

# INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/234/2024

02 August 2024

## ORDER

In compliance with the Hon'ble Delhi High Court Order dated 10.04.2024, this Order disposes of the Show Cause Notice No. IBBI/IP/R(INSP)/2019/9/272/1380 dated 08.01.2021 and No. IBBI/IP/R(INSP)/2019/9 dated 22.02.2022, issued to Mr. Manish Kumar Gupta, R/o 404, 4<sup>th</sup> Floor, Laxmideep Building, Laxmi Nagar, District Centre, Vikas Marg, New Delhi, Delhi -110092 who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00225/2017-18/10424 dated 27.06.2017.

### 1. Background

- 1.1 The Hon'ble National Company Law Tribunal, Principal Bench, New Delhi (AA) vide its Order dated 28.08.2019, admitted the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") for Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor viz. Three C Projects Private Ltd ("CD-1") and appointed Mr. Manish Kumar Gupta as the Interim Resolution Professional ("IRP") who was later confirmed as Resolution Professional ("RP").
- 1.2 The Hon'ble National Company Law Tribunal, Principal Bench, New Delhi (AA) vide its Order dated 05.11.2019, admitted the application under Section 7 of the Code for CIRP of the Corporate Debtor viz. AVP Buildtech Private Ltd ("CD-2") and appointed Mr. Manish Kumar Gupta as the IRP.
- 1.3 The IBBI, in exercise of its powers under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017 vide order dated 03.10.2019 appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Manish Kumar Gupta on having reasonable grounds to believe that Mr. Manish Kumar Gupta had contravened provisions of the Code, Regulations and Circulars issued thereunder. A draft inspection report dated 10.07.2020, prepared by the IA, was shared with Mr. Manish Kumar Gupta, to which Mr. Manish Kumar Gupta submitted reply dated 19.08.2020. The IA submitted the Inspection Report to IBBI on 25.09.2020. Further, the draft of the addendum to the Inspection Report was submitted by the IA to Mr. Manish Kumar Gupta on 12.04.2021 and subsequently the final addendum to Inspection Report was submitted to the Board by the IA on 02.08.2021.
- 1.4 Based on the findings in the inspection report and materials available on record, the IBBI issued the Show Cause Notice No. IBBI/IP/R(INSP)/2019/9/272/1380 dated 08.01.2021 ("SCN-1") and No. IBBI/IP/R(INSP)/2019/9 dated 22.02.2022 ("SCN-2") to Mr. Manish Kumar Gupta, in respect of his role as an IRP/RP in the CIRPs of CD-1 and CD-2 respectively. The SCN alleged contraventions of various provisions of the Code IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and clauses 3, 5, 13 and 14 of

the Code of Conduct thereof, the IBBI (Insolvency Resolution Process for corporate persons) Regulations 2016 (CIRP Regulations) and IBBI Circular No. IP/005/2018 dated 16.01.2018.

- 1.5 The above-referred SCNs were disposed of by the Disciplinary Committee of IBBI vide Orders dated 22.07.2021 and 26.05.2022. The said Orders were challenged by Mr. Manish Kumar Gupta before Hon'ble High Court of Delhi in W.P.(C) No. 8205/2021 and W.P.(C) No. 9545/2022 respectively. The Hon'ble High Court has *vide* its Order dated 10.04.2024 has remanded both these matter back to the Board.
- 1.6 Accordingly, the abovesaid SCNs, responses of Mr. Manish Kumar Gupta to the SCNs and other materials available on record were referred to this Disciplinary Committee (DC) for disposal of the above-said SCNs in accordance with the Code and Regulations made thereunder. Mr. Manish Kumar Gupta had submitted that his replies to the draft inspection report, reply to the show cause notices issued and also contents of Writ Petition bearing No. WP(C) No.8205 of 2021 and also in WP(C) No.9545 of 2022 filed by him be read as part and parcel of reply to the said Final Inspection Reports. Mr. Manish Kumar Gupta availed an opportunity of e-hearing before this DC on 22.07.2024 where was represented by advocate Mr. Arpit Dwivedi. Mr. Manish Kumar Gupta pleaded to the DC that the period of punishment mentioned in the aforesaid Impugned Orders is already over and expired as on date and therefore, no fresh proceedings can be initiated qua him for the same issue again as the same would amount to double jeopardy.

## **2. Alleged Contraventions and Submissions**

The contraventions alleged in both of the SCNs, the submissions of Mr. Manish Kumar Gupta and findings of the DC are summarized as follows.

### **In the matter of CD-1**

#### **2.1 SCN-1: Contravention I:**

- 2.1.1 According to Regulation 36A of the CIRP Regulations, any expression of interest received after the time specified in the invitation, the same shall be rejected. It was observed that the invitation for expression of interest (EOI) dated 04.12.2019 provided the last date of submission of EOI as 20.12.2019. The revised invitation to EOI was published on 31.12.2019 pursuant to discussion in the 3<sup>rd</sup> CoC meeting and the last date for submission of EOI was extended to 08.01.2020. The minutes of 4<sup>th</sup> CoC meeting dated 08.01.2020 reflects that Mr. Manish Kumar Gupta apprised CoC about receiving EOI from 6 prospective resolution applicants (PRAs). However, the minutes of 5<sup>th</sup> CoC meeting dated 15.02.2020 reflects 9 PRAs. Therefore, implying that Mr. Manish Kumar Gupta received other 3 EOIs after the last date of submission i.e. 08.01.2020.
- 2.1.2 It was noted that Regulation 36A of CIRP Regulation clearly provides that the EOI received after the last date of submission are to be rejected, however, Mr. Gupta has accepted EOI even after the last date of submission, thereby violated the Regulation 36A of the CIRP

Regulations. Thus, the IBBI was of the prima facie view that Mr. Manish Kumar Gupta contravened regulation 36A of CIRP Regulations, regulation 7(2)(h) of IP Regulations and Clauses 13 and 14 of the Code of Conduct.

