



2025:DHC:8086



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 9th SEPTEMBER, 2025

IN THE MATTER OF:

+ **W.P.(C) 4951/2024 & CM APPL. 35954/2024**

SAVAN GODIAWALA

.....Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate with
Mr. Manmeet Singh, Mr.
Yashvardhan Bandi, Ms. Saru
Sharma, Advs.

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

.....Respondent

Through: Mrs. Madhavi Divan, Senior
Advocate with Mr. Sahil Monga, Ms.
Alekhya Sattigeri, Advocates for
IBBI

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant Writ Petition has been filed by the Petitioner being aggrieved by the Order dated 04.03.2024 (*'Impugned Order'*) passed by the Disciplinary Authority of the Insolvency and Bankruptcy Board of India (*'IBBI/Respondent'*) in case bearing No. IBBI/DC/208/2024, whereby the Disciplinary Authority has found the Petitioner guilty of contravention of Section 34(8), 208(2)(a) and 208(2)(e) of the Insolvency and Bankruptcy Code (*'IBC'*), Regulation 35A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (*'CIRP Regulations'*), Regulation 4(3) and 7(1) of the IBBI (Liquidation Process) Regulations, 2016 (*'Liquidation Regulations'*), Regulation 7(2)(a) and 7(2)(h) of the IBBI



(Insolvency Professionals) Regulations, 2016 (***IP Regulations***) read with Clauses 1, 2, 3, 14, and 25 of the Code of Conduct provided in the First Schedule of the IP Regulations (***Code of Conduct***) and has proceeded to suspend the registration of the Petitioner for a period of two years from 18.08.2022 (effective from 16.09.2022) and directing refund of half of the fees paid to the Deloitte Touche Tohmatsu India LLP (***DTTILLP***).

2. The facts leading to the filing of the present Petition are as follows:

- i. The Petitioner is a qualified Chartered Accountant registered with the Institute of Chartered Accountants of India having Membership No. 045857. He is registered with IBBI as an Insolvency Professional *vide* Registration No. IBBI/IPA-001/IP-00239/2017-2018/10468 having his IBBI registered address at 19th Floor, Shapath-V, SG Road, Ahmedabad, Gujarat – 380015.
- ii. The Petitioner was appointed as the Interim Resolution Professional (***IRP***) of Lanco by the National Company Law Tribunal (***NCLT***), Hyderabad Bench *vide* Order dated 07.09.2017 and he was later confirmed as its Resolution Professional (***RP***). During the Corporate Insolvency Resolution Process (***CIRP***) of Lanco Infratech Limited (***Lanco***), a Resolution Plan submitted by Thriveni Earthmovers Private Limited was placed by the Petitioner before the Committee of Creditors (***CoC***) for approval, however, the same was eventually not approved by the CoC, in its commercial wisdom. Accordingly, the CoC in its 18th meeting held on 02.05.2018, passed a resolution seeking the



liquidation of Lanco, which was thereafter approved by the NCLT, Hyderabad *vide* Order dated 27.08.2018. The Petitioner was appointed as the Liquidator of Lanco pursuant to such Order.

- iii. The Petitioner admitted claims of financial creditors to the extent of approximately Rs. 54,335 Crores (out of total financial debt claimed of approximately Rs. 55,030 Crores), the admitted claims of operational debt stood at approximately Rs. 7,005 Crores (out of total operational debt claimed by 627 operational creditors of approximately Rs. 17,972 Crores), and the admitted claims of 1,128 Employee and Workmen stood at approximately Rs. 34.59 Crores (out of total employee and workmen debt claimed of approximately Rs. 40.65 Crores).
- iv. During the liquidation process of Lanco, the Petitioner filed an Acquisition Plan dated 22.09.2021 for acquiring Lanco as a going concern to KRS Erectors Private Limited on an '*as is where is basis*' for the approval of the NCLT *vide* Order dated 26.09.2022.
- v. As per the Petitioner, the CIRP, as well as the liquidation process of Lanco, involved significant complexities and extensive nature. For this reason, the consortium of banks, including leading public sector banks, prior to the commencement of the CIRP, themselves reached out to reputed professional firms with requisite and proven capabilities and resources to provide a proposal in respect of the appointment of the IRP/RP, prior to initiating insolvency proceedings.



Accordingly, the Petitioner was selected as the IRP of Lanco, subject however, to DTTILLP assuring that it would provide support as the professional advisory firm. The same was set out in DTTILLP's letter dated 30.06.2017 sent to IDBI Bank.

- vi. DTTILLP was further re-appointed to provide professional advisory services to the Liquidator of Lanco.
- vii. In the case of Shirpur Power Private Limited ("**SPPL**"), the NCLT, Ahmedabad *vide* Order dated 04.03.2020 admitted the Section 7 application filed by State Bank of India and Bank of Baroda and appointed the Petitioner as the IRP who was later confirmed as the RP.
- viii. As no resolution plan was approved by the CoC, the CoC passed a resolution during its 10th meeting held on 03.02.2021 for liquidation of SPPL which was later approved by the NCLT, Ahmedabad *vide* Order dated 10.03.2021 and one Mr. Dushyant Dave was appointed as the Liquidator.
- ix. An Inspection Order was passed by an Assistant General Manager of the Respondent on 12.10.2020 under Section 196 of the Code read with Regulation 3(1) and Regulation 3(3) of the IBBI Inspection and Investigation Regulations, 2017 (***‘Inspection Regulations’***), directing the Inspecting Authority (*hereinafter referred to as “IA”*) to conduct an inspection of the assignments undertaken by the Petitioner.
- x. The Petitioner received the Notice of Inspection on 13.10.2020 wherein the Petitioner was informed that the IA had initiated an inspection of all the assignments handled by the Petitioner.



- xi. The Petitioner received a Draft Inspection Report (**‘DIR’**) under Section 218 of the Code read with Regulation 6(1) of the IBBI Inspection and Investigation Regulations, 2017 (**‘Inspection Regulations’**) from the Respondent on 11.11.2021. The Petitioner was directed to provide his comments on certain observations concerning the various mandates where the Petitioner had been appointed as the Resolution Professional and/ or the Liquidator. The Petitioner provided his detailed comments on the DIR *vide* his response dated 24.12.2021.
- xii. On 13.06.2022, on the basis of DIR, the Respondent issued a Show Cause Notice (**‘SCN’**) to the Petitioner under Section 219 of the Code, Regulations 11 and 12 of the Inspection Regulations, and Regulation 11 of the IP Regulations asking the Petitioner to show cause as to why disciplinary action should not be taken against him for contravention of Section 34(8), Section 208(2)(a), and Section 208(2)(e) of the Code, Regulation 35A of the CIRP Regulations, Regulation 4(3), Regulation 7(1), and Regulation 7(2)(a) of the Liquidation Regulations, and Regulation 7(2)(h) of IP Regulations, Clauses 1-3, 10, 14, and 25 of the Code of Conduct. The SCN held the Petitioner to show cause as to why disciplinary action should not be taken against him for the following contraventions:
- a) In the matter of Lanco, the withdrawal of excess remuneration as Liquidator’s fee.
 - b) Petitioner engaged a related party (DTTILLP) to assist him in the liquidation process of Lanco, on completely vague



terms and conditions, for the function falling in domain of the Liquidator for which Liquidator is paid fee as per table under Regulation 4 of Liquidation Regulations, and without approval of CoC.

c) In the matter of SPPL, the failure of Petitioner to file avoidance application in contravention of Regulation 35A of the CIRP Regulations.

- xiii. The Petitioner responded to the SCN *vide* email dated 04.07.2022. Separately, *vide* email dated 01.07.2022, the Petitioner requested the Respondent to provide a copy of the Inspection Report on the basis of which the SCN was issued.
- xiv. After perusing the material on record and the reply filed by the Petitioner, Respondent herein passed an Order dated 18.08.2022 suspending the Petitioner for a period of three years. The said suspension would be effective after 30 days from the Order dated 18.08.2022. The said Order was challenged by the Petitioner before this Court in W.P.(C) 13317/2022.
- xv. This Court *vide* Order dated 11.01.2024 came to the conclusion that the investigation report had not been handed over to the Petitioner which is in violation of the procedure laid down by the Respondent/IBBI. The Order dated 04.07.2022 was, therefore, set aside and the matter was remanded back to the Respondent for fresh consideration.



- xvi. On 18.01.2024, the Respondent provided a copy of the Final Inspection Report dated 07.04.2022 to the Petitioner along with an addendum to the DIR dated 23.12.2021.
- xvii. The Petitioner submitted his substituted response to the SCN on 01.02.2024.
- xviii. In due course, *vide* email dated 13.02.2024, the Respondent apprised the Petitioner regarding the date of hearing before the Disciplinary Committee ('**DC**') on 19.02.2024.
- xix. Pursuant to the personal hearing on 19.02.2024, the DC *vide* email dated 20.02.2024 sought certain additional information from the Petitioner. The Petitioner *vide* email dated 21.02.2024 submitted his response to the queries and requested for a personal hearing to explain his responses. Accordingly, a hearing was scheduled on 27.02.2024, and additional information as required by the DC during the hearing was submitted by the Petitioner on 28.02.2024.
- xx. The Respondent passed the Impugned Order on 04.03.2024 disposing of the SCN against the Petitioner. The following order was passed against the Petitioner. The relevant extract of the Impugned Order is as follows:-

"4. Order

4.1. In view of the forgoing discussions, SCN, substituted reply to the SCN, oral and written submissions made by Mr. Savan Godiawala, the DC finds Mr. Savan Godiawala in contravention of section 34(8), section 208(2)(a), 208(2)(e), regulation 35A of CIRP Regulations, regulation 4(3) and 7(1) of Liquidation Regulations, regulation 7(2)(a), regulation 7(2)(h) of IP



Regulations read with clauses 1, 2, 3, 14 and 25 of the Code of Conduct specified thereunder.

4.2. In view the above findings, 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 hereby suspends the registration of Mr. Savan Godiawala for a period of two years. The period of two years will commence from the date from which the earlier DC order dated 18.08.2022 had become effective (i.e., from 16.09.2022).

