

# INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

## (Disciplinary Committee)

No. IBBI/DC/217/2024

17 May 2024

### ORDER

**This Order disposes of the Show Cause Notice (SCN) No. IBBI/COMP/2022-23/00973(IBBI/C/2022/00707)/816/1453 dated 27.10.2023, issued to Mr. Manish Kumar Gupta, resident of 404, 4th Floor, Laxmideep Building, Laxmi Nagar, District Centre, Vikas Marg, Delhi - 110092 (herein referred as “IP”) who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-001/IP-P00225/2017-2018/10424.**

#### **1. Background**

- 1.1 The Adjudicating Authority (National Company Law Tribunal Principal Bench, New Delhi) (hereinafter referred as “AA”) vide its Order dated 28.08.2019, admitted the application under Section 7 of the Insolvency and Bankruptcy Code (Code) for corporate insolvency resolution process (CIRP) of Three C Projects Private Limited (Corporate Debtor / CD). Mr. Manish Kumar Gupta was appointed as Interim Resolution Professional (IRP) vide the above-said Order, later he was confirmed as Resolution Professional (RP) vide AA Order dated 21.11.2019.
- 1.2 The IBBI in exercise of its powers under Section 218 of the Code, read with Regulation 7(1) and 7(2) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to conduct investigation in the CIRP of the CD.
- 1.3 Based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the IBBI formed a *prima facie* view and issued the SCN to Mr. Gupta on 27.10.2023. The SCN alleged contraventions of provisions of the Code and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations). The reply of Mr. Gupta on the SCN was received by the Board on 10.11.2023.
- 1.4 The SCN and response of Mr. Gupta to the SCN were referred to the Disciplinary Committee (DC) for its consideration. Mr. Gupta availed an opportunity of personal hearing before the DC on 19.12.2023. Pursuant to the personal hearing, Mr. Gupta

provided additional submissions to the DC vide his mail dated 02.01.2024.

## **2. Alleged Contraventions, Submissions of the IP and Findings**

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

### **2.1 Failure to conduct due diligence of assets of the CD:**

- 2.1.1 It was observed that during the CIRP, Mr. Gupta had admitted claims of buyers of a partially built shopping arcade by categorizing them as homebuyers. Subsequently, he floated a tender along with the layout map for completion of the construction of the said shopping arcade and proceeded with its construction. Thereafter, Mr. Gupta came to know that the said map is not sanctioned by appropriate authority, as submitted in his reply dated 20.11.2022 to the IA.
- 2.1.2 The SCN noted that by proceeding with the construction of the unsanctioned shopping arcade, Mr. Gupta has failed to perform requisite due diligence of assets of the CD while taking control and custody of such assets, collecting all information relating to the assets and operations of CD, complying with the requirements under other laws for the time being in force, and monitoring, preserving and protecting the assets of CD and its continued operations, thereby, adversely affecting the interest of stakeholders.
- 2.1.3 In view of the above, the Board was of the *prima facie* view that Mr. Gupta has contravened Sections 17(2)(e), 18(a) and (f), and 25(1), 208(2)(a) and (e) of the Code, Regulations 7(2)(a) and (h) of the IP Regulations read with Clause 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

### **Submissions by the IP**

- 2.1.4 Mr. Gupta submitted that the shopping arcade in the project formed part of sanction plan got passed by the CD for the project. He was informed by the employees of the CD only that the sanctioned plan is not traceable, however, the same has already been granted and approved in respect of the shopping arcade. Relying upon such representations only and also in the interest of the Project as the same could have generated revenue thereby ensuring completion of the Project and also to maintain the CD as going concern, the IP had proceeded with construction of shopping arcade.
- 2.1.5 Mr. Gupta submitted that when he took over the Project as IRP, the construction of

Shopping Arcade was already initiated by the RWA (Resident Welfares' Association) through a contractor M/s Straight Edge Contractors Private Limited sometime around 2018 and was stopped thereafter in 2018 itself whereas the CD was admitted under CIRP on 20.08.2019. Mr. Gupta carried on the very same construction with the approval of CoC.

