

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

No. IBBI/DC/149/2023

3rd February, 2023

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2021/103/4150/635 dated 10.10.2022 issued to Mr. Manish Gupta, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations). Mr. Manish Gupta is a Professional Member of Insolvency Professional Agency of the Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with registration No. IBBI/IPA-001/IP-P01131/2018-19/11826.

1. Developments in relation to resolution/liquidation of the CDs

1.1. The Hon'ble NCLT, New Delhi Bench-IV (AA) *vide* order dated 13.12.2019 admitted the application under section 7 of the Code filed by Dharendra Nath & others for initiating Corporate Insolvency Resolution Process (CIRP) of JC World Hospitality Private Limited (CD). Mr. Manish Gupta was appointed as the Interim Resolution professional (IRP) on 13.12.2019 and was later confirmed as resolution professional (RP). The resolution plan has been filed for approval before AA. However the proceedings before AA has been stayed by the Hon'ble Supreme Court.

2. Issuance of Show Cause Notice (SCN) and hearing before DC

2.1. The Board, in exercise of the powers conferred to it under section 218 of the Code read with the Inspection Regulations, appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Manish Gupta *vide* order dated 10.11.2021. A draft inspection report (DIR), prepared by the IA, was shared with Mr. Manish Gupta on 17.01.2022, to which Mr. Manish Gupta did not submit his comments even after follow up by IA. The IA submitted the Inspection Report to Board on 16.05.2022.

2.2. Based on the material available on record including the Inspection Report, the Board issued the SCN to Mr. Manish Gupta on 10.10.2022. The SCN observed contravention of section 17(2)(e), 208(2)(a), 208(2)(e) of the Code, regulation 13(1), 36, 36A, 36A(2)(iii) and 40B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulation 4(4) and 4(7) of IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations), regulation 7(2)(a) and 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 1, 2, 3, 5, 10, 13, 14, 18, 19, 24 and 25 of the Code of Conduct specified thereunder and Board Circular No. IP/003/2018 dated 03.01.2018, Board Circular No. IP/005/2018 dated

16.01.2018 and Board Circular No. IBBI/IP/013/2018 dated 12.06.2018. Mr. Manish Gupta, as per requirement under Regulation 12(3) of Inspection Regulations, did not reply to the SCN within 15 days.

- 2.3. The Board referred the SCN and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder.
- 2.4. Mr. Manish Gupta availed an opportunity of personal hearing before DC on 29.12.2022 virtually where he requested last opportunity to submit reply against the SCN. The DC granted another opportunity to make submissions. Mr. Manish Gupta submitted his reply to SCN on 18.01.2023 and availed opportunity of personal hearing before DC on 18.01.2023.

3. Observed contraventions and submissions of the IP

Contraventions observed in the SCN and Mr. Manish Gupta's submissions thereof are summarized below:

Contravention – I

3.1. Non-cooperation with Inspecting Authority (IA)

- 3.1.1. As per regulation 4(4) of the Inspection Regulations, it shall be the duty of the service provider and an associated person to produce before the IA such records in his custody or control and furnish to the IA such statements and information relating to its activities within such time as the IA may require. As per regulation 4(7) of Inspection Regulation, it shall be the duty of the service provider and an associated person to give to the IA all assistance which the IA may reasonably require in connection with the inspection.
- 3.1.2. The Board observed that Mr. Manish Gupta has not cooperated with the IA all throughout the inspection. The following specific instances of non-cooperation substantiate these observations:
- a) He did not acknowledge receipt of Inspection Notice sent to him by IA *vide* e-mail dated 10.11.2021 despite being asked to do so by the IA.
 - b) *Vide* email dated 20.11.2021, he sought an extension to submit the records by 30.11.2021. IA granted him extension till 28.11.2021. However, he failed to provide documents to IA even by 30.11.2021.
 - c) IA *vide* email dated 01.12.2021 again requested him to submit the documents at the earliest. Mr. Manish Gupta *vide* e-mail dated 08.12.2021 stated that as per his discussion with IA, he would be submitting documents by 10.12.2021. However, he failed to submit the requisite documents.
 - d) Further in reply to his request for another extension on the ground of medical condition, IA again allowed him final extension for 7 days (till 17.12.2021) to

submit the documents. However, even after the lapse of 7 days he failed to provide the documents to IA and subsequently *vide* email dated 23.12.2021, IA granted him another opportunity to submit documents by 27.12.2021 yet he refrained to submit the required documents.

