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CWP-11311-2022

SUMAT KUMAR GUPTA

V/S

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA AND ANOTHER

Present: Mr. Puneet Bali, Senior Advocate assisted by
Mr. Rajansh Thukral and Mr.Sachin Jain, Advocates,
for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of India,
Assisted by Mr. Arun Gosain, Senior Govt. Counsel,
for the respondents.

Notice of motion.

Mr. Arun Gosain, Senior Govt. Counsel accepts notice on behalf
of the respondents, and seeks time to file reply to the contentions raised in the
Writ Petition.

In this Writ Petition, the petitioner is questioning order dt.
06.05.2022 (Annexure P-1) passed by the Disciplinary Committee of
respondent No.1(Respondent No.2) under Section 220 of Insolvency and
Bankruptcy Code, 2016 read with Regulation 13 of the Insolvency and
Bankruptcy Board of India (Inspection and Investigation) Regulation, 2017
under which the petitioner's registration as Insolvency Professional has been
suspended for a period of one year.

One of the contentions raised by counsel for the petitioner is that
the impugned order has been passed by Sh. Ravi Mittal, Chairperson, IBBI,
(Respondent No.2) and that as per Annexure P-14, which is a screenshot
taken from the website of respondent No.1, he was associated with Punjab
National Bank, who had in fact lodged the complaint against the petitioner.

It is his contention that this fact was not known to the petitioner
before the said order was passed, and it was duty of respondent No.2 to
disclose this fact before he passed the said order, but he did not do so. He
also contended that "justice must not only be done but must be seen to be
done", and in the facts and circumstances of the case, the impugned order is
required to be suspended.

Sh. Satya Pal Jain, Additional Solicitor General of India,
appearing on behalf of the respondents, submits that the issue about bias of

disciplinary authority was not raised during the course of hearing, that no prejudice has been caused and that all the Rules of the principles of natural justice were otherwise followed.

He further sought time to file a short reply, and also to seek instructions on the document Annexure P-14.

If the fact that the Disciplinary Committee (Respondent No.2) i.e. Sh. Ravi Mittal, Chairperson, IBBI, who has passed the impugned order was associated with the complainant-Punjab National Bank, was not known to the petitioner at the time when the matter was heard by him, it cannot be said that there is any waiver on the part of the petitioner on the plea of bias.

The association of Sh. Ravi Mittal, who had passed the order against the petitioner on 06.05.2022 with the Punjab National Bank is made out from (Annexure P-14). Therefore, it was *prima facie*, improper for him to hear the complaint made by PNB against the petitioner on account of possible bias. Therefore, there shall be interim suspension of the impugned order dt. 06.05.2022 (Annexure P-1).

List on 11.07.2022.

Let the reply be filed on or before the next date of hearing with a copy in advance to the counsel for the petitioner.

(M.S. RAMACHANDRA RAO)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

May 25, 2022
Ess Kay

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/94/2022

6th May, 2022

ORDER

In the matter of Mr. Sumat Kumar Gupta, Insolvency Professional (IP) under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 13 of the Insolvency and Bankruptcy Board of India (Investigation and Investigation) Regulations, 2017 and regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/INSP/2020/42/392/2302 dated 13.08.2021 issued to Mr. Sumat Kumar Gupta, R/o M/s Sumat Gupta & Company B-1, 2581/3, Near Zoom Hotel Building, Indl. Area-A, Transport Nagar, Ludhiana, Punjab-141003 who is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00167/2017- 18/10336.

1. Background

- 1.1. The Hon'ble NCLT, Chandigarh Bench, Chandigarh (AA) vide order dated 12.04.2019 admitted the application under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating Corporate Insolvency Resolution Process (CIRP) of M/s. Vallabh Textiles Company Limited (CD). The AA appointed Mr. Sumat Kumar Gupta as an Insolvency Resolution Professional (IRP) and who was later confirmed as the Resolution professional (RP).
- 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. Sumat Kumar Gupta vide order dated 10.07.2020 on having reasonable grounds to believe Mr. Sumat Kumar Gupta had contravened provisions of the Code, Regulations and Circulars issued thereunder. A draft inspection report (DIR), prepared by the IA, was shared with Mr. Sumat Kumar Gupta on 28.01.2021, to which the Mr. Sumat Kumar Gupta submitted reply vide email dated 15.02.2021. The IA submitted the Inspection Report to IBBI on 24.03.2021.
- 1.3. The IBBI issued the SCN to Mr. Sumat Kumar Gupta on 13.08.2021 based on the material available on record including the inspection report in respect of his role as an IRP/RP in the CIRP of CD. The SCN alleged contraventions of sections 19, 20(1), 20(2)(a) and section 208(2)(a) and (e) of the Code, Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2017 (CIRP Regulations), IBBI Circular No. IP/003/2018 dated 03.01.2018, Regulation 7(2)(a) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and Clause 1, 3 and 14 of the Code of Conduct under First Schedule of regulation

7(2) thereof. Mr. Sumat Kumar Gupta replied to the SCN vide mail dated 02.09.2021.

