

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/246/2024

30th August 2024

Order

This Order disposes of the Show Cause Notice (SCN) No. COMP-11015/43/2023-IBBI/843/114 dated 01.03.2024 issued to Mr. Yogesh Kumar Gupta, who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with registration No. IBBI/IPA-003/IP-N00078/2017-18/10701 and a Professional Member of the Insolvency Professional Agency of Institute of Cost Accountants of India.

1. Background

- 1.1. The Hon'ble NCLT, New Delhi (AA) *vide* order dated 17.09.2019 admitted the application filed by the Financial Creditor Sunita Agarwal, under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code), for initiating Corporate Insolvency Resolution Process (CIRP) against M/s Antriksh Infratech Private Limited (Corporate Debtor/CD) and appointed Mr. Yogesh Kumar Gupta as Interim Resolution Professional (IRP). Mr. Ankit Goyat, director of the CD preferred an appeal before the Hon'ble NCLAT. *Vide* order dated 01.10.2019, the Hon'ble NCLAT directed the IRP not to constitute Committee of Creditors (CoC) and keep the CD as going concern. The Hon'ble NCLAT *vide* order dated 12.08.2021 set aside admission of the CD into CIRP.
- 1.2. A complaint against Mr. Yogesh Kumar Gupta as received by Anti-Corruption Branch of the CBI was forwarded to the Board *vide* letter dated 24.04.2023 for further necessary action as deemed fit. In pursuance with the complaint, the Board, in exercise of its powers under section 218 of the Code read with regulation 7(2) and 7(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations) appointed an Investigating Authority (IA) to conduct the investigation of Mr. Yogesh Kumar Gupta. In compliance with regulation 8(1) of Investigation Regulations, notice of investigation was sent to Mr. Yogesh Kumar Gupta on 31.07.2023 to which his response was received *vide* e-mail dated 08.09.2023.
- 1.3. Further,, an another complaint with similar allegations was filed by Mr. Ankit Goyat before IBBI on 25.09.2023. The IA sent another notice for investigation to Mr. Yogesh Kumar Gupta but no reply was received from him. The IA further sought certain additional clarification from Mr. Yogesh Kumar Gupta through emails dated 29.12.2023, 08.01.2024 and 18.01.2024. However, no reply to such communications were made by Mr. Yogesh Kumar Gupta. The IA submitted its report to the Board on 24.01.2024 taking into consideration the reply received on 08.09.2023.

- 1.4. Thereafter, based on the findings of the investigation report, the Board formed a *prima facie* opinion that Mr. Yogesh Kumar Gupta had contravened provisions of the Code and Regulations made thereunder and issued the SCN to him on 01.03.2024. Mr. Yogesh Kumar Gupta submitted his replies to the SCN on 26.03.2024 and 18.06.2024.
- 1.5. The Board referred the SCN and its reply to the Disciplinary Committee (DC) for disposal in accordance with the Code and Regulations made thereunder. Mr. Yogesh Kumar Gupta availed the opportunity of personal hearing through virtual mode before the DC on 07.08.2024. Mr. Yogesh Kumar Gupta provided his additional submissions on 24.08.2024.
- 1.6. The DC has considered the SCN, the reply to SCN, oral and written submissions of Mr. Yogesh Kumar Gupta, and hereby proceeds to dispose of the SCN.

2. Alleged Contraventions, Submissions, Analysis and Findings

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

2.1. Contravention-I

Demanding illegal gratification from the directors of the suspended board of the CD.