3.1.3. The IA shared its DIR with Mr. Manish Gupta *vide* email dated 17.01.2022 and sought his comments within 15 days (i.e., 01.02.2022) in accordance with the regulation 6(1) of Inspection Regulations. However, he failed to reply to the DIR.

3.1.4. It is, thus, evident that he has failed to submit the records/documents within the time prescribed by the IA despite being given multiple opportunities to do the same. Hence, he has not extended sufficient and appropriate co-operation to the IA as may be required to carry out the inspection, which is his duty under regulation 4(4) of the Inspection regulations.

3.1.5. As he has not at all cooperated with the IA, the Board held the *prima facie* view that he has, *inter alia*, violated regulation 4(4) and 4(7) of Inspection Regulations read with clauses 18 and 19 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

3.2. Submissions made by the IP

3.2.1. Mr. Manish Gupta submitted that the allegations are not denied but they have to be considered in proper perspective. He submitted that period from December 2021 to December 2022 has been the most difficult phase in his life. The alleged non-Cooperation was unintentional and can be attributed to multiple factors.

3.3. Summary Findings

3.3.1. The DC notes that Mr. Manish Gupta has admitted violation of regulation 4(4) and 4(7) of Inspection Regulations read with clauses 18 and 19 of the Code of Conduct for his non-cooperation with IA. Since he was continued to deal with the assignment, professional ethics demanded that he should have been careful about the services he is required to render in compliance with the statute, despite his personal difficulties, whatsoever.

Contravention-II

3.4. Breach of timelines in the CIRP of CD

3.4.1. Clause 12 of the Code of Conduct prescribes that an IP must not conceal any material information or knowingly make a misleading statement to the Board, the AA or any stakeholder.

3.4.2. CIRP of the CD was initiated *vide* AA's order dated 13.12.2019. The period of 180 days provided under section 12 of the Code for completion of CIRP ended on 16.06.2020. It is noted that on 07.12.2020, he filed an application for seeking exclusion of pandemic period from 24.03.2020 to 09.08.2020 and also for 90 days' extension from the expiry of 180 days. Hence, there is substantial delay of 6 months in filing the application before AA for exclusion of covid related period and further extension.

3.4.3. The Board observed from the order dated 14.12.2020 passed by AA that Mr. Manish Gupta has failed to give any satisfactory reason for delay in filing the application for extension or exclusion before AA. The Board has also taken note of AA's order dated 14.12.2020 wherein it had imposed cost of Rs. 50,000/- collectively on RP and CoC by noting adverse remarks on his conduct "*...nor Resolution Professional are vigilant and serious about conducting CIRP in time bound process for Resolution*"

3.4.4. The Board further noted that in the 8th CoC meeting held on 17.02.2021, he apprised the CoC about the status of the application for extension and exclusion of time but omitted to inform the CoC about the cost imposed by AA. Taking objection to his conduct of allowing the resolution plans to be considered by CoC beyond 330 days maximum limit of completion of CIRP, AA *vide* order dated 13.09.2021 observed "*...The Resolution Professional and CoC are warned about their conduct of receiving and acting on Resolution Plans beyond 330 days against the permission of law.*"

3.4.5. The Board observed that his conduct of belatedly filing application before AA for exclusion/extension and receiving and acting on the resolutions plans beyond maximum prescribed time limit of 330 days has been against the spirit of the code and regulations. Further, his conduct of not informing CoC about the monetary penalty imposed by AA on account of delayed filing of exclusion/extension application is misrepresentation of facts. In view of the above, the Board held the *prima facie* view that he has, *inter alia*, violated section 17(2)(e) of Code and clauses 2, 10, 13, 14, 24 of the Code of Conduct.

