

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR

W.P.A 10330 of 2022

with
CAN 1 of 2025

Sashi Agarwal

vs.

Union of India & Ors.

For the Petitioner	: Mr. Jaydip Kar, Sr. Adv. Mr. Swatarup Banerjee, Adv. Mr. Suddhasatva Banerjee, Adv. Mr. Kuldip Mallick, Adv. Mr. Dyutimoy Pal, Adv. Mr. Arun Kumar Mishra, Adv. Mr. Shantanu Mishra, Adv. Mr. Diptomoy Talukdar, Adv.
For the Union of India	: Ms. Rashmi Bothra, Adv.
For the IBBI	: Mr. Jishnu Chowdhury, Sr. Adv. Mr. Ritoban Sarkar, Adv. Ms. Aparajita Rao, Adv. Ms. Nabanita Dutta, Adv.
Judgment reserved on	: 08.05.2026
Judgment pronounced on	: 16.07.2026
Judgment uploaded on	: 16.07.2026.

Shampa Sarkar, J.

1. The writ petition has been filed challenging an order dated May 13, 2022, passed by the Chairperson, Insolvency and Bankruptcy Board of India

(in short 'IBBI'). By the said order, the registration of the petitioner as an Insolvency Professional was cancelled, in exercise of powers under section 220(2) of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC') read with sub-Regulations 7 and 8 of Regulation 11 of the IBBI (Insolvency Professional) Regulations, 2016.

2. By an order dated August 7, 2019, passed by the learned National Company Law Tribunal, Kolkata Bench (in short 'NCLT, Kolkata'), the writ petitioner was appointed as the Industrial Resolution Professional (in short 'IRP') of INCAB Industries Limited (hereinafter referred to as the 'said Company'). The factual matrix as narrated in the writ petition were as follows :-

- A. In October, 1999, a reference was made to the Board for Industrial and Financial Re-construction (in short 'BIFR') for the purpose of declaring the said company as a sick unit.
- B. On April 4, 2000, BIFR declared the said company as a sick unit under the provisions of The Sick Industrial Companies (Special Provisions) Act, 1985.
- C. The accounts of the said company had not been audited from April 1, 2000, and accordingly annual returns and balance sheets had not been filed in the office of the Registrar of Companies, West Bengal, since 2000.
- D. The said company's production at its main factory at Jamshedpur, had been closed since 1999 and the factory at Pune was carrying on production more or less up to 2016.

- E. The determination of the provident fund dues also could not be made for the period between April 2000 and June 2014, as per the intimation of the Provident Fund Department.
- F. By a telefax dated May 4, 2009, BIFR appointed one of the directors of the Financial Creditors (Kamala Mills Limited and Fasqua Investments Private Limited (hereinafter referred to as 'Kamala Mills' and 'Fasqua Investments')), namely, Mr. Ramesh Ghamandiram Gowani as a director of the said company.
- G. Two writ petitions were filed before the Delhi High Court by Tata Iron and Steel Company Limited and the said company, challenging the decision of the BIFR, as reflected in the tele-fax,.
- H. The writ petitions were allowed by the Delhi High Court upon setting aside the telefax communication dated May 4, 2009. Thus, the position existing on May 3, 2009, was revised as per the order of the Delhi High Court. The nomination of Mr. Gowani as a director of the said company by BIFR, was set aside on April 29, 2013.
- I. Upon Promulgation of IBC, an employee/worker of the said company, filed an application under Section 9 of IBC, inter alia, praying for initiation of corporate insolvency resolution process (in short 'CIRP') in respect of the said company. The petition, bearing number C.P. (IB) No. 1684/KB/2019 was

admitted by the NCLT, Kolkata by an order dated August 7, 2019.

- J. The petitioner was appointed as the IRP. Thereafter, the petitioner issued a paper publication, upon receiving the claims from the financial creditors. The Committee of Creditors (in short 'COC') was formed and assigned voting percentage, based on the claims filed by them. In view of the order passed by the Delhi High Court dated April 29, 2013, setting aside the telefax communication of the BIFR by which Mr. Gowani was nominated as the director of the said company, Kamal Mills and Fasqua Investments were included in the COC as non-related parties (financial creditors). The petitioner invited them to the first, second and third meetings of the COC. One Pegasus Assets Reconstruction Private Limited (in short 'Pegasus') was also a member of the COC and was present in all the meetings.
- K. In the third meeting of the COC held on October 18, 2019, Pegasus raised an objection in respect of the inclusion of Kamala Mills and Fasqua Investments as members of the COC. On the basis of the objections raised by Pegasus, by an e-mail dated 4th and 5th November, 2019, the petitioner informed both Kamala Mills and Fasqua Investments that, in terms of Section 5(24) and other applicable provisions of IBC, they would be treated as related parties. The fourth

meeting of the COC was held on November 11, 2019. At the said meeting, Kamala Mills and Fasqua Investments were not invited. The petitioner treated them to be related parties. The petitioner filed an application before the NCLT under Section 19(2) of IBC, inter alia, alleging that Mr. Gowani was not cooperating with the petitioner and had not made over the records of the corporate debtor (said company).

L. The application was disposed of by the NCLT Kolkata, by an order dated November 20, 2019. According to the NCLT, as the telefax by which the representative of Kamala Mills had been appointed as a nominee director of the said company, had been set aside by the Delhi High Court, Mr. Gowani, who was the respondent in the said application, was not a director of the corporate debtor and had never remained a director of the corporate debtor. The NCLT Kolkata held that, Mr. Gowani was wrongly impleaded as a respondent in the application under Section 19(2).

M. In view of the order of the NCLT Kolkata, the petitioner again invited Kamala Mills and Fasqua Investments to join the COC and the said two entities participated in the fifth COC meeting held on December 5, 2019.

N. The order of the NCLT had attained finality and had not been challenged by any of the parties. Even Pegasus did not object to the above findings of the NCLT that, Kamala Mills

and Fasqua Investments could not be treated as related parties. In the 5th meeting, COC came to a decision that the said company could not be revived and proposed liquidation. No one objected. Pursuant to the resolution of the COC, an application was filed before the learned NCLT, Kolkata and the same was numbered as CA (IB) No. 1748/KB/2019. The said application was taken up for hearing and by an order dated February 7, 2020, the NCLT Kolkata, allowed liquidation of the said company.

O. Aggrieved by the order passed by the NCLT, some of the workers of the said company preferred an appeal before the National Company Law Appellate Tribunal (in short 'NCLAT') praying for setting aside of the order dated February 7, 2020. The NCLAT not only set aside the order of February 7, 2020, but also set aside the earlier order dated November 20, 2019, although, no appeal was preferred from the said order. Pursuant to the order of the NCLAT dated June 4, 2021, a show cause notice dated September 10, 2021, was issued to the petitioner, by the Assistant General Manager, IBBI, inter alia, seeking an explanation on the various allegations stated in the said notice. The basis of the notice was the direction in paragraph 88(i)(g) of the decision of the NCLAT. The NCLAT directed that the order dated June 4, 2021 may be sent to the IBBI for further action, which it

may deem fit against the petitioner (Resolution Professional).

The petitioner submitted his reply to the said show cause notice by denying the allegations.

