

# INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

## (Disciplinary Committee)

No. IBBI/DC/233/2024

31 July 2024

### ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/82/2023-IBBI/783/1274 dated 20.08.2023, issued to Mr. Amar Gopal Gambhir, an Insolvency Professional, registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-002/IP-N00753/2018-2019/12327, and a Professional Member of the ICSI Institute of Insolvency Professionals, having residential address recorded with IBBI as 21/16 2<sup>nd</sup> Floor, West Patel Nagar, New Delhi, 110008.

#### 1. Background

- 1.1 The Adjudicating Authority (Hon'ble National Company Law Tribunal, New Delhi Bench-II) (hereinafter referred as "AA") vide its Order dated 13.12.2021, admitted the application filed by M/s Jakson Engineers Limited under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating Corporate Insolvency Resolution Process (CIRP) of UM Green Lighting Private Limited ("Corporate Debtor / CD"). Mr. Amar Gopal Gambhir was appointed as the Interim resolution Professional (IRP). Later on he was replaced by Mr. Rajiv Bhatnagar as Resolution Professional vide order of AA dated 10.01.2023.
- 1.2 The Board in exercise of its powers under Section 218 of the Code, read with Regulations 7(2) and 7(3) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to investigate the affairs of the CIRP of the CD. The notice of investigation was served on 23.06.2023. Thereafter, Mr. Amar Gopal Gambhir replied to the investigation notice vide mail dated 01.07.2023 .
- 1.3 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. Amar Gopal Gambhir has contravened the provisions of the Code and Regulations made thereunder and issued the SCN to Mr. Amar Gopal Gambhir on 29.08.2023. The SCN alleged contraventions of several provisions of the Code, the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (CIRP Regulations), the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations). The reply of Mr. Amar Gopal Gambhir to the SCN was received by the Board on 12.09.2023.
- 1.4 The SCN and response of Mr. Amar Gopal Gambhir to the SCN were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Amar Gopal Gambhir availed an opportunity of personal hearing before the DC on 08.02.2024 through virtual mode. Pursuant to the hearing, Mr. Amar Gopal Gambhir submitted additional written submissions.

#### 2. Alleged Contraventions, Submissions of Amar Gopal Gambhir and Findings of DC

The contraventions alleged in the SCN, submissions by Mr. Amar Gopal Gambhir and

findings of the DC are summarized as follows:

**Issue regarding non action on part of Mr. Amar Gopal Gambhir while conducting CIRP**

- 2.1 It was observed that the Committee of Creditors (CoC) at its first meeting held on 12.01.2022 did not confirm the agenda of appointment of Mr. Amar Gopal Gambhir as Resolution Professional (RP). Subsequently in the second CoC meeting held on 11.02.2022, the agenda for appointment of Mr. Rajiv Bhatnagar as RP in place of Mr. Amar Gopal Gambhir was approved with 100% voting. However, the appointment of Mr. Bhatnagar as RP was approved by the AA on 10.01.2023.
- 2.2 As per Section 16(5) of the Code, the term of the interim resolution professional shall continue till the date of appointment of the resolution professional under Section 22. Hence, Mr. Amar Gopal Gambhir was required to perform all the activities as per the timelines prescribed under the provisions of the Code and Regulations in the CIRP of the CD till appointment of new RP in his place was approved by the AA on 10.01.2023.
- 2.3 Further, as per Regulation 36 of CIRP Regulations (then in vogue), RP shall submit the Information Memorandum (IM) in electronic form to each member of the CoC within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date. However, it was observed from CIRP forms (Form-3) that IM was prepared and submitted before the CoC only on 30.12.2022 i.e. after delay of 328 days. Mr. Amar Gopal Gambhir in his reply to the IA submitted that the same was due to absence of data due to non-cooperation from the suspended management of the CD. However, it was noted that financials of CD were available on MCA database. It was further noted that apart from the above, Form CHG-1 as well as Form MGT-7, having crucial details such as shareholding structure of CD for period 2017-18, details of directorship during the period, assets mortgaged and amount of debt taken from Canara Bank, were available with MCA database which were easily accessible.
- 2.4 It was further noted that during the 5<sup>th</sup> CoC meeting dated 30.12.2022, the CoC approved the request for resolution plan. However, Mr. Amar Gopal Gambhir failed to publish the Form-G within the prescribed timeline. As per the website of IBBI, the Form G was published first time on 21.03.2023 only by the new RP, Mr. Rajiv Bhatnagar.
- 2.5 It was, thus, evident that Mr. Amar Gopal Gambhir failed to undertake various important activities such as preparation of IM, publication of Form-G etc. within the prescribed timelines. The AA in its order dated 10.01.2023 has noted that "the dormancy/ reluctance of IRP can hardly be a ground for the exclusion of any period from the prescribed time limit for CIRP.

