INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/345/2026 08 September 2026

ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/1/2025-IBBI-1852/1808 dated 02.12.2025, issued to Mr. Sumit Binani, who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) having Registration No. IBBI/IPA-001/IP-N00005/2016-2017/10025 and a Professional Member of the Indian Institute of Insolvency Professionals of ICAI.

1. Background

1.1. The Corporate Insolvency Resolution Process (CIRP) of Gujarat NRE Coke Limited (Corporate Debtor/CD) commenced *vide* order of the National Company Law Tribunal, Kolkata Bench (AA) dated 07.04.2017 on an application filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 (Code) and Mr. Sumit Binani was appointed as Interim Resolution Professional (IRP) and later confirmed as the Resolution Professional (RP) of the CD. The AA vide its order dated 11.01.2018 initiated liquidation of the CD and Mr. Sumit Binani was appointed as the Liquidator of the Corporate Debtor.

1.2. The Board received a complaint from SFIO regarding irregularities in the affairs of the CD. Pursuant thereto, in exercise of its powers conferred under Section 218 of the Code read with Regulation 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection and Investigation Regulations), IBBI appointed an Investigating Authority (IA) to conduct investigation into the allegations contained in a complaint in the matter of CD.

1.3. The IA served upon the notice of investigation dated 06.01.2025 as per Regulation 8(1) of the Inspection and Investigation Regulations and in response thereof, Mr. Sumit Binani submitted his reply on 29.01.2025 and 31.01.2025. Additional queries were raised by the Board, and Mr. Sumit Binani submitted his reply to the said queries on 18.04.2025 and 16.06.2025.

1.4. Based on the findings of the investigation, as mentioned in the Investigation Report submitted by the IA, the Board formed a prima facie view that Mr. Sumit Binani has contravened several provisions of the Code and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and therefore issued the SCN to Mr. Sumit Binani on 02.12.2025. The reply of Mr. Sumit Binani to the SCN was received by the Board on 16.12.2025.

1.5. The SCN and its response by Mr. Sumit Binani were referred to the Disciplinary Committee (DC) for disposal. Mr. Sumit Binani availed the opportunity of personal hearing before the DC through virtual mode on 08.04.2026 and appeared along with his advocate Sandeep Bajaj. Mr. Sumit Binani also submitted his additional written submissions on 17.04.2026, 29.05.2026, 12.06.2026 and 13.08.2026. The DC has considered the SCN, the reply to SCN, oral and written submissions of Mr. Sumit Binani, and proceeds to dispose of the SCN.

1.6. During the personal hearing held on 08.04.2026, Mr. Sumit Binani undertook to submit additional documents to support his submissions, which he furnished vide email dated 17.04.2026. However, upon perusal of such documents, the DC observed that these were incomplete and relevant documents which had been stated during the personal hearing to be furnished such as copy of all CoC minutes where the discussions regarding the subsidiaries have taken place, details regarding case filed by SFIO in special court etc. were not provided. Accordingly, vide an email dated 22.05.2026, Mr. Sumit Binani was requested to furnish the relevant documents and explanations. In response, Mr. Sumit Binani again sent certain additional documents vide email dated 29.05.2026, upon perusal of which the DC found that the audited financial statements of Hunter Valley and Manor Dealcom Investment for the financial years 2019-20, 2020-21, 2021-22, 2022-23 and 2023-24, along with those of their respective subsidiaries, as requested earlier vide email dated 22.05.2026 were still not furnished. Accordingly, the DC, vide email dated 10.06.2026, sought the aforesaid audited financial statements. In response, Mr. Sumit Binani, vide email dated 12.06.2026, furnished the audited financial statements of the companies in which Hunter Valley and Manor Dealcom Investment had made investments for the financial years 2019-20 to 2023-24, as available with him. However, the audited financial statements of Hunter Valley and Manor Dealcom Investment for the financial years 2019-20, 2020-21, 2021-22, 2022-23 and 2023-24 were not furnished. The DC, therefore, vide email dated 07.08.2026, once again sought the audited financial statements of Hunter Valley and Manor Dealcom Investment for the aforesaid financial years. Mr. Sumit Binani, vide email dated 13.08.2026, furnished the audited financial statements of Hunter Valley and Manor Dealcom Investment.

