

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/161/2023

4th May, 2023

Order

In the matter of Mr. Arun Gupta, Insolvency Professional (IP) under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No. COMP-11016/3/2023-IBBI/18/727/364 dated 22.03.2023 issued to Mr. Arun Gupta, R/o S-34, LGF, Greater Kailash-II, New Delhi- 110048 who is a Professional Member of the ICSI Institute of Insolvency Professionals (ICSI-IIP) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00051/2016-2017/10095.

1. Background

- 1.1. The Hon'ble NCLT, Allahabad Bench (AA) *vide* order dated 23.03.2018 commenced the liquidation process of the LML Limited (CD) and appointed Mr. Arun Gupta as the liquidator *vide* order dated 09.04.2018.
- 1.2. The IBBI, in exercise of its powers under section 218 of the Code read with regulation 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations) appointed an Investigating Authority (IA) to conduct the investigation of Mr. Arun Gupta. In compliance with regulation 8(1) of Investigation Regulations, IA served notice to Mr. Arun Gupta on 28.12.2022. Mr. Arun Gupta replied on 20.01.2023 and 25.01.2023. Thereafter, IA submitted the Investigation Report (IR) on 27.01.2023 in accordance with regulation 10(1) of the Investigation Regulations.
- 1.3. The IBBI issued the SCN to Mr. Arun Gupta on 22.03.2023, based on the findings in the investigation report in respect of his role as liquidator of CD and material available on record. Mr. Arun Gupta submitted his reply to SCN *vide* email dated 10.04.2023.
- 1.4. The IBBI referred the SCN, response of Mr. Arun 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. Arun Gupta availed opportunity of personal hearing through virtual mode before the DC on 28.04.2023 where he was represented by Mr. G P Madaan, Advocate. Mr. Arun Gupta further gave his written submissions on 01.05.2023.

1.5. The DC has considered the SCN, the reply to SCN, submissions of Mr. Arun Gupta, other material available on record and proceeds to dispose of the SCN.

2. Alleged Contraventions, Submissions, Analysis and Findings

The contravention alleged in the SCN and Mr. Arun Gupta's written and oral submissions thereof are summarized as under:

3. Contravention-I

- 3.1 The Board had observed that in the conduct of the liquidation process, Mr. Arun Gupta had appointed a professional named M/s. Kaushal Shankar & Company (Chartered Accountant) for a remuneration of Rs. 5,40,000/- for support in distribution of proceeds. However, a primary duty is cast upon liquidator under Code to ensure the distribution of proceeds to the stakeholders and to outsource the same to other professional is abdicating his accountability and responsibilities as liquidator. Further, as per the liquidation fees computation sheet submitted by Mr. Arun Gupta, it was observed that he had drawn fee as percentage of the amount distributed according to regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Regulations) even when he had outsourced the distribution of proceeds to a third-party professional and separately charged their remuneration to liquidation costs.
- 3.2 In view of the above, the Board held the *prima facie* view that Mr. Arun Gupta has contravened provisions of sections 35(1)(o), 208 (2)(a) & (e) of the Code, regulation 42(2) of the Liquidation Regulations, regulation 7(2)(a), (h) and (i) of the IP Regulations read with clauses 2, 14 and 27 of the Code of Conduct and IBBI Circular no. IP/003/2018 dated 03.01.2018.

Submissions by Mr. Arun Gupta

- 3.3 Mr. Arun Gupta submitted that the duty of the Liquidator as embedded in the Code and allied Regulations is distribution of the proceeds to the stakeholders. Section 35(1)(i) of the Code read with Regulation 7(1) of Liquidation Regulations, duly empowered him to appoint M/s Kaushal Shankar & Company, as a professional, in discharge of his duty of distribution of the proceeds to the stakeholders. The scope of the work of the said professional clarifies that the said appointment was done for the purposes of providing support services in discharge of the aforesaid duty and clearly reflects no core functions and responsibilities of the liquidator were delegated/outsourced to the M/s Kaushal Shankar & Company.
- 3.4 Mr. Arun Gupta further submitted that such professional was appointed for assisting the liquidator in fulfilment of its duties as per the Code without shifting the responsibilities of liquidator. He submitted that he did not outsource the distribution of proceeds, all distribution

is being done by him. All the correspondences / emails etc. made to banks were done by liquidator himself and not by such professional, which also proves that M/s Kaushal Shankar & Company had no power to take any decisions on behalf of the Liquidator and the entire decision making was vested only with the Liquidator. M/s Kaushal Shankar & Company is a Chartered Accountant Firm run by Mr. Kaushal Shankar who has an experience of over 8 years and had deployed a team also who worked for a period up to 2-3 months in assisting the Liquidator in compiling the requisite information about stakeholders for distribution of claims and hence, the remuneration of Rs. 5,00,000/- exclusive of taxes for support in distribution of proceeds to approx. 3000 workmen/employee was fair and justified keeping in mind the market standards, the experience and time and efforts spent by M/s Kaushal Shankar & Company on the said task.