3.5. Submissions made by the IP

3.5.1. Mr. Manish Gupta submitted that the matter is not as straight forward as it seems to be and not everything is captured in the order of AA. From March 2020 onwards, year 2020 has been a year of lockdown & unlock due to the Corona virus pandemic. During this time of uncertainty, running any business was the most challenging task. Once the lock down was announced by the Central Government no one was sure how this will impact the business of companies as going concern, let alone the companies undergoing CIRP. Government under tremendous economic pressure started the unlock process effective June 2020 but there was no clarity and certainty for how long will this unlock will continue or there will be fresh round of lockdown. This uncertainty with multiple unlock notifications by the Government i.e. unlock 1, unlock 2, unlock 4 etc continued throughout the second half of 2020 and had an impact on all sphere of life & business.

3.5.2. He further submitted that regulation 40C of CIRP Regulations provides as follows:

40C. Special provision relating to time-line.

Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.

3.5.3. He submitted that CIRP period was ending on 25.03.2021. Had AA allowed the application filed for 40 days of Covid-19 exclusion from CIRP timelines, there would have been no breach with regard to CIRP Timelines.

3.5.4. He submitted that the alleged breach of timelines cannot be only attributed to his conduct. The delay, if any, has been on account of prevalent situation across the country and circumstances like no clarity of complete removal of lockdown, delay in adjudication of application for extension/exclusion, etc. The averments that he had failed to inform the CoC about the monetary penalty is incorrect.

3.6. Summary Findings

3.6.1. The DC notes that AA vide order dated 14.12.2020 has allowed extension of 90 days from the expiry of 180 days of CIRP on 16.06.2020 and excluded period from 24.03.2020 to 09.08.2020 on application filed by Mr. Manish Gupta. The AA observed as follows:

“Today almost after 6 months the application for extension/exclusion of CIRP period is filed and no satisfactory argument is being placed either by Resolution Professional or by the counsel for such delay”

“In our view this application needs to be rejected since neither the CoC members nor the Resolution Professional are vigilant and serious about conducting CIRP in time bound process for Resolution.

...

...but the IRP/RP needs to be well conversant with the provisions of law especially the processes where it is declared to be decided in time bound manner.”

3.6.2. The DC also notes that AA has further imposed penalty of Rs. 50,000/- on RP and all CoC members. Further from a perusal of minutes of CoC meeting dated 17.02.2021, Mr. Manish Gupta did not inform the CoC about the penalty imposed by the AA.

3.6.3. The DC further observes that the submission of Mr. Manish Gupta that if AA had allowed the application filed for 40 days of Covid-19 exclusion from CIRP timelines, there would

have been no breach with regard to CIRP timelines is based on a conjecture. The AA clearly rejected the exclusion of time CIRP period again *vide* order dated 13.09.2021 and observed as follows:

“In the interest of the rights and entitlement of the Home Buyers we think that it will be appropriate to consider allowing of further CIRP period not by way of exclusion but by way of extension beyond 330 days, in view of 2 Resolution Plans already received and deliberated by CoC.”

It further issued warning by observing that *“The Resolution Professional and CoC about their conduct of receiving and acting on Resolution Plans beyond 330 days against the permission of law.”*

- 3.6.4. In light of above circumstances, the DC finds that Mr. Manish Gupta has violated section 17(2)(e) of Code and clauses 2, 10, 13, 14, 24 of the Code of Conduct for delay filing of application before AA for exclusion/extension and receiving and acting on the resolutions plans beyond maximum prescribed time limit of 330 days.

