

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/237/2024

06 August 2024

ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11015/56/2023-IBBI/09/830 dated 09.01.2024, issued to Mr. Gopal Lal Baser, who is a Professional Member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-002/IP-N00553/2017-2018/11677 having residential address recorded with Board as House No. M 356, First Floor, Orchid Island, Sector 51, Gurgaon, Haryana- 122001 .

1. Background

- 1.1 The Certificate of registration as an insolvency professional of Mr. Gopal Lal Baser was suspended for a period of two years by an order dated 26.05.2023 passed by the Disciplinary Committee of the Board. The said order was passed in respect of assignment as Interim Resolution Professional/ Resolution Professional (IRP/ RP) in the corporate insolvency resolution process (CIRP) of Wianxx Impex Private Limited (Corporate Debtor/ CD).
- 1.2 Thereafter, the IBBI received fresh complaints against Mr. Gopal Lal Baser in the CIRP of the CD. Therefore, the IBBI in exercise of its powers under Section 218 of the Insolvency and Bankruptcy Code (Code), read with Regulations 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 The investigation commenced by issuance and service of a notice of investigation upon Mr. Gopal Lal Baser on 17.10.2023 as per Regulation 8(1) of the Inspection and Investigation Regulations. In response to the aforesaid notice, Mr. Gopal Lal Baser had *inter alia* sought annexures of the underlying grievance vide email dated 25.10.2023, which was provided to him *vide* e-mail dated 10.11.2023. Further, *vide* e-mail dated 10.11.2023, Mr. Gopal Lal Baser had replied to the IA that he was out of station and would be replying after returning. However, he did not respond to the notice. The IA submitted the investigation report based on the materials available on record to IBBI on 28.12.2023.

- 1.4 Thereafter, based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the IBBI formed a *prima facie* opinion that Mr. Gopal Lal Baser had contravened provisions of the Code and Regulations made thereunder and issued the SCN to him on 09.01.2024. The SCN alleged contraventions of several provisions of the Code, and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and the Inspection and Investigation Regulations. The reply of the IP on the SCN was received by the Board on 22.01.2024.
- 1.5 The SCN and response of Mr. Gopal Lal Baser to the SCN were referred to the Disciplinary Committee (DC) for disposal of the SCN. The IP availed an opportunity of personal hearing before the DC on 10.05.2024 through virtual medium.

2. Alleged Contraventions, Submissions of Mr. Gopal Lal Baser and Findings

The contraventions alleged in the SCN, submissions by Mr. Gopal Lal Baser and findings of the DC are summarized as follows:

2.1 Contravention I: Non-cooperation with the IA

- 2.1.1 It was observed that Mr. Gopal Lal Baser failed to submit any specific response to the allegations made in the complaint before the IA which was considered serious as it not only hinders the investigation but also shows the lackadaisical approach of Mr. Gopal Lal Baser towards the investigation.

- 2.1.2 Further, as per Regulation 8(4) of the Inspection and Investigation Regulations, Mr. Gopal Lal Baser was duty bound to furnish statements and information relating to his activities within the time as the IA may require. The said Regulation 8(4) provides as under:

“(4) It shall be the duty of the service provider and an associated person to produce before the Investigating Authority such records in his custody or control and furnish to the Investigating Authority such statements and information relating to its activities within such time as the Investigating Authority may require.”

- 2.1.3 Further, Clause 18 and 19 of the Code of Conduct for Insolvency Professionals, made under Regulation 7(2)(h) of the IP Regulations provides:

“18. An insolvency professional must appear, co-operate, and be available for inspections and investigations carried out by the Board, any person authorized by the Board or the insolvency professional agency with which he is enrolled.

19. An insolvency professional must provide all information and records as may be required by the Board or the insolvency professional agency with which he is enrolled.”

- 2.1.4 Thus, the Board was of the *prima facie* view that Mr. Gopal Lal Baser has violated Regulation 8(4) of Inspection and Investigation Regulations, Regulation 7(2)(a) and (h) of the IP Regulations read with Clause 18 and 19 of the Code of Conduct for Insolvency Professionals.

Submissions by Mr. Gopal Lal Baser

- 2.1.5 Mr. Gopal Lal Baser submitted that the notice of investigation was sent to him through email on 17.10.2023 without attaching the relevant annexures and on 18.10.2023 one more mail was sent to him mentioning complaint of the CoC members.
- 2.1.6 Mr. Gopal Lal Baser submitted that within a week time he responded on 25.10.2023 mentioning that relevant annexures were not attached and with respect to another mail which was sent on 18.10.2023 enclosing the document, he replied that documents are fake and bogus, with a request to provide authentic documents.
- 2.1.7 Mr. Gopal Lal Baser further submitted that in response to his email dated 25.10.2023, a mail was sent to him with annexures, but no response was given on bogus/fabricated document. He had again sent a mail on 25.11.2023 to provide authentic documents.

Analysis and Findings of the DC

- 2.1.8 On perusal of the submissions of Mr. Gopal Lal Baser, the DC observes that Mr. Gopal Lal Baser did not provide his reply to the specific queries asked by the Investigating Authority on the pretext that the complaint forwarded to him by the Investigating Authority was bogus/fabricated. The DC has also perused the emails sent by Mr. Gopal Lal Baser to the Investigating Authority where it was observed that he had sought the identity of the complainant.
- 2.1.9 The DC notes that when a document is sent by the Investigating Authority, constituted by IBBI, in discharge of his duties and functions entrusted on him, through the official email id, seeking clarifications on certain aspect of the CIRP handled by the Insolvency Professional, there is no case for an Insolvency Professional to refuse giving such clarification/information/document to the IA on pretext that the information mentioned in the document (in the instant case the complaint document) is bogus and the identity of the complainant cannot be ascertained. The Insolvency Professional is duty bound to

provide clarification on the merits of the issue raised therein and any issue of non-maintainability of the complaint (because of forged or unauthentic documents) should be appropriately countered by him in his response along with the supporting evidence. Merely doubting the document and refusing to cooperate with the Investigating Authority is an improper conduct on part of Mr. Gopal Lal Baser.