4.3. As per Liquidation Regulations, the professional assistance may be sought by the liquidator for work falling in a domain for which specialist professional expertise is required and not for the functions which are to be performed by a liquidator and for which no additional professional expertise is required. Further, once the fee of liquidator is fixed as per regulation 4(3), the work relating to duties and functions of liquidator which do not require professional assistance need to be performed by the liquidator and his team and not by DTTILLP. Considering the fact that more than half of the work assigned to DTTILLP for assisting the liquidator did not require assistance of any professional, penalty of half of the fees paid to DTTILLP is imposed on Mr. Savan Godiawala and he is directed to deposit this amount directly to the Consolidated Fund of India (CFI) under the head of “penalty imposed by IBBI” on <https://bharatkosh.gov.in> within 45 days from the date this order becomes effective and submit a copy of the transaction receipt to the Insolvency and Bankruptcy Board of India.

4.4. This Order shall come into force after 30 days from the date of this order.”



xxi. The Petitioner has filed the present Writ Petition to challenge this Impugned Order dated 04.03.2024.

3. The learned Senior Counsel for the Petitioner has advanced the following arguments:

- i. The learned Senior Counsel states that the SCN was issued by the Respondent completely without jurisdiction and in direct violation of the provisions the Code. The inspection/ investigation conducted under Section 218 of the Code is a condition precedent to imposition of any penalty under Section 220 of the Code. He submits that no SCN can be issued under Section 219 of the Code in the absence of an inspection/ investigation under Section 218 of the Code and no penalty can be imposed under Section 220 of the Code in the absence of an inspection/ investigation under Section 218 of the Code and a SCN under Section 219 of the Code. The inspection/ investigation under Section 218 of the Code is thus a condition precedent to imposition of penalty under Section 220 of the Code.
- ii. He states that Section 218 of the Code requires that disciplinary proceedings shall only commence in a case when there is a complaint received under Section 217 of the Code; or when there are reasonable grounds to believe that the Insolvency Professional has contravened any provisions of the Code. As per the learned Senior Counsel for the Petitioner, neither of the two jurisdictional pre-requisites of Section 218 stand satisfied



in this case and therefore, no inspection could have been directed in the present matter in the first instance and for this reason alone the Impugned Order deserves to be set aside.

- iii. As per the learned Senior Counsel for the Petitioner, the Respondent could not have initiated inspection under Section 196(1)(f) and (g) of the Code which merely enumerates the functions of IBBI, without satisfying the mandatory requirements under Section 218 of the Code.
- iv. He states that from perusal of Section 196 of the Code, it is apparent that Section 196(1) (a) to (u) of the Code merely lists out the functions of the IBBI, whereas on the other hand, Section 196(3) (i) to (iv) list out the powers of IBBI. Section 196(1) and (3) of the Code is as under:

“196. Powers and functions of Board.—(1) The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions namely:—

(a) register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations;

[(aa) promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of this Code;]

(b) specify the minimum eligibility requirements for registration of insolvency professional agencies, insolvency professionals and information utilities;



(c) levy fee or other charges 2 [for carrying out the purposes of this Code, including fee for registration and renewal] of insolvency professional agencies, insolvency professionals and information utilities;

(d) specify by regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities;

(e) lay down by regulations the minimum curriculum for the examination of the insolvency professionals for their enrolment as members of the insolvency professional agencies;

(f) carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(g) monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(h) call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities;

(i) publish such information, data, research studies and other information as may be specified by regulations;

(j) specify by regulations the manner of collecting and storing data by the information utilities and for providing access to such data;



(k) collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases;

(l) constitute such committees as may be required including in particular the committees laid down in section 197;

(m) promote transparency and best practices in its governance;

(n) maintain websites and such other universally accessible repositories of electronic information as may be necessary;

(o) enter into memorandum of understanding with any other statutory authorities;

(p) issue necessary guidelines to the insolvency professional agencies, insolvency professionals and information utilities;

(q) specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder;

(r) conduct periodic study, research and audit the functioning and performance of to the insolvency professional agencies, insolvency professionals and information utilities at such intervals as may be specified by the Board;

(s) specify mechanisms for issuing regulations, including the conduct of public consultation processes before notification of any regulations;



(t) make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code, including mechanism for time bound disposal of the assets of the corporate debtor or debtor; and

(u) perform such other functions as may be prescribed.

xxx

(3) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under this Code, the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person at any place;

(iv) issuing of commissions for the examination of witnesses or documents.

- v. It is stated that as against the case of the Respondent that inspection has been ordered pursuant to powers conferred by Section 196(1) (f) and (g) of the Code, Section 196(1) (f) and (g) of the Code only provides the functions of the IBBI and not the powers of IBBI.



- vi. Further the learned Senior Counsel submits that without prejudice even if IBBI has the power under Section 196(1), the same is expressly circumscribed by the requirements of Section 218 of the Code. He argues that it could not have been the legislative intent under Section 196(1) of the Code to bestow untrammelled powers to IBBI *de hors* checks and balances that are expressly included by the Legislature in Section 218 of the Code. The express jurisdictional fact requirements stipulated under Section 218 of the Code of there being a complaint or the existence of ‘reasonable grounds to believe’ are, in fact, an important check placed on IBBI without which it would be exercising untrammelled powers. He tendered judgements of the Apex Court titled, Rohtash Industries vs. S.D. Agarwal & Ors. (1969) 1 SCC 325 and Hardeep Singh vs. State of Punjab and Ors. (2014) 3 SCC 92, to substantiate his arguments.
- vii. The learned Senior Counsel for the Petitioner extending the foregoing arguments, also states, that assuming that Section 196(1) (f) and (g) read with Regulation 3(1) of the Inspection Regulations confer powers on IBBI to initiate ‘routine inspection’ and the same are not circumscribed by the pre-requisites of Section 218, even then no consequences can follow under Section 220 of the Code. As per Section 220(1), the Board can constitute a Disciplinary Committee on the basis of the report of the IA as submitted under Section 218(6). Section 220 of the Code is as follows:



“220. Appointment of disciplinary committee.—(1) The Board shall constitute a disciplinary committee to consider the reports of the investigating Authority submitted under sub-section (6) of section 218:

Provided that the members of the disciplinary committee shall consist of whole-time members of the Board only.

(2) On the examination of the report of the Investigating Authority, if the disciplinary committee is satisfied that sufficient cause exists, it may impose penalty as specified in sub-section (3) or suspend or cancel the registration of the insolvency professional or, suspend or cancel the registration of insolvency professional agency or information utility as the case may be.

(3) Where any insolvency professional agency or insolvency professional or an information utility has contravened any provision of this Code or rules or regulations made thereunder, the disciplinary committee may impose penalty which shall be—

(i) three times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention; or

(ii) three times the amount of the unlawful gain made on account of such contravention, whichever is higher:

Provided that where such loss or unlawful gain is not quantifiable, the total amount of the penalty imposed shall not exceed more than one crore rupees.

(4) Notwithstanding anything contained in sub-section (3), the Board may direct any person who has made unlawful gain or averted loss by indulging in any activity in contravention of this Code, or the rules or regulations



made thereunder, to disgorge an amount equivalent to such unlawful gain or aversion of loss.

(5) The Board may take such action as may be required to provide restitution to the person who suffered loss on account of any contravention from the amount so disgorged, if the person who suffered such loss is identifiable and the loss so suffered is directly attributable to such person.

(6) The Board may make regulations to specify—

(a) the procedure for claiming restitution under subsection (5);

(b) the period within which such restitution may be claimed; and

(c) the manner in which restitution of amount may be made.”

(emphasis supplied)

viii. Learned Senior Counsel states that it is settled law that a delegated power to legislate by making rules/ regulations cannot be exercised to create a substantive right over and above what the statute provides, i.e., vest powers which the statute does not give or prescribe penalties not contemplated by the statute itself. The Counsel referred the judgment of Apex Court in Kunj Behari Lal Butail and Ors. vs. State of H.P. & Ors., (2000) 3 SCC 40 to support his argument. The relevant extract is as follows:

"14. We are also of the opinion that a delegated power to legislate by making rules “for carrying out the purposes of the Act” is a general delegation without



laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself."

- ix. The learned Senior Counsel states that any report for consideration by the Disciplinary Committee submitted under Section 218(6) of the Code can be concluded only after complying with the requirements stipulated under Section 218(1) of the Code, which is that, there is either a complaint or reasonable grounds to believe that an insolvency professional has contravened any of the provisions of the Code. Therefore, no Disciplinary Committee can be constituted to consider the results of any 'routine inspection' conducted by IBBI under Regulation 3(1) of the Inspection Regulations.
- x. The learned Senior Counsel for the Petitioner states that the inspection was authorized in a manner not known to law. He submits that the findings in the Impugned Order that the power to order the inspection was exercised by an officer having rank of Executive Director (ED) is unsustainable. It is submitted that the inspection was initiated by an officer of rank 'Assistant General Manager' when under the IBBI (Delegation of Powers and Functions) Order, 2017 (**'Delegation Order'**), the power to order an inspection can only be exercised by an officer having the designation of an ED.
- xi. The learned Senior Counsel further states that the Respondent has returned a finding against the Petitioner with respect to



excess fee despite the IBBI itself issuing a Clarification Circular which was necessitated due to differing interpretations being taken by various liquidators under the provisions of the Code and the Regulations. He submits that Para 3 of the Clarification Circular, which has been issued after the issuance of the SCN, clearly stipulates that where excess liquidator's fee is returned on or before 31.10.2023, no disciplinary proceedings will be initiated. The relevant extract of the said Circular as pointed out by the Petitioner 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 clarification 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.”

- xii. The learned Senior Counsel submits that in the present case, the excess fee was returned by the Petitioner on 18.02.2022, which was well before 31.10.2023.
- xiii. He submits that the Impugned Order failed to consider the submissions of the Petitioner made on Section 233 of the Code which specifically states that no proceedings would lie against an Insolvency Professional in respect of acts carried out or intended to be carried out in good faith. He states that Section 233 of the Code takes into account the complex roles and responsibilities of the Resolution



Professional/Liquidator and accordingly seeks to protect the Resolution Professional / Liquidator where the Resolution Professional/Liquidator has acted or intended to act in good faith. The Impugned Order has not returned any finding to the effect that the Petitioner acted or intended to act in *a mala fide* manner, and he ought to have been granted protection envisaged under the Code.

