

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/74/2021

22nd July, 2021

ORDER

In the matter of Mr. Manish Kumar Gupta, Insolvency Professional (IP) under Section 220 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/R(INSP)/2019/9/272/1380 dated 08.01.2021, issued to Mr. Manish Kumar Gupta, R/o 404, 4th Floor, LaxmidEEP Building, Laxmi Nagar, District Centre, Vikas Marg, New Delhi, Delhi -110092 who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00225/2017- 18/10424 dated 27.06.2017.

Background

- 1.1 Mr. Manish Kumar Gupta, was appointed as an interim resolution professional (IRP) for the corporate insolvency resolution process (CIRP) in the matter of Three C Projects Private Ltd, Corporate Debtor (CD) *vide* order of the National Company Law Tribunal, Principal Bench, New Delhi (AA) in CP (IB)-1718(PB)/2018, dated 28.08.2019 which admitted an application for CIRP under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code). The IRP was confirmed as the Resolution Professional (RP) by the Committee of Creditors (CoC) constituted by the company in the first CoC meeting held on 16.10.2019.
- 1.2 The IBBI, in exercise of its powers under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017 appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Manish Kumar Gupta *vide* order dated 03.10.2019 on having reasonable grounds to believe that Mr. Manish Kumar Gupta had contravened provisions of the Code, Regulations and Circulars issued thereunder. A draft inspection report dated 10.07.2020, prepared by the IA, was shared with Mr. Manish Kumar Gupta, to which Mr. Manish Kumar Gupta submitted reply dated 19.08.2020. The IA submitted the Inspection Report to IBBI on 25.09.2020.
- 1.3 The IBBI issued the SCN to Mr. Manish Kumar Gupta on 08.01.2021, based on the findings in the inspection report in respect of his role as an IRP/RP in the CIRP of CD and material available on record. The SCN alleged contraventions of provisions of sections 208(2)(a) and (c) of Insolvency and Bankruptcy Code, 2016 (Code), regulations 7(2)(a) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and clauses 3, 5, 13 and 14 of the Code of Conduct thereof, regulations

36A of the IBBI (Insolvency Resolution Process for corporate persons) Regulations 2016 (CIRP Regulations) and IBBI Circular No. IP/005/2018 dated 16.01.2018.

- 1.4 The IBBI referred the SCN, response of Mr. Manish 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. Manish Kumar Gupta availed an opportunity of e-hearing before the DC on 25.06.2021. Mr. Manish Kumar Gupta was represented by Mr. GP Madaan, Advocate who made submissions during the e-hearing.

Alleged Contraventions and Submissions

2. The contraventions alleged in the SCN and Mr. Manish Kumar Gupta's written and oral submissions thereof are summarized as follows.

I Contravention

- 2.1.1 According to regulation 36A of the CIRP Regulations, any expression of interest received after the time specified in the invitation, the same shall be rejected. It is observed that the invitation for expression of interest (EOI) dated 04.12.2019 provided the last date of submission of EOI as 20.12.2019. The revised invitation to EOI was published on 31.12.2019 pursuant to discussion in the 3rd CoC meeting and the last date for submission of EOI was extended to 08.01.2020. The minutes of 4th CoC meeting dated 08.01.2020 reflects that Mr. Manish Kumar Gupta apprised CoC about receiving EOI from 6 prospective resolution applicants (PRAs). However, the minutes of 5th CoC meeting dated 15.02.2020 reflects 9 PRAs. Therefore, implying that Mr. Manish Kumar Gupta received other 3 EOIs after the last date of submission i.e. 08.01.2020.
- 2.1.2 It is noted that the regulation 36A of CIRP Regulation clearly provides that the EOI received after the last date of submission are to be rejected, however, Mr. Gupta has accepted EOI even after the last date of submission, thereby violated the regulation 36A of the CIRP Regulations. Thus, the IBBI is of the *prima facie* view that Mr. Manish Kumar Gupta contravened regulation 36A of CIRP Regulations, regulation 7(2)(h) of IP Regulations and Clauses 13 and 14 of the Code of Conduct.

I Submission

- 2.2.1 With regard to the aforesaid contravention, Mr. Manish Kumar Gupta submitted that it is incorrect to presume that the EOIs were received but he did not have the evidence of receipt. The EOIs were received in his office but could not be placed before CoC as receipt of the same was not in his knowledge and hence, could not be recorded in the Minutes. However, immediately after the meeting, on very next day he called a meeting of the stakeholders and apprised every one about the receipt of the EOIs. He also submitted that at such a short notice, it was not possible to convene a meeting of CoC. Further, he submitted that his objective was to maximize the value, hence accepted the EOIs which was received in the evening after the CoC meeting, to keep more PRAs

in kitty. He also submitted that the CoC was convened in the evening and end of CoC meeting should not be construed as the end of day as it was a unique situation where the date of CoC was also the last date of receipt of EOI.