- P. It was contended that, the show cause notice was issued on the basis of the observations of the NCLAT by ignoring the draft inspection report. IBBI had conducted inspection under the relevant provisions of the IBC, with regard to all the assignments handled by the petitioner as the I.R.P, including those of the said company.
- Q. All documents with regard to the other companies as also the corporate debtor were sent to the IBBI.
- R. Ms. Tuhina Madri of IBBI, had viewed the Information Memorandum of the said company on September 13, 2020 and no irregularities were found. Such inspection had taken place prior to the decision of the NCLAT.
- S. The petitioner preferred a civil appeal before the Hon'ble Apex Court challenging the order of the NCLAT dated June 4, 2021, and the same was numbered as Civil Appeal No. 2209-2210 of 2021. Upon hearing the respective parties, by an order dated December 3, 2021, the Hon'ble Apex Court allowed the petitioner to withdraw the special leave application, but permitted the petitioner to raise all pleas and contentions before the IBBI. The petitioner approached IBBI and requested that the show cause notice dated

September 10, 2021, be rescinded and the petitioner be allowed to file a fresh representation. The petitioner also prayed for activation of the Authorisation For Assignments (AFA). The respondent No. 3 failed to reply to the said e-mail dated December 13, 2021. Ultimately the order impugned was passed by IBBI.

3. Mr. Jaydip Kar, learned Senior Advocate for the writ petitioner submitted that the proceedings initiated by the respondent No. 3 (Disciplinary Committee) and the decision arrived at, were contrary to the statutory provisions under Sections 33(2), 217, 218, 219 and 220 of IBC. It was submitted that the proceeding initiated by the IBBI was based on an erroneous interpretation of Regulation 13, 14, 36 and 40 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016, Rule 2(1)(c) and 2(1)(d) of the IBBI (Salary, Allowances and Other Terms and Conditions of Service of Chairperson and Members) Rules, 2016 and Regulation 2(c), 3, 4, 7 of the IBBI (Inspection and Investigation) Regulations, 2017. It was also submitted that the proceeding was vitiated on account of violation of the principles of natural justice. The findings suffered from non-consideration of the effect of the order of the Delhi High Court dated April 29, 2019. It was contended that, the order dated November 20, 2013, passed by the NCLT had attained finality. By such order, the NCLT Kolkata held that Mr. Gowani was not a related party.

Thus, the finding against the petitioner in allowing Kamala Mills and Fasqua Investments to be members of the COC in the year 2019 and allowing them to participate in the meetings, were contrary to the decision of the NCLT dated November 20, 2019. Finally, the show cause notice would indicate that allegations made against the petitioner were the exact representation of the findings of the NCLAT. On such ground, the said show cause notice should be set aside. The Hon'ble Apex Court had clearly directed by the order dated December 3, 2021, that the IBBI would proceed independently and not be guided by or influenced by the order passed by the NCLAT. The observation of the NCLAT in the order dated June 4, 2021, were relied upon mechanically and the other relevant materials which were to be considered independently by the Disciplinary Committee, on the basis of the order of the Hon'ble Apex Court, were ignored.

4. According to Mr. Kar, the alleged illegal actions of the petitioner, could not attract such a harsh punishment of cancellation of his registration, in the absence of any finding of fraud or malafide intent or lack of integrity. There was no specific allegation with regard to any wrongful gain or financial irregularity against the petitioner. The sum and substance of the allegations against the petitioner were non-verification of the claims, failure to collate the claims, constitution of the COC prior to verification of the claims, inclusion of related parties in the COC, non-preparation of the Information Memorandum and hasty recommendation for liquidation. With regard to the allegation of failure to collate the claims and constitution of the COC without verification of claim, it was submitted by Mr. Kar that, admittedly,

the company was in BIFR as it had become sick since 1999. The company did not have any audited books of accounts and other relevant documents. The company was not in active operation and was not a going concern. On April 14, 2000, the BIFR had declared the said company as a sick company. The accounts of the company was last audited for the year 1999. Reference was made to the order of the NCLT dated April 18, 2024, to support such contention. In a proceeding with regard to renewal of lease in favour of the said company, the NCLT observed that the company was not a going concern. Such application was filed by the subsequent RP, who was appointed after the petitioner was removed and his registration was cancelled. By another order dated March 7, 2025, the NCLT categorically recorded that, since the said company did have records, the RP had appointed experts in order to obtain relevant information and to revisit the claims. Thus, the inability of the petitioner to collate the claims was a mere non-compliance in view of a genuine impediment. After the petitioner was appointed as the IRP, due advertisement was published in terms of IBC, inter alia, calling upon the creditors to submit their claims. Pursuant to such advertisement, three financial creditors, namely, Pegasus, Kamala Mills and Fasqua Investments filed their claims. The first COC meeting was held on September 6, 2019 and the financial creditors were invited as members of the COC to attend the first meeting. In the first meeting, authorised persons of the financial creditors were present and the petitioner was appointed as the Resolution Professional (RP). The petitioner checked and verified the claims of other financial creditors as well. The last of the

financial creditors was updated and they were invited to the COC meeting. The petitioner reduced the claims of Punjab National Bank and Oriental Insurance Company. The petitioner sought clarification from the Life Insurance Corporation of India. The composition of the COC was updated when the documents were filed.

5. According to Mr. Kar, those were the only kind of verifications that could be done in view of the non-availability of the audited books of accounts and any other kind of record whatsoever. Referring to the COC meetings and the minutes prepared, Mr. Kar submitted that the verification process was ongoing and was subject to revision. The minutes clearly indicated that the records, books of accounts, audited accounts were not available. The petitioner had clearly mentioned such fact and in the meetings. The minutes recorded that the voting share could change, upon further documents being filed and upon further verification being made. Collation of the claims that were received, could not be done due to absence of records and the accounts. Collation would require the books of accounts of the company. The claims of the financial creditors in the COC were considered on the basis of the documents filed by them. The petitioner made the best estimates of the accounts as claimed by the financial creditors and invited them to the meeting in accordance with Regulations 14(1) and 14(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In view of the practical difficulties faced by the petitioner, the COC also accepted the gross estimation that was made by the petitioner with regard to the claims and the voting share of the members. Reliance was

placed on Regulation 13(1A) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, by Mr. Kar to urge that, although, the said Regulation was brought in later, but the insertion of the same would clearly indicate that IBBI had acknowledged the fact that there could be situations where the claims could not be collated after due verification and as such, a provision to address such a crisis was incorporated. If the IRP could not collate the claims, they had to provide reasons. In this case, reasons were provided.

6. According to Mr. Kar, collation and verification were not synonymous, but two distinct processes. Under Regulation 14 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the RP could make the best estimates of the amount claimed, based on material available to him.