- xiv. Learned Senior Counsel for the Petitioner states that other Insolvency Professionals against whom similar allegations of charging excess fee were made, namely one Mr. Rakesh Ahuja, and one Mr. Avishek Gupta, the IBBI took a considerate view and only issued a warning to be more careful in future. The Counsel submits that the Respondent proceeded with bias against the Petitioner.
- xv. Learned Senior Counsel for the Petitioner also advanced arguments regarding excessive fees charged by DTTILLP. Learned Counsel submits that the Respondent failed to take into account the fact that the lenders of Lanco themselves wanted an entity like DTTILLP to assist the Petitioner in the CIRP. This is evidenced from Agenda 7 of the first CoC meeting held on 12.09.2017, during which IDBI Bank set out the background to the appointment of DTTILLP for the benefit of the other financial creditors.
- xvi. The Senior Counsel further states that in the Addendum to DIR suppressed by the Respondent, the Respondent made a categorical finding regarding the fees paid in the CIRP i.e.



that there was due compliance with the IBBI Circular dated 12.06.2018 (*‘June Circular’*), wherein it is envisaged that fees and other expenses incurred for CIRP, are to be reasonable. Relevant portion of the said circular is enumerated below:-

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi-110001

CIRCULAR

No. IBBI/IP/013/2018

12th June, 2018

To

All Registered Insolvency Professionals
All Recognised Insolvency Professional Entities
All Registered Insolvency Professional Agencies
(By mail to registered email addresses and on website of the IBBI)

Dear Madam / Sir,

Sub: Fee and other Expenses incurred for Corporate Insolvency Resolution Process

When a corporate debtor undergoes corporate insolvency resolution process (CIRP), an Insolvency Professional (IP) is vested with the management of its affairs and he manages its operations as a going concern. He complies with the applicable laws on behalf of the corporate debtor. He conducts the entire CIRP. Such responsibilities of an IP require the highest level of professional excellence, dexterity and integrity. He needs to be compensated for his professional services commensurate to his ability, duties and responsibilities. He also needs to pay fee or incur other expenses for various goods and services required for conducting the CIRP and or managing the operations of the corporate debtor as a going concern.

2. The relevant provisions of the Insolvency and Bankruptcy Code, 2016 (Code) and regulations made thereunder having a bearing on fee and other expenses of CIRP are at **Annexure A**.

3. An IP is obliged under section 208(2)(a) of the Code to take reasonable care and diligence while performing his duties, including incurring expenses. He must, therefore, ensure that not only fee payable to him is reasonable, but also other expenses incurred by him are reasonable. What is reasonable is context specific and it is not amenable to a precise definition. An illustrative list of factors considered in determination of what is reasonable is given in **Annexure B**.

4. Para 16 of the Code of Conduct for IPs in the Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 provides that an IP must maintain written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his decisions and actions.

5. The IBBI had put out a discussion paper titled “Regulation of fee payable to insolvency professionals and other process costs under Corporate Insolvency Resolution Process” on its web site on 1st April, 2018 seeking comments thereon. The comments received from stakeholders have been considered in consultation with the Insolvency Professional Agencies.



6. Keeping the above in view, the IP is directed to ensure that:-

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

7. The Code read with regulations made thereunder specify what is included in the insolvency resolution process cost (IRPC). The IP is directed to ensure that:-

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

8. It is clarified that the IRPC shall not include:

- (a) any fee or other expense not directly related to CIRP;
- (b) any fee or other expense beyond the amount approved by CoC, where such approval is required;
- (c) any fee or other expense incurred before the commencement of CIRP or to be incurred after the completion of the CIRP;
- (d) any expense incurred by a creditor, claimant, resolution applicant, promoter or member of the Board of Directors of the corporate debtor in relation to the CIRP;
- (e) any penalty imposed on the corporate debtor for non-compliance with applicable laws during the CIRP;

[Reference: Section 17 (2) (e) of the Code read with circular No. IP/002/2018 dated 3rd January, 2018.]

- (f) any expense incurred by a member of CoC or a professional engaged by the CoC;
- (g) any expense incurred on travel and stay of a member of CoC; and
- (h) any expense incurred by the CoC directly;

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

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



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

- (a) for all concluded CIRPs by 15th July, 2018, and
- (b) for ongoing and subsequent CIRPs within the time as specified in the relevant Form.

10. An Insolvency Professional Agency shall -

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

11. This circular is issued in exercise of the powers conferred under clause (h) of sub-section (1) of section 196 read with regulation 34A of the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016, in consultation with all the three registered Insolvency Professional Agencies.

Yours faithfully,

-Sd-

(Dilip Arjun Khandale)
Deputy General Manager
Email: dilip.khandale@ibbi.gov.in

- xvii. The learned Senior Counsel for the Petitioner states that the Impugned Order perversely concluded that reduction of fee payable to DTTILLP in the subsequent stages of liquidation points to unreasonable fee paid to DTTILLP. In the Disciplinary Proceedings, pursuant to a specific query raised by the Respondent regarding change in quantum of work of DTTILLP, the Petitioner provided detailed response demonstrating that work required to be performed in the initial 12-18 months was significantly more than the work required to be done later. However, the Respondent



reached a finding that there was no basis for reduction of DTTILLP fee.

- xviii. The learned Senior Counsel for the Petitioner submits that the Impugned Order travels beyond the SCN and proceeds on entirely new allegations. He submits that there was no allegation in the DIR, Final Inspection Report, and the SCN, regarding the Petitioner appointing DTTILLP for carrying on activities that the Petitioner was required to do himself. Neither was there any such finding in the Previous Order. He submits that the Impugned Order has given findings beyond the SCN that the Petitioner could have taken the aid of another professional only for such work which does not fall under his domain and DTTILLP whose services were taken by the Petitioner performed the same work which could have been performed by the Petitioner or any of the team member of the Petitioner.
- xix. He states that such limitation does not exist in the Code, or regulations thereunder and there is no restriction in the Code for the liquidator to appoint a professional support entity. Pertinently, Regulation 7(1) of the Liquidation Regulations envisages the appointment of professionals by the liquidator for assistance.
- xx. The learned Senior Counsel for the Petitioner in the same vein submits that it is well settled that in any disciplinary proceedings, it is not open to the regulator to add fresh allegations or travel beyond the allegations previously levelled. The principle of *audi alteram partem* which enshrines the right of every person to be afforded an opportunity to be heard is fundamental to the rule of



law and that every individual should be afforded the right to be heard in proceedings initiated against them.

xxi. Learned Senior Counsel for the Petitioner has advanced arguments with respect to CIRP of SPPL. He submits that the findings in the Impugned Order that the Petitioner failed to comply with his obligations under Regulation 35A of the CIRP Regulations read with Clause 1, 2, 3, and 14 of the Code of Conduct was based on entirely new allegations which are missing in the previous stages of the underlying disciplinary proceedings. The said allegations are as follows:

- a. The Petitioner allegedly stopped following-up with the previous management of SPPL from 21.12.2020; and
- b. That the Petitioner did not file an application under Section 19 of the Code.

xxii. As per the learned Senior Counsel for the Petitioner, the conclusion that the Petitioner ought to have filed an application under Section 19(2) of the Code has not been alleged in the previous stages of the underlying disciplinary proceedings and is, therefore, untenable and is liable to be dismissed outrightly. He states that since the management of SPPL was functioning with limited staff on account of Covid-19 it cannot be alleged that the delay by the former management of SPPL in responding to the request for information would amount to non-assistance or failure to co-operate.



- xxiii. He further states that the Impugned Order completely failed to consider the severe delays occasioned by the unprecedented Covid-19 pandemic and ignored orders of the Hon'ble Supreme Court, the NCLAT, and the IBBI Notification dated 20.04.2020 which provided extensions on limitations on filing, and following compliances.
- xxiv. The learned Senior Counsel for the Petitioner states that no prejudice has been caused to SPPL and/or any of its stakeholders on account of the alleged delay in filing the Avoidance Application.
- xxv. The learned Senior Counsel for the Petitioner also states that the Impugned Order ignores well settled law that timelines under Regulation 35A of the CIRP Regulations are merely indicative and not mandatory. The Counsel submitted judgements, titled, Tata Steel BSL vs. Venus Recruiters, **2023 SCC OnlineDel 155**, Aditya Kumar Tiberwal vs. Om Prakash Pandey & Ors., **CA (AT) Insolvency No. 583 of 2021**, to substantiate his contentions.
- xxvi. The learned Senior Counsel for the Petitioner states that the Impugned Order failed to follow its own previous orders in similarly situated cases where other Insolvency Professional was involved. The Disciplinary Committee of the Respondent passed an Order dated 12.05.2022, in the Show Cause Notice No. IBBI/IP/R(INSP)/2020/15/496/3218 dated 24.03.2022 issued to one Ms. Kalpana G., an Insolvency Professional ("**Kalpana G. Order**"). In the said matter, similar to the SCN issued to the Petitioner, the Insolvency Professional therein was asked to show



cause regarding an alleged contravention of Regulation 35A of the CIRP Regulations as she had failed to file an Avoidance Application within the prescribed timeline and such application had been filed with a delay of 341 days.

- xxvii. In the Kalpana G. Order, in spite of holding that the Insolvency Professional had failed to perform the duty cast on her under the provisions of the Code and the Regulations thereunder, the Disciplinary Committee held that as no *mala fide* was established and the deficiencies as noticed and conceded by Ms. Kalpana G. appear to be minor in nature, the Disciplinary Committee disposed of the show cause notice merely with a note of caution to the Insolvency Professional to be more careful in future, in glaring contrast to the directions made in the Impugned Order.

4. *Per contra*, learned Senior Counsel for the Respondent advanced the following arguments:

- i. The learned Senior Counsel stated that during the liquidation process of Lanco, the Petitioner failed to take reasonable care and diligence while performing his duties, and, admittedly, in the period from 27.02.2019 to 27.08.2019, he withdrew an excess fee of Rs. 83,04,764/- from the liquidation estate of Lanco based on a self-serving distorted interpretation of the Regulation 4(3) of the Liquidation Regulations. After this contravention was brought to the Petitioner's attention in the DIR, he refunded an amount of



Rs. 92,44,758/- adjusted for taxes, in the liquidation account of Lanco.

- ii. It is stated that the Petitioner was a partner in DTTILLP. He appointed DTTILLP *vide* Work Order dated 28.08.2018 ‘to assist him in taking control and managing the operations of Lanco Infratech Limited and his other obligations as Liquidator of the Corporate Debtor under the Insolvency and Bankruptcy Code’. Further, insofar as the cost of engaging DTTILLP and the terms of payment are concerned, the aforesaid Work Order stipulates that ‘*the cost of services of DTTILLP to Liquidator will be as mutually agreed*’. The Petitioner has engaged a related party to assist him in the liquidation process of Lanco on completely vague terms and conditions, without due approval of the CoC, without specifying the amount of fee payable to such related party, for the role and functions of the liquidator which does not fall within the domain of another professional and for which fees is specified under Regulation 4 of the Liquidation Regulations. The Work Order dated 28.08.2018 reads as under:

**WORK ORDER**

THIS Work Order No. 1A dated August 28, 2018 is issued pursuant to and incorporates the terms and conditions of the Agreement (the "Agreement") dated October 17, 2017 between "Insolvency Professional" or "IP" and Deloitte Touche Tohmatsu India LLP ("DTTILP").