2. Alleged Contravention, submissions of Mr. Sumit Binani and analysis and findings of the DC.

2.1. Failure to protect interest of CD with respect to its wholly owned subsidiaries.

2.1.1. Section 35 (1) of the Code provides that subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:- (b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor; (d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary. Further, Clause 27 A of the Code of Conduct (hereinafter referred to as "Code of Conduct") contained in Schedule I of the IBBI (Insolvency Professionals) Regulations 2016 (hereinafter referred to as "IP Regulations") provides that an insolvency professional shall, while undertaking assignment or conducting processes, exercise reasonable care and diligence and take all necessary steps to ensure that the corporate person complies with the applicable laws. Furthermore, section 96 (l) of the Companies Act 2013 provides that every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next and section 152(2) of the said Act provides that save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.

2.1.2. The Board observed that the CD has two wholly owned subsidiaries namely Hunter Valley Coal Pvt. Ltd. and Manor Dealcom Pvt. Ltd. wherein a change in directorships took place on 15.05.2023 i.e. during the liquidation process of the CD. It was observed that neither the annual general meeting of said two wholly owned subsidiaries was attended by Mr. Sumit Binani, nor the said change in directorship of said two wholly owned subsidiaries was authorized by Mr. Sumit Binani on behalf of the CD. Despite the aforesaid, a change in directorship of said two wholly owned subsidiaries was effectuated and updated in the public domain.

2.1.3. Mr. Sumit Binani had submitted that he became aware of the aforesaid change in the directorships only during the SFIO investigation in March 2024.

2.1.4. In view of the foregoing, the Board observed that Mr. Sumit Binani failed to attend the annual general meeting of the said two wholly owned subsidiaries of CD, take steps to review or obtain their financial statements and take proper custody and control of the assets of the CD.

2.1.5. In view of the above, the Board was of the *prima facie* view that Mr. Sumit Binani had contravened Sections 35(l)(b) and (d), 208(2)(a) and (e) of the Code and Regulation 7(2)(a) and (h) of the IP Regulations read with Clauses 14 and 27A of the Code of Conduct.

Submissions by Mr. Sumit Binani.

2.1.6. Mr. Sumit Binani submitted that since the Insolvency Commencement Date, the Corporate Debtor (CD) continued to hold 100% of the equity share capital / beneficial interest in its two wholly owned subsidiaries, namely Hunter Valley Coal Private Limited (HVCPL) and Manor Dealcom Private Limited (MDPL). The CD holds 2,51,15,850 equity shares in HVCPL and 2,36,28,150 equity shares in MDPL. The CD's complete beneficial ownership interest in these two subsidiaries remained recorded in its books from the ICD till date. The beneficial interest reflected as assets i.e. investments in equity shares in the books of the CD since the ICD. Conversely, the name of Gujarat NRE Coke Limited was disclosed as Promoter holding 100% equity capital in the financial statements of both the Companies.

2.1.7. Mr. Sumit Binani further submitted that upon taking custody of the assets of the CD, he observed that both subsidiaries were non-operational, having no tangible or realisable assets, and were burdened with liabilities and cross-holdings in other promoter-controlled group companies, all of which similarly lacked tangible assets or any commercial activity. This fact was also categorically confirmed in Para 11 of the Executive Summary of the SFIO investigation Report (page 14), which recorded that both subsidiaries had no fixed assets, no debtors, no inventory, no operating income, no employee cost, and only reflected internal group investments, all of which were in unlisted entities with no operating revenue. Therefore, the SFIO's independent findings corroborate the factual position that these subsidiaries were never value-generating entities and had no assets capable of beneficial realisation.

2.1.8. Mr. Sumit Binani further submitted that he had consciously and prudently decided not to change the management of the subsidiaries because (i) the 2 subsidiaries had no business (ii) no revenue or operating activity (iii) no tangible realisable assets (iv) no economic rationale for intervention and (v) Changing management would have only added avoidable costs, compliance. The decision not to alter management was therefore commercially prudent, legally permissible, and entirely consistent with the duty to protect the interest of stakeholders while avoiding wasteful expenditure.

2.1.9. Mr. Sumit Binani submitted that in regular consultation with the stakeholders of the CD, he attempted as many as 16 separate auctions for sale of the investments in these subsidiaries (and various other group entities), at different reduced reserve prices, but not a single expression of interest was ever received. This strongly reinforces the fact that the market perceives no intrinsic economic value in these shares and is now contemplating NRRA sale of the said investments after obtaining approval of the stakeholders of the CD.

