

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/162/2023

4th May 2023

ORDER

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

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/142/2022-IBBI/717/311 dated 1.03.2023, issued to Mr. Suresh Chandra Jena, House No. 501, Ruby Isle, Royal Palms, Aarey Milk Colony, Goregaon East, Mumbai Suburban, Maharashtra-400065 (hereinafter referred as "IP") who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P-01540/2019-2020/12473.

1. Background

- 1.1 The National Company Law Tribunal, Mumbai, (AA) had admitted the application under Section 9 of the Code for corporate insolvency resolution process (CIRP) of M/s Gopinath Engineering Company Private Limited (CD) vide Order dated 10.08.2021 and appointed Mr. Suresh Chandra Jena as Interim Resolution Professional (IRP).
- 1.2 The IBBI, in exercise of its powers under section 218 of the Code read with regulations 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017, appointed an Investigating Authority (IA) to conduct investigation in the matter of the CD. The IA served a notice of investigation to Mr. Suresh Chandra Jena on 13.06.2022. Pursuant to the said notice, Mr. Suresh Chandra Jena replied vide emails and the IA submitted the Investigation Report to the IBBI on 08.07.2022.
- 1.3 The IBBI issued the SCN to Mr. Suresh Chandra Jena on 01.03.2023 based on findings in the Investigation Report in respect of his role as IRP/RP. Mr. Suresh Chandra Jena submitted his reply to the SCN on 14.03.2023.
- 1.4 The IBBI referred the SCN, response of Mr. Suresh Chandra Jena 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. Suresh Chandra Jena availed the opportunity of personal hearing through virtual mode before the DC on 27.04.2023.

2. Alleged Contraventions, Submissions of IP and Findings

The contraventions alleged in the SCN and submissions by Mr. Suresh Chandra Jena are

summarized as under:

3. Contravention

- 3.1 AA, in its order dated 21.04.2022, had made an adverse observation against Mr. Suresh Chandra Jena for not appearing before the AA despite specific direction given to him by the AA during hearing dated 25.03.2022. It is noted that in his reply to the IA, Mr. Suresh Chandra Jena has stated that that in the hearing held on 25.03.2022, the matter could not be heard due to paucity of time and the AA had asked the registry to provide next date of hearing which was to be communicated electronically. It is further noted that Mr. Suresh Chandra Jena could not attend the hearing listed on 21.04.2022, as neither he, nor his counsel received any communication from the registry with respect to the next hearing date in the matter. However, it is noted that order passed by AA on 25.03.2022, is available on NCLT website i.e., is in public domain and the said order contained the next date of hearing in the matter. Thus, it is noted that that casual and lax conduct had been shown on the part of Mr. Suresh Chandra Jena in complying with AA's direction.
- 3.2 Accordingly, the Board held the *prima facie* opinion that the Mr. Suresh Chandra Jena had *inter alia* violated Sections 25(2)(b), 208(2)(a) and (e) of the Code, Regulations 7(2)(a) and (h) of the IP Regulations read with clause 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Submission by Mr. Suresh Chandra Jena

- 3.3 Mr. Suresh Chandra Jena has submitted that on an application filed by Totale Global Private Limited (Operational Creditor), CIRP was initiated against the CD *vide* order dated 10.08.2021, and he was appointed as IRP from the list of empanelled IP as the OC had not recommended any name in it's petition. He submitted that he had been collating the claim and intimating claimants about the CIRP status and their claim. It was further submitted by him that while discussing with the DCB Bank, he came to know about a Bank account which was being operated by the CD with Bank of Maharashtra and on receiving the said information, he took necessary steps to take control of the account by intimating Bank of Maharashtra Branch to stop debit without his instructions.
- 3.4 Mr. Suresh Chandra Jena further submitted that on following up with Bank of Maharashtra Branch, it came to his notice that the previous signatory had still being using the account which belonged to CD. He submitted that he was forced to escalate the matter to higher authorities of Bank of Maharashtra and later he had received confirmation from the Bank of Maharashtra that his instructions were abided. However, by the time his instructions were abided, the erstwhile signatory had issued the payments from the said bank account of the CD to the tune of more than Rs.60 crores (after 10.08.2021) and out of the total withdrawals, a part was used to pay the settlement amount to the OC. He submitted that he tried to bring it to the notice not only in his reply to the appeal which was filed with Hon'ble National Company Law Appellant Tribunal in Company Appeal (AT) (Ins) 697/ND/2021 but also by filing an application bearing IA 2479 of 2021 before the National Company Law Tribunal. He submitted that in the said reply and the Application before both the forums, the said issue was well elaborated by him and he requested

for necessary directions.