1. **Name of the Project:** Project Hill 2
2. **Desired expertise, skills and qualifications:**

Personnel Name	Skills
Uday Bhansali Sumit Khanna Nirmala Rajan Manish Kumar Sharma Snehal Shah Anusha Gupta Rashmi Malhotra	• Relevant Regulations expertise • M&A advisory and process expertise • Operations and Management expertise • Steel Sector expertise • Project Management expertise • Restructuring expertise
To be supported by other relevant resources from Corporate Finance practice	

3. **Name of the Engagement Partner and Manager:**

Engagement Partner – Sumit Khanna
Engagement Director – Manish Kumar Sharma
Engagement Manager – Snehal Shah

4. **Description of Services :** The Personnel will perform the Services as specified below :

To assist the IP in taking control and managing the operations of Lanco Infratech Limited ("Corporate Debtor") and his other obligations as Liquidator of the Corporate Debtor under the Insolvency and Bankruptcy Code.

DTTILP has, pursuant to its review of the scope of the Services, represented and warranted to IP that the Personnel have adequate experience, capability and competency to perform the Services efficiently.

IP shall reserve the right to order changes or alterations in the Services to be performed hereunder.

5. **Deliverables :**

The Personnel shall provide the following Deliverables under this Work Order: –



To assist the IP in meeting his obligations as the Liquidator of the Corporate Debtor under the Insolvency and Bankruptcy Code.

6. Specifications, requirements and acceptance criteria for the Services and Deliverables

Not Applicable

7. Time Schedule and Duration of Services :

Services under this Work Order is effective from August 27, 2018 ("Effective Date") and shall be completed on ("Completion Date") March 20, 2020, until unless the appointment of IP as Liquidator is extended.

DTTILLP reserves the right to extend the term of this Work Order.

8. Cost of DTTILLP and Terms of Payment :

The cost of services of DTTILLP to Liquidator will be as per mutually agreed.

9. Other Terms :

The relevant team members will be deployed at Corporate Debtors' locations.

IN WITNESS WHEREOF, IP and DTTILLP have caused this Work Order to be executed and delivered by their respective duly authorized representatives as of the date first set forth above.

Savan Godiawala

Signature

Name : Savan Godiawala

Title : Insolvency Professional

Date : _____

Deloitte Touche Tohmatsu India LLP

Signature

Name: Sumit Khanna

Title: Partner, Leader, Corporate Finance & Restructuring Services, DTTILLP

Date: _____

- iii. Further, the learned Senior Counsel for the Respondent states that to ensure smooth and time bound completion of CIRPs which in turn ensures successful insolvency



resolutions, it is essential to effectively monitor and regulate the IPs or service providers who have been assigned the key task of managing the affair of the ailing corporate debtor. For this reason the IBBI has been empowered under Section 196 (1) (f) & (g) to carry out inspections and monitor performance of IPs and, pass such orders/directions as may be required for compliance of the provisions of the Code and the Regulations made thereunder. The relevant extract of Section 196 of the Code is reproduced below:

"196(1)(f) carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(g) monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;"

- iv. The IBBI has framed Inspection Regulations in exercise of the powers conferred under Sections 196, 217, 218, 219, 220 read with Section 240 of the Code to carry out *inter alia* the functions under Section 196 of the Code.
- v. Regulation 3(1) of the Inspection Regulations empowers the IBBI to conduct inspection of such number of service providers every year, as may be decided by it from time to time and, as per Regulation 3(2), the power conferred upon



the IBBI under Regulation 3(1) is expressly without prejudice to its power to direct inspection under Section 218(1) of the Code. The relevant extract from Regulation 3 of the Inspection Regulations reads as follows:

“3. Inspection by the Board.

(1) The Board shall conduct inspection of such number of service providers every year, as may be decided by the Board from time to time.

(2) Without prejudice to provisions of sub-regulation (1), the Board may conduct inspection of a service provider under section 218.

(3) The Board may, for the purposes of this regulation, by an order, direct an Inspecting Authority to conduct an inspection of records of a service provider for purposes specified under sub-regulation (4).

(4) The purposes under sub-regulation (3) include -

(a) to ensure that the records are being maintained by a service provider in the manner required under the relevant regulations;

(b) to ascertain whether adequate internal control systems, procedures and safeguards have been established and are being followed by a service provider to fulfill its obligations under the relevant regulations;

(c) to ascertain whether any circumstance exists which would render a service provider unfit or ineligible;

(d) to ascertain whether the provisions of the Code, or the rules, regulations and guidelines made



thereunder and the directions issued by the Board, if any, are being complied with;

(e) to inquire into the complaints received from 5[stakeholders] or any other person on any matter having a bearing on the activities of a service provider; and

(f) such other purpose as may be deemed fit by the Board in furtherance of the objectives of the Code.

(5) The order referred to in sub-regulation (3) shall contain-

(a) scope of inspection;

(b) composition of Inspecting Authority;

(c) timelines for conducting the inspection;

(d) reporting of progress in inspection;

(e) submission of interim inspection report, if any; and

(f) submission of inspection report.

(6) The Board and the Inspecting Authority shall make every effort to keep the inspection confidential and to cause the least burden on, or disruption to, the business of the service provider under inspection.”

(emphasis supplied)

- vi. The learned Senior Counsel states that in the present case, in exercise of powers under Section 196 of the Code read with Regulation 3(1) & 3(3) of the Inspection Regulations, the IBBI passed the Order dated 12.10.2020 directing the IA to conduct inspection of the Petitioner in relation to all his IBC related assignments.
- vii. She states that in light of the grave and egregious contraventions that have come out upon the inspection, the Petitioner cannot take a plea that IBBI directed the IA to



conduct inspection without any reasonable grounds to believe that the Petitioner had contravened any provisions of the Code or the Rules and Regulations made or directions issued by the IBBI thereunder.

- viii. Further, Regulation 11(2) of the Inspection Regulations provides for consideration of the inspection report and subsequent action.
- ix. The contention of the Petitioner that reference to Regulation 11(2) in the Impugned Order is an afterthought is totally baseless. The Inspection Regulations has been framed under Section 196 of the Code along with Section 217, 218, 219, 220. Thus, when there is material available on record along with an inspection report, the Respondent has ample power to issue a SCN under Regulation 11(2) of the Inspection Regulations.
- x. The SCN has been issued by the AGM to whom the power to issue the SCN had been specifically delegated by a decision taken on 16.09.2019 by IBBI.
- xi. The inspection has been approved by competent authority and only the communication has been issued by the AGM.
- xii. It is the case of the Respondent that the addendum to the DIR was duly shared with the Petitioner along with the Final Inspection Report. Thereafter, the Petitioner submitted a Substituted Response to the SCN on 01.02.2024 and to ensure complete fairness in the process, the Petitioner was also granted fresh opportunity of personal hearing. It was



only these hearings the Impugned Order was passed. Therefore, the Petitioner cannot contend any violation of the principles of natural justice. The learned Senior Counsel also referred a judgment of Apex Court in S.L. Kapoor vs. Jagmohan, (1980) 4 SCC 379. The relevant extract is as follows:

“17. Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it approves the non-observance of natural justice but because courts do not issue futile writs. But it will be a pernicious principle to apply in other situations where conclusions are controversial, however, slightly, and penalties are discretionary.

- xiii. It is the case of the Respondent that the findings in DIR, Addendum to DIR, First Inspection Report are not conclusive. The DIR or the Final Inspection Report is placed before the Competent Authority of IBBI and the said Competent Authority *prima-facie* forms an opinion as to whether there is any contravention on the part of the Insolvency Professional. It is the Disciplinary Committee which disposes of the SCN by passing a reasoned order after



providing an opportunity of being heard to the concerned Insolvency Professional.

- xiv. The learned Senior Counsel states that the Circular issued in June pertains to “Fee and other Expenses incurred for Corporate Insolvency Resolution Process”. Hence, the comments in the addendum should be read in context of CIRP and not with regards to liquidation process. As per the Petitioner, the contravention of June Circular was not found by the DC and dropped in the Impugned Order. Therefore, the Petitioner cannot plead for a relief which already is adjudicated in his favour on his submissions in the Impugned Order.
- xv. The fees structure in liquidation proceedings is distinguishable from CIRP. During liquidation fees can either be fixed by CoC following the mandate under CIRP or it may be drawn as per table given in the Regulation 4 of the Liquidation Regulations. Once, it is fixed as per Regulation 4(3), the fee is to be charged for all the work to be performed by the liquidator, and which do not require domain expertise or professional help. During liquidation process the fees of the professional services is fixed by the liquidator himself. The Insolvency Professional may take into consideration the advice or suggestions of stakeholder like financial and operational creditors, but final call vests with him. Therefore, it was the Petitioner’s responsibility to



not have charged excessive fees during the liquidation process.