### **Submissions by Mr. Manish Kumar Gupta**

- 2.1.3 With regard to the aforesaid contravention, Mr. Manish Kumar Gupta submitted that it is incorrect to presume that the EOIs were received but he did not have the evidence of receipt. The EOIs were received in his office but could not be placed before CoC as receipt of the same was not in his knowledge and hence, could not be recorded in the Minutes. However, immediately after the meeting, on the very next day he called a meeting of the stakeholders and apprised every one about the receipt of the EOIs. He also submitted that at such a short notice, it was not possible to convene a meeting of CoC. Further, he submitted that his objective was to maximize the value, hence accepted the EOIs which was received in the evening after the CoC meeting, to keep more PRAs in the kitty. He also submitted that the CoC was convened in the evening and end of CoC meeting should not be construed as the end of day as it was unique situation where the date of CoC was also the last date of receipt of EOI.
- 2.1.4 Mr. Gupta further submitted that he intimated all the stakeholders by making the arrangement of sending mails and called a meeting. He immediately informed the authorised representative as well and also invited him in the meeting. All the proceedings were recorded in the next minutes of the CoC meeting. He submitted that whenever any document is submitted, the proof of receipt is tendered to the person who has delivered the document as a token of receipt. He also submitted that the documents of PRA was notarized on 08.01.2020, the date of stamp paper was also 08.01.2020 for other 2 cases, the proof of receiving a document is internal document and the same may not be reliable in the eye of Board. He also submitted that his office being a mediocre Chartered Accountant firm office, they do not have any system of maintaining the inward documents register.
- 2.1.5 Mr. Manish Kumar Gupta further submitted that he intimated the home buyers through the email immediately and sent an email to the website service provider M/s Nisha attaching the final list dated 20.01.2021 of PRAs to be uploaded immediately. The list was uploaded on 24.01.2021. This, according to him proves that he informed all the stakeholders immediately and uploading of documents on the website indicates that the all the EOIs were available to all the stakeholders of the project including financial creditors.
- 2.1.6 Mr. Manish Kumar Gupta further submitted that the SCN fails to demonstrate as to which sub-regulation or clause of regulation 36A of CIRP Regulations has been violated. He submitted that there is no violation of any of the sub-regulations or clauses of regulation 36A of CIRP Regulations. Further, with regard to clause 13 and 14 of Code of Conduct, he submitted that clause 13 speaks about the timeliness whereas in the present case, there is no issue of timeliness as the documents were received in the office by the office boy and at same time the CoC meeting was being conducted in the office which took long time in concluding. Further, he informed all the stakeholders immediately next day by whatsapp as well as email. In the light of above fact, Mr. Gupta submitted that there has been no

violation of clause 13 and 14 of the Code of Conduct.

- 2.1.7 Further, Mr. Gupta has relied on Regulation 12 of Inspection Regulations and submitted that the notice does not discuss the nature and seriousness of the alleged contraventions; the consequences and impact of the alleged contravention; unfair advantage gained by him as a result of the alleged contravention; loss caused, or likely to be caused, to clients or any other person as a result of the alleged contravention; his conduct after the occurrence of the alleged contravention, and prior to the alleged contraventions. He submitted that there were no mala-fide intention, no financial or other risk to any of the stakeholders or any unlawful gain to him. He also submitted that there was no beneficiary in this inadvertent mistake. He performed all his duties keeping in mind the maximization of wealth and value of the CD. He did not have any interest of any nature and that there is no allegation in relation to finance.
- 2.1.8 Mr. Manish Kumar Gupta submitted that out of 3 PRA, one is ineligible and other one had withdrawn EOI. Further, he submitted that the 3rd PRA also applied for withdrawal of proposal before the Hon'ble NCLT. He submitted that he has not only delivered the houses to 500+ home buyers but also gave a ray of hope to more than 850 homebuyers to get their house as he initiated the Pool & Build Scheme with the participation of homebuyers of Tower 9, 10, 11, 12A and 14. Further, he went the extra mile and tried to resolve the land dispute also.
- 2.1.9 Further, it is Mr. Manish Kumar Gupta's submission that regulation 7(2)(h) seems to be duplicity with the clause of first schedule as mentioned in the notice and further the relevant clause as referred in the notice are not applicable, hence allegation is liable to be dismissed. He lastly submitted that the notice fails to establish the violation of any of the timelines or any mala fide or negligence on his part and categorically denied having violated any of the provisions of any regulations of the Code of Conduct.

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

- 2.1.10 Regulation 36A of the CIRP Regulations provides as follows:

*“36A. Invitation for expression of interest.*

*(1) The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule at the earliest, not later than seventy-fifth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.*

*(2) The resolution professional shall publish Form G-*

*(i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the resolution professional, the corporate debtor conducts material business operations;*

*(ii) on the website, if any, of the corporate debtor;*

*(iii) on the website, if any, designated by the Board for the purpose; and*

*(iv) in any other manner as may be decided by the committee.*

*(3) The Form G in the Schedule shall –*

*(a) state where the detailed invitation for expression of interest can be downloaded or obtained from, as the case may be; and*

*(b) provide the last date for submission of expression of interest which shall not be less than fifteen days from the date of issue of detailed invitation.*

*(4) The detailed invitation referred to in sub-regulation (3) shall-*

*(a) specify the criteria for prospective resolution applicants, as approved by the committee in accordance with clause (h) of sub-section (2) of section 25;*

*(b) state the ineligibility norms under section 29A to the extent applicable for prospective resolution applicants;*

*(c) provide such basic information about the corporate debtor as may be required by a prospective resolution applicant for expression of interest; and*

*(d) not require payment of any fee or any non-refundable deposit for submission of expression of interest.*

*(5) A prospective resolution applicant, who meet the requirements of the invitation for expression of interest, may submit expression of interest within the time specified in the invitation under clause (b) of sub-regulation (3).*

*(6) The expression of interest received after the time specified in the invitation under clause (b) of sub-regulation (3) shall be rejected.*

*(7) An expression of interest shall be unconditional and be accompanied by-*

*(a) an undertaking by the prospective resolution applicant that it meets the criteria specified by the committee under clause (h) of sub-section (2) of section 25;*

*(b) relevant records in evidence of meeting the criteria under clause (a);*

*(c) an undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A to the extent applicable;*

*(d) relevant information and records to enable an assessment of ineligibility under clause (c);*

*(e) an undertaking by the prospective resolution applicant that it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process;*

*(f) an undertaking by the prospective resolution applicant that every information and records provided in expression of interest is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code; and*

*(g) an undertaking by the prospective resolution applicant to the effect that it shall maintain confidentiality of the information and shall not use such information to cause an undue gain*

*or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.*

*(8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with- (a) the provisions of clause (h) of sub-section (2) of section 25; (b) the applicable provisions of section 29A, and (c) other requirements, as specified in the invitation for expression of interest.*

*(9) The resolution professional may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence under sub-regulation (8).*

*(10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.*

*(11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list.*

*(12) On considering the objections received under sub-regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.”*

2.1.11 Therefore, any expression of interest received after the last date of submission is to be rejected as is provided in sub-regulation (6) of regulation 36A of the CIRP Regulations. Regulation 36A of the CIRP Regulations provides the stages to be followed while inviting expression of interest from prospective resolution applicants. Sub-regulation (10) provides that the RP shall issue a provisional list of eligible prospective resolution applicants within 10 days of the last date of submission of expression of interest.

2.1.12 The DC notes the claim that Mr. Manish Kumar Gupta accepted three expressions of interest after the official submission deadline of 08.01.2020. Mr. Gupta contends that these expressions of interest were physically received on the deadline day. However, his office lacked a system for issuing receipts or maintaining a register to record the receipt of documents or mail, leaving no evidence of this process. The DC observes that when deadlines are set for document submissions, it is essential for professionals to keep a record of all incoming receipts to verify compliance with the timelines.