2.1.10 The DC deems it pertinent to mention that the Board was established under Section 188 of the Code for the purposes of the Code. The Board has a statutory mandate to oversee the processes under the Code and monitor the performance of Insolvency Professionals, who are the main driving force of such processes. Section 196 of the Code vests powers and functions on the Board to regulate and monitor the performance of Insolvency Professionals. The monitoring of regulated entities through inspections and investigations is an important function which is exercised by the Board. It is the duty of all regulated entities to cooperate with the Board in exercising its statutory mandate for the overall purpose of achieving the objectives of the Code. Not extending support to the Board is an act of dissidence by such an Insolvency Professional and makes mockery of the statutory obligations enshrined under the Code.

2.1.11 In light of the above, the DC is of the view that Mr. Gopal Lal baser is in contravention of Regulation 8(4) of Inspection and Investigation Regulations, Regulation 7(2)(a) and (h) of the IP Regulations read with Clause 18 and 19 of the Code of Conduct for Insolvency Professionals specified therein.

2.2 Contravention II: Illegal start of maintenance work before approval of resolution plan by the AA

2.2.1 It was observed from the e-mail dated 26.05.2023 that Mr. Gopal Lal Baser had allowed the Resolution Applicant to start maintenance work of the Europark Mall even though the AA had not approved the resolution plan. Thus, the SCN alleges that Mr. Gopal Lal Baser has not been able to preserve and protect the assets of the CD.

2.2.2 In view of the above, the Board was of the *prima facie* view that Mr. Gopal Lal Baser has violated Sections 25(1), 208(2)(a) and (e) of the Code read with Regulation 7(2)(a) and (h) of the IP Regulations read with Clause 1, 3, 5 and 14 of the Code of Conduct for Insolvency Professionals specified therein.

Submissions by Mr. Gopal Lal Baser

- 2.2.3 Mr. Gopal Lal Baser submitted that maintenance activity was part of Resolution Plan as approved by the CoC as can be inferred from page 93 of the Resolution Plan as per which it was mentioned that the Resolution Applicant had proposed to make an investment up to Rs. 30 crores as per requirement of its technical consultant with annual return of 12% p.a. for period commencing from the date of the CoC approval till the date of approval from the AA.
- 2.2.4 Mr. Gopal Lal Baser further submitted that he had never given any type of possession to Resolution Applicant and entire mall was under his supervision. Further, Technical Consultant recommended some urgent repairing of the mall and Mr. Gopal Lal Baser requested the Resolution Applicant to transfer fund in separate bank account. Total fund released by Resolution Applicant was Rs.20 lakhs and the same was utilized by technical consultant in repairing of the mall.

Analysis and Findings of the DC

- 2.2.5 Section 25(1) of the Code provides as follows:
*“25. Duties of resolution professional. –
(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.”*
- 2.2.6 The DC noted that the Resolution Professional is vested with the duty to protect and preserve the assets of the Corporate Debtor, during the CIRP. Further, in accordance with Section 31(1) of the Code, the resolution plan is required to be approved by the AA for it to be having the binding value. The said provision is as follows:
*“31. Approval of resolution plan. –
(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.*

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.”

2.2.7 Therefore, until the resolution plan is approved by the AA, it cannot be inferred that the resolution plan of a Resolution Applicant is approved. The AA, may, after examination of the resolution plan, reject the resolution plan.

2.2.8 In light of the above, the DC notes that the implementation of the resolution plan can be allowed only if it is approved by the AA. There is no case for any Insolvency Professional to presume the approval of resolution plan by the AA the moment it is approved by the CoC and submitted to the AA.

2.2.9 Therefore, the argument of Mr. Gopal Lal Baser that the maintenance activity was part of resolution plan as approved by the CoC and therefore the same was allowed, is not tenable and cannot be accepted. Accordingly, the DC finds Mr. Gopal Lal Baser in contravention of Sections 25(1), 208(2)(a) and (e) of the Code read with Regulation 7(2)(a) and (h) of the IP Regulations read with Clause 1, 3, 5 and 14 of the Code of Conduct for Insolvency Professionals specified therein.

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 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby suspends the registration of Mr. Gopal Lal Baser (Registration No. IBBI/IPA-002/IP-N00553/2017-2018/11677) for a period of one year. Considering the Disciplinary Committee Order (No. IBBI/DC/174/2023) dated 26.05.2023, the above said suspension period shall run consecutive to the suspension period ordered in the Disciplinary Committee Order dated 26.05.2023.

3.2. A copy of this order shall be forwarded to ICSI Institute of Insolvency Professionals where Mr. Gopal Lal Baser is enrolled as a member.

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. Gopal Baser is providing his services, if any and the CoC/SCC may decide on the continuation of services of Mr. Gopal Lal Baser.

- 3.4. 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.
- 3.5. Accordingly, the show cause notice is disposed of.

Sd/-

(Jayanti Prasad)

Whole Time Member

Insolvency and Bankruptcy Board of India

Dated: 06 August 2024

Place: New Delhi