingly. The said circular also provided that if the excess liquidator's fee is returned and distributed on or before 31.10.2023, no disciplinary proceedings will be initiated on the ground that excess fee was charged. It was, however, observed that despite the clarification issued and opportunity provided *vide* the said circular dated 28.09.2023, Mr. Gupta failed to inform the Board as required under the said circular indicating Mr. Gupta's failure to return and distribute the excess liquidator's fee of Rs. 6,29,95,701/-.

2.1.3 The SCN notes that Regulation 4 of the Liquidation Regulations clearly lays down the provision for Liquidator's fee. Regulation 4(2)(b) provides that in cases other than those

covered under sub-regulation (1) and (1A), the liquidator shall be entitled to a fee as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation, as specified in the table under the said regulation.

2.1.4 The SCN alleges that Mr. Amit Gupta charged excess fees and thus failed to take reasonable care while performing his duties as mandated under section 208(2) (a) of the Code. Although, the said circular dated 28.09.2023 was issued with clear advice to return the excess fee and report to the Board. Furthermore, Mr. Amit Gupta failed to return the excess fee and did not report to the Board as directed by the said circular dated 28.09.2023.

2.1.5 In view of the above, the Board was of the *prima facie* view that Mr. Gupta has contravened provisions contained in:-

a. Regulation 4 of the Liquidation Regulations

b. Section 208(2)(a) & (e) of the Code which provides as under:

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

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

.....

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

c. Regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016, which provides as under:

*“(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 byelaws of the insolvency professional agency with which he is enrolled;*

.....

*(h) abide by the Code of Conduct specified in the First Schedule to these Regulations;”*

d. Clauses 1, 2 and 14 of the Code of Conduct specified in the First Schedule to the IP Regulations which provides as under:

*“1. An insolvency professional must maintain integrity by being honest, straightforward, and forthright in all professional relationships.*

*2. An insolvency professional must not misrepresent any facts or situations and should refrain from being involved in any action that would bring disrepute to the profession.*

.....

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

e. Board Circular dated 28.09.2023, as stated above.

**Brief overview of the issue relating to the difference in fees.**

2.1.6 It is pertinent to analyse the provision with respect to the fee of the liquidator during the liquidation proceedings. Regulation 4 of the Liquidation Regulations provides that the liquidator is entitled to the fee as decided by the Committee of Creditors during the CIRP under Regulation 39D of the CIRP Regulations. In case no such fee has been fixed, then the Stakeholders’ Consultation Committee (SCC) can fix the fee of the liquidator (this provision is applicable only from 16.09.2022). Further, in case, no fee is fixed in above-mentioned manners, the liquidator shall, for the period of compromise or arrangement, be entitled to a fee at the same rate as the resolution professional was entitled to during the CIRP, and for the balance period of the liquidation, a fee at a percentage specified in the table given in regulation 4(2)(b) of the Liquidation Regulations is applicable. The said Regulation 4 is as hereunder:

***“4. Liquidator’s fee.***

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

*(1A) Where no fee has been fixed under sub-regulation (1), the consultation committee may fix the fee of the liquidator in its first meeting.*

*(2) In cases other than those covered under sub-regulation (1) and (1A), the liquidator*

shall be entitled to a fee-

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

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

Amount of Realisation / Distribution (In rupees)	Percentage of fee on the amount realised / distributed		
	in the first six months	in the next six months	thereafter
<i>Amount of Realisation (exclusive of liquidation costs)</i>			
<i>On the first 1 crore</i>	5.00	3.75	1.88
<i>On the next 9 crore</i>	3.75	2.80	1.41
<i>On the next 40 crore</i>	2.50	1.88	0.94
<i>On the next 50 crore</i>	1.25	0.94	0.51
<i>On further sums realized</i>	0.25	0.19	0.10
<i>Amount Distributed to Stakeholders</i>			
<i>On the first 1 crore</i>	2.50	1.88	0.94
<i>On the next 9 crore</i>	1.88	1.40	0.71
<i>On the next 40 crore</i>	1.25	0.94	0.47

2.1.7 It can be seen that the specified percentage is higher for amounts realised and distributed in first six months and then keeps on decreasing for next six months, next one year and thereafter.

2.1.8 Though most of the liquidators were complying with the above-said provision, there were instances where some liquidators, were not calculating the fee as per this regulation correctly by taking different interpretation of few terms used in the regulations. Therefore, the IBBI vide its circular dated 28.09.2023 clarified several issues in Liquidation Regulations with respect to calculation of fee by the liquidator in the following manner: -

a) Regulation 4(2)(b) provides that the fee shall be “as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation....” It was clarified that “amount realised” shall mean amount realised from assets other than liquid assets such as cash and bank balance including term deposit, mutual fund, quoted share available on start of the process after exploring compromise and arrangement, if any. It was contended that amount realised means an amount that is being realised from the sale of an asset where the asset changes form. Where the asset is already liquid such as cash and bank balance

including term deposits, mutual funds, and quoted shares, there is no ‘realisation’, and funds are readily available for distribution. The amount realised, thus, implies the proceeds from the sale/ realization from the liquidation of assets which are not liquid. Therefore, the liquidator is not entitled to a fee on realisation for these liquid assets and is entitled to a fee only on distribution. (*Para 2.1 of the circular*)

- b) The term “*Amount of Realisation (exclusive of liquidation costs)*” given in the table in Regulation 4(2)(b) mandates that all liquidation costs are to be deducted from the realisation amount. However, as per Regulation 4(2)(b), “other liquidation cost” is to be deducted from realisation. There is a gap in understanding in the market about what components of the liquidation cost are to be excluded from the liquidation cost to derive “other liquidation cost”. It was clarified that the “other liquidation cost” in Regulation 4(2)(b) shall mean liquidation cost paid in priority under section 53(1)(a), after excluding the liquidator’s fee. It was explained that the component that can be excluded is only that part of the liquidation cost which is itself dependent for its calculation on other liquidation costs i.e., liquidator’s fee. Including the same in “other liquidation cost” would entail a circular reference to the liquidator fee for the calculation of liquidator fee making the calculation very tedious and impractical. Hence, all other components of liquidation cost apart from liquidator’s fee shall be part of the “other liquidation cost”. In few cases, liquidators were only considering process cost as “other liquidation cost” and thereby, not considering the ‘cost incurred in preserving and protecting the assets of the CD and running the CD as a going concern’ in “other liquidation cost”. Before amendment dated 25.07.2019 to the Liquidation Regulations, the liquidation cost under Regulation 2(1)(ea) had four components. To clarify the liquidation cost, through aforesaid amendment four new components of liquidation cost were added. In some cases, it is being wrongly interpreted that these newly added four components, *inter-alia*, such as going concern costs etc., are to not be considered as the liquidation cost in respect of all those cases where the liquidation process commenced before the aforesaid amendment. Since these four components are paid in priority to payment to stakeholders as per section 53 of the Code by virtue of it being liquidation cost under Section 53(1)(a), these newly added components were always part of the liquidation cost irrespective of the date of commencement of liquidation process. Any other interpretation would create uncertainty about the priority of payment of these

components of liquidation cost over payment to stakeholders. Furthermore, the term “other liquidation cost” existed right from the inception of liquidation regulations and thus could not have meant to exclude certain components of liquidation costs from “liquidation costs” which were added by a subsequent amendment in 2019.

***(Para 2.2 of the circular)***

- c) Section 53 provides for order of priority for making distribution out of proceeds from sale of assets. Further, Regulation 42 provides that:

*“Distribution.*

*(1) .....*

*(2) The liquidator shall distribute the proceeds from realization within ninety days from the receipt of the amount to the stakeholders.*

*(3) The insolvency resolution process costs, if any, and the liquidation costs shall be deducted before such distribution is made.”*

Furthermore, the table in Regulation 4(2)(b) provides for liquidator’s fees to be calculated as a percentage of the ‘Amount Distributed to Stakeholders’. However, in few cases, it was observed that the liquidators were erroneously calculating fees even on distribution of the CIRP cost and liquidation cost, including expenses incurred in running the business of the CD during the liquidation process. The conjoint reading of Regulation 42(2) and 42(3) read with Regulation 4(2)(b) mandates the liquidator to distribute the proceeds from realization after deducting the payment of CIRP cost and liquidation costs as these costs do not represent distribution of proceeds to stakeholders/ claimants. Therefore, it was clarified that “Amount distributed to stakeholders” shall mean distributions made to the stakeholders, after deducting CIRP and liquidation cost. ***(para 2.3 of the circular)***

For instance, on perusal of the inspection report it was observed that in the matter of Provogue (India) Limited, Mr. Amit Gupta had considered the unpaid CIRP cost and Liquidation costs for calculating the fee on distribution.

- d) It was clarified that ***“Amount of Realisation /Distribution”*** shall mean cumulative value of amount realised/ distributed which is to be bifurcated in various slabs as per column 1 and thereafter the same is to be bifurcated into realisation/ distribution in various periods of time and then corresponding fee rate from the table is to be taken. ***(para 2.4 of the circular)***



e) It was clarified that the exclusion for purpose of fee calculation is to be allowed only when the same has been explicitly provided by the Hon'ble NCLT/ NCLAT or any other court of law and will operate only for the asset which could not have been realised during the excluded period. (*para 2.5 of the circular*)

2.1.9 It is noted that *vide* the above-said circular the liquidators were directed to ensure that the fee charged by them under Regulation 4(2)(b) of the Liquidation Regulations is in accordance with the clarifications made through above-referred circular. The said para is as follows:

*“3. The IPs who are currently handling or have handled in the past any liquidation assignment shall ensure that the fee charged by them under Regulation 4(2)(b) is in accordance with above clarifications and inform the same to the Board electronically on the website of IBBI. In cases, where excess liquidator’s fee is returned and distributed on or before 31st October 2023 no disciplinary proceedings will be initiated on the ground that the excess fee was charged and has now been returned.”*

2.1.10 Mr. Amit Gupta *vide* his reply dated 15.01.2024 to the SCN has submitted that he had filed WP(L) 34701 of 2023 before the Hon'ble High Court of Bombay challenging the IBBI Circular dated 28.09.2023. The DC notes that Mr. Amit Gupta has raised similar contentions in his reply to the instant SCN as raised in the said Writ Petition. Mr. Amit Gupta has also submitted explanation on merits of the specific cases too which is dealt in detail in this Order. He also submitted that the Circular No. IBBI/LIQ/024/2019 dated 26.08.2019 (“Circular dated 26.08.2019”) issued by the Board clearly provided that the provisions of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 dated 25.07.2019 (“Amendment Regulations”) are not applicable to the ‘liquidation processes’ which had commenced before coming into force of the said Amendment Regulations and that they are applicable only to ‘liquidation processes’, which commenced on or after 25.07.2019. With respect to the present issue relating to computation of fee, prior to the 2019 amendments, the definition of liquidation cost as specified under Regulation 2(1)(ea) of the Liquidation Regulations provided the following:

***“(ea) “liquidation cost” under sub-section (16) of section 5 means-***

*(a) fee payable to the liquidator under regulation 4;*

*(b) remuneration payable by the liquidator under regulation 7;*

*(c) cost incurred by the liquidator under regulation 24; and*  
*(d) interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower”.*

However, after the 2019 amendment the definition was modified as following:

***(ea) “liquidation cost” under clause (16) of section 5 means—***

- (i) fee payable to the liquidator under regulation 4;*
- (ii) remuneration payable by the liquidator under subregulation (1) of regulation 7;*
- (iii) costs incurred by the liquidator under subregulation (2) of regulation 24;*
- (iv) costs incurred by the liquidator for preserving and protecting the assets, properties, effects and actionable claims, including secured assets, of the corporate debtor;*
- (v) costs incurred by the liquidator in carrying on the business of the corporate debtor as a going concern;*
- (vi) interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower;*
- (vii) the amount repayable to under sub-regulation (3) of regulation 2A;*
- (viii) any other cost incurred by the liquidator which is essential for completing the liquidation process:*  
*PROVIDED that the cost, if any, incurred by the liquidator in relation to compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013), if any, shall not form part of liquidation cost.*

2.1.11 Mr. Amit Gupta submitted that out of the 8 Corporate Debtors (CDs) in respect of which inspection was conducted, the liquidation process of 5 CDs commenced prior to 25.07.2019. Hence, the unamended Liquidation Regulations was applicable to these 5 CDs liquidation process. The liquidation processes of the rest 3 CDs commenced after 25.07.2019 and, thus, the amended Liquidation Regulations were applied for determining his fees as the Liquidator.

2.1.12 However, Hon’ble Bombay High Court *vide* its order dated 04.04.2024 has observed that the over-arching definition of “liquidation cost” provided in Section 5(16) of the Code has remained unchanged since inception of the Code. Between 01.12.2016, (when the liquidation-related provisions of the IBC were brought into force) through 15.12.2016 (when the Liquidation Regulations took effect) and 01.04.2018 (when Regulation 2(1)(ea) was introduced for the first time), the conceptual definition under Section 5(16) of the IBC for “liquidation costs” provided the core meaning. Therefore, the contention of Mr. Amit Gupta regarding the inapplicability of the amended definition of ‘liquidation cost’ under regulation 2(1)(ea) on the CDs whose liquidation

had commenced prior to 25.07.2019, is not tenable.

2.1.13 The Hon'ble Bombay High Court while disposing of the writ petition *vide* order dated 04.04.2024 had struck down the following two clarifications mentioned in the above-said circular –

a) **Clarification in para 2.1** - *“Amount realised” shall mean amount realised from assets other than liquid assets such as cash and bank balance including term deposit, mutual fund, quoted share available on start of the process after exploring compromise and arrangement, if any.*

The Hon'ble High Court of Bombay had struck down the above clarification stating that neither the Code nor the Liquidation regulations talk of liquidation fees being paid only for liquidating illiquid assets. The circular introduces a new standard of perceived effort or lack of it in the process of liquidation. Also, that asset under liquidation has to “change form” is new introduction through circular.

b) **Clarification in para 2.5** - *Exclusion for purpose of fee calculation is to be allowed only when the same has been explicitly provided by the Hon'ble NCLT/ NCLAT or any other court of law and will operate only for the asset which could not have been realised during the excluded period.*

The Hon'ble High Court of Bombay had struck down the above clarification on the ground that the clarification has introduced a new standard to the effect that a liquidator has to approach the relevant judicial forum for exclusion of time period for the purpose of calculating fee. Although, in terms of Liquidation Regulations, the fee calculation is done based on ‘self-compliance’ and there is no requirement to approach NCLT for approval of fees.

2.1.14 Whereas, following clarifications were upheld by the Hon'ble Bombay High Court with the reasoning as follows:

a) **Clarification in para 2.2** - *The “other liquidation cost” in regulation 4(2)(b) shall mean liquidation cost paid in priority under section 53(1)(a), after excluding the liquidator's fee.*

The Hon'ble Bombay High Court upheld the clarification of inclusion of cost

incurred in preserving and protecting the assets of the CD, and running the CD as a going concern, under the phrase ‘other liquidation costs’ with following observations:

*“44. We have already set out the legislative history and overall scheme of the IBC and the LP Regulations in connection with the definition and meaning of the term “liquidation cost”. The term is primarily defined in Section 5(16) of the IBC. The LP Regulations are merely iterative of types of liquidation costs that flow from the over-arching definition in the IBC (any cost incurred by the liquidator during the liquidation period). The initial version of the LP Regulations did not even have any definition of the term “liquidation cost”. The definition was introduced in the LP Regulations only on 1st April, 2018, with four types of liquidation costs. Four more types of liquidation costs were added in the 2019 Amendments with effect from 25th July, 2019, including the costs of running the business as a going concern pending liquidation (which is the bone of contention in these proceedings).*

*45. The logic behind Section 5(16) providing an expansive and a conceptual definition, that would bring within its sweep, costs of running the business as a going concern, is not far to seek. If a business is preserved pending liquidation by running it as a going concern, the liquidator in management of the business would incur and pay costs before distributing the proceeds of liquidation to stakeholders such as workmen, secured creditors, unsecured creditors and the others (in accordance with Section 53 of the IBC). **Regulation 4(2)(b) makes it abundantly clear that the amount realised must be reduced by the liquidation costs to arrive at the base amount on which, the liquidator’s percentage fee would be payable. Therefore, there is no doubt in our mind that liquidation costs, as defined in Section 5(16) of the IBC would bring such costs within its sweep. The amount of such costs must necessarily be excluded from the liquidation proceeds realised, and the liquidator’s fees would need to be computed on that net amount.***

*46. We say this because but for such a framework, the fee structure in the LP Regulations would not incentivise the liquidator to keep a firm control over the costs incurred during liquidation. A liquidator may then recklessly incur costs, with no implications on his own fees. On the other hand, a common-sensical application of Section 5(16) of the IBC to the situation, would lead to the*

*logical inference that the liquidator is incentivised to keep costs down. The more frugal he is with costs in running the business, the higher his fee would be.”*

It is pertinent to note that the Hon’ble High Court has upheld the clarification in para 2.2 of the above-referred circular which has the effect that the cost incurred in running the CD as going concern during the liquidation period shall also be included in ‘other liquidation cost’ while calculating fee of liquidator and therefore must be deducted from the realization amount to arrive at net realization cost. As mentioned in earlier portions of this order, non-inclusion of ‘going concern cost’ in the ‘other liquidation costs’ by Mr. Amit Gupta had resulted in substantial portion of the excess fee alleged to be charged by him.

**b) Clarification in para 2.3** - *“Amount distributed to stakeholders” shall mean distributions made to the stakeholders, after deducting CIRP and liquidation cost.*

The Hon’ble Bombay High Court upheld the clarification that the payment of CIRP costs and liquidation costs cannot be termed as distribution to stakeholders because of the reasons captured in the following extract of its order:

*“63. It is settled law that mere apprehension that an instrument of law may be abused or misinterpreted cannot lead to the provision being declared unconstitutional. Indeed, the Impugned Circular could have been more elegantly worded to bring out what it sought to clarify, but it is quite clear to us that Paragraph 2.3 seeks to make it clear that payments made to operational creditors in the course of running the business as a going concern is not a “distribution” to “stakeholders” for the liquidator to become entitled to a percentage-based distribution fee on the amount of liquidation costs.*

*64. Under the second part of the table in Regulation 4(2)(b), liquidators are incentivised to distribute the liquidation proceeds speedily. The distribution fee incentivises efficiency in distribution by paying a higher percentage rate for faster distribution. Such percentage is to be computed on the proceeds distributed. The liquidator has to assess claims of various stakeholders and determine the payments due to them, in compliance with Section 53 of the IBC, read with Regulation 42 of the LP Regulations. Once the amounts are realised, the liquidator’s fees are computed as a percentage after deducting the*

*liquidation costs. That amount realised, net of liquidation costs, is the amount to be distributed, after assessment of claims. The distribution fee is to be computed on such amount “distributed”. If payments made to meet day-to-day costs in keeping a business running as a going concern, are treated as “distribution” to “stakeholders” it would truly turn the very scheme of the LP Regulations on its head. Therefore, the contents of Paragraph 2.3 are not inconsistent with the IBC or the LP Regulations, and do not deserve to be struck down on the premise of being ultra vires the IBC or the LP Regulations.”*

- c) **Clarification in para 2.4.** that **“Amount of Realisation /Distribution”** shall mean cumulative value of amount realised/ distributed which is to be bifurcated in various slabs as per column 1 and thereafter the same is to be bifurcated into realisation/ distribution in various periods of time and then corresponding fee rate from the table is to be taken.

The Hon’ble HC upheld that while calculating the fee of liquidator, the applicable percentage rates based on such matrix must be applied. The relevant excerpts are as follows:

*“68.....Suffice it to say that all Paragraph 2.4 means is that the cumulative amount realised or distributed must be computed. Thereafter, the time period in which such amounts were realised or, as the case may be, distributed, must be determined. The applicable percentage rates based on such matrix must be applied.”*

2.1.15 The DC further notes that in consequence to the above-said judgment of Hon’ble Bombay High Court, the IBBI came up with another circular dated 18.04.2024 through which para 2.1 and 2.5 of the earlier circular dated 28.09.2023 were withdrawn and opportunity was granted to the Insolvency Professionals who have not complied with the earlier circular dated 28.09.2023 to comply with the remaining parts of the said circular and inform the IBBI on or before 31.05.2024.