- 2.1.6 Mr. Gupta further submitted that as an abundant caution, he even sought approval of the Committee of Creditors (CoC), which consisted of Home Buyers/ Allottees of the CD as well before undertaking the construction of the shopping arcade. Even in the said CoC meeting, neither any member of the CoC including the Complainant had raised any such issue of non-sanction of plans of Shopping Arcade. On the contrary, the members of the CoC appreciated the efforts of Mr. Gupta, as the same was leading to generation of revenue. Mr. Gupta referred to minutes of meeting of 14th CoC (Page 88 onwards) wherein he had annexed the Site Plan/ Layout Plan of the Project duly submitted by the CD with the Noida Authority. In the said Site plan, Tower- 12A was Shopping Complex. Mr. Gupta had also annexed therewith photographs showing status of construction at shop complex in the said minutes of meeting.
- 2.1.7 Mr. Gupta also submitted before the DC during the personal hearing that he shall provide the evidence of already ongoing construction work of shopping arcade and details of shops already sold and money received against the sale prior to the commencement of CIRP. Mr. Gupta also submitted that the proposed shopping arcade was existing in the Site Plan/ Layout Plan but the approved plan of the same was not available. He assured the DC to provide evidence in this regard.
- 2.1.8 Mr. Gupta contended that immediately when it came to his knowledge that the information provided by the employees and erstwhile management was incorrect, he in the best interest of all stakeholders got made the arrangement to appoint a consultant to file the application with the competent authority immediately.

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

- 2.1.9 Section 17(2) of the Code provides that:

***17. Management of affairs of corporate debtor by interim resolution professional. –***

*(2) The interim resolution professional vested with the management of the corporate debtor, shall-*

....

*(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.*

2.1.10 The DC notes that the SCN states that Mr. Gupta had admitted claims of buyers of the partially built shopping arcade, floated tender for completion of construction of the said shopping arcade and thereafter he came to know that the said map is not sanctioned by the appropriate authority. Irrespective of the fact about the material timing of this knowledge coming to his notice, fact remains that he showed undue haste in admitting such claims and start of construction work without carrying out proper due diligence.

2.1.11 The DC further notes from the perusal of the reply of Mr. Gupta that the construction of referred shopping arcade was already initiated in 2018 but was later stopped due to non-payment and violation of contractual terms agreed between the contractor and builder. Although, Mr. Gupta had assured the DC to provide evidence of already ongoing construction work of the shopping arcade prior to the commencement of the CIRP and about approved layout plans, however, no plausible and concrete evidence for the same has yet been provided by Mr. Gupta .

2.1.12 The DC observes that after the initiation of the CIRP of a CD, it becomes the duty of IRP or RP, as the case may be, to take over the control of assets of the CD and ensure the going concern status of the CD. Accordingly, the IRP/RP also becomes responsible to ensure compliance with all prevailing laws during the CIRP.

2.1.13 The DC notes that complete set of information was neither provided at the investigation stage nor in response to the SCN. Furthermore, despite committing during the DC proceedings that he will supply the relevant information, he refrained from sharing the required evidences. Deliberately hiding information from the Board is a serious lapse on his part.

## **2.2 Non-cooperation with the IA in conduct of investigation**

2.2.1 It was noted that on 26.07.2022, the IA served the notice of investigation along with a copy of the complaint upon Mr. Gupta with the request to furnish the reply along with supporting documents within 10 days of the notice. Mr. Gupta requested for more time vide emails dated 08.08.2022 and 12.09.2022 to submit his reply to the said notice. A reminder was sent to Mr. Gupta by the IA on 14.11.2022. He finally submitted his reply to the said notice

vide email dated 22.11.2022. However, the reply submitted by Mr. Gupta was a partial reply as no reply was submitted with regard to the allegation of illegal disposal of assets of the CD by him, without approval of the CoC and failure to get payment verification audit done to conceal the fraud by him during the CIRP, as raised in the complaint. Due to the non-cooperation of Mr. Gupta, the IA finalised and submitted the investigation report dated 03.01.2023 based on the material available on record.

- 2.2.2 The SCN therefore alleges that Mr. Gupta has not rendered necessary cooperation to the IA in submission of relevant records for investigation. In view thereof, the Board was of the *prima facie* view that Mr. Gupta has contravened Sections 208(2)(a) and (e) of the Code, Regulation 4(4) and (7) of Inspection and Investigation Regulations, Regulation 7(2)(a) and (h) of the IP Regulations read with and Clause 18 and 19 of the Code of Conduct.