2.2.2 Mr. Gupta submitted that he intimated all the stakeholders by making the arrangement of sending mails and called a meeting. He immediately informed the authorised representative as well and also invited him in the meeting. All the proceedings were recorded in the next minutes of the CoC meeting. He submitted that whenever any document is submitted, the proof of receipt is tendered to the person who has delivered the document as a token of receipt. He also submitted that the documents of PRA were notarized on 08.01.2020, the date of stamp paper was also 08.01.2020 for other 2 cases, the proof of receiving a document is an internal document and the same may not be reliable in the eye of Board. He also submitted that his office being a mediocre Chartered Accountant firm office, they do not have any system of maintaining the inward documents register.

2.2.3 In his reply, Mr. Manish Kumar Gupta submitted that he intimated the home buyers through the email immediately and sent an email to the website service provider M/s Nisha attaching the final list dated 20.01.2021 of PRAs to be uploaded immediately. The list was uploaded on 24.01.2021. This according to him, this proves that he informed all the stakeholders immediately and uploading of documents on the website indicates that all the EOIs were available to all the stakeholders of the project including financial creditors.

2.2.4 Mr. Manish Kumar Gupta further submitted that the SCN fails to demonstrate as to which sub-regulation or clause of regulation 36A of CIRP Regulations has been violated. He submitted that there is no violation of any of the sub-regulations or clauses of regulation 36A of CIRP Regulations. Further, with regard to clause 13 and 14 of Code of Conduct, he submitted that clause 13 speaks about the timeliness whereas in the present case, there is no issue of timeliness as the documents were received in the office by the office boy and at the same time the CoC meeting was being conducted in the office which took a long time in concluding. Further, he informed all the stakeholders immediately the next day by WhatsApp as well as email. In the light of the above facts, Mr. Gupta submitted that there has been no violation of clause 13 and 14 of the Code of Conduct.

2.2.5 Further, Mr. Gupta has relied on Regulation 12 of Inspection Regulations and submitted that the notice does not discuss the nature and seriousness of the alleged contraventions; the consequences and impact of the alleged contravention; unfair advantage gained by him as a result of the alleged contravention; loss caused, or likely to be caused, to clients or any other person as a result of the alleged contravention; his conduct after the occurrence of the alleged contravention, and prior to the alleged contraventions. He submitted that there was no mala-fide intention, no financial or other risk to any of the stakeholders or any unlawful gain to him. He also submitted that there was no beneficiary in this inadvertent mistake. He performed all his duties keeping in mind the maximization of wealth and value of the CD. He did not have any interest of any nature

and that there is no allegation in relation to finance.

2.2.6 Mr. Manish Kumar Gupta submitted that out of 3 PRA, one is ineligible and other one had withdrawn EOI. Further, he submitted that the 3rd PRA also applied for withdrawal of proposal before the Hon'ble NCLT. He submitted that he has not only delivered the houses to 500+ home buyers but also gave a ray of hope to more than 850 homebuyers to get their house as he initiated the Pool & Build Scheme with the participation of homebuyers of Tower 9, 10, 11, 12A and 14. Further, he went the extra mile and tried to resolve the land dispute also.

2.2.7 Further, it is Mr. Manish Kumar Gupta's submission that regulation 7(2)(h) seems to be duplicity with the clause of first schedule as mentioned in the notice and further the relevant clause as referred in the notice are not applicable, hence allegation is liable to be dismissed. He lastly submitted that the notice fails to establish the violation of any of the timelines or any *mala fide* or negligence on his part and categorically denied having violated any of the provisions of any regulations of Code of Conduct.

II Contravention

3.1.1. Section 208 of the Code lays down the functions and obligations of IPs. Clause (2) of section 208 of the Code provides that every IP shall abide by the code of conduct given in the clause. These include performing duties with diligence and taking reasonable care. Section 208(2) of the Code is reproduced below:

“208. Functions and obligations of insolvency professionals. –

(2) Every insolvency professional shall abide by the following code of conduct: –

(a) to take reasonable care and diligence while performing his duties;

(b) to comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member;

(c) to allow the insolvency professional agency to inspect his records;

(d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and

(e) to perform his functions in such manner and subject to such conditions as may be specified.”

3.1.2. It is seen from the minutes of 2nd CoC meeting dated 27.11.2019 that Singhal Ajay & Associates was appointed for looking after compliance of TDS and GST requirements for CD and the same Mr. Ajay Singhal is one of the PRAs as seen from the minutes of 4th CoC meeting dated 08.01.2020. Despite this fact, Mr. Manish Kumar Gupta did not terminate the services of Mr. Ajay Singhal. It is seen that Mr. Ajay Singhal tendered his resignation as consultant with effect from 28.02.2020, which was considered in the 6th

CoC meeting held on 12.03.2020, only after almost 2 months.

3.1.3. The IBBI observes that Mr. Manish Kumar Gupta should have terminated the services of the Mr. Ajay Singhal immediately when he submitted his resolution plan and became a PRA. By not terminating the services, Mr. Manish Kumar Gupta has not taken reasonable care and not exercised diligence. Thus, the IBBI is of *prima facie* view that Mr. Manish Kumar Gupta contravened Section 208(2)(a) of the Code, Regulation 7(2)(a) and 7(2)(h) of IP Regulations and Clauses 3, 5 and 14 of Code of Conduct of First Schedule of Code of Conduct for Insolvency Professionals under IP Regulations.