- xvi. The learned Senior Counsel submits that there was no predetermination of issues whatsoever in the SCN. The Petitioner's case was considered and decided strictly in accordance with the procedure prescribed by law.
- xvii. The learned Senior Counsel for the Respondent also contend that Section 233 provides for protection from suit, prosecution, or other legal proceedings for anything done in good faith under the Code or the rules or regulations made thereunder. For actions which are not taken under good faith, protection under Section 233 is not available. Hence, the protection envisaged under Section 233 cannot be bestowed upon the Petitioner.
- xviii. It is the case of the Respondent that the Petitioner has failed to substantiate his claim as to how an erroneous interpretation of Regulation 4 of the Liquidation Regulations led to withdrawal of an excess fee of Rs.83,04,764/-. The said contention is clearly an afterthought and DC has rightly found the Petitioner liable for violating Section 34(8) of the Code, Regulation 4(3) of Liquidation Regulations read with clauses 10, 14, and 25 of the Code of Conduct as specified in the First Schedule of IP regulations.
- xix. Further, the orders passed by the DC in certain other cases which are sought to be relied upon the Petitioner, arose in completely different facts and circumstances, and upon a



holistic examination of the conduct of an IP in discharging his duties. Therefore, these instances cannot be pressed into service to further the Petitioner's case.

xx. The learned Senior Counsel for the Respondent objects to the submission of the Petitioner claiming that as per Circular dated 28.09.2023 once excess fee is returned, no disciplinary proceedings can be initiated. The relevant circular dated 28.09.2023 is as follows:

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

CIRCULAR

No. IBBI/LIQ/61/2023

28th September, 2023

To,
All Registered Insolvency Professionals
All Recognised Insolvency Professional Entities
All Registered Insolvency Professional Agencies
(By mail to registered email addresses)

Dear Madam/Sir,

Subject: Clarification w.r.t. Liquidators' fee under clause (b) of sub-regulation (2) of Regulation 4 of IBBI (Liquidation Process) Regulations, 2016

Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) provides for Liquidator's fee. Sub-regulation (1) and (1A) provide that the fee payable to the liquidator be decided by the Committee of Creditors (CoC) or Stakeholders' Consultation Committee (SCC), as the case may be. If liquidators' fee is not fixed under sub-regulation (1) and (1A), clause (b) of sub-regulation (2) of Regulation 4 provides that 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 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
Amount of Realisation (exclusive of liquidation costs)			
On the first 1 crore	5.00	3.75	1.88
On the next			
Amount Distributed to Stakeholders			
On the first 1 crore	2.5	1.88	0.94
On the next			

2. Based on records examined during the inspections and investigations and interaction with stakeholders, it has been observed that different interpretations of terms highlighted above are being made by the liquidator which are being clarified below: -

2.1 Amount realised: 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...."

"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.

Clarification: "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.

2.2 Other liquidation costs:

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".

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 are only considering process cost as "other liquidation cost" and thereby, exclude the cost incurred in preserving and protecting the assets of the CD, and running the CD as a going concern to calculate "other liquidation cost". Before amendment dated 25th July, 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.

Clarification: 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.

2.3 Amount distributed to stakeholders:

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 has been observed that the liquidators are 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.

Clarification: "Amount distributed to stakeholders" shall mean distributions made to the stakeholders, after deducting CIRP and liquidation cost.

2.4 Amount of Realisation /Distribution:

It is observed that different interpretations are being made for the words "Amount of Realisation /Distribution" used in table in the Regulation 4(2)(b). Though, most of them are interpreting it correctly to mean the cumulative value of assets realised till date, few are interpreting it to mean the value of assets realised during the first six months and then next six months and so on. The words "Amount of Realisation /Distribution" are mentioned in column 1 only. Other columns are for percentage of fees on such realisation/distribution. Thus, the cumulative value of amount realised/ distributed is to be bifurcated in various slabs as per column 1. Only after that, liquidator has to divide the amount realised in a particular slab based on the tenure in which it was realised such as in first six months, next six months or thereafter. Out of the total amount pertaining to that slab, for the amount realised in first six months, % of fees will be as per column 2; for the amount realised in next six months, % of fees will be as per column 3; and for the amount realised thereafter, % of fees will be as per column 4.

Illustration: Assume the liquidation commencement date is 01.11.2021. Further, the liquidation cost and period spent on compromise or arrangement are nil. The liquidator has realised Rs.10 crore on 01.01.2022 and another Rs.1 crore on 01.10.2023.

Liquidator's fee – erroneously computed:

Liquidator fee while interpreting "Amount of Realisation /Distribution" to mean value of assets realised during the first six months and then next six months period and so on, without considering the slab value of assets, computed as under:

Particulars	in first six months	Fee	in next six months	Fee
On the first 1 crore	5.00%	5,00,000	3.75%	3,75,000
On the next 9 crore	3.75%	33,75,000		
Total		38,75,000		3,75,000
Total fee				42,50,000



In the same illustration, if we consider that entire Rs 11 crores was realised within 6 months, the calculation of the liquidator fee is as under:

Particulars	in the first six months	Fee
On the first 1 crore	5.00%	5,00,000
On the next 9 crore	3.75%	33,75,000
On the next 40 crore	2.80%	2,80,000
Total fee		41,55,000

In the above illustrations, the liquidator is getting more fee if he realises the assets within 12 months in comparison to realisation of the assets within 6 months which is against the spirit of the regulation. Thus, it is clear that the cumulative value of amount realised/ distributed is to be bifurcated in various slabs as per column 1. Only after that, the liquidator has to divide the amount realised in a particular slab based on the tenure in which it was realised such as in first six months, next six months or thereafter. Thereafter, fee rate for various amounts realised in various periods are to be taken as per columns 2, 3 and 4.

Clarification: "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.

2.5 Period for calculation of fee: It has been observed that the liquidators are *suo-moto* excluding various time periods such as stay by court on sale of a particular asset, delay in relinquishment by secured creditor, for the purpose of calculating the fee. However, since the liquidator works under the overall guidance of the Adjudicating Authority, any such exclusion should have stamp of judicial authority and should be only for the asset for which such exclusion has been granted.

Clarification: 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.

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.

4. This Circular is being issued in exercise of the powers conferred under the provisions of section 196 of the Insolvency and Bankruptcy Code, 2016.

Yours faithfully

Sd/-

Rajesh Tiwari

General Manager

Email: rajesh.74@ibbi.gov.in



- xxi. It is the case of the Respondent that though Para 3 of the aforesaid circular provides that where excess fee is returned, no disciplinary proceeding will be initiated but there is a difference in cases where the excess fee is returned without being detected at all by the Board, and where the excess fee is returned after a draft inspection report, and where the excess fee is returned after receipt of a Show Cause Notice. In the present case, the Petitioner refunded the excess amount after the IBBI had brought this fact to his notice and had taken cognizance of such infraction.
- xxii. It is the case of the Respondent that Regulation 35A of the CIRP Regulations prescribes for strict timelines that need to be followed by an RP to form an opinion and make a determination regarding whether the corporate debtor has been subjected to any transactions covered under Sections 43, 45, 50, 66 of the Code, and, accordingly, file an application before the Adjudicating Authority seeking appropriate reliefs for avoidance of such transactions. Timely compliance with this exercise can be absolutely critical for viability of an ailing corporate debtor and for protection of interests of all the stakeholders of the corporate debtor.
- xxiii. In light of the gravity of the contraventions alleged and duly proved against the Petitioner, the DC found sufficient cause to impose a proportionate penalty for Petitioner's misconduct, in consonance with Section 220(2) of the Code



read with Regulation 11 of the IP Regulations and Regulation 13 of the Inspection Regulations. The learned Senior Counsel also tendered a decision of Apex Court in Regional Manager & Disciplinary Authority vs. S. Mohammed Gaffar, (2002) 7 SCC 168. The relevant extract of the said judgment is as follows:

“10. The High Court seems to have overlooked the settled position that in departmental proceedings, insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or Appellate Authority is either impermissible or such that it shocks the conscience of the High Court, it should not normally interfere with the same or substitute its own opinion and either impose some other punishment or penalty or direct the authority to impose a particular nature or category of punishment of its choice. It is for this reason we cannot accord our approval to the view taken by the High Court in disregard of this settled principle. Consequently, the appeal is allowed, the judgment of the Division Bench is set aside and that of the learned Single Judge shall stand restored. No costs.”

- xxiv. The learned Senior Counsel for the Respondent contends that the Impugned Order does not violate any of the Petitioner’s fundamental right under Article 19(1)(g) of the Constitution and does not warrant any interference. The DC found sufficient cause to impose a proportionate penalty for Petitioner’s misconduct, in consonance with Section 220(2) of the Code read with Regulation 11 of the IP Regulations and Regulation 13 of the Inspection Regulations.



5. Heard the Counsels for the parties and perused the material on record.
6. The scope of judicial review over the decisions taken by *quasi-judicial* bodies or *administrative* bodies is well settled. Under Article 226 of the Constitution of India, the enquiry is limited to two questions: (i) whether the decision making process is just, fair and reasonable and in accordance with the rules laid down by the authorities for conducting the enquiry, (ii) whether the order is so perverse that no reasonable person would arrive at the decision taken by the authorities, i.e., it suffers from the vice of *Wednesbury's Principles*.
7. As stated in the foregoing paragraphs, against the Order dated 18.08.2022 passed by the Respondent, the Petitioner approached this Court by filing W.P.(C) 13317/2022, contending that copy of the final inspection report had not been supplied to him. Since the process adopted by the Disciplinary Authority was contrary to the rules, this Court set aside the said Order dated 18.08.2022 and remanded the matter back to the Respondent to give a copy of the final inspection report to the Petitioner, invite replies, and thereafter pass a reasoned order after considering the reply.
8. In compliance of the said Order, the Petitioner was supplied with the Final Inspection Report, and additionally an Addendum to the Draft Inspection Report, to ensure full disclosure of all the material. The Petitioner submitted his substituted response to the SCN and was even afforded personal hearings for proper adjudication. The Petitioner cannot raise an objection that the Addendum to DIR was suppressed by the Respondent as it is only after the supply of the said Addendum that the personal hearings took



place on 19.02.2024 and 27.02.2024, which resulted in the final adjudication and passing of the Impugned Order.

9. Therefore, it is only after due compliance of the Order of this Court, and providing the Petitioner with a proper opportunity of being heard, the Impugned Order was passed. In light of the same, this Court is of the opinion that there was no infirmity in passing of the Impugned Order.

10. Further, the Respondent in exercise of powers under Section 196 of the Code read with Regulation 3(1) & 3(3) of the Inspection Regulations, passed the Order dated 12.10.2020 ("**Inspection Order**"), directing the IA to conduct inspection of the Petitioner in relation to all his IBC related assignments. After the Inspection Order was passed by the IBBI directing IA to conduct inspection, and before commencing such inspection, the Petitioner was duly notified by the IA vide email dated 13.10.2020 under Regulation 4(1) that it will be undertaking Petitioner's inspection.

11. Perusal of Regulation 11(2) of the Inspection Regulations provides as follows:

"11. Consideration of Report.

(1) The Board shall consider the inspection report received under regulation 6 or investigation report received under regulation 10, as the case may be, expeditiously.

(2) If the Board, after consideration of the report under sub-regulation (1)10[or on the basis of material otherwise available on record], is of the prima facie opinion that sufficient cause exists to take actions under section 220 or sub-section (2) of section 236, it shall issue a show-cause notice in accordance with regulation 12 to the service provider or an associated person and in any other case, close the inspection or investigation, as the case may be."