7. With regard to the inclusion of related parties to the COC, Mr. Kar submitted that the order of the Delhi High Court, which set aside the fax message of BIFR, clearly indicated that Mr. Gowani was not a nominee director of the said company. In the first and the second COC meetings, there were no objections with regard to participation of Mr. Gowani and inclusion of Kamala Mills and Fasqua Investments in the COC. In the third meeting, an objection was raised by Pegasus that, as Mr. Gowani was an ex-director of the company, as well as, director of Kamala Mills and Fasqua Investments, the said Financial Creditors, namely, Kamala Mills and Fasqua Investments could not be a part of the COC. Pegasus requested for removal of Kamala Mills and Fasqua Investments from the COC. Representatives of

Kamala Mills and Fasqua Investments sought time to file a reply to the application of Pegasus. Thereafter, the petitioner informed Kamala Mills and Fasqua Investments that they could not participate in the future meetings. In the third COC meeting, it was also resolved that, as Mr. Gowani was a director of the said company, an application before the NCLT under section 19(2) of IBC, should be filed for a direction upon Mr. Gowani to furnish all information, documents, records, books of accounts, audited books of accounts of the corporate debtor. Mr. Gowani was made a respondent in the proceedings before the NCLT. Upon receipt of the objection by Pegasus, the petitioner also declared both Kamala Mills and Fasqua Investments as related parties. The application was disposed of by NCLT, Kolkata. Not only was it held that, Mr. Gowani was not a director of the said company in view of the order of the Delhi High Court, but the NCLT discharged Mr. Gowani from the responsibility of submitting document relating to the records of the corporate debtor, to the RP. According to Mr. Kar, the RP had no other choice, but to act on the decision of the COC, based on the order of the NCLT and the Delhi High Court. Moreover, according to Regulation 40B of the IBBI (Insolvency Resolution Process for Corporate Debtors) Regulations, 2016, the entire process was time bound. The provision of 40D of the said Regulations were ignored, insofar as, its application to the decision of the COC to liquidate the said company.

8. With regard to the allegation of non-preparation of the Information Memorandum, it was submitted by Mr. Kar that, the same could not be prepared due to non-availability of statutory records, books of accounts and

audited financial statements since the year 1999, which was mandatory under Regulation 36 of IBBI (CIRP) Regulations, 2016. In every meeting, the COC was apprised of such a situation. The Information Memorandum was to be prepared as per Section 29(1) of IBC, read with Regulation 36 of the IBBI (CIRP) Regulations, 2016. Reference was made to the minutes of the fifth meeting of the COC, wherein it was resolved that the said company should go into liquidation in terms of Section 33(2) of IBC and the reasons for such decision have been recorded in the minutes of the said meeting. The petitioner had disclosed to the COC that, the Information Memorandum was under preparation, but could not be completed due to the absence of records. With regard to the allegation that the decision to go for liquidation was hasty, it was submitted that, although the order impugned recorded multiple allegations on this issue, the show cause notice did not mention such allegation separately. The COC comprised of financial creditors with more than 80% voting share and consequently, the COC resolved to go for liquidation, based on the factors which were enumerated in the minutes. The decision of the COC was taken as per their commercial wisdom and the petitioner was bound to follow the decision of the COC, as adopted in the fifth meeting. Accordingly, the petitioner filed the application under Section 33(2) of IBC before the NCLT, thereby, informing the Tribunal about the resolution passed by the COC members and for necessary orders. The workmen and employees of the company contested the application. Liquidation of the company was allowed by an order dated February 7, 2020. Although, Pegasus had challenged the said decision before the NCLT,

Pegasus withdrew the same and accepted the order of liquidation. Although, it was Pegasus itself, which had originally objected to the inclusion of Kamala Mills and Fasqua Investment in the COC, Pegasus did not raise any dispute at all.

9. Mr. Kar also submitted that IBBI had made an inspection in relation to the CIRP of the said company, in addition to all other companies in which the petitioner was the IRP/RP and no violation of law and non-compliance thereof in the process adopted in respect of the said company, had been detected. The said fact was conveniently suppressed in the show cause notice, as also in the order passed by the respondent No. 4. The final inspection report dated June 2, 2021, was supplied to the petitioner on January 18, 2024. The report did not indicate any kind of non-compliance. When the statutory inspection was clear, the issue could not be reopened on identical facts, without there being further investigation and collection of further relevant materials against the petitioner. According to Mr. Kar, the show cause notice was issued upon a misinterpretation of the decision of the NCLAT dated June 4, 2021. The show cause notice should have been based on an independent inspection and investigation. The Hon'ble Apex Court had directed the IBBI to proceed independently. Sections 218(1) and (6) and Section 219 of IBC had been completely disregarded. Any action under Section 220 of IBC, ought to have been preceded by an inspection. Moreover, the show cause notice was issued under Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016. According to Mr. Kar, the said Regulation was not applicable to any action taken by IBBI. Finally, it was

submitted that the respondent No. 4 lacked the jurisdiction to act as a Disciplinary Committee. The Chairperson could not be the Disciplinary Committee. The Board had not nominated the Chairperson to act as the Disciplinary Committee. The Chairperson and the Whole Time Members belonged to separate categories of Board members. Only Whole Time Members, as defined under the law, could act as the Disciplinary Committee. The jurisdictional defect could not be cured by consent, waiver or acquiescence. Even if the petitioner participated before the Committee, it did not take away his right to raise the point of lack of subject matter jurisdiction before the higher forum. The order was a nullity and the proceedings were null and void. It was submitted that, the entire proceeding was vitiated on account of non-compliance of the statutory provisions requiring inspection and investigation, prior to any action being taken under Section 220 of IBC. A, prima facie, opinion was required to be formed before the show cause notice could be issued. Compliance of Section 218 of IBC was mandatory. The Hon'ble Apex Court had clearly directed that the IBBI would not be bound by the observation made in the impugned order and would independently apply its mind. Mr. Kar relied on the following decisions and prayed for setting aside of the order impugned:-

- ***Barium Chemicals Ltd. And Another vs. Company Law Board and Others.*** reported in **1966 SCC OnLine SC 53.**
- ***Sushil Kumar Mehta vs. Gobind Ram Bohra (Dead) Through His LRs.*** reported in **(1990) 1 SCC 193.**

- ***Jagmittar Sain Bhagat and Others vs. Director Health Services, Haryana and Others*** reported in ***(2013)10 SCC 136.***
- ***K. Sashdhar vs. Indian Overseas Bank and Others*** reported in ***(2019) 12 SCC 150.***
- ***Municipal Corporation of Greater Mumbai (MCGM) vs. Abhilash Lal and Others*** reported in ***(2020) 13 SCC 234.***
- ***Sunil S. Kakkad vs. Atrium Infocom Private Limited and Others*** reported in ***2020 SCC OnLine NCLAT 1160.***
- ***Sunil S. Kakkad vs. Atrium Infocom Pvt. Ltd. and Others*** reported in ***2021 SCC OnLine SC 723.***
- ***Bimalesh Bharadwaj and Others vs. Value Infratech India Pvt. Ltd. and Others*** reported in ***2021 SCC OnLine NCLAT 443.***
- ***United Bank of India vs. Biswanath Bhattacharjee*** reported in ***(2022) 13 SCC 329.***
- ***Intec Capital Ltd. vs. Uday Kumar Bhaskar Bhat IRP of Atharva Auto Logistics Pvt. Ltd.*** reported in ***2023 SCC OnLine NCLAT 1069.***
- ***Tata Cellular vs. Union of India*** reported in ***(1994) 6 SCC 651.***
- ***Mohd. Mustafa vs. Union of India and Others*** reported in ***(2022) 1 SCC 294.***
- ***Sushil Kumar Mehta vs. Gobind Ram Bohra*** reported in ***(1990) 1 SCC 193.***

10. The respondent Nos. 3 and 4, namely, IBBI and the Chairperson of IBBI were represented by Mr. Jishnu Chowdhury, learned senior Advocate. Ms.