- 2.6 It was also noted that till appointment of RP on 10.01.2023, Mr. Amar Gopal Gambhir had conducted 5 CoC meetings as under:

Sl. No	Details of CoC meeting	Date
1	1st CoC meeting	12.01.2022
2	2 <sup>nd</sup> CoC meeting	11.02.2022
3	3rd CoC meeting	06.06.2022
4	4 <sup>th</sup> CoC meeting	01.12.2022
5	5 <sup>th</sup> CoC meeting	30.12.2022

- 2.7 The period of 180 days of CIRP had expired on 11.06.2022. The second CoC meeting was conducted on 11.02.2022 and the 3<sup>rd</sup> CoC meeting was conducted only on 06.06.2022 i.e. after a period of approximately four months wherein a resolution for extension of CIRP was passed. Further, the next CoC meeting was conducted on 01.12. 2022 i.e. approximately after a period of six months from the last meeting. The long delays in conducting CoC meetings further indicates that Mr. Amar Gopal Gambhir did not conduct the CIRP of the CD as required under the Code.
- 2.8 In view of the above, the Board was of the *prima facie* view that Mr. Amar Gopal Gambhir had contravened Sections 208(2)(a) & (e) of the Code, Regulations 36, 36A and 40A of the CIRP Regulations, Regulations 7(2) (a) and 7(2)(h) of IP Regulations and clauses 13 and 14 of Code of Conduct under IP Regulations (Code of Conduct).

#### **Submissions by the IP**

- 2.9 Mr. Amar Gopal Gambhir submitted that IM comprises of all the information including the latest financials of CD including the provisional financials of CD as on the date of commencement of CIRP. However, he did not receive any cooperation from the erstwhile management of the CD. For this, he has also filed Section 19(2) application. However, the order from NCLT came only on 10.01.2023 through a common order.
- 2.10 Mr. Amar Gopal Gambhir further stated that during the CIRP period which commenced from 13.12.2021 till the mid of December 2022 there were COVID-19 related restrictions, due to which all the CoC Meetings were conducted through Video Conferencing mode. In the prevalent limitations, he visited the corporate office of the CD twice and also the registered office of the CD and the letters stating the detailed documents required by him to proceed the CIRP were hand delivered which were duly acknowledged by the CD. Mr. Amar Gopal Gambhir submitted that he repeatedly reminded the CD to co-operate and give access to all the documents and records vide emails dated 15-12-2021, 22-12-2021, 23-12-2021, 25-12-2021, 30-12-2021, 04-01-2022, 05-01-2022, 06-01-2022, 18.01.2022 and for carrying out CIRP. The CD only provided the Audited balance sheet for the F.Y. ending 31-03-2020. However, no further details were provided to the IRP. Further, several mails were sent on 01-02-2022, 02-02-2022, 30-05-2022, 15-11-2022, 18-11-2022, 22-11-2022, 24-11-2022, 28-11-2022, 19-12-2022 and 04-01-2023 requesting him to provide the necessary details pending from his end, however, no details were provided by the CD.