Contravention-III

3.7. Delay in preparation of Information Memorandum (IM)

- 3.7.1. Regulation 36 of the CIRP Regulation provides that IP shall submit the IM in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier.
- 3.7.2. The Board observed that CIRP was initiated *vide* order dated 13.12.2019 passed by AA in CP(IB) 256/ND/2019 appointing Mr. Manish Gupta as IRP. The Board noted that he failed to share the IM with the CoC members as mandated under regulation 36 of CIRP Regulations. Further, the Board observed that in the 2nd CoC meeting, he has justified non-sharing of IM on the ground of pendency of appeal against order of admission before Hon'ble National Company Law Appellate Tribunal (NCLAT), while there was no stay in the aforementioned case preventing him from sharing the IM with CoC. Thus, his conduct of not sharing the IM on the ground of the pending appeal is against the essence of the Code and also amounts to misleading to CoC. In view of the above, the Board held the *prima facie* view that he has, *inter alia*, violated regulation 36 of CIRP Regulations read with clauses 5 and 13 of the Code of Conduct.

3.8. Submissions made by the IP

- 3.8.1. Mr. Manish Gupta submitted that there has been no delay in the preparation of IM. He quoted sub-clause 1 & 4 of regulation 36 of CIRP Regulations as follows:

Sub-Clause 1: Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to each member of the committee on or before the ninety-fifth day from the insolvency commencement date.

Sub-Clause 4: The resolution professional shall share the information memorandum after receiving an undertaking from a member of the committee to the effect that such member or resolution applicant 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.

Before amendment in September 2022, time line to prepare IM was 54 days under sub-clause 1 of regulation 36 of CIRP regulations.

3.8.2. He further submitted that minutes of 2nd meeting of CoC held on Monday, the 10.02.2020 provided as follows:

“AGENDA ITEM NO. 7

To update CoC on Information Memorandum and place on record

The Resolution Professional has prepared Information Memorandum on the basis of the information received from the Corporate Debtors as per Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Professionals) Regulations, 2016.

The committee was also informed that the copy of the Information Memorandum shall be shared with the members of the Committee of Creditors and potential Resolution applicant subject to receipt of an undertaking to the effect that such member or resolution applicant 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 section 29(2) of the Code.

The Resolution Professional also informed committee that since the promoters have approached NCLAT against the decision of NCLT admitting this case, and is scheduled for hearing on 18th Feb'20, Information Memorandum will only be shared after the hearing/decision by NCLAT

The Committee took note of the same”

3.8.3. He submitted that from the above its unambiguously clear that the IM was prepared without any delay and was placed before the CoC. He further submitted that in compliance to regulation 36(4) of CIRP Regulations, he informed the CoC that IM shall be shared with the members of the CoC and potential resolution applicant subject to receipt of an undertaking to the effect that such member or resolution applicant 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 section 29(2) of the Code. The only caveat that was that once the undertaking was received, IM will be shared with the members of CoC after 18.02.2020. During this period no request (for sharing the IM), along with the undertaking, was received from any member of the CoC. He denied the allegation that he has mislead the CoC and flawed in interpreting the relevant extract of the minutes of the meeting. He submitted that he is not aware of any complaint from any member of the CoC, during that period that IM was not shared. Authorised Representative of class of creditors (allottees in a real estate project), observers from home buyers and representative of directors of the CD attended the meeting but no one raised any concerns about the time lines or for that matter delay in preparation of the IM.

3.9. Summary Findings

- 3.9.1. The DC accepts the submission of Mr. Manish Gupta that in compliance to regulation 36(4) of CIRP Regulations, he informed the CoC that IM shall be shared with the members of the CoC and potential resolution applicant subject to receipt of an undertaking to the effect that such member or resolution applicant 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 section 29(2) of the Code.
- 3.9.2. However, the agenda in the minutes of 2nd meeting of CoC stated that promoters has approached Hon'ble NCLAT against the decision of AA admitting this case, and is scheduled for hearing on 18.02.2020. Since there was no stay from Hon'ble NCLAT, Mr. Gupta should not have made any statement before CoC, which must have influenced the CoC members to refrain from submitting confidentiality undertaking and request for IM. The DC notes that there was no stay in the aforementioned case preventing him from sharing the IM with CoC. The DC finds that Mr. Manish Gupta violated regulation 36 of CIRP Regulations read with clauses 5 and 13 of the Code of Conduct for misleading CoC that IM cannot be shared due to pending appeal before Hon'ble NCLAT.