2.1.13 The DC further notes Mr. Gupta's claim that he emailed and communicated with the authorized representatives of the CD about the receipt of these expressions of interest. He also uploaded a list of prospective resolution applicants to the website on 20.01.2020. The DC comments that if Mr. Gupta had received the EOIs by the deadline, he should have included them in the 4th meeting of the CoC or at least informed CoC members about their receipt and the names of the prospective applicants. Had he done this, the CoC might have directed Mr. Gupta to review all EOIs and select eligible applicants. Consequently, Mr. Gupta's handling of the EOIs represents a lapse in his duties.

2.1.14 The DC notes the submission of Mr. Manish Kumar Gupta that he posted the list of PRAs on the website of CD on 14.01.2020 i.e. within 6 days from the last date of receipt of EOI. However, this DC finds that the earlier DC *vide* its Order dated 22.07.2021 had observed that the list was provided by Mr. Manish Kumar Gupta to the website developers by email dated 24.01.2020 and therefore, it is wrong on the part of Mr. Gupta to state that list was hosted on 14.01.2020. Further, in any case the final list of PRAs is dated 20.01.2020 so the question of hosting the final PRA list on 14.01.2020 cannot arise. There is not only delay in hosting the list of EOIs but also violation of clause 12 of Code of Conduct by giving false statement in his submissions. Mr. Manish Kumar Gupta has not provided any explanation on this observation in the DC Order dated 22.07.2021.

2.1.15 The DC further notes the oral submission made by Mr. Manish Kumar Gupta that all expression of interests were received physically as well as through email. He also stated that he had informed the CoC members and home buyers about receipt of the three PRAs. He submitted that the website developers were also asked to update the list of PRAs on the website. Mr. Gupta has provided email dated 08.01.2020 received from Harshvardhan Reddy by him attaching the expression of interest as prospective resolution applicant. Mr. Gupta has also provided the email dated 08.01.2020 received from Svarnim Infrastructure Pvt. Ltd. However, with respect to the expression of interest of Laxmi Trading Company, Mr. Manish Kumar Gupta has submitted the expression of interest was prepared on stamp paper dated 08.01.2020. This will only establish that the EOI could not have been submitted earlier than 08.01.2020. But it is not the evidence to substantiate that the EOI of Laxmi Trading Company was in fact received on 08.01.2020 as has been claimed by Mr. Manish Kumar Gupta.

2.1.16 In view of the foregoing, the DC finds that Mr. Manish Kumar Gupta contravened regulation 36A(6) of the CIRP Regulations, regulation 7(2)(h) of IP Regulations and clauses 1, 2, 3, 12, 13 and 14 of the Code of Conduct.

## **2.2 SCN-1: Contravention II:**

2.2.1 Section 208 of the Code lays down the functions and obligations of IPs. Clause (2) of section 208 of the Code provides that every IP shall abide by the code of conduct given in the clause. These include performing duties with diligence and taking reasonable care. Section 208(2) of the Code is reproduced below:

*“208. Functions and obligations of insolvency professionals. –  
(2) Every insolvency professional shall abide by the following code of conduct: –  
(a) to take reasonable care and diligence while performing his duties;  
(b) to comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member;  
(c) to allow the insolvency professional agency to inspect his records;  
(d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and*

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

- 2.2.2 It was seen from the minutes of 2nd CoC meeting dated 27.11.2019 that Singhal Ajay & Associates was appointed for looking after compliance of TDS and GST requirements for CD and the same Mr. Ajay Singhal is one of the PRAs as seen from the minutes of 4<sup>th</sup> CoC meeting dated 08.01.2020. Despite this fact, Mr. Manish Kumar Gupta did not terminate the services of Mr. Ajay Singhal. It is seen that Mr. Ajay Singhal tendered his resignation as consultant with effect from 28.02.2020, which was considered in the 6<sup>th</sup> CoC meeting held on 12.03.2020, only after almost 2 months.
- 2.2.3 The SCN alleges that Mr. Manish Kumar Gupta should have terminated the services of the Mr. Ajay Singhal immediately when he submitted his resolution plan and became a PRA. By not terminating the services, Mr. Manish Kumar Gupta has not taken reasonable care and not exercised diligence.
- 2.2.4 Thus, the Board was of the *prima facie* view that Mr. Manish Kumar Gupta contravened Section 208(2)(a) of the Code, Regulation 7(2)(a) and 7(2)(h) of IP Regulations and Clauses 3, 5 and 14 of Code of Conduct of First Schedule of Code of Conduct for Insolvency Professionals under IP Regulations.

#### **Submissions by Mr. Manish Kumar Gupta**

- 2.2.5 With regard to the aforesaid contravention, Mr. Manish Kumar Gupta submitted that M/s Singhal Ajay & Associates was appointed by him for TDS and GST compliance for the CD on monthly basis at a retainer ship fee of Rs. 30,000 per month plus applicable taxes. Further, he submitted that a lot of GST and TDS compliances were pending for past many years and he had to ensure these compliances to be done as soon as possible. This work was carried out by same firm at a consolidated one-time fee of Rs. 1,00,000/-. The payment to Ajay Singhal is Rs. 30,000/- per month and for Sept. 2019 to Feb 2020 is Rs. 180,000 + GST.
- 2.2.6 Mr. Manish Kumar Gupta has given the list of event, which is given below:

First EOI	20/12/2019
2nd CoC	27/11/2019
Third CoC	31/12/2019
Last Date of EOI	08/01/2020
Fourth CoC	08/01/2020
Fifth CoC	15/02/2020

- 2.2.7 Mr. Manish Kumar Gupta submitted that at the time of EOI and withdrawal of EOI, the cancellation of GST issues of the CD were raised which involved Rs. 1.53 Crores of input credit of earlier period. He further submitted that all the purchases were on hold and in addition to that he was unable to take the input credit of approx. Rs. 40 lakhs for current period for current services. In the absence of non-filing of GST returns, the e-way bill



generation was not in process, affecting the facilities like maintenance, security, lift operations, repair and maintenance and the residents of the projects were making hue and cry. Therefore, it was considered necessary to get this job done to keep the CD as a going concern.

- 2.2.8 It is further submitted by Mr. Manish Kumar Gupta that there were certain GST issues which were being dealt by Mr. Ajay Singhal, as latest as 13.02.2020. The CD had availed the input credit in previous period for Rs. 1.53 crores. Further, the CD was in receipt of orders resulting in the cancellation of the registration by the GST Department. If this would have not been restored, then it would be a net cash outflow (net loss to CD) for the same amount as in the coming period, CD would be requiring to pay the GST and this input would not be available for input credit. In view of the seriousness of the situation and considering the fact that an amount to the tune of Rs. 1.53 Crores was at stake, Mr. Ajay Singhal was requested to continue to provide his services. It was due to the aforesaid reasons alone that the services of Mr. Ajay Singhal were not terminated, also owing to the fact that the conflict of interest ceased to exist once he had communicated his unwillingness to participate as a Resolution Applicant of the CD.