- 2.11 Mr. Amar Gopal Gambhir further submitted that he sent e-mail to the Registered Valuers seeking quotations, which was reverted seeking latest audited balance sheet and other relevant details. Mr. Amar Gopal Gambhir submitted that the erstwhile director refused to provide information to him on the basis that appointment of new RP is awaited. However, Mr. Amar Gopal Gambhir also admitted that the CoC denied and clearly specified that no such statement of awaiting the appointment of new RP was made to the member of the Suspended Board of Corporate Debtor. The CoC had advised that the process is required to be followed and stated that the present status of the assets is to be ensured before appointment of the registered valuers and all needful actions for the Valuation be undertaken once the list of all the assets is provided.
- 2.12 Mr. Amar Gopal Gambhir further submitted that in the Show Cause Notice it is mentioned that the IM could have been prepared on the basis of financials of the CD and other past records available otherwise and at MCA data base, including MGT -7, having shareholding details, CHG -1 (assets mortgaged / debt etc.). However, as per Regulation 36 of CIRP Regulations, Information Memorandum has to be prepared comprising all the information as including the latest financials of CD including the provisional financials of CD as on the date of Commencement of CIRP. Shareholding pattern etc., as available are of 2017 -18 and are basic details, which are not enough for preparing IM as per Regulation 36 to facilitate the prospective Resolution Applicant to take an appropriate decision on the Resolution plan. Mr. Amar Gopal Gambhir emphasised that an early incomplete submission of IM would have been contrary to Regulation 36 of the CIRP Regulations and Section 29 of the Code.
- 2.13 Mr. Amar Gopal Gambhir has further submitted that the CoC members have never discussed, and the IRP was never requested to place a proposal from members of the committee in a meeting as per Regulation 18(3). The CoC members have not requested the IRP to call a CoC Meeting.
- 2.14 In his additional submissions, Mr. Amar Gopal Gambhir re-iterated his point of non-cooperation by the erstwhile management of the CD. Mr. Amar Gopal Gambhir stated that even the new RP has also acknowledged through his revised application under Section 19(2) that Mr. Amar Gopal Gambhir, while acting as IRP, was not getting required cooperation from the CD.

### **Analysis and Findings of the DC**

- 2.15 Section 16(5) of the Code provides as follows:

#### ***16. Appointment and tenure of interim resolution professional. –***

*(1)....*

*.....*

*(5) The term of the interim resolution professional shall continue till the date of appointment of the resolution professional under Section 22.*

- 2.16 Further, Regulation 17(3) of the CIRP Regulations mandated an IRP to perform the

functions of RP till an RP is appointed. The relevant Regulation is as hereunder:

**17. Constitution of committee**

(1)....

.....

*(3) Where the appointment of resolution professional is delayed, the interim resolution professional shall perform the functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed under Section 22.*

- 2.17 The DC notes that in the present case Mr. Amar Gopal Gambhir was appointed as IRP on 13.12.2021 and Mr. Rajiv Bhatnagar was appointed as RP on 10.01.2023. During the interregnum period, in accordance with Section 16(5) of the Code read with Regulation 17(3) of the CIRP Regulations, Mr. Amar Gopal Gambhir was mandated to carry out the functions of the resolution professional.
- 2.18 However, as noted in the SCN, Mr. Amar Gopal Gambhir failed in carrying out various critical activities of CIRP for around a year. Further, even the meetings of the CoC were conducted belatedly and with long gaps. This clearly reflects the reluctance/ inaction of Mr. Gambhir to carry forward the CIRP despite the time bound nature of CIRP under the Code.
- 2.19 The DC notes the submission of Mr. Amar Gopal Gambhir regarding non-cooperation from the directors of the CD and that he had even filed Section 19(2) application against the directors for extending cooperation to him with respect to the CIRP of the CD. This contention of Mr. Amar Gopal Gambhir is not tenable as important details of the CD was available in the public domain and if the members of the suspended board of the CD were not co-operating in providing the information, he could have prepared the IM on the basis of information available in the public domain.
- 2.20 Mr. Amar Gopal Gambhir was not required to wait for cooperation from the erstwhile management of the CD for conducting activities pertaining to conducting CoC meetings, getting valuation of assets of CD through appointment of valuers, taking steps for inviting prospective resolution applicants through publication of Expression of Interest, etc. It is pertinent to note that publishing of Expression of Interest requires minimal information about CD which was available with a Resolution Professional even where there is non-cooperation from the earlier management of CD, or books are still being updated. The CIRP Regulations were amended on 16.09.2022 that mandates the Form-G to be published within sixty days from the insolvency commencement date, which is earlier than the date of submission of Information Memorandum to CoC which has to be done within ninety-five days from insolvency commencement date. However, no effort was made by Mr. Amar Gopal Gambhir to issue Expression of Interest even when amended Regulations clearly indicate the intent of early issuance of Form G is to find out the prospective resolution applicants whilst more information is being gathered for preparation of information memorandum.

