

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**  
**(Disciplinary Committee)**

No. IBBI/DC/248/2024

11 October 2024

**ORDER**

In compliance with the Hon'ble Delhi High Court order dated 10.04.2024 in W.P.(C) 11268/2022, this Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/INSP/2021/102/521/3520 dated 09.05.2022 issued to Mr. Yogesh Kumar Gupta who is a Professional Member of Insolvency Professional Agency of Institute of Cost Accountants of India (IPA-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-003/IP-N00078/2017-18/10701 and residing at C-17B, Basement, Kalkaji, New Delhi, 110019.

**1. Background**

- 1.1. The NCLT, Principal Bench, New Delhi (AA) *vide* order dated 13.02.2019 admitted the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) filed by Sanjeev Memorial Foundation for initiating Corporate Insolvency Resolution Process (CIRP) of Kamrup Housing Projects Private Limited (CD). Mr. Yogesh Kumar Gupta was appointed as RP replacing Mr. Surendra Khinvasra *vide* AA's order dated 13.06.2019.
- 1.2. The IBBI, in exercise of its powers under Section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017 appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Yogesh Kumar Gupta in the CIRP of the CD. In compliance with the Regulation 6(1) of Inspection Regulations, IA shared the Draft Inspection Report (DIR) with Mr. Yogesh Kumar Gupta on 22.02.2022 to which response was received on 11.03.2022. Thereafter, the IA submitted the Inspection Report (FIR) in accordance with the Regulation 6(4) of the IBBI (Inspection and Investigation) Regulations 2017 on 14.03.2022.
- 1.3. Based on the findings in the inspection report in respect of role of Mr. Yogesh Kumar Gupta as an RP in the CIRP of CD, the IBBI issued the SCN to Mr. Yogesh Kumar Gupta on 09.05.2022. Mr. Yogesh Kumar Gupta sought extension of 15 days for submission of his reply to the SCN *vide* email dated 29.05.2022. He finally replied to the SCN *vide* email dated 08.06.2022.

- 1.4. The above-referred SCN was disposed of by the Disciplinary Committee of IBBI *vide* Order dated 01.07.2022. The said Order was challenged by Mr. Yogesh Kumar Gupta before Hon'ble High Court of Delhi in W.P.(C) No. 11268/2022. The Hon'ble High Court of Delhi *vide* its Order dated 10.04.2024 has remanded the matter back to the Board with a direction to the Board to supply a copy of the Final Inspection Report to Mr. Yogesh Kumar Gupta.
- 1.5. The Board in compliance of the Hon'ble High Court of Delhi Order dated 10.04.2024 had supplied the copy of FIR to Mr. Yogesh Kumar Gupta *via* email and letter on 15.05.2024. However, no reply was received by the Board within the period of 2 weeks. The Board sent a reminder email dated 24.06.2024 to Mr. Yogesh Kumar Gupta for submitting the reply. Mr. Yogesh Kumar Gupta submitted the reply dated 25.06.2024 via email on 25.06.2024.
- 1.6. Accordingly, the abovesaid SCNs, reply of Mr. Yogesh Kumar Gupta to the SCN, additional reply to FIR dated 25.06.2024 and other materials available on record were referred to this Disciplinary Committee (DC) for disposal of the above-said SCN in accordance with the Code and Regulations made thereunder. Mr. Yogesh Kumar Gupta was informed by IBBI *vide* email dated 12.07.2024 that DC has fixed the date of personal hearing on 19.07.2024 to which Mr. Yogesh Kumar Gupta replied *vide* email dated 15.07.2024 and request for deferment of the personal hearing. Accordingly hearing fixed on 19.07.2024 was deferred. Further date of personal hearing was fixed on 22.08.2024 and intimation for the same was sent to Mr. Yogesh Kumar Gupta on 19.08.2024. Mr. Yogesh Kumar Gupta *vide* email dated 20.08.2024 again requested for deferment of the personal hearing. Accordingly, the date of personal hearing was fixed on 03.09.2024 and intimation for the same was sent to Mr. Yogesh Kumar Gupta *vide* email dated 20.08.2024. Mr. Yogesh Kumar Gupta availed the opportunity of personal hearing through virtual mode on 03.09.2024 and made submissions during the hearing. Mr. Yogesh Kumar Gupta further submitted additional written submissions dated 05.09.2024 without attachment and with attachment additional written submission was received on 18.09.2024.

## **2. Issue of maintainability of Disciplinary Committee Proceedings.**

### **2.1 Mr. Yogesh Kumar Gupta raised certain preliminary objections related to the maintainability of the SCN issued to him which are as follows:**

- 2.1.1 The complaint against him was filed after about 22 months of the alleged CoC meeting in Jan 2020 and is therefore the complaint was time barred. As per Regulation 4 of the IBBI (Grievance

and Complaint Handling Procedure) Regulations, 2017 (GCHP Regulations, 2017), a complaint or a grievance shall be filed within forty-five days of the occurrence of the cause of action for the grievance or complaint.