12. It is clear from the perusal of Regulation 11(2) of the Inspection Regulations that the Respondent after consideration of the report, can issue a Show Cause Notice if it is of the prima facie opinion that sufficient cause exists to take action under Section 220 of the Code.

13. Taking into account the above-mentioned Regulations, this Court holds that the Respondent had followed the due process and has not committed any infirmity in the initiation of the disciplinary proceedings.

14. It is the case of the Petitioner that the Inspection Order was issued by Assistant General Manager instead of requisite/competent authority, i.e., the Executive Director, IBBI as per the Delegation Order.

15. As per clause 3(3) of the said Delegation Order when a Division does not have an Officer of a particular grade, the powers and functions delegated to him under this Order may be exercised by an Officer of the next immediate lower Grade, if so designated by the Chairperson. The relevant extract is the Delegation Order is as follows:

“3. (1) The delegation of powers and functions in this Order is in addition to, and not in derogation of, delegation of powers and functions assigned under the Code or rules or regulations made under the Code.

(2) The powers and functions delegated to any Member or Officer of the Board under this Order may be exercised by an Officer or Authority higher in grade or position to him in reporting hierarchy.

(3) Where a Division does not have an Officer of a particular grade, the powers and functions delegated to him under this Order may be exercised by an Officer of the next immediate lower Grade, if so designated by the Chairperson.



(4) Subject to provisions in this Order, the Chairperson may delegate any powers and or functions to a Member or an Officer by a special order from time to time.”

(emphasis supplied)

16. The inspection of the Petitioner was approved by Competent Authority and only the communication was made by AGM after seeking approval under Clause 3(3) of the Delegation Order vide File Note dated 16.09.2019. The relevant extract is as follows:

“Subject: Approval for Delegation of Power to AGM (MM)

1. Vide officer order IBBI/HR/60 dated 19.08.2019, Mr. Mayank Mehta, Assistant General Manager was designated as divisional head IP Monitoring Division (issuance of Show Cause Notices).

2. In terms of Sr. No.12 (Supervision of Service Providers) of Part B or the IBBI General Order (Delegation of Powers and Functions) IBBI/DOP/2017 dated 25.04.2018, the power for issue of Show-Cause Notice has been delegated to Deputy General Manager (DGM).

3. It is also stipulated at clause 3 (3) of Part-A of the IBBI General Order (Delegation of Powers and Functions) IBBI/DOP/2017 dated 25.04.2018 that where a Division does not have an Officer of a particular grade, the powers and functions delegated to him under this Order may be exercised by an Officer of the next immediate lower grade, if so designated by the Chairperson.



4. In view of the above, Mr. Mayank Mehta. Assistant General Manager (of IP Monitoring Division may be authorised for issuance of Show Cause Notices.

5. Submitted for approval, please.”

17. The AGM issued the Inspection Order as in accordance with the Delegation Order as the AGM was duly authorised by the Competent Authority in consonance with the procedure laid down in the Delegation Order. Thus, we do not find any merit in the submission of the Petitioner that the Inspection Order was issued by AGM instead of Executive Director without requisite authority. Hence, this Court does not find merit with the plea of the Petitioner. No procedural irregularity was committed by the Respondent during the disciplinary proceedings.

18. After holding that there is no procedural irregularity in the Impugned Order, this Court now proceeds to consider the second aspect as to whether the Order of the DC is so perverse that it shocks the conscience of the Court, as to whether it is based on irrelevant considerations or, if there is a failure to take into account the material factors.

19. The Petitioner was first appointed as RP of Lanco and since the CIRP failed, the Petitioner was appointed as Liquidator in Lanco as well.

20. The Petitioner was the appointed liquidator for Lanco and the RP for SPPL. The Respondent has held the Petitioner for the following contraventions:

- a. In the matter of Lanco, the withdrawal of excess remuneration as Liquidator's fee.



- b. Petitioner engaged a related party (DTTILLP) to assist him in the liquidation process of Lanco, on completely vague terms and conditions, for the function falling in domain of the Liquidator for which Liquidator is paid fee as per table under Regulation 4 of Liquidation Regulations, and without approval of CoC.
- c. In the matter of SPPL, the failure of Petitioner to file avoidance application in contravention of Regulation 35A of the CIRP Regulations.

21. This Court is going to first deal with the arguments of the Petitioner against the findings of the DC in the Impugned Order with respect to Lanco; and subsequently with the findings of the Impugned Order with respect to SPPL.

Arguments with respect to Lanco:

22. The Petitioner seeks to assail the finding in the Impugned Order with regards to excessive fee withdrawal from the liquidation estate of Lanco. As per the Petitioner, during the period from 27.02.2019 to 27.08.2019, due to erroneous calculation of Liquidator's fee, the Petitioner withdrew excess fee of Rs. 83,04,764/- from the liquidation estate of the Corporate Debtor, which was, over and above the fee that was payable to the Petitioner.

23. The Petitioner refunded the excess amount of Rs. 92,44,758/-, adjusted for taxes, after the Respondent had brought this fact to his notice and had taken cognizance of such infraction. The Petitioner claims that it was a *bona fide* mistake on account of erroneous interpretation of



Regulation 4 of the Liquidation Regulations. The relevant extract of Regulation 4 is as follows:

“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.

(2) In cases other than those covered under sub-regulation (1), 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
Amount of Realisation (exclusive of liquidation costs)			
On the first 1 crore	5.00	3.75	1.88
On the next 9 crore	3.75	2.80	1.41
On the next 40 crore	2.50	1.88	0.94
On the next 50 crore	1.25	0.94	0.51
On further sums realized	0.25	0.19	0.10
Amount Distributed to Stakeholders			
On the first 1 crore	2.50	1.88	0.94
On the next 9 crore	1.88	1.40	0.71
On the next 40 crore	1.25	0.94	0.47
On the next 50 crore	0.63	0.48	0.25
On further sums distributed	0.13	0.10	0.05



(3) Where the fee is payable under clause (b) of sub-regulation (2), the liquidator shall be entitled to receive half of the fee payable on realisation only after such realised amount is distributed.

Clarification: Regulation 4 of these regulations, as it stood before the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 shall continue to be applicable in relation to the liquidation processes already commenced before the coming into force of the said amendment Regulations.]”

24. Section 36 of the Code stipulates that the liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

Relevant extract of Section 36 is as follows:

*“36. **Liquidation estate.**—(1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.*

(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

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

(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the



Board, including shares held in any subsidiary of the corporate debtor;

(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;

(c) tangible assets, whether movable or immovable;

(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;

(e) assets subject to the determination of ownership by the court or authority;

(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;

(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and

(i) all proceeds of liquidation as and when they are realised.

(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:—



(a) assets owned by a third party which are in possession of the corporate debtor, including—

(i) assets held in trust for any third party;

(ii) bailment contracts;

(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;

(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and

(v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;

(b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;

(c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

(d) assets of any Indian or foreign subsidiary of the corporate debtor; or

(e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.”



25. Moreover, as per Section 208(2)(a) of the Code, an IP is bound to abide by the Code of Conduct and to take reasonable care and diligence while performing his duties. The relevant extract of Section 208 of the Code is as follows:

“208. Functions and obligations of insolvency professionals.—(1) Where any insolvency resolution, fresh start, liquidation or bankruptcy process has been initiated, it shall be the function of an insolvency professional to take such actions as may be necessary, in the following matters, namely:—

(a) a fresh start order process under Chapter II of Part III;

(b) individual insolvency resolution process under Chapter III of Part III;

(c) corporate insolvency resolution process under Chapter II of Part II;

(d) individual bankruptcy process under Chapter IV of Part III; and

(e) liquidation of a corporate debtor firm under Chapter III of Part II.

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

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

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



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

(d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and (e) to perform his functions in such manner and subject to such conditions as may be specified.”

(emphasis supplied)

26. The Petitioner was bound to follow the provisions of the Code, and the Code of Conduct laid down under the Code in letter and spirit as it is the duty of the IP to maximise the value of liquidation estate in order to pay back the creditors.

27. The Petitioner has placed reliance on the Circular dated 28.09.2023 to contend that as per the said Circular once the IP returns the excess fee no disciplinary action can be taken against such IP.

28. It is pertinent to note that the return of excess fee by the Petitioner only occurred after the Respondent had brought this fact to the Petitioner's notice and had taken cognizance of such infraction. The act of the Petitioner refunding the excess fee only after the said contravention was pointed out by the Respondent does not absolve the Petitioner rather it points out to the culpability of the Petitioner. In the present case, the Petitioner failed to substantiate how the erroneous interpretation of Regulation 4 of the Liquidation Regulations led to withdrawal of an excess fee. This fact is against the intent and spirit of the Code and its regulations. The Petitioner cannot be given the



protection of Section 233 of the Code as the Petitioner has utterly failed to establish how his actions were done in good faith.

29. Further, the orders passed by the DC in similar cases which were relied upon by the Petitioner cannot be taken as precedent as they were passed in entirely different facts and circumstances. Therefore, we do not see any reason to interfere with the finding of the DC in the Impugned Order.

30. The Petitioner has also contended the finding of the DC in the Impugned Order upholding the charge in the SCN that the Petitioner had engaged DTTILLP on vague terms and conditions and paid unjustified fees without any documentation and quantification. The DC held that for carrying out his own duties, the Petitioner engaged assistance of DTTILLP which was not in the nature of appointment of professionals under Regulation 7(1) of the Liquidation Regulations. Instead, DTTILLP was paid the fees for the work for which the Petitioner was duly compensated as per Regulation 4(3) of the Liquidation Regulations. The relevant extract of the said regulation of the Liquidation Regulations is provided 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
Amount of Realisation (exclusive of liquidation costs)			
On the first 1 crore	5.00	3.75	1.88
On the next 9 crore	3.75	2.80	1.41
On the next 40 crore	2.50	1.88	0.94
On the next 50 crore	1.25	0.94	0.51
On further sums realized	0.25	0.19	0.10
Amount Distributed to Stakeholders			
On the first 1 crore	2.50	1.88	0.94
On the next 9 crore	1.88	1.40	0.71
On the next 40 crore	1.25	0.94	0.47



Amount of Realisation / Distribution (In rupees)	Percentage of fee on the amount realized / distributed			
	in the first six months	in the next six months	in the next one year	Thereafter
<i>Amount of Realisation (exclusive of liquidation costs)</i>				
On the first 1 crore	5.00	3.75	2.50	1.88
On the next 9 crore	3.75	2.80	1.88	1.41
On the next 40 crore	2.50	1.88	1.25	0.94
On the next 50 crore	1.25	0.94	0.68	0.51
On further sums realized	0.25	0.19	0.13	0.10
<i>Amount Distributed to Stakeholders</i>				
On the first 1 crore	2.50	1.88	1.25	0.94
On the next 9 crore	1.88	1.40	0.94	0.71
On the next 40 crore	1.25	0.94	0.63	0.47
On the next 50 crore	0.63	0.48	0.34	0.25
On further sums distributed	0.13	0.10	0.06	0.05

(4) The liquidator shall be entitled to receive half of the fee payable on realization under sub-regulation (3) only after such realized amount is distributed.”