- 2.21 Further, Mr. Amar Gopal Gambhir had certain documents such as audited balance sheet for the F.Y. 31.03.2020 and several other information could have been gathered by Mr. Amar Gopal Gambhir being a professional, from other sources, only if he would have attempted the same. For example, following details were available from the MCA database - financials of CD, shareholding details, directorship details, assets mortgaged, debt taken from Canara Bank, etc. The DC observes that Mr. Amar Gopal Gambhir did not revert to the valuers with available documents. Mr. Amar Gopal Gambhir should also have provided these documents to the valuers for the purpose of valuation of CD. However, Mr. Amar Gopal Gambhir chose not to do anything other than relying on the support from the directors of the CD. He failed to show any bonafide efforts to carry out his duties under the Code.
- 2.22 The DC further observes that it is the duty of the RP to regularly conduct CoC meetings to apprise the CoC members of the progress of the CIRP and facilitate various decisions with respect to the CIRP of the CD. The contention of Mr. Amar Gopal Gambhir that he did not conduct CoC meetings as there was no request for the same from the members of the CoC is misplaced and incorrect understanding of the provisions and objectives of the Code as the IP is the main driving force for CIRP and has been entrusted with the duty to complete the CIRP in a timebound manner, to achieve the objectives of the Code.
- 2.23 In view of the above, the DC finds that the clarifications provided by Mr. Amar Gopal Gambhir for his failure to carry out statutorily mandated functions under the Code and Regulations framed thereunder, are not acceptable. Accordingly, the DC holds Mr. Amar Gopal Gambhir in contravention of Sections 208(2)(a) & (e) of the Code, Regulation 36, 36A and 40A of the CIRP Regulations, Regulation 7(2) (a) and Regulation 7(2)(h) of IP Regulations and clause 13 and 14 of Code of Conduct.

### **3. ORDER**

- 3.1. The Code was enacted with the objective of insolvency resolution in a time bound manner for maximization of value of assets. Time is the essence of the Code and therefore the provisions of the Code and Regulations framed thereunder intends that the CIRP is not being held up in any case and is completed in a time bound manner. For this purpose, timelines have been assigned to various activities under the Code and Regulations so that overall timeline of completion of CIRP is achieved. The Resolution Professional, being the main driver of the CIRP, is expected to take all such measures necessary to perform various functions in a time bound manner.
- 3.2. In view of the foregoing, the DC in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby suspends the registration of Mr. Amar Gopal Gambhir (Registration No. IBBI/IPA-002/IP-N00753/2018-2019/12327) for a period of two years.
- 3.3. This Order shall come into force after expiry of 30 days from the date of this order.
- 3.4. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Amar Gopal Gambhir is enrolled as a member.

- 3.5. A copy of this order shall be sent to the CoC/Stakeholders Consultation Committee (SCC) of all the corporate debtors in which Mr. Amar Gopal Gambhir is providing his services, if any and the respective CoC/SCC shall decide about continuation of existing assignment of Mr. Amar Gopal Gambhir.
- 3.6. 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.
- 3.7. Accordingly, the show cause notice is disposed of.

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

Sd/-  
(Jayanti Prasad)  
Whole Time Member  
Insolvency and Bankruptcy Board of India

Dated: 31 July 2024  
Place: New Delhi