Rashmi Bothra represented the Union of India and Ms. Bothra also adopted the submissions made by Mr. Chowdhury.

11. Mr. Chowdhury submitted that, the petitioner had acted with dishonest intention and proceeded to send the company into liquidation without following the mandatory provisions of law. Verification of claims was not done. The constitution of the COC was illegal. The COC could not have been constituted without verification of claims. Non-preparation of the Information Memorandum, amounted to a serious legal infraction. No attempt was made for revival of the company and to test the feasibility for such revival. No valuer was appointed and consequently, valuation was not done. Related parties were admitted to the COC. Those parties engineered the liquidation with the support of and consequent to the conscious omissions of the petitioner. It was urged that, the declaration of the NCLT that, Mr. Gowani was not a director of the said company and as such, Kamala Mills and Fasqua Investments were related parties, was perverse and misconceived. The NCLT could not have adjudicated on such issue, at all, while disposing of an application under Section 19(2) of IBC. Moreover, investigation and/or inspection was not compulsory in all cases and the IBBI could act on the basis of the information received. Section 219 of IBC used the expression 'may' and not 'shall'. The order of the NCLAT would reveal that the actions of the petitioner demonstrated violation of the law and failure to perform his duties as the RP. The petitioner pushed the corporate debtor into liquidation, which was wholly against the intention of the legislature and the philosophy behind IBC. The records before the

NCLAT clearly indicated that Mr. Gowani was a director in the said company and at the same time he was also a director of Kamala Mills and Fasqua Investments. Mr Gowani also attended the Annual General Meeting till 2018. It was contended that the COC could not be constituted without admitting the claims. Thus, the constitution of the COC was violative of the proviso to Section 21(2) of IBC. The RP should have been an impartial professional in this regard, but he was not so. The NCLAT directed the IBBI to take steps against the petitioner in terms of its findings on the illegalities committed by the petitioner. The appeal filed by the petitioner challenging such findings of NCLAT before the Apex Court,, had been withdrawn. The challenge to the show cause notice, in a writ petition, was barred by the principle of issue estoppel. The allegations of illegality in the issuance of the show cause notice, defective composition of the Disciplinary Committee, absence of investigation and inspection prior to issuance of such notice, could not be agitated after withdrawal of the appeal from the order of the NCLAT and upon seeking liberty to contest the proceeding initiated by the IBBI. The petitioner had himself sought leave to ventilate his grievances before the Disciplinary Committee. The order of the Hon'ble Apex Court, permitting the petitioner to raise all points before the Disciplinary Committee / IBBI indicated that, the Hon'ble Apex Court had approved the proceedings which were initiated by the IBBI, and had allowed the petitioner to contest the same on facts and law, but not on the question of jurisdiction of the IBBI to issue such notice.

12. The findings of the Disciplinary Committee, which were emphasised by Mr. Chowdhury are stated hereunder :-

Issues raised in the SCN	Evidence relied upon	Finding rendered
The RP failed to verify the claims in accordance with Regulation 13 of CIRP Regulations	The first, second, third, fourth and fifth minutes of the Committee of Creditor.	The RP failed to verify the claims within 7 days of the receipt of the claim. The claims were kept pending verification. Pending such claims the COC was constituted.
Assigning voting share to related parties.	a. NCLT Order dated 20.11.2019. b. Master Data of CD c. List of shareholders of Kamala Pvt. Ltd. d. Master Date and List of shareholders of Fasqua and Kamala Mills e. The 1st, 2nd and 3rd COC minutes.	The list of shareholders of Kamala Mills shows that Ramesh Gowani (RG) is a shareholder comprising more than 99%. Further MCA data shows RG is a director of Fasqua and also a director of Incab Industries. Both Fasqua and Kamala together constituted more than 90 percent of the COC. Therefore, all the three entities were found to be related parties and they were not entitled to participate in the COC.
Non Preparation of Information Memorandum	The 4 th and 5 th minutes of COC	Section 29 of the Code read with Regulation 36 of CIRP Regulations mandates RP to prepare IM before 54 th day from CIRP order. The RP has

		failed to do the same and has not assigned any reasons for such violation thus contravening the said regulations.
Non appointment of registered valuer and abdication of duty of appointment of COC.	The 2 nd , 3 rd and 4 th minutes of COC.	Regulation 27 of CIRP mandates RP to appoint two valuers within 47 days. The RP has failed to do the same and has not assigned any reasons for such violation thus contravening the said regulations.
Constitution of COC without verification of claims	Report dated 28.08.2019 certifying the constitution of COC.	The claims of the Fasqua and Kamala were kept pending because of want of information. Without verifying the claims, the COC could not have been constituted.

13. It was thus urged that, the Disciplinary Committee had not acted on the dictation of the NCLAT, but had applied an independent mind. Mr. Chowdhury submitted that the NCLAT merely directed that the IBBI could take steps against the petitioner on the basis of the findings of the NCLAT. Thereafter, IBBI independently considered the materials on record which were before the NCLAT and upon perusing the same, proceeded to issue the show cause notice and the Disciplinary Committee finally passed the order. The documents, on the basis of which an inference was drawn that the

petitioner had contravened the provisions of law, were the master data of the said company, list of shareholders of Kamala Mills, master data of Fasqua Investments and list of shareholders of Fasqua Investments and the report dated September 21, 2021 certifying the revised COC, etc. According to Mr. Chowdhury, those documents were sufficient materials to draw an inference that the petitioner did not discharge his duty as per law. The order of IBBI provided a clear, logical, factual and legal basis for drawing the conclusion that the petitioner did not follow the legal proceedings and drove the said company into liquidation. Disputed questions of fact which were not raised by the petitioner before the Disciplinary Committee, could not be adjudicated by the writ court in judicial review. The scope of judicial review was very limited and the writ court should abstain from interfering with the specific findings of the Disciplinary Committee. The allegations made in the show cause notice stood proved by documents and evidence. The allegation of lack of jurisdiction of the respondent No. 4 to pass the order was disputed by Mr. Chowdhury on the ground that the Chairperson was also a whole time member and could act as the Disciplinary Committee. Section 189 of IBC was relied upon in this regard. According to learned senior Advocate, the terms and conditions of service of the Chairpersons and the Whole Time Members were the same. The salaries and allowances payable to the Chairperson and the Whole Time Members were also the same and as such, no distinction could be drawn between the Chairperson and Whole Time Members. In exercise of power under Section 30 of the Insolvency and Bankruptcy Code, the function of the Disciplinary Committee had been

delegated to the Chairperson by the Board. Moreover, under Section 191 of IBC, the Chairperson had all the powers of general superintendence and could exercise powers as delegated by the Board. The petitioner had accepted the jurisdiction of the Disciplinary Committee by submitting his reply and by participating in the entire process. The point of jurisdiction had not been raised before the said authority at any point of time.

14. Heard the parties. Admittedly, the scope for interference with the decision of the respondent No. 4, by the writ court is limited. The power of Judicial review can be exercised in certain cases, i.e. if the decision making process is faulty and is not in accordance with the procedure laid down by law; or if the proceeding is concluded without compliance of the principles of natural justice; or if the decision suffers from error apparent on the face of record or the decision making authority lacks jurisdiction. In the event, the decision is based on extraneous materials, or if the decision is based on no materials at all, or if the order is passed on the dictation of someone else, the writ court can quash such decision.