On the next 50 crore	0.63	0.48	0.25
On further sums distributed	0.13	0.10	0.05

[Clarification: For the purposes of clause (b), it is hereby clarified that where a liquidator realises any amount, but does not distribute the same, he shall be entitled to a fee corresponding to the amount realised by him. Where a liquidator distributes any amount, which is not realised by him, he shall be entitled to a fee corresponding to the amount distributed by him.]

(3) Where the fee is payable under clause (b) of sub-regulation (2), the liquidator shall be entitled to receive half of the fee payable on realisation only after such realised amount is distributed.

Clarification: Regulation 4 of these regulations, as it stood before the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 shall continue to be applicable in relation to the liquidation processes already commenced before the coming into force of the said amendment Regulations.]”

(emphasis supplied)



31. As per the Petitioner, DTTILLP was appointed by the Petitioner under Regulation 7(1) of the Liquidation Regulations, which 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.”

32. The DC in the Impugned Order has provided a table for the work done by the DTTILLP as submitted by the Petitioner. The relevant extract of the Impugned Order is as follows:

“3.3.46. The work done by the DTTILLP as submitted by Mr. Savan Godiawala is below:

Sr.	Activity where assistance of DTTILLP was sought	Duty of Liquidator
1	Claim verification	Section 35(1)(a) to verify claims of all the creditors;
2	Planning and strategy for the auction of the CD-1, businesses, and assets	Regulation 33 of Liquidation Regulations
3	Preparation of liquidation estate and preparation for auction – data collation from various sites, review of assets and their categorization for first auction.	Section 36
4	Coordination and facilitation of valuation of assets	Regulation 35 of Liquidation Regulations
5	Preparation of reports such as preliminary report, asset memorandum, marketing documents, etc.	Regulation 34 of the Liquidation Regulations
6	Interactions with the stakeholders, including through conduct of Stakeholders’ meetings	Regulation 31A of Liquidation Regulations.
7	Preparation of process documents for auction of the Corporate Debtor, businesses, and assets	Clause 3 Schedule I of Liquidation Regulations
8	Appointment of auction agency	Clause 8 of Schedule I of Liquidation Regulations



9	Discussion and planning the details of auction process with appointed auction agency	Clause 2 of Schedule I of Liquidation Regulations
10	Initial marketing thrust and reach out to potential buyers	With the help of a marketing professional,
11	Deliberation with stakeholders on the possible monetization of group entities for the benefit of stakeholders, whether as part of liquidation or outside liquidation process	Regulation 31A of Liquidation Regulations.
12	Discussions with SAIL and various stakeholders and efforts towards realizing value from a coal mining contract of Corporate Debtor	Regulation 31A of Liquidation Regulations.
13	Identifying EPC projects and potential receivables for recovery.	Section 35(1)(b) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;
14	Bids for sale as a going concern at later stage	Regulation 32 of Liquidation Regulations.
15	Filing of progress reports and compliances	Regulation 15 of the Liquidation Regulations “The liquidator shall submit Progress Reports, in the format stipulated by the Board, to the Adjudicating Authority and the Board”

33. From the perusal of the above, it can be construed that the most of the activities contained by DTTILLP correspond to the role and functions of a liquidator as provided under provisions of the Code and Liquidation Regulations. Section 35 of the Code enumerates the powers and duties of a liquidator. The relevant extract of Section 35 of the Code is 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; 1

[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 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) The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53:

Provided that any such consultation shall not be binding on the liquidator:

Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.”

34. The work done by DTTILLP is similar to that of a liquidator for which fee was already being paid to the Petitioner who was the appointed Liquidator.

35. As per Liquidation Regulations, a liquidator can 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, for example, accounting professional, auditing professional, marketing professional, valuation professional, legal professional. The liquidator can seek assistance of professionals for services which are not in his domain exclusively. Services such as claim verification, taking custody or control of assets, evaluating the assets, inviting and settling claims of creditors, etc. will fall in these services



where the liquidator has the expertise and they do not fall in the domain of another professional.

36. The fee of a Liquidator can be fixed in two ways. Either the Liquidator can negotiate the fee with the CoC and get it fixed as per his terms and conditions; or the same can be fixed as per Regulation 4(3) of the Liquidation Regulations. Once, it is fixed as per Regulation 4(3), the fee is for all the role and functions of the liquidator which are performed by the liquidator when the liquidator is for a small case. But in a complicated case like the current one, the performance of all such duties will require a team and, the fees will accordingly be higher.

37. The DC in the Impugned Order, has rightly held that the fee paid to DTTILLP to the extent they have been paid for performing the role and functions of liquidator cannot be said to be reasonable which cannot be said to be perverse.

38. The Petitioner also contended that the findings in the Impugned Order regarding the Petitioner appointing DTTILLP to perform the function of the Liquidator was not part of the SCN.

39. During the Disciplinary Proceeding, the Petitioner himself admitted to the scope of work of DTTILLP. The relevant portion of the Impugned Order is as follows:

"3.3.20. Mr. Savan Godiawala submitted that the assistance required from DTTILLP, immediately upon the commencement of the liquidation in various processes, included the following:

a. Claim verification;

b. Planning and strategy for the auction of the Corporate Debtor, businesses, and assets;



- c. Preparation of liquidation estate and preparation for auction – data collation from various sites, review of assets and their categorization for first auction;*
- d. Coordination and facilitation of valuation of assets;*
- e. Preparation of reports such as preliminary report, asset memorandum, marketing documents, etc.;*
- f. Interactions with the stakeholders, including through conduct of stakeholders' meetings;*
- g. Preparation of process documents for auction of the Corporate Debtor, businesses, and assets;*
- h. Appointment of auction agency;*
- i. Discussion and planning the details of auction process with appointed auction agency;*
- j. Initial marketing thrust and reach out to potential buyers;*
- k. Extensive deliberation with stakeholders on the possible monetization of group entities for the benefit of stakeholders, whether as part of liquidation or outside liquidation process;*
- l. Discussions with SAIL and various stakeholders and efforts towards realizing value from a coal mining contract of CD-1;*
- m. Identifying EPC projects and potential receivables for recovery."*

40. From the material on record, it is evident that it was only after the aforesaid submissions were made on behalf of the Petitioner that the



Disciplinary Committee proceeded to conclude that DTTILLP has been paid an enormous fee for tasks which, under the statutory scheme, were required to be performed by the Liquidator himself, and for which he was already in receipt of due remuneration. The DTTILLP has thus been paid an excessive fee, in clear contravention of the Liquidation Regulations.

41. Therefore, this Court does not find any infirmity with the afore-stated findings of the DC in the Impugned Order with respect to contraventions committed by the Petitioner during the liquidation of Lanco and declines to interfere with the said findings.

Arguments with respect to SPPL:

42. The Petitioner was appointed as RP of the SPPL which finally went into liquidation since the CIRP failed.

43. This Court will now analyse arguments of the Petitioner in consonance with the facts of the matter in the case of SPPL. The Petitioner has objected to the finding in the Impugned Order pertaining to delayed filing of Avoidance Application in contravention to Regulation 35A of the CIRP Regulations.

44. The DC in the Impugned Order has held that the Petitioner appointed BDO India LLP vide engagement letter dated 01.07.2020 to conduct TRA of SPPL. However, he failed to initiate action as required under Regulation 35A(2) and 35A(3) of CIRP Regulations.

45. It is the case of the Petitioner that such delay occurred due to onset of Covid-19 pandemic as the management of SPPL was working on limited staff and therefore there was a delay in supply of information sought by BDO for the purposes of TRA and consequential delay in



filing of the Avoidance Application. It is contended that on account of the pandemic the Respondent itself, the NCLAT, and even the Supreme Court relaxed timelines under CIRP regulations, the IBC Code, and the Limitation Act respectively.

46. The Petitioner in the 6th meeting of the CoC held on 22.10.2020 with respect to SPPL, himself admitted that the transaction audit is completed. The relevant portion of the meeting dated 22.10.2020 is provided hereunder:

“Agenda 5: To update CoC on Corporate Insolvency Resolution Process (“CIRP”) activities undertaken by the Resolution Professional (“RP”) and to brief the CoC about the current state of operation and recent developments

The Chair further in line with agenda briefed the CoC on activities undertaken by the RP/Authorised Representatives:

- *As discussed, in the fifth CoC meeting, final list of Prospective Resolution Applicants(PRAs) include:*
 - *Vedanta Limited*
 - *Manikaran Power Limited*
 - *Sherisha Technologies Private Limited*
 - *Prudent ARC Limited*

RP informed the CoC members that the PRAs were given access to the Virtual Data Room and have devoted resources for their due diligence; however, none of the PRAs have submitted a Resolution Plan up to the due date.

- *The RP and his team are in continuous interaction with the plant in-charge Mr. Manojit Panda as well as the security in-charge Mr. Sagar Patil to keep a check on the current situation at the plant.*



- ***The RP and his team are in continuous follow-up with the Transaction Review Auditors and valuers for completion of the audit as well as valuation exercise. Transaction audit is near to completion and valuation exercise will be completed within 5-7 days. He further briefed the CoC that the transaction audit is completed and a discussion call is scheduled tomorrow.***

(emphasis supplied)

47. In spite of the stand of the Petitioner in the 6th CoC meeting, the Petitioner in the disciplinary proceedings has taken the defence of delay on the part of the management of the SPPL in providing requisite information for the TRA which led to a delay in TRA, and the filing of Avoidance Application. The DC in its Impugned Order has held that the Petitioner could have filed an application under Section 19(2) of the Code for seeking cooperation of the management of SPPL when there was a continuous delay in receiving information. The Petitioner failed to do so, and even stopped following up with the management of SPPL from 21.12.2020.