### **Submissions by the IP**

- 2.2.3 Mr. Gupta submitted that he provided all the documents, data and details available with him as and when required by the IA. Moreover, even in cases, where he had failed to provide the documents within the stipulated time due to certain unforeseeable circumstances or for the reasons that he was collating information from the suspended management, then also he had duly notified the same to the IA and sought extension for providing the documents.
- 2.2.4 Mr. Gupta contended that he had always attended each and every telephonic call and replied to each and every email of IA within the permissible / extended time. Further due to non-cooperation by suspended directors and promoters, he filed the application u/s 19(2). He sought extension of time to file reply at the relevant point of time as the last date to file Income Tax and other Compliances was approaching as hence, the IP was held up in above works.
- 2.2.5 Mr. Gupta submitted that he could not file his response to certain allegation out of sheer oversight and inadvertence and also since complete complaint was not provided to him. He expressed his *bonafide* intent by stating that he was/is acting as the IRP/RP in several projects namely, M/s AJ Castings Pvt. Limited, Samaih Buildtech Private Limited, Three C Projects Pvt. Limited, Classque Infra solution Pvt. Limited and in all these projects, the IA has conducted the inspection of the records and raised several queries, which were duly replied to by Mr. Gupta.

2.2.6 Mr. Gupta submitted that owing to non-providing of relevant documents to him by the IA, he was not in a position to fully examine the context of each allegations and to respond to the same. Mr. Gupta highlighted that in order to give complete response, he had requested copy of annexures to the complaint, however the same have not been provided. Mr. Gupta has denied the allegation in investigation report with respect to his failure to get payment audit conducted as there were some five to six homebuyers, who had approached Mr. Gupta and requested him to conduct the payment audit. Since the request was below the prescribed limit as envisaged under the Code, it was not obligatory for him to conduct such audit. Further, despite being so, he raised the issue in point No. 27 of the 13th CoC and again in 15th and 16th CoC meeting where it was declined by the CoC.

2.2.7 With regard to the allegation of illegal disposal of flats, Mr. Gupta submitted that:

- i) There is no sale of flat was done by the IP during the CIRP.
- ii) Only possession/ possession for fit out was given to homebuyers on the terms and conditions approved by CoC.

2.2.8 Mr. Gupta also submitted before the DC during the personal hearing that he shall provide the details of the inventory sold and unsold at the time of initiation of CIRP and also the details of inventory sold during the CIRP, if any, details of inventory sold and unsold as per Information Memorandum. However, till date the complete information has not been received from Mr. Gupta.

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

2.2.9 The DC notes that the SCN has alleged that Mr. Gupta has not cooperated with the Investigating Authority with respect to providing of necessary documents and information to examine the allegations levelled against Mr. Gupta regarding illegal disposal of assets of CD without approval of the CoC.

2.2.10 Mr. Gupta contended before the DC that he had sought certain documents from the IA which was not provided to him and therefore he was not able to give complete response to the information sought by the IA. In this regard, the DC sought reply of the IA. The IA has forwarded the trails of communication made by him with Mr. Gupta with respect to the investigation.

2.2.11 On perusal of the said communication between the IA and Mr. Gupta, it is observed that the notice of investigation in the matter of CIRP of the CD was sent by IA to Mr. Gupta

*vide* mail dated 27.07.2022. Mr. Gupta had replied to this mail on 08.08.2022 seeking more time to file his reply to the notice of investigation.

2.2.12 The DC notes that another email communication was sent by IA to Mr. Gupta, with respect to the investigation in the matter of CIRP of another corporate debtor, namely Umang Realtech Private Limited, on 12.08.2022. Mr. Gupta had replied on this email communication on the same day i.e. 12.08.2022 and again on 27.08.2022 requesting the annexures of the complaint forwarded to him with respect to investigation in the matter of Umang Realtech. Mr. Gupta submitted his reply to the notice dated 12.08.2022 (investigation in the matter of Umang Realtech) on 02.09.2022.

2.2.13 With respect to the investigation in the matter of CIRP of the CD, Mr. Gupta *vide* his email dated 12.09.2022 sought 15 more days to submit his reply. Further, after a reminder mail was sent by IA to Mr. Gupta on 14.11.2022, Mr. Gupta *vide* his email dated 15.11.2022 sought time till 21.11.2022 to submit his reply. Finally *vide* email dated 22.11.2022, Mr. Gupta submitted his reply to the notice of investigation in the matter of CIRP of the CD. Further, the IA again *vide* email dated 24.11.2022 forwarded the detailed complaint to Mr. Gupta stating that there are some additional allegations and without the comments on such allegations, the investigation process may not get completed by the IA. However, no reply was received from Mr. Gupta.