Contravention-IV

3.10. Delay in publishing Form G and Non-publication of Form G on the website of the Board

- 3.10.1. Regulation 36A of CIRP Regulations provides that RP shall publish brief particulars of the invitation for expression of interest (EOI) in Form G of the Schedule at the earliest but not later than seventy-fifth day from the ICD. Further, regulation 36A(2)(iii) of CIRP Regulations provides that the RP shall publish Form G on the website, if any, designated by the Board.
- 3.10.2. The Board observed that first EOI (EOI-1) was published on 27.03.2020 i.e. after 30 days from the due date. Thus, there is a delay of 30 days in publishing the Form G. The Board further noted that minutes of the 2nd, 3rd, 4th and 6th CoC meetings record discussions

on publishing fresh EOIs. Accordingly fresh EOIs were published on 19.08.2020, 17.09.2020 and 27.10.2020. However, except for first EOI dated 27.03.2020, none has been published on the website of the Board as required under regulation 36A(2)(iii) of CIRP Regulations. In view of the above, the Board held the *prima facie* view that Mr. Manish Gupta has, *inter alia*, violated regulation 36A read with 36A(2)(iii) of CIRP Regulations read with clauses 5 and 13 of the Code of Conduct.

3.11. Submissions made by the IP

3.11.1. Mr. Manish Gupta submitted that sub-clause 1 of 36A of CIRP Regulations before September 2022 amendment states as follows:

“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.”

3.11.2. He further submitted that the CIRP was initiated in the matter of CD on 13.12.2019 and accordingly 75th day was 26.02.2020. Form G was published in the leading newspaper in English and Hindi on 26.02.2020. He submitted that there might have been some issue in updating the website, and hence it was not reflecting on the portal according to appropriate date. He submitted that the so far as subsequent Form G is concerned, it's a matter of record that they have not been uploaded on the Board website.

3.11.3. In view of the above submissions, he requested board to allow him to cure any discrepancies with regard to the aforesaid circular, with appropriate late fees,

3.12. Summary Findings

3.12.1. The DC accepts the submission of Mr. Manish Gupta that CIRP was initiated in the matter of CD on 13.12.2019 and Form G was published in the leading newspaper in English and Hindi on 26.02.2020 which was 75th day. Further, Mr. Manish Gupta has accepted that he has not uploaded Form G on website of Board. Hence the DC finds him in violation of 36A(2)(iii) of CIRP Regulations read with clauses 5 and 13 of the Code of Conduct.

Contravention-V

3.13. Non-compliance of 40B of CIRP Regulations

3.13.1. Regulation 40B of CIRP Regulation provides that IRP or RP shall file the Forms, along with the enclosures thereto, on an electronic platform of the Board, as per the timelines stipulated against each Form.

3.13.2. The Board observed from the material available on record that Mr. Manish Gupta has not filed any of the CIRP Forms 1 to Form 8. In view of the above, the Board held the *prima*

facie view that he has, *inter alia*, violated regulation 40B of CIRP Regulations read with clauses 1, 2, 13 and 14 of the Code of Conduct.

3.14. Submissions made by the IP

3.14.1. Mr. Manish Gupta submitted that sub-clause 4 & 5 of regulation 40B of CIRP Regulations states as follows:

Sub-clause 4 - The filing of a Form under this regulation after due date of submission, whether by correction, updation or otherwise, shall be accompanied by a fee of five hundred rupees per Form for each calendar month of delay after 1st October, 2020.