2.1.16 In accordance with the circular, Mr. Amit Gupta has revisited the calculation of his fees and declared to the Board that in certain cases he had correctly calculated his fees and therefore no case of refund is made. While in certain other cases refund has to be made

and yet in other cases, Mr. Amit Gupta is now claiming more fees. The details of the same are presented in table below:

*Figures in INR*

CD Name	Actual fee charged	Revised fee as per IP	Excess Fee calculated by IP	Excess fee in SCN	Difference in excess fee
A	B	C	D	E	F=E-D
Padmavati Wire and Cables Private Limited	2,43,335	2,19,769	23,566	73,986	50,420
Winsome Diamonds and Jewellery Limited	2,69,67,775	2,69,67,775	0	60,05,506	60,05,506
Forever Precious Jewellery and Diamonds Limited	3,52,417	3,52,417	0	3,13,427	3,13,427
<i>HDO Technologies Limited</i>	<i>3,23,33,000</i>	<i>3,92,88,100</i>	<i>-69,55,100</i>	<i>1,69,22,612</i>	<i>1,69,22,612</i>
<i>Hindustan Dorr Oliver Limited</i>	<i>4,31,88,140</i>	<i>4,41,00,140</i>	<i>-09,12,000</i>	<i>2,10,26,622</i>	<i>2,10,26,622</i>
Nimit Steels and Alloys Private Limited	17,90,702	14,27,629	3,63,073	2,74,900	-88,173
Provogue (India) Limited	3,47,82,000	33,55,5000	12,27,000	1,76,16,413	1,63,89,413
Kohinoor Diamonds Private Limited	18,16,808	16,97,474	1,19,334	7,62,235	6,42,901
<b>Total</b>					<b>6,12,62,728</b>

**Note:** The information with respect to the Corporate Debtors - HDO Technologies Limited and Hindustan Dorr Oliver Limited (as mentioned in *italics* in above table) were taken from the document w.r.t. revised calculation made by Mr. Amit Gupta.

2.1.17 It is notable to mention that after the SCN was issued to Mr. Amit Gupta on 04.12.2023, the IBBI circular dated 28.09.2023 was challenged by Mr. Amit Gupta before the Hon'ble Bombay High Court. The order of Hon'ble Bombay High Court came on 04.04.2024 and pending the pronouncement of the order, further action on the SCN was not taken. The personal hearing of Mr. Amit Gupta was firstly scheduled for 24.05.2024 to which Mr. Amit Gupta replied that he presumes the hearing was for the issues other than the fees as the timelines for making submissions and refund of excess fees as per the circular dated 18.04.2024 is 31.05.2024 and final submission for the excess fees and refund of excess fees will be complied by him by 31.05.2024. Accordingly, the personal hearing was again scheduled for 07.06.2024 so that all the issues mentioned in the SCN can be heard together.

2.1.18 During the personal hearing on 07.06.2024 it emerged that there were substantial differences between the liquidation cost; and the time periods for which exclusion had been sought while considering the realisations and distributions for various time periods for various CDs besides other variations as presented at the time of hearing from the

details submitted in earlier reply dated 15.01.24.

2.1.19 Since there were large differences, Mr. Amit Gupta was requested to cooperate with DC and provide details of realisation and distribution in such a way that if time period for any realisation or distribution needs to be changed, for the purpose of verification, it should be possible for the DC to re-calculate the fees. He was asked to submit following details: -

- a) The proof/evidence containing details of actual receipt of payment from the sale. Also, details of any exclusion in time period, if any, claimed for the fee calculation purpose, with relevant supporting proofs/documents.
- b) Detailed comparison sheet of the calculation made by Mr. Amit Gupta and that by the Investigating Authority, and bring out the areas where there is difference in calculation with the explanation to such differences alongwith necessary proofs.

2.1.20 Mr. Amit Gupta *vide* his email dated 13.07.2024 provided his additional submissions whereby he submitted that the proof/evidence containing details of actual receipt of payment has already been provided by him to the Board in all the cases as part of the progress report read with the asset sale report and the Receipts and Payments have been duly audited by the Auditor as per the process. Further, with respect to the exclusions of time taken by him in the respective CDs, he has provided his explanation which is examined in this Order at respective places where specific allegations have been examined. It is notable to mention here that Mr. Amit Gupta has now, in respect of CDs HDO Technologies Limited and Hindustan Dorr Oliver Limited has taken extra exclusion of time on different grounds as against the exclusion originally taken by him in his earlier calculations. On the basis of such additional exclusions, he has tried to avoid his liability of paying back extra fees which had arisen on account of order of Hon'ble Bombay high Court dated 04.04.2024 upholding several clarifications in the circular issued by the Board.

2.1.21 However, on perusal of the materials available on record, the DC found it difficult to assess the actual fees that could have been charged by Mr. Amit Gupta in absence of non-submission of granular details of the amount realized and distributed. To determine the correct fees of Mr. Amit Gupta, the details of realization and distribution in a specific format was sought *vide* email dated 09.08.2024 as follows—



*“It was made clear at the time of hearing that the details of realisation and distribution should be given in such a way that if time period for any realisation or distribution needs to be changed, it should be possible for the DC to re-calculate the fees. Therefore, you were asked to give in excel sheet for each CD, the date wise details of realisation in respect of sale of assets and date wise details of distribution of proceeds. You were also asked to reconcile this excel sheet with the bank statement of the respective CD. However, it is seen that the details have been given in a pdf form and that too in an aggregated manner so that if DC wants to exclude/include any time period for any particular realisation/distribution for a particular asset, the revised calculation is not possible. It is therefore again requested that these details may be given as was explained during the personal hearing and was readily agreed by you in view of the difficulty in calculating the same.*

*Please give details related to realisation in the following form:*

<i>Date of receipt</i>	<i>Date of credit in bank</i>	<i>Amount received</i>	<i>Date of sale</i>	<i>Details of asset sold</i>	<i>Time excluded for this receipt</i>	<i>Remarks about exclusion</i>
------------------------	-------------------------------	------------------------	---------------------	------------------------------	---------------------------------------	--------------------------------

*Please give details related to distribution in the following form:*

<i>Date of distribution</i>	<i>Date debited in bank</i>	<i>Amount distributed</i>	<i>Details of Asset - Realisation of which has been distributed</i>	<i>Time excluded for distribution</i>	<i>Remarks about exclusion</i>
-----------------------------	-----------------------------	---------------------------	---	---------------------------------------	--------------------------------

*The copy of minutes of meeting of CoC for each CD (as referred in the SCN) in which CoC has decided about the fee of the liquidator in terms of Regulation 39D of the CIRP Regulations.*

*Since these details will already be available with you, on the basis of which the calculations were made by you, the same may be provided immediately and in any case by 12.08.2024 (Monday) by 03:00 P.M.”*

2.1.22 Mr. Amit Gupta *vide* his email dated 12.08.2024 replied that the information sought has already been provided by him once as part of the Progress Report *inter alia* the Asset Sale Report filed on quarterly basis with the Board and secondly to the Inspecting Authority at the time of inspection. However, on perusal of such documents/information already submitted by him, the DC found it deficient to correctly assess his fees.

2.1.23 Since in the absence of granular information of date-wise details of realisation and distribution, DC was finding it difficult to verify the calculation, the realisations and distributions in time periods where the exclusions of time periods which were being considered by the DC, were not found to be matching with the exclusions of time

periods being considered by the liquidator, the DC again asked Mr. Amit Gupta vide email dated 13.09.2024 to submit granular information of date-wise details of realisation and distribution, as follows:

*“Dear Sir,*

*This is in furtherance to the trail mails dated 09.08.2024 and 13.08.2024 whereby certain information in a specific format was requested. It is observed that even after the lapse of substantial time, the same is not provided.*

*It is re-iterated that the information as sought is necessary to examine the contravention mentioned in the SCN regarding calculation of fee. For instance, in the matter of CD - Hindustan Dorr Oliver Limited, the reply provided by you mentions the period of 25 June 2018 to 19 March 2022 as ‘first six months’ for the purpose of calculation of fee, wherein you had sought exemption of time period on the basis of various grounds. If on the basis of the materials available on record, the DC considers exclusions for a period other than the period for which you have sought exclusion, it will not be possible for the DC to re-allocate the various realisations and distributions to the time periods on which the fee percentage changes. The present information given by you does not mention the date when the realisation and distribution took place. The information sought by email dated 09.08.2024 and reminded on 13.08.2024 therefore required the information to be given in a format which can facilitate the DC to examine the calculation of fee after considering exclusions of time in accordance with the applicable Liquidation Regulations and circulars. In the absence of the aforesaid information, it will be difficult to examine which time period can be reckoned for calculation of the fee claimed for distribution and realisation as well as for exclusion. If granular information of date-wise details of realisation and distribution as sought by email dated 09.08.2024 and reminded on 13.08.2024 is not available, the DC will have no option but to attribute the realisation and distribution to the last date of the respective time period slot mentioned by you, e.g. 19 March 2022 in this instant case. This shall be accordingly applicable in the case for all other Corporate Debtors too, mentioned in the SCN.*

*Therefore, it is hereby again requested to please provide the information sought in the manner as specified in the mail dated 09.08.2024 and 13.08.2024. Please note that the last opportunity is being given to you to provide the information sought within a week, failing which DC will be constrained to take a view in the matter on the basis of available information.”*

2.1.24 However, Mr. Amit Gupta vide email dated 21.09.2024 refused to provide granular details and replied stating that he hasn't seen the format. The extract of Mr. Amit Gupta e-mail dated 21.09.2024 is as follows: -

“ ....

*I am surprised and equally amused by your emails asking for 'granular information' which is without any substance and provisions of the law. Further you have mentioned about 'format'. What 'format' the information is being asked? Where is the format? I haven't seen it in any of the email yet.*

*The Regulation 45A of Liquidation Regulations, introduced on 16th September 2022 i.e. after the liquidation process in this CD got over, also doesn't mandate requirement of day wise cash flows or the required 'granular information'.*

*This email asking for information is nothing but harassment of a professional under the garb of 'granular information'. I also challenge the authority of the IBBI/DC to seek this sort of information. It's nothing but an overreach of the IBBI officials to unduly harass the Insolvency Professionals. Kindly indicate the provisions of the Code/Regulations which empower IBBI officials/DC to approve/reject/evaluate the decision of SCC. This delay in disposal of SCN even after all the information provided or already with IBBI/DC, is nothing but tactic of IBBI/DC to suppress the ability of the professional from taking up new work.*

*How will a professional presume to store day wise cash flows when it was not asked for in the regulations. How a liquidation process started in 2018 and completed in 2022, the liquidator having demitted office as per the order of the court, will provide granular information as per the whims and fancies of IBBI / DC.*

*I shall also mention that there is no complaint whatsoever from any of the stakeholders and IBBI/DC is misusing its power and authority.*

*Inspecting Authority comprising of two officials was stationed for 4 days in the first week of July 2023 at my office for inspection of all liquidation cases and have accessed all the required information. The cover page of the draft inspection report states that all the required information was provided.*

*It seems that undersigned having filed the writ petition against the circular issued by IBBI on 28th September 2023 has irked the regulator hence its continuing the SCN and kept AFA suspended for more than 9 months now.*

*With this more than 21 months of ongoing investigations, inspection and multiple SCNs (first SCN issued in March 2023) I have no staff left to assist and work.*

*The Hon'ble High Court while disposing off the Writ filed by undersigned, asked IBBI to-*

*1. Reconcile two SCNs issued - IBBI has merely issued a letter dated 28 April 2024 stating that the first SCN was never disposed off? Is this a reconciliation of formality? Further does this means that the SCN is pending for more than 18 months, which itself is ultra virus of IBBI's drafted Regulations.*

*2. Examine the serious effect of the issuance of a show cause notice to any IP i.e. suspension of AFA on issuance of SCN - IBBI has done absolutely nothing on this front. On the contrary the IBBI is acting vindictive, revengeful and prejudiced as it has not disposed off the SCN even after 5 months have already elapsed from the date of the high court order.*

*What is the objective of IBBI? To regulate or to destroy the profession and professionals. There has been no support to professionals whatsoever in last 7 years but has always been there to harass/question them at times without any complaint like in this case. IBBI should look into its own conduct as to why 50% professionals do not have valid AFA. What kind of insolvency profession is being developed?*

*Further more I also raise serious objection to the timing of the email i.e. sending the email on Friday evening giving 7 days timelines when majority of the days in following week was holidays i.e. effectively giving only 1-2 days to the IP to reply.*

*Lastly I shall request IBBI / DC not to threaten professional by stating that it will take extreme view and consider all the receipts on the last day (even though all the progress reports and asset sale reports are there with it). If the regulator has this approach then it shall go ahead with this one sided totally authoritative approach misusing its power unduly.”*

2.1.25 It is pertinent to mention that contrary to what Mr. Amit Gupta has contended with respect to non-receipt of format by him, it is evident from the email communication dated 09.08.2024 that the format was indeed received by him. Further, the information with respect to calculation of fee, as provided by Mr. Amit Gupta pertained to a different time slab because of the specific time exclusions claimed by the IP. However, after examining the material on record, the DC has found that exclusions of only certain time periods were justified and has therefore considered only them. Therefore, the time periods for calculation of amounts of realisation and distribution have become different from that of the IP and also from IA. Therefore, DC was requesting the IP again and again to provide the day-wise details of receipt and payment so that amounts of realisation and distribution for various time periods after the exclusions taken into account by the DC can be worked out. This information is already available in the books of account and bank statement of the respective CDs. However, the IP has not co-operated at all. Consequently, in absence of the specific information, the DC has assessed the fee of Mr. Amit Gupta considering the amounts of realisation and distribution either in the report of the IA or the details of realisation and distribution in the progress reports which were closest to the time periods considered by the DC for

various fee slabs.

- 2.1.26 The DC had to make substantial efforts to reconcile the available information and still several approximations had to be made for calculations of amounts of realisation and distribution in various time periods. At places, benefit has been given to Mr. Amit Gupta while making approximations.
- 2.1.27 Further, the DC observes that Mr. Amit Gupta had incorrectly averred that the letter dated 28.04.2024 by the IBBI had stated that the first SCN was never disposed of. On perusal of the said letter, it is observed that it is stated in the letter that the DC Order dated 18.05.2023 disposing of the first SCN has not disposed of the allegations therein on merits and left it open for further inspection.
- 2.1.28 It is observed from perusal of the inspection report that out of the total excess fee of Rs. 612 lakhs alleged to be charged by Mr. Amit Gupta, the substantial amount of excess fee is in relation to the matters of HDO Technologies Limited and Hindustan Dorr Oliver Limited which is cumulatively around Rs. 380 lakhs. In these cases, the main difference was on account of non-inclusion of the going concern cost in liquidation cost (in his reply dated 15.01.24) which is presented in following table:

*(Amount in INR)*

<b>Particulars</b>	<b>Hindustan Dorr Oliver Limited</b>	<b>HDO Technologies Limited</b>
<b>Going concern cost considered by IA and not considered by IP (A)</b>	<b>194,51,62,033</b>	<b>48,34,82,704</b>
Other liquidation costs considered by IA (B)	3,24,93,396	1,10,67,557
Total liquidation cost as per IA (C) = (A+B)	197,76,55,429	49,45,50,261
Liquidation cost considered by IP (D)	99,32,290	18,77,261
Total difference in liquidation cost as considered by IA & as considered by IP (C-D)	1,96,77,23,139	49,26,73,000
Excess fee claimed by IP as per the IA and mentioned in SCN	2,10,26,622	1,69,22,612

- 2.1.29 In the case of HDO Technologies Limited, the DC observed that Mr. Amit Gupta, while submitting the receipts and payment details for HDO Technologies Limited, had accepted the total liquidation cost as Rs. 52,04,51,415/-. This amount includes the cost of running the Corporate Debtor as a going concern, which totaled Rs. 48,34,82,704/-, and fees paid to other professionals, amounting to Rs. 1,10,67,557/-. However, interestingly, while submitting his fee calculation to the IA, Mr. Amit Gupta had

considered the liquidation cost to be Rs. 18,77,261/- without taking into account the going concern cost.

2.1.30 It was clarified by para 2.2 of the IBBI circular dated 28.09.2023 that the cost incurred in running the business of CD as going concern shall also be included in the liquidation cost. This clarification was upheld by Hon'ble Bombay High Court. Therefore, the DC was perplexed as to why the excess fee calculation of IP, after the upholding of relevant clarification, was still at variance with the alleged excess fee calculation given in the SCN. The investigation report, SCN and both replies to the SCN were studied minutely to find out the cause of this persistent variance in fees.

2.1.31 On perusal of the materials available on record, the DC observes that the business run by the liquidator has in fact suffered loss as the revenue received (realisation) is less than the cost incurred for earning that revenue (liquidation cost). Hence, the stakeholders were not benefiting by liquidator's running the business of the CDs as a going concern. Even then, Mr. Amit Gupta tried to take pecuniary advantage from the ailing CDs by exacting his fee on the revenues of these CDs without considering the going concern costs, although these CDs were making loss. By this act of Mr. Amit Gupta of not deducting the liquidation cost from the realisation, for the purpose of calculation of his fees on realisation has caused further loss to the stakeholders. The details of revenue, going concern costs and profit/ loss earned while running the CDs as going concern are given in the table below:

*(Amount in crores)*

<b>Name of CD</b>	<b>Revenue received (realisation)</b>	<b>Costs incurred for earning this revenue (liquidation cost)</b>	<b>Profit</b>
Provogue (India) Limited	17.84	25.85	<b>-8.01</b>
Hindustan Dorr Oliver Limited	154.91	194.51	<b>-39.60</b>
HDO Technologies Limited	51.53	48.34	<b>3.49</b>
<b>Total</b>	224.28	268.7	<b>-44.12</b>

2.1.32 On perusal of the investigation report, and both the replies of the IP, it was found that IP had taken different stands in respect of several issues in his various replies to the Board and DC. The stand taken by IP in various replies and as that of IA in its inspection report are detailed below for the above-mentioned two CDs for bringing out how the IP has changed his stand to ensure that he does not incur the liability of refunding the

excess fee:

(Figures in INR)

<b>HDO Technologies Limited</b>			
<b>Particular</b>	<b>As per IA</b>	<b>First reply of the IP</b>	<b>Second reply of the IP in compliance with the IBBI Circular dated 18.04.2024</b>
<b>Liquidation cost considered</b>	49,45,50,261	18,77,261	48,83,31,816
<b>Exclusion of time period claimed</b>		12.07.18-29.01.19	1) 12.07.18-29.01.19 2) <b>29.01.19-16.01.20</b> 3) <b>15.03.20-28.02.22</b>
<b>Duration for which fixed fee of Rs. 3 lakh p.m. was charged (in months)</b>	Zero	<b>12.07.18 - 29.01.19</b> (6 months, 17 days)	<b>12.07.18 - 16.01.20</b> (18 months 8 days)
<b>Total fixed fee charged</b>		<b>15,00,000</b>	<b>54,80,000</b>
<b>Liquidator Fee</b>	1,36,40,750	3,05,63,361.75	3,28,22,000
<b>Observations -</b>			
<p>1) Mr. Amit Gupta had earlier charged an additional fixed fee of Rs. 3 lakhs per month from 12.07.2018 to 29.01.2019, over and above the liquidation fees, for managing the CD as a going concern. Furthermore, in his second reply, he has inflated the fees by extending the Rs. 3 lakh charge for an additional 12 months, from 12.07.2018 to 16.01.2020.</p> <p>2) Also, Mr. Amit Gupta has now claimed additional exclusions of time period for the purpose of calculation of his fee, which has the effect of allocating maximum realisation and distribution amount in the time slab offering highest proportion of fee. In his initial reply, Mr. Gupta had considered the time period from 26.06.2018 to 19.07.2022 in four slabs viz., 26.06.2018 to 28.07.2019, 29.07.2019 to 28.01.2020, 29.01.2020 to 31.03.2021 and then 01.04.2021 to 19.07.2022. However, in the subsequent reply, this time period is divided in only two slabs viz., 25.06.2018 to 20.06.2022, and 21.06.2022 to 20.12.2022.</p> <p>These adjustments are an attempt to manipulate the time periods for fee calculation with an intent to bypass the liability incurred by Mr. Amit Gupta pursuant to the judgment of Hon'ble Bombay High Court dated 04.04.2024. The detailed analysis is done in para 2.1.120 to para 2.1.149.</p>			

<b>Hindustan Dorr Oliver Limited</b>			
<b>Particular</b>	<b>As per IA</b>	<b>First reply of the IP</b>	<b>Second reply of the IP in compliance with the IBBI Circular dt. 18.04.24</b>
<b>Liquidation cost</b>	197,76,55,428	99,32,290	2,01,52,30,924
<b>Exclusion of time period claimed</b>		12.07.18-29.01.19	1) <b>12.07.18 - 29.01.19</b> 2) <b>29.01.19 – 14.10.19</b> 3) <b>15.03.20 -28.02.22</b>
<b>Duration for which fixed fee of Rs. 5 lakh per month was charged</b>	N.A	12.07.2018 – <b>29.01.2019</b> <b>(6 months and 17 days approx.)</b>	12.07.2018 - <b>14.10.2019</b> <b>(15 months and 2 days approx.)</b>
<b>Total fixed fee charged (exclusive of GST)</b>		25,00,000	75,00,000
<b>Liquidator Fee</b>	2,17,66,226	4,02,92,848.12	3,52,50,000
<b>Observations -</b>			
<p>1) Similar to the case of HDO Technologies Limited, Mr. Amit Gupta in this case also has charged an additional fixed fee of Rs. 5 lakhs per month from 12.07.2018 to 29.01.2019, over and above the liquidation fees, for managing the CD as a going concern. Furthermore, in the second reply, he inflated the fees by extending the Rs. 5 lakh charge for an additional 9 months, from 12.07.2018 to 14.10.2019.</p> <p>2) Similar to the case of HDO Technologies Limited, Mr. Amit Gupta in this case also has now claimed additional exclusions of time period for the purpose of calculation of his fee, which has the effect of allocating maximum realisation and distribution amount in the time slab offering highest percentage of fee. In his initial reply, Mr. Gupta had considered the time period from 26.06.2018 to 30.09.2020 in three slabs viz., 26.06.2018 to 28.07.2019, 29.07.2019 to 28.01.2020 and 29.01.2020 to 30.09.2020. However, in the subsequent reply, this time period is divided in three slabs viz., 25.06.2018 to 19.03.2022, 20.03.2022 to 15.09.2022 and 21.09.2022 to 20.09.2023.</p> <p>These adjustments are an attempt to manipulate the time periods for fee calculation with an intent to bypass the liability incurred by Mr. Amit Gupta pursuant to the judgment of Hon'ble High Court dated 04.04.2024. The detailed analysis is in para 2.1.80 to para 2.1.116.</p>			



## **Submissions of Mr. Amit Gupta and analysis of the DC**

2.1.33 Mr. Amit Gupta had submitted his reply on the SCN on 15.01.2024 where he submitted same contentions as made by him while challenging the IBBI circular dated 28.09.2023 before Hon'ble Bombay High Court. Mr. Amit Gupta has also provided his submissions with respect to the specific Corporate Debtors *vide* his reply dated 15.01.2024 and again in his reply dated 13.07.2024. These submissions have been analysed by the DC in the following paragraphs. The issues already decided by Hon'ble Bombay High Court *vide* its order dated 04.04.2024 have been taken in the manner as decided by the Hon'ble Court.