- 3.5 He submitted that the matter was listed on various occasions, about 15 times at NCLT, and out of those 15 times, he could not remain present only once due to non-receipt of intimation. He submitted that after court hearings shifted from physical to virtual mode during Covid pandemic, he had been getting electronic notifications in all matters including this CD, however, he could not attend the hearing on 21.04.2021, as he did not receive any notification from the registry. He submitted that from the previous order dated 25.03.2022, it could be seen that due to paucity of time the matter could not be heard, and from the Order Sheet of 25.03.2022, which is now available, the matter was next listed on 21.04.2022, however, during that period, that is from 25th March 2022 to 21st April 2022, the said order was not uploaded on the NCLT Website. He further submitted that on 25.03.2022, when he was present virtually in NCLT, it was announced by the Court Officer that, in all remaining matters, next date would be informed electronically, which was not done in this case.
- 3.6 He submitted that after being present in 14 hearings out of total 15 hearings, he had no reason not to attend the hearing on 21.04.2022. He submitted that since he had already filed withdrawal application under Section 12A of the Code on 26.03.2022, he had no reason not to attend the hearing on 21.04.2022 and to escape away from his responsibilities. He relied on an Order to substantiate his claim, that is, an order in the matter of "*Sandesh P Samjiskar and Mrs. Sandhya Ramesh Samjiskar Vs Nirmal Lifestyle (Kalyan) Private Limited*", pronounced on 15.03.2022, where the said Order was received by the IRP at least two months after where the IRP in the captioned matter had issued Form A on 16.06.2022 as there were delays in uploading orders/judgments on NCLT website. Thus, he submitted that order sheet of 25.03.2022 was not uploaded on or before 21.04.2022.
- 3.7 He further submitted that Interlocutory Application 1836/2021 was filed by the erstwhile promoter of the CD which was on board for recall/ withdraw the CIRP order of the main petition and the IRP was not made a party. Hence, he was not informed, as he was not a party for withdrawal in the said Interlocutory Application. He submitted that he has complied with law and Code and performed duties in accordance with the spirit and provisions of Code and Regulations despite not receiving any document/records/even a piece of paper from suspended directors, non-payment of CIRP cost by OC. He further submitted that he only received incomplete Form FA, and that too, after several emails and telephone calls.

Analysis and Findings

- 3.8 The DC notes that AA vide its order dated 21.04.2022 has made the following observations: *"None appeared for the Interim Resolution Professional despite specific direction given to the IRP to remain present before this Bench with a further direction to file appropriate application under Section 12A as per the directions of the Hon'ble NCLAT vide order dated 08.03.2022 directing the IRP to file appropriate Application before the adjudicating authority within 2 weeks without fail. Despite repeated directions by this Bench as well as Hon'ble NCLAT, the Resolution Professional, Mr. Suresh Chandra Jena having IBBI Registration No IBBI/IPA-001/IP-P01540/2019-2020/12473 is not bothered to respect the orders of both NCLT and Hon'ble*

NCLAT. Since the matter has been settled between the parties and payment has been made by the Corporate Debtor, this Bench feels that this is a fit case for reporting to IBBI against the conduct of the IRP, Mr. Suresh Chandra Jena.”

3.9 The DC further notes that the submission of Mr. Suresh Chandra Jena that he could not appear due to non-receipt of intimation from the NCLT about the date of hearing. It may be noted that the Code casts duty on the IP to carefully plan his actions and not be negligent while performing his functions and duties under the Code. It is the professional's responsibility and duty to actively and consciously perform his functions, and there should be no lapses while discharging his functions. Therefore, Mr. Suresh Chandra Jena should have undertaken utmost caution and diligence in complying with the order of the AA including appearing before the AA. In the issue in hand, the DC finds that Mr. Suresh Chandra Jena has failed to appear before the AA despite specific direction given to him by the AA during hearing dated 25.03.2022. Hence, the DC holds this contravention.

4. ORDER

4.1 In view of the forgoing discussion, the DC finds that Mr. Suresh Chandra Jena had failed to comply with the directions of AA and accordingly, contravened the sections 25(2)(b), 208(2)(a) and (e) of the Code, regulations 7(2)(a) and (h) of the IP Regulations read with clause 14 of the Code of Conduct. 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 imposes a penalty of Rs.50,000/- on Mr. Suresh Chandra Jena and directs him to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of “penalty imposed by IBBI” on <https://bharatkosh.gov.in> within 45 days from the date of issue of this order and submit a copy of the transaction receipt to the Insolvency and Bankruptcy Board of India

4.2 This Order shall come into force on expiry of 30 days from the date of its issue.

4.3 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Suresh Chandra Jena is enrolled as a member.

4.4 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.

4.5 Accordingly, the show cause notice is disposed of.

Sd/-
(Ravi Mital)
Chairperson, IBBI

Dated: 4th May, 2023
Place: New Delhi