15. The writ petitioner has alleged that the decision of the respondent No. 4 is without jurisdiction, contrary to law and in violation of the direction of the Hon'ble Apex Court. The decision has also been challenged on the ground of mala fide intention on the part of respondent No. 4 to cancel the registration of the writ petitioner. The petitioner urged that, the alleged irregularities which were found by the IBBI, could not have been taken into consideration in the facts and circumstances of the case. In view of the findings of the NCLT that, the company was not a going concern since 1999 and the books

of accounts, record and audited accounts were not available after 2000, the question of collating claims and preparing the Information Memorandum did not arise. The other contention of the writ petitioner was that the RP was bound to act on the basis of the decision of the COC, when the objections were raised, and under no circumstance could the writ petitioner have deviated from the decision of the COC to go for liquidation. The petitioner had no option, but to present such decision before the adjudicating authority by taking appropriate steps. Section 33(2) of IBC has been relied upon. Moreover, with regard to allowing a related party to be a member of the COC, the writ petitioner claims to have acted on the basis of the findings of the NCLT that, Mr. Gowani was not a director of the said company which would be clear from the decision of the Delhi High Court. If Mr. Gowani was not a director of the said company, Kamala Mills and Fasqua Investments could not have been barred from attending the subsequent meetings. As soon as the objection was raised by Pegasus, the writ petitioner had asked Kamala Mills and Fasqua Investments not to attend the meetings. Only after the decision of the NCLT that Mr. Gowani was not a director and Kamala Mills and Fasqua Investments were not related parties, the RP included them back as members of the COC. It was also submitted that the Information Memorandum could not be prepared because no documents were available. The voting share of the members of the COC were based on a rough estimate and was provisional. The writ petitioner had categorically recorded that the estimated claim would be revised and the voting share could change.

16. Mr. Kar raised objections by alleging procedural irregularity, lack of jurisdiction and violation of the statutory provisions by the respondent No. 4. This court proceeds to deal with these objections first. Admittedly, the decision was taken by the respondent No. 4 who is the Chairperson. Section 220 provides that the Board shall constitute a Disciplinary Authority to consider the reports of the investigating authority that was submitted under sub-Section 6 of Section 218. The first proviso stipulates that the members of the Disciplinary Committee shall consist of whole time members of the Board only. Thus, the expression 'only' clearly indicates that none other than Whole Time Members can constitute the Disciplinary Committee. Section 220 casts a duty upon the Board to constitute a Disciplinary Committee for the purpose of disposal of any complaint against RP. Sub-Section 2 provides that, on examination of the report of the investigating authority, if the Disciplinary Committee is satisfied that sufficient information exists, it can impose such penalty as specified under Sub-Section 3 or suspend or cancel the registration of the Insolvency Professional or suspend or cancel the registration of the Insolvency Professional Agency. Thus, none other than Whole Time Members can comprise the Disciplinary Committee. Section 189 of IBC deals with constitution of the Board. The same is reproduced below:-

“189. Constitution of Board.—(1) The Board shall consist of the following members who shall be appointed by the Central Government, namely:—

(a) a Chairperson;

(b) three members from amongst the officers of the Central Government not below the rank of Joint Secretary or equivalent, one each to represent the Ministry of Finance, the Ministry of Corporate Affairs and Ministry of Law, ex officio;

(c) one member to be nominated by the Reserve Bank of India, ex officio;

(d) five other members to be nominated by the Central Government, of whom at least three shall be the whole-time members.

(2) The Chairperson and the other members shall be persons of ability, integrity and standing, who have shown capacity in dealing with problems relating to insolvency or bankruptcy and have special knowledge and experience in the field of law, finance, economics, accountancy or administration.

(3) The appointment of the Chairperson and the members of the Board other than the appointment of an ex officio member under this section shall be made after obtaining the recommendation of a selection committee consisting of—

(a) Cabinet Secretary—Chairperson;

(b) Secretary to the Government of India to be nominated by the Central Government—Member;

(c) Chairperson of the Insolvency and Bankruptcy Board of India (in case of selection of members of the Board)—Member;

(d) three experts of repute from the field of finance, law, management, insolvency and related subjects, to be nominated by the Central Government—Members.

(4) The term of office of the Chairperson and members (other than ex officio members) shall be five years or till they attain the age of sixty-five years, whichever is earlier, and they shall be eligible for reappointment.

(5) The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and members (other than the ex officio members) shall be such as may be prescribed.”

17. Under Section 189(1)(d), the Board is comprised of five other members to be nominated by the Central Government of whom at least three members will be Whole Time Members. Thus, the Chairperson falls under a separate category in the Board, so also the three Whole Time Members. In the IBBI (Salary and allowances and Other Terms and Conditions of Service of Chairperson and Members) Rules, 2016, the Chairperson has been defined under Section 2(1)(e) to mean the Chairperson of the Board appointed under Clause (a) of sub-Section (1) of Section 189 of IBC. Similarly, under Section 2(1)(d), a Whole Time Member has been defined as a member of the Board appointed under clause (d) of sub-Section (1) of Section 189 of IBC. Thus, as per the IBC and the Rules of 2016, the Chairperson and Whole Time Members belong to different categories of members in the Board. The definition of Chairperson and Whole Time Member under the 2016 Rules also refer to Section 189(1). Rule 3 of the 2016 Rules, deals with terms and conditions of service of Chairperson and members. Sub-Rules 1, 2 and 3 thereunder, also treat the Chairperson and the Whole Time Members separately, even though, the terms and conditions of the service of the Chairperson and members are similar. Some of the provisions of the 2016 Rules are quoted below :-

“2. Definitions

(1) In these rules, unless the context otherwise requires –

(c) “Chairperson” means the Chairperson of the Board appointed under clause (a) of sub-section (1) of section 189 of the Code;

(d) “whole-time member” means the member of the Board appointed under clause (d) of sub-section (1) of section 189 of the Code;

3. Terms and conditions of service of Chairperson and members

(1) The Chairperson and the whole-time member shall be a person who shall not have any financial or other interests as are likely to affect prejudicially his functions as such Chairperson or member.

(2) The Chairperson and whole-time member appointed to fill-up a casual vacancy shall hold office for the remainder period of the term of the Chairperson or, as the case may be, whole-time member in whose place he is appointed.

(3) The Chairperson and whole-time member shall not accept any employment before the expiry of a period of one year from the date of demitting the office in the Board, except with the previous sanction of the Central Government.

13. Conveyance.-

(1) The Chairperson and a whole-time member shall be entitled to a staff car of the Board for official purpose.

(2) No passenger vehicle shall be purchased by the Board and requirement of vehicles shall be met by hiring.

(3) Nothing in this rule shall apply to the Chairperson and a whole-time member who has opted a consolidated salary of Rs. 4,50,000/-per month or 3,75,000/-respectively."

18. Here too, the Chairperson and Whole Time Members are treated as two categories of entities comprising the Board. Thus, when the statute provides that the Disciplinary Committee shall consist of Whole Time Members only, emphasis has to be laid on the expression 'only'. Thus, none other than Whole Time Members can constitute the Disciplinary Committee, irrespective of whether the Chairperson is also a Whole Time Member or not. The provisions do not state that the Chairperson shall be a Whole Time Member. The law is well settled that, when a statute requires a thing to be done in a particular way, it should be done in that way or not at all. Reference is made to the following decisions.