2.2.14 The DC, therefore, notes that the grievance of Mr. Gupta with respect to non-furnishing of necessary documents to him by the IA was in relation to a separate investigation in the matter of CIRP of one Umang Realtech Private Limited, and not for the instant investigation in the CIRP of the CD. Therefore, the defence of Mr. Gupta that because of non-furnishing of necessary documents to him by the IA, he was not able to submit complete reply, cannot be sustained. The DC rejects such defence by Mr. Gupta.

2.2.15 Therefore, the DC finds Mr. Gupta in violation of sections 208(2)(a) and (e) of the Code, Regulation 4(4) and (7) of Inspection and Investigation Regulations, Regulation 7(2)(a) and (h) of the IP Regulations read with and Clause 18 and 19 of the Code of Conduct.

2.2.16 Further, the DC finds the allegation with respect to illegal selling of assets to be grave in nature which requires detailed examination. Although, Mr. Gupta has now put forward his defense to the said allegation, no material document / evidence has been provided by him to support his defense as was submitted by him. Further, it is not desirable for this DC to act as Investigating Authority. This case needs to be examined afresh by the Investigating

Authority in light of the documents produced by Mr. Gupta and any other additional documents/information as may be required by the Investigating Authority.

### **3. ORDER**

- 3.1. The monitoring of regulated entities through inspections and investigations, in order to examine whether such regulated entity has contravened any provisions of the Code or rules and regulations framed therein, is an important and crucial activity exercised by the Board. It enables the Board to effectively carry out its duties enshrined under section 196 of the Code, with the overall purpose of achieving the objectives of the Code. Therefore, it is the duty of all regulated entities to cooperate with the Board in exercising its statutory mandate.
- 3.2. In the instant case, the IA had served notice of investigation to Mr. Gupta on 22.07.2022 to provide documents / information within 10 days. Mr. Gupta requested for extension of the timeline and finally provided the documents / information to IA on 22.11.2022 after a reminder mail was sent to him on 14.11.2022. Even then, only partial information was provided by Mr. Gupta to the IA. He did not provide his submissions on the issue related to alleged illegal disposal of assets of the CD by him and his failure to get payment verification audit done.
- 3.3. Such an act of not extending necessary support to the Board Mr. Manish Kumar Gupta, being an insolvency Professional, is violation of his duties and obligations entrusted on him under the Code. It hampers the effective discharge of duties and functions by the Investigating Authority.
- 3.4. In view of the foregoing, the DC in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016; the DC hereby:
  - (a) suspends the registration of Mr. Manish Kumar Gupta for a period of six months which shall run consecutive to the existing suspension period effective in operation vide earlier Disciplinary Committee Order dated 23.09.2022, and
  - (b) imposes a penalty of Rupees One Lacs (Rs. 1,00,000/-) on Mr. Manish Kumar Gupta for his failure to fully cooperate with the IA and directs him to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of “penalty



imposed by IBBI” on <https://bharatkosh.gov.in> within 45 days from the date of issue of this order and submit a copy of the transaction receipt to IBBI, and

(c) refers back the matter to the Board for re-investigation of conduct of Mr. Manish Kumar Gupta (Registration Number: IBBI/IPA-001/IP-P00225/2017-2018/10424) in the CIRP of Three C Projects Private Limited with respect to the issue of alleged illegal disposal of assets of the CD by him and his failure to get payment verification audit done. The DC also hereby strictly warns and cautions Mr. Manish Kumar Gupta to be careful and to extend all necessary support to the Investigating Authority during the investigation process.

- 3.5. This Order shall come into force immediately in view of the directions in para 3.4 above.
- 3.6. 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, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Manish Kumar Gupta.
- 3.7. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Manish Kumar Gupta is enrolled as a member.
- 3.8. A copy of this order shall also be forwarded to the Registrar of the Principal Bench and New Delhi of the National Company Law Tribunal for information.
- 3.9. Accordingly, the show cause notice is disposed of.

Sd/-

(Sandip Garg)

Whole Time Member, IBBI

Sd/-

(Sudhakar Shukla)

Whole Time Member, IBBI

Dated: 17 May 2024

Place: New Delhi