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

- 2.2.9 Clauses 3 of the Code of Conduct provides that the IP shall act with objectivity, without presence of any bias, conflict of interest etc. to the insolvency proceedings whether directly or not. The clause 3 of the Code of Conduct is reproduced below:

*“3. An insolvency professional must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the insolvency proceedings or not.”*

- 2.2.10 Clause 5 of the Code of Conduct provides that the IP must maintain complete independence in his professional relationships and conduct himself independent of external influence. Clause 5 of the Code of Conduct is reproduced below:

*“5. An insolvency professional must maintain complete independence in his professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences.”*

- 2.2.11 Clause 14 of the Code of Conduct provides that the RP must not act with mala fide or be negligent. Clause 14 of the Code of Conduct is reproduced below:

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

- 2.2.12 The DC notes Mr. Manish Kumar Gupta's statement that Mr. Ajay Singhal was appointed as the GST advisor for the CD. Mr. Gupta mentioned that the GST system in Ghaziabad was complex and technical, and Mr. Singhal managed it. Additionally, Mr. Gupta reported that there was an outstanding input credit of Rs.1.53 crore, which led to issues with billing

and purchasing, potentially delaying the insolvency resolution process if not addressed promptly. Mr. Gupta further stated that Mr. Singhal was verbally instructed to resign from the GST advisory role and complete his work by 16.02.2020, as he had become a PRA. The DC's Order dated 22.07.2021 notes the advocate's statement for Mr. Gupta, indicating that any delay was only for 40 days (from 08.01.2020 to 16.02.2020), with Mr. Singhal submitting his documents on 28.02.2020.

2.2.13 The Hon'ble Supreme Court in *Reliance Energy Ltd. and Ors. vs. Maharashtra State Road Development Corporation Ltd. and Ors.* ((2007) 8 SCC 1), held that:

*“The doctrine of "level playing field" is an important doctrine which is embodied in Article 19(1)(g) of the Constitution. This is because the said doctrine provides space within which equally-placed competitors are allowed to bid so as to subserve the larger public interest. "Globalization", in essence, is liberalization of trade. Today India has dismantled licence-radj. The economic reforms introduced after 1992 have brought in the concept of "globalization". Decisions or acts which results in unequal and discriminatory treatment, would violate the doctrine of "level playing field" embodied in Article 19(1)(g) . Time has come, therefore, to say that Article 14 which refers to the principle of "equality" should not be read as a stand alone item but it should be read in conjunction with Article 21 which embodies several aspects of life. There is one more aspect which needs to be mentioned in the matter of implementation of the aforesaid doctrine of "level playing field". According to Lord Goldsmith - commitment to "rule of law" is the heart of parliamentary democracy. One of the important elements of the "rule of law" is legal certainty. Article 14 applies to government policies and if the policy or act of the government, even in contractual matters, fails to satisfy the test of "reasonableness", then such an act or decision would be unconstitutional.”*

2.2.14 The DC observes that Mr. Ajay Singhal submitted an EOI, which was fundamentally inappropriate, particularly on part of Mr. Gupta's for including Mr. Singhal's name in the list of Prospective Resolution Applicants and presenting it to the Committee of Creditors. Mr. Singhal, being the GST consultant for the CD, had insider information, creating a conflict of interest when he submitted his EOI. This action also violated principles of fairness. Consequently, Mr. Gupta should not have presented Mr. Singhal's EOI to the CoC. The Resolution Professional (RP) is responsible for ensuring that the insolvency process is conducted fairly, transparently, and impartially, and any action that casts doubt on the same constitutes a breach of the Code of Conduct. Given Mr. Singhal's prior knowledge of the CD's financial status through his GST advisory role, his submission as a PRA unfairly disadvantaged other PRAs by providing him with an undue competitive edge. Therefore, Mr. Singhal's EOI should have been rejected due to the clear conflict of interest. The DC concludes that Mr. Manish Kumar Gupta has violated Section 208(2)(a) of the Code and Clauses 3, 3A, 5, and 23B of the Code of Conduct.

## **2.3 SCN-1: Contravention III:**

2.3.1 According to Circular No. IP/005/2018 dated 16.01.2018 provides the disclosures by Insolvency Professionals and other Professionals appointed by Insolvency Professionals

conducting CIRP. The relevant paras of the Circular are reproduced below:

*“The Insolvency and Bankruptcy Code, 2016 read with regulations made thereunder provide for appointment of an insolvency professional [(Interim Resolution Professional (IRP) / Resolution Professional (RP)] to conduct the resolution process (Corporate Insolvency Resolution Process and the Fast Track Process) and discharge other duties. These authorise the Insolvency Professional to appoint registered valuers, accountants, legal and other professionals to assist him in discharge of his duties in resolution process.*

*2. In the interest of transparency, it has been decided that an insolvency professional and every other professional appointed by the insolvency professional for a resolution process shall make disclosures as specified in Para 3 to 5 hereunder.*

*3. An insolvency professional shall disclose his relationship, if any, with (i) the Corporate Debtor, (ii) other Professional(s) engaged by him, (iii) Financial Creditor(s), (iv) Interim Finance Provider(s), and (v) Prospective Resolution Applicant(s) to the Insolvency Professional Agency of which he is a member, within the time specified as under:*

<b><i>Relationship of the Insolvency Professional with</i></b>	<b><i>Disclosure to be made within three days of</i></b>
<i>Corporate Debtor</i>	<i>his appointment.</i>
<i>Other Professionals [Registered Valuer(s) / Accountant(s) / Legal Professional(s)/Other Professional(s)] appointed by him</i>	<i>Appointment of the other Professional.</i>
<i>Financial Creditor(s)</i>	<i>the constitution of Committee of Creditors.</i>
<i>Interim Finance Provider(s)</i>	<i>the agreement with the Interim Finance Provider.</i>
<i>Prospective Resolution Applicant(s)</i>	<i>the supply of information memorandum to the Prospective Resolution Applicant.</i>
<i>If relationship with any of the above comes to notice or arises subsequently</i>	<i>of such notice or arising.</i>

4. An insolvency professional shall ensure disclosure of the relationship, if any, of the other professional(s) engaged by him with (i) himself, (ii) the Corporate Debtor, (iii) Financial Creditor(s), (iv) Interim Finance Provider(s), and (v) Prospective Resolution Applicant(s) to the Insolvency Professional Agency of which he is a member, within the time specified as under:

<b><i>Relationship of the Other Professional(s) with</i></b>	<b><i>Disclosure to be made within three days of</i></b>
<i>The Insolvency Professional</i>	<i>the appointment of the other Professional.</i>
<i>Corporate Debtor</i>	<i>the appointment of the other Professional.</i>
<i>Financial Creditor(s)</i>	<i>the constitution of Committee of Creditors.</i>
<i>Interim Finance Provider(s)</i>	<i>the agreement with the Interim Finance Provider or three days of the appointment of the other Professional, whichever is later.</i>
<i>Prospective Resolution Applicant(s)</i>	<i>the supply of information memorandum to the Prospective Resolution Applicant or three days of the appointment of the other Professional, whichever is later</i>
<i>If relationship with any of the Above comes to notice or arises subsequently</i>	<i>of such notice or arising.</i>

....”