Analysis and Findings

3.5 In light of section 35(i) of the Code read with regulation 7(1) of the Liquidation Regulations, and submissions made by Mr. Arun Gupta, the DC accepts the submissions of Mr. Arun Gupta.

4. Contravention-II

4.1 The Board observed from appointment letter dated 30.04.2018 that Mr. Arun Gupta had appointed Anil Bhatia of C/o Anil Bhatia & Co. for a total remuneration of Rs. 10,00,000/- for a period from 12.04.2018 to 15.07.2018. Similarly, he had *vide* appointment letter dated 01.05.2018 appointed Math & Associates for a fees of Rs. 2,25,000 (excluding out of pocket expenses) from 01.05.2018 to 15.07.2018. The scope of work of both the entity contains *inter alia* providing assistance in verification of claims to stakeholders, updation of books of accounts, assists in physical verification of assets. Accordingly, it is noted that the professionals appointed by him has overlapping scope of work which led to cost increase in the conduct of the Liquidation Process.

4.2 In view of the above, the Board held the *prima facie* view that Mr. Arun Gupta has contravened provisions of sections 35(1)(d) and (e), 208 (2) (a) and (e) of the Code, regulation 7(1) of the Liquidation Regulations, regulation 7(2)(a) & (h) of the IP Regulations read with clauses 14 and 27 of the Code of Conduct of the said IP Regulations.

Submissions by Mr. Arun Gupta

4.3 Mr. Arun Gupta submitted that the services of Anil Bhatia & Co. Chartered Accountants (Experience of about 18 years) and Math & Associates, Chartered Accountants (Experience of about 5 years) were engaged *vide* appointment letter dated 30.04.2018 and 01.05.2018, respectively. The services of Anil Bhatia & Co were engaged for the period of 12.04.2018 to

15.07.2018 and Math and Associates from 01.05.2018 to 15.07.2018. The scope of work of both the professionals as defined in appointment letters was absolutely different. These professionals were engaged in the preliminary stage of liquidation to carry out the liquidation process in the most efficient and effective way. Large number of claims i.e., 2353 were received within a period of 30 days from commencement of liquidation. The total number of claims 6674 processed and admitted by liquidator within defined timelines in compliance of provisions of the Code. As per Regulation 19(4) of Liquidation Process Regulations: *"19(4) The liquidator may admit the claims of a workman or an employee on the basis of the books of account of the corporate debtor if such workman or employee has not made a claim."*. Hence, the Liquidator decided to admit the claims of the employees/workmen who had not filed their claims based upon the books and records of the Corporate Debtor.

- 4.4 Mr. Arun Gupta further submitted that the liquidator was not Resolution Professional of the CD, so he had no prior handy information about it. The liquidator has carefully defined the period of appointment of such professionals till 15.07.2018, assuming that all such initial report as mentioned above where data relating to financials/ liquidation estate/ claims/details of stakeholders etc shall be completed. Both the aforesaid professional firms were appointed only for assisting the liquidator and had collectively deployed a team of about 10-12 people to support the Liquidator in verification of claims to stakeholders, updation of books of accounts, preparation of balance sheet and profit and loss account, taxation, physical verification of assets, coordination with statutory authorities etc. and for aiding the Liquidator in ensuring the objective of liquidation is met successfully and in a timely manner. Due to multiple challenges, the liquidator had to take various decisions many times in assigning work to them to handle the situations diplomatically to avoid any unwanted incident and for smooth and fast execution of liquidation. Mr. Arun Gupta submitted that only assistance was taken from such professionals, no responsibility or accountability was shifted to such professionals as evident from appointment letters dated 30.04.2018 and 01.05.2018, wherein it has clearly prescribed the role and responsibility of professionals appointed.

Analysis and Findings

- 4.5 Section 208(2)(a) of the Code mandates the IP to take reasonable care and diligence while performing his duties, including incurring expenses. He must, therefore, ensure that not only fee payable to him is reasonable, but also other expenses incurred by him are reasonable. The DC notes that during the personal hearing held on 28.04.2023, Mr. Arun Gupta had admitted that there was a technical error in charting the scope of work for appointment of professionals. But there was no overlapping of works executed by such professionals, both the professionals were engaged in the preliminary stage of liquidation and were reporting to liquidator and doing the jobs as assigned by liquidator to them from time to time as per need within the defined scope of services. Considering the fact and circumstances of this case, and submissions made by Mr.

Arun Gupta, the DC accepts the submissions of Mr. Arun Gupta and directs him to be more diligent in performing his duties under the Code.

5. Order

- 5.1 In view of the foregoing discussion, 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 disposes of the SCN with a caution to Mr. Arun Gupta to be careful, diligent and ensure full compliance with the provisions of the Code and Regulations made thereunder in his assignments.
- 5.2 This Order shall come into force with an immediate effect.
- 5.3 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Arun Gupta is enrolled as a member.
- 5.4 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.
- 5.5 Accordingly, the show cause notice is disposed of.

Sd/-
(Ravi Mital)
Chairperson, IBBI

Dated: 4th May, 2023
Place: New Delhi