Sub-clause 5 - The insolvency professional or interim resolution professional or resolution professional, as the case may be, shall be liable to any action which the Board may take as deemed fit under the Code or any regulation made thereunder, including refusal to issue or renew Authorisation for Assignment, for-

- (i) *failure to file a form along with requisite information and records;*
- (ii) *inaccurate or incomplete information or records filed in or along with a form;*
- (iii) *delay in filing the form.*

In view of the above submissions, he requested Board to allow him to cure any discrepancies with regard to the aforesaid circular, with appropriate late fees.

3.15. Summary Findings

3.15.1. Mr. Manish Gupta has accepted that he has not filed any of the CIRP Forms 1 to Form 8. Hence the DC finds him in violation of regulation 40B of CIRP Regulations read with clauses 1, 2, 13 and 14 of the Code of Conduct.

Contravention-VI

3.16. Outsourcing the responsibility of claim verification

3.16.1. As per Regulation 13(1) of CIRP Regulations, the IRP or the RP, as the case may be, is required to verify every claim received. Further, IBBI Circular No. IP/003/2018 dated 03.01.2018 prohibits IP to outsource any of his duties and responsibilities under the Code. Furthermore, IBBI Circular No. IBBI/IP/013/2018 dated 12.06.2018 specifies that no fee or expense other than what is permitted under the Code read with regulations made thereunder is included in the IRPC and no fee or expense other than the IRPC incurred by the IP is borne by the CD.

3.16.2. The Board noted that claim verification cost has been added in the CIRP cost as detailed below:

1st CoC meeting	13th January 2020	Ratification for an amount of Rs. 59,000 was obtained towards claim verification expenses.
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2 nd CoC meeting	10th February 2020	Ratification for an amount of Rs. 29,500 was obtained towards claim verification expenses
3 rd CoC meeting	0th August 2020	Ratification for an amount of Rs. 29,500 was obtained towards claim verification expenses.

3.16.3. Inclusion of claim verification cost separately in the CIRP cost indicates that Mr. Manish Gupta has delegated the responsibility of verifying the claims to a third party. In view of the above, the Board held the *prima facie* view that he has, *inter alia*, violated regulation 13 (1) of the CIRP Regulations, clauses 1, 2, 14 and 25 of the Code of Conduct, the IBBI Circular No. IP/003/2018 dated 03.01.2018 and the IBBI Circular No. IBBI/IP/013/2018 dated 12.06.2018.

3.17. Submissions made by the IP

3.17.1. Mr. Manish Gupta submitted that the services of MPR & Co. were engaged only for the purpose of processing of claim forms i.e., secretarial work/ clerical work. MPR & Co processed 205 claims. Every individual claim has approximately 20-100 pages which needs to be printed and proper sets are to be made accordingly, considering the extremely bulky nature of each individual claim, the services of M P R & Co were engaged. Also, the resolution for the ratification of expenses incurred for claim processing has been duly approved by the members of the CoC in the 1st, 2nd & 3rd Meeting of CoC by 100.00% of total voting share.

3.17.2. He submitted that he has himself verified and collated all the claims as received and has not outsourced his duties to the third party as alleged. Further, regulation 13(1) of CIRP Regulations states that the IRP/RP should verify every claim. He submitted that after getting the printouts of the claim forms along with the supporting documents, he himself verified all the claims and replied to all the creditors accordingly. Hence the provisions of regulation 13(1) of CIRP Regulations, section 18(1)(b) of the Code and the circular No. IP/003/2018 were never violated by him. Moreover, the Circular No. IP/013/2018 states about the "*Fee and other Expenses incurred for Corporate Insolvency Resolution Process*" and the IP is directed to ensure that:

(a) the fee payable to him, fee payable to an Insolvency Professional Entity, and fee payable to Registered Valuers and other Professionals, and other expenses incurred by him during the CIRP are reasonable;

(b) the fee or other expenses incurred by him are directly related to and necessary for the CIRP;

(c) the fee or other expenses are determined by him on an arms' length basis, inconsonance with the requirements of integrity and independence;

(d) written contemporaneous records for incurring or agreeing to incur any fee or other expense are maintained;

(e) supporting records of fee and other expenses incurred are maintained at least for three years from the completion of the CIRP; approval of the Committee of Creditors (CoC) for the fee or other expense is obtained, wherever approval is required; and
(g) all CIRP related fee and other expenses are paid through banking channel.