2.3.2 It was seen from the minutes of 4<sup>th</sup> CoC meeting dated 08.01.2020 that the following professionals were appointed during CIRP:

<b>S. No.</b>	<b>Name of Professionals</b>	<b>Nature of Work</b>	<b>Fee</b>
1	Neetu Maan	Consultancy	Rs. 7,00,000/-
2	Ravi Bhargav	Consultancy	Rs. 12,00,000/-
3	Sujit Kumar Singh	Consultancy	Rs. 2,50,000/-
4	Vinay Kumar Taparia	Consultancy	Rs. 4,50,000/-
5	Excelon SAP Solution Private Limited	Consultancy fee for A/C mapping into SAP	Rs. 36,000/-
6	Sanghi Anish Kumar & Co	Consultancy for IBBI Compliance	Rs. 58,500/-
7	Abhishek Anand (Advocate)	NCLT Appearance	Rs. 29,250/-

8	Anu Luthra	ROC Compliance & Challan	Rs. 1,01,500/-
9	Sandeep Kumar Agarwal	STP Consultancy	Rs. 18,000/-
10	Aggarwal Sarawagi & Co.	Tax Audit Fees	Rs. 54,000/-

2.3.3 It was noted that Mr. Manish Kumar Gupta did not file relationship disclosure with respect to professionals stated in the afore-stated table, except that of Mr. Anand and Sanghi Anish Kumar & Co. with respective Insolvency Professional Agency. Thus, the IBBI was of the prima facie view that Mr. Manish Kumar Gupta contravened Circular No. IP/005/2018 dated 16.01.2018

#### **Submissions by Mr. Manish Kumar Gupta**

2.3.4 In his reply, Mr. Manish Kumar Gupta has submitted that he had filed the disclosure for all such cases, wherever they were required to be filed. He submitted that the SCN fails to clarify whether the disclosures of all the individuals, as named in the SCN, were required to be filed. He further submitted that the SCN has not clarified whether the other individuals/entities fell in the category of professionals whose disclosures were required to be filed.

2.3.5 Mr. Manish Kumar Gupta submitted that Mr. Ravi Bhargava, Sujit Singh, Sandeep Agarwal, Anu Luthra, Vinay Taparia, Navin Mann etc. are the existing and past employees of the CD since more than 7 years or more and they have been working with CD as divisional / departmental heads. He has submitted that he did not have any kind of relationship in the past/ present.

2.3.6 Mr. Gupta, in his reply submitted that keeping such employees in the company was inevitable to maintain the going concern status of the company. He submitted that the payment made to Vinay Taparia was on behalf of such persons only who were also an employee of the Three C group company. These people namely Mr. Ravi Bhargava and Mr. Sujit Singh were taken by M/s Granite Gate Private Limited as Key Managerial Person (KMP); Mr. N Mann and Ravi Bhargava were the employees of M/s Three C Universal Developers Private Limited and Mr. Sujit Singh were the employee of the Three C Infra Private Limited. He submitted that therefore it was not possible to take them as employee, and therefore, the terms of payment was contractual, but otherwise, these professionals were earlier working as employees with the CD.

2.3.7 Mr. Manish Kumar Gupta submitted that the entire accounting/ CRM data was maintained by the SAP accounting system and all the license and ownership was owned by a Three C Group Company and Three C Universal Developers Private Limited which was controlled by such employees. The huge licensing fees was payable for SAP license fees and the SAP server was required to update. He also submitted that these persons were the departmental heads of the organization and the salary of the entire team who provide the support of accounting, financial, banking, customer relations, legal documentation, Human Resource Development and project related issues needs to be paid, in addition to other day to day working. There were 8 employees who were getting the remuneration from such HOD's.

- 2.3.8 Mr. Manish Kumar Gupta submitted that for keeping the services in order, maintaining the Customer Relationship Management services, to take the history of each and every customer behind the scene and to co-ordinate with the various services provider, to carry on the services of project Lotus Zing, it was considered necessary to keep the people in employment with CD on the same pattern as other resolution professional took. Further, he considered it prudent to hire in-house staff in place of outside consultant who were very expensive in comparison to the in-house staff.
- 2.3.9 Mr. Manish Kumar Gupta explained that Mr. Sandeep Agarwal is a technical engineer for pipeline of drinking water and sewage water for sewage treatment plant of the Project Lotus Zing and paid Rs. 18,000/- only. He was taken on contract just because he is the employee of Three C Group and has expertise over the pipeline of the already constructed towers and hence his working was inevitable and therefor, is not covered in the ambit of professionals and no disclosure is required.
- 2.3.10 Similarly, he submitted that Ms. Anu Luthra was an employee of the Group who is now filing the forms for compliance with ROC. She was paid total amount of Rs. 59,500/- for payment to ROC and the remaining Rs. 42,000/- as professional fees. He further submitted that as she was engaged in providing various services to the CD before the initiation of CIRP, she does not fall in the category of professionals and therefore, no disclosure was required to be filed. Mr. Gupta has expressed his willingness to file the disclosure form
- 2.3.11 With respect to Agarwal Sarawagi, Mr. Manish Kumar Gupta submitted that they were the existing auditors of the CD, appointed 2 years before the CIRP was initiated. Mr. Gupta submitted that since the firm had been providing services prior to the initiation of CIRP, no disclosure was required to be filed. Mr. Gupta has expressed his willingness to file the disclosure form and has stated that he does not have any relationship with Agarwal Sarawagi. With regard to Excel on SAP solution services, he submitted that it is the existing company which was providing the technical services for maintaining the SAP system, maintain the data and hence, no disclosure is required to be filed.
- 2.3.12 Further, in relation to the disclosure to be filed for Anish Kumar Sanghi and Abhishek Anand, Mr. Manish Kumar Gupta submitted that IP entity Immaculate Resolution Professional was carrying out the compliance work and he assumed that they would have filed the necessary compliances. He requested that the delay in filing of disclosures of may please be condoned.
- 2.3.13 Mr. Manish Kumar Gupta submitted that he did not have any kind of relationship in last 20 years with any of the consultants mentioned herein above. Lastly, it is Mr. Gupta's submission that he himself and IP entity M/s Immaculate Resolution Professionals Private Limited are of the opinion that the disclosure is not required to be filed. Mr. Gupta has expressed his willingness to file the disclosure form.

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

- 2.3.14 The DC notes that in accordance with the IBBI Circular No. IP/005/2018 dated 16.01.2018, an RP must disclose their relationships with all professionals appointed during the CIRP

within the deadlines specified therein. The DC notes Mr. Manish Kumar Gupta's statement that, apart from Mr. Anish Kumar Sanghi and Mr. Abhishek Anand, no other professionals were appointed. The other individuals listed in the SCN were employees of the Three C Group company. Their services were utilized because they were already engaged in similar projects for the Three C Group and could be hired at a lower cost than what would have been required for external industry professionals.

2.3.15 The DC agrees condones the delay in filing of relationship disclosure for Mr. Anish Kumar Sanghi and Mr. Abhishek Anand.