### **A. Padmavati Wires and Cables Private Limited**

#### **Submissions of Mr. Amit Gupta**

2.1.34 Mr. Amit Gupta has submitted that no exclusion in the time period for the purpose of calculation of liquidation fees was taken.

2.1.35 Mr. Amit Gupta further submitted that as per IBBI Circular dated 18.04.2024, the revised calculation of the fees has been carried out and the amount of excess fees charged inadvertently due to lack of clarity is Rs 23,566 (inclusive of GST).

2.1.36 Mr. Amit Gupta further submitted that the computation of the alleged 'excess fees' as per the SCN dated 04.12.2023 is erroneous on account of consideration of reimbursement of out-of-pocket expenses He has further contended that the issue of out-of-pocket expenditure was dropped by the IA in the final inspection report.

#### **Analysis by the DC**

2.1.37 The DC notes that it is alleged in the SCN that Mr. Amit Gupta has charged excess fee to the tune of Rs. 73,986/- during the liquidation proceedings of the M/s. Padmavati Wires and Cables Private Limited. In compliance with the IBBI circular dated 18.04.2024, Mr. Amit Gupta has recalculated his fee and submitted that there was excess fee of Rs. 23,566/- charged by him which he submitted to be refunded in accordance with the waterfall mechanism given in section 53 of the Code.

2.1.38 The DC further notes that the contention of Mr. Amit Gupta that the computation of

alleged 'excess fees' as per the SCN is 'erroneous' on account of consideration of reimbursement of out-of-pocket expenses, is not tenable and therefore cannot be accepted. The provision of fee of the liquidator is very clearly provided in Regulation 4 of the Liquidation Regulations. The Liquidator is entitled to only such fee as permissible under Regulation 4. The liquidator is not expected to expand the scope of fee permissible under Regulation 4 by including other costs also incurred by him and avail himself any excess fee.

2.1.39 Furthermore, the DC notes that Mr. Amit Gupta has falsely submitted that the IA in his final inspection report had dropped the issue of out-of-pocket expenses charged by him. On perusal of the final inspection report, the DC observes that the IA had mentioned that in its view the out-of-pocket expenses charged for Rs. 48,090/- over and above the applicable table rates is not permitted.

2.1.40 Mr. Amit Gupta has not given any details of these out-of-pocket expenditure and has also not given any legal basis for considering them as chargeable over and above his fees in accordance with Liquidation Regulations. Therefore, in the instant case, Mr. Amit Gupta cannot claim the out-of-pocket expenditure of Rs. 48,090/- as a component of his fee over and above what he is entitled to in accordance with Regulation 4 of the Liquidation Regulations.

## **B. Nimit Steels and Alloys Private Limited**

### **Submissions of Mr. Amit Gupta**

2.1.41 Mr. Amit Gupta submitted that no exclusion in the time period for the purpose of calculation of liquidation fees was taken.

2.1.42 Mr. Amit Gupta submitted that as per IBBI Circular dated 18.04.2024, the revised calculation of the fees has been carried out and the amount of excess fees charged inadvertently due to lack of clarity is Rs 3,63,073/- (inclusive of GST) whereas the excess fee amount calculated by IA is Rs 2,74,900/- (inclusive of GST).

### **Analysis by the DC**

2.1.43 The DC notes the submission of Mr. Amit Gupta that he has recalculated his fee in light of the IBBI circular dated 18.04.2024, which is amounting more than what the IA had

calculated. The DC understands that the calculation of IA was based on limited documents, as provided to it during the time of inspection. Therefore, the DC accepts the re-calculated amount by Mr. Amit Gupta and advises him to follow the IBBI circular dated 18.04.2024 to refund the same to stakeholders in accordance with section 53 of the Code.

## **C. Winsome Diamonds and Jewellery Limited**

### **Submissions of Mr. Amit Gupta**

2.1.44 Mr. Amit Gupta submitted that the exclusion of 95 days i.e. 01.09.2020 to 05.12.2020, was taken due to delay in relinquishment of security interest by the Financial Creditor and the said condition was part of the quotation of the fees and a condition of his appointment and once again approved by the stakeholders in the Stakeholder's Consultation Committee meeting held on 06.06.2024.

2.1.45 Mr. Amit Gupta further submitted that he had recalculated the fees as per IBBI circular dated 18.04.2024 for the realization and distribution till the date of 31.03.2024 and there is no excess fees charged which need to be refunded.

### **Analysis by the DC**

2.1.46 The DC notes that it is alleged in the SCN that Mr. Amit Gupta has charged excess fee of Rs. 60,05,506/- in the liquidation proceedings of M/s. Winsome Diamonds and Jewellery Limited.

2.1.47 The DC further notes from perusal of the inspection report that apart from consideration of opening bank balance in realization, there were two other factors due to which there was excess fee computed by Mr. Amit Gupta. Firstly, Mr. Gupta had considered payment of unpaid CIRP costs and Liquidation cost as distribution for the purpose of calculating his fee on distribution. Further, Mr. Amit Gupta has considered lesser amount i.e. Rs. 169.58 lakhs as liquidation cost while the actual liquidation cost as per the bank statement, as examined by the IA, was Rs. 180.86 lakhs. However, now Mr. Gupta has while re-calculating his fee, considered a higher amount of Rs. 198 lakhs as liquidation cost. Further, he has also deducted the distribution of unpaid CIRP costs and Liquidation cost from the ambit of distribution for the purpose of calculation of his fee.

2.1.48 Secondly, Mr. Amit Gupta had extended the time period of “first six months” for the purpose of calculation of fees. As per the IA, the time period should have been from 01.09.2020 to 28.02.2021, while Mr. Gupta has considered the same from 01.09.2020 to 31.03.2021. Mr. Amit Gupta, however, on his reply on SCN has submitted that he had actually considered ‘first six months’ from 05.12.2020 to 04.06.2021 on the ground that he had the belief that he was appointed on the basis of the fee quote/mandate letter submitted by him to a particular financial creditor whereby he had expressly mentioned that the time period taken in relinquishment of security interest will be excluded. However, on perusal of the minutes of the 4<sup>th</sup> meeting of the COC of M/s. Winsome Diamonds and Jewellery Limited, it is observed that the issue of appointment of Mr. Amit Gupta as liquidator was discussed and nowhere the CoC had decided to exclude any time period for the purpose of calculation of fee of Mr. Amit Gupta. In fact, the fee of Mr. Amit Gupta was fixed in accordance with regulation 4(3) of the Liquidation Regulations. The relevant excerpts of the meeting are as follows:

**“12. To discuss the appointment of Liquidator for the Corporate Debtor along with his Remuneration**

*The Chairman informed the Committee that pursuant to direction of COC he would be filing an application to Hon’ble NCLT Ahmedabad Bench for liquidation of corporate debtor under section 33 of the IBC, 2016.*

*On request of the COC RP and his team made presentation on liquidation. COC members requested RP to provide his quote for professional fee to act as liquidator.*

*On which existing RP (Mr. Anshuman Chaturvedi), informed the COC that he had already quoted for the same while bidding for Expression of Interest at the meeting held for his appointment. He further informed the members that his fees as per his financial bid was as per chart given in Regulation 4(3) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. He further informed the members that in order to maintain the cash flows he would draw a monthly fee of Rs. 3/- Lakh plus GST which would be adjusted against fees of Regulation 4(3) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*

*Representative from Standard Chartered Bank invited and introduced Mr. Amit Gupta, an Insolvency Professional to the members and thereafter the members requested him to give his presentation and proposal of fee for acting as liquidator*

*of the Corporate Debtor. Mr. Amit Gupta gave his presentation and replied to queries of members of COC. Mr. Amit Gupta proposed the fees as per Regulation 4(3) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 without any monthly withdrawal.*

*COC requested RP to negotiate on his fee specifically relating to proposed monthly withdrawal. RP explained the members that a monthly cash flow needs to be maintained for the purpose of regular assignment under liquidation.*

*COC after a discussion proposed the name of Mr. Amit Gupta, Insolvency Professional as liquidator of Corporate Debtor and directed RP to take vote of members for the same by way of a resolution.”*

- 2.1.49 Further, it is also observed from the perusal of the progress reports submitted by Mr. Amit Gupta to the AA, that he as liquidator took various steps for sale of assets of the Corporate Debtor such as follows:

<b>Date</b>	<b>Action taken</b>
16.09.2020	Request for title documents from the Financial Creditors
22.09.2020	Intimation of initiation of liquidation to the valuers and seeking revised quotes
7.11.2020 and 09.11.2020	Appointment of Registered Valuer

The above facts contradict the assertion of Mr. Amit Gupta that the time period till the time security interest was not relinquished by the financial creditors should be excluded for the purpose of calculating his fee as apparently for such time period he could not have carried on with the liquidation process. In the present facts and circumstances, Mr. Amit Gupta is unfairly extending the time period of time-slab of ‘first six months’ to avail himself of larger amounts of realisation and distribution under the highest rate of fee resulting in charging of excess fee.

- 2.1.50 With respect to the contention of Mr. Amit Gupta that the terms of his appointment were approved by the stakeholders in the Stakeholder’s Consultation Committee meeting held on 06.06.2024, the DC notes that the same is erroneous and bad in law. In terms of Regulation 4 of the Liquidation Regulations, the Stakeholders Consultation Committee (SCC) may fix the fee of liquidator in its first meeting only in case no fee is approved by the CoC. Further this provision has come into effect only from 16.09.2022. Whereas,

in the present matter, the liquidation proceedings of this CD commenced on 01.09.2020. Accordingly, Mr. Amit Gupta cannot seek refuge of approval of his terms and conditions of fee by the SCC.

2.1.51 The DC notes that the manner in which the fee of the liquidator can be decided is specifically provided under Regulation 4 of the Liquidation Regulations which cannot be altered or modified by a liquidator to suit his own needs. Even the concurrence of a financial creditor would not allow the liquidator to modify the terms of Regulation 4. Therefore, Mr. Amit Gupta cannot expand the time period of “first six months” by one more month to mean “first seven months”, for the period of his fee calculation, which has the effect of enriching him unjustly.

2.1.52 Accordingly, the DC finds that Mr. Amit Gupta has wrongly excluded the time period of 95 days from 01.09.2020 to 05.12.2020 on account of delay in relinquishment of security interest by the Financial Creditor. Therefore, on the basis of the above discussion, the period of “first six months” from 05.12.2020 to 04.06.2021 as considered by Mr. Amit Gupta in the liquidation of the CD cannot be accepted by the DC. Therefore, the DC is of the view that Mr. Amit Gupta has charged an excess fee of Rs. 60,05,506 and has tried to secure his unjust enrichment by excluding the period of delay in relinquishment of security, in contradiction to the terms of fee fixed by the CoC as evident from the quoted CoC minutes. The DC also takes adverse note of the attempt of Mr. Amit Gupta to get this fee ratified by SCC in a meeting dated 06.06.2020 when there is no such provision for SCC to reconsider the terms of the fee.

#### **D. Forever Precious Jewellery and Diamonds Limited**

##### **Submissions of Mr. Amit Gupta**

2.1.53 Mr. Amit Gupta submitted that the exclusion of 123 days i.e. 01.09.2020 to 02.01.2021, was taken due to delay in relinquishment of security interest by the Financial Creditor and the said condition was part of the quotation of the fees as well as condition of his appointment. Mr. Amit Gupta further submitted that the same was once again approved by the stakeholders in the Stakeholder’s Consultation Committee meeting held on 06.06.2024.

2.1.54 Mr. Amit Gupta further submitted that he had recalculated the fees as per IBBI circular

dated 18.04.2024 for the realization and distribution till the date of 31.03.2024 and there is no excess fees charged by him which needs to be refunded.

### **Analysis by the DC**

- 2.1.55 The DC notes that it is alleged in the SCN that Mr. Amit Gupta has charged excess fee of Rs. 3,13,427/- in the liquidation proceedings of M/s. Forever Precious Jewellery and Diamonds Limited.
- 2.1.56 The DC further notes that apart from consideration of opening bank balance in realization, there were two other factors due to which there was excess fee computed by Mr. Amit Gupta. Firstly, Mr. Amit Gupta had considered payment of unpaid CIRP costs and Liquidation cost as distribution for the purpose of calculating his fee on distribution. However, in the re-calculation, Mr. Amit Gupta has also deducted the distribution of unpaid CIRP costs and Liquidation cost from the ambit of distribution for the purpose of calculating his fee.
- 2.1.57 Secondly, Mr. Amit Gupta had extended the time period of “first six months” for the purpose of calculation of fees. As per the IA, the time period should have been from 01.09.2020 to 28.02.2021, while Mr. Amit Gupta had considered the same from 01.09.2020 to 31.03.2021. Mr. Amit Gupta, however, on his reply to SCN has submitted that he had actually considered ‘first six months’ from 02.01.2021 to 01.07.2021 on the ground that he had the belief that he was appointed on the basis of the fee quote/mandate letter submitted by him to a particular financial creditor whereby he had expressly mentioned that the time period taken in relinquishment of security interest will be excluded. However, on perusal of the minutes of the 4<sup>th</sup> meeting of the COC of M/s. Forever Precious Jewellery and Diamonds Limited, it is observed that the issue of appointment of Mr. Amit Gupta as liquidator was discussed and nowhere the CoC had decided to exclude any time period for the purpose of calculation of fee of Mr. Amit Gupta. In fact, the fee of Mr. Amit Gupta was fixed in accordance with Regulation 4(3) of the Liquidation Regulations. The relevant excerpts of the meeting are as follows:

*“The following resolution is therefore approved by 85.28% votes in favour:*

***RESOLVED THAT*** *the consent of the Committee of Creditors be and is hereby accorded to appoint Mr. Amit Gupta, Insolvency Professional, (IBBI Registration No.: IBBI/TPA-001/IP-P00016/2016- 17/10040) as Liquidator in the matter of Forever*

*Precious Jewellery & Diamond Limited (CP No. 207-9-NCLT/AHM/2017).*

**RESOLVED FURTHER THAT** *the remuneration of the Liquidator for the conduct of the liquidation proceedings shall be in the proportion to the value of the liquidation estate as specified under Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate as specified under section 53 of the Insolvency and Bankruptcy Code, 2016."*

2.1.58 Further, it is also observed from the perusal of the progress reports submitted by Mr. Amit Gupta to the AA, that he as liquidator took various steps for sale of assets of the Corporate Debtor such as follows:

<b>Date</b>	<b>Action taken</b>
16.09.2020	Request for title documents from the Financial Creditors
22.09.2020	Intimation of initiation of Liquidation to the valuers and seeking revised quotes
7.11.2020	Appointment of Registered Valuer for asset class Securities or Financial Assets and Plant and Machinery
09.11.2020	Appointment of Registered Valuer for all asset classes of Corporate Debtor

The above facts contradict the assertion of Mr. Amit Gupta that the time period till the time security interest was not relinquished by the financial creditors, should be excluded for the purpose of calculation of his fee as apparently for such time period he could not have carried on with liquidation process. In the present facts and circumstances, Mr. Amit Gupta is unfairly extending the time period of 'first six months' to avail himself of the highest rate of fee on larger amounts of realization and distribution resulting in charging of excess fee.

2.1.59 The DC notes that this issue has already been analyzed in the matter of CD namely Winsome Diamonds and Jewellery Limited. In the same terms, the DC finds that Mr. Amit Gupta cannot expand the time period of "first six months" by one more month to mean "first seven months", for the period of his fee calculation, which has the effect of enriching him unjustly. Further, similar to the analysis made in Winsome Diamonds and Jewellery Limited, the contention of Mr. Amit Gupta that the terms of his appointment was approved by the stakeholders in the Stakeholder's Consultation Committee meeting held on 06.06.2024 is erroneous and bad in law and therefore cannot be accepted by the DC.

2.1.60 Accordingly, the DC finds that Mr. Amit Gupta has wrongly excluded the time period



of 123 days from 01.09.2020 to 02.01.2021 on account of delay in relinquishment of security interest by the Financial Creditor. Therefore, on the basis of the above discussion, the period of “first six months” from 02.01.2021 to 01.07.2021 as considered by Mr. Amit Gupta in the liquidation of the CD cannot be accepted by the DC. Therefore, DC is of the view that Mr. Amit Gupta has charged an excess fee of Rs. 3,13,427 and has tried to secure his unjust enrichment by excluding the period of delay in relinquishment of security, in contradiction to the terms of fee fixed by the CoC as evident from the quoted CoC minutes. The DC also takes adverse note of the attempt of Mr. Amit Gupta to get this fee ratified by SCC in a meeting dated 06.06.2020 when there is no such provision for SCC to reconsider the terms of the fee.

## **E. Provogue (India) Limited**

### **Submissions of Mr. Amit Gupta**

- 2.1.61 Mr. Amit Gupta submitted that the exclusion of the Covid period starting from 15.03.2020 to 28.02.2022 was taken, because of the outbreak of Covid, numerous challenges were faced in keeping the CD as a ‘going concern’. Mr. Amit Gupta further submitted that the value of the CD comprised of its brand, current assets and property in Mumbai and due to the disruptions caused by Covid, the sale of the CD as a going concern could not be carried out and the sale was ultimately completed after the Covid period.
- 2.1.62 Mr. Amit Gupta further submitted that the Mumbai property was mired in litigation, where initially there was an eviction order which was stayed by the Hon’ble NCLAT and the property could not be sold till the litigation was concluded. Hence, for the purpose of Mumbai property, exclusion has been taken till the auction of the said property. Mr. Amit Gupta also submitted that the SCC in its meeting held on 17.03.2023 has approved the exclusion of such time for the purpose of calculation of the fee of the liquidator.
- 2.1.63 Mr. Amit Gupta submitted that as per IBBI Circular dated 18.04.2024, the revised calculation of the fees has been carried out and the amount of excess fees charged inadvertently due to lack of clarity is Rs 12,27,070 (including GST).