3.17.3. Mr. Manish Gupta submitted that he has complied with above points and paid reasonable cost for the purpose of processing of claims and the CoC in its commercial wisdom, has duly approved the resolution proposed for the ratification of fees of MPR & Co (in 1st, 2nd & 3rd Meeting of CoC) by 100.00% vote share. Hence, the terms of Circular No. IP/013/2018 were never violated by him and has been duly complied with. He submitted that the law is evolving and the fact the engagement was done only to get the documents of claim in order to be collated for the purposes so that no claim or document is missed out by the him whilst verification of the claim.

3.18. Summary Findings

3.18.1. The DC notes the relevant agenda in 1st CoC Meeting dated 13.01.2020 which states claim verification expenses as Rs. 59,000/-. The claim verification expenses were shown as Rs. 29,500/- in 2nd CoC meeting dated 10.02.2020 and 3rd CoC Meeting dated 10.08.2020.

3.18.2. The DC notes that section 18(b) of the Code provides as follows:

“18. Duties of interim resolution professional. - The interim resolution professional shall perform the following duties, namely:

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

Further regulation 13(1) of 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.”

The Apex Court in the matter of Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta & Ors. (Civil Appeal No. 8766-67 of 2019) also highlighted the role of RP in the revival of the CD. The Hon^{ble} Court remarked as under:-

“...Thereafter, under Regulation 13, the resolution professional shall verify each claim as on the insolvency commencement date, and thereupon maintain a list of creditors

containing the names of creditors along with the amounts claimed by them, the amounts admitted by him, and the security interest, if any, in respect of such claims, and constantly update the aforesaid list – see Regulation 13(1).”

Circular No. IP/003/2018 dated 03.01.2018 provides as follows:

“It is hereby directed that an insolvency resolution professional shall not outsource any of his duties and responsibilities under the Code.”

Circular No. IBBI/IP/013/2018 dated 12.06.2018 provides as follows:

“6. Keeping the above in view, the IP is directed to ensure that:- (a) the fee payable to him, fee payable to an Insolvency Professional Entity, and fee payable to Registered Valuers and other Professionals, and other expenses incurred by him during the CIRP are reasonable;”

- 3.18.3. As per above quoted circulars, Mr. Manish Gupta cannot outsource his duties as IRP/RP to verify claims. The minutes of CoC meeting showing claim verification expenses as separate expense clearly indicates that Mr. Manish Gupta has delegated the responsibility of verifying the claims to a third party. Further, the expenses should be reasonable in correlation to the work done. Hence, the DC finds Mr. Manish Gupta to be in violation of regulation 13 (1) of the CIRP Regulations, clauses 1, 2, 14 and 25 of the Code of Conduct, the IBBI Circular No. IP/003/2018 dated 03.01.2018 and the IBBI Circular No. IBBI/IP/013/2018 dated 12.06.2018.

Contravention-VII

3.19. Violation of Circular No. IP/005/2018 dated 16.01.2018

- 3.19.1. The Board Circular No. IP/005/2018 dated 16.01.2018, mandates IP to disclose his relationship, if any, with CD, with other professional(s) engaged by him to Insolvency Professional Agency of which he is a member, within 3 days of his appointment.
- 3.19.2. The Board observed from the website of IIPICAI with which he is enrolled, that only 2 relationship disclosures- one for himself and the other for FCs has been made in terms of Board Circular No. IP/005/2018 dated 16.01.2018. However, he failed to make relationship disclosures with respect to various other professionals appointed by him. The Board also noted that in the list of defaulting IPs who fail to comply with the requirements of filing disclosure as per aforementioned Circular, he has been shown as a defaulter.
- 3.19.3. In view of the above, the Board held the *prima facie* view that he has, *inter alia*, violated clauses 1, 2, 13 and 14 of the Code of Conduct and Board Circular No. IP/005/2018 dated 16.01.2018.