19. In **Taylor vs. Taylor** reported in **(1875) 1 Ch.D 426** , the Court held as follows:-

"It appears to me that the 16th section, though in form merely enabling, is in fact the only enabling part which entitles the Court to set the Act in motion. When a statutory power is conferred for the first time upon a Court, and the mode of exercising it is pointed out, it

means that no other mode is to be adopted. For instance, the 16th section says that the proceeding is to be by petition. It is enabling, I know, in form, that the application may be by petition; but no other process can be adopted. That has been decided on a great variety of Acts where the application has been directed to be by petition, and it has been laid down that that being the mode pointed out by the Act which conferred the jurisdiction, you must exercise the jurisdiction (as the 2nd section of this Act says in terms, though it was not necessary) according to the provisions of the Act. In the same way, when the statute says who is the person to petition, it means that the person or persons so described, and no others, shall be entitled to petition, otherwise anyone interested might petition under the general principle that when powers are to be exercised by a Court of law any person interested in calling those powers into execution is entitled to come before the Court, and the only reason for putting in such a section is to shew that that is not meaning of the Legislature, but that the right of calling for the exercise of the powers shall be confined to the persons so described.”

20. In ***Nazir Ahmad vs. King Emperor*** reported in ***AIR 1936 PC 253***, the

Court held as follows:-

“4.

To this contention it was answered that there was no ground for reading the word “may” in s. 164 as meaning “must” on the principle described in *Julius v. Lord Bishop of Oxford*. There is no need to call in aid this rule of construction—well recognized in principle but much debated as to its application. It can hardly be doubted that a magistrate would not be obliged to record any confession made to him if, for example, it were that of a self-accusing madman, or for any other reason the magistrate thought it to be incredible or useless for the purposes of justice. Whether a magistrate records any confession is a matter of duty and discretion and not of obligation. The rule which applies is a different and not less well recognized rule—namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. This doctrine has often been applied to Courts—*Taylor v. Taylor*—and although the magistrate acting under this group of sections is not acting as a Court yet he is a judicial officer, and both as a matter of construction and of good sense there are strong reasons for applying the rule in question to s. 164.”

21. In the decision of ***Municipal Corporation of Greater Mumbai (MCGM) vs Abhilash Lal and Ors.*** reported in ***(2020) 13 SCC 234***, the Hon'ble Apex Court held as follows:-

“39. The principle that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all, articulated in *Nazir Ahmad v. King Emperor* [*Nazir Ahmad v. King Emperor*, 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372 : AIR 1936 PC 253 (2)] , has found widespread acceptance. In the context of this case, it means that if alienation or creation of any interest in respect of MCGM's properties is contemplated in the statute through a particular manner, that end can be achieved only through the prescribed mode, or not at all.”

22. Mr. Chowdhury relied on the Insolvency and Bankruptcy Board of India, Delegation of Powers and Functions, General Order, 2017 to support his contention that the Chairperson could act as the delegate of the Board and perform the functions of the Disciplinary Committee. In exercise of powers conferred under Section 230 of IBC, the Board had delegated its powers and functions to such members or officers of the Board as specified in the said 2017 Order. In the definition clause under Section 2(1)(e) of the said Order, Chairperson means the Chairperson of the Board. Under Section 2(1)(n), the Whole Time Member means a member of the Board appointed and designated as such by the Central Government. Thus, a Whole Time Member has to be appointed and designated as such by the central government and only such members can function as a Disciplinary Committee. Reference is made to Part B of the said order which deals with delegation of powers and function. Serial No. 8 deals with Committees. Mr. Chowdhury lays great emphasis on such provision, which is quoted below :-

Sl No.	Power/Function	Delegate
8.	Committees	
	Constitution of Governing Board Committees	Governing Board
	Constitution of other Committees (Advisory Committees, Examination Committee, Committee of Officers, any other Committee unless specified specifically elsewhere)	Chairperson
	Invitation to an Outsider as Secretary to a Committee	ED
	Designating an Officer as Secretary to a Committee	Chairperson
	Maintenance of Records of Meetings and their Deliberations	Secretary to the Respective Committee

23. It appears that the power of constitution of the Governing Board Committee rests with the Governing Board. With regard to the constitution of other Committees namely Advisory Committee, Examination Committee, Committee of Officers and any other Committee unless specifically specified elsewhere, the power has been delegated to the Chairperson. Thus, the Chairperson has the power to constitute Committees as a delegate of the Board. However, Serial No. 12 of the section dealing with oversight, enforcement and supervision of service providers, states as follows :-

Sl No.	Power/Function	Delegate
12.	Supervision of Service Providers	
	Calling for information required under Regulations or the Code	Assistant Manager
	Calling for information required to deal with a Complaints or Grievances	Manager
	Calling for information for policy/Regulation Purposes	Manager with the approval of ED
	Appointment of Members in Committees of IPA/IU	Chairperson

	Amendment of Bye-laws (By Board)	WTM
	Approval of Amendment to Bye-laws (By IPA/IU)	WTM
	Inspection Policy	Chairperson
	Ordering Inspection	ED
	Ordering Investigation	WTM
	Inspection/Investigation	Inspecting/Investigating Authority
	Acceptance of Inspection/Investigation Report	ED
	Approval of Show Cause Notice pursuant to Inspection/Investigation, after considering the views of Committee of EDs	ED
	Issue of Show Cause Notice	DGM
	Interim Order on Show Cause Notice	Disciplinary Committee
	Disposal of Show Cause Notice	Disciplinary Committee
	Suspension/Cancellation of Registration	Disciplinary Committee
	Imposition of Monetary Penalty	Disciplinary Committee
	Disgorgement Order under Section 220(4)	WTM
	Restitution under Section 220(5)	WTM

24. It appears that the power to issue show cause notice is delegated to DGM. The power to issue interim order of show cause, dispose of the show cause notice, suspend or cancel the registration, has been delegated to the Disciplinary Committee. Thus, even if the respondent No.4 had the authority to constitute the Disciplinary Committee as a delegate of the Board, the 2017 Order clarifies that the Disciplinary Committee shall dispose of the show cause notice and impose punishment, including cancelling the registration of the Insolvency Professional.

25. In this case, the order has been passed by the Chairperson. Under such circumstances, the order cannot be sustained in law on account of lack of jurisdiction of the Chairperson. The chairperson lacked the jurisdiction to act as the Disciplinary Committee. The order is a nullity.

26. In ***Sushil Kumar Mehta vs Gobind Ram Bohra (dead) Through his LRS*** reported in **(1990) 1 SCC 193**, the Hon'ble Apex Court held as follows:-

“12. This Court has held that it is a well-established principle that a decree passed by a court without jurisdiction is a nullity and the plea can be set up whenever and wherever the decree is sought to be enforced or relied upon, and even at the stage of execution or in collateral proceedings.