48. The only reason, non-filing of the application under Section 19(2) as well as the Petitioner not following up with the management of SPPL, was made part of the Impugned Order was on account of the submissions made by the Petitioner in the disciplinary proceedings. This Court does not find any infirmity in the findings of the Impugned Order.

49. The Apex Court in Central Council for Research in Ayurvedic Sciences & Anr. v. Bikartan Das & Ors., 2023 SCC OnLine SC 996, has held as under:



“48. Before we close this matter, we would like to observe something important in the aforesaid context:

Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

49. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of the Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

50. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the



fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

51. The essential features of a writ of certiorari, including a brief history, have been very exhaustively explained by B.K. Mukherjea, J. in *T.C. Basappa v. T. Nagappa* [*T.C. Basappa v. T. Nagappa*, (1954) 1 SCC 905 : AIR 1954 SC 440] . The Court held that a writ in the nature of certiorari could be issued in “all appropriate cases and in appropriate manner” so long as the broad and fundamental principles were kept in mind. Those principles were delineated as follows : (SCC p. 914, paras 8-10)

“8. ... In granting a writ of “certiorari”, the superior court does not exercise the powers of an Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. ...

9. The supervision of the superior court exercised through writs of “certiorari” goes on two points, as has been expressed by Lord Sumner in *R. v. Nat Bell Liquors Ltd.* [*R. v. Nat Bell Liquors Ltd.*, (1922) 2 AC 128 (PC)] , AC at p. 156. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise;



the other is the observance of law in the course of its exercise. ...

10. “Certiorari” may and is generally granted when a court has acted without or in excess of its jurisdiction.”

52. Relying on T.C. Basappa [T.C. Basappa v. T. Nagappa, (1954) 1 SCC 905 : AIR 1954 SC 440], the Constitution Bench of this Court in Hari Vishnu Kamath [Hari Vishnu Kamath v. Ahmad Ishaque, (1954) 2 SCC 881 : AIR 1955 SC 233], laid down the following propositions as well established : (Hari Vishnu Kamath case [Hari Vishnu Kamath v. Ahmad Ishaque, (1954) 2 SCC 881 : AIR 1955 SC 233], SCC p. 899, para 24)

“24. ... 24.1. “Certiorari” will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

24.2. “Certiorari” will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

24.3. The court issuing a writ of “certiorari” acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.”

53. This Court explained that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that



decision, it would be defeating its purpose and policy if a superior court were to rehear the case on the evidence and substitute its own finding in certiorari.

54. In *Yakoob v. K.S.Radhakrishnan* [*Yakoob v. K.S. Radhakrishnan*, 1963 SCC OnLine SC 24 : AIR 1964 SC 477] , P.B. Gajendragadkar, C.J., speaking for the Constitution Bench, placed the matter beyond any position of doubt by holding that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. The observations of this Court in para 7 are worth taking note of : (SCC OnLine SC para 7)

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or



Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised....”

55. In *Surya Dev Rai v. Ram Chander Rai* [*Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675] , a Bench of two Judges held that the certiorari jurisdiction though available, should not be exercised as a matter of course. The High Court would be justified in refusing the writ of certiorari if no failure of justice had been occasioned. In exercising the



certiorari jurisdiction, the procedure ordinarily followed by the High Court is to command the inferior court or tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to determine, whether on the face of the record the inferior court has committed any of the errors as explained by this Court in Hari Vishnu Kamath v. Ahmad Ishaque [Hari Vishnu Kamath v. Ahmad Ishaque, (1954) 2 SCC 881 : AIR 1955 SC 233] occasioning failure of justice.”

(emphasis supplied)

50. It is well settled that the High Court while exercising its jurisdiction under Article 226 of the Constitution of India does not sit as an Appellate Authority. A writ court exercising its jurisdiction under Article 226 of the Constitution of India does not substitute its own conclusion to the one arrived at by any authority unless the decision is so perverse that no authority can come to such a conclusion or that the order is completely in contravention of any provision of any law be it an Act or the Regulation framed under the Act.

51. The scope of interference by Court exercising its powers of judicial review in respect of a challenge pertaining to a decision taken by the experts of the field is well settled. The Supreme Court has considerably in a number of judgments held that the Court may interfere in an administrative decision, if and only if the same is arbitrary, irrational, unreasonable, *mala fide*, or biased. The Apex Court in Tata Cellular vs. Union of India, (1994) 6 SCC 651, has laid down as follows:

“70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must



be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.”

52. Summing up the principles laid down in Tata Cellular (supra), Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517, DwarkanadasMarfatia and Sons v. Board of Trustees of the Port of Bombay, (1989) 3 SCC 293, and Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622, the Apex Court in Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818, stated:

“13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision.

53. The Apex Court in Silppi Constructions Contractors v. Union of India, (2020)16 SCC 489, has laid down that Courts should exercise a lot



of restraint while exercising powers of judicial review in respect of matters pertaining to technical issues as the Courts lack the expertise to adjudicate upon technical issues. The relevant portion of the Judgment is reproduced as under:

*“19. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. **The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give “fair play in the joints” to the government and public sector undertakings in matters of contract. Courts must also not interfere where such***



interference will cause unnecessary loss to the public exchequer.

(emphasis supplied)

54. The rationale in the afore-stated judgement was reaffirmed by the Apex Court in Tata Motors Limited vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Ors. (2023) 19 SCC 1. Further, the Apex Court in BTL EPC Ltd. vs. Macawber Beekay Pvt. Ltd. and Ors. 2023 SCC OnLine SC 1223, also followed the law laid down by Silppi (*supra*), and Tata Motors (*supra*) stating as follows:

“35. It is settled law that in contracts involving complex technical issues, the Court should exercise restraint in exercising the power of judicial review. Even if a party to the contract is ‘State’ within the meaning of Article 12 of the Constitution, and as such, is amenable to the writ jurisdiction of the High Court or the Supreme Court, the Court should not readily interfere in commercial or contractual matters. This principle has been reiterated in a recent judgment of this Court. Justice J B Pardiwala, speaking for the Bench in Tata Motors Limited v. BEST held:

“48. This Court being the guardian of fundamental rights Is duty-bound to Interfere when there Is arbitrariness, irrationality, mala fides, and bias However, this Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review In contractual or commercial matters This Court Is normally loathe to Interfere In contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or Irrationality Is made out One must remember that today many public sector undertakings compete with the private industry



The contracts entered Into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless Interference in commercial matters can cause. In contracts Involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical Issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give fair play In the Joints' to the government and public sector undertakings In matters of contract. Courts must also not Interfere where such interference will cause unnecessary loss to the public exchequer."

36. The Court ought to defer to the discretion of the tender inviting authority which, by reason of having authored the tender documents, is best placed to interpret their terms. The Courts ought not to sit as courts of appeal but review the decision-making process and examine arbitrariness or mala fides, if any."

55. From the afore-stated judgment, it is clear that the scope of interference by way of judicial review in commercial matters is extremely limited and can only be justified when a case of arbitrariness,



unreasonableness, *mala fide*, bias, or irrationality is clearly made out. Further, the Courts lack the requisite expertise to adjudicate upon technical issues which are often involved in commercial matters. Applying the law laid down by the Apex Court to the facts of the present case, this Court is of the opinion that the IBBI has not contravened any of the procedural requirements mandated under the IBC or the Inspection Regulations.

56. The purpose of the IBC is revival of a company. A Resolution Professional takes complete charge of the company when the company is undergoing through resolution process. His role is to see whether the company can be revived or not. The function of IRP is to ensure that proper steps are taken to set aside such of transactions which are fraudulent in nature. Similarly, it is also the function of a Liquidator of the company, where revival is not possible, to ensure that the assets of the company are not frittered away which are meant to repay the Government dues, the wages of the employees, who have not been paid, and the other dues. The Insolvency Professional itself cannot become a predator of a company which itself is in the dire financial strains. Such professionals who act more like scavengers of a dead body for their own ulterior motives have to be dealt with severely as they strike at the heart rather the very object of the IBC. The Resolution Professional is therefore obliged to maintain the highest standard of professional ethics and even a single act of negligence, omission, or commission is sufficient for the Board to take action against the Resolution Professional/ Liquidator under Section 217-220 of the IBC after following the due procedure. The purpose of the IBBI is to look into the conduct of the



Resolution Professional in the nature and manner of the performance of their duty.

57. The conduct of the Petitioner has been first scrutinized by the Investigating Authority which found substantial deficiencies in the conduct and performance of the Petitioner inasmuch the Petitioner failed to maximise the returns to the creditors by withdrawing excessive fee from the Liquidation estate of Lanco, hiring of external agency and allowing them huge fees for the tasks that were supposed to be done by the Petitioner himself, and delaying the filing of avoidance application in the case of SPPL.

58. The facts of the case does indicate a lack of devotion on the part of the Petitioner in not filing the avoidance application in the case of SPPL and engaging an entity in which he was a partner to perform functions which the Petitioner could have undertaken himself and thereby, saving substantial amount of money that has to be paid. It is well settled that Courts, while exercising their writ jurisdiction, only look at the decision making process and not the decision itself. Even while interfering with penalties, the Courts do not interfere with penalties, unless it shocks the conscience of the Courts. Further the argument that persons who are similarly situated have been dealt with leniently becomes a facet of a negative equality and Article 14 does not apply in these cases. The Petitioner cannot take the umbrella that other persons in similar cases have been dealt with lightly. In any event, the Respondents have brought out a case that the cases are not similar in nature and the Petitioner was handling much bigger projects as compared to other Insolvency Professionals.



59. The Impugned Order of the Disciplinary Committee shows that all the objections of the Petitioner were duly considered after affording the Petitioner with personal hearings. This Court has gone through the material on record and is of the opinion that the procedure under law has been followed by the Respondent before passing the Impugned Order suspending the Petitioner, and directing the refund of half of the fees paid to DTTILLP. The attempt of the Petitioner has been to persuade this Court to substitute its conclusion to the one arrived at by the Board, which is outside the scope of Article 226 of the Constitution of India.

60. This Court, therefore, does not find any reason to interfere with the Order passed by the Respondent.

61. Accordingly, the Petition is dismissed, along with the pending applications, if any.

62. The IBBI by the Impugned Order has directed the Petitioner to deposit half of the fees paid to the DTTILLP with the Consolidated Fund of India. However, this Court *vide* Order dated 22.05.2024 has stayed the recovery of penalty from the Petitioner. The time to deposit the penalty by the Petitioner is extended by six weeks.

SUBRAMONIUM PRASAD, J

SEPTEMBER 09, 2025

hsk/MT