3.20. Submissions made by the IP

3.20.1. Mr. Manish Gupta requested Board to allow him to cure any discrepancies with regard to the aforesaid circular, with appropriate fines, in view of the submissions made.

3.21. Summary Findings

3.21.1. Mr. Manish Gupta has accepted that he has not made any relationship disclosures with respect to various other professionals appointed by him and requested to cure discrepancies. Hence the DC finds him in violation of clauses 1, 2, 13 and 14 of the Code of Conduct and Board Circular No. IP/005/2018 dated 16.01.2018.

Contravention-VIII

3.22. Violation of Circular No. IBBI/IP/013/2018 dated 12th June 2018

3.22.1. Board Circular No. IBBI/IP/013/2018 dated 12.06.2018 stipulates that Form – II has to be submitted by the IRP within seven days of his demitting office as IRP.

3.22.2. The Board noted that Mr. Manish Gupta has failed to file the cost disclosures form to the IPA. The Board also noted that in the list of defaulting IPs who fail to comply with the requirements of filing Form – II as per aforementioned Circular, he has been shown as a defaulter. As Form II has not been filed by him, the Board held the prima facie view that he has, inter alia, violated Board Circular No. IBBI/IP/013/2018 dated 12.06.2018 and clause 1,2, 13 and 14 of the Code of Conduct.

3.23. Submissions made by the IP

3.23.1. Mr. Manish Gupta requested the Board to allow him to cure any discrepancies with regard to the aforesaid circular, with appropriate fines, in view of the submissions made.

3.24. Summary Findings

3.24.1. Mr. Manish Gupta has accepted that he has failed to comply with the requirements of filing Form – II as per aforementioned Circular and requested to cure discrepancies. Hence the DC finds him in violation of Board Circular No. IBBI/IP/013/2018 dated 12.06.2018 and clause 1,2, 13 and 14 of the Code of Conduct.

4. Order

4.1. In view of the submission made by Mr. Manish Gupta, and materials available on record, DC notes that Mr. Manish Gupta has violated section 17(2)(e), 208(2)(a), 208(2)(e) of the Code, regulation 13(1), 36, 36A(2)(iii) and 40B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulation 4(4) and 4(7) of IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations), regulation 7(2)(a) and 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 1, 2, 3, 5, 10, 13, 14, 18, 19, 24 and 25 of the Code of Conduct specified thereunder and Board Circular No. IP/003/2018 dated 03.01.2018,

Board Circular No. IP/005/2018 dated 16.01.2018 and Board Circular No. IBBI/IP/013/2018 dated 12.06.2018.

- 4.2. Repeated non-cooperation and series of non-compliances is not justifiable, whatsoever, serious nature of trauma, at personal level one may be suffering. In case, circumstances were so compelling that he was not able to discharge his duties, instead of remaining gainfully engaged on regular basis in connection with CD, he had option to approach to CoC or AA for presenting a case for his replacement. The indifferent behaviour of Mr Gupta already resulted in delay in resolution of the Corporate Debtor and also been seriously commented upon by the AA.
- 4.3. Hence, the DC, in exercise of the powers conferred under section 220 (2) of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Mr. Manish Gupta for a period of two years.
- 4.4. This Order shall come into force on expiry of 30 days from the date of its issue in view of para above.
- 4.5. A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Manish Gupta is providing his services, if any.
- 4.6. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Manish Gupta is enrolled as a member.
- 4.7. 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.
- 4.8. Accordingly, the show cause notice is disposed of.

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(Sudhaker Shukla)
Whole Time Member, IBBI

Date: 3rd February, 2023

Place: New Delhi