* * *

* * *

27. Thus it is settled law that normally a decree passed by a court of competent jurisdiction, after adjudication on merits of the rights of the parties, operates as res judicata in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be assailed only in an appeal or revision as the case may be. In subsequent proceedings its validity cannot be questioned. A decree passed by a court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a *coram non judge*. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party. If the court has jurisdiction but there is defect in its exercise which does not go to the root of its authority, such a defect like pecuniary or territorial could be waived by the party. They could be corrected by way of appropriate plea at its inception or in appellate or revisional forums, provided law permits. The doctrine of res judicata under Section 11 CPC is founded on public policy. An issue of fact or law or mixed question of fact and law, which are in issue in an earlier suit or might and ought to be raised between the same parties or persons claiming under them and was adjudicated or allowed uncontested becomes final and binds the parties or persons claiming under them. Thus the decision of a competent court over the matter in issue may operate as res judicata in subsequent suit or proceedings or in other proceedings between the

same parties and those claiming under them. But the question relating to the interpretation of a statute touching the jurisdiction of a court unrelated to questions of fact or law or mixed questions does not operate as *res judicata* even between the parties or persons claiming under them. The reason is obvious; a pure question of law unrelated to facts which are the basis or foundation of a right, cannot be deemed to be a matter in issue. The principle of *res judicata* is a facet of procedure but not of substantive law. The decision on an issue of law founded on fact in issue would operate as *res judicata*. But when the law has since the earlier decision been altered by a competent authority or when the earlier decision declares a transaction to be valid despite prohibition by law it does not operate as *res judicata*. Thus a question of jurisdiction of a court or of a procedure or a pure question of law unrelated to the right of the parties founded purely on question of fact in the previous suit, is not *res judicata* in the subsequent suit. A question relating to jurisdiction of a court or interpretation of provisions of a statute cannot be deemed to have been finally determined by an erroneous decision of a court. Therefore, the doctrine of *res judicata* does not apply to a case of decree of nullity. If the court inherently lacks jurisdiction consent cannot confer jurisdiction. Where certain statutory rights in a welfare legislation are created, the doctrine of waiver also does not apply to a case of decree where the court inherently lacks jurisdiction.”

27. Chapter VI of IBC deals with inspection and investigation. Section 217 provides that complaints against an Insolvency Professional Agency or its members or information utility, can be lodged by any person aggrieved by the functioning of an Insolvency Professional Agency by filing a written complaint with the Board. The complaint will be filed in such a manner and within such time as may be prescribed. Section 218 deals with the investigation of the Insolvency Professional Agency or its members or Information Utility. According to Mr. Kar, unless an investigation with regard to the mode and manner in which the writ petitioner had acted was ordered by the Board and conducted by such person as appointed by the Board, the show cause notice could not have been issued. To counter such

argument Mr. Chowdhury submitted that, if the Board had reasonable grounds to believe that any Insolvency Professional Agency or Insolvency Professional had contravened the provisions of IBC or the Rules and Regulations made thereunder, or had contravened the directions issued by the Board, the Board could issue a show cause notice. Thus, in this case, upon perusal of the order of the NCLAT and the materials supporting the findings of the NCLAT, the Board had reasonable ground to believe that the writ petitioner had contravened the IBC and also the Rules and Regulations framed thereunder. On such power being conferred by law, the show cause notice was issued. Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 was relied upon to submit that, on the basis of the materials that was available on record, if the Board was of the, *prima facie*, opinion that sufficient causes existed to take action permissible under Section 220, it could issue a show cause notice to the Insolvency Professional. Thus, the issuance of the show cause notice under Regulation 11 was based on the materials available with the NCLAT. Upon perusal of the records which led to the decision of the NCLAT in setting aside the resolution plan and in making the the observations against the writ petitioner, the Board had reason to believe that the writ petitioner should be issued a show cause notice under the said Regulation as also under Section 219 of IBC.

28. First and foremost, Section 218(1) of IBC, does not contemplate issuance of show cause notice by the Board. If the Board had reasonable grounds to believe that the Insolvency Professional had violated the law, the

provision empowered the Board to direct an investigation or an inspection into the conduct of the Insolvency Professional. The said Section does not deal with issuance of the show cause notice. Section 218 deals with inspection and investigation and the filing of a report of inspection or investigation before the Board, upon completion of the investigation or the inspection as the case may be. Section 218 is quoted below :-

“218. Investigation of insolvency professional agency or its member or information utility.—(1) Where the Board, on receipt of a complaint under section 217 or has reasonable grounds to believe that any insolvency professional agency or insolvency professional or an information utility has contravened any of the provisions of the Code or the rules or regulations made or directions issued by the Board thereunder, it may, at any time by an order in writing, direct any person or persons to act as an investigating authority to conduct an inspection or investigation of the insolvency professional agency or insolvency professional or an information utility.

(2) The inspection or investigation carried out under sub-section (1) of this section shall be conducted within such time and in such manner as may be specified by regulations.

(3) The Investigating Authority may, in the course of such inspection or investigation, require any other person who is likely to have any relevant document, record or information to furnish the same, and such person shall be bound to furnish such document, record or information.

Provided that the Investigating Authority shall provide detailed reasons to such person before requiring him to furnish such document, record or information.

(4) The Investigating Authority may, in the course of its inspection or investigation, enter any building or place where they may have reasons to believe that any such document, record or information relating to the subject-matter of the inquiry may be found and may seize any such document, record or information or take extracts or copies therefrom, subject to the provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), insofar as they may be applicable.

(5) The Investigating Authority shall keep in its custody the books, registers, other documents and records seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the concerned person from whose custody or power they were seized.

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof.

(6) A detailed report of inspection or investigation shall be submitted to the Board by the Investigating Authority.”

29. Section 219 deals with issuance of show cause notice. It provides that, upon perusal of the report filed upon completion of the inspection or the investigation, the Board may issue a show cause notice to such Insolvency Professional for giving a reply. Section 219 is quoted below :-

“219. Show cause notice to insolvency professional agency or its member or information utility.—The Board may, upon completion of an inspection or investigation under section 218, issue a show cause notice to such insolvency professional agency or insolvency professional or information utility, and carry out inspection of such insolvency professional agency or insolvency professional or information utility in such manner, giving such time for giving reply, as may be specified by regulations.”

30. Section 220 provides for constitution of a Disciplinary Committee. It states that the Board shall constitute a Disciplinary Committee to consider the report of the investigating agency submitted under sub-Section 6 of Section 218. The proviso states that the members of the Disciplinary Committee shall consist of whole time members of the Board ‘only’. Sub-section 2 provides that, on the examination of the report of the investigating agency, if the Disciplinary Committee is satisfied that sufficient causes exist to impose penalty or suspend or cancel the registration of the Insolvency Professional, such punishment shall be imposed. In this case, the Assistant General Manager issued the show cause notice dated September 10, 2021 under Regulation 11 of the 2016 Regulations. NCLAT, vide order dated June 4, 2021 had made adverse observations against the writ petitioner. Paragraph 3 of the NCLAT’s order stated that, on the basis of the facts and materials available on record, the matter was examined and accordingly

observations with regard to the alleged contravention were made. Those were narrated in the show cause notice. The 2017 order was heavily relied upon by Mr. Chowdhury. Serial No. 12 shows that the DGM was delegated the power to issue the show cause notice on behalf of the Board and not the Assistant General Manager. It appears that the foundational basis for the issuance of the said show cause notice were the observations of the NCLAT in the order dated June 4, 2021. The IBBI relied on Annexures A to F to support the allegations in the show cause notice. A very important factor which vitiates the issuance of the show cause notice without any inspection or investigation by the Board under Section 218 is that, in exercise of power vested under Section 19 of IBC read with Regulations 3(1) and 3(3) of the IBBI (Inspection and Investigation) Regulations, 2017, an inspection was held with regard to the assignments of the writ petitioner as an IRP of other corporate debtors, including the said company, but no illegality or irregularity was found against the writ petitioner with regard to his conduct either as IRP or RP in respect of the CIRP proceedings. The final report was filed in this proceeding by way of a supplementary affidavit. The show cause notice was issued on September 10, 2021. The final report of investigation which had been filed in terms of Regulation 6(4) of IBBI (Inspection and Investigation) Regulations, 2017 is in favour of the petitioner and it is dated June 2, 2021. Assignment No. 2 in the said report deals with ongoing liquidation process of the said company. "Nothing untoward, or illegal was noticed by the inspection team". By a letter issued by the Assistant General Manager dated August 6, 2020, the inspection was ordered. The inspection

was in respect of the conduct of the writ petitioner. The contents of the Order (File No. IBBI/IP/R(INSP)/2020/1, Dated 6th August, 2020) is quoted below :-