2.3.16 The DC notes Mr. Manish Kumar Gupta's statement that all accounting and CRM data were managed using the SAP accounting system, with licenses held by the Three C Group company. Mr. Gupta also mentioned that, aside from Mr. Anish Kumar Sanghi and Mr. Abhishek Anand, the other professionals were department heads within the organization, and their expertise was crucial for maintaining the CD's operational status. For instance, Mr. Sandeep Agarwal was paid Rs. 18,000 for his work on the drinking water pipeline and sewage treatment plant. The DC observes that some of these professionals, who were employees of the Three C Group, were compensated for their services. As these payments were part of the CIRP costs, they should have been disclosed. Further, he has also not been able to substantiate how the services provided by the above-said individuals were not in the nature of professional services as they were all providing crucial services for running the CD as has been admitted by Mr. Manish Kumar Gupta.

2.3.17 The DC is notes that in today's era of transparency and corporate governance, disclosing information about processes and professionals is essential for reinforcing corporate governance. Such disclosure is vital for ensuring transparency, impartiality, independence, and professional competence, which is quintessential in any CIRP. In this case, though the professionals were paid lower than the salary as employees their payments were included in the process cost. Consequently, Mr. Gupta should have disclosed their relationships. This omission in conduct of Mr. Gupta amounts to violation of clauses 5, 10, and 16 of the Code of Conduct.

2.3.18 Therefore, the DC finds that Mr. Manish Kumar Gupta did not adhere to the Circular No. IP/005/2018 dated 16.01.2018 and contravened clauses 5, 10,13, 14 and 16 of Code of Conduct since the disclosures were not made timely. Compliances have been provided to maintain transparency and fairness in the process and therefore, should be made on time as provided in the Circular.

#### **In the matter of CD-2**

#### **2.4 SCN-2: Contravention I:**

2.4.1 Hon'ble NCLAT *vide* its order dated 13.03.2020 in CA (AT) (Ins.) No. 1244 of 2019 and 1249 of 2019 directed the following:

*"We direct the Interim Resolution Professional/'Resolution Professional' to call a meeting*

*of the 'Committee of Creditors' including the allottees to take a call on the question whether the matter can be resolved in the manner as settled in the aforesaid two (2) appeals or by way of any other 'Terms of Settlement'. If such decision is taken by more than 50% of the allottees and/or 66% of the 'Committee of Creditors', the 'Terms of Settlement' be placed before this Appellate Tribunal. We make it clear that in the meeting of the 'Committee of Creditors', 'Promoter' should be present to know the result of the voting share but will not take part in the voting. However, it will be open to the Promoter to give a suggestion as to what amount he infused or he intends to infuse as a 'Financial Creditor' and not as a 'Promoter'... ”*

- 2.4.2 Instead of honoring the Hon’ble NCLAT order dated 13.03.2020, Mr. Manish Kumar Gupta held meeting with allottees/homebuyers only. This issue was raised by allottees in 2nd meeting allottees/homebuyers dated 31.08.2020 whereby the following was recorded:

*“iii) Some allottees raised that meeting to be done with Committee of creditor (COC) and not the allottee- to this IRP replied that his lawyer has different view on the same as Hon'ble NCLAT order has both the words in its order.*

*iv) One allottee asked to form the Committee of creditor (COC) and this present forum is illegal - To this, IRP replied and referred NCLAT order of November, 2019 to stay the formation of COC. He explained that the intent of Hon'ble court was to give a solution and not to vacate the order and it has to be honored. If court will direct the IRP specifically (after submission of the result of this meeting) then IRP will form the COC immediately.”*

- 2.4.3 Even after the issue was raised, Mr. Manish Kumar Gupta did not seek any clarification from Hon'ble NCLAT nor conducted the COC meeting. *Prima facie*, it appears that Mr. Manish Kumar Gupta failed to conduct the COC meeting and by not constituting the COC, he avoided the requirement of the 90 percent vote share for withdrawal under section 12A and thus deprived the stakeholders of their legitimate decision-making opportunity. In view of the above, the said conduct of Mr. Manish Kumar Gupta is *prima-facie* not in consonance with Section 208(2) (a) and (e) of the Code, Regulation 7(2)(h) of IP Regulations read along with Clause 2 and 14 of Code of Conduct specified in the First Schedule of the IP Regulations.

#### **Submissions by Mr. Manish Kumar Gupta**

- 2.4.4 Mr. Manish Kumar Gupta submitted that the order of the Hon’ble NCLAT dated 14.11.2019 clearly directed him not to make any publication calling for claims, if not yet made, nor constitute any Committee of creditors (CoC), if not yet constituted. The said order also directed him to ensure that the CD remains a going concern. Mr. Manish Kumar Gupta submitted that adhering to these clear-cut directions of the Hon’ble NCLAT, he could not constitute any CoC. Mr. Manish Kumar Gupta further submitted that there was no Authorized Representative (AR) of the class of creditors and therefore, in absence of any AR, no meeting of the CoC can be convened.
- 2.4.5 Mr. Manish Kumar Gupta has also submitted that status reports dated 21.08.2020, 18.09.2020 and 09.10.2020 had been filed by him before Hon’ble NCLAT along with



details of 2 meeting of Committee of Creditors and/or the allottees of the flats conducted on 26.07.2020 and 31.08.2020 along with notice and agenda thereof. The Status Reports mentioned that the IRP of the CD has complied with the order of Hon'ble NCLAT. The voting was done in 2nd meeting.

- 2.4.6 Mr. Manish Kumar Gupta has further stated that the matter had been listed before the Hon'ble NCLAT a number of times since 13.03.2020 and a number of progress reports had already been filed with the Hon'ble NCLAT and with IBBI by him. The Hon'ble NCLAT has taken cognizance of these progress reports and these progress reports have been duly discussed at length in the order of the Hon'ble NCLAT and have ultimately been taken on record. Mr. Gupta submitted that the Hon'ble NCLAT has not vacated the stay order dated 14.11.2019 on constitution of the CoC till date and in absence of any vacation on status quo, Mr. Manish Kumar Gupta had no other option but to follow the directions of the order of the Hon'ble NCLAT. Mr. Manish Kumar Gupta submitted that he convened the meetings of all allottees and wherever required, the voting was also done on the issue of construction proposal of the promoters of the CD.
- 2.4.7 Mr. Manish Kumar Gupta submits that there were more than 10 effective hearings before Hon'ble NCLAT and the Hon'ble NCLAT never directed him to form CoC nor questioned his conduct as IRP of the CD in any of its hearings. Mr. Manish Kumar Gupta referred to the order dated 16.02.2022 wherein the Hon'ble NCLAT recognized the status reports submitted by him.
- 2.4.8 In respect of the allegation against him that by not constituting the CoC, Mr. Manish Kumar Gupta avoided the requirement of 90% vote share for withdrawal under section 12A of the Code, he submitted that the SCN failed to demonstrate a situation where there could have been applicability of section 12A. He submitted that there was no withdrawal proposal from either the creditors or the directors of CD to withdraw the main application on which voting was required under section 12A.
- 2.4.9 Mr. Manish Kumar Gupta submitted that he has not violated any of the directions of the Hon'ble NCLAT passed vide order dated 14.11.2019 and 13.03.2020 and that he has done his best and has almost completed the construction of two towers of the CD with the assistance of the promoter thereof which shall be ready to be delivered to the allottees in the near future. He stated that some of the flats have already been given to the allottees to do the finishing job on their end.