II Submission

3.2.1 With regard to the aforesaid contravention, Mr. Manish Kumar Gupta submitted that M/s Singhal Ajay & Associates was appointed by him for TDS and GST compliance for the CD on monthly basis at a retainer ship fee of Rs. 30,000 per month plus applicable taxes. Further, he submitted that a lot of GST and TDS compliances were pending for past many years and he had to ensure these compliances to be done as soon as possible. This work was carried out by same firm at a consolidated one-time fee of Rs. 1,00,000/-. The payment to Ajay Singhal is Rs. 30,000/- per month and for Sept. 2019 to Feb 2020 is Rs. 180,000 + GST.

3.2.2 Mr. Manish Kumar Gupta has given the list of event, which is given below:

First EOI	20/12/2019
2nd CoC	27/11/2019
Third CoC	31/12/2019
Last Date of EOI	08/01/2020
Fourth CoC	08/01/2020
Fifth CoC	15/02/2020

3.2.3 Mr. Manish Kumar Gupta submitted that at the time of EOI and withdrawal of EOI, the cancellation of GST issues of the CD were raised which involved Rs. 1.53 Crores of input credit of earlier period. He further submitted that all the purchases were on hold and in addition to that he was unable to take the input credit of approx. Rs. 40 lakhs for current period for current services. In the absence of non-filing of GST returns, the e-way bill generation was not in process, affecting the facilities like maintenance, security, lift operations, repair and maintenance and the residents of the projects were making hue and cry. Therefore, it was considered necessary to get this job done to keep the CD as a going concern.

3.2.4 It is further submitted by Mr. Manish Kumar Gupta that there were certain GST issues which were being dealt by Mr. Ajay Singhal, as latest as 13.02.2020. The CD had availed the input credit in previous period for Rs. 1.53 crores. Further, the CD was in receipt of

orders resulting in the cancellation of the registration by the GST Department. If this would have not been restored, then it would be a net cash outflow (net loss to CD) for the same amount as in the coming period, CD would be requiring to pay the GST and this input would not be available for input credit. In view of the seriousness of the situation and considering the fact that an amount to the tune of Rs. 1.53 Crores was at stake, Mr. Ajay Singhal was requested to continue to provide his services. It was due to the aforesaid reasons alone that the services of Mr. Ajay Singhal were not terminated, also owing to the fact that the conflict of interest ceased to exist once he had communicated his unwillingness to participate as a Resolution Applicant of the CD.

III Contravention

4.1.1 According to Circular No. IP/005/2018 dated 16.01.2018 provides the disclosures by Insolvency Professionals and other Professionals appointed by Insolvency Professionals conducting CIRP. The relevant paras of the Circular are reproduced below:

“The Insolvency and Bankruptcy Code, 2016 read with regulations made thereunder provide for appointment of an insolvency professional [(Interim Resolution Professional (IRP) / Resolution Professional (RP)] to conduct the resolution process (Corporate Insolvency Resolution Process and the Fast Track Process) and discharge other duties. These authorise the Insolvency Professional to appoint registered valuers, accountants, legal and other professionals to assist him in discharge of his duties in resolution process.

2. In the interest of transparency, it has been decided that an insolvency professional and every other professional appointed by the insolvency professional for a resolution process shall make disclosures as specified in Para 3 to 5 hereunder.

3. An insolvency professional shall disclose his relationship, if any, with (i) the Corporate Debtor, (ii) other Professional(s) engaged by him, (iii) Financial Creditor(s), (iv) Interim Finance Provider(s), and (v) Prospective Resolution Applicant(s) to the Insolvency Professional Agency of which he is a member, within the time specified as under:

<i>Relationship of the Insolvency Professional with</i>	<i>Disclosure to be made within threedays of</i>
<i>Corporate Debtor</i>	<i>his appointment.</i>
<i>Other Professionals [Registered Valuer(s) / Accountant(s) / Legal Professional(s) / Other</i>	<i>appointment of the other Professional.</i>

<i>Professional(s)] appointed by him</i>	
<i>Financial Creditor(s)</i>	<i>the constitution of Committee of Creditors.</i>
<i>Interim Finance Provider(s)</i>	<i>the agreement with the Interim Finance Provider.</i>
<i>Prospective Resolution Applicant(s)</i>	<i>he supply of information</i>
	<i>memorandum to the Prospective Resolution Applicant.</i>
<i>If relationship with any of the above comes to notice or arises subsequently</i>	<i>of such notice or arising.</i>

4. An insolvency professional shall ensure disclosure of the relationship, if any, of the other professional(s) engaged by him with (i) himself, (ii) the Corporate Debtor, (iii) Financial Creditor(s), (iv) Interim Finance Provider(s), and (v) Prospective Resolution Applicant(s) to the Insolvency Professional Agency of which he is a member, within the time specified as under:

<i>Relationship of the Other Professional (s) with</i>	<i>Disclosure to be made within threedays of</i>
<i>The Insolvency Professional</i>	<i>the appointment of the other Professional.</i>
<i>Corporate Debtor</i>	<i>the appointment of the other Professional.</i>
<i>Financial Creditor(s)</i>	<i>the constitution of Committee of Creditors.</i>
<i>Interim Finance Provider(s)</i>	<i>the agreement with the Interim Finance Provider or three days of the appointment of the other Professional, whichever is later.</i>
<i>Prospective Resolution Applicant(s)</i>	<i>the supply of information memorandum to the Prospective Resolution Applicant or three days of the appointment of the other Professional, whichever is later</i>
<i>If relationship with any of the above comes to notice or arises subsequently</i>	<i>of such notice or arising.</i>

....”