2.1.2 The FIR, which was intrinsically linked to the issuance of the SCN dated 09.05.2022 was never provided to him at any stage prior to the issuance of the SCN and was provided pursuant to the Hon'ble High Court Order dated 10.04.2024 which was in direct contravention of the fundamental tenets of natural justice.

2.1.3 The earlier SCN dated 09.05.2022 stands cancelled as the DC order has been set aside and a new SCN should have been issued subsequent to reply to Final Inspection Report.

2.2 **The DC has examined the grounds raised by Mr. Yogesh Kumar Gupta on the issue of non-maintainability of the SCN as raised and holds as under:**

2.2.1 In terms of Section 218 of the Code read with Inspection and Investigation Regulations, the Board is empowered to take into account any material made available to it, regarding any alleged misconduct by the service provider. It should be noted that the Board constituted under Section 188 of the Code is entrusted with the duty to ensure effective implementation of the provisions and objectives of the Code. Section 196 of the Code bestows various powers and functions on the Board, including that of suspension or cancellation of registration granted to service providers, regulation of working of service providers, carry out inspection and investigation on service providers and pass such orders as may be required for compliance of provisions of the Code and Regulations, monitoring of performance of service providers, etc. The conduct of an Insolvency Professional in a CIRP has wide implications and affects the rights and interests of all the stakeholders. Therefore, to effectively discharge its statutorily mandated duties and functions, under the Code, the Board can very well examine the conduct of the IP whenever any information about the conduct related issue is received by the Board by any person.

2.2.2 Chapter II of Inspection and Investigation Regulations provides the procedure for conduct of inspection. Regulation 6 of the said Regulation provides that IA shall submit the inspection report to the Board. Chapter-IV of Inspection and Investigation Regulations provides that the Board on consideration of the inspection report of the IA, if any *prima facie view* is formed that there is contravention on the part of IP, then the SCN is issued by the Board and time is granted to IP to provide his explanation on the allegations mentioned in the SCN before the order is passed by Disciplinary Committee.

- 2.2.3 In compliance with regulation 6(1) of Inspection Regulations, the IA had shared the DIR with Mr. Yogesh Kumar Gupta on 22.02.2022, response to which was received on 11.03.2022. Thereafter, the IA after considering the clarifications and explanations provided by Mr. Yogesh Kumar Gupta submitted the FIR to the Board on 14.03.2022 in accordance with Regulation 6(4) of the IBBI (Inspection and Investigation) Regulations 2017. The Hon'ble High Court of Delhi, in its order dated 10.04.2024, remanded the matter back to the Board with specific directions. The key directive for the Board was to supply a copy of the Final Inspection Report to Mr. Yogesh Kumar Gupta, and Mr. Yogesh Kumar Gupta was to submit reply within two weeks after receiving the FIR. The Board in compliance of the Hon'ble High Court of Delhi Order dated 10.04.2024 supplied the copy of FIR to Mr. Yogesh Kumar Gupta *via* email and letter on 15.05.2024
- 2.2.4 The Hon'ble High Court of Delhi has directed the Board to supply a copy of the FIR to Mr. Yogesh Kumar Gupta and permitted Mr. Yogesh Kumar Gupta to file further reply or substituted reply to the SCN and directed the Board to decide the matter thereafter in accordance with the Regulations.
- 2.2.5 The DC will now in following paragraphs, examine the allegations made in the SCN.

### **3. Alleged Contraventions, Submissions of Mr. Yogesh Kumar Gupta and Findings of the DC**

The contravention alleged in the SCN, submissions by Mr. Yogesh Kumar Gupta and findings of the DC are summarized as follows:

#### **Contravention-I:**

#### **3.1 Removal of Financial Creditors (homebuyers) from the CoC for not contributing to CIRP costs**

- 3.1.1 As per item No. 5 of the minutes of the 10<sup>th</sup> meeting of the Committee of Creditors (CoC), Mr. Yogesh Kumar Gupta updated the list of creditors by removing those Financial Creditors (homebuyers) who had not paid their dues towards insolvency resolution process costs (IRPC). According to Section 21(2) of Code, the CoC shall comprise all FCs of CD. Neither the Code nor any Regulation made under the Code provide for any provision for exclusion of FCs from the CoC for non-payment of IRPC. The said minutes also recorded that an application shall be moved before the AA for removal of name of creditors who have not paid their share towards IRPC. Rather than seeking directions from the AA, Mr. Yogesh Kumar Gupta excluded some FCs from the CoC and deprived them from their rights given under the Code.

- 3.1.2 In view of the above, the Board had held the prima facie view that Mr. Yogesh Kumar Gupta had, inter-alia, violated Section 21(2) of the Code.