2.1.10. Mr. Sumit Binani submitted that he had access to all the financial statements of the subsidiaries of the CD which were filed in MCA since ICD, which he obtained from the MCA portal periodically and reviewed the same to ensure that the CDs interest was not diluted/compromised. He did not attend the Annual General Meeting of the 2 subsidiaries since he did not receive any notice and more so in the instant case, since the 2 subsidiaries were non operative, did not have any financial transaction and were under the management of the Promoter Group of the CD, he did not consider it necessary to attend the AGM because considering the state of affairs of the 2 subsidiaries as also explained above, there were no material business to be conducted at AGM except for routine compliance of adoption of audited accounts and auditors for which the CD or the liquidator was not responsible.

2.1.11. Mr. Sumit Binani submitted that during liquidation under the Code, a company is generally not required to hold an Annual General Meeting. Once the liquidation process commences, the affairs and management of the company are vested in the hands of the appointed liquidator, and the powers of the board of directors ceases. The corporate entity ceases to carry on its business except as required for the beneficial winding up of its affairs. The standard operations and compliance requirements under the Companies Act, 2013, such as preparing and adopting financial statements at an AGM, are superseded by the Code. The liquidator is primarily responsible for maintaining accounts in the form of a receipts and payments accounts, rather than full financial statements under the Companies Act. While AGMs for shareholders are not applicable, the liquidator is required to hold meetings of creditors or stakeholders as specified in the Code.

2.1.12. Mr. Sumit Binani submitted that Board of Directors of the Company has the power to appoint directors. Section 152 read with Section 161 of the said Companies Act deals with appointment of additional director, alternate director and nominee director without the consent of the shareholder. If a director resigns, the Board is under an obligation to report the said resignation by filing a prescribed form with the MCA. In the instant case, the change in director happened on 15.05.2023, which must have been at a board meeting of the subsidiary companies, as their Annual General Meeting in 2023 was held on 25.09.2023, as available from the MCA records. Since the management of the subsidiaries was with the erstwhile

Promoter Group of the CD, any change effected in the Board Meeting does not require approval of the shareholders. The continuation of the said appointment beyond the ensuing Annual General Meeting date after their appointment in the Board Meeting, however ought to have happened at the ensuing Annual General Meetings of the 2 subsidiaries. In any case, the change in the directorship does not affect the interest of the CD and its controlling stake.

2.1.13. Mr. Sumit Binani further submitted that the violation of not taking the consent of the shareholders for effecting any such change or not issuing the notice of AGM to its shareholders committed by the management of the subsidiary companies cannot be construed as a violation of the CD acting through its liquidator. However, in consultation with the stakeholders of the CD, Mr. Sumit Binani decided to file an affidavit before the Learned Special Court highlighting the unauthorised act of the directors of the aforesaid 2 subsidiary companies. On 07.05.2024, Mr. Sumit Binani submitted the above facts before the Learned Judge of Special Court, who was pleased to observe that the Liquidator is at liberty to file necessary documents and submissions at the stage of framing of charges in order to bring to the attention of the Hon'ble Court regarding commission of further frauds and criminal unauthorised acts of the accused persons.

2.1.14. Mr. Sumit Binani further submitted that at a meeting of the stakeholders of the CD held on 17.04.2025, the entire episode of unauthorised change in management and the next steps to be taken on the matter was discussed and it was decided that since initiating independent proceedings would result in additional costs to the liquidation estate, the liquidator should adequately represent the matter before Learned 2nd Special Judge at Calcutta in Complaint Case No. 18 of 2024, where proceedings are presently pending.

Analysis and Findings of the DC.

2.1.15. Section 35(1) of the Code casts a duty upon the liquidator to take into his custody or control all the assets, property, and actionable claims of the corporate debtor, and to take such measures to protect and preserve the assets and properties of the corporate debtor as considers necessary. Clause 27A of the Code of Conduct requires an IP, while undertaking an assignment, to exercise reasonable care and diligence, and Section 208(2)(a) of the Code requires every IP to take reasonable care and diligence while performing his duties.

2.1.16. The DC notes in the instant matter that an unauthorised change in the directorship of HVCPL and MDPL took place on 15.05.2023, during the liquidation process, and remained undetected by Mr. Sumit Binani for a period of nearly ten months, until it was brought to his notice by SFIO in March 2024. As the sole shareholder of the two subsidiaries, Mr. Sumit Binani, being the liquidator of the CD was duty bound and expected to exercise the rights attached to that shareholding, including attending or calling for general meetings and independently tracking material changes in the board composition of the subsidiaries, as part of the continuing duty to protect and preserve the CD's assets and to exercise reasonable oversight over an investment representing the entirety of two companies' equity capital. In this regard, the DC finds the submission of Mr. Sumit Binani that he did not consider it necessary to attend the AGM of the subsidiaries as they were under the management of the Promoter Group of the CD to be not in accordance with law. The subsidiaries were 100% subsidiary of the CD which was under the control of Mr. Sumit Binani and therefore they were not under the management of promoter group of CD.