4.1.2 It is seen from the minutes of 4th CoC meeting dated 08.01.2020 that the following professionals were appointed during CIRP:

S. No.	Name of Professionals	Nature of Work	Fee
1	Neetu Maan	Consultancy	Rs. 7,00,000/-
2	Ravi Bhargav	Consultancy	Rs. 12,00,000/-
3	Sujit Kumar Singh	Consultancy	Rs. 2,50,000/-
4	Vinay Kumar Taparia	Consultancy	Rs. 4,50,000/-
5	Excelon SAP Solution Private Limited	Consultancy fee for A/C mapping into SAP	Rs. 36,000/-
6	Sanghi Anish Kumar & Co	Consultancy for IBBI Compliance	Rs. 58,500/-
7	Abhishek Anand (Advocate)	NCLT Appearance	Rs. 29,250/-
8	Anu Luthra	ROC Compliance & Challan	Rs. 1,01,500/-
9	Sandeep Kumar Agarwal	STP Consultancy	Rs. 18,000/-
10	Aggarwal Sarawagi & Co.	Tax Audit Fees	Rs. 54,000/-

4.1.3 It is noted that Mr. Manish Kumar Gupta did not file relationship disclosure with respect to professionals stated in the aforesaid table, except that of Mr. Anand and Sanghi Anish Kumar & Co. with respective Insolvency Professional Agency. Thus, the IBBI is of the prima facie view that Mr. Manish Kumar Gupta contravened Circular No. IP/005/2018 dated 16.01.2018

III. Submissions

4.2.1 In his reply, Mr. Manish Kumar Gupta has submitted that he filed the disclosure for all such cases, wherever they were required to be filed. He submitted that the SCN fails to clarify whether the disclosures of all the individuals, as named in the SCN, were required to be filed. He further submitted that the SCN has not clarified whether the other 8 individuals/entities fell in the category of professionals whose disclosures were required to be filed.

4.2.2 Mr. Manish Kumar Gupta submitted that Mr. Ravi Bhargava, Sujit Singh, Sandeep Agarwal, Anu Luthra, Vinay Taparia, Navin Mann etc. are the existing and past employees of the CD since more than 7 years or more and they have been working with CD as divisional / departmental heads. He has submitted that he did not have any kind of relationship in the past/ present.

- 4.2.3 Mr. Gupta, in his reply submitted that keeping such employees in the company was inevitable to maintain the going concern status of the company. He submitted that the payment made to Vinay Taparia was on behalf of such persons only who were also an employee of the Three C group company. These people namely Mr. Ravi Bhargava and Mr. Sujit Singh were taken by M/s Granite Gate Private Limited as Key Managerial Person (KMP); Mr. N Mann and Ravi Bhargava were the employees of M/s Three C Universal Developers Private Limited and Mr. Sujit Singh were the employee of the Three C Infra Private Limited. He submitted that therefore it was not possible to take them as employee, and therefore, the terms of payment was contractual, but otherwise, these professionals were working as employees with the CD.
- 4.2.4 Mr. Manish Kumar Gupta submitted that the entire accounting/ CRM data was maintained by the SAP accounting system and all the license and ownership was owned by a Three C Group Company and Three C Universal Developers Private Limited which was controlled by such employees. The huge licensing fees was payable for SAP license fees and the SAP server was required to update. He also submitted that these persons were the departmental heads of the organization and the salary of the entire team who provide the support of accounting, financial, banking, customer relations, legal documentation, Human Resource Development and project related issues needs to be paid, in addition to other day to day working. There were 8 employees who were getting the remuneration from such HOD's.
- 4.2.5 Mr. Manish Kumar Gupta submitted that for keeping the services in order, maintaining the Customer Relationship Management services, to take the history of each and every customer behind the scene and to co-ordinate with the various services provider, to carry on the services of project lotus zing, it was considered necessary to keep the people in employment with CD on the same pattern as other resolution professional took. Further, he considered it prudent to hire in-house staff in place of outside consultant who were very expensive in comparison to the in-house staff.
- 4.2.6 Mr. Manish Kumar Gupta explained that Mr. Sandeep Agarwal is a technical engineer for pipeline of drinking water and sewage water for sewage treatment plant of the Project Lotus Zing and paid Rs. 18,000/- only. He was taken on contract just because he is the employee of Three C Group and has expertise over the pipeline of the already constructed towers and hence his working was inevitable and therefor, is not covered in the ambit of professionals and no disclosure is required.
- 4.2.7 Similarly, he submitted that Ms. Anu Luthra was an employee of the Group who is now filing the forms for compliance with ROC. She was paid total amount of Rs. 59,500/- for payment to ROC and the remaining Rs. 42,000/- as professional fees. He further submitted that as she was engaged in providing various services to the CD before the initiation of CIRP, she does not fall in the category of professionals and therefore, no disclosure was required to be filed. Mr. Gupta has expressed his willingness to file the

disclosure form.