- 1.4. The IBBI referred to the SCN, response of Mr. Sumat Kumar Gupta to 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. Mr. Sumat Kumar Gupta request copy of final inspection report vide email dated 27.10.2021 which was provided to him vide email dated 28.10.2021. Mr. Sumat Kumar Gupta availed an opportunity of virtual personal hearing before erstwhile DC on 29.10.2021 where he was accompanied by CA Archit Gupta, who is also an IP. Mr. Gupta submitted written submissions via email dated 30.10.2021.
- 1.5. Thereafter, due to the completion of the term of Dr. Mukulita Vijayawargiya, who constituted earlier Disciplinary Committee, new Disciplinary Committee was constituted to dispose of the aforesaid show cause notice which granted another opportunity of personal hearing to Mr. Gupta on 21.04.2022. Mr. Sumat Kumar Gupta availed the opportunity of virtual personal hearing before DC on 21.4.2022 where he was accompanied by CA Archit Gupta, who is also an IP. The DC heard the oral submissions of Mr. Gupta on 21.04.2022. The DC has considered the SCN, the reply to SCN, oral and written submissions of Mr. Sumat Kumar Gupta, other material available on record and proceeds to dispose of the SCN.

2. Alleged Contraventions, Submissions and Analysis and Findings

A summary of contraventions alleged in the SCN, Mr. Sumat Kumar Gupta's written and oral submissions thereon and their analysis with findings of the DC are as under:

2.1. Contravention I

- 2.1.1. Section 20(1) and section 20(2)(a) of the Code, *inter-alia*, mandates an IP to manage operations of CD and appoint professionals respectively. Regulation 27 of the CIRP Regulations requires an IP to appoint registered valuers. Additionally, IBBI's circular IP/003/2018 dated 03.01.2018 specifies that an IP shall not outsource his duties and responsibilities under the Code. It was observed that the appointment letter dated 25.05.2019 issued by Mr. Gupta to the Registered Valuers (RVs) namely Mr. Ankit Goel, Mr. Ankush Garg and Mr. Sachin Goel (first set of valuers) in asset classes viz. plant and machinery, financial assets, land and building respectively stated that the said valuers will co-ordinate and appoint IBBI registered valuers. Thereby Mr. Gupta authorized these valuers to appoint other valuers for their asset class. In view of the same, the Board was of the view that by outsourcing the duty of appointment of RVs, Mr. Gupta has violated section 20(1), 20(2)(a), 208(2)(a) and 208(2)(e) of Code read with regulation 27 of CIRP Regulations and IBBI circular no. IP/003/2018 dated 03.01.2018 and clause 14 of the Code of Conduct prescribed under regulation 7(2)(h) of the IP Regulations.

2.2. Submissions

- 2.2.1. Mr. Gupta submitted that in compliance with section 20(2) of the Code read with regulation 27 of the CIRP Regulations, he had appointed the valuers himself and under his signatures. Pursuant to their appointment appropriate disclosures as required under the law has been submitted by these valuers being "*Disclosures by the other Professionals appointed by the Insolvency Professionals conducting Resolution Processes of Vallabh Textiles Company*" under circular IP/005/2018 wherein it is clearly stated in column under "*Relationship with*" Professional (Registered Valuers/Accountant/Advocate/Any Other Professional) as "NONE". This clearly shows that there is no delegation of duty of appointment of valuer by him and no additional cost has been incurred.
- 2.2.2. Mr. Gupta further submitted that he has himself coordinated with the six valuers for valuation of their assets and they have submitted their separate reports under their own signatures. The line "*the fee of valuation of land & building valuation for which you will coordinate and appoint IBBI registered valuers and submit the report to us*" in appointment letter of Mr. Sachin Goel and similarly in letters of Mr. Ankit Goel and Ankush Garg is a typographical error occurred during cutting pasting process in the computer files by the clerk that went unnoticed by the IP.
- 2.2.3. Mr. Gupta submitted that there is clear computer cut-paste error as the words "*you will coordinate and appoint IBBI Registered Valuers*" is taken from another pervious valuation assignment of some other agency and missed out to be struck off. The only basis of allegation is a typographical error in appointment letter. Mr. Gupta accepted his mistake of wrongly including the said line in appointment letters of three RVs as mistake. It also does not lead to violation of any substantive or procedural law as contained in the Code, Rules or Regulations.

2.3. Analysis & Findings

- 2.3.1 The appointment letter dated 25.05.2019 issued by Mr. Gupta to Mr. Ankit Goel, Registered Valuer (RV) states as: "*The fees of valuation of Plant and Machinery, valuation for which you will coordinate and appoint IBBI registered Valuers and submit report to us*"
- 2.3.2 Similarly, the appointment letter dated 25.05.2019 issued to Mr. Ankush Garg the Registered Valuer (RV) states as: "*The fees of valuation of Financial Asset, valuation for which you will coordinate and appoint IBBI registered Valuers and submit report to us*".
- 2.3.3 Similarly, the appointment letter dated 25.05.2019 issued to Mr. Sachin Goel the Registered Valuer (RV) states as: "*The fees of valuation of Land and Building, valuation for which you will coordinate and appoint IBBI registered Valuers and submit report to us*".

- 2.3.4 However, on perusal of the appointment letters dated 25.05.2019 issued to other three registered valuers namely Mr. Brahm Pal Bhardwaj, Mr. Prateek Mittal and Ms. Alpna Harjai (second set of valuers), it is observed that no such clause (similar to referred above) of further appointment has been mentioned therein.
- 2.3.5 Section 20(2)(a) read regulation 27 of the CIRP Regulations casts duty upon a RP to appoint two registered valuers to determine the fair and liquidation value of the CD. Further circular no. IP/003/2018 dated 03.01.2018 issued by IBBI provides that an IP cannot outsource his duties and responsibilities under the Code. Hence the IP must maintain complete independence in discharge of his duties.
- 2.3.6 The DC notes that the appointment letters issued by Mr. Gupta to the first set of valuers indicate that they would co-ordinate and appoint IBBI registered valuers. Having such clause while appointing the RVs is not in consonance of the above-mentioned provisions of the Code read with Regulation and Circular. The DC observes that the second set of valuers were also appointed on the same date as the first set of valuers i.e., 25.05.2019. Thus, all the valuers were appointed on the same day i.e. 25.05.2019 under the signature of Mr. Gupta. The first set of valuers could not have assisted in appointing the second set of valuers since both were appointed on the same day. In view of the above, the submission of Mr. Gupta regarding typographical error in the appointment letters of the first set of valuers is accepted.

3.1. Contravention - II

- 3.1.1. During CIRP, Mr. Gupta procured an interim finance of Rs. 1.50 crores at an interest rate of 22% pa. from an entity namely Venus Goods & Supply Private Limited (VGSPL). However, the name of said interim finance provider was not disclosed to CoC in 5th CoC meeting dated 08.08.2019, while obtaining the CoC approval for raising the interim finance. Thus, Mr. Gupta did not intimate the CoC about the name of the interim finance provider i.e., VGSPL. Mr. Gupta in his comments to DIR submitted that his firm M/s Sumat Gupta & Company was a statutory auditor of VGSPL. The IA observed that Mr. Gupta did not intimate the CoC about the name of the interim finance provider and prior association of his firm with the interim finance provider. In view of the same, the Board was of the view that by not disclosing the name of the interim finance provider and his firm's association with the interim finance provider to CoC, Mr. Gupta has allegedly contravened Clause 1 and Clause 3 of Code of Conduct prescribed under regulation 7(2)(h) of the IP Regulations.

3.2. Submissions

- 3.2.1. Mr. Gupta has submitted that on the advice of CoC to explore other sources of interim finance, he had identified three sources of finance namely M/s S. P. Scrips Limited, Mr Ramesh Maggo and VGSPL. In the fifth meeting of COC held on 08.08.2019, the Mr. Gupta informed CoC that he has contacted with local brokers who have agreed to provide finance and the cost would be 22%. Keeping in view that the above said 3 persons only VGSPL quoted 22% while others had quoted

24%. Mr. Gupta submitted that the names of the interim finance provider were mentioned in the meeting however the same were not recorded in the minutes as there is no specific requirement in law to place the names of the interim finance lenders before CoC. However, the amount and terms & conditions were duly approved by CoC with the authority having been given to the undersigned to raise interim finance in trenches at the rate of 22% interest. That the Memorandum of Understanding was executed with VGSPL on 10.08.2019 and the first trench of finance was received on 13.08.2019. A copy of MOU was sent to the IA vide email dated 24.12.2020 along with some other documents.

3.2.2. That in the eleventh meeting of CoC held on 19.12.2019, in agenda item no. 4 it is duly recorded that Rs. 150 lakhs raised by way of interim finance, Rs. 100 lakhs have been repaid to VGSPL. That the context in which these minutes have been recorded would clearly show that the CoC was fully conversant about the name of the company from whom the interim finance had been raised.

3.2.3. It is pertinent to mention that even in the Disclosure Form prescribed by the IBBI no requirement has been prescribed to disclose the name of the independent interim finance provider. Moreover, this transaction is not covered even in clause 5 of IBBI Circular No. IP/005/2018 dated 16 January 2018 relating to disclosures by IP and other professionals appointed by IP conducting Resolution Processes

3.2.4. In reference to his relation with VGSPL, Mr Gupta submitted as follows:

- a. He is one of the eight partners in the firm M/s Sumat Gupta & Co, Chartered Accountants at Ludhiana. Twelve Chartered Accountants are also working with this firm as partners/ employees, and they have total strength of more than forty persons. The firm M/s Sumat Gupta & Co. has rendered service to large number of industrial and other clients based at Ludhiana.
- b. That no one is coming forward to give unsecured interim finance to the company facing insolvency and it is only through the personal persuasive efforts that this kind of interim finance could be arranged. The interim finance provider was known to the Mr. Gupta because the firm in which he is a partner, is the statutory auditor of the said company. The status of the firm is that of independent and therefore was eligible to be appointed as a Statutory Auditor. The annual remuneration of the firm M/s Sumat Gupta & Company was just Rs. 5000/- from the interim finance provider whereas its annual turnover is Rs. 1.10 crores. As per circular no. IP/005/2018 dated 16.01.2018, independence of IP is affected if receipt is more than 5%. It was also informed the IA that M/s Sumat Gupta & Company, a firm of Chartered Accountants, had eight partners and the Resolution Professional was only one of the partners.
- c. Being statutory auditor it does not affect the independence of the undersigned in any manner as per the provisions of Companies Act, 2013 or as per the Code or its Regulations.
- d. There is no specific provision under the Code to inform each and every thing to CoC even when the same are considered independent and unrelated in

accordance with law.

3.2.5. Mr. Gupta submitted that there is no deliberate non-disclosure of interim finance provider to CoC and this non-disclosure was due to the fact that there is no requirement under the Code to place the list of names of all prospective lenders of interim finance before CoC. Moreover, CoC never asked Mr. Gupta to place before them list of all prospective lenders of interim finance. However, it is submitted that there is no deliberate act on his part to conceal any name from CoC and the disclosure did not have any adverse impact on the conduct of CIRP as none of these things affected his independence. Hence, this is only a hyper technical view of the matter which deserves to be avoided. Moreover, this has not resulted into any extra / additional cost or financial burden on the CIRP cost and therefore has no adverse impact on CIRP.

4.1. Analysis & Findings

4.1.1. In respect of the issue of not disclosing name of interim finance provider to CoC by Mr. Gupta and his association with it, the DC notes that the key objective of the Code is conducting the CIRP in transparent manner. Mr. Gupta has admitted the fact that interim finance provider was known to the Mr. Gupta because the firm in which he is a partner, is the statutory auditor of the said company. The DC observes that Mr. Gupta has not disclosed the name to the CoC while taking the approval for procuring the interim finance. Further, Mr. Gupta has also not disclosed his relationship with the interim finance provider to the CoC. Mr. Gupta has contravened Clause 1 and Clause 3 of Code of Conduct for not being straightforward in his professional relationships and not acting objectively in his professional dealings when there is conflict of interest.

5.1. Contravention III

5.1.1. It was observed from the minutes of the seventh meeting of CoC dated 05.10.2019 that promoters were denying to provide information to the forensic auditor. However, the application for non-cooperation under section 19 of Code was filed only on 31.07.2020 i.e after 300 days. The application was filed even after the approval of resolution plan by CoC on 26.05.2020. Mr. Gupta has delayed the filing of section 19 application and allegedly contravened section 19 of Code read with section 208(2)(a), 208(2)(e), regulation 7(2)(a) of IP Regulations and clause 14 of Code of Conduct prescribed under regulation 7(2)(h) of the IP Regulations.

5.2. Submissions

5.2.1. Mr. Gupta has submitted that section 19 does not mandate that if the promoter does not provide some personal information to a forensic auditor, then also IP has to move application seeking directions to provide information to forensic auditor. It is pertinent to mention that in the seventh meeting of CoC dated 05.10.2019, Mr. Gupta in item No. 6(ii) informed the CoC that the Forensic Auditor requires some information, mostly relating to suspended management of CD. *"The RP informed*

CoC that promoters are denying providing personal information asked by the forensic auditor. This CoC members requested Mr. Vikram Jain, the suspended director to provide necessary information to the forensic auditor without any delay for which he agreed". "The COC advised RP to initiate steps in this regard if the suspended directors failed to cooperate"

- 5.2.2. On 05.11.2019 the Forensic Auditor released the draft report after incorporating the information received from the suspended directors and the same was tabled before the CoC in its ninth meeting held on 08.11.2019. Thus, there remained no cause for filing any section 19 application before NCLT.
- 5.2.3. Mr. Gupta has further submitted that the subject matter of the application IA 405/2020 filed by IP for non-cooperation under section 19 of the code on 31.07.2020 does not relate to the information asked by the forensic auditor. He further submitted that vide email dated 29.07.2020, he got the information that the suspended directors were not allowing shifting of record and the access to the registered office and on 03.08.2020, he files IA 405/2020 before NCLT.
- 5.2.4. Mr. Gupta submitted that he filed avoidance application on 31.01.2020 after which he was restrained by the promoters from entering into the registered office. He tried to shift record of the CD from registered office to the factory and succeeded in shifting record for the financial year 2018 onwards only. However, records prior to financial year 2018 were still in custody of suspended directors. Mr. Gupta submitted that he was manhandled when he tried to enter the premises and pressurised to handover the premises to prospective resolution applicant. He informed all the points to PNB who is a financial creditor.

5.3. Analysis & Findings

- 5.3.1. This contravention relates to late filing of application under section 19. The DC notes that the application for non-cooperation against promoters has been filed by Mr. Gupta on 31.07.2020. which was even after the approval of resolution plan by CoC on 26.05.2020. On perusal of the application under section 19 filed by the applicant Mr. Gupta, it mentions the following:
- “4...The corporate has paid an amount of Rs.27 lakhs during the Financial year 2018-19 and an amount of Rs. 2.25 lakhs during the year 2019-20 under the garb of lease agreement. These are the extra ordinary transactions with related party which needs to be rectified and are challenged in IA No52/2020.*
- 5.That in view of denial of access to the Registered office, the applicant decided to shift the entire staff to the works of the Company. The applicant also requested the Head of Accounts Department of the CD Company Sh. Rajinder singh to shift the entire record from the Registered office to the works....*
- 6. The subsequently the Respondent did not allow Mr. Rajinder Singh to shift the record of the CD company to its works and therefore entire statutory record, entire office record, and accounts record for the period prior to 31.03.2018 is lying in the*

custody of the Respondent and he is not handing over the possession of the same to the applicant...

7. That in view of the foregoing the directions may be issued to the Respondent to hand over the entire statutory record, entire office record, and accounts record for the period prior to 31.03.2018 to the Resolution Professional.”

- 5.3.2. From the above, it is observed that Mr. Gupta has failed to take custody of the entire records of the CD. One of the objectives of filing application under section 19 is to get orders of AA so as to compel the CD to cooperate. Filing of application after finalisation of resolution plan defeats the very purpose of filing of the application under section 19. The DC finds that Mr. Gupta has contravened section 19 read with section 208(2) (a) and (e) and regulation 7(2)(a) of IP Regulations and clause 14 of Code of Conduct prescribed under regulation 7(2)(h) of the IP Regulations by not abiding with the provisions of the Code pertaining to obtaining custody of the assets owned by the CD and by late filing the application under section 19.

Order

- 6.1 In view of the foregoing contraventions no. II and III, the DC, in exercise of the powers conferred under section 220 (2) of the Code read with sub-regulations (7) and (8) of 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. Sumat Kumar Gupta as Insolvency Professional, having Registration No. IBBI/IPA-001/IP-P00167/2017-18/10336 for a period of one year.
- 6.2 The Order shall come into force on expiry of 30 days from the date of its issue.
- 6.3 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Gupta is providing his services, if any. The CoC may decide whether to continue his services or not. In case, CoC decide to discontinue his services, CoC may file an appropriate application before AA.
- 6.4 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Sumat Kumar Gupta is enrolled as a member.
- 6.5 A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.
- 6.6 Accordingly, the show cause notice is disposed of.

-Sd-

(Ravi Mital)
Chairperson, IBBI

Dated: 6th May, 2022
Place: New Delhi