“In exercise of its power under section 196 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 3(1) and 3(3) of the IBBI (inspection and Investigation) Regulations, 2017, the Insolvency and Bankruptcy Board of India (IBBI), hereby directs the Inspecting Authority to conduct an inspection of the insolvency professional, the details of which are as under :

<i>Sl No.</i>	<i>Particulars</i>	<i>Details</i>
1.	<i>Name of the Insolvency Professional</i>	<i>Mr. Sashi Agarwal Regd. No: IBBI/ IPA-001/IP-P00470/2017-2018/10813</i>
2.	<i><u>Scope of Inspection</u></i>	<i>All the assignments handled by IP (including completed assignments)</i>
3.	<i><u>Purpose of Inspection</u></i>	<i>Purpose under 3(4) of the IBBI (Inspection and Investigation) Regulations 2017</i>
4.	<i>Composition of Inspection Authority</i>	<i>Mr. Rajesh Kumar Gupta, CGM Ms. Archana Sharma, AM Ms. Tuhina Mardi, AM</i>
5.	<i>Submission of Draft Inspection Report</i>	<i>By 10th September, 2020</i>
6.	<i>Submission of Final Inspection Report</i>	<i>By 30th September 2020</i>

31. It appears that the purpose for the inspection was to check compliances under Regulation 3 and 4 of the IBBI (Inspection and Investigation)

Regulations, 2017. Regulations 3 and 4 of the said Regulations are quoted below :-

“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.*

4. Conduct of Inspection.

(1) *The Inspecting Authority shall serve a notice of inspection to the service provider at least 10 days before the commencement of inspection: Provided that where the Inspecting Authority is satisfied that the notice will cause undue delay in inspection or there is an apprehension that records of the service provider may be destroyed, mutilated, altered, falsified or secreted, after the notice is served, it may, for reasons to be recorded in writing, dispense with such notice.*

(2) The Inspecting Authority may require the service provider or an associated person to submit records, as may be required, before the commencement of inspection.

(3) The Inspecting Authority may visit the offices of the service provider for conducting the on-site inspection.

(4) It shall be the duty of the service provider and an associated person to produce before the Inspecting Authority such records in his custody or control and furnish to the”

32. One of the grounds for such inspection was to ascertain whether the provisions of IBC and the Rules or the Regulations and Guidelines framed thereunder and the directions issued by the Board, were being complied with. On such inspection being held, the report was filed and no infraction of law or violation of IBC, Rules, Guidelines and directions of the Board, was noticed in respect of the petitioner’s conduct as an Insolvency Professional. Thus, when the said report was in favour of the petitioner and was prepared by a team constituted by the Board, just a few months prior to the issuance of the show cause notice, such report could not have been ignored. It was all the more necessary for the Board to direct an inspection or an investigation into the affairs of the said company, before a show cause notice was directly issued on the basis of the order of the NCLAT. Formation of opinion by the Board necessitated a deeper probe in the matter and scanning of the records. The Hon’ble Apex Court directed that the IBBI would not be bound by the observations made in the order of the NCLAT, and would act independently. In view of the procedural irregularities in the manner of conduct of the proceedings and the lack of jurisdiction on the part of the Chairperson to act as the Disciplinary Committee, the order impugned is set aside. Reference is made to the decision of ***Tata Cellular vs Union of India*** reported in **(1994) 6 SCC 651**, the Hon’ble Apex Court held as follows:-

“77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) **Illegality** : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) **Irrationality**, namely, *Wednesbury* unreasonableness.

(iii) **Procedural impropriety**.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* [(1991) 1 AC 696] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

78. What is this charming principle of *Wednesbury* unreasonableness? Is it a magical formula? In *R. v. Askew* [(1768) 4 Burr 2186 : 98 ER 139] , Lord Mansfield considered the question whether mandamus should be granted against the College of Physicians. He expressed the relevant principles in two eloquent sentences. They gained greater value two centuries later:

“It is true, that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practise this profession is trusted to the College of Physicians and this Court will not take it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, candid and unprejudiced; not arbitrary, capricious, or biased; much less, warped by resentment, or personal dislike.”

33. The IBBI committed an error of law. The order also suffers from gross illegality and procedural irregularity. The lack of jurisdiction and failure to

comply with the provisions of Section 218 and 219 are adequate reasons for interference by the writ court. The order impugned is set aside, as a whole. Although statutory infractions had been pointed out by the respondent No. 4, the said respondent did not point out what were the options available to the RP, to continue with the CIRP process in the facts and circumstances of the case. It has also not been stated whether the decision of the COC could be avoided or disregarded by the RP.

34. The IBBI failed to take into consideration the background of the case and the recommendation of the BIFR. The fact that the audited books of accounts and other relevant documents were not available, is also a significant fact. Secondly, the BIFR had itself declared the company as a sick company. The decision of the NCLT dated April 18, 2024, in a proceeding with regard to renewal of lease in favour of the said company was not looked into. In the said decision, the NCLT observed that the company was not a going concern. Thus, before the petitioner was found to be guilty of not trying to revive the company, such observations of the NCLT ought to have been taken note of. An inspection or investigation into the affairs were thus, all the more necessary. It is also pertinent to mention that the application in which the NCLT observed on April 18, 2024 that the company was not a going concern, had been filed by a subsequent RP who was appointed after the petitioner had been removed and his registration had been cancelled. Another order dated March 7, 2025 of the NCLT is also relevant, inasmuch as, the same would indicate that the said company did not have any audited records or any records and for that matter, the RP had

appointed experts in order to obtain relevant information and help in revisiting the claims. Thus, whether the inability of the petitioner to collate the claims was genuine or was a dubious act of gross illegality and dishonesty, which necessitated the cancellation of registration, ought to have been probed deeper by the IBBI, by adopting the mechanism provided under Section 218 of the IBC. In this case, an inspection or investigation was necessary before the Board deemed it fit to issue the show cause notice. The show cause notice is also set aside.

35. There cannot be any estoppel against a statute. Even if, the SLP was withdrawn by the writ petitioner and liberty was granted by the Hon'ble Apex Court to contest the show cause notice, non-compliance of the mandatory provision of Section 218 could be raised at any stage. Enforcement of a statutory provision cannot be prevented. The conduct or representation or behaviour of the writ petitioner, cannot override the law.

36. However, liberty is granted to the IBBI to act and proceed according to law, on the self-same issue.

37. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties, upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)