- 4.2.8 With respect to Agarwal Sarawagi, Mr. Manish Kumar Gupta submitted that they were the existing auditors of the CD, appointed 2 years before the CIRP was initiated. Mr. Gupta submitted that since the firm had been providing services prior to the initiation of CIRP, no disclosure was required to be filed. Mr. Gupta has expressed his willingness to file the disclosure form and has stated that he does not have any relationship with Agarwal Sarawagi. With regard to Excelon SAP solution services, he submitted that it is the existing company which was providing the technical services for maintaining the SAP system, maintain the data and hence, no disclosure is required to be filed.
- 4.2.9 Further, in relation to the disclosure to be filed for Anish Kumar Sanghi and Abhishek Anand, Mr. Manish Kumar Gupta submitted that IP entity Immaculate Resolution Professional was carrying out the compliance work and he assumed that they would have filed the necessary compliances. He requested that the delay in filing of disclosures of mayplease be condoned.
- 4.2.10 Mr. Manish Kumar Gupta submitted that he did not have any kind of relationship in last 20 years with any of the consultants mentioned herein above. Lastly, it is Mr. Gupta's submission that he himself and IP entity M/s Immaculate Resolution Professionals Private Limited are of the opinion that the disclosure is not required to be filed. Mr. Gupta has expressed his willingness to file the disclosure form

FINDINGS AND ANALYSIS

- 5.1.1 The objective of the Code is, *inter alia*, to promote entrepreneurship, maximisation of value of assets, make available credit and balance the interests of all stakeholders, in a time bound manner. In its endeavour to maximize the value of assets of the CD, uniform valuation standards have been adopted to get a fair estimate of the value of the assets of the CD, which enables the CoC and the prospective resolution applicants to make an informed decision regarding the CD.
- 5.1.2 The Bankruptcy Law Reforms Committee in its report has laid emphasis on the role of an IP in Chapter 4 titled Institutional Infrastructure, at point 4.4 titled Insolvency Professional, which are as follows:

“Insolvency professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process.

...

In administering the resolution outcomes, the role of the IP encompasses a wide range of functions, which include adhering to procedure of the law, as well as accounting and finance related functions. The latter include the identification of the assets and liabilities of the defaulting debtor, its

management during the insolvency proceedings if it is an enterprise, preparation of the resolution proposal, implementation of the solution for individual resolution, the construction, negotiation and mediation of deals as well as distribution of the realisation proceeds under bankruptcy resolution. In performing these tasks, an IP acts as an agent of the adjudicator. In a way the adjudicator depends on the specialized skills and expertise of the IPs to carry out these tasks in an efficient and professional manner. The role of the IPs is thus vital to the efficient operation of the insolvency and bankruptcy resolution process.
...”

- 5.1.3 The role of the RP is crucial and critical to fulfill the objective of the Code. It is imperative that the RP functions and discharges his/ her duties independently in a fair and transparent manner and facilitate the fulfilment of the objectives of the Code. Various checks and balances have been provided in the Code and Regulations made thereunder to ensure independent, fair and transparent functioning of the IRP/RP. It is the duty of an IRP/ RP to perform and discharge his/ her duties in accordance with the Code and the Regulations made thereunder, in letter and spirit to achieve the objectives of the Code.
- 5.1.4 The responsibilities of the IRP/RP under the Code require highest level of standards, calibre and integrity which inspire confidence and trust among the stakeholders and the society. The role of the RP is vital to the efficient operation of the insolvency and bankruptcy resolution process. The IP forms a crucial pillar upon which rests the credibility of the entire resolution process. For that purpose, the Code provides for certain duties, obligations for undertaking due diligence in the conduct of the insolvency process to establish integrity, independence, objectivity and professional competence in order to ensure credibility of both the process and profession as well.
- 5.1.5 Section 208 of the Code provides for the functions and obligations of the IP which provides *inter alia* that the IP shall abide by the Code of Conduct to take reasonable care and diligence when performing his duties and to perform his functions in such manner and subject to such conditions as may be specified. One of the conditions for registration as IP is that an IP shall at all times abide by the Code and Rules, Regulations and Guidelines made thereunder and the bye-laws of the insolvency professional agency with which he/she is enrolled.
- 6.1.1 With respect to the first contravention relating to expression of interest, it is relevant to refer to regulation 36A of the CIRP Regulations which provides that the expression of interest received after the time specified shall be rejected. The DC notes the allegation that Mr. Manish Kumar Gupta accepted three expressions of interest after the last date of submission i.e. 08.01.2020. According to Mr. Manish Kumar Gupta, these three expressions of interest were received in physical form on the last of submission, however, no system of issuing receiving or maintaining of register to record receipt of documents or post was followed in his office, there is no record to show the same. The DC observes that

when in any process or sub-process if timelines are provided or in other words last date is mentioned for receiving any document then the professional needs to maintain the record of inward receipts without which timelines compliance cannot be ascertained.