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

- 2.4.10 The DC notes that the Hon'ble NCLAT in its order dated 14.11.2019 stated that:-

*“Till next date, the Interim Resolution Professional will not make any publication calling for claims, if not yet made, nor constitute any Committee of Creditors, if not yet constituted. However, he will ensure that the Corporate Debtor remains a going concern and will help of the Directors, Promoters, Employees, Workmen, etc. for completion of the project/ one or other Tower. He will also ensure that the paid Directors, Officers, Employees, Workmen and Supplier of materials are paid their current dues. Though he will not pay the dues if*

*may payable prior to the date of admission, i.e., amount payable before 5th November, 2019. The person who signs the cheque on behalf of the Corporate Debtor will continue to sign the cheques but after approval of the Interim Resolution Professional.”*

2.4.11 Subsequently, Hon’ble NCLAT on 13.03.2020 gave further order stating that:-

*"We direct the Interim Resolution Professional/'Resolution Professional' to call a meeting of the 'Committee of Creditors' including the allottees to take a call on the question whether the matter can be resolved in the manner as settled in the aforesaid two (2) appeals or by way of any other 'Terms of Settlement'. If such decision is taken by more than 50% of the allottees and/ or 66% of the 'Committee of Creditors', the 'Terms of Settlement' be placed before this Appellate Tribunal. We make it clear that in the meeting of the 'Committee of Creditors', 'Promoter' should be present to know the result of the voting share but will not take part in the voting. However, it will be open to the Promoter to give a suggestion as to what amount he infused or he intends to infuse as a 'Financial Creditor' and not as a 'Promoter'... ”.*

2.4.12 On perusal of the above-referred orders of Hon’ble NCLAT, it is evident that the Hon'ble NCLAT, in its order dated 14.11.2019, prohibited Mr. Gupta from making any public announcements to invite claims or from forming a Committee of Creditors, if these actions had not already been taken, until the next scheduled hearing. There is no evidence on record indicating that this restriction was extended beyond the date of the Hon'ble NCLAT's next order or that the CIRP of the CD was stayed by the Hon'ble NCLAT. It is important to note that, according to the Hon'ble NCLAT's order dated 13.03.2020, Mr. Manish Kumar Gupta (IRP) was directed to call a meeting of the Committee of Creditors.

2.4.13 Further, following the Hon'ble NCLAT's order dated 13.03.2020, which instructed Mr. Gupta to convene a meeting of the Committee of Creditors, Mr. Gupta arranged the first virtual meeting with the homebuyers/allottees of the CD only on 26.07.2020, which was 135 days after the order. The second virtual meeting with the homebuyers/allottees took place on 31.08.2020, 170 days after the Hon'ble NCLAT's order. It is important to note that the Code stipulates that the resolution process should be completed within 180 days. Moreover, Mr. Gupta called the meeting of homebuyers/allottees only although there was a clear directive given by the Hon’ble NCLAT in its order dated 13.03.2020 to call a meeting of Committee of Creditors.

2.4.14 The DC further notes that since Hon’ble NCLAT vide its order dated 13.03.2020 had given a specific direction to Mr. Manish Kumar Gupta (IRP) to call a meeting of ‘Committee of Creditors’, Mr. Gupta was duty bound to collate all the claims submitted by the creditors in pursuance of public announcement made by Mr. Gupta on 09.09.2019 as per Section 18(b) of the Code, verify the claims as per regulation 13 of the CIRP Regulations, and determine financial position of the CD and constitute Committee of Creditors as per section 21 of Code, and then call a meeting of Committee of Creditors as per provisions of the Code and regulations made thereunder.

2.4.15 The contention of Mr. Gupta that he had complied with the directions of NCLAT order

dated 13.03.2020, by calling a meeting of Homebuyers/allotees of the CD is not tenable as he was directed to call a meeting of the Committee of Creditors. The DC has noted the minutes of meetings of Homebuyers/allotees held on 26.07.2020 and 31.08.2020 wherein the homebuyers/allotees objected the conduct of such meetings despite specific directions given by NCLAT in its order to conduct the meeting of Committee of Creditors.

2.4.16 The DC notes that in the minutes of first meeting of homebuyers/allotees, it is mentioned that

*“Following concern of Homebuyers in relation to NCLAT order dated 13.03.2020 in relation to the constitution of the committee of creditors were discussed in detail and the same was clarified by the IRP appropriately. Few Homebuyers stated that the meeting was held in terms of the decisions passed by the Hon’ble NCLAT on 13.03.2020 and on the other hand, the notice itself states that the CoC is not formed and a meeting of the allottees/home-buyers is being held. Pertinently, in the order dated 13.03.2020 passed by the Hon’ble NCLAT directed for a CoC meeting of the CD to be held and not the meeting of allottees/homebuyers/financial creditors. The intention of the Hon’ble NCLAT that it is the meeting of the CoC which is to be held is evinced clearly from the order dated 13.03.2020.”*

2.4.17 Further, in the minutes of second meeting of homebuyers/allotees held on 31.08.2020, it is mentioned that

*“iii) Some allottees raised that meeting to be done with Committee of creditor (COC) and not the allottee- to this IRP replied that his lawyer has different view on the same as Hon'ble NCLAT order has both the words in its order.*

*iv) One allottee asked to form the Committee of creditor (COC) and this present forum is illegal - To this, IRP replied and referred NCLAT order of November, 2019 to stay the formation of COC. He explained that the intent of Hon'ble court was to give a solution and not to vacate the order and it has to be honored. If court will direct the IRP specifically (after submission of the result of this meeting) then IRP will form the COC immediately.”*

2.4.18 The DC notes that as per the provisions of the Code and regulations made thereunder, Committee of Creditors can be constituted only after receiving and collating the claims received by the IRP and verification thereof. There is no evidence on record to show that Mr. Gupta while discharging his duty as IRP, has collated and verified the claims received in pursuance of public announcement made by him and constituted a Committee of Creditors as per provisions of the Code and regulations made thereunder. The DC finds that Mr. Gupta had not constituted the Committee of Creditors in accordance with the provisions of the Code and regulations made thereunder, as directed by the NCLAT vide its order dated 13.03.2020. Mr. Gupta during the course of oral hearing submitted that the directions of NCLAT cannot be taken to mean that CoC be constituted and a meeting of that CoC be conducted. He also submitted that he has sought clarification from Hon’ble NCLAT about the constitution of CoC and therefore adverse view should not be taken till the matter is decided by Hon’ble NCLAT. It is seen that the Order of Hon’ble NCLAT about conducting the meeting of CoC was passed on 13.03.2020. As per the submissions of Mr. Manish

Kumar Gupta, he had filed clarification application, which can be traced only to 17.12.2022. It is pertinent to note that he had conducted several meetings during this period. This application for clarifying the Order has been filed only after an investigation on this issue was started. Hence, the clarification application doesn't seem to have been filed to actually seek clarification in the matter but appears to have been filed with a view to create doubts about the intent of order of Hon'ble NCLAT as an afterthought. If the directions of Hon'ble NCLAT was not clear, the clarification application in this regard should have been made immediately after the order of Hon'ble NCLAT. Hence, the contentions of Mr. Manish Kumar Gupta is not acceptable.