2.1.17. The submission of Mr. Sumit Binani that no notice of the AGMs was received does not absolve him, being the sole shareholder of the given subsidiaries from the responsibility to proactively assert and monitor its shareholder rights and it evidences that Mr. Sumit Binani had no control over the said two subsidiaries and had not taken any steps for taking custody of these the said two subsidiaries. Mr. Sumit Binani submitted that he decided to file an affidavit before the Learned Special Court highlighting the unauthorised act of the directors of the aforesaid 2 subsidiary companies. Had Mr. Sumit Binani taken effective control and custody of the said two subsidiaries companies, no unauthorised act by the Directors of the two subsidiaries companies would have been possible and unnecessary litigation could have been avoided.

2.1.18. The DC notes that the non-operational and dormant character of the subsidiaries is a commercial question of whether to restructure or dispose of the investment and should be put before the CoC or the SCC for their deliberation and decision. However, the dormant and non- operational status of the subsidiaries does not relieve Mr. Sumit Binani of the more basic obligation to monitor and control changes in the governance of an entity wholly owned by the CD. The very fact that an unauthorised change in directorship of a 100%-owned subsidiary could be effected and remain undetected by the Liquidator for nearly ten months, coming to light only through an external investigative agency rather than through the Liquidator's own oversight, is itself demonstrative of a failure to exercise the reasonable care and diligence.

2.1.19. The DC notes that Mr. Sumit Binani submitted that he had taken steps upon gaining knowledge of the unauthorised change, by communicating to SFIO on 22.03.2024 clarifying the absence of consent, the filing of the relevant facts before the Learned 2nd Special Judge at Calcutta and the apprising of the SCC at its meeting dated 17.04.2025 and considered these to be reasonable and diligent steps taken in mitigation, once the lapse came to light. The DC notes that these subsequent actions by Mr. Sumit Binani was done in course of his response to the investigations carried out by SFIO and are not the remedial measures taken by him on his own. These actions do not cure his failure to protect the interest of the CD in its subsidiaries during the period the unauthorised change went unnoticed.

2.1.20. The DC further notes that, even after gaining knowledge of the unauthorised change in the directorship of HVCPL and MDPL, Mr. Sumit Binani failed to exercise his authority as a 100% shareholder of HVCPL and MDPL and take necessary steps for reconstituting the Board of Directors and assuming control and management of the subsidiaries under his custody and control.

2.1.21. The DC notes the submission of Mr. Sumit Binani that he had consciously decided not to change the management of the subsidiaries because it had no tangible realisable assets and there was no economic rationale for intervention. However, the DC on perusal of the financial statements of the subsidiaries finds that there were significant investments by these subsidiaries. It is also observed that, as reflected in the financial statements of both subsidiaries, that there was a substantial reduction in the value of their Non-Current

Investments in the financial year 2023–24 in which the change in directorship was affected. No explanation has been provided by Mr. Sumit Binani for this significant reduction in the value of Non-Current Investments which raises concerns regarding the manner in which the affairs of the subsidiaries were being managed. In such circumstances, Mr. Sumit Binani, being the liquidator of the 100% shareholder company, ought to have exercised greater diligence and vigilance and should have sought an explanation for the substantial reduction in Non-Current Investments, particularly around the period of change in directorship. His failure to take timely steps or seek appropriate clarification reflects a lack of due diligence in safeguarding the interests of the subsidiaries.

2.1.22. In view of the foregoing, the DC finds that, Mr. Sumit Binani failed to exercise the degree of proactive oversight and diligence expected of a liquidator holding 100% of the equity of a subsidiary of the corporate debtor, and he neither attended the AGMs of HVCPL and MDPL nor maintained any independent mechanism to monitor changes in their board composition, as a result of which an unauthorised change in directorship remained undetected for several months.

2.1.23. Accordingly, the DC finds the above discussed conduct of Mr. Sumit Binani in contravention of contravened Sections 35(l)(b) and (d), 208(2)(a) and (e) of the Code and Regulation 7(2)(a) and (h) of the IP Regulations read with Clauses 14 and 27A of the Code of Conduct.