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

- 3.1.3 Mr. Yogesh Kumar Gupta submitted that the insolvency resolution process costs (IRPC) plays a very significant role in the whole process of CIRP to keep the CD as a going concern and the members of the CoC are required to contribute towards the IRPC for the effective implementation of the CIRP of the CD. The RP is also required to make a balance between all stakeholders and to treat them equally in order to run the CIRP process successfully and in the best interest of all the stakeholders by maximising the value of the CD. Consequently, the matter relating to the non-payment of the CIRP cost was discussed in the meeting of the CoC held on 18.01.2020 and upon the suggestion given by the CoC, it was decided that an application shall be moved to the AA seeking removal of the names of such creditors who were not contributing towards the CIRP cost. Accordingly, an application bearing IA No. 1348/2020 for the recovery of CIRP cost was moved before the AA on 16.02.2020.
- 3.1.4 Mr. Yogesh Kumar Gupta submitted that he sent various e-mails and reminders to the members of the CoC requesting them to contribute towards the CIRP cost but no response was received from them. Consequently, on 09.12.2019, he sent 17<sup>th</sup> reminder *via* e-mail to the members of the CoC stating that in case, the members of the CoC fail to make payment towards the CIRP cost, he will be compelled to take appropriate action against the creditors. However, again the members of the CoC did not pay any heed to the requests and reminders sent. Consequently, Mr. Yogesh Kumar Gupta mentioned about the removal of the names of the defaulting creditors from the list of creditors updated in the minutes of 10<sup>th</sup> CoC meeting held on 18.01.2020.
- 3.1.5 Mr. Yogesh Kumar Gupta placed reliance on the order passed by the AA, New Delhi, in the matter of "M/s. Reliance Commercial Finance Vs Noble Resourcing Business and Solutions (P) Ltd." wherein it was explained by the AA that for the effective implementation of the CIRP, the FC constituting the CoC has to contribute to the expenses, fee and other costs of the process. The AA observed that *"if the financial creditors are not inclined to contribute to the cost of the process, then we are doubtful as to how their claim would be considered in the whole Process. If the financial creditors fail to contribute towards the CIRP cost then their claim in the CIRP Process would not be considered."*

- 3.1.6 Mr. Yogesh Kumar Gupta further placed reliance on the AA Chennai Bench order in B. Parameshwara Udpa vs. DBS Bank India Limited, IA 967/IB/2020 in IBA/1045/2019 to support his submissions. Mr. Yogesh Kumar Gupta submitted that he has taken action in compliance of the direction/order passed by the AA in the above stated matter.
- 3.1.7 Mr. Yogesh Kumar Gupta further submitted that he had mentioned about the removal of the names of defaulting creditors only after approval of the resolution plan and all such creditors have been treated as the part of the CoC till date as decision relating to removal of the defaulting creditors was only mentioned in the minutes, but the said decision was never given effect to at any point of time. In fact, after 10<sup>th</sup> CoC meeting, no meeting took place and consequently, no matter was considered which required the approval of the CoC members. Therefore, any rights of any financial creditor was not infringed upon and all the creditors continued to be in the list of creditors.
- 3.1.8 Mr. Yogesh Kumar Gupta further submitted that the last updated list of creditors was filed as on 07.10.2019 on the website of IBBI and the names of all financial creditors in class were included. He also sent all the informative mails to those FCs either in relation to current status of the CIRP or proceedings pending before the AA. Mr. Yogesh Kumar Gupta submitted that he did not remove the name of any of the FC in class from the list of creditors and treated all the creditors equally. Furthermore, for the purpose of protecting the interest of all FCs, including the creditors whose names were alleged to be removed from the CoC members for non- payment of the CIRP cost which is very much essential for running the operations of a going concern, he sent all the informative mails to those FCs either in relation to current status of the CIRP or proceedings pending before the AA and no FC in class was deprived from its rights.
- 3.1.9 Mr. Yogesh Kumar Gupta submitted that in reply to the DIR, he clarified that an application, with the approval of the CoC, was filed on 16.02.2020 before the AA against the FCs who were in default for making payment of the CIRP cost and the same was pending at that time. Further, in the FIR also, the IA took note of the fact that the application filed by Mr. Yogesh Kumar Gupta on 16.02.2020 against the FCs defaulting in making payment is currently *sub-judice*. However, the SCN completely ignored the fact that Mr. Yogesh Kumar Gupta sought directions from the AA and stated that “Rather than seeking directions from AA, you excluded FCs from the CoC and deprived them from their rights given by the Code.”

3.1.10 Mr. Yogesh Kumar Gupta reiterated that the decision of removal of the FCs who defaulted in making payments towards CIRP costs was never given effect to, therefore, the question of causing loss does not arise at all.

### **Analysis and Findings**

3.1.11 The DC notes the submission of Mr. Yogesh Kumar Gupta that matter relating to the non-payment of the CIRP cost was discussed in the 10<sup>th</sup> CoC meeting held on 10.01.2020 and upon the suggestion given by the CoC, it was decided that an application shall be moved to the AA seeking removal of the names of such creditors who were not contributing towards the CIRP cost. The DC had also perused the minutes of the 10<sup>th</sup> CoC Meeting.