- 2.1.1. A grievance was received from Mr. Ankit Goyat, director of the CD, alleging that in one of the visits to the CD, Mr. Yogesh Kumar Gupta demanded a bribe of Rs. 5 lakhs to submit a favourable report in favour of the CD. Mr. Ankit Goyat also submitted an audio recording of the purported conversation between Mr. Yogesh Kumar Gupta and Mr. Saurabh Arora who was complainant's (Ankit Goyat) representative suggesting that Mr. Yogesh Kumar Gupta demanded the said amount of Rs. 5 lakhs from Mr. Saurabh Arora as *quid pro quo* for giving a favourable report in support of the CD.
- 2.1.2. It was observed that there was some discussion happening with the in house-chartered accountant of the CD, Mr. Saurabh Arora regarding settlement with Mr. Yogesh Kumar Gupta wherein Mr. Yogesh Kumar Gupta was discussing the matter relating to such demand. While in his reply before the IA, Mr. Yogesh Kumar Gupta denied the allegation. However, Mr. Yogesh Kumar Gupta did not deny having a conversation with the representative of the management of the CD, Mr. Saurabh Arora. When the IA specifically asked Mr. Yogesh Kumar Gupta about the context of the said conversation, he failed to provide any reply to the IA.
- 2.1.3. Further, it was also mentioned by Mr. Yogesh Kumar Gupta that after the CIRP of the CD was set aside by the NCLAT on 12.08.2021, he sent invoices to the CD for payment towards his fees, legal charges and other expenses but the said fees and expenses were not paid to him and

hence, Mr. Yogesh Kumar Gupta filed a contempt application seeking compliance of order of the Hon'ble NCLAT dated 12.08.2021. However, when the IA specifically asked Mr. Yogesh Kumar Gupta for copy of the said contempt petition and the reply filed in respect of the said petition, he failed to provide the required documents even after repeated reminders.

2.1.4. Thus, while having statutory duties under section 218(3) of the Code to provide all documents, records and information to the IA, Mr. Yogesh Kumar Gupta failed to do so. Resolution Professional(s) has been conferred with a duty to disclose the truth; however, Mr. Yogesh Kumar Gupta evaded the truth by keeping away from disclosing the documents and failed to give any cogent response in respect of the allegation in the aforesaid grievance. Such indifference to statutory obligation is not merely a needless procrastination but also indicates admission of the allegation when there is complete silence on his part despite repeated requisitions raised by the IA. Such a conduct is unbecoming of an IP. In the view of the above, the Board held the *prima facie* view that Mr. Yogesh Kumar contravened the provisions sections 208(2)(a) and (e) of the Code, regulation 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 1, 2,9 and 14 of the Code of Conduct specified in the IP Regulations.

2.2. Submissions by Mr. Yogesh Kumar Gupta.

2.2.1. Mr. Yogesh Kumar Gupta stated the timeline from admission of CD in corporate insolvency process and emphasized that after filing of contempt petition before the Hon'ble NCLAT by him on 29.09.2021, Mr Ankit Goyat filed a complaint on 16.12.2021 with SHO, Dwarka South Police Station to counter the contempt petition filed by him. He submitted that no action has been taken by the Dwarka South Police on the said complaint till date.

2.2.2. Mr. Yogesh Kumar Gupta further submitted that on 24.04.2023, after 1 year and 8 months of such complaint, the Board received a forwarding letter from CBI of the complaint made by Mr. Ankit Goyat and he received notice of investigation on 31.07.2023, i.e., after the lapse of almost 2 years of the complaint. He submitted that it is not clear what CBI has asked from IBBI in its forwarding letter which was not provided to him. He submitted that entire disciplinary process has been initiated by IBBI based on this complaint which fails to meet the criteria of "aggrieved" or "stakeholder" as defined in regulations 2(1)(a) and 2(1)(j) of the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 (Complaint Regulations). To be considered "aggrieved," a party must be a stakeholder who, having failed to get their grievance redressed by the concerned service provider, has filed a grievance with the Board. The Regulations define a "stakeholder" as a debtor, creditor, claimant, service provider, resolution applicant, or any other person with an interest in insolvency, liquidation, voluntary liquidation, or bankruptcy transactions under the Code. CBI cannot be considered as a stakeholder and consequently, renders the complaint fundamentally untenable. It is not known that under which provision of the Code or its regulations, IBBI recognised this as a complaint

and started the investigation. He submitted that the complainant also does not seem to have adhered to the regulations 3(3) of the Complaint Regulations which provides that a stakeholder who wishes to file a complaint shall file it with the Board in Form-A along with a demand draft for Rs. 2500/- in favour of the IBBI. He submitted that the complainant has not filed the complaint in the correct format i.e., Form-A. As mentioned in the IA report, the investigation was started on the basis of the complaint forwarded to IBBI by the CBI which undermines the investigation process. Additionally, Regulation 3(5) of the Complaint Regulations mandates that the complaint must be filed through the designated online portal of the IBBI.

2.2.3. Mr. Yogesh Kumar Gupta submitted that he received a notice of investigation (First Investigation Notice) from IBBI which was replied by him on 07.09.2023. Thereafter, on 25.09.2023 a similar complaint was filed by the Mr. Ankit Goyat, as a result, a separate notice of investigation (Second Investigation Notice) was issued to Mr. Yogesh Kumar Gupta, however, neither the Investigation Report nor the SCN reveals the date of issuance of such notice of investigation. Moreover, neither any such notice of investigation has been received by Mr. Yogesh Kumar Gupta nor the same has been annexed with SCN or investigation report. However, admittedly the investigation process was concluded on the basis of earlier reply of Mr. Yogesh Kumar Gupta to the first notice of investigation which is gross violation of principles of natural justice during the investigation as such SCN was issued without providing any opportunity to Mr. Yogesh Kumar Gupta to respond to the fresh complaint received by IBBI against him.

2.2.4. Mr. Yogesh Kumar Gupta further stated that IBBI has taken cognizance of a complaint, after more than 2 years of the order of the NCLAT wherein CIRP of the CD was set aside. He further insisted that it is to be noted that regulation 3(4) of Complaint Regulations provides that the complaint shall be filed within forty-five days from the date of occurrence of the cause of action and additional 30 days with reason for the delay. However, said complaint was never shared with him by the IA. Further, Regulation 3 of the IBBI Grievance Regulations lays down a detailed procedure for filing a complaint, wherein the complainant must disclose their status as an aggrieved party or stakeholder and comply with the requirements of Form A. However, in the present case, there has been a flagrant non-adherence to these mandatory provisions, rendering the entire investigation process arbitrary and *void ab initio*.

2.2.5. He further submitted that allegedly, *vide* emails dated 29.12.2023, 08.01.2024 and 18.01.2024, the IA had sought verification of the audio recordings from him, along with some additional queries. However, no such emails have been received by him. It is submitted that Mr. Yogesh Kumar Gupta only got to know about the same after receiving the captioned SCN. On 24.01.2024, the IA submitted its report, which was never shared with Mr. Yogesh Kumar Gupta till the issuance of the SCN.

- 2.2.6. Mr. Yogesh Kumar Gupta submitted that the initiation of the investigation proceedings against the RP and the subsequent issuance of the SCN were utterly illegal, unauthorized, and in blatant violation of the IBBI (Delegation of Powers and Functions) Order, 2017 (DOP). The DOP unambiguously mandates that any action, inspection, or ordering of an investigation must be issued by the Executive Director of the IBBI. However, in the present case, the notice of investigation dated 31.07.2023 has been admittedly signed by Mr. Keshav Kumar Giridhari, Deputy General Manager, rendering it inherently defective and a nullity. Moreover, even the SCN itself has not been approved by the Executive Director, as mandatorily required by the DOP 2017. The Hon'ble Bombay High Court has unequivocally deprecated such practices in *Partha Sarathy Sarkar vs. Insolvency & Bankruptcy Board of India (IBBI) & Ors. (I Civil Writ Petition (L) No. 28206 of 2023)*.
- 2.2.7. Mr. Yogesh Kumar Gupta submitted that the Investigation Report, as annexed with the SCN, was neither furnished to him nor he was given the opportunity to provide any explanation or response in relation to the contents of the same. He submitted that issuance of the SCN, which is linked to the investigation report dated 02.08.2023 is in direct contravention of the fundamental tenets of natural justice. The IA ought to have provided him an opportunity of hearing before submission of the report to the Board. However, no response was sought by the IA from him on the said Investigation Report. This conduct of IA amounts to denying him fundamental right to defence against the Investigation Report. A simple communication seeking information or clarifications with respect to findings in the Investigation Report could have prevented this unwarranted SCN and the unjustifiable suspension of his Authorisation for Assignment (AFA).
- 2.2.8. Mr. Yogesh Kumar Gupta alleged that the observations made in SCN are evidently contradictory to the investigation report. The investigation report states that the recorded conversation "appears" to be in contravention of clause 17 of the Code of Conduct, indicating that the IA itself is not fully convinced about the allegations. However, the SCN makes definitive observations against him. The Investigation Report acknowledges that the complainant has not mentioned the date when the conversation happened, and the bribe allegation does not specifically clarify the purpose for which the bribe was allegedly sought. It was observed that the bribe allegation does not specifically clarify the purpose of bribe as the CIRP was under stay and he was supposed to ensure going concern status of the CD as directed by the court. The conversation refers to some favourable report but does not specify which favourable report they are talking about. He submitted that he was not supposed to file any report except his status report to the application filed under section 19(2) for non-cooperation, if any.
- 2.2.9. Mr. Yogesh Kumar Gupta referred investigation report and pointed out the following observations which are very important on the issues raised in the SCN:

- i) It was observed that the “IA gathered that “CD representative” only mentioned “five” repeatedly and not him.
- ii) It was observed that “*IA also gathered that some settlement was going on between complainant and the applicant.*” This implies that the settlement which is being talked about in the complaint is between the complainant and CD and nothing to do with him.
- iii) It was mentioned that he was heard saying that he would get the amount in any way from the NCLT. This clearly explains that he was referring to the CIRP cost which will be decided by the AA.
- iv) It was mentioned in the investigation report that “*It was also heard that IP had gone for seeking information*”. This shows his motive that he has gone there for seeking information as per his duties.
- v) It is also mentioned that “*NCLAT order also sets aside CIRP order mentioning something about settlement*”. He submitted that settlement was going on between the CD and applicant and not him.
- vi) IA concluded that recording itself may not conclusively substantiate the allegation of bribe on the part of the IP in the absence of the context, place and time of conversation. Then, how come that SCN has concluded the allegation of bribe in the conversation.
- vii) He submitted that he has not received any communication and in the absence of any communication or information, the IA has stated that possibility of demand for bribe can’t be ruled out. IA made this statement because it didn’t get any reply from him and no such reply could be provided as he has not received those alleged mails which has already been pointed out.
- viii) It was observed by IA that any talk of exchange of money between him and CD management prior to the NCLAT order “does not appear to be in the normal course”. As already stated by the IA about the nature of talk and that he has gone there for seeking information as required under the statute, he did not understand as to how it is not in the normal course. There is no talk on exchange of money at all.

Thus, as per his inference, the SCN does not appear to consider these contextual gaps and ambiguities. He further submitted that investigation report notes that Mr. Ankit Goyat filed the bribe complaint on 16.12.2021, only after Mr. Yogesh Kumar Gupta filed a contempt application against the complainant in October 2021, suggesting a potential motive of vengeance. He further submitted that he has gone to the CD’s office in the routine course for information as enshrined in the code with prior notice and information through mail for seeking information only. Hence, it can’t be considered to be a private meeting for a private talk. It was CD’s representative who started talking about the numbers with a malafide intention in order to harass and to avoid the payment of the CIRP cost. He never said any number except that whatever the number he is talking about is CIRP cost which he will get as may be ordered by the NCLAT which imply that IP is talking about the IRP fees and costs only. When the IP said during the conversation that it will increase as the time passes by, it again implies the

increase in the CIRP cost as the IP cost is based on monthly charges. So, his conduct is not in contravention of clause 17 of the code of conduct.

2.2.10. Mr. Yogesh Kumar Gupta further stated that the onus to prove an allegation is on Mr. Ankit Goyat, and there shall be a presumption of innocence in his favour. He further submitted that it is a well-settled position of law that the burden of proof lies on the person who alleges a claim/fact. However, it has been concluded that there is an admission of allegation due to his silence and failure to disclose documents. Regulation 7(1) of the IBBI Grievance Regulations states that *"The Board may seek additional information and records from the complainant and information and records from the concerned service provider to form a prima facie view whether the contravention alleged in the complaint is correct."* However, it is not shown that any additional information and records have been sought from complainant before forming the *prima facie* view. The IA has only asked the complainant to provide the recordings of the conversation. However, they have not asked for any additional information from the complainant. Therefore, the IA cannot blame him when they should have sought the information from the complainant instead. Without being provided with any date, time, venue, or context by the complainant, cognizance of the complaint has been taken. Even after taking cognizance, no clarifications were sought from the complainant.

2.2.11. Mr. Yogesh Kumar Gupta submitted that the cost mentioned in the conversation refers to the CIRP cost only and also mentioned that there was no motive for him to ask for any gratification as he was not in a position to give any favor to the CD since the CIRP was stayed he was just performing his duties as per the order to keep the CD as a going concern. Rather, the opposite party has the clear motive to divert the attention from not paying the CIRP cost as demanded by him through the contempt application.

2.2.12. Mr. Yogesh Kumar Gupta stated that during the CIRP of the CD, while discharging his duties as the IRP, he had incurred various costs, fees, and expenses. Invoices were duly raised for same, including an invoice dated 07.12.2020 for Rs.31,46,500/- toward IRP fee reimbursement of legal charges for the period from 17.09.2019 to 30.11.2020, and another invoice dated 07.12.2020 for Rs.37,166/- towards reimbursement of expenses, totalling to Rs. 31,83,666/- incurred during the CIRP for the period from 17.09.2019 to 30.11.2020. Subsequently, the Hon'ble NCLAT while setting aside the CIRP initiation order, explicitly directed the CD to bear the IRP fees incurred by him. The relevant excerpt from the NCLAT's order dated 12.08.2021 is reproduced below:

"20.For all the aforementioned reasons, the Order of Admission under Section 7 is set aside. The 'Corporate Debtor' is released from all the rigours of law and is allowed to function independently through its Board of Directors with immediate effect. Keeping in view the peculiar facts of the attendant case, the IRP fees is to be borne by the 'Corporate Debtor'."

- 2.2.13. In compliance with the above order and to recover the expenses and fees, he generated invoices dated 14.08.2021 for Rs.17,22,800/- towards IRP fees and reimbursement of legal charges for the period from 01.12.2020 to 12.08.2021, and another invoice dated 14.08.2021 for Rs.61,793/- towards reimbursement of expenses incurred during the CIRP for the same period. These invoices, along with the previous invoices dated 07.12.2020, were sent *vide* email dated 21.08.2021 to the CD, requesting compliance with the NCLAT's order by releasing payment towards the total amount of Rs.49,68,259/-. Despite repeated reminders, the CD had failed to pay heed to any of the communications sent by him. Consequently, Mr. Yogesh Kumar Gupta filed a Contempt Petition bearing Contempt Case No. 30 of 2021 dated 29.09.2021 before the Hon'ble NCLAT against the CD and its directors for non-compliance with the NCLAT's order dated 12.08.2021 by not paying his fees and expenses. Mr. Ankit Goyat filed the complainant on 16.12.2021, which was a direct retaliation and a vengeful attempt to deviate from the matter and refrain Mr. Yogesh Kumar Gupta from recovering his rightful dues. The complainant has deliberately misrepresented and manipulated the communication between him and the CD's representatives much prior in time, with the sole purpose of misleading the authorities and evading liability.
- 2.2.14. Mr. Yogesh Kumar Gupta further submitted that the Hon'ble NCLAT, recognizing the validity of claims of Mr. Yogesh Kumar Gupta, *vide* order dated 12.09.2023 in the Contempt Petition, directed the CD to pay Rs. 25 lacs to Mr. Yogesh Kumar Gupta within 5 months as accepted by the complainant in the court personally, in equal installments of Rs. 5 lacs. The complaint was filed by the complainant approximately 18 months after the last visit of Mr. Yogesh Kumar Gupta to the CD's office and subsequent to the filing of the Contempt Petition against the complainant before the NCLAT. This complaint is nothing but a mere afterthought and an act of retaliation against Mr. Yogesh Kumar Gupta, exhibiting complainant's mala fide intention to raise, unwarranted, out-of-context, and frivolous issues with the sole objective of misleading the Authorities, refraining Mr. Yogesh Kumar Gupta from recovering his lawful dues in accordance with the NCLAT's order dated 12.08.2021.
- 2.2.15. Mr. Yogesh Kumar Gupta further submitted that during the CIRP of the CD, he visited the registered office of the CD in Dwarka on 26.09.2019 for the first formal meeting with the Board of Directors, with the legitimate purpose of receiving the necessary information and documents to perform his duties as IRP. Subsequently, 2-3 more visits were made, but Board of Directors denied any opportunity to meet them. In order to discharge his responsibilities as the IRP while resolving the CIRP of the CD, Mr. Yogesh Kumar Gupta diligently sent numerous emails to Mr Ankit Goyat, requesting for providing the information and details pertaining to the CD, including emails dated 26.09.2019, 03.10.2019, 07.10.2019, 09.10.2019, 14.10.2019 and 04.11.2019. Furthermore, Mr. Yogesh Kumar Gupta either himself or through his representative also visited the office of the CD multiple times to collect the required information. However, the CD denied Mr. Yogesh Kumar Gupta any opportunity to meet the directors, despite being provided advance intimation. Every time he visited the office, he was

only allowed to meet one of the representatives, Mr. Saurabh Arora, while being deliberately denied access to the directors.

2.2.16. Mr. Yogesh Kumar Gupta submitted that he did not need to file any report pertaining to the directors of the CD with any authority whatsoever. Therefore, the idea of soliciting a bribe by him for such an imaginary and hypothetical report is not only implausible but also misrepresentation of facts. He further submitted that concerning the conversation between him and the representative of the CD regarding the alleged demand for money in exchange for a favorable report, the complainant has deliberately misrepresented the conversation and its context. He submitted that as the IRP of the CD, he had conversations with the representative of the CD in different meetings, but in every single meeting, his conversation revolved around repeatedly demanding that the representative provide the information pertaining to the CD, as had been incessantly requested.

2.3. Analysis and Findings.

2.3.1. Regarding question of technical infirmity due to delay in filing complaint, the DC observes that provision as contained in section 218(1) of the Code as quoted below is unambiguously clear:

“Where the Board, on receipt of a complaint under section 217 or has reasonable grounds to believe that any insolvency professional agency or insolvency professional or an information utility has contravened any of the provisions of the Code or the rules or regulations made or directions issued by the Board thereunder, it may, at any time by an order in writing, direct any person or persons to act as an investigating authority to conduct an inspection or investigation of the insolvency professional agency or insolvency professional or an information utility.”

Thus, the order of the investigation was as per the provision of the Code.

2.3.2. The DC notes that the investigation was ordered by the Executive Director and only the decision of the Executive Director was communicated by the IA. Further, the SCN was also approved by Executive Director and on approval of the SCN, Deputy General Manager issued the SCN. Thus, the DC does not find any violation of the DOP either.

2.3.3. Mr. Yogesh Kumar Gupta denied receipt of email from the IA regarding second investigation notice and reminder email dated 29.12.2023, 08.01.2024 and 18.01.2024. Upon perusal of emails, it is observed that no email bounced back or shown as undelivered. The emails were sent to email id of Mr. Yogesh Kumar Gupta registered with the Board as ykgupta64@yahoo.co.in. Further Mr. Yogesh Kumar Gupta has received few emails sent by the Board and denied receipt of others. The emails are listed below:

Sr	Date	Subject	Received as per Mr. Yogesh Kumar Gupta
1.	31.07.2023	Notice of investigation for complaint received from CBI	Yes
2.	17.10.2023	Second investigation notice	No
3.	29.12.2023	Additional information required by IA	No
4.	08.01.2024	Reminder Additional information required by IA	No
5.	18.01.2024	Last opportunity for providing additional information required by IA	No
6.	01.03.2024	Show Cause Notice	Yes
7.	22.05.2024	Opportunity for Personal hearing on 28.05.2024.	Yes
8.	13.06.2024	Reminder to provide reply to SCN	Yes
9.	11.07.2024	Opportunity for Personal hearing on 18.07.2024.	Yes
10.	31.07.2024	Opportunity for Personal hearing on 07.08.2024.	Yes

2.3.4. The above table indicates that Mr. Yogesh Kumar Gupta has denied the receipt of many emails of the Board. IT platforms provide a fool proof technological solutions for seamless transmission of all the communications on instant basis. There is no reasonable explanation why should computer display selective mails until unless command function imposes some reasonable restrictions on the emails being sent at the same registered email address.

2.3.5. Regarding the allegation against Mr. Yogesh Kumar Gupta of demanding illegal gratification from the directors of the CD based on a conversation between him and Mr. Sourabh Arora, who is representative of director of the CD, the DC observed that Mr. Yogesh Kumar Gupta did not deny the occurrence of conversation. However, he has testified that in that conversation, no demand for any kind of bribe has been made. The reading of transcript too does not allude to any transaction which can termed as bribe. The DC has also perused the recording tapes of the conversations and despite having doubt on its forensic veracity for the conversation, at any point, it does not appear that any bribe has been demanded by Mr. Yogesh Kumar Gupta for extending any undue favour.

2.3.6. Neither, complainant nor IA report had provided any additional information which can establish beyond doubt that bribe has been demanded or any other mala-fide intentions. Therefore, the benefit of doubt, on this count rests in favour of the resolution professional.

2.3.7. Furthermore, Mr. Yogesh Kumar Gupta filed Contempt Case (AT) No. 30 of 2021 in CA (AT) (Ins) No. 1020 of 2019 before the Hon'ble NCLAT for non-payment of his invoices as directed vide order dated 12.08.2021. The reply filed by directors of the CD mentioned and reproduced the conversation between Mr. Yogesh Kumar Gupta and Mr. Saurabh. The Hon'ble NCLAT in its order dated 12.09.2023 without making any reference to the charges of bribe as filed by the complainant disposed of the Contempt Case with following directions:

“2. Shorn of unnecessary details, the parties are ad-idem that the present contempt petition may be disposed of as having been rendered infructuous on payment of Rs. 25 Lakh by the Respondent to the Appellant in five monthly instalments of Rs. 5 Lakh each.

3. The Petitioner is present in court and has accepted the offer made by the Respondent. Let the first instalment of Rs. 5 Lakh be paid by 05th October, 2023 and the rest of the instalments shall be paid on 5th of every month till Rs. 25 Lakh is paid in full.

4. The present petition is, therefore, disposed of and rule is discharged.”

2.3.8. The DC finds that filing of complaint on similar charges which were otherwise submitted for adjudication by the Hon'ble NCLAT are not tenable at this stage as in the presence of Mr. Ankit Goyat himself, above mentioned pronouncements were made and if he was not satisfied with the judgement, he could have pursued higher judicial forum.

2.4. Contravention-II

Non-cooperation with the IA in conduct of investigation.

2.4.1. In terms of section 218(3) of the Code, Mr. Yogesh Kumar Gupta was bound to furnish document, record and information to the IA. Regulation 8(2) of the Investigation Regulations provides that the IA may require the IP to submit records as may be required. Regulation 8(8) of the Investigation Regulations requires the IP to provide the IA all assistance which the IA may reasonably require. Further, clause 18 of the Code of Conduct also require that the IP must co-operate and be available for investigation carried out by the Board.

2.4.2. *Vide* email dated 29.12.2023 and 08.01.2024, the audio recording of the aforesaid purported conversation between Mr. Yogesh Kumar Gupta and Mr. Saurabh Arora was shared with Mr. Yogesh Kumar Gupta requesting him to verify the same. Mr. Yogesh Kumar Gupta was further asked to provide a copy of the contempt application filed by him against the non-compliance of the directions issued by AA *vide* order dated 12.08.2021 and clarify on the context of the said conversation. However, despite subsequent reminders sent *vide* e-mails dated 08.01.2024

and 18.01.2024 seeking reply from Mr. Yogesh Kumar Gupta, he has failed to provide any response to the said queries sent to him.

2.4.3. In view of the foregoing, it is evident that Mr. Yogesh Kumar Gupta did not provide the required co-operation to IA in submission of relevant records and providing clarification for investigation. Therefore, the Board held the *prima facie* view that Mr. Yogesh Kumar Gupta has contravened the provisions of section 218(3) of the Code, regulation 8(2), 8(4) and 8(8) of Investigation Regulations and section 208(2)(e) of the Code read with regulation 7(2)(h) of the IP Regulations and clauses 18 and 19 of the Code of Conduct.

2.5. Submissions by Mr. Yogesh Kumar Gupta.

2.5.1. Mr. Yogesh Kumar Gupta denied receiving email dated 29.12.2023, 08.01.2024, and 18.01.2024 sent by the IA. On receipt of the SCN, he filed an RTI to identify the truthfulness of the delivery of the alleged mails but only got a very evasive and vague reply. Even the appeal filed against the said RTI reply got almost the same response. He submitted that he only received a notice of investigation on 31.07.2023, which was duly replied to by him on 08.09.2023. Thereafter, he has not received any communication from the Board or IA with respect to this matter until this present SCN. He submitted that the additional information / documents sought by the IA in the above-mentioned emails have been duly answered in this reply and in the contempt application provided in reply to the SCN.

2.6. Analysis and Findings

2.6.1. The issue with regards to non-receipt of email(s) by Mr Yogesh Kumar Gupta has already been dealt with by the DC above. The plea of non-receiving certain emails is not acceptable. Mr. Yogesh Kumar Gupta has provided the copy of contempt petition filed by him before the Hon'ble NCLAT, its reply and rejoinder thereafter along with his reply to the SCN. However, such documents could have been provided earlier to the IA. Hence the contravention of non-cooperation with the IA is established.

3. Order

3.1. In view of the forgoing discussion, SCN, reply to the SCN, oral and written submission made by Mr. Yogesh Kumar Gupta, the DC finds that there is no sufficient evidence to substantiate the charge of bribery. Hence this contravention does not hold. However, on count of non-cooperation with IA, Mr. Yogesh Kumar Gupta is in contravention of the provisions of Code and regulation framed thereunder.

3.2. The DC in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby warns Mr. Yogesh

Kumar Gupta to be careful and prompt in sending its responses to the Board in his all the future assignments.

- 3.3. This Order shall come into force immediately, in view of the paragraph 3.2 above.
- 3.4. A copy of this order shall be sent to the CoC/Stakeholders Consultation Committee (SCC) of all the corporate debtors in which Mr. Yogesh Kumar Gupta is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Yogesh Kumar Gupta.
- 3.5. A copy of this order shall be forwarded to the Institute of Cost Accountants of India Institute of Insolvency Professionals where Mr. Yogesh Kumar Gupta is enrolled as a member.
- 3.6. A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.
- 3.7. Accordingly, the show cause notice is disposed of.

-sd/-

(Sudhaker Shukla)
Whole-Time Member, IBBI

Dated: 30th August 2024
Place: New Delhi