2.2. **Failure to file applications with respect to avoidance transactions.**

2.2.1. Section 66(1) of the Code provides that if during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

2.2.2. The Board noted that the CD entered into agreements with a Trust namely Girdharilal Arun Kumar Family Trust (GAKFT) for renting office space which was renewed for the period till 30.09.2017 and said expenses were booked and debit notes were raised as per the said agreement. However, the Board noted from the report of the SFIO that the CD had inflated its rental expense and introduced bogus office maintenance expenses in five financial years from FY 2013-14 till FY 2017-18 amounting to approx. 3.81 Crores, which were booked in the name of GAKFT owned/controlled by the promoter and his family. The SFIO in its report concluded that the said amount booked in the name of fake office maintenance was siphoned off from the CD and the promoters of the CD were enriched unjustly through family trusts and individually.

2.2.3. Admittedly Mr. Sumit Binani was in receipt of the SFIO report and despite the explicit observation of the SFIO pertaining to diversion of funds from the accounts of the CD, Mr. Sumit Binani submitted that he had not filed any avoidance application pertaining to the same.

Mr. Sumit Binani also submitted that he was cooperating with the SFIO, however, that does not absolve him from initiating actions under the provisions of the Code.

2.2.4. Therefore, the Board was of the prima facie view that Mr. Sumit Binani had contravened sections 66(1), 208(2)(a) and (e) of the Code and Regulation 7(2)(a) and (h) of the IP Regulations 2016 read with Clause 14 of the Code of Conduct.

Submissions by Mr. Sumit Binani.

2.2.5. Mr. Sumit Binani submitted that his decision not to file any avoidance application under Sections 43 to 51 or Section 66 of the Code was not an act of negligence, but a reasoned and informed decision taken after examining the transaction structure, the contemporaneous records, and the transaction and forensic audit reports, and that the SCC was fully aware of this decision.

2.2.6. Mr. Sumit Binani further submitted that, pursuant to the approved Corporate Debt Restructuring package of the CD, a Trust and Retention Account (TRA) was opened with the lead bank, State Bank of India, around September 2014, following which all cash flows of the CD were mandatorily routed through the TRA and appropriated in accordance with the waterfall mechanism stipulated by the lenders, with withdrawals subject to periodic concurrent audits conducted under the aegis of the lenders. He submitted that, accordingly, for approximately two and a half years prior to the commencement of the CIRP, the financial transactions of the CD, including the transactions with GAKFT, were under continuous lender supervision, monitoring, and audit control, and could not be characterised as unapproved, clandestine, or avoidable transactions.

2.2.7. Mr. Sumit Binani further submitted that neither the Transaction Auditor nor the Forensic Auditor appointed for the purpose of examining the transactions of the CD had identified, flagged, or reported any transaction warranting the initiation of avoidance proceedings under Sections 43 to 51 or Section 66 of the Code, and that, upon commencement of liquidation, he had undertaken an independent evaluation of the transaction, the forensic audit report, and the underlying records, and thereafter, in consultation with the SCC, arrived at the conclusion that no legally tenable or evidence-based avoidance application could be filed.

2.2.8. Mr. Sumit Binani further submitted that steps are presently being undertaken to initiate an avoidance application, in deference to the regulatory expectation, without any admission that such an application was warranted on facts or in law.

Analysis and Findings of the DC.

2.2.9. Sections 43, 45, 50, and 66 of the Code empower the resolution professional or liquidator, as the case may be, to make an application to the Adjudicating Authority in respect of preferential, undervalued, extortionate credit, and fraudulent transactions undertaken by the corporate debtor.

2.2.10. The DC on perusal of the SFIO report observes that the SFIO has raised serious red flags regarding the financial affairs and transactions of the CD, particularly in relation to the alleged siphoning/diversion of funds through the family-owned trusts of the promoters, the absence of business rationale for substantial transfers, and the routing/layering of funds through related/group entities.

2.2.11. In brief, the SFIO Report attributes to the CD an alleged loss on account of diversion/siphoning of funds through GAKFT comprising inflated rental and wholly bogus office maintenance expenses of approximately Rs. 3.81 crore booked over FY 2013-14 to FY 2017-18; a security deposit of approximately Rs. 9.35 crore paid to GAKFT which was never, in substance, repaid to the CD, having been routed back through layering across related/group entities; and further amounts aggregating approximately Rs. 18.55 crore transferred to family-owned trusts, of which approximately Rs. 14.95 crore was never repaid to the CD. This, in SFIO's assessment, represents the quantum of loss caused to the CD and the extent of enrichment of the promoters and their family members.