6.1.2 The DC further notes Mr. Gupta's submission that he had written emails and communicated with the authorized representatives of the CD with respect to the receipt of these expressions of interest. He also got the list of prospective resolution applicants uploaded on the website on 20.01.2020. The DC observes that if he had received the EOIs on or before the last date, then he should have placed those EOIs in the 4th meeting of CoC or at least should have communicated to members of CoC regarding receipt of such EOIs and the name of the prospective resolution applicants. If he would have done so then possibly CoC would have directed Mr. Gupta to place all such EOIs and select eligible prospective resolution applicants. Therefore, there is lapse on the part of Mr. Manish Kumar Gupta in this regard.

6.1.3 The three expressions of interest with regard to prospective resolution applicants which are the bone of contention in the present issue, are given below:

S.No.	NAME OF PRA
1.	Harsh Vardhan Reddy
2.	Svarnim Infrastructure Pvt. Ltd.
3.	Lakshmi Trading Company

6.1.4 The contravention is that of Regulation 36A of the CIRP Regulations, which is reproduced below:

“36A. Invitation for expression of interest.

(1) 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.

(2) The resolution professional shall publish Form G-

(i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the resolution professional, the corporate debtor conducts material business operations;

(ii) on the website, if any, of the corporate debtor;

(iii) on the website, if any, designated by the Board for the purpose;
and

(iv) in any other manner as may be decided by the committee.

(3) The Form G in the Schedule shall –

(a) state where the detailed invitation for expression of interest can be

- downloaded or obtained from, as the case may be; and*
- (b) provide the last date for submission of expression of interest which shall not be less than fifteen days from the date of issue of detailed invitation.*
- (4) The detailed invitation referred to in sub-regulation (3) shall-*
- (a) specify the criteria for prospective resolution applicants, as approved by the committee in accordance with clause (h) of sub-section (2) of section 25;*
- (b) state the ineligibility norms under section 29A to the extent applicable for prospective resolution applicants;*
- (c) provide such basic information about the corporate debtor as may be required by a prospective resolution applicant for expression of interest; and*
- (d) not require payment of any fee or any non-refundable deposit for submission of expression of interest.*
- (5) A prospective resolution applicant, who meet the requirements of the invitation for expression of interest, may submit expression of interest within the time specified in the invitation under clause (b) of sub-regulation (3).*
- (6) The expression of interest received after the time specified in the invitation under clause (b) of sub-regulation (3) shall be rejected.*
- (7) An expression of interest shall be unconditional and be accompanied by-*
- (a) an undertaking by the prospective resolution applicant that it meets the criteria specified by the committee under clause (h) of sub-section (2) of section 25;*
- (b) relevant records in evidence of meeting the criteria under clause (a);*
- (c) an undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A to the extent applicable;*
- (d) relevant information and records to enable an assessment of ineligibility under clause (c);*
- (e) an undertaking by the prospective resolution applicant that it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process;*
- (f) an undertaking by the prospective resolution applicant that every information and records provided in expression of interest is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code; and*
- (g) an undertaking by the prospective resolution applicant to the effect that it 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.

- (8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with- (a) the provisions of clause (h) of sub-section (2) of section 25; (b) the applicable provisions of section 29A, and (c) other requirements, as specified in the invitation for expression of interest.*
- (9) The resolution professional may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence under sub-regulation (8).*
- (10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.*
- (11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list.*
- (12) On considering the objections received under sub-regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.”*

6.1.5 The DC notes that any expression of interest received after the last date of submission is to be rejected as is provided in sub-regulation (6) of regulation 36A of the CIRP Regulations. Regulation 36A of the CIRP Regulations provides the stages to be followed while inviting expression of interest from prospective resolution applicants. Sub-regulation (10) provides that the RP shall issue a provisional list of eligible prospective resolution applicants within 10 days of the last date of submission of expression of interest. The DC notes his submission that he posted the list of PRAs on the website of CD on 14.01.2020 i.e. within 6 days from the last date of receipt of EOI. However, DC finds that the list was provided by Mr. Manish Kumar Gupta to the website developers by email dated 24.01.2020 and therefore, it is wrong on the part of Mr. Gupta to state that list was hosted on 14.01.2020. Further, in any case the final list of PRAs is dated 20.01.2020 so the question of hosting the final PRA list on 14.01.2020 cannot arise. There is not only delay in hosting the list of EOIs but also violation of clause 12 of Code of Conduct by giving false statement in his submissions.

6.1.6 It may be relevant to refer to section 25 of the Code which provides the duties of the RP.

”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) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -

...

(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.

(i) present all resolution plans at the meetings of the committee of creditors;

... ”

6.1.7 The DC notes the oral submission made by Mr. Manish Kumar Gupta that all expression of interests were received physically as well as through email. He also stated that he had informed the CoC members and home buyers about receipt of the three PRAs. He submitted that the website developers were also asked to update the list of PRAs on the website. Mr. Gupta has provided email dated 08.01.2020 received from Harshvardhan Reddy by him attaching the expression of interest as prospective resolution applicant. Mr. Gupta has also provided the email dated 08.01.2020 received from Svarnim Infrastructure Pvt. Ltd. However, with respect to the expression of interest of Laxmi Trading Company, Mr. Manish Kumar Gupta has submitted the expression of interest was prepared on stamp paper dated 08.01.2020 but there is no evidence to substantiate that the EOI of Laxmi Trading Company was received on 08.01.2020. Therefore, the DC finds that Mr. Manish Kumar Gupta contravened regulation 36A(6) of the CIRP Regulations, regulation 7(2)(h) of IP Regulations and clauses 1, 2, 3, 12, 13 and 14 of the Code of Conduct.