## **Analysis by the DC**

- 2.1.64 The DC notes that it is alleged in the SCN that Mr. Amit Gupta has charged excess fee of Rs. 1,76,16,413/- in the liquidation proceedings of Provogue (India) Limited. In compliance with the IBBI circular 18.04.2024, Mr. Amit Gupta has recalculated his fee and submitted that there was excess fee of Rs. 12,27,000/- charged by him which he submitted to be refunded in accordance with the waterfall mechanism given in section 53 of the Code.
- 2.1.65 On perusal of the inspection report and other materials available on record, the DC notes that apart from consideration of opening bank balance in realization, there were two other factors due to which there was excess fee computed by Mr. Amit Gupta, as examined by the IA.
- 2.1.66 Firstly, Mr. Amit Gupta had considered payment of unpaid CIRP costs and Liquidation costs as distribution for the purpose of calculating his fee on distribution. However, now Mr. Amit Gupta, while re-calculating his fee, has removed the unpaid CIRP cost and Liquidation cost from the ambit of distribution for the purpose of calculation of his fee.
- 2.1.67 Secondly, there was a difference in realisation and distribution for each time slab period. Mr. Amit Gupta in his reply to the SCN dated 15.01.2024 had submitted that this difference is due to Covid Exclusions as well as delay caused on account of a tenant dispute. However, in his further reply dated 13.07.2024, he has submitted that exclusion of Covid period starting from 15.03.2020 to 28.02.2022 was taken because of the Covid period. Mr. Amit Gupta has sought to rely on the judgments of the Hon'ble Supreme Court to claim exclusion of time period from 14.10.2019 to 31.03.2022 on the grounds of COVID-19 and also the period of stay imposed by NCLAT on certain property of M/s. Provogue (India) Limited. The DC notes that the referred Hon'ble Supreme Court judgments relate only to relaxation of time period for the purpose of calculation of limitation period for the purpose of filing appeal and is not applicable to the liquidation proceedings to be carried out by the liquidator which are not in the nature of appeal. In respect of liquidation proceedings, to account for the impact of COVID-19, IBBI has inserted Regulation 47A in the Liquidation Regulations which allows exclusion of time for the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak, for the purposes of computation of the time-line for any task that could not

be completed due to such lockdown.

- 2.1.68 The DC notes that Mr. Amit Gupta failed to bring on record any document or proof to show that the liquidation process could not be progressed due to the lockdown imposed. The DC has reviewed the notifications issued by the Central Government and the Government of Maharashtra concerning the COVID-19 lockdown and its phased lifting. It is noted that a blanket exclusion for the period from 15.03.2020 to 28.02.2022 for the purposes of fee calculation in the liquidation process cannot be allowed. The DC observes that while the lockdown was imposed in March 2020, partial relaxations and phased reopening began after the initial four months. In Maharashtra, various sectors, including commercial activities, started resuming operations with restrictions from July 2020 onwards. Consequently, the DC finds that the claim for a blanket exclusion of time from 15.03.2020 to 28.02.2022 is not justified. At most, the period from 15.03.2020 to 31.08.2020, when stringent lockdowns were in place, can be considered for exclusion under Regulation 47A for the purpose of recalculating Mr. Amit Gupta's fees.
- 2.1.69 Besides, the DC observed that Mr. Amit Gupta had undertaken activities for realisation and distribution of the assets of the CD-4 from 04.09.2020 onwards. Perusal of the progress reports the DC found that the public announcement for the sale of the CD as a going concern was issued on 04.09.2020. Subsequently, the e-auction process were conducted on 16.09.2020, 10.12.2020, 22.01.2021, 16.02.2021. The DC further notes that pursuant to the e-auction conducted on 16.02.2021, 5 cars of M/s. Provogue (India) Limited were sold. The DC also notes that one vehicle of M/s. Provogue (India) Limited was sold in the month of December, 2021 by way of private auction.
- 2.1.70 Mr. Amit Gupta had also appointed professionals to conduct the valuation of the CD. Additionally, on 27.01.2020, there was a distribution of proceeds from the liquidation estate to secured financial creditors who held charges on the properties.
- 2.1.71 Since the liquidation process of M/s. Provogue (India) Limited was ongoing during 2020 and 2021, Mr. Amit Gupta is not entitled to claim a blanket exclusion for the entire period from 15.03.2020 to 28.02.2022 in the calculation of his fees due to the Covid-19 pandemic. In terms of Regulation 47A, the DC considers the exclusion of the lockdown period from 15.03.2020 to 31.08.2020 as appropriate. Therefore, the first six months of the liquidation period in the case of M/s. Provogue (India) Limited is considered from

the LCD date (14.10.2019) to the date of the e-auction public announcement (30.09.2020).

No.	Description	First six months	Next six months	Next 1 year	Thereafter
1.	As per IP	14.10.19 – 31.03.22	01.04.22 – 30.09.22	01.10.22-30.09.23	--
2.	As per IA	14.10.19 – 31.03.20	01.04.20 – 30.09.20	01.10.20-30.09.21	01.10.21-31.03.23
3.	As per DC	14.10.19 – 30.09.20	01.10.20 –31.03.21	01.04.21-31.03.22	01.04.22–03.10.23*

\*In accordance with Regulation 45 of Liquidation Regulations, the final report was submitted on 03.10.2023.

2.1.72 On the basis of above time period, the DC has calculated the fee that could have been claimed by Mr. Amit Gupta for the realization and distribution, in accordance with the realisations made by him as follows:

*Figures in INR (lakhs)*

Considered by	Time frame	Op. Bal+ FD + BG Recovery	Proceeds from Sale of Assets (Auction and Private Sale)	Other Realisation - Going concern sale	Gross Realisation	Liquidation Cost	Total Realised net of Liquidation Cost
		(A)	(B)	(C)	D= A+B+C	(E)	F= D-E
<b>First Six months</b>							
IP to IA	14.10.19-31.03.22	170	1094	4,944	6208	2,275	3,932
IA	14.10.19-31.03.20	200	0	1,611	1,812	804	1,008
IP to DC	14.10.19-31.03.22	155	1094	4,959	6,208	2,275	3,932
DC	14.10.19-30.09.20	155	0	2,132	2,287	1,135	1,152
<b>Next Six months</b>							
IP to IA	01.04.22-30.09.22	0	0	450	450	275	175
IA	01.04.20-30.09.20	158	0	318	476	290	184
IP to DC	01.04.22-30.09.22	0	0	450	450	275	175
DC	01.10.20-31.03.21	0	1021	763	1784	430	1,354
<b>Next one year</b>							
IP to IA	01.10.22-30.09.23	0	9,123	363	9,486	281	9,206
IA	01.10.20-30.09.21	0	1,093	1,316	2,409	732	1,677
IP to DC	01.10.22-30.09.23	0	9,123	363	9,486	281	9,206
DC	01.04.21-31.03.22	0	6	2,128	2,134	784	1,350
<b>Thereafter</b>							
IP to IA	N.A	0	0	0	0	0	0
IA	01.10.21-31.03.23	0	10,121	2,371	12,492	2,004	10,488
IP to DC	N.A	0	0	0	0	0	0
DC	01.04.22-03.10.23	0	9,190	749	9,939	482	9,457
<b>Cumulative</b>							
IP to IA	14.10.19-30.09.23	170	10,217	5,757	16,144	2,830	13,314
IA	14.10.19-31.03.23	358	11,214	5,615	17,188	3,831	13,358
IP to DC	14.10.19-30.09.23	155	10,217	5,772	16,144	2,830	13,314
DC	14.10.19-03.10.23	155	10,217	5,772	16,144	2,830	13,314

2.1.73 The details of distribution made is as under:

Period	First six months	Next six months	Next one year	Thereafter	Cumulative
<b>Time Periods</b>					
<b>IP to IA</b>	14.10.19-31.03.22	01.04.22- 30.09.22	01.10.22-30.09.23	--	14.10.19-03.10.23
<b>IA</b>	14.10.19-31.03.20	01.04.20- 30.09.20	01.10.20-30.09.21	01.10.21-31.03.23	14.10.19-31.03.23
<b>IP to DC</b>	14.10.19-31.03.22	01.04.22- 30.09.22	01.10.22-30.09.23	--	14.10.19-03.10.23
<b>DC</b>	14.10.19- 30.09.20	01.10.20- 31.03.21	01.04.21-31.03.22	01.04.22-03.10.23	14.10.19-03.10.23
<b>Amount (in lakhs)</b>					
<b>IP to IA</b>	8,912	375	6,378	0	15,665
<b>IA</b>	N.A.	N.A.	3,002	6,336	9,338
<b>IP to DC</b>	6,147	100	6,097	N.A.	12,344
<b>DC</b>	512	1,200	1,425	9,207	12,344

2.1.74 Based on the above amounts of realisation and distribution following fees (exclusive of GST) are worked out as per the table:

- a) Fee on realization – Rs. 84,15,678/-
- b) Fee on distribution – Rs. 52,90,082/-

2.1.75 Accordingly, the DC finds that Mr. Amit Gupta was entitled to fees of Rs. 1,37,05,760/- (exclusive of GST) as liquidator in the liquidation proceedings of Provogue (India) Limited, as against the fee of Rs. 2,94,76,000/- (exclusive of GST) earlier charged by him. The details of the same is below:

<b>Exclusive of GST (in Rs.)</b>				
	<b>IP to IA</b>	<b>IA</b>	<b>IP to DC</b>	<b>DC</b>
Realisation	1,93,07,000	1,00,72,699	1,93,07,000	84,15,677
Distribution	1,01,69,000	44,32,683	91,29,000	52,90,082
<b>Total</b>	<b>2,94,76,000</b>	<b>1,45,05,382</b>	<b>2,84,36,000</b>	<b>1,37,05,759</b>
<b>Inclusive of GST (in Rs.)</b>				
	<b>IP to IA</b>	<b>IA</b>	<b>IP to DC</b>	<b>DC</b>
Realisation	2,27,82,260	1,18,85,785	2,27,82,260	99,30,499
Distribution	1,19,99,420	52,30,566	1,07,72,220	62,42,297
<b>Total</b>	<b>3,47,81,680</b>	<b>1,71,16,351</b>	<b>3,35,54,480</b>	<b>1,61,72,796</b>

2.1.76 It is pertinent to note from the above table that Mr. Amit Gupta had to refund amount of Rs. 186.08 lakhs as excess fee claimed by him. Out of this, he has already refunded the amount of Rs. 12.27 lakhs. Therefore, he is liable to refund remaining amount of 1,73,81,884/- which has been charged in excess claiming exclusions of time on account

of Covid, basis the order of Hon'ble Supreme Court which clearly operates in a different field instead of taking exclusion in terms of regulation 47A of Liquidation Regulations dealing with exclusion of period from process timeline in Covid situation.

**F. Hindustan Dorr Oliver Limited**

**Submissions of Mr. Amit Gupta**

- 2.1.77 Mr. Amit Gupta has claimed exclusion of period of stay on the liquidation process as per the order of the Hon'ble NCLAT from 12.07.2018 till 29.01.2019, followed by the period when Section 230 process was carried out in compliance of the Hon'ble NCLAT's order dated 29.01.2019, which continued till 14.10.2019 when the Hon'ble NCLT finally passed the order allowing sale of the assets of the Corporate Debtor.
- 2.1.78 Mr. Amit Gupta further claimed exclusion of Covid period starting 15.03.2020 to 28.02.2022 because of various challenges faced during this period in conducting the liquidation process of the Corporate Debtor which was a going concern. Mr. Amit Gupta also submitted that the stakeholders in the meeting held on 18.04.2024 has approved the exclusion of such time for the purpose of calculation of the fee of the liquidator.
- 2.1.79 Mr. Amit Gupta submitted that as per the revised calculation of the fees carried out as per IBBI circular dated 18.04.2024, which has been approved by the secured creditors, fee amount works out to Rs 441 Lakhs, while the actual fees charged is Rs 431.88 Lakhs. Thus, the actual fees charged is short by Rs 9.12 Lakhs as compared to fees calculated as per the IBBI circular dated 18.04.2024. Mr. Amit Gupta also submitted that the liquidation process stood closed on 13.01.2023 and the secured creditors will have difficulty in now debiting their recovery account to remit any amount and hence he is not claiming the shortfall amount of Rs. 9.12 Lakhs.

**Analysis by the DC**

- 2.1.80 The DC notes that it is alleged in the SCN dated 04.12.2023 that Mr. Amit Gupta has charged excess fee of Rs. 2,10,26,622/- in the liquidation proceedings of M/s. Hindustan Dorr Oliver Limited. On perusal of the inspection report, it is observed that such excess fee was on account of the following:
- a) Mr. Amit Gupta has considered bank balance of Rs. 286 lakhs as realization which

in the opinion of IA could not have been considered as realization because of it being liquid asset,

- b) Mr. Amit Gupta had deducted only Rs 99 lakhs as liquidation cost as against Rs 19,700 lakhs, as the cost of running the business of CD as going concern was not included in the liquidation cost,
- c) Mr. Amit Gupta had considered payment of unpaid CIRP costs and Liquidation costs including cost of running business for the purpose of calculating fee on distribution.
- d) Mr. Amit Gupta has considered initial period of six months as running from 26.06.2018 to 28.07.2019 as against the actual period from 25.06.2018 to 25.12.2018.

It is observed that the main component resulting in excess fee charged by Mr. Amit Gupta is with respect to inclusion of only Rs 99 lakhs as liquidation cost as against Rs 19,700 lakhs (as calculated by the IA).

2.1.81 In his reply dated 15.01.2024 to the Show Cause Notice, Mr. Amit Gupta has justified the charging of his fee as follows:

- a) there is no stipulation under the Code or Regulations to exclude the bank balance from 'realization' amount,
- b) the excess fee alleged by the IA is because of non-consideration of going concern cost. Since the liquidation in the present case commenced on 25.06.2018, as per the IBBI Circular dated 26.08.2019, the unamended regulation prior to 25.07.2019 will be applicable whereby the liquidation cost did not include the cost incurred in carrying out the business of the corporate debtor as a going concern.
- c) With respect to considering payment of unpaid CIRP costs and Liquidation costs, and the extension of time period, Mr. Amit Gupta has submitted that the issue was already heard by earlier DC and no non-compliance was noted. Further, in his reply during the earlier DC proceedings, Mr. Amit Gupta had submitted that Regulation 4(3) of the unamended Liquidation Regulations provided deduction of liquidation cost only from the realization and not the distribution. Further, with respect to the

exclusion of time, Mr. Amit Gupta has relied on the stay imposed by the NCLAT for the period from 12.07.2018 to 29.01.2019. Accordingly, the time period taken by Mr. Amit Gupta for the 'first six months' was 28.07.2019.

The justification submitted by Mr. Amit Gupta was contended by him before the Hon'ble High Court of Bombay also. Further, with respect to the contention of Mr. Amit Gupta that the issue regarding payment of unpaid CIRP costs and Liquidation costs, and the extension of time period was already heard by earlier DC and no non-compliance was noted, this DC observes that that there was no determination by the earlier DC on this issue in DC Order dated 18.05.2023. Rather, due to unavailability of sufficient documents and information, the earlier DC had referred the matter for detailed investigation in all the assignments handled by him.

2.1.82 The Hon'ble High Court of Bombay had examined these contentions of Mr. Amit Gupta in its order dated 04.04.2024 as mentioned in paras 2.1.13 and 2.1.14 above. In light of the judgment dated 04.04.2024 of the Hon'ble Bombay High Court and in compliance with the IBBI circular dated 18.04.2024, Mr. Amit Gupta has recalculated his fee and has now made following substantial modification in parameters of calculation of his fee:

- a) Mr. Amit Gupta has now considered amount of Rs. 20,100 lakhs as the liquidation cost by including the cost of running business of CD as going concern as liquidation cost.
- b) The amount paid for CIRP cost and liquidation cost was excluded from the amount distributed.
- c) Amount of Rs. 5 lakhs per month aggregating to Rs. 75 lakhs have been charged for the period from 12.07.2018 to 14.10.2019 i.e., approximately 15 months instead of Rs.25 lakhs which was earlier charged for the period from 12.07.2018 to 29.01.2019 on account of running the CD as going concern.
- d) The time of first six months has now been taken from 25.06.2018 to 19.03.2022. The exclusion of time from 25.06.2018 to 29.01.2019 has been taken on the basis of stay order granted by the NCLAT. Further, exclusion of time from 29.01.2019 to 14.10.2019 has been claimed on the ground that the order from NCLT for sale of



assets was received on 14.10.2019 which was required as per the directions of NCLAT. Furthermore, the exclusion from 15.03.2020 to 28.02.2022 has been claimed on the ground of COVID 19 read with Regulation 47A of the Liquidation Regulations.

2.1.83 Basis the above re-calculation, Mr. Amit Gupta has claimed that the actual fee charged by him is short by Rs. 9.12 lakhs as compared to the fees calculated in accordance with the IBBI circular dated 18.04.2024. The above-said parameters taken by Mr. Amit Gupta while re-calculating his fee are being examined in the following paragraphs.

#### **Exclusion of periods**

2.1.84 The DC has perused the NCLAT order dated 29.01.2019. The relevant para 9 of the NCLAT order dated 29.01.2019 is reproduced herein below for ready reference :-

*“The Liquidator if initiates, will complete the process under Section 230 of the Companies Act within 90 days. For the purpose of counting the period of liquidation, the pendency of the appeal(s) preferred by the Eight Finance Pvt. Ltd.’ that is from 12th July, 2018 and till date should be excluded. In the circumstances, while we are not inclined to interfere with the impugned order(s) both dated 25th June, 2018 direct the Liquidator to act in accordance with law and as observe above.”*

2.1.85 The DC notes that the NCLAT vide its order dated 29.01.2019 had specifically excluded the time period from 12.07.2018 to the date of its order of 29.01.2019 and had also directed that the liquidator if initiates the process for compromise or arrangement shall conclude it within a period of 90 days.

2.1.86 The DC notes that Mr. Amit Gupta in his reply to the IA and re-iterated in his reply to SCN dated 15.01.2024 had taken the period of first 6 months from 26.06.2018 to 28.07.2019 after considering the exclusion from 12.07.2018 to 29.01.2019 as granted by the NCLAT and accordingly, it is evident that Mr. Amit Gupta in his reply to IA had taken liquidation commencement date as 29.01.19 for the purpose of calculation of his fee. The DC further notes that for this time period, Mr. Amit Gupta, in his reply to IA, had considered gross realization amounting Rs.11,017 lakhs and liquidation cost amounting to Rs. 4.36 lakhs, resulting in net realization of Rs.11,013 lakhs, basis which his fee on realization for the first 6 months considered by him aggregates to Rs. 200 lakhs.

2.1.87 The DC, while considering the period of first six months in the Liquidation of M/s. Hindustan Dorr-Oliver Limited, after considering the NCLAT order dated 29.01.2019, is inclined to consider the exclusion from 12.07.2018 to 29.01.2019 as granted by the NCLAT in para 9 its order dated 29.01.2019 and also as claimed by the liquidator while submitting his reply to IA.

2.1.88 The DC further notes that Regulation 2B (2) of the Liquidation Regulations provides for exclusion of time taken on Compromise & Arrangement not exceeding 90 days from the liquidation period, as follows:

***“2B. Compromise or arrangement.***

***(2) The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.”***

2.1.89 The DC notes from the dates and events in the liquidation proceedings of Hindustan Dorr-Oliver Limited (as submitted by Mr. Amit Gupta in his progress reports) that on 15.02.2019, an Expression of Interest (EoI) inviting Scheme of Compromise and Arrangement from the sponsors was published. However, as on 08.03.2019 no EoI was received. Consequently, on 25.03.2019, Mr. Amit Gupta had preferred an application before the NCLT for placing on record the failure of Compromise and Arrangement of Hindustan Dorr-Oliver Limited under Section 230 of the Companies Act, 2013. Accordingly, the DC is inclined to consider further exclusion of period from 29.01.2019 to 25.03.2019 on account of Compromise and Arrangement under Section 230 of the Companies Act, 2013 in terms of regulation 2B(2) even though the same was not claimed by Mr. Amit Gupta in his submission to the IA and reply to SCN dated 15.01.2024.

2.1.90 Accordingly, the DC is inclined to grant exclusion of time period from 12.07.2018 to 29.01.2019 on account of specific order of NCLAT and further exclusion from 30.01.2019 to 25.03.2019 on account of Compromise and Arrangement in terms of Regulation 2B(2) of Liquidation Regulations. This exclusion is being considered despite the fact that Mr. Amit Gupta had in fact, realized amount of Rs. 8,900 lakhs during the period from 26.06.2018 to 25.03.2019. Accordingly, the period of first six months as allowed by DC is from 26.06.2018 to 24.09.2019.

- 2.1.91 The DC notes that Mr. Amit Gupta in his reply to DC dated 13.07.2024, has now sought to exclude additional time period from 29.01.2019 to 14.10.2019 on account of NCLT order and further time period from 15.03.2020 to 28.02.2022 on ground of outbreak of COVID 19 pandemic, resulting into the period of first 6 months from 26.06.2018 to 19.03.2022, next 6 months from 20.03.2022 to 15.09.2022 and next year from 21.09.2022 to 20.09.2023. This is in complete contrast to the stand taken by Mr. Amit Gupta in his reply to IA and again in his reply to SCN dated 15.01.2024, wherein he had considered the first 6 months of the liquidation period from 26.06.2018 to 28.07.2019.
- 2.1.92 The DC observes that Mr. Amit Gupta has realized substantial amounts from of Rs. 4,700 lakhs during the period from 26.06.2018 to 30.09.2019 out of total cumulative gross realizations of Rs. 10,600 lakhs, which constitutes 44.65% of the total realizations. Accordingly, in view of the fact that 44.65% of the total realization were made during the period from 26.06.2018 to 30.09.2019, granting exclusion from 29.01.2019 to 14.10.2019 on account of NCLT order dated 14.10.2019 cannot be accepted by the DC. Since, the NCLAT order specifically excludes the period from 12.07.2018 to 29.01.2019, the same is being considered despite the fact that substantial realisation has been made during this period. Further, since exclusion of the period of compromise and arrangement is provided in Regulation 2B(2) of the Liquidation Regulations, the same is being considered despite the fact that a total realizations of Rs. 8,900 lakhs during the period from 26.06.2018 to 25.03.2019 has been made.
- 2.1.93 The DC notes that in his re-calculation, Mr. Amit Gupta has sought to rely on judgments of Hon'ble Supreme Court to claim exclusion of time period from 15.03.2020 to 28.02.2022 on the grounds of COVID-19. It is observed that the judgment relates only to relaxation of time period for the purpose of calculation of limitation period for the purpose of filing appeal and is not applicable to the liquidation proceedings to be carried out by the liquidator which are not in the nature of appeal. In respect of liquidation proceedings, to account for the impact of COVID-19, IBBI has inserted Regulation 47A in the Liquidation Regulations which allows exclusion of time for the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak, for the purposes of computation of the time-line for any task that could not be completed due to such lockdown. The said regulation is as hereunder:

***Exclusion of period of lockdown.***

***47A. Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any liquidation process.***

- 2.1.94 The crux and rationale of Regulation 47A of Liquidation Regulations is that only such period should be excluded when the Liquidator was unable to take any step due to ongoing COVID pandemic. In cases where the liquidator was not prevented by COVID situation from undertaking liquidation process, no period can be excluded even on the basis of it being approved by certain creditors of the CD. The DC notes that the impact of lockdown was only for the period from 25.03.2020 to 31.08.2020 during the first wave and from 01.06.2021 to 30.06.2021 during the second wave. Therefore, this is the period which should be excluded in terms of Regulation 47A unless the process was undertaken during this period. It is seen from the perusal of the progress reports that Mr. Amit Gupta had proceeded with the sale of assets of the CD from 07.09.2020 onwards as soon as the impact of lockdown was over. The minutes of the consultation meeting with secured creditors held on 05.11.2020 mentions that certain assets of the CD were sold by way of e-auctions conducted on 07.09.2020, 10.09.2020 and 23.09.2020, 29.07.2022. In the present facts and circumstances where Mr. Amit Gupta was able to sell the assets, it is improper for Mr. Amit Gupta to avail himself of excess fee by undertaking blanket exclusion of COVID 19 period for an extended period from 15.03.2020 to 28.02.2022.
- 2.1.95 In light of the above-mentioned facts, Mr. Amit Gupta is not entitled to claim a blanket exclusion for the entire period from 12.07.2018 to 28.02.2022 in the calculation of his fees. Further, Mr. Amit Gupta is also estopped from changing parameters for calculation of his fee, just to avoid his liability of paying back the excess fee received by him. So, the period of exclusion which is justifiably to be excluded on account of COVID 19 is a period of 5 months from 25.03.2020 to 31.08.2020 in view of the first wave of Covid-19 pandemic and further period of 1 month from 01.06.2021 to 30.06.2021, in view of the second wave of Covid-19 pandemic when the lockdown was in operation.
- 2.1.96 After considering the NCLAT order dated 29.01.2019, Liquidation Regulations and the

outbreak of COVID-19 in year 2020 and second wave of COVID in year 2021 and considering the realization made either *via* running the CD as going concern or sale of assets or other liquidation activities conducted during the given period, the DC had considered the following time periods for realisation and distribution of amounts entitled to various percentages of fee:-

Period considered by DC		Rationale for exclusion
First 6 months	26.06.18- 24.09.19	a) Exclusion of 12.07.2018 to 29.01.2019 on account of NCLAT order dated 29.01.2019 b) Exclusion of 29.01.2019 to 25.03.2019 in terms of Regulation 2B(2) of Liquidation Regulations. <b>Total Exclusion period - 26.06.2018 to 25.03.2019</b>
Next 6 months	01.10.19- 24.03.20	
Next 1 year	25.03.20- 30.09.21	a) Exclusion of 25.03.2020 to 31.08.2020 (5 months) on account of lockdown imposed during the first wave of COVID -19 pandemic. b) Exclusion of 01.06.2021 to 30.06.2021 lockdown imposed by the Maharashtra Government.
Thereafter	01.10.21 onwards	

2.1.97 The DC notes that on various occasions, Mr. Amit Gupta, was asked to submit the granular details i.e., 07.06.2024, 09.08.2024, 13.08.2024 and 13.09.2024. However, the same were not furnished by him to the DC. This issue of non-cooperation by Mr. Amit Gupta has been chronologically discussed from para 2.1.19 to 2.1.25. Subsequently, in absence of details, the DC extracted the data with respect to realizations and liquidation cost from the progress reports submitted by Mr. Amit Gupta to the Board. However, this data was available for quarter-ending periods of the year. So, even though the periods considered by the DC were slightly different from the quarter ending periods, the nearest quarter ending periods have been considered for calculation of amount of realisation and distribution in absence of granular details as follows:-

<b>Liquidation Period considered by DC</b>		<b>Period considered by DC for calculating amounts of realization and liquidation cost</b>
First 6 months	26.06.2018 to 24.09.2019	26.06.2018 to 30.09.2019
Next 6 months	01.10.2019 to 24.03.2020	01.10.2019 to 31.03.20
Next 1 year	25.03.2020 to 30.09.2021	01.04.20 to 30.09.21
Thereafter	01.10.2021 onwards	01.10.21 – 23.01.2023 i.e., final report prior to closure of the liquidation process of the CD which also stands reflected in the closure order dated 10.10.2023.

It is pertinent to mention that since DC has considered the realization and liquidation costs data from the progress reports of the period as mentioned above, Mr. Amit Gupta is being placed at an advantageous position, as he is getting additional advantage of few days in particular time period slabs. For instance, for the period of first 6 months, the liquidation period as per DC should be 26.06.2018 to 24.09.2019, however, in absence of granular details, the period taken by the DC for calculation of realization and payments is 26.06.2018 to 30.09.2019.

2.1.98 The DC further notes that in the period of first 6 months as calculated by DC i.e., 26.06.2018 to 30.09.2019, the realization pertaining to the period from 29.01.2019 to 25.03.2019 is also included, which relates to the proceeds realized during the period of Compromise and Arrangement. Mr. Amit Gupta is already charging fixed fees of Rs. 5 lakhs per month during the period of Compromise and Arrangement in view of Regulation 4(2)(a) of the Liquidation Regulations. So, in effect, he is getting double benefit of Regulations 4(2)(a) and (b) of Liquidation Regulations. It appears that the Liquidation Regulations have been framed considering that during the period of compromise and arrangement, there will be standstill in the liquidation process and the fixed fees have been granted for the effort of compromise and arrangement, but Mr. Amit Gupta has realised substantial amounts before and during the period of compromise and arrangement. This situation is quite peculiar and not envisaged in

Liquidation Regulations, but Mr. Amit Gupta has been granted benefit of doubt because of the peculiar situation which could not have been envisaged the at the time of framing of regulations i.e. that of realisation during the period of compromise and arrangement.

2.1.99 The details of time periods considered by Mr. Amit Gupta, the IA and now DC is as follows:

<b>Considered by</b>	<b>First six months</b>	<b>Next six months</b>	<b>Next 1 year</b>	<b>Thereafter</b>
IP in his reply to IA / 1 <sup>st</sup> reply to DC	26.06.18-28.07.19	29.07.19-28.01.20	29.01.20-30.09.20	30.09.20-23.01.23*
IA	25.06.18-25.12.18	25.12.18-25.06.19	25.06.19-25.06.20	25.06.20-23.01.23
IP in 2nd reply to DC	25.06.18-19.03.22	20.03.22-15.09.22	21.09.22-20.09.23	
DC	26.06.18-24.09.19	25.09.19-24.03.20	25.03.20-30.09.21	01.10.21-23.01.23
Reason for DC's consideration	Same as claimed by IP in his reply to IA in accordance with NCLAT order and additional period for compromise and arrangement from 29.01.19 to 25.03.19	Next six months	25.03.20 to 31.08.20 and 01.06.2021 to 30.06.2021 excluded for lock-down period as per Regulation 47A.	Residual period
Period considered for realisation and distribution in view of availability of data	26.06.18 to 30.09.19	01.10.19 to 31.03.20	01.04.20 to 30.09.21	01.10.21 onwards

\*In accordance with Regulation 45 of Liquidation Regulations, the final report was submitted on 23.01.2023.

2.1.100 On the basis of above time period, the DC has calculated the fee that could have been claimed by Mr. Amit Gupta for the realization and distribution, in accordance with the realisations made by him as follows:

Figures in INR (lakhs)

Details of realisation in the liquidation of Hindustan Dorr Oliver Limited (in lakhs)							
Stage	Time frame	Op. Bal+ FD + BG Recovery	Proceeds from Sale of Assets (Auction and Private Sale)	Other Realisation - Going concern sale	Gross Realisation	Liquidation Cost	Total Realised net of Liquidation Cost
		(A)	(B)	(C)	D= A+B+C	(E)	F**= D-E
<b>First 6 Months</b>							
IP to IA	26.06.18 - 28.07.19	282	0	10,735	11,018	4	11,013
IA	25.06.18 - 25.12.18	0	3,449	2,729	6,179	3,487	2,692
IP to DC	25.06.18 - 19.03.22	29,753	0	0	29,753	18,645	11,108
DC	26.06.18 - 30.06.20	5,896	0	4,757	10,652	8,122	2,531
<b>Next 6 Months</b>							
IP to IA	29.07.19 - 28.01.20	0	0	3,273	3,273	0	3,273
IA	25.12.18 - 25.06.19	0	1,315	2,975	4,290	3,266	1,024
IP to DC	20.03.22 - 15.09.22	705	0	0	705	1,503	-798
DC	01.07.20 - 31.12.20	2,455	274	3,393	6,121.1	3,618	2,503
<b>Next 1 Year</b>							
IP to IA	29.01.20 - 30.09.20	0	7,091	2,694	9,785	95	9,691
IA	25.06.19 - 25.06.20	0	2,318	3,546	5,864	4,694	1,171
IP to DC	21.09.22 - 20.09.23	4	0	0	4	4	0
DC	01.01.21 - 31.12.21	3,900	6,821	838	11,558	5,779	5,779
<b>Thereafter</b>							
IP to IA	30.09.20-23.01.23	N.A	N.A	N.A	N.A	N.A	N.A
IA	25.06.20-23.01.23	0	7,591	6,252	13,843	8,330	5,513
IP to DC	N.A	-	-	-	-	-	-
DC	01.01.22-23.01.23	46	0	2,085	2,131	2,634	-503
<b>Cumulative</b>							
IP to IA	26.06.18 -23.01.23	N.A	N.A	N.A	24,076	99	23,976
IA	25.06.18 -23.01.23	N.A	N.A	N.A	30,176	19,777	10,399
IP to DC	25.06.18 - 23.01.23	N.A	N.A	N.A	30,463	20,152	10,310
DC	26.06.18 - 23.01.23	N.A	N.A	N.A	30,463	20,152	10,310
Notes	Note 1	Note 2	Note 3	Note 4	Note 5	Note 6	

\*\*As evident from Column F, the net realizations for the period 'thereafter' 01.10.2021 onwards is in negative i.e, Rs. (5,02,82,463). Accordingly, the same stands adjusted from realization for the 'next one year' period i.e., 01.04.2020 to 30.09.2021. Resultantly the net realization for next one year period stands as Rs. 5,02,82,463/- (Rs. 57,79,39,845 – Rs.5,02,82,463).

**Notes: Assumptions/Figures taken by DC for arriving at the calculation**

- 1. Time Period for calculation of fee** – Considered by DC after taking NCLAT order dated 29.01.2019 and compromise and arrangement period from 29.01.2019 to 25.03.2019 into consideration. Refer para 2.1.84 to para 2.1.90 for detailed discussion.
- 2. Opening Balance and Fixed Deposit Closure** - Considered as given by IP in the



progress reports.

3. **Proceeds of Sales of Assets (Auction) etc.-** Considered as given by IP in the progress reports.
4. **Going Concern Sale Proceeds** -Considered as given by IP in the progress reports.
5. **Gross Realisation** – The aggregate of gross realisation amounting to Rs. 3,04,62,64,451 as arrived by DC is equivalent to the aggregate of gross realisation as submitted by IP to DC.
6. **Other Liquidation Cost** - Considered as given by IP in the progress reports.
7. The aggregate liquidation cost amounting to Rs. 2,01,52,30,924 as arrived by DC is equivalent to the aggregate of liquidation cost as submitted by IP to DC.

2.1.101 The details of distribution made is as under:

Period	First six months	Next six months	Next one year	Thereafter	Cumulative
<b>Time Periods</b>					
IP to IA	26.06.18-28.07.19	29.07.19-28.01.20	29.01.20-30.09.20	30.09.20 -23.01.23*	26.06.18-23.01.23
IA	25.06.18-25.12.18	25.12.18-25.06.19	25.06.19-25.06.20	25.06.20-23.01.23	25.06.18-23.01.23
IP to DC	25.06.18-19.03.22	20.03.22-15.09.22	21.09.22-20.09.23	N.A	25.06.18-23.01.23
DC	26.06.18-30.06.20	01.07.20-31.12.20	01.01.21-31.12.21	01.01.22-23.01.23	26.06.18-23.01.23
<b>Amount (in lakhs)</b>					
IP to IA	10514.27	3172.52	9325.75	-	23012.54**
IA	-	-	3001.96	6336.34	9,338.30
IP to DC	8,538.31	200	600	-	9,338.31
DC	3021.25	0.00	5400.00	917.06	9338.31

Note: On 30.05.2020 distribution was made by Mr. Amit Gupta, but benefit has been given to him by excluding that period from calculation of first six months.

\*\*This amount included distribution of CIRP and liquidation cost which was reduced after the judgment of Hon'ble Bombay High Court while altering other parameters for charging his fee.

2.1.102 Based on the above amounts of realisation and distribution the following fees (exclusive of GST) are worked out as per the table:

- a) Fee on realization – Rs. 1,23,75,744/-
- b) Fee on distribution – Rs. 71,07,661/-

### **Claim of fixed fee for excess periods**

- 2.1.103 The DC notes that an additional fixed fee of Rs. 5 Lakh per month has also been charged by Mr. Amit Gupta for the period from 12.07.2018 to 29.01.2019, over and above the liquidation fees, for managing the CD as a going concern, however, Mr. Amit Gupta in his second reply submitted pursuant to the IBBI circular dated 18.04.2024, had inflated the fees by extending the Rs. 5 lakh charge , from 12.07.2018 to 14.10.2019 (i.e. till the date of receipt of order of NCLT) i.e., for 15 months on account of managing the CD as a going concern.
- 2.1.104 It is important to emphasize the distinction between Compromise and Arrangement under Section 230 and running the CD as a going concern. The two processes are fundamentally different in their objectives and execution.
- 2.1.105 Further, Regulation 4(2) of the Liquidation Regulations provides specific guidelines for the liquidator's entitlement to fees. It states that in cases other than those covered under sub-regulation (1) and (1A), the liquidator is entitled to a fee, at the same rate as the resolution professional was entitled to during the Corporate Insolvency Resolution Process (CIRP), but only for the period of compromise or arrangement under Section 230 of the Companies Act, 2013.
- 2.1.106 This regulation makes it clear that the liquidator's fee entitlement under Regulation 4(2)(a) of the Liquidation Regulations applies strictly to the period during which efforts were made for compromise or arrangement under Section 230. The regulation does not extend the liquidator's fee entitlement to a period in which the liquidator has run the CD as a going concern. It must be noted that for the period when the business of CD is run as going concern, the net revenue received (after deducting the liquidation cost) is considered as realisation for the liquidator and therefore he has already been compensated for keeping the CD as going concern. Therefore, applying the same fee structure to the running of CD as a going concern is unjustified, as running the business of CD as going concern does not amount to exploring compromise or arrangement under Section 230.
- 2.1.107 Further, even Mr. Amit Gupta has not provided any legal basis for charging of fixed fee for running the business of CD as going concern. Rather, in order to avoid his liability of reverting the excess fee received by him, Mr. Amit Gupta is now claiming fixed fee for an additional time period of 10 months. Accordingly, the DC finds that in accordance with the extant regulations, Mr. Amit Gupta is entitled to the fixed fee of Rs 5 lakhs per

month only for the period of two months i.e. 29.01.2019 (date of order of NCLAT) to 25.03.2019 (the date when application before the NCLT for placing on record the failure of Compromise and Arrangement of Hindustan Dorr-Oliver Limited under Section 230 of the Companies Act, 2013 was preferred) amounting to Rs. 10 lakhs only.

#### **Ratification of fee by SCC - for exclusion of time periods and fixed fee**

2.1.108 Mr. Amit Gupta has also sought to get his fee ratified from erstwhile secured creditors of the CD. This attempt of Mr. Amit Gupta to get his fee approved from the erstwhile secured creditors (as closure report for the CD has been approved by the AA on 10.10.2023) is bad in law and reflects poorly on the intention of Mr. Amit Gupta. Firstly, no such meeting could have been conducted after the closure of liquidation proceedings as the liquidation process comes to an end after the disposal of the closure report by the AA. Secondly, the committee only of 'secured creditors' cannot grant any such approval. The 'Stakeholders Consultation Committee' to be constituted during the liquidation period consists of other creditors too such as unsecured financial creditors, workmen and employees, governments, and other operational creditors, as provided under regulation 31A of the Liquidation Regulations.

2.1.109 The DC also observed that the materials made available on record did not establish whether the said secured creditors had actually voted on the agenda of *post facto* approval of fees of Mr. Amit Gupta. In this regard, the DC had sought specific information from Mr. Gupta as to the member wise voting percentage through which the said approval was made. However, Mr. Gupta bypassed from providing specific information and replied to the query of DC by providing only the voting share of the secured creditors of the CD. This does not establish whether actually such approval was made by the secured creditors. In any case, there cannot be any SCC after the closure of the liquidation process and calling for such meeting by the IP and attending of such meeting by the erstwhile creditors is illegal and improper.

#### **Summary of excess fee in Hindustan Dorr Oliver Limited**

2.1.110 The DC observes that while calculating his fee in accordance with the Hon'ble Bombay High Court Order dated 04.04.2024, Mr. Amit Gupta had to deduct a substantial amount of Rs. 20100 lakhs as other liquidation costs (as against the earlier Rs. 99 lakhs). This would have resulted in substantial deduction in the fees of Mr. Amit Gupta. However, after re-calculating Mr. Amit Gupta has now claimed that he is entitled to Rs. 9.12 lakhs more as fees.

2.1.111 However, to circumvent his liability of paying back the excess fee availed by him, Mr. Amit Gupta has now claimed:-

- a) extra exclusion of time (a total of around thirty-three months), as against the exclusion originally claimed by him (a total of around seven months) in his reply dated 15.01.2024 submitted to the Board in response to the SCN.
- b) the fixed fee of Rs 5 lakhs per month for running the CD as going concern for the period from 12.07.2018 to 14.10.2019 i.e., approximately 15 months, which was earlier charged for a period from 12.07.2018 to 29.01.2019 i.e., approximately 5 months.

2.1.112 There is a substantial change in stand of Mr. Amit Gupta. The above grounds of additional exclusion of around 26 months and excess fixed fee as claimed by Mr. Amit Gupta are completely new and afterthought and were never raised by him in his replies to the IA, his earlier replies dated 03.04.2023 and 08.05.2023 to the earlier DC, reply to SCN dated 15.01.2024, which was prior to the pronouncement of judgment dated 04.04.2024 of Hon'ble Bombay High Court. This has resulted in fixation of excess amount of realization in the higher fee percentage slab and consequently entitlement of higher fees on realization and distribution.

2.1.113 On the basis of above discussions, the DC finds that Mr. Amit Gupta, as liquidator in the liquidation proceedings was entitled to an approximate fee of Rs 241 lakhs (inclusive of GST), as detailed in the table below:-

*(Figures in INR)*

<b>Exclusive of GST</b>				
	<b>IP to IA</b>	<b>IA</b>	<b>IP to DC</b>	<b>DC</b>
Realisation	2,31,10,830	1,41,90,063	2,04,02,000	1,23,75,744
Distribution	1,10,35,652	42,55,891	94,71,000	71,07,661
Fixed	25,00,000	0	75,00,000	10,00,000
<b>Total</b>	<b>3,66,46,481</b>	<b>1,84,45,954</b>	<b>3,73,73,000</b>	<b>2,04,83,405</b>
<b>Inclusive of GST</b>				
	<b>IP to IA</b>	<b>IA</b>	<b>IP to DC</b>	<b>DC</b>
Realisation	2,72,70,779	1,67,44,274	2,40,74,360	1,46,03,378
Distribution	1,30,22,069	50,21,951	1,11,75,780	83,87,040
Fixed	29,50,000	0	88,50,000	11,80,000
<b>Total</b>	<b>4,32,42,848</b>	<b>2,17,66,226</b>	<b>4,41,00,140</b>	<b>2,41,70,418</b>

2.1.114 It is pertinent to mention that Mr. Amit Gupta in his reply to the DC has submitted that he has in actual charged fees of Rs. 366 lakhs (inclusive of GST Rs 432 lakhs) i.e. Rs.

341 lakhs as Liquidators fees and Rs. 25 Lakhs for the period 12.07.2018 till 29.01.2019.

2.1.115 The DC notes that the conduct of Mr. Amit Gupta in representing before the DC that his fee was calculated on the basis of certain exclusions of time, which in fact was not considered by him during initial calculation done by him while availing his fee, shows his deliberate attempt to bypass the effect of order of Hon'ble Bombay High Court on his fee as liquidator and entitle himself of undue gain in form of excess fee. This needs to be viewed sternly.

2.1.116 To summarize, the DC finds that Mr. Amit Gupta, in order to avoid his liability of reverting the excess amount of approximate Rs. 190 lakhs as excess fee availed by him, has now substantially altered the parameters for calculation of fee, in contradiction to the parameters earlier taken by him for ensuring his unjust enrichment by availing excess fees continues. Further, he has claimed exclusions of time on account of Covid, basis the order of Hon'ble Supreme Court which clearly operates in a different field instead of taking exclusion in terms of regulation 47A of Liquidation Regulations dealing with exclusion of period from process timeline in Covid situation.

## **G. HDO Technologies Limited**

### **Submissions of Mr. Amit Gupta**

2.1.117 Mr. Amit Gupta has claimed exclusion of period of stay on the liquidation process as per the order of the Hon'ble NCLAT from 12.07.2018 till 29.01.2019, followed by the period when Section 230 process was carried out in compliance of the Hon'ble NCLAT's order dated 29.01.2019, which continued till 29.01.2020 when the Hon'ble NCLT finally passed the order allowing sale of the assets of the Corporate Debtor.

2.1.118 Mr. Amit Gupta further submitted that the exclusion of Covid period from 15.03.2020 to 28.02.2022 was taken because various challenges were faced during this period in conducting the liquidation process of the CD which was a going concern. Mr. Amit Gupta also submitted that the stakeholders in the SCC meeting held on 18.04.2024 has approved the exclusion of such time for the purpose of calculation of the fee of the liquidator.

2.1.119 Mr. Amit Gupta in his further reply to the DC has submitted that the revised calculation of the fees has been carried out as per IBBI circular dated 18.04.2024 which has been approved by the secured creditors, works out to Rs 392.88 Lakhs, while the actual fees charged is Rs. 323.33 Lakhs. Thus, the actual fees charged is short by Rs 69.55 Lakhs as compared to fees calculated basis the IBBI Circular dated 18.04.2024. Mr. Amit Gupta also submitted that the liquidation process stood closed on 19.08.2022 and the secured creditors will have difficulty in now debiting their recovery account to remit any amount and hence, Mr. Amit Gupta is not claiming the shortfall amount of Rs. 69.55 Lakhs.

#### **Analysis by the DC**

2.1.120 The issue with respect to fees in the matter of liquidation of HDO Technologies is similar to the issues as discussed above in the matter of liquidation of HDO Limited. Therefore, the analysis of issues as done in the matter of HDO Limited is applicable in the present CD also. For the sake of convenience, the data which is different in HDO Technologies Limited is highlighted in bold.

2.1.121 The DC notes that it is alleged in the SCN dated 04.12.2023 that Mr. Amit Gupta has charged excess fee of **Rs. 1,69,22,612/-** in the liquidation proceedings of HDO Technologies Limited. On perusal of the inspection report it is observed that such excess fee was on account of following:

- a) Mr. Amit Gupta has considered bank balance of **Rs. 252 lakhs** as realization which in the opinion of IA could not have been considered as realization because of it being liquid asset,
- b) Mr. Amit Gupta had deducted only Rs. 18.77 lakhs as liquidation cost as against Rs. 4,945 lakhs, and the cost of running the business of CD as going concern was not included in the liquidation cost,
- c) Mr. Amit Gupta had considered payment of unpaid CIRP costs and Liquidation costs including cost of running business for the purpose of calculating fee on distribution.
- d) There was a difference in the total realization / distribution for each period as per receipts and payments account vis-à-vis the ones considered for calculation of fee by

Mr. Amit Gupta.

It is observed that the main component resulting in excess fee charged by Mr. Amit Gupta is with respect to inclusion of only Rs 18.77 lakhs as liquidation cost as against **Rs 4,945 lakhs** (as calculated by the IA).

2.1.122 In his reply dated 15.01.2024 to the Show Cause Notice, Mr. Amit Gupta has justified the charging of his fee on similar grounds as taken by him in the matter of Hindustan Dorr Oliver as mentioned above. For the sake of brevity, the same is not being reiterated over here.

2.1.123 The Hon'ble High Court of Bombay had examined these contentions of Mr. Amit Gupta in its order dated 04.04.2024 as mentioned in paras 2.1.13 and 2.1.14 above. In light of the judgment dated 04.04.2024 of the Hon'ble Bombay High Court and in compliance with the IBBI circular dated 18.04.2024, Mr. Amit Gupta has recalculated his fee and has now made following substantial modification in parameters of calculation of his fee:

- a) Mr. Amit Gupta has now considered amount of **Rs. 4,914 lakhs** as the liquidation cost by including the cost of running business of CD as going concern as liquidation cost
- b) the amount paid for CIRP cost and liquidation cost was excluded from the amount distributed.
- c) the time of first six months has now been taken from 25.06.2018 to 20.06.2022. The exclusion of time from 25.06.2018 to 29.01.2019 has been taken on the basis of stay order granted by the NCLAT. Further, exclusion of time from 29.01.2019 to 16.01.2020 has been claimed on the ground that the order from NCLT for sale of assets was received on 16.01.2020 which was required as per the directions of NCLAT. Furthermore, the exclusion from 15.03.2020 to 28.02.2022 has been claimed on the ground of COVID 19 read with Regulation 47A of the Liquidation Regulations.
- d) Amount of Rs. 3 lakhs per month aggregating to **Rs. 54.80 lakhs** have been charged for the period from 12.07.2018 to 16.01.2020 i.e., approximately 18 months instead

of **Rs.15 lakhs** which was earlier charged for the period from 12.07.2018 to 29.01.2019.

2.1.124 Basis the above re-calculation, Mr. Amit Gupta has claimed that the actual fee charged by him is short by **Rs. 59 lakhs** as compared to the fees calculated in accordance with the IBBI circular dated 18.04.2024. The above-said parameters taken by Mr. Amit Gupta while re-calculating his fee are being examined in the following paragraphs in line with the discussions already made on these issues in the matter of Hindustan Dorr Oliver Limited in earlier paragraphs.

### **Exclusion of periods**

2.1.125 It is noteworthy to mention that the orders of Adjudicating Authority in respect of liquidation of both the Corporate Debtors - Hindustan Dorr Oliver Limited and HDO Technologies, was challenged before the NCLAT, which were disposed by NCLAT collectively *vide* its order dated 29.01.2019. Therefore, the exclusion of time period from 12.07.2018 to the date of order of 29.01.2019 on account of pendency of appeal with NCLAT is applicable in the present CD also.

2.1.126 The DC notes that Mr. Amit Gupta in his reply to IA and re-iterated in his reply to SCN dated 15.01.2024 that he had taken the period of first six months after considering the exclusion from 12.07.2018 to 29.01.2019 as granted by the NCLAT in its order dated 29.01.2019 and accordingly, it is evident that Mr. Amit Gupta in his reply to IA had taken liquidation commencement date as 29.01.2019 for the purpose of calculation of his fee. The DC further notes that Mr. Amit Gupta in his reply to IA had for the period of 'first 6 months' considered gross realization amounting Rs.4353 lakhs and liquidation cost amounting Rs. 0.8 lakhs resulting in net realization of Rs.4352 lakhs, basis which the Liquidator fee on realization for the first six months for the period from 26.06.18 to 28.07.19 aggregates to Rs. 54.29 lakhs.

2.1.127 The DC, while considering the period of first six months in the Liquidation of M/s. HDO Technologies Limited after considering the NCLAT order dated 29.01.2019 is inclined to consider the exclusion from 12.07.2018 to 29.01.2019 as granted by the NCLAT in para 9 its order dated 29.01.2019 and also as claimed by the liquidator while submitting his reply to IA.



- 2.1.128 With respect to exclusion of time on account of compromise or arrangement, the DC notes from the dates and events in the liquidation proceedings of HDO Technologies, as submitted by Mr. Amit Gupta in his progress reports, that on 15.02.2019, EoI inviting Scheme of Compromise and Arrangement from the sponsors was published, however, no EoI was received. Consequently, on 25.03.2019, Mr. Amit Gupta had preferred an application before the NCLT for placing on record the failure of Compromise and Arrangement of HDO Technologies Limited under Section 230 of the Companies Act, 2013.
- 2.1.129 Accordingly, similar to the case of Hindustan Dorr Oliver Limited, the DC in this matter also is inclined to grant exclusion of time period from 12.07.2018 to 29.01.2019 on account of specific order of NCLAT and further exclusion from 30.01.2019 to 25.03.2019 on account of Compromise and Arrangement in terms of Regulation 2B(2) of Liquidation Regulations even though the same was not claimed by Mr. Amit Gupta in his submission to IA. This exclusion is being considered despite the fact that Mr. Amit Gupta had in fact, realized amount of Rs. 1,684 lakhs during the period from 26.06.2018 to 25.03.2019.
- 2.1.130 The DC further notes that Mr. Amit Gupta in his reply to DC, has now sought to exclude additional time periods from 29.01.2019 to 16.01.2020 on account of NCLT order and further time period from 15.03.2020 to 28.02.2022 on ground of outbreak of COVID 19 pandemic resulting into the period of first six months from 25.06.2018 to 20.06.2022, next six months from 21.06.2022 to 20.12.2022.
- 2.1.131 The DC observes that Mr. Amit Gupta has realised substantial amounts of Rs. 4,911 lakhs during the period from 26.06.2018 to 28.01.2020 out of total cumulative realizations of Rs.13,800 lakhs, which constitutes 36% of the total realizations. Accordingly, in view of the fact that 36% of the total realization were made during the period from 26.06.2018 to 28.01.2020, granting exclusion from 29.01.2019 to 16.01.2020 on account of NCLT order dated 16.01.2020 cannot be accepted by the DC. Further, since exclusion of the period of compromise and arrangement is provided in Regulation 2B(2) of the Liquidation Regulations, the same is being considered despite the fact that a total realisations of Rs. 49.11 lakhs during the period from 26.06.2018 to 28.01.2020 has been made.

2.1.132 The DC notes that similar to Hindustan Dorr Oliver Limited, in this case also Mr. Amit Gupta has sought to rely on judgments of Hon'ble Supreme Court. The non-applicability of such judgments is already explained in earlier paras of this order. Further, during this period of exclusion claimed by Mr. Gupta, he had undertaken various substantial actions for liquidation of Corporate Debtor, e.g. on perusal of the progress report for the period ending 31.12.2022, it is observed that on 09.09.2020 public announcement for auction of assets was made by Mr. Amit Gupta. In the present facts and circumstances, where Mr. Amit Gupta was able to sell the assets during liquidation period, it is improper for Mr. Amit Gupta to take cover of above-mentioned Regulation 47A in order to avail himself of excess fee by undertaking blanket exclusion of COVID 19 period for an extended period from 15.03.2020 to 28.02.2022. As analysed above in the case of Hindustan Dorr Oliver Limited, the applicability of Regulation 47A cannot be made in such manner.

2.1.133 Accordingly, similar to the case in Hindustan Dorr Oliver Limited, in the present CD also, Mr. Amit Gupta is not entitled to claim a blanket exclusion for the entire period from 12.07.2018 to 28.02.2022 in the calculation of his fees. Further, Mr. Amit Gupta cannot change parameters for calculation of his fee, just to avoid his liability of paying back the excess fee received by him.

2.1.134 After considering the NCLAT order dated 29.01.2019, Liquidation Regulations and the outbreak of COVID-19 in year 2020 and second wave of COVID in year 2021 and considering the realization made either *via* running the CD as going concern or sale of assets or other liquidation activities conducted during the given period, the DC had considered the same timelines as done in the matter of Hindustan Dorr Oliver Ltd -

Period considered by DC		Rationale for exclusion
First 6 months	26.06.18-24.09.19	a) Exclusion of 12.07.2018 to 29.01.2019 on account of NCLAT order dated 29.01.2019 b) Exclusion of 29.01.2019 to 25.03.2019 in terms of Regulation 2B(2) of Liquidation Regulations. <b>Total Exclusion period - 26.06.2018 to 25.03.2019</b>
Next 6 months	01.10.19-24.03.20	
Next 1 year	25.03.20-30.09.21	a) Exclusion of 25.03.2020 to 31.08.2020 5 months on account of lockdown imposed during the first wave of COVID -19 pandemic. b) Exclusion of 01.06.2021 to 30.06.2021 lockdown imposed by the Maharashtra Government.
Thereafter	01.10.21 onwards	

2.1.135 It is pertinent to mention that in the instant CD also, Mr. Amit Gupta has not provided the granular details of realization and distribution, even after repeated requests. Subsequently, in absence of details, the DC had extracted the data with respect to realizations and liquidation cost from the progress reports submitted by Mr. Amit Gupta to the Board in similar manner as done in the case of Hindustan Dorr Oliver Limited, as follows:

<b>Liquidation Period considered by DC</b>		<b>Period considered by DC for taking the data of realization and liquidation cost</b>
First 6 months	26.06.2018 to 24.09.2019	26.06.2018 to 30.09.2019
Next 6 months	01.10.2019 to 24.03.2020	01.10.2019 to 31.03.20
Next 1 year	25.03.2020 to 30.09.2021	01.04.20 to 30.09.21
Thereafter	01.10.2021 onwards	01.10.2021 onwards

2.1.136 In the instant CD also, Mr. Amit Gupta is getting additional advantage of few days in particular time period slabs. Further, he is also getting double benefit of Regulations 4(2)(a) and (b) of Liquidation Regulations, by claiming fixed fee and fee in accordance with the table also, for the same time period. The details of time periods considered by Mr. Amit Gupta, the IA and now DC is as follows:

<b>Considered by</b>	<b>First six months</b>	<b>Next six months</b>	<b>Next 1 year</b>	<b>Thereafter</b>
IP in his earlier reply to IA / DC	26.06.18–28.07.19	29.07.19-28.01.20	29.01.20 - 31.03.21	01.04.21 - 19.07.22
IA	26.06.18–31.12.18	01.01.19-30.06.19	01.07.19 - 30.06.20	01.07.20 - 30.09.22
IP in reply dated 13.07.2024 to DC	25.06.18-20.06.22	21.06.22-20.12.22	NA	NA
DC	26.06.2018-24.09.19	25.09.19-24.03.20	25.03.20 - 30.09.21	01.10.21- 16.12.22*
Reason for DC's consideration	Same as claimed by IP in his reply to IA in accordance with NCLAT order and additional period for compromise and arrangement from 29.01.19 to 25.03.19	Next six months	25.03.20 to 31.08.20 and 01.06.2021 to 30.06.2021 excluded for lock-down period as per Regulation 47A.	Residual period
Period considered for realisation and distribution in view of availability of data	26.06.18 to 30.09.19	01.10.19 to 31.03.20	01.04.20 to 30.09.21	01.10.21 onwards

\*AA order dated 16.12.2022 directing the dissolution of M/s. HDO Technologies Limited.

2.1.137 On the basis of above time period, the DC has calculated the fee that could have been claimed by Mr. Amit Gupta for the realization and distribution, in accordance with the realisations made by him as follows:

*Amount in INR(lakhs)*

<b>Details of Realisation in the liquidation of HDO Technologies Limited</b>							
Stage	Time period	Op. Bal+ FD + BG Recov ery	Proceeds from Sale of Assets (Auction & Private Sale)	Other Realisati on - Going concern sale	Gross Realisat ion	Liquida tion Cost	Total Realised net of Liquidati on Cost
		(A)	(B)	(C)	(D)=A+ B+C	(E)	(F)= D-E
<b>First Six Months</b>							
<b>IP to IA</b>	26.06.18-28.07.19	244	0	4,110	4,353	1	4,352
<b>IA</b>	26.06.18-31.12.18	0	0	1,007	1,007	1,125	-118
<b>IP to DC</b>	25.06.18-20.06.22	13,792	0	0	13,792	4,864	8,928
<b>DC</b>	26.06.18-31.12.20	<b>4,423</b>	<b>0</b>	<b>0</b>	<b>4,423</b>	<b>2,633</b>	<b>1,791</b>
<b>Next Six Months</b>							
<b>IP to IA</b>	29.07.19-28.01.20	0	0	558	558	0.08	558
<b>IA</b>	01.01.19-30.06.19	0	0	1,005	1,005	1,039	-34
<b>IP to DC</b>	21.06.22-20.12.22	20	0	0	20	19	1
<b>DC</b>	29.07.19-28.01.20	<b>545</b>	<b>0</b>	<b>0</b>	<b>545</b>	<b>753</b>	<b>-209</b>
<b>Next one year</b>							
<b>IP to IA</b>	29.01.20-31.03.21	0	7,560	960	8,520	18	8,502
<b>IA</b>	01.07.19-30.06.20	0	0	2,869	2,869	921	1,948
<b>IP to DC</b>	NA	0	0	0	0	0	0
<b>DC</b>	29.01.20-31.03.21	<b>1,063</b>	<b>7,606</b>	<b>0</b>	<b>8,151</b>	<b>1,781</b>	<b>6,370</b>
<b>Thereafter</b>							
<b>IP to IA</b>	01.04.21-19.07.22	0	46	326	372	0	372
<b>IA</b>	01.07.20-30.09.22	0	7,607	1072	8,679	1,861	6,817
<b>IP to DC</b>	NA	0	0	0	0	0	0
<b>DC</b>	01.04.21-16.12.22	<b>174</b>	<b>0.685</b>	<b>0</b>	<b>175</b>	<b>37</b>	<b>137</b>
<b>Cumulative</b>							
<b>IP to IA</b>	26.06.18-19.07.22	N.A	N.A	N.A	13,804	19	13,785
<b>IA</b>	26.06.18-30.09.22	N.A	N.A	N.A	13,559	4,946	8,614
<b>IP to DC</b>	25.06.18-20.12.22	N.A	N.A	N.A	13,812	4,883	8,928
<b>DC</b>	26.06.18-16.12.22	N.A	N.A	N.A	<b>13,812</b>	<b>4,883*</b>	<b>8,928</b>
<b>Notes</b>	<b>Note 1</b>	<b>Note 2</b>	<b>Note 3</b>	<b>Note 4</b>	<b>Note 5</b>	<b>Note 6</b>	
<p>* The aggregate of liquidation cost amounting Rs.48,83,31,816 as arrived by DC is equivalent to the aggregate of liquidation cost as submitted by IP to DC.</p> <p>**As evident from Column F, the net realizations for the period 'next 6 months' 29.07.2019 -28.01.20 is in negative i.e, Rs.2,08,93,905. Accordingly, the same stands adjusted from realization for the 'next one year' period i.e., 01.04.2020 to 30.09.2021. Resultantly the net realization for next one year period stands as Rs.66,79,02,331/- (Rs. 68,81,96,235 – Rs.2,08,93,905).</p>							

**Notes: Assumptions/Figures taken by DC for arriving at the calculation**

1. **Time Period for calculation of fee** – Considered by DC after taking NCLAT order dated 29.01.2019 and compromise and arrangement period from 29.01.2019 to 25.03.2019 into consideration.
2. **Opening Balance and Fixed Deposit Closure** - Considered as given by IP in the progress reports.
3. **Proceeds of Sales of Assets (Auction) etc.-** Considered as given by IP in the progress reports.
4. **Going Concern Sale Proceeds** -Considered as given by IP in the progress reports.
5. **Gross Realisation** – The aggregate of gross realisation amounting Rs. 1,38,11,55,733 as arrived by DC is equivalent to the aggregate of gross realisation as submitted by IP to DC.
6. **Other Liquidation Cost** - Considered as given by IP in the progress reports.

2.1.138 The details of distribution made is as under:

Period	First six months	Next six months	Next one year	Thereafter	Cumulative
<b>Time Period</b>					
IP to IA	26.06.18–28.07.19	29.07.19-28.01.20	29.01.20 - 31.03.21	01.04.21 - 19.07.22	26.06.18-19.07.22
IA	26.06.18–31.12.18	01.01.19-30.06.19	01.07.19 - 30.06.20	01.07.20 - 30.09.22	26.06.18 - 30.09.22
IP to DC	25.06.18-20.06.22	21.06.22-20.12.22	NA	NA	26.06.18 - 20.12.22
DC	26.06.18-31.12.20	29.07.19-28.01.20	29.01.20 - 31.03.21	01.04.21- 19.07.22	26.06.18 -16.12.22
<b>Amount</b>					
IP to IA	3,789.85	691.21	7,625.54	1,359.03	13,465.64
IA	0	0	1500	6,848	8,348.39
IP to DC	8,203.92	144.47	N.A	N.A	8,348.39
DC	1500	0	6,702	146	8348.39

2.1.139 Based on the above amounts of realisation and distribution following fees are worked out as per the table:

- a) Fee on realization – Rs. 1,22,92,777/-
- b) Fee on distribution – Rs. 58,97,278

**Claim of fixed fee for excess periods**

2.1.140 In this case also, similar to Hindustan Dorr Oliver Limited, Mr. Amit Gupta has charged a fixed fee of Rs. 3 lakhs per month for approximately 5 months, totaling Rs. 15 Lakhs for running HDOT as a going concern, in addition to the liquidation fees of Rs. 305.63 lakhs. Furthermore, in his second reply, Mr. Amit Gupta has now revised his fees, charging Rs. 3 lakhs per month for 18 months and 8 days, amounting to Rs. 54.80 lakhs, over and above the liquidation fees of Rs. 328.22 lakhs.

2.1.141 As already examined in the matter of Hindustan Dorr Oliver Limited, the DC finds that Mr. Amit Gupta is entitled to the fixed fee of Rs 3 lakhs per month only for the period of two months i.e. 29.01.2019 to 25.03.2019. Further, in terms of regulation 2B(2) of the Liquidation Regulations, such time period is also excluded from the liquidation period.

#### **Ratification of fee by SCC - for exclusion of time periods and fixed fee**

2.1.142 Further, similar to his conduct in Hindustan Dorr Oliver Limited, in this CD also, Mr. Amit Gupta has tried to get his fee approved by the erstwhile secured creditors of the CD which is improper and bad in law. The Corporate Debtor had already been dissolved *vide* NCLT Order dated 16.12.2022. Such an act of Mr. Amit Gupta has already been examined in para 2.1.108 to 2.1.109 above.

#### **Summary of excess fee in HDO Technologies**

2.1.143 The DC observes that in this Corporate Debtor also, while calculating his fee in accordance with the Hon'ble Bombay High Court Order dated 04.04.2024, Mr. Amit Gupta had to deduct a substantial amount **of Rs 4,900 lakh** as other liquidation costs (as against the earlier Rs. 18.77 lakhs). This would have resulted in substantial deduction in the fees of Mr. Amit Gupta.

2.1.144 However, in this case also, to circumvent his liability of paying back the excess fee availed by him, Mr. Amit Gupta has now claimed:

- a) extra exclusion of time (a total of around forty-two months), as against the exclusion originally claimed by him (a total of around seven months) in his reply dated 15.01.2024 submitted to the Board in response to the SCN.
- b) the fixed fee of Rs 3 lakhs per month aggregating to Rs. 54.80 lakhs for running the CD as going concern for the period from 12.07.2018 to 16.01.2020 i.e., approximately 18 months 8days, which was earlier charged for a period from 12.07.2018 to 29.01.2019 i.e., approximately 5 months.

2.1.145 In this case also, here is a substantial change in stand of Mr. Amit Gupta. The grounds of additional exclusion of around 35 months claimed by Mr. Gupta is completely new and afterthought and was never raised by him in his earlier replies dated 03.04.2023 and

08.05.2023 to the earlier DC, his reply dated 15.01.2024 to present SCN, which was prior to the coming of above-mentioned judgment of Hon'ble Bombay High Court. This has resulted in fixation of excess amount of realization in the higher fee percentage slab and consequently entitlement of higher fees on realization and distribution.

2.1.146 On the basis of above information, the DC finds that Mr. Amit Gupta, as liquidator in the liquidation proceedings was entitled to an approximate of Rs 224 lakhs (inclusive of GST), as detailed in the table below:

<b>EXCLUSIVE OF GST</b>				
	<b>IP to IA</b>	<b>IA</b>	<b>IP to DC</b>	<b>DC</b>
Realisation	1,76,68,733	77,91,860	1,87,85,000	1,25,11,193
Distribution	82,32,381	37,68,099	90,30,000	58,97,278
Fixed	0	0	54,80,000	6,00,000
<b>Total</b>	<b>2,59,01,114</b>	<b>1,15,59,959</b>	<b>3,32,95,000</b>	<b>1,90,08,471</b>

<b>INCLUSIVE OF GST</b>				
	<b>IP to IA</b>	<b>IA</b>	<b>IP to DC</b>	<b>DC</b>
Realisation	2,08,49,105	91,94,395	2,21,66,300	1,47,63,208
Distribution	97,14,209	44,46,357	1,06,55,400	69,58,787
Fixed	0	0	64,66,400	7,08,000
<b>Total</b>	<b>3,05,63,314</b>	<b>1,36,40,752</b>	<b>3,92,88,100</b>	<b>2,24,29,996</b>

2.1.147 It is pertinent to mention that Mr. Amit Gupta in his reply to the DC has submitted that he has in actual charged fees of Rs. 274 lakhs (inclusive of GST Rs 323 lakhs).

2.1.148 Similar to as examined in the earlier CD – Hindustan Dorr Oliver Limited, the conduct of Mr. Amit Gupta in changing the parameters of calculation of fee to avoid payment of additional fee is unethical and short of professional conduct.

2.1.149 To summarize, the DC notes that Mr. Amit Gupta, in order to avoid his liability of reverting the excess amount of approximate Rs. 101 lakhs as excess fee availed by him, has now substantially altered the parameters for calculation of fee, in contradiction to the parameters earlier taken by him. Further, in this case also, he has claimed exclusions of time on account of Covid, basis the order of Hon'ble Supreme Court which clearly operates in a different field instead of taking exclusion in terms of regulation 47A of Liquidation Regulations dealing with exclusion of period from process timeline in Covid situation.

## **I. Kohinoor Diamonds Private Limited**

### **Submissions of Mr. Amit Gupta**

2.1.150 Mr. Amit Gupta submitted that exclusion of 575 days i.e. 13.11.2018 to 10.06.2020 taken due to delay in relinquishment of security interest by the Financial Creditor and the said condition was part of the quotation of the fees as well as condition of his appointment. Mr. Amit Gupta also submitted that the SCC in its meeting dated 01.07.2024 had also approved the given exclusion.

2.1.151 Mr. Amit Gupta further submitted that the revised calculation of the fees has been carried out as per the IBBI Circular dated 18.04.2023 and the amount of excess fees charged inadvertently due to lack of clarity is Rs 1,19,334 (inclusive of GST). Mr. Amit Gupta also submitted that the said amount has been transferred to the liquidation account by way of issuance of cheque and deposited to the liquidation account.

### **Analysis of the DC**

2.1.152 The DC notes that it is alleged in the SCN that Mr. Amit Gupta has charged excess fee of Rs. 7,62,235/- in the liquidation proceedings of CD-8. In compliance with the IBBI circular dated 18.04.2024, Mr. Amit Gupta has recalculated his fee and submitted that he had charged excess fee of Rs. 1,19,334/-.

2.1.153 The DC further notes from perusal of the inspection report that apart from consideration of opening bank balance in realization, there were two other factors due to which there was excess fee computed by Mr. Amit Gupta. Firstly Mr. Amit Gupta had considered payment of unpaid CIRP costs and Liquidation cost as distribution for the purpose of calculating his fee on distribution. Further, Mr. Amit Gupta has considered lesser amount i.e., Rs. 1,31,004/- as the liquidation cost, while the actual liquidation cost as examined by the IA, was Rs. 22,69,972/-. However, now Mr. Amit Gupta while re-calculating his fees, has considered a higher amount of Rs. 24,17,742.80/- as the liquidation cost. Further, Mr. Gupta has also deducted the distribution of unpaid CIRP cost and Liquidation cost from the ambit of distribution for the purpose of calculation of his fee.

2.1.154 Secondly, Mr. Gupta has extended the time period of “first six months”. As per the IA,



the time period should have been from 13.11.2018 to 13.05.2019, while Mr. Gupta has considered the same from 13.11.2018 to 10.12.2020 (a total of around 23 months). Mr. Amit Gupta, however, on his reply on SCN has submitted that he had actually considered 'first six months' from 11.06.2020 to 10.12.2020 on the ground that he had the belief that he was appointed on the basis of the fee quote/mandate letter submitted by him to a particular financial creditor whereby he had expressly mentioned that the time period taken in relinquishment of security interest will be excluded. However, on perusal of the minutes of the 5<sup>th</sup> meeting of the COC of the CD-\$, it is observed that the issue of appointment of Mr. Amit Gupta as liquidator was discussed and nowhere the CoC had decided to exclude any time period for the purpose of calculation of fee of Mr. Amit Gupta. In fact, the fee of Mr. Amit Gupta was fixed in accordance with regulation 4(3) of the Liquidation Regulations. The relevant excerpts of the meeting are as follows:

**12. To discuss the appointment of Liquidator for the Corporate Debtor along with his remuneration**

*The Chairman informed the Committee that pursuant to direction of COC he would be filing an application to Hon'ble NCLT Ahmedabad Bench for liquidation of corporate debtor under section 33 of the IBC, 2016. On request of the COC RP and his team made presentation on liquidation. COC members requested RP to provide his quote. On which exiting RP Mr. Anshuman Chaturvedi, informed the COC that he had already quoted for the same while bidding for Expression of Interest at the meeting held for his appointment. He further informed the members that he had proposed his fee to act as liquidator as per the table given in Regulation 4(3) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. He further informed the members that in order to maintain the cash flows, he would draw a monthly fee of Rs. 2.50 Lakhs plus GST which would be adjusted against fees of Regulation 4(3) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The members thereafter invited Mr. Amit Gupta, an Insolvency Professional to give his presentation and proposal of fee to act as liquidator of the Corporate Debtor. Mr. Amit Gupta gave his presentation and replied to queries of members of COC. Mr. Amit Gupta proposed the fees as per Regulation 4(3) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 without any monthly withdrawal.*

*COC requested RP to negotiate on his fee specifically relating to proposed monthly*

*withdrawal. RP explained the members that a monthly cash flow needs to be maintained for the purpose of continue assignment under liquidation of corporate debtor. COC after a brief discussion proposed the name of Mr. Amit Gupta, Insolvency Professional as liquidator of Corporate Debtor and directed RP to take vote of members for the same by way of a resolution. The Committee noted the same.*

2.1.155 Further, it is also observed from the perusal of the progress reports submitted by Mr. Amit Gupta to the AA, that he as liquidator. he took various steps for sale of assets of the Corporate Debtor such as follows:

<b>Date</b>	<b>Action taken</b>
20.11.2018	Intimation of initiation of Liquidation to the valuers and seeking revised quotes
24.01.2019 & 29.01.2019	Appointment of Registered Valuer
23.05.2019	Relinquishment of security interest of the assets of the Corporate Debtor by IDBI Bank, Bank of India, Standard Chartered, EXIM Bank and Bank of Maharashtra

The above facts contradict the assertion of Mr. Amit Gupta that the time period till the time security interest was not realized by the financial creditors, should be excluded for the purpose of calculating his fee as apparently for such time period he could not have carried on with liquidation process. In the present facts and circumstances, Mr. Amit Gupta is unfairly extending the time period of time-slab of ‘first six months’ to avail himself of larger amounts of realisation and distribution under the highest rate of fee resulting in charging of excess fee.

2.1.156 The DC notes that the manner in which the fee of the liquidator can be decided is specifically provided under Regulation 4 of the Liquidation Regulations which cannot be altered or modified by a liquidator to suit his own needs. Even the concurrence of a financial creditor would not allow the liquidator to modify the terms of Regulation 4. The terms used in Regulation 4 is not open to interpretation by a liquidator to suit his own needs. Therefore, Mr. Amit Gupta cannot expand the time period of “first six months” by **seven** more months to mean “first seven months”, for the period of his fee calculation, which has the effect of causing him pecuniary benefits.

2.1.157 Accordingly, the DC finds that Mr. Amit Gupta has wrongly excluded the time period of 575 days from 13.11.2018 to 10.06.2020 on account of delay in relinquishment of security interest by the Financial Creditor. Therefore, on the basis of the above discussion, the period of “first six months” from 11.06.2020 to 10.12.2020 as considered by Mr. Amit Gupta in the liquidation of the given CD cannot be accepted by the DC. Therefore, DC is of the view that Mr. Amit Gupta has charged an excess fee of Rs. 7,62,235 and has tried to secure his unjust enrichment by excluding the period of delay in relinquishment of security, in contradiction to the terms of fee fixed by the CoC as evident from the quoted CoC minutes.

## **2.2 Contravention II: In the matter of Padmavati Wires and Cables Private Limited – Issue regarding reduction in reserve price**

2.2.1 It was observed that Mr. Amit Gupta had issued an auction notice dated 19.04.2021 for sale of the asset of the CD which was in the nature of land and building located at Gut No. 194, Tansa Farms, Wade at a reserve price of Rs. 43,83,500/-. On failure of the said auction process, Mr. Amit Gupta issued another auction notice on 14.05.2021 by reducing the reserve price by 15.25% to Rs. 37.15 lakhs.

2.2.2 The SCN refers to Regulation 33 of the liquidation regulations read with Schedule I which deals with the mode of sale provides as under:

### ***“Regulation 33: Mode of Sale***

*(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.*

#### ***SCHEDULE I***

##### ***MODE OF SALE***

...

*(4B) Where an auction fails at reduced price under clause (4A), the reserve price in subsequent auctions may be further reduced by not more than ten percent at a time.”*

2.2.3 It was, thus, noted that while clause 4B of Schedule I of the Liquidation Regulations provides for reduction of reserve price in subsequent auction by 10%, Mr. Amit Gupta reduced the reserve price by about 15.25% in subsequent auction.

2.2.4 In view of the above, the Board was of the *prima facie* view that Mr. Amit Gupta has contravened section 208(2)(a) & (e) of the Code, regulation 33 read with clause 4B of Schedule I of the Liquidation Regulations, regulation 7(2)(a) & (h) of the IP Regulations read with Clauses 1, 2 and 14 of the Code of Conduct.

#### **Submissions by Mr. Amit Gupta**

2.2.5 Mr. Amit Gupta submitted that the Liquidation of Padmavati Wires commenced on 22.02.2018. Notably, Schedule I of Liquidation Regulations (prior to amendment) (Unamended Regulation) was applicable to the said auction as per IBBI's Circular No. IBBI/LIQ/024/2019 dated 26.08.2019.

2.2.6 Mr. Amit Gupta further submitted that under the unamended regulations, a liquidator was allowed to sell the assets of the Corporate Debtor at reserve price, which shall be the value of the assets arrived at in accordance with Regulation 34 of CIRP Regulations and such valuation shall not be more than six months old. However, as per Schedule I of the unamended regulations, if an auction fails at such price, a liquidator was allowed to reduce the price of the asset up-to seventy-five per cent of such value to conduct subsequent auctions. Since as per the plain reading of the IBBI Circular, the unamended regulations was applicable, the Liquidator following the provision of unamended regulations and basis its assessment of facts and circumstances, reduced the reserve price by 15.25% in the auction dated 31.05.2021. Further, the IBBI Circular was only withdrawn by Circular dated 06.05.2022 and hence cannot be made applicable to the auction conducted on 31.05.2021.

2.2.7 Mr. Amit Gupta further submitted that the asset could not be sold even at such reduced price and he had to therefore reduce the price further by 10%. Thereafter, the auction was successful on 29.06.2021. Mr, Amit Gupta pleaded that no malice or wrongdoing can be attributed to him in reducing the reserve price by 15.25% given the prevailing facts and circumstances since even at such reduced price the auction was not successful and there were no buyers for the asset. Thus, no loss can be said to have occurred to the Corporate Debtor on account of such reduction of price.

#### **Analysis and Findings by the DC**

2.2.8 The DC notes that the IBBI circular dated 26.08.2019 made the applicability of the

amendment to the Liquidation Regulations brought out on 25.07.2019 only to the liquidation processes commencing on or after 25.07.2019. The relevant paras of the Circular are as follows:

*“The Insolvency and Bankruptcy Board of India notified the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 (Amendment Regulations) on 25th July, 2019. They came into force on the date of their publication in the Official Gazette, that is, on 25th July, 2019.*

*2. The stakeholders have expressed a difficulty in applying the Amendment Regulations to a liquidation process, which commenced before 25th July, 2019. It is reiterated that the provisions of the Amendment Regulations are not applicable to the liquidation processes, which had commenced before coming into force of the said Amendment Regulations and that they are applicable only to liquidation processes, which commenced on or after 25th July, 2019.”*

2.2.9 The said circular was withdrawn by IBBI through another Circular No. IBBI/LIQ/2/2022 dated 06.05.2022. The DC further notes that Clause 4 of Schedule I of the Liquidation Regulations, prior to the 25.07.2019 amendment read as follows:

*“(4) The reserve price shall be the value of the asset arrived at in accordance with Regulation 34. Such valuation shall not be more than six months old. However, in the event that an auction fails at such price, the liquidator may reduce the reserve price up to seventy five per cent of such value to conduct subsequent auctions.”*

2.2.10 In light of the above-mentioned provisions, the DC accepts the reply of Mr. Amit Gupta and finds that the allegations mentioned in the SCN in this regard is not upheld.

### **2.3 Contravention III: In the matter of Nimit Steels and Alloys Private Limited– Issue regarding sale of stock without auction**

2.3.1 It was observed that Mr. Amit Gupta had sold 71.03 tonnes of stock for an amount of Rs. 25,96,592/- without conducting the auction. In his reply to the draft inspection report to the IA, Mr. Amit Gupta had informed that the process of selling stock was initiated during the CIRP period but before the RP could sell the stock, liquidation process had commenced.

2.3.2 The SCN has referred to the relevant provisions in the Liquidation Regulations in this

regard provide as under:

**“Section 36:**

***Liquidation Estate***

...

*(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following:*

...

*(c) tangible assets, whether movable or immovable;*

***Regulation 33: Mode of Sale***

*(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.”*

2.3.3 It was thus, noted that 71.03 tonnes of stocks formed part of liquidation estate and hence, the same should have been sold through the auction process only. However, Mr. Amit Gupta had sold the stock without conducting the auction process as mandated in Regulation 33(1) of the Liquidation Regulations.

2.3.4 In view of the above, the Board was of the *prima facie* view that Mr. Amit Gupta has contravened section 208(2)(a) & (e) of the Code, regulation 33 read with Schedule I of the Liquidation Regulations, regulation 7(2)(a) & (h) of the IP Regulations read with Clauses 1, 2 and 14 of the Code of Conduct.

**Submissions of Mr. Amit Gupta**

2.3.5 Mr. Amit Gupta has submitted that the Liquidator was acting as the resolution professional of Nimit Steels and Alloys Private Limited and before the commencement of the liquidation of Nimit Steels and Alloys Private Limited, he had to keep it as a going concern. Further, even during the liquidation process, Mr. Amit Gupta made attempts to continue the business of the Corporate Debtor as a going concern. Nimit Steels and Alloys Private Limited was in the business of manufacturing/processing steel and therefore, the business operations involved purchase of raw material, manufacture/processing and thereafter sale of stock such as coils, wire rods, round, billets etc. to the customers. Therefore, during the CIRP as well as during the liquidation, the CDs operation continued as a going concern which involved purchase of raw material and processing the same in the factory premises of CD and selling the same in the ordinary

course of business.

- 2.3.6 During the CIRP of Nimit Steels and Alloys Private Limited, Mr. Amit Gupta as the RP initiated the process of selling certain stock of the Corporate Debtor in the normal course of business. For such purpose, RP sought quotations from M/s AH Steels on 23.01.2019, M/s. Triveni Implements Manufacturing Co. Pvt. Ltd on 16.02.2019 and other customers. Amongst these, one of the customers, namely M/s. Triveni Implements Manufacturing Co. Pvt. Ltd, had agreed to purchase the entire stock and the payment terms were decided to be “advance payment before release of goods from the factory”. Hence, in light of the above, when the liquidation commenced, the stock was sold to the said customer in the ordinary course of business of Nimit Steels.
- 2.3.7 Mr. Amit Gupta has further submitted that he believes that it is not necessary or mandatory for goods that are being generated in the ordinary course of business of the Corporate Debtor to maintain the same as a going concern to be sold only through public auctions. He has referred to Regulation 33 (1) of Liquidation Regulations which states that “*The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I*”. Hence, the word used is “ordinarily” and it is a settled position in law, as held by Hon’ble Supreme Court in the matter of Kailash Chandra V/s Union of India (1961) 2 LLJ 639 that “Ordinarily” means “in the large majority of cases but not invariably”. Hence, public auction may not be the correct way to sell assets of the CD in all cases.
- 2.3.8 Mr. Amit Gupta has further submitted that if the liquidators are mandated to sell goods in ordinary course also through public auctions – it would be counter-productive as there would be cost and time implications, apart from being operationally very difficult as customers would have no certainty of getting their products thereby hampering the running of company as a going concern. For instance, in the present case, the process of sale of stock in ordinary course had already been initiated prior to the liquidation process and was concluded during liquidation. If the liquidator had cancelled the sale and put the same into auction (after conducting valuation of the stock), that would have actually resulted in increase in cost and time, apart from exposing CD to litigations for breach of contract.

## **Analysis and findings of the DC**

- 2.3.9 Section 36 of the Code and Regulation 33 of the Liquidation Regulations provides that assets forming part of the liquidation estate should ordinarily be sold through a public auction, in a prescribed manner. The liquidation proceedings were initiated against Nimit Steels and Alloys Private Limited vide AA order dated 18.02.2019 and the confirmation of quotation for selling the stocks was made at a later date on 01.03.2019.
- 2.3.10 With respect to the submission of Mr. Amit Gupta that the sale of stock was made in the ordinary course of business and was already initiated during the Corporate Insolvency Resolution Process, i.e. before the initiation of the liquidation, the DC notes that the CD was engaged in the business of processing metal alloys and therefore selling of scrap cannot be considered as ordinary course of business. Further, the DC on perusal of emails and invoices in this regard finds that on 14.02.2019, one M/s. Treveni Implements Mfg. Co. Pvt Ltd, had sent an initial quotation for the sale of stock at Taloja factory of Nimit Steel and Alloys Private Limited. Subsequently, on 16.02.2019, Mr. Amit Gupta shared a summary of the material with M/s. Treveni Implements Mfg. Co. Pvt Ltd, providing details of the stock including the weights and product types. Following this, updated quotations were received from M/s. Treveni Implements Mfg. Co. Pvt Ltd on same day i.e. 16.02.2019, reflecting changes in the offer.
- 2.3.11 It is noteworthy to mention that the rights of the parties are only created when an order is placed by a party pursuant to the acceptance of the quotation. Till that time only inquiry is being made and reply to the inquiry is provided. Merely submission of quotations does not entitle any right on the parties and therefore does not bind the liquidator for taking action on that quotation. The DC also notes that Mr. Amit Gupta *vide* e-mail dated 01.03.2019 had accepted the updated quotations received and confirmed that the transaction could proceed with the condition that payment be made in advance before the lifting of materials. Moreover, the invoices relied by Mr. Amit Gupta, also relates to the period of March 2019 only. The above facts indicate that Mr. Amit Gupta had finalized and executed the sale of stock of Nimit Steels and Alloys Private Limited after the initiation of the liquidation process on 18.02.2019, and therefore the process of stock sale was undertaken during the liquidation process.
- 2.3.12 In view of the above, the DC notes that once the liquidation process of the CD begins, the liquidator is bound by the Liquidation Regulations. Accordingly, the DC finds that Mr. Amit Gupta has contravened section 208(2)(a) & (e) of the Code, regulation 33 read



with Schedule I of the Liquidation Regulations, regulation 7(2)(a) & (h) of the IP Regulations read with Clauses 1, 2 and 14 of the Code of Conduct.

#### **2.4 Contravention IV: In the matter of Hindustan Dorr Oliver Limited (HDOL)– Issue regarding engagement of M/s ANAROCK Capital Advisors Pvt Ltd for Asset Monetisation**

2.4.1 It was observed that Mr. Amit Gupta had appointed M/s ANAROCK Capital Advisors (“Anarock”) for assistance in the sale of HDOL commercial property located at Mumbai. Accordingly, he had entered into an agreement dated 15.06.2020 with M/s ANAROCK Capital Advisors Pvt Ltd, for a period of 6 months at fee of 1% of the gross transaction value. The broad scope of services of the agreement as follows:

*Project Kick off*

*Pre-marketing stage*

*Marketing stage*

*Negotiation and closure*

*Under the heading “Negotiation and closure” scope of the work to be performed by the transaction advisor which is as under:*

*To secure offers from potential buyers on the Transaction.*

*Present all the offers in a comparable form along with recommendations for shortlisting for negotiations and further consideration.*

*Assist in negotiations as required.*

*Post negotiations with various buyers, facilitating the signing of term sheet between the final buyer and client.*

*Coordinating due diligence requests between various consultants of buyer and client.*

*Facilitating execution of definitive documents on behalf of the client.*

2.4.2 The above referred property was put on auction on 07.09.2020 at Reserve Price of Rs 5835.64 lakh and same was sold at Rs 6312.93 lakh. Accordingly, an amount of Rs 75,05,559/- was paid to the ANAROCK as 1% of the sale consideration.

2.4.3 The SCN refers to the relevant provisions of Liquidation Regulations in this regard as under:

#### ***SCHEDULE I***

## **MODE OF SALE**

### **1. AUCTION**

(2) *The liquidator shall prepare a marketing strategy, with the help of marketing professionals, if required, for sale of the asset. The strategy may include-*

- (a) releasing advertisements;*
- (b) preparing information sheets for the asset;*
- (c) preparing a notice of sale; and*
- (d) liaising with agents*

2.4.4 It was, thus, observed that the scope of services of ANAROCK as per the agreement dated 15.06.2020 is beyond what are permitted in the Schedule-I of Liquidation Regulations. By engaging a consultant for activities beyond the scope of work permissible under Schedule I (AUCTION) to the Liquidation Regulations, Mr. Amit Gupta has burdened the already stressed CD with avoidable expenditure.

2.4.5 In view of the above, the Board was of the *prima facie* view that Mr. Amit Gupta has contravened section 208(2)(a) of the Code and Schedule I (AUCTION) of the Liquidation Regulations.

### **Submissions by Mr. Amit Gupta**

2.4.6 Mr. Amit Gupta has submitted that he had appointed ANAROCK Capital Advisor Private Limited for assistance in the sale of HDOL commercial property located in Mumbai. Under Section 35(1)(f) of the Code, the Liquidator has the power “*to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities*”. Mr. Amit Gupta asserted that while exercising such powers, no prohibition could have been read that has not been provided in the statute (Ref: Hon’ble Supreme Court in *B.A. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees’ Assoc. and Ors.* 2006 SCC OnLine SC 887, which holds that no restriction or prohibition can be read into the statute unless is expressly provided in the statute). There is no restriction in the Code or Liquidation Regulations on the appointment of professionals including marketing professionals such as ANAROCK. Such appointment was undertaken on an arm’s length basis, in consultation with the secured creditor i.e., Standard Chartered Bank, which was holding the first and exclusive charge on the property.

2.4.7 Mr. Amit Gupta has submitted that the aforesaid regulation permits the appointment of marketing professionals. The marketing strategy *may* include items (a) to (d) referred above, however, the said provision cannot be interpreted to mean that the scope of work of a marketing professional has to be necessarily limited to those 4 points.

**Analysis and Findings of the DC –**

2.4.8 Section 35 of the Code, as relied on by Mr. Amit Gupta, provides for the powers and duties of the liquidator as follows:

***“35. Powers and duties of liquidator. –***

*(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: -*

*(a) to verify claims of all the creditors;*

*(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;*

*(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;*

*(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;*

*(e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;*

*(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified:*

*Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.*

*(g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;*

*(h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such*

*cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;*

*(i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;*

*(j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;*

*(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor;*

*(l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;*

*(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;*

*(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and*

*(o) to perform such other functions as may be specified by the Board.”*

2.4.9 The DC notes that the scope of services of M/s. Anarock Capital Advisors (“Anarock”) included negotiation and even closure involving securing offers from potential buyers on the transaction, assisting in negotiations, coordinating due-diligence requests between various consultants, etc. For this purpose, Anarock was paid a hefty amount of 1% of the sale consideration which amounted to Rs. 75.05 lakhs.

2.4.10 The DC notes that Mr. Amit Gupta has sought to take shelter of section 35(1)(i) (wrongly mentioned by him as 35(1)(f) in the written submissions) of the Code, which empowers a liquidator to appoint any professional in discharge of his duties, to justify the appointment of M/s. Anarock Capital Advisors on such terms and conditions and with such fee. However, Mr. Amit Gupta has conveniently ignored the duty casted on him under section 35(1)(d) to protect and preserve the assets and properties of the corporate debtor and also under 35(1)(e) to carry on the business of the corporate debtor for its beneficial liquidation. The incurring of cost by a liquidator by appointing professionals, to carry out such functions which is essentially the function to be

performed by the liquidator, results in unnecessary pecuniary burden on the corporate debtor undergoing liquidation process and jeopardises the interests of stakeholders.

- 2.4.11 The DC further notes that Regulation 7(1) of the Liquidation Regulations provides as follows:

***7. Appointment of professionals.***

*(1) A liquidator may appoint professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost. (emphasis supplied)*

- 2.4.12 As per the abovementioned Liquidation Regulation, a liquidator shall engage services of professionals to assist him in discharge of his duties, obligations and functions. As per regulations, he can take help of professionals for discharge of his duties however, those services should fall within the domain of a professional e.g. accounting professional, auditing professional, marketing professional, valuation professional, legal professional. The scope of the services provided by these professionals are also definitive and should not intrude into the functions of liquidator. The Code or regulations does not envisage that the liquidator will seek assistance of professionals for services which are not in domain of another professional but are exclusively in his domain as a liquidator. The functions of securing offers from potential buyers, negotiations with various buyers, closure of the negotiation, etc. will fall in these services where the liquidator as an Insolvency Professional has the expertise and they do not fall in the domain of another professional. The DC notes that the Liquidation Regulations is therefore very clear on this aspect. Schedule I therein envisages the appointment and role of marketing professionals with a certain specified scope of services to be performed by them. The professional assistance taken by the liquidator should pertain only to preparing and promoting the asset for sale through activities such as releasing advertisements, preparing information sheets, and liaising with agents.

- 2.4.13 Once the fee of liquidator is fixed as per regulation 4(3), the fee will be charged for all the role and functions of the liquidator which are performed by the liquidator, and which do not fall within the domain of another professional. These duties may be performed by the liquidator himself in a small case, while in a large case the performance of all such duties will require a team. However, the fees will accordingly be higher and will

be sufficient to compensate the liquidator team. However, the role and functions of the liquidator will have to be performed by the liquidator and his team for which liquidator is adequately compensated by the fee structure given in regulation 4(3) of Liquidation Regulations. The Code and its regulations do not intend the liquidator to get these role and functions being performed by another entity and get them paid separately from the CD while claiming the entire fees for himself for the duties to be done by him. Section 35(1)(i) of the Code and Regulation 7(1) of Liquidation Regulations only intends that liquidator should seek assistance of professional which fall in the domain of another professional. The professional assistance intended above is in respect of a work which has to be carried out by a professional in his own right and not assistance for some work to be carried out by liquidator and his team members to carry out liquidator's role and functions which do not fall in the realm of any other professional.

2.4.14 The DC notes that the scope of services defined in the agreement with M/s. Anarock Capital Advisors appears to have extended beyond mere marketing and promotion. The involvement of M/s. Anarock Capital Advisors in securing offers, facilitating negotiations, coordinating due diligence, and assisting in the execution of definitive documents suggests a broadening of their role, which overlaps with the duties and functions of the Liquidator. On perusal of the materials available on record, the DC is of the considered view that more than fifty percent of the functions performed by Anarock were the functions to be performed by Mr. Amit Gupta as liquidator, the cost of which should not have been charged to CD but should have been borne by the liquidator if he chose to get assistance from Anarock.

2.4.15 In light of the above, the DC notes that the scope of services of M/s. Anarock Capital Advisors is beyond the permissible scope of Schedule-I of Liquidation Regulations and therefore, has drained the resources of the CD for the benefit of liquidator as several functions which were to be performed by the liquidator and his team have been performed by M/s. Anarock Capital Advisors and the fees for the same have been charged to CD instead of being borne by liquidator. Accordingly, the DC finds Mr. Amit Gupta in contravention of section 208(2)(a) of the Code and Schedule I (AUCTION) of the Liquidation Regulations.

### 3. ORDER

- 3.1. The Code confers upon the liquidator extensive powers and duties to ensure the expeditious and equitable liquidation of a corporate debtor. It is imperative that the liquidator exercises his powers and functions with the utmost integrity and in strict adherence to ethical standards. The liquidator bears a fiduciary responsibility to act in the best interests of all stakeholders involved in the liquidation process. This entails maintaining transparency in all proceedings and adherence to the provisions of law in its letter and spirit.
- 3.2. Mr. Amit Gupta engaged in following actions during the liquidation process of the CDs, that are in gross violation of the Code and the Liquidation Process Regulations:-
- a) In the liquidation proceedings of Nimit Steels and Alloys Private Limited, Mr. Amit Gupta sold the stocks of CD without conducting any auction, in contravention to Regulation 33 of the Liquidation Regulations.
  - b) In the matter of Hindustan Dorr Oliver Limited, Mr. Amit Gupta engaged an external agency to perform functions which was essentially the function of Mr. Amit Gupta as liquidator. The fee of the external agency was then charged on the CD, which could have been born by Mr. Amit Gupta.
- 3.3. Further, Mr. Amit Gupta has deliberately tried to take pecuniary advantage from the ailing CDs while undertaking the liquidation process of the CDs. Even when the opportunity was provided to him by the IBBI *vide* circular dated 28.09.2023 and again on 18.04.2024 pursuant to the judgment dated 04.04.2024 by Hon'ble High Court of Bombay, for correctly calculating the fee and refunding the same to the stakeholders, Mr. Amit Gupta chose to retain the majority of his undue gains by manipulating the parameters of calculation of his fee. On perusal of the records of various liquidation proceedings handled by Mr. Amit Gupta, the DC finds that he has tried to maximise his entitlement of fee by one or other means, as follows:
- a) In the matter of liquidation proceedings of Padmavati Wires and Cables Private Limited, Mr. Amit Gupta in addition to his scheduled proportionate fees, has also claimed out-of-pocket expenditure, which is not provided under Regulation 4 of the Liquidation Regulations.

- b) In the matter of liquidation proceedings of Winsome Diamonds and Jewelry Limited, Forever Precious Jewellery and Diamonds Limited, and Kohinoor Diamonds Private Limited, Mr. Amit Gupta has extended the 'first six months' time period of the liquidation proceedings for the purpose of calculation of his fee, against the terms of approval of his appointment by the CoC. This has the effect of allocating maximum amount of realization and distributions made by him, in the time slab of highest percentage of fee which has the effect of Mr. Amit Gupta unjustly enriching himself with excess fee. The stand of Mr. Amit Gupta, for exclusion of time periods, in these CDs is contradictory as even in the excluded time periods, he has undertaken sale and distribution activities.
- c) In the matter of liquidation proceedings of Provogue (India) Limited, Mr. Amit Gupta has considered extended period of time exclusion for the purpose of calculation of fee, on the pretext of COVID-19 although he undertook realization and distribution activities in such time period. Through such unjustified exclusions he enriched himself of excess fee to the tune of Rs. 174 lakhs.
- d) In the matter of Hindustan Dorr Oliver Limited and HDO Technologies Limited, Mr. Amit Gupta has sought to avoid his liability of refunding the excess fee amount already charged by him (cumulative of Rs. 291 lakhs), pursuant to the judgment of Hon'ble High Court of Bombay, by changing his stand w.r.t. calculation of his fee. Mr. Amit Gupta has now substantially altered the parameters for calculation of fee, in contradiction to the parameters earlier taken by him. He has claimed an additional exclusion of time period for the purpose of calculation of fee (thirty-three months in the former CD and forty-two months in the latter CD) to avail himself the maximum pecuniary benefit, although in the said excluded time periods, he was undertaking activities for liquidation proceedings of the respective CDs. Further, he has also now claimed an excessive amount of fixed fees (cumulative of Rs 130 lakhs as against Rs 40 lakhs earlier claimed by him) for running the CDs as going concern, although the same is not provided under the Liquidation Regulations. Furthermore, in order to grant legitimacy to his conduct, Mr. Amit Gupta convened an improper meeting of erstwhile secured creditors of these CDs, even when the Liquidation regulations does not provide for it and also after the closure of liquidation proceedings.



3.4. The brief of excess fee claimed by Mr. Amit Gupta for Corporate Debtors is detailed below:

*Figures in INR*

Name of Corporate Debtor	Excess fee alleged in SCN	Actual fee charged by IP	Fee calculated by IP as per circular dated 18.04.24	Fee entitled to IP as examined by DC	Excess fee as examined by DC (against fee in column C)	Excess fee to be refunded (as against charged by IP in column C)
	(A)	(B)	(C)	(D)	(E)=(C)-(D)	(F)=(B)-(D)
Padmavati Wires and Cables Private Limited	73,986	2,43,335	2,19,769	1,69,349	50,420	73,986
Winsome Diamonds and Jewellery Limited	60,05,506	2,69,67,775	2,69,67,775	2,09,62,269	60,05,506	60,05,506
Forever Precious Jewellery and Diamonds Limited	3,13,427	3,52,417	3,52,417	38,990	3,13,427	3,13,427
HDO Technologies Limited	1,69,22,612	3,23,00,000	3,92,88,100	2,24,29,996	1,68,58,104	98,70,004
Hindustan Dorr Oliver Limited	2,10,26,622	4,32,00,000	4,41,00,140	2,41,70,418	1,99,29,722	1,90,29,582
Provogue (India) Limited	1,76,16,413	3,47,81,680	3,35,54,480	1,61,72,796	1,73,81,684	1,86,08,884
Kohinoor Diamonds Private Limited	7,62,235	18,16,808	16,97,474	10,54,573	6,42,901	7,62,235
<b>Total</b>	<b>6,27,20,801</b>	<b>13,96,62,015</b>	<b>14,61,80,155</b>	<b>8,49,98,391</b>	<b>6,11,81,764</b>	<b>5,46,63,624</b>

3.5. Such acts of Mr. Amit Gupta reflect *malafide* on his part to exact undue fee from the liquidation proceedings of the CD, which is detrimental to the interests of the stakeholders. The defiant acts of Mr. Amit Gupta, as examined in this Order, of flouting of regulations of regulatory authority and bypassing the judgment of Hon'ble Bombay High Court raises serious concerns on the professional conduct of Mr. Amit Gupta.

3.6. The DC also takes adverse view on the conduct of the erstwhile financial creditors of Hindustan Dorr Oliver Limited and HDO Technologies Limited viz., Bank of India and Union Bank of India in attending the meeting convened by Mr. Amit Gupta after the closure of liquidation process for the purpose of ratification of his fee. The DC refers this issue to the Board to take appropriate and necessary steps in this regard.

3.7. In view of the foregoing, the DC in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals)

Regulations, 2016 hereby-

- a) imposes a penalty on Mr. Amit Gupta of amount equivalent to half of the fees paid to ANAROCK Capital in the liquidation process of Hindustan Dorr Oliver Limited, and directs him to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of “penalty imposed by IBBI” on <https://bharatkosh.gov.in> within 15 days from the date this order takes effect and shall submit a copy of the transaction receipt to the Insolvency and Bankruptcy Board of India, and
  - b) Cancels the registration of Mr. Amit Gupta as an Insolvency Professional.
- 3.8. Further, on the basis of the limited information made available as explained in earlier paras, this DC has found that Mr. Amit Gupta has actually entitled himself by charging excess fee to the tune of Rs. 546 lakhs, cumulatively for all the afore-referred Corporate Debtors. In case, Mr. Amit Gupta considers that certain information in the form of granular details of receipt and distribution which had not been provided by him to the DC, can now be provided by him, the same may be provided within four weeks to the Board which will then within four weeks, thereafter, re-calculate the excess fee based on such information, within the parameters discussed and decided in this order. If no such information is provided by Mr. Amit Gupta within four weeks, the excess fee amount shall be taken as Rs. 546 lakhs. Further, since this excess fee is an unlawful gain in contravention of the Code and regulation 4 of the Liquidation Regulations, the Board may disgorge this amount from Mr. Amit Gupta. Further, the Board may take further action to provide restitution to the stakeholders who have been distributed less amount in view of this unlawful gain.
- 3.9. This Order shall come into force immediately except for para 3.7 which shall come into force after expiry of 30 days from the date of its issuance.
- 3.10. A copy of this order shall be sent to the CoC/ Stakeholder Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Amit Gupta is providing his services, if any.
- 3.11. A copy of this order shall be forwarded to the Insolvency Professional Agency of Indian Institute of Insolvency Professionals of ICAI where Mr. Amit Gupta is enrolled as a member.

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

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

Sd/-  
(Sandip Garg)  
Whole Time Member  
Insolvency and Bankruptcy Board of India

Dated: 26 November 2024  
Place: New Delhi