2.2.12. The SFIO in its report has identified various modes through which the CD's funds are alleged to have been diverted, such as fraudulent Letters of Credit obtained on the strength of bogus/circular purchase transactions with related entities, aggregating approximately Rs.1693 crore over FY 2011-12 to FY 2015-16, of which approximately Rs.1358 crore was routed back to the CD. It also found diversion of borrowed funds (term loans, cash credit, NCDs and FCCBs) sanctioned for working capital/capital expenditure but applied instead towards long-term investments and regularising overdrawn accounts, aggregating approximately Rs. 726.60 crore over FY 2007-08 to FY 2012-13. Further, security deposits of approximately Rs.95 crore paid in FY 2015-16 for leasing manufacturing units from associate companies, which were never genuinely refunded and approximately Rs.49.54 crore were routed through pass-through entities in FY 2008-09 to discharge the liabilities of associate companies having no real business; and approximately Rs.482.65 crore was invested over FY 2007-08 to FY 2016-17 in two wholly-owned subsidiaries, Hunter Valley Coal Private Limited and Manor Dealcom Private Limited, which was found to be shell entities without fixed assets, employees or operations. The SFIO Report additionally referred to approximately Rs.476.79 crore routed back to the CD, through a web of pass-through entities and NBFCs, in the guise of subscriptions to its own share warrants so as to artificially inflate its net worth, and to inflated plant hire charges of approximately Rs.161.23 crore paid to associate companies over FY 2013-14 to FY 2016-17. The SFIO quantified the fraudulent diversion of the CD's funds at an aggregate of approximately Rs.3074.89 crore.

2.2.13. Upon perusal of the SFIO Report and on further analysis of the material on record, including the forensic audit report and the transaction audit report, the DC observes that the major losses of the CD, in substance, began accruing from FY 2013-14 onwards as follows:

Particulars (in Rs. crores)	**Mar-14**	**Mar-15**	**Mar-16**	**Mar-17**	**Mar-18**
Sales	932	379	731	502	567
Expenses	1,644	520	1,636	729	594
Operating Profit	**-712**	**-141**	**-905**	**-227**	**-27**
Other Income	270	60	54	5	0

Interest	331	318	294	394	343
Depreciation	61	62	65	60	57
Profit before tax	**-834**	**-461**	**-1,209**	**-676**	**-427**
Tax %	-33%	-30%	-32%	0%	
Net Profit	**-561**	**-322**	**-819**	**-676**	**-427**

2.2.14. The DC notes that Mr. Sumit Binani had appointed transaction auditor as well as forensic auditor to examine the transactions of the CD. which may be covered under sections 43, 44, 50 or 66 of the Code. Neither of these auditor reports had suggested any avoidance transactions being entered into by the CD. However, the perusal of these audit reports raises more questions as detailed in the following paragraphs.

2.2.15. Mr. Sumit Binani had appointed Inkwest Management Consultants Private Limited, as the Transaction Auditor of the CD, to examine whether the company had entered into any transactions covered under Sections 43, 45, 50 or 66 of the Code during the period from 01.04.2015 to 31.03.2017. The DC further notes that the very same firm was also functioning as the Concurrent Auditor of the CD under the TRA mechanism instituted pursuant to the Corporate Debt Restructuring package of the CD approved by the lenders on 22.03.2014. The appointment of the Concurrent Auditor as the Transaction Auditor may give rise to an inherent conflict of interest, inasmuch as the auditor was, in effect, called upon to review and opine upon the propriety of transactions that had earlier passed through its own concurrent audit scrutiny without demur. The DC finds that there is need to look into the propriety of such appointment on part of Mr. Sumit Binani and whether it passes the duty of reasonable care and diligence expected of an Insolvency Professional under Section 208(2)(a) of the Code and Clause 14 of the Code of Conduct.

2.2.16. Further, the scope of the Transaction Audit Report dated 27.12.2017 was extended to preferential transactions under Section 43, undervalued transactions under Section 45, extortionate credit transactions under Section 50, and fraudulent transactions under Section 66 of the Code, in the previous two financial years. The DC notes that the period of scope for the fraudulent transactions was unexplainedly restricted to only previous two financial years even though substantial losses have started in the CD from FY 2013-14. It is noted that section 66 of the Code does not provide for any specific “look-back period” for fraudulent transactions, unlike the preferential, undervalued or extortionate transactions and therefore the practice is to cover periods wherein substantial losses have been incurred by the CD.