3.1.12 The DC notes that the said decision was done in Item No.5 of the 10<sup>th</sup> CoC Meeting under the heading “To take note of the expenses incurred in the CIRP process till 31.12.2019 and contribution received from the CoC members and Balance amount lying in the Bank Account of Kamrup Housing Projects (Pvt.) Ltd-CIRP Account” wherein the summary sheet of CIRP expenses was presented and was recorded as follows:

*“The Final list of COC members who have paid their dues of CIRP cost is annexed herewith as Annexure A and the names of the creditors who have not paid their dues have been removed from the final updated list of COC. List of the COC member who have not paid and removed is also annexed as Annexure A. And it is pertinent to mention that the notice of the ensuing meeting is not being sent to these creditors. And the updated list is being sent to creditors with their revised voting share.*

*It was also discussed and decided that an application shall be moved to the Hon'ble court for filing an application to remove the names of such creditors who have not paid the amount towards the CIRP cost and the construction cost.*

*CoC took note of the same.”*

3.1.13 From the above-referred minutes, it is apparent that Mr. Yogesh Kumar Gupta had in an arbitrary matter decided to remove the names of the CoC members who have not paid their dues towards CIRP cost from the list of members of the CoC. The DC further notes that Mr. Yogesh Kumar Gupta had not sent notices for the 10<sup>th</sup> CoC meeting to such members of the CoC members who had been removed from the list of the CoC.

- 3.1.14 The DC also notes that the issue of removal of FCs from the CoC on account of non-contribution towards CIRP cost was not discussed and voted by the CoC as a separate agenda. In fact, the same was only noted by the CoC while taking note of the CIRP cost incurred. Moreover, it was clearly minutised in the minutes of the 10<sup>th</sup> CoC meeting that the, *“updated list is being sent to creditors with their revised voting share and the notice of the ensuing meeting is not being sent to the creditors who had not paid their dues.”*
- 3.1.15 The DC notes that in the said minutes, it was nowhere mentioned that the removal of the FCs from the CoC will be subject to the NCLT’s approval, on the contrary, it was noted that the updated list of creditors with revised voting share was shared as well as the notice of the ensuing meeting was not sent to the creditors whose names Mr. Yogesh Kumar Gupta had removed from the list of the CoC members of the CD. Mr. Yogesh Kumar Gupta had sought direction from the AA after removal of the FCs which shows that such action of Mr. Yogesh Kumar Gupta was an afterthought action.
- 3.1.16 The DC notes the submission of Mr. Yogesh Kumar Gupta that he mentioned about the removal of the names of defaulting creditors only after approval of the resolution plan and all such creditors were treated as the part of the CoC till date as decision relating to removal of the defaulting creditors was only mentioned in the minutes, but the said decision was never given effect to at any point of time. The DC is of the view that the issue is not whether the defaulting financial creditors were removed before or after the approval of the resolution plan. The key question is whether Mr. Yogesh Kumar Gupta’s decision to remove these financial creditors, who had defaulted on CIRP cost payments, is as per applicable provisions of the Code and Regulations made thereunder.
- 3.1.17 Mr. Yogesh Kumar Gupta relied on the judgments of the Adjudicating Authority (AA), New Delhi, in the matter of M/s. Reliance Commercial Finance vs. Noble Resourcing Business and Solutions (P) Ltd, and the AA, Chennai Bench, in B. Parameshwara Udpa vs. DBS Bank India Limited, to support his contention that his actions were in compliance with the directions/orders passed by the AA in those cases. However, after reviewing the judgments, the DC is of the view that neither of the judgment grants the RP the authority or power to remove the FCs from the CoC on account of non-payment of the CIRP costs. Consequently, the judgments relied upon by Mr. Yogesh Kumar Gupta do not support his actions.



3.1.18 It is pertinent to note that neither the Code nor the Regulations made thereunder envisage any provision regarding the removal of any CoC member on non-payment of CIRP cost. This is blatant violation of the provisions of the Code and Regulations made thereunder. Hence, DC finds that Mr. Gupta contravened Section 21(2) of the Code.

### **Contravention-II:**

#### **3.2 Deficiency in taking custody and control of assets of CD**

3.2.1 The minutes of the 3<sup>rd</sup> CoC meeting (during the tenure of erstwhile RP Mr. Surendra Khinvasra) noted that the construction material worth Rs.1.58 crore was lying at the project site. However, after appointment of Mr. Yogesh Kumar Gupta as RP, he didn't create record of the quantum of construction materials available at site / handed over to Mr. Yogesh Kumar Gupta by the erstwhile RP. It was observed from the CA certificate provided by the erstwhile RP that most of the assets of CD could have been made good use of in construction and out of assets worth Rs. 1.49 crore, only Rs. 0.015 crore of assets (cement) belonged to the perishable category. It was also recorded in the minutes of 6<sup>th</sup> CoC meeting held on 22.06.2019 that the assets such as bricks & cement could be utilised in construction. This not only establishes poor inventory management on part of Mr. Yogesh Kumar Gupta but also led to deficiency of information with the CoC about the availability of actual inventory while having discussion on commencing the construction work at Greater Noida site in the 6<sup>th</sup> CoC meeting. In view of the above, the Board held the *prima facie* view that Mr. Gupta, inter-alia, contravened Sections 25(1) and 25(2)(a) of Code.

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

3.2.2 Mr. Yogesh Kumar Gupta submitted that he was appointed as RP after 4 months from the date of commencement of CIRP against the CD. The erstwhile RP, Mr. Surendra Khinvasra neither provided any physical handover of the inventory nor provided any record with respect to the exact quantity and value of the inventory lying at the site of the CD. Furthermore, the erstwhile RP provided a physical inspection report submitted by Kanha & Associates, Chartered Accountants appointed by him, wherein, the notes of the report provided that:

*"Notes:*

- 2.2.1 *Exact quantity of steel lying at the site could not be verified without weighment and weighment is not possible.*
- 2.2.2 *Exact quantity of cement bags could not be verified because stacking of the cement bags was not proper & certain loose cement bags was also found lying on floor.*
- 2.2.3 *Coarse sand, aggregate and fine sand lying on the site but exact quantity of the same could not be verified because it was spread over a large area.*

2.2.4 *Bricks are lying at the site at various places, hence, could not be counted. "*

3.2.3 Mr. Yogesh Kumar Gupta submitted that he also visited the site of the CD for the purpose of physical verification of the inventory and it was observed that all the construction materials were spread over a very large area and it was not practically possible to take measures of the quantity of the said material. However, in order to ensure the security of the assets/inventory of the CD, security guards were appointed by the erstwhile RP, who continued to provide their services during the whole CIRP process. He never came across about any theft activity taking place at the site. The CA certificate was based upon the information provided by the suspended management of the CD. The said certificate wasn't based upon the physical verification of the inventory as mentioned in the said certificate itself. In fact, no physical verification of the inventory of the CD could be done by the erstwhile RP as well as by Kanha & Associates. Out of inventory worth Rs. 1.49 crore, 0.799 crore worth of goods consisting of raw material like cement, sand, steel, bricks etc could not be verified at all. The rest of the other materials were consisting of more than 200 items of very small values and even these items could not be physically verified by the erstwhile RP as well as by the Kanha & Associates. In fact, it was very difficult for him to physically verify them. The said facts were also corroborated and recorded in the physical count verification report submitted by Kanha & associates dated 12.06.2019. Relevant extract of the said report is reproduced hereunder:

*"i. All values are approximate and subject to detailed verification and calculation.*

*ii. Rates of all individual items have been taken as provided by the management of the company, we have not verified the rates from open markets.*

*iii. Physical count of each and every items were not practically possible hence, we have taken physical count on best estimated basis. "*

### **Analysis and Findings**

3.2.4 The DC notes that the report of Kanha & Associates, CA dated 12.06.2019 stated that material was lying loose, and its quantification was not feasible. The DC notes the submission of Mr. Yogesh Kumar Gupta that he also visited the site of the CD for the purpose of physical verification of the inventory and it was observed that all the construction material was spread over a very large area and it was not practically possible to take measures of the quantity of the said material and he continued the security guards who had been appointed by the erstwhile RP during the whole CIRP

process That out of inventory worth Rs.1.49 crore, Rs.0.79 crore worth of goods consisting of raw material like cement, sand, steel, bricks etc could not be verified at all. The rest of the other material was consisting of more than 200 items of very small values and even these items could not be physically verified by the erstwhile resolution professional as well as by the Kanha & Associates. The DC notes that Mr. Yogesh Kumar Gupta had faced challenges in verifying the inventory because of impracticability of conducting physical count of the inventory considering the nature and condition of the material at the site. Hence, the DC takes a lenient view and accepts the submission of Mr. Yogesh Kumar Gupta.

### **Contravention-III:**

#### **3.3 Delayed filing of disclosure**

- 3.3.1 IBBI circular No. IP/005/2018 dated 16<sup>th</sup> January 2018 requires disclosure of appointment of a professional to be made within three days of appointment of that professional. However, it was observed that Mr. Yogesh Kumar Gupta delayed the filing of the disclosure on the website of the Insolvency Professional Agency of the following professionals:

Professional	Name	Date of appointment	Disclosure date	Delay (in days)
Advocate	Mr. Vinod Khanna	05-07-2019	30-07-2019	22
Forensic Auditor	M/s VMRS & Associates	03-08-2019	16-08-2019	10

- 3.3.2 In reply to the DIR, Mr. Yogesh Kumar Gupta accepted the delay while attributing it to technical issues and receiving of requisite details of professionals for submission of the disclosure. He also sought condonation from the Board for the delays by stating that it did not cause any loss to any person. In view of the above, the Board held the *prima facie* view that Mr. Yogesh Kumar Gupta, *inter alia*, violated Regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 13 and 14 of Code of Conduct as specified in the first Schedule of The Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 and IBBI circular No. IP/005/2018 dated 16<sup>th</sup> January 2018.

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

- 3.3.3 Mr. Yogesh Kumar Gupta submitted that he appointed Mr. Vinod Khanna as legal counsel on 05.07.2019 and VMRS & Associates as forensic auditor on 16.08.2019. After appointment of these professionals, he immediately sought the requisite details of the professionals in order to file

disclosures in accordance with the IBBI circular no. IP/005/2018. However, there were minor delays on the part of the appointed professionals in providing the relevant details sought by him. Consequently, he could not file the disclosures within the prescribed period and minor delays were caused in such compliances. However, any of such delays were neither intentional nor caused any prejudice or loss to any of the stakeholder of the CD. He did not derive any personal benefit out of it and there was never any intent by him to violate the law or cause any undue gain to himself or any undue loss to any other party.

### **Analysis and Findings**

- 3.3.4 The DC notes that Mr. Yogesh Kumar Gupta delayed in filing disclosure and admitted the delay on his part. Since the same has not affected any of the stakeholder, the DC accepts the submission and takes a lenient view.

#### **Contravention-IV:**

### **3.4 Inadequate efforts for recovery of loans and advances**

- 3.4.1 From financial statement for FY 2016-17, it was observed that the CD had advanced long term loans and advances of Rs.2.13 crore and short-term loans and advances of Rs.5.21 crore. However, Mr. Yogesh Kumar Gupta failed to take concrete action to recover the advances. In reply to DIR, Mr. Yogesh Kumar Gupta, inter-alia, stated that the majority loans and advances were fictitious entries and details of these entries were not available in the records of the CD. He also stated that any legal efforts to recover this money would have cost the CD a lot without any material gain and hence he did not take help of professionals to recover the money. Mr. Gupta has failed to provide any documentary proof in support of low value of the assets. His stand that said loans and advances were fictitious entries was neither recorded in the CoC minutes nor communicated to the CoC members. Thus, Mr. Gupta failed to preserve and protect the assets of the CD. In view of the above, the Board held the *prima facie* view that Mr. Gupta, inter *alia*, contravened Section 25(1) of Code.

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

- 3.4.2 Mr. Yogesh Kumar Gupta submitted that as per the financial statements for the year 2016-17, the CD had long-term loans and advances of Rs.2.13 crore and short-term loans and advances of Rs.5.21 crore. However, as on the date of commencement of the CIRP i.e. 13.02.2019, the CD had loans and advances of Rs.0.04 crore and short-term loans and advances of Rs.3.87 crore only. In the valuation report submitted by the registered valuer Mr. Pradeep Kumar comments were

mentioned at page 57 as under: *"The information regarding the short-term loans and advances was sought from the CD as stated in Section 6 of the report on page 18. However, no details of the same have been made available to us... In absence of any data, it is assumed that the loans and advances made are not recoverable and hence, its value is taken as ZERO."* Further, the other registered valuer, Mr. Ankush Garg has also provided his comments in his report at page 19 mentioned hereunder: *"No agreement, balance confirmation and account statement were provided for the above, accounts (list of all such loans were provided). As informed, most of the balances are either more than 2 years old or are not recoverable from the respective authorities/vendors. Hence, conservatively and due to lack of information the fair value and liquidation value have been considered as NIL"*

- 3.4.3 Mr. Yogesh Kumar Gupta submitted that as per the list of such advances, most of the amount pertains to individuals whose whereabouts were not known, and he was not in a position to even communicate to such persons. Mr. Yogesh Kumar Gupta submitted that he also appointed the forensic auditor to conduct forensic audit of the financials of the CD. During the forensic audit, it was observed that the entries relating to such loans and advances were fictitious in nature or bogus in majority. Even, any details relating to these entries were not available in the records of the CD. The forensic auditor vide its addendum dated 14.12.2019 provided some comments over the queries raised by him which were reproduced hereunder: *" The Loans and Advances -Assets Side as on 13.02.2019 shown under financial statement of corporate debtor includes balances majorly from individual persons, some corporates and rest from Directors and Relatives which seems to be suspicious on the basis of books of accounts and other details provided ...On further analysis of the book of accounts of the CD, most of the balances belongs to a very long period and appears to be time barred...."*

### **Analysis & Findings**

- 3.4.4 The DC accepts the submission of Mr. Yogesh Kumar Gupta, based on the valuation reports and reports of the forensic auditor.

### **Contravention-V:**

#### **3.5 Incurring expenses without seeking prior approval of the CoC**

- 3.5.1 The minutes of 9<sup>th</sup> CoC meeting in its item No. 5 recorded that Mr. Yogesh Kumar Gupta incurred some expenses on construction work at Greater Noida site without approval of the CoC. The said minutes further noted that on being questioned about the increased expenditure on construction,

Mr. Yogesh Kumar Gupta stated that he was not required to obtain approval of the CoC as it was a going concern, which is factually incorrect. Regulation 34 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) requires that the CoC shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs. In view of the above, the Board was of prima facie view that Mr. Yogesh Kumar Gupta, inter-alia, violated Regulation 34 of CIRP Regulations.

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

- 3.5.2 Mr. Yogesh Kumar Gupta submitted that in the 3<sup>rd</sup> CoC meeting, the concern about the construction and utilization of the material lying in the construction site was raised by the Authorized Representative of the FCs in class which was already on record. Thereafter, some discussions were done between the members of the CoC relating to appropriate utilization of the material such as cement and steel which were likely to deteriorate in quality and utility with the passage of time. After such discussion on the issue, Shri Shridev Sharma, director of the suspended board of the CD was requested to give the plan where the perishable material can be utilized and also the estimate of expenditure to be incurred for carrying the activity. It was also discussed that once the plan with likely expenditure was received, the CoC members would be requested to approve the same and arrange the funds for carrying out the activity. It was further submitted that in the 4<sup>th</sup> meeting of the CoC held on 18.05.2019, the matter relating to the construction was discussed in detail between the members present in the meeting, including the invitation of tenders from the Civil Engineers, formation of a committee for the said purpose and other actions to be taken in this respect. The said discussion was also recorded in the minutes of the 4<sup>th</sup> CoC meeting.
- 3.5.3 Mr. Yogesh Kumar Gupta further submitted that in the 6<sup>th</sup> CoC meeting held on 22.06.2019, the agenda relating to approval for construction at the project site was placed before the CoC in agenda item 12 along with the agenda of seeking approval of construction of the project. The said agenda was approved by the members of the CoC with the 74.75% majority. Later, he kept apprising the CoC members about the status of the construction work from time to time in every subsequent CoC meeting.
- 3.5.4 Mr. Yogesh Kumar Gupta submitted that IRP/RP is duty bound to make all possible efforts to run the CD as going concern as per the Section 20 of the Code. All the expenses were incurred in ordinary course of business and any such expenses do not require any approval of the members of the CoC. However, the said information was placed before the CoC members during the meeting

on several occasions and the same was in the knowledge of the members of the CoC. Moreover, no objections were ever raised by any of the creditor or other stake holders during the CIRP process or even after the completion of the same.

3.5.5 Mr. Yogesh Kumar Gupta further submitted that the IA in the Final Inspection Report observed that “weekly reports of Monitoring committee have not been presented to the CoC, thereby creating gap towards ascertaining actual expenses incurred/being incurred on construction. ” It was submitted that the weekly report of monitoring committee was never supposed to be presented before the CoC. It was clearly mentioned in the 6<sup>th</sup> CoC meeting at item 12 that “Monitoring committee shall finalize the contractor and other modalities in their meeting for the smooth function of the construction work and shall submit their weekly report to resolution professional”. Therefore, the weekly report was to be submitted by the Monitoring Committee to the Resolution Professional and not to the CoC. Considering that the allegation pertains to incurring of expenses and not to providing the weekly reports of the monitoring committee to the CoC, it was clear that the finding in the FIR is incorrect as the same completely ignores that all the expenses incurred were duly provided to the CoC from time to time.

3.5.6 Mr. Yogesh Kumar Gupta further submitted that the IA became confused between “updating about progress of construction work” and “incurring expenses to keep the CD as a going concern”, while he may be duty bound to apprise the CoC members about the status of the construction work, which he duly fulfilled, and he was not bound to take approval of the CoC for incurring expenses to keep the CD as a going concern.

3.5.7 Mr. Yogesh Kumar Gupta also submitted that the Charter of Responsibilities of IRP/RP and the CoC in a CIRP (“Charter”) issued by the Board vide its circular no. Facilitation/002/2019 dated 1<sup>st</sup> March, 2019 provides clarity to Regulation 34 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) and clarifies that there is a distinction between costs incurred to keep the CD as a going concern and Resolution Professional costs. To support his submission, Mr. Yogesh Kumar Gupta placed reliance on Order dated 10.02.2022 of DC in the matter of Shri. Anil Goel, Insolvency Professional [IBBI/DC/82/2022].

### **Analysis & Findings**

3.5.8 The DC notes that the CoC in its 6<sup>th</sup> CoC meeting held on 22<sup>nd</sup> June 2019 in agenda item 12 had discussed and voted *on the issue of taking the approval of the COC to start the urgent construction work required at the Greater Noida site* and the same was approved by the COC members as

resolution number 5 of the voting list with the 74.75% majority. In the said resolution, it was noted that as the CD is not having funds right now, amount shall be contributed by the home buyers which shall be adjusted against their dues as per buyers agreement and further the comparison chart for the quotations received from four different contractors were placed before the CoC. The extract of the said resolution is extracted below:-

*“Resolved that approval of the COC is hereby accorded that the construction work at the greater Noida site be started immediately as per the detailed proposal put before the COC and appoint a contractor to complete the same.*

*Resolved further that approval of the COC is also accorded for the formation of Monitoring Committee consisting of five members as below:-*

- a. Mr. Yogesh Kumar Gupta Resolution Professional*
- b. Mr. Shyam Arora AR of Home Buyers*
- c. Dr. Magan Aggarwal Home Buyer*
- d. Mr. Dinesh Chauhan Home Buyer*
- e. Mr. Satish Home Buyer*

*Monitoring committee shall finalize the contractor and other modalities in their meeting for the smooth function of the construction work and shall submit their weekly report to resolution Professional.”*

*The abovementioned resolution was duly approved with the COC members as resolution no. 5 of the voting list with the 74.75% majority.”*

3.5.9 The DC also notes the following from the minutes of the 9<sup>th</sup> CoC meeting held on 24.10.2019:

*“On being asked for the approval of CoC for the increased expenditure on the construction by the AR, RP informed that it is not required to obtain the approval of CoC as it is going concern and RP is authorized to look into the operation of the company.”*

3.5.10 The DC notes that Mr. Yogesh Kumar Gupta's defence hinges on his assertion that while he is duty-bound to apprise the CoC members about the status of the construction work, he is not obligated to seek the CoC approval for incurring expenses necessary to keep the Corporate Debtor (CD) as a going concern. However, the DC is of the view that during the 6<sup>th</sup> CoC meeting, the CoC resolved to initiate urgent construction work at the Greater Noida site, which was to be funded by contributions from homebuyers and later adjusted against their dues as per the Builder Agreement. Further, the CoC had also compared and discussed quotations from various contractors, and subsequently granted approval for the appointment of the contractor to complete the work. This clearly indicates that prior approval from the CoC must be promptly obtained for any escalation or changes in the expenditures.



- 3.5.11 The DC further notes that Mr. Yogesh Kumar Gupta appears to be attempting to manipulate the IA's observation in the FIR by reading that in piecemeal to divert the attention from the core issue. However, upon a comprehensive reading of the FIR, it is evident that the IA's findings pertain directly to the present contravention.
- 3.5.12 Mr. Yogesh Kumar Gupta placed reliance on the DC Order dated 10.02.2022 in the matter of Shri Anil Goel, Insolvency Professional [IBBI/DC/82/2022] to support the contention that the expenses incurred for day-to-day operations need not to be approved by the CoC. The DC notes that the facts of the judgement relied upon is different from the present case, as in the case relied upon the issue was with regard to the expenses of monitoring and inspection which CD was obligated to incur as per the executed loan agreements whereas in the present case. Therefore, the order relied upon by Mr. Yogesh Kumar Gupta is not applicable in the present case.
- 3.5.13 Regulation 34 of the CIRP Regulations states that "*The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.*" Explanation provided under Regulation 34 of the CIRP Regulations clarifies that "expenses" includes "other expenses to be incurred by the resolution professional." Thus, it is clear that RP has to take approval of the CoC for the expenditure incurred to *start the urgent construction work required at the greater Noida site*. The contention of Mr. Yogesh Kumar Gupta raised in the 9<sup>th</sup> CoC meeting that he as RP is not required to take approval of the CoC for going concern expenses cannot be accepted. If Mr. Yogesh Kumar Gupta's stand is to be accepted, it would lead to RP's spending arbitrary amounts in the name of going concern expenses. The stand taken by Mr. Yogesh Kumar Gupta that he as RP did not need the approval of the CoC, is not only against the provision of Regulation 34 of the CIRP Regulations but also against the spirit of the Code. Hence, the DC finds that Mr. Yogesh Kumar Gupta contravened Regulation 34 of the CIRP Regulations.

#### **4. ORDER**

- 4.1 It is clear that Mr. Yogesh Kumar Gupta violated the provisions of the Code and Regulations by removing the CoC members from the list of the CoC and revised their voting shares on the basis that some of the CoC members had not contributed to the CIRP cost, and has not taken approval from the CoC for the going concern expenses. Hence, the DC, in exercise of the powers conferred under Section 220 (2) 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 suspends the registration of Mr. Yogesh Kumar Gupta having Registration No. IBBI/PA-003/IPN00078/2017-18/10701 for a period of three years.

- 4.2 This order will be effective from 01.08.2022, i.e., the date when the DC order No.IBBI/DC/109/2022 dated 01.07.2022 had come into force, prior to the same getting set aside by the order dated 10.04.2024 of the Hon'ble High Court of Delhi.
- 4.3 A copy of this order shall be sent to the CoC/ Stakeholder Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Yogesh Kumar Gupta is providing his services, if any. The CoC may decide whether to continue his services or not. In case, the CoC decide to discontinue his services, the CoC may file an appropriate application before the AA.
- 4.4 A copy of this order shall be forwarded to the Insolvency Professional Agency of Institute of Cost Accountants of India where Mr. Yogesh Kumar Gupta is enrolled as a member.
- 4.5 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, for information.
- 4.6 Accordingly, the show cause notice is disposed of.

Dated: 11 October 2024  
Place: New Delhi

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