2.4.19 In view of the above, the DC finds that Mr. Manish Kumar Gupta has contravened the provisions of section 208(2) (a) and (e) of the Code, Regulation 7(2)(h) of IP Regulations read along with Clause 2 and 14 of Code of Conduct specified in the First Schedule of the IP Regulations.

## **2.5 SCN-2: Contravention II:**

2.5.1 One of the allottee, Ms. Anu Singh, had filed Form CA with Mr. Manish Kumar Gupta on 22.11.2019. However, her name was not appearing in the list of claims as on 30.06.2020 or the list of claims as on 21.08.2020. The said conduct of Mr. Manish Kumar Gupta showed negligence in preparing the list of allottees. In view of the same, the said conduct of Mr. Manish Kumar Gupta is *prima facie* not in consonance with Section 208 (2)(a) and (e) of the Code, Regulation 13(1) of the CIRP Regulations, Regulation 7(2)(h) of IP Regulations read along with Clauses 14 of Code of Conduct specified in the First Schedule of the IP Regulations.

### **Submissions by Mr. Manish Kumar Gupta**

2.5.2 With regard to the aforesaid contravention, Mr. Manish Kumar Gupta submitted that it was a matter of only one claim which could not be considered because the email id of the Homebuyer – Ms. Anu Singh was not available in the record of the CD and the claim was filed with wrong email id by Ms. Anu Singh which was not matching with the data available with the IRP as provided by the director of the CD. Ms. Anu Singh voted in the agenda as allottee of the project. After verification of correct email id, the claim of Ms. Anu Singh was admitted and informed to her over email as well. That as on date her name is reflecting in the list of homebuyers, as per the records of the CD.

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

2.5.3 Regulation 13(1) of the CIRP Regulations provides as follows:

#### ***“13. Verification of claims.***

*(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.”*

- 2.5.4 The DC observes that Ms. Anu Singh had filed her claim on 22.11.2019 which was not admitted by Mr. Manish Kumar Gupta even after constant follow up by her. The claim did not appear in the list of claims even upto the list of claims uploaded by Mr. Manish Kumar Gupta on 21.08.2020. The DC further notes that an Interlocutory Application has been filed by Ms. Anu Singh as late as 08.02.2022.
- 2.5.5 The DC notes that Mr. Manish Kumar Gupta has failed to provide plausible explanation as to the reason for not admitting the claim of Ms. Anu Singh for such a long period. He has also not brought out the communication he made, if any, with Ms. Anu Singh for rectification of defects, if any and the reason for taking such a long time to admit the claim.
- 2.5.6 So, the matter has been kept pending on the ground of non-matching of email for more than two years. This was a very small issue of checking of her identity details from other records and should have been resolved quickly. The claimants cannot be made to run to various forums for getting their genuine claims admitted.
- 2.5.7 Accordingly, this DC is of the view that Mr. Manish Kumar Gupta is in contravention of Section 208 (2)(a) and (e) of the Code, Regulation 13(1) of the CIRP Regulations, Regulation 7(2)(h) of IP Regulations read along with Clauses 14 of Code of Conduct specified in the First Schedule of the IP Regulations

## **2.6 SCN-2: Contravention III:**

- 2.6.1 In compliance with Regulation 6 of the Inspection Regulations, the IA had shared the Addendum report with Mr. Manish Kumar Gupta vide e-mail dated 12.04.2021. IA further requested Mr. Manish Kumar Gupta vide email dated 02.06.2021, 14.06.2021, and 23.07.2021 to provide response on the same. However, Mr. Manish Kumar Gupta failed to provide his comments on the same. In view of the above, the said conduct is *prima facie* not in consonance with Section 208(2)(a) and (e) of the Code, Regulation 4(4) of Inspection Regulations, Regulation 7(2)(h) of IP Regulations read along with Clauses 18 and 19 of Code of Conduct specified in the First Schedule of the IP Regulations.

### **Submissions by Mr. Manish Kumar Gupta**

- 2.6.2 Mr. Manish Kumar Gupta submitted that the IA did not give extension of time to file reply on request. Regarding the allegation of non-cooperation with the IA, the IP has clearly denied this bald allegation which has not been substantiated with any proof or evidence. Mr. Gupta has alleged that it was IBBI which had not supplied the desired information, particularly the Final Inspection Report, despite repeated requests from the IP. In absence of said Final Inspection Report, the IP was not in a position to file a reply to the addendum to Final Inspection Report.

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

- 2.6.3 The DC finds the submission of Mr. Manish Kumar Gupta as acceptable as the addendum was in respect of final inspection report which had not been provided to him at that time and accordingly the contravention made in SCN-2 in this regard is not upheld.

### 3. Order

- 3.1. In view of the foregoing, the DC in exercise of the powers conferred under section 220 of the Code read with Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017, hereby, issues the following directions:
- (i) **With respect to SCN-1:**
- a) The Authorisation for Assignment of Mr. Manish Kumar Gupta shall be suspended for a period of twelve months from the date when Order dated 22.07.2021 had come in force i.e. 22.08.2021.
  - b) Mr. Manish Kumar Gupta shall pay a penalty equal to the fee paid to Mr. Ajay Singhal during the CIRP.
  - c) The fee paid to Mr. Ajay Singhal shall not form part of CIRP cost
- (ii) **With respect to SCN-2:**
- a) The Authorisation for Assignment of Mr. Manish Kumar Gupta shall be suspended for a period of twenty-seven months which shall run consecutive to the punishment imposed for SCN-1 in para 3.1 (i) above.
- 3.2. Since the punishment imposed is already running, this Order shall come into force immediately.
- 3.3. A copy of this order shall be sent to the CoC / Stakeholders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Manish Kumar Gupta is providing his services, if any. The CoC/SCC may decide whether to continue his services or not. In cases where CoC has not yet been constituted, a copy of this order shall be forwarded to the Registrar of the Hon'ble NCLT / Hon'ble NCLAT, as the case may be, requesting to place this order before Hon'ble NCLT / Hon'ble NCLAT for appropriate directions about continuance of Mr. Manish Kumar Gupta.
- 3.4. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI of which Mr. Manish Kumar Gupta is enrolled as a member.
- 3.5. 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.
- 3.6. Accordingly, the afore mentioned show cause notices are disposed of.

Dated: 02 August 2024  
Place: New Delhi

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