2.2.17. The DC also notes that the manner in which the report dealt with these categories is internally inconsistent and raises questions. With regard to Section 43, the report records:

“We have verified the books of accounts and other relevant accounting records of the company including sales register of both FY 2015-16 and 2016-17 for the coke and steel units and on the basis of our verification we have not observed any transaction which falls under the purview of preferential transactions as depicted u/s 43 of the IBC.

However, our following observation may be noted that upon review of sales registers of both FY 2015-16 and 2016-17 that bulk of company's sale i.e. coke and steel product have been sold to Dhrupad Traders Private Limited, Shreeji Importers & Exporters and Akriti Coal

Private Limited and selling price at which coke/ steel products sold to them are comparable with the price in which these were sold to other debtors. Further company has also issued credit notes to them in respect of shortfall of goods, moisture content, quality issue, etc. This type of credit notes were also issued to other parties as per general practice followed in this trade. Apart from adjustment of same party debit and credit - Akriti Coal Private Limited (Rs.7.66 Crores), Bharat NRE Coke Limited (Rs.37.20 Crores), Dhrupad Traders Private Limited (Rs.60.17 Crores) and Shreeji Importers & Exporters (Rs.8.07 Crores). Company has also directed in certain cases to the buyers of their of products to make direct payment to vendors - third party instead of direct credit to TRA account maintained with lead bank. It is observed from debtors ledgers that parties namely Akriti Coal Pvt. Ltd., Bharat NRE Coke Ltd. and Dhrupad Traders Pvt. Ltd. have made payments aggregating Rs.5.85 Crores, Rs.2.80 Crores and Rs.12.29 Crores respectively to the companies creditors.

Details of such transactions during 2016-17 are furnished below:

Further it may be noted that company has adjusted outstanding debt of Shreeji Importers & Exporters against sales effected to them. Incidentally the outstanding debts of group companies of Shreeji Importers & Exporters were also transferred to it. The total value involves Rs.35.40 Crores."

2.2.18. It appears to the DC from the above observations that certain payments to vendors have been made out of turn without routing the payment first to TRA account. These transactions are likely preferential transactions and should have been further examined by Mr. Sumit Binani to ascertain the same.

2.2.19. Similarly, with regard to Section 45, the report first records that

"We have verified the books of accounts and other relevant accounting records of the company including sales register of both FY 2015-16 and 2016-17 for the coke and steel units and on the basis of our verification we have not observed any transaction which falls under the purview of undervalued transactions as depicted u/s 45 of the IBC", but then goes on in the very next paragraph, to observe:

"However upon verification of the books of accounts of the company we have observed that in the FY 2015-16 the company pursuant to the approval of the Board of Directors in its meeting dated 29th May 2016 have reassessed the inventory value due to the continued slowdown in global market scenario, poor market demand and non movement of the inventories over the years and the value of stocks was reduced from Rs.619.17 crores as on 28.02.17 to Rs.195.75 Crores as on 31.03.17. Of the rejected stocks bulk quantity of 330049.555 Mt valuing Rs.27.55 Crores has been sold to Shreeji Importers & Exporters and 52756.94 Mt valuing Rs.4.32 Crores to Dhrupad Traders Pvt. Ltd. which have been adjusted against credit balance in the ledger."

2.2.20. It appears to the DC from above observation that there was substantial reduction in the value of inventories in a very short period of time. The reason for this reduction in value should have been investigated and actual movement of goods sold at such a low price to two particular parties, as mentioned in above observation, should have been checked to ascertain the genuineness of the transaction and also the reasonableness of value at which the transaction was undertaken. So further inquiry was required in terms of the observation mentioned in the report for forming an opinion on undervalued transaction.

2.2.21. The DC observes that a report which, in the same breath, records the absence of any preferential, undervalued or fraudulent transaction, and yet sets out the observations as mentioned above raises suspicion on the due diligence done by the transaction auditor in the report. The observations and findings in the transaction audit report calls for further inquiry and explanation on the transactions mentioned in the observations of the audit report. These observations coupled with concentration of sales and credit-note adjustments with only 2 entities for whom these transactions are 97% of the transactions as per forensic audit report, payments directed by the CD to be made by its buyers directly to the CD's creditors thereby bypassing the TRA account maintained with the lead bank, and a reduction in inventory value from Rs.619.17 crore to Rs.195.75 crore within the span of about one month, followed by sale of the resultant 'rejected stock' to the very same entities is internally inconsistent, and such observations ought to have prompted further inquiry rather than acceptance at face value. The transaction audit report is silent on various crucial facts, such as the quantity and quality of the stocks sold to these two entities, and physical verification of the actual movement of stock from the CD to them.

2.2.22. The DC further notes that the forensic audit of the CD was conducted by M/s SRB & Associates, Chartered Accountants, with the scope of work to examine ‘specific transactions as mentioned in the complaint letters as well as in terms of Sec 43, 45, 50 and 66 of the Code. However, notwithstanding this mandate under scope of work, the forensic audit report has limited itself by stating that the movement of funds within other group companies, including foreign companies, could not be verified since access to the basic records of those companies was not covered within the scope of engagement. The DC notes that the examination of the preferential, extortionate, undervalued and fraudulent transactions of the CD, especially in the case of the CD where movements of funds within the group companies had been prevalent, the examination of records of group companies was essential specially where the access was possible being subsidiaries.

2.2.23. Further, the forensic audit report is, in substance, weighted almost entirely towards an examination of the CD's FY 2015-16 financials and the sudden loss of approximately Rs. 1155.26 crore recorded therein (including approximately Rs. 732.61 crore attributable to change in value of inventories), and towards the specific transactions referable to the complaints received from the lender-banks, rather than a comprehensive, period-wise examination of the CD's affairs from FY 2013-14, the year from which substantial losses have been incurred by the CD. The DC further notes that, while the report furnishes a plant-wise and quantity-wise breakup of the CD's finished-goods inventory as on 31.03.2015, i.e. the opening position, no corresponding plant-wise or quantity-wise breakup is furnished for the closing position as at 31.03.2016, so as to enable verification of the price and quantity at which the inventory was actually valued down or sold. This contrasts with substantial analysis of trading loss of Rs.10.28 crores given in the report whereas no analysis of loss of 727.34 crores on account of loss of finished goods has been provided.

2.2.24. Further, given that Section 66 of the Code, unlike Sections 43, 45 and 50, does not prescribe any look-back period, it was incumbent upon Mr. Sumit Binani to have specifically defined the scope of the forensic audit so as to comprehensively cover the transactions spanning FY 2013-14 to FY 2017-18 from the standpoint of Section 66 when the CD has incurred substantial losses. Notwithstanding these infirmities, Mr. Sumit Binani accepted the forensic audit report without seeking any clarification, supplementary verification, or extension of its scope.

2.2.25. The absence of examination of transactions for earlier years, the internal inconsistencies and unexplained observations contained in the transaction audit report and the forensic audit report, as discussed above, give rise to a reasonable suspicion in the mind of the DC regarding the genuineness of the CD's transactions and the losses reported by it. The same suspicion should have been there in the minds of any reasonable person who is looking after the affairs of the CD, especially a qualified professional like Mr. Sumit Binani. This suspicion should have resulted in further inquiries by Mr. Sumit Binani to determine whether there were any avoidance transactions or fraudulent or wrongful trading by the CD and therefore the same requires further examination by the Board. Accordingly, the DC finds it appropriate to refer the matter to the Board which may examine the issues raised above.

2.2.26. Since the issue under this contravention in the instant SCN is connected with the issue which is being referred to the Board for examination, no view is taken at this stage on the alleged contravention.

3. Order.

3.1. In view of the foregoing discussions, the DC finds that Mr. Sumit Binani in contravention of Sections 35(l)(b) and (d), 208(2)(a) and (e) of the Code and Regulation 7(2)(a) and (h) of the IP Regulations read with Clauses 14 and 27A of the Code of Conduct by failing to exercise the degree of proactive oversight and diligence expected of a liquidator of the corporate debtor holding 100% of the equity of a subsidiary of the corporate debtor which led to an unauthorised change in directorship which remained undetected for several months.

3.2. Accordingly, 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. Sumit Binani (Registration No. IBBI/IPA-001/IP-N00005/2016-2017/10025) for a period of six months. Further, in terms of Section 206 of the Code, Mr. Sumit Binani shall not be eligible to continue his existing assignments.

3.3. Further, with respect to the alleged contravention regarding failure to file applications with respect to avoidance transactions, as mentioned in para 2.2.26, the issue is referred to the Board which may investigate the matter.

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

3.5. A copy of this order shall be sent to the CoC of all the corporate debtors in which Mr. Sumit Binani is providing his services. The CoC of the respective corporate debtors shall replace Mr. Sumit Binani with another Resolution Professional in terms of Section 27 of the Code.

3.6. A copy of this order shall be forwarded to Indian Institute of Insolvency Professionals of ICAI where Mr. Sumit Binani is enrolled as a member.

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

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

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

Dated: 08 September 2026
Place: New Delhi