7.1.1 With regard to the second contravention relating to accepting Mr. Ajay Singhal as PRA, it is alleged that Mr. Manish Kumar Gupta had violated Section 208(2)(a) of the Code and Clauses 3, 5, 14 of the Code of Conduct as he considered Mr. Ajay Singhal as PRA on his expressing interest, who was already handling the GST related issues for the CD.

7.1.2 Clauses 3 of the Code of Conduct provides that the IP shall act with objectivity, without presence of any bias, conflict of interest etc. to the insolvency proceedings whether directly or not. The clause 3 of the Code of Conduct is reproduced below:

“3. An insolvency professional must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the insolvency proceedings or not.”

Clause 5 of the Code of Conduct provides that the IP must maintain complete independence in his professional relationships and conduct himself independent of external influence. Clause 5 of the Code of Conduct is reproduced below:

“5. An insolvency professional must maintain complete independence in his professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences.”

Clause 14 of the Code of Conduct provides that the RP must not act with mala fide or be negligent. Clause 14 of the Code of Conduct is reproduced below:

“14. An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code.”

7.1.3 During the e-hearing held on 25.06.2021, Mr. Manish Kumar Gupta submitted that the Mr. Ajay Singhal was appointed as GST advisor for CD. He pointed out that GST system of Ghaziabad was complicated and technical and Mr. Ajay Singhal was handling it. He also submitted that an amount of Rs.1.53 crore was involved for which input credit was pending and that he was unable to raise bills and therefore, purchases could not be made, which could have hindered the process of insolvency resolution of CD if not done timely. Mr. Gupta submitted that Mr. Singhal was asked orally to resign from GST advisory services and to complete the work till 16.02.2020 as he became PRA. Mr. G.P.Madaan, Advocate appearing for Mr. Manish Kumar Gupta submitted that if there was any delay it was for 40 days only (08.01.2020 to 16.02.2020) and Mr. Singhal submitted his papers on 28.02.2020.

7.1.4 The Hon'ble Supreme Court in Reliance Energy Ltd. and Ors. vs. Maharashtra State Road Development Corporation Ltd. and Ors. ((2007) 8 SCC 1), held that *“The doctrine of "level playing field" is an important doctrine which is embodied in Article 19(1)(g) of the Constitution. This is because the said doctrine provides space within which equally-placed competitors are allowed to bid so as to subserve the larger public interest. "Globalization", in essence, is liberalization of trade. Today India has dismantled licence-raj. The economic reforms introduced after 1992 have brought in the concept of "globalization". Decisions or acts which results in unequal and discriminatory treatment, would violate the doctrine of "level playing field" embodied in Article 19(1)(g) . Time has come, therefore, to say that Article 14 which refers to the principle of "equality" should not be read as a stand alone item but it should be read in conjunction with Article 21 which embodies several aspects of life. There is one more aspect which needs to be mentioned in the matter of implementation of the aforesaid doctrine of "level playing field". According to Lord Goldsmith - commitment to "rule of law" is the heart of parliamentary democracy. One of the important elements of the "rule of law" is legal certainty. Article 14 applies to government policies and if the policy or act of the government, even in contractual matters, fails to satisfy the test of*

"reasonableness", then such an act or decision would be unconstitutional."

7.1.5 The DC notes that Mr. Ajay Singhal also submitted EOI which was fundamentally wrong on the part of Mr. Singhal and more so on the part of Mr. Gupta in including his name in the list of PRAs and placing before CoC. Mr. Singhal had insider information and therefore, there was conflict of interest, moment Mr. Ajay Singhal submitted the EOI, being the GST consultant for the CD. Moreover, it is against the principles of fair play. Therefore, Mr. Gupta should not have placed EOI of Mr. Singhal before the CoC. It is the duty of the RP to conduct the insolvency process in a fair, transparent and unbiased manner and therefore, anything that may raise an iota of doubt will be a contravention of the Code of Conduct. Mr. Ajay Singhal was already in knowledge of the financial status of the CD since he was advising the RP on GST related matters. By making an expression of interest as PRA, Mr. Singhal was better placed to make a competitive PRA, dismantling the level playing field available to the other PRAs. Mr. Ajay Singhal's PRA should have been rejected forth rightly as clearly there was conflict of interest. The DC therefore, finds that Mr. Manish Kumar Gupta has contravened section 208(2)(a) of the Code and Clause 3, 3A, 5 and 23B of the Code of Conduct.

8.1.1 The third contravention is with respect to relationship disclosures to be made under Circular No. IP/005/2018 dated 16.01.2018 as alleged in the SCN. An RP is required to make relationship disclosures with all the professionals appointed during the CIRP within the timeframe mentioned in the Circular No. IP/005/2018 dated 16.01.2018. The DC notes the submission of Mr. Manish Kumar Gupta that except for Mr. Anish Kumar Sanghi and Mr. Abhishek Anand, no other professional was appointed. The remaining professionals mentioned in the SCN were employees of the Three C Group company. Their services were taken as they were already working on similar projects for the Three C Group and their services were availed at low remuneration compared what would have to be paid to someone from the industry.

8.1.2 The DC notes submission of Mr. Gupta that the relationship disclosure to be made for Mr. Anish Kumar Sanghi and Mr. Abhishek Anand were delayed and accepts the delay. He stated that his IP entity M/s Immaculate Resolution Professionals Pvt. Ltd. were to file the same in time, however, it seems that there was delay on the entity's part. He states it to be a genuine mistake and not *mala fide*.

8.1.3 The DC also notes the submission of Mr. Manish Kumar Gupta that the entire accounting/ CRM data was maintained by SAP accounting system and the licenses were owned by Three C Group company. The DC also notes the submission of Mr. Gupta that these professionals, except Mr. Anish Kumar Sanghi and Mr. Abhishek Anand, were department heads of the organization and their expertise was valuable for maintaining the going concern status of the CD. Mr. Gupta gave the example of Mr. Sandeep Agarwal who was paid Rs. 18,000/- for his services for pipeline of drinking water and sewage water for sewage treatment plant. The DC observes that certain professionals who were employees of the flagship company Three C Group, their services were availed on payment. Such payments made, formed part of the CIRP cost,

hence, disclosure should have been made.

8.1.4 In this age of transparency and corporate governance, disclosures about the process and the professionals strengthens corporate governance. The disclosure requirement no doubt brings transparency as also best practice in any process to ensure impartiality, independence and professional competence. In the instant matter, the employees though engaged at a lower remuneration, the payment made to them formed part of the CIRP cost. Hence, their relationship disclosure should have been made by Mr. Gupta. This omission amounts to violation of clauses 5, 10 and 16 of the Code of Conduct.

8.1.5 The DC finds that Mr. Manish Kumar Gupta did not adhere to the Circular No. IP/005/2018 dated 16.01.2018 and contravened clauses 5, 10,13, 14 and 16 of Code of Conduct since the disclosures were not made timely. Compliances have been provided to maintain transparency and fairness in the process and therefore, should be made on time as provided in the Circular.

9. In the present matter, the DC, in view of the foregoing analysis, finds as follows:

- (i) Manish Kumar Gupta, by inclusion of the expression of interest after the last date, has contravened regulation 36A of the CIRP Regulations, Regulation 7(2)(h) of IP Regulations and clauses 1,2,3, 12, 13 and 14 of the Code of Conduct.
- (ii) Mr. Manish Kumar Gupta, by allowing Mr. Ajay Singhal to be PRA and his continuation as GST adviser thereafter, amounted to conflict of interest and therefore, has contravened section 208(2)(a), Regulation 7(2)(a) and (h) of the IP Regulations and clauses 3, 3A, 5 and 23B of the Code of Conduct.
- (iii) Mr. Manish Kumar Gupta did not take reasonable care and exercise diligence while making the disclosures as per Circular No. IP/005/2018 dated 16.01.2018. Therefore, Mr. Manish Kumar Gupta has not adhered to Circular No. IP/005/2018 dated 16.01.2018 and clauses 5,10,13, 14 and 16 of the Code of Conduct.

Order

10. In view of the above, the DC finds that Mr. Manish Kumar Gupta has violated section 208(2)(a) of the Code, regulation 36A of the CIRP Regulations and regulation 7(2)(a) and (h) of the IP Regulations read with clauses 1, 2, 3,3A, 5,10, 12, 13, 14 and 23B of the Code of Conduct and did not adhere to Circular No. IP/005/2018 dated 16.01.2018.

10.1 The DC, therefore, in exercise of the powers conferred under section 220 (2) of the Code read with sub-regulations (7), (8), (9) and (10) of Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017, hereby, issues the following directions:

- (i) Mr. Manish Kumar Gupta shall not seek or accept any process or assignment or render any services under the Code for a period of twelve months from the date of coming into force of this Order. He shall, however, continue to

conduct and complete the assignments/ processes he has in hand as on date of this order.

- (ii) Mr. Manish Kumar Gupta shall pay a penalty equal to the fee paid to Mr. Ajay Singhal during the CIRP.
- (iii) The fee paid to Mr. Ajay Singhal shall not form part of CIRP cost.
- (iv) Mr. Manish Kumar Gupta shall discontinue with immediate effect availing the services of Mr. Ajay Singhal for any professional services in any CIRP or liquidation process assigned to him.
- (v) Mr. Manish Kumar Gupta is advised to avoid availing services of Mr. Ajay Singhal in future.

10.2 This Order, except direction issued under clause (iv), shall come into force on expiry of 30 days from the date of its issue.

10.3 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI of which Mr. Manish Kumar Gupta is enrolled as a member.

10.4 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.

11. Accordingly, the show cause notice is disposed of.

Dated: 22nd July, 2021
Place: New Delhi

Sd-
(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI