

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/130/2022

23rd September, 2022

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2021/74/3678/553 dated 17th June, 2022 issued to Mr. Manish Kumar Gupta, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) and regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 (IP Regulations). Mr. Manish Kumar Gupta is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-001/IP-P00225/2017-18/10424.

1. Developments in relation to resolution of the CD

1.1. The Hon'ble NCLT, Principal Bench, New Delhi (AA) vide order dated 28.08.2019 admitted the application under section 7 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of Three C Projects Private Limited (CD). The AA had appointed Mr. Manish Kumar Gupta as an Interim Resolution Professional (IRP) and he was confirmed as the Resolution Professional (RP) by the Committee of Creditors (CoC) constituted in the first CoC meeting held on 16.10.2019. Mr. Manish Kumar Gupta has since resigned as RP of CD Three C Projects Pvt. Ltd. and Mr. Ajit Kumar has been appointed as RP.

2. Issuance of Show Cause Notice (SCN) and hearing before DC

2.1. The Board, in exercise of the powers conferred to it under section 218 of the Code read with the Inspection Regulations, appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Manish Kumar Gupta vide order dated 27.04.2021. A draft inspection report (DIR), prepared by the IA, was shared with Mr. Manish Kumar Gupta on 15.12.2021 and to which Mr. Gupta submitted reply vide email dated 01.03.2022. The IA submitted the Inspection Report to Board on 28.03.2022.

2.2. Based on the material available on record including the Inspection Report, the Board issued the SCN to Mr. Manish Kumar Gupta on 17.06.2022. The SCN alleged contravention of section 3(6), 18(1), 19(1), 20, 24(8), 25(1), 25(2), 25(2)(a) and 27 of the Code, regulations 4(4) and 4(7) of the Inspection Regulations, regulations 13(1), 14, 16A(7), 18, 24(7), 35(1)(b), 35A (3), 36A, 36B(1) and 39 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulations 7(2)(a) and (h) of IP Regulations, clauses 1, 2, 3, 5, 9, 10, 12, 13,14, 18, and 25 of Code of Conduct of IP Regulations along with Board Circular No. IBBI/IP/013/2018 dated 12th June 2018, IBBI Circular No. IP/003/2018 dated 3rd January 2018, IBBI Circular No. IBBI/CIRP/021

dated 16th April 2021. Mr. Manish Kumar Gupta submitted his reply to SCN vide e-mail dated 22.08.2022.

2.3. The Board referred the SCN, written and oral submissions of Mr. Manish Kumar Gupta, 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 personal hearing before DC on 05.09.2022 through virtual mode.

3. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Mr. Manish Kumar Gupta's submissions thereof are summarized below:

3.1. Contravention

Non-cooperation with Inspecting Authority:

- 3.1.1 As per Regulation 4(4) of the Inspection Regulations, it shall be the duty of the service provider to produce before the IA such records in his custody or control and furnish to the IA such statements and information relating to its activities within such time as the IA may require. As per Regulation 4(7) of Inspection Regulation, it shall be the duty of the service provider to give to the IA all assistance which the IA may reasonably require in connection with the inspection.
- 3.1.2 It is observed that Mr. Gupta has not cooperated with the IA all throughout the inspection. The following specific instances of non-cooperation substantiate these observations:
- (a) Mr. Gupta did not acknowledge receipt of Inspection Notice sent to him by IA vide e-mail dated 27.04.2021 despite being asked to do so by the IA.
 - (b) Mr. Gupta was requested by IP vide Inspection Notice dated 27.04.2021 to provide all documents and records pertaining to CIRP of CD by 12.05.2022. He sought multiple extensions for submitting the requisite documents and records, which the IA allowed. However, Mr. Gupta provided only some documents to IA vide e-mail dated 21.06.2021 and access to even those documents was restricted. It was only after multiple e-mails from IA (emails dated 24.06.2021, 25.06.2021 and 28.06.2021 that the required documents and records were provided to IA on 28.06.2021.
- 3.1.3 IA vide e-mail dated 22.10.2021 requested for certain additional documents, Mr. Gupta forwarded individual e-mails sent to IP Monitoring Division without due care whether or not information is complete in all respect and all enclosures/ attachments are in order or not.
- 3.1.4 The IA shared its Draft Inspection Report (DIR) with Mr. Gupta vide email dated 15.12.2021 and sought his comments within 15 days (i.e., 31.12.2021) in accordance with the 6(1) of Inspection Regulations. Mr. Gupta sought multiple extensions for submitting his comments on DIR, which IA allowed but still failed to submit requisite comments on

one or another pretext. Lastly, Mr. Gupta was allowed by IA to submit reply by 15.02.2022, but he submitted his comments only 01.03.2022.

3.1.5 It is, thus, evident that Mr. Gupta has failed to submit the records/documents within the time prescribed by the IA and further has not extended sufficient and appropriate co-operation to the IA as may be required to carry out the inspection, which is his duty under Regulation 4(4) of the Inspection regulations.

3.1.6 In view of the above, the Board is of the *prima facie* view that Mr. Gupta has *inter alia* violated Regulation 4(4) and 4(7) of Inspection Regulations read with Clause 18 and 19 of the Code of Conduct.

3.2. Submissions made by the IP

3.2.1 Mr. Manish Kumar Gupta submitted that he has provided all the documents, data and details as and when required by the IA within the stipulated time. Moreover, even in cases, where he failed to provide the documents within the stipulated time due to certain unforeseeable circumstances or because he was collating information from the suspended management, then also Mr. Gupta has duly notified the same to the IA and sought extension for providing the documents. In addition, Mr. Gupta submitted that he has always attended each and every telephonic call and replied to each and every email of IA within the permissible / extended time.

3.2.2 Mr. Gupta also submits that the reasons for seeking extension were neither deliberate nor intentional but rather it was due to the unforeseen circumstances which were beyond the control such as deaths of close relatives. It is to be noted that the declared lockdown had resulted in restricted movement. Therefore, the documents and records which were kept in the office of Mr. Gupta couldn't be shared with the IA as per the timeline provided by the IA. Also Mr. Gupta submits that he had also suffered from the symptoms of Covid-19 and was under treatment for a period of twenty-one (21) days.

3.3. Findings

3.3.1 The regulation 4 of the Inspection Regulations makes it the *duty of the service provider to produce before the Inspecting Authority such records in his custody or control*. In the present matter it is observed that the IA had issued the inspection notice dated 27.04.2021 for the assignment of Three C Projects Private Limited. However, on the request of RP the IA had granted multiple extensions vide e-mail dated 21.05.2021, 23.05.2021 and 05.06.2021 and the final extension granted time till 20.06.2021 due to Covid-19 exigencies. Thereafter, Mr. Gupta submitted documents vide e-mail dated 21.06.2021 but with restricted access. The IA sought access by again sending continuous e-mails dated 24.06.2021, 25.06.2021 and 28.06.2021. The RP then provided access vide e-mail dated 28.06.2021. The IA had to again send e-mail dated 22.10.2021 requesting for certain additional documents and missing attachments. It is also observed that the IA had shared the DIR on 15.12.2021 and as per the regulations the RP is required to provide reply within 15 days but Mr. Gupta submitted the same on 01.03.2022.

3.3.2 In view of the aforesaid facts the DC observes that Mr. Gupta had repeatedly sought extensions for submission of documents and for reply to DIR and despite being allowed extensions he was unable to adhere to the timelines. Unexplained delays should have been avoided as it has repercussions for timely disposal of complaints.

4.1 Contravention

Delay in Circulation of minutes of CoC meetings

- 4.1.1 As per Section 24(8) of the Code, the meetings of the CoC shall be conducted in such manner as may be specified. Further, regulation 24 (7) of CIRP Regulations requires the RP to circulate the minutes of the meeting to all participants by electronic means within forty-eight hours of the said meeting.
- 4.1.2 The 5th CoC meeting held on 15.02.2020 and the minutes were circulated on dated 18.02.2020. The 6th CoC meeting held on 12.03.2020 and the minutes of the said meeting were circulated on 16.03.2020. Further, the 7th CoC meeting of the was held on 13.07.2020 and the minutes of the said meeting were circulated on 21.07.2020.
- 4.1.3 It is thus noted that while the law stipulates sharing of minutes within 48 hours of the meeting, Mr. Gupta failed to circulate the same within the prescribed timelines. In view of the above, the Board is of the *prima facie* violated view that Mr. Gupta has *inter alia* violated section 24(8) of the Code read with regulation 24(7) of the CIRP Regulations, clause 1, 2, 13 and 14 of the Code of Conduct.

4.2 Submissions made by the IP

- 4.2.1 Mr. Manish Kumar Gupta submitted that the 5th CoC meeting was held on 15.02.2020 (Saturday) which commenced at 5:00 PM and concluded at 8:30 PM. The next day being Sunday was a public holiday and therefore, cannot be counted to calculate the time. As a result, the minutes of the meeting was prepared on Monday and was circulated to the Authorized Representatives (AR) of the Creditors to avoid any error and ambiguity. Subsequently, after receiving the comments from the AR and incorporating the same, the minutes were signed on 18.02.2020. Therefore, for all practical purposes, there was no delay on part of Mr. Gupta.
- 4.2.2 Similarly, the 6th CoC meeting was held on 12.03.2020 (Saturday). In the next week, the AR of Allottees went to his hometown on account of Holi festival, which is one of the major festivals. Therefore, the minutes could not be finalised and circulated within the stipulated time period of forty-eight (48) hours. Therefore, the delay in circulating the minutes only arise owing to the occasion of Holi.
- 4.2.3 Likewise, the 7th CoC meeting was held on 13.07.2020 (Monday). The discussion during the 7th COC meeting took a considerable amount of time because approx. 50 items were listed in the agenda. Moreover, at that time, the government had uplifted partial lockdown which hampered the functioning of the office of IP. In fact, keeping into consideration the unprecedented situation owing to Covid-19, the AA had itself adopted a flexible approach and granted exclusion of time period in calculating the CIRP period. Mr. Gupta had

categorically specified that the circulation of minutes shall be delayed as the employee were in isolation. In view of the above facts, it is stated that the delay in circulating the minutes of the meetings was neither intended nor deliberate and the same had occurred to due reasons not attributable to Mr. Gupta and beyond his control.

4.3 Findings

4.3.1 With regard to the issue of the delay in circulation of the CoC minutes, the regulation 24(7) of the CIRP Regulation states that:

“24. Conduct of meeting.

(7) The resolution professional shall circulate the minutes of the meeting to all participants by electronic means within forty-eight hours of the said meeting”.

4.3.2 As per the provisions of the Code and the regulations made thereof it is envisaged that the RP shall circulate the minutes of the meeting within 48 hours of the said meeting, it has been provided so as to ensure the consensus and finalization of the facts disclosed, resolution passed, votes taken, names of attendees and other important details by the members of the meeting. The minutes of the CoC meetings serve as the official records of actions undertaken during the CIRP proceedings and prompt receipt of the minutes allows sufficient time for actions to be reviewed before the next meeting, which improves the efficiency of meetings.

4.3.3 The DC observes that the 5th CoC, 6th CoC and 7th CoC meetings were held on 15.02.2020, 12.03.2020 and 13.07.2020 respectively, however, the minutes were circulated on dated 18.02.2020, 16.03.2020 and 21.07.2020. Mr. Gupta has submitted that the delay was caused due to the intervening public holiday, festival and during the partial lockdown the 7th CoC meeting was held wherein substantial number of agenda item were also discussed. In view of these submission of Mr. Gupta, the DC finds the delay in circulation of minutes are non-substantial in nature and being accepted as an exceptional aberration.

5.1 Contravention

Outsourcing the responsibility of claim verification

5.1.1 As per Regulation 13(1) of CIRP Regulations, the IRP or the RP, as the case may be, is required to verify every claim received. Further, IBBI Circular No. IP/003/2018 dated 3rd January 2018 prohibits IP to outsource any of his duties and responsibilities under the Code. Furthermore, IBBI Circular No. IBBI/IP/013/2018 dated 12th June 2018 specifies that no fee or expense other than what is permitted under the Code read with regulations made thereunder is included in the insolvency resolution process cost (IRPC) and no fee or expense other than the IRPC incurred by the IP is borne by the CD.

5.1.2 It is observed from the minutes of the 1st CoC meeting held on 16.10.2019, Mr. Gupta appointed M/s Naresh Sharma & Association for claim processing and verification work at a fee of Rs. 200 per claim plus GST as applicable. Further, Form II for the period under IRP filed by Mr. Gupta with his IPA reveals that an amount of Rs. 2,00,000 (excluding GST) was paid to the claim verifier.

- 5.1.3 By appointing a claim verifier, Mr. Gupta delegated the responsibility of verifying the claims to a third party and furthermore included the same as IRPC. In view of the above the Board is of the *prima facie* violated view that Mr. Gupta has *inter alia* violated regulation 13 (1) of the CIRP Regulations, Clause 1, 2, 14 and 25 of the Code of Conduct, the IBBI Circular No. IP/003/2018 dated 3rd January 2018 and the IBBI Circular No. IBBI/IP/013/2018 dated 12th June 2018.

5.2 Submissions made by the IP

- 5.2.1 Mr. Manish Kumar Gupta submitted that in the 1st CoC meeting held on 16.10.2019 Mr. Gupta had moved an agenda for engaging a consultant for verification of claims by allottees owing to large number of allottees in the real estate project of the CD. Therefore, appointment of a consultant was with the approval of the CoC members. It is to be noted that perusal of the appointment letter dated 04.09.2019 issued by Mr. Gupta to M/s Naresh Gupta & Associates demonstrates that it was appointed as “Consultant” for verification of claims filed by the creditors of the CD. It is submitted that the services of M/s Naresh Gupta & Associates were engaged for the purpose of checking the documentation of claim from the original files of the homebuyers, checklist of papers, coordination with the customer, addressing their queries, checking and follow up for missing documents and communicating the same to the creditors, maintaining a claim helpline no., to provide various reports on demand from time to time, summary of documents to be used for decision making. This establishes that the scope of work of M/s Naresh Gupta & Associates was only limited as a consultant to RP which Mr. Gupta to verify all the claims received.
- 5.2.2 Materially, the intent to engage the third party was to filter out all the documents and queries raised by the applicant/creditors so that Mr. Gupta can communicate and resolve the queries in order to expedite the whole process. Their other responsibilities were to follow up for missing documents, reconciliation of claim documents with the original files of the homebuyers, making the checklist of papers, coordination with the customers, addressing their queries. M/s Naresh Gupta & Associates was also responsible for maintaining a claim helpline number and the list was to be published and circulated among the home buyers. Apart from this, M/s Naresh Gupta & Associates was responsible for making the summary documents to be used for decision making and to provide various reports on demand from time to time. M/s Naresh Gupta & Associates did not have any right to verify and approve the claim in any situation. It was the sole responsibility of Mr. Gupta to verify and admit the claim.

5.3 Findings

- 5.3.1 It is observed that inclusion of expenses of the independent professional for verification of claims to IRPC is an added burden on the already stressed CD, also the mandate of the Code under Section 18(1)(b) read with Regulation 13(1) of CIRP Regulations is that the verification has to be undertaken by the IRP/RP and the IBBI Circular no. IP/003/2018 further adds that the RP shall not outsource his core responsibilities. One of the duties conferred upon IPs include receiving, collating and verifying claims. Such core duties

have to be performed by the IPs themselves and they are not permitted to outsource them to third parties. An IP can take support by appointing accountants, legal or other professionals as may be necessary. However, he cannot outsource duties assigned to him under the regulations.

- 5.3.2 The DC observes that Mr. Gupta engaged the independent professional, M/s Naresh Sharma & Association for claim processing and verification work at a fee of Rs. 200 per claim plus GST as per the minutes of the 1st CoC Meeting dated 16.10.2019. Also, the Cost Disclosure Form filed by Mr. Gupta with his IPA reveals that a fees of Rs. 2,00,000 has been paid to the independent professional. Although Mr. Gupta submits that the independent professional did not verify or approve the claim it is observed that in the appointment letter dated 04.09.2019 the scope of work has been defined as ‘*consultant for verification of Claims filed by Financial/Operational Creditors*’.
- 5.3.3 Hence, the DC finds that Mr. Gupta, even while charging separate fees for conducting CIRP outsourced his primary responsibility to an independent professional and included that expense to the CIRP cost as well thereby, further burdening the CD. Hence there is a contravention of regulation 13(1) of the CIRP Regulations, clause 1, 2, 14 and 25 of the Code of Conduct, read with the clarification provided in the IBBI Circular No. IP/003/2018 dated 3rd January 2018 and the IBBI Circular No. IBBI/IP/013/2018 dated 12th June 2018. Furthermore, it is pertinent to observe that CoC as an institution can exercise powers which are provided in Code. For delegation of any item constituting exclusive role of the professional, CoC has no locus standi to allow such dispensation.

6.1 Contravention Appointment of third Valuer at the instance of CoC

- 6.1.1 As per Regulation 35(1)(b) of CIRP Regulations, if in the opinion of the RP, the two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner. It is observed on perusal of minutes of meeting of 9th, 10th, 13th and 14th CoC meeting that a third valuer was appointed by Mr. Gupta at the instance of CoC as they were of the view that certain shops in the shopping arcade were undervalued in the valuation exercise done by the 2 valuers earlier appointed by Mr. Gupta. Minutes of 14th CoC further reveals that Mr. Gupta also requested CoC members to suggest the name of valuer.
- 6.1.2 Thus, by appointing a third valuer at the instance of CoC and also by asking the CoC to suggest the name of valuer, the Board is of the *prima facie* view that Mr. Gupta did not act independently thereby abdicating his duties and thus has *inter alia* violated regulation 35(1)(b) of CIRP Regulations, clause 1, 2, 3 and 14 of the Code of Conduct.

6.2 Submissions made by the IP

- 6.2.1 Mr. Manish Kumar Gupta submitted that in the minutes of 14th CoC meeting the approval was sought from CoC towards the valuation of inventory of shops which is to be sold. However even after the approval, the same was not appointed. Thereafter, the process for appointment of third valuer was initiated on account of request made by the homebuyers

on the ground that the actual market price of the shops is quite higher than the valuation and therefore, no new shops should be sold before obtaining the fair market value price of the shops. As a result, during the CoC meeting, the homebuyers suggested to appoint the valuer of their choice and however, the same was never materialized and as on date, no third valuer has been appointed.

6.3 Findings

6.3.1 The DC observed that the unamended regulation 35 of the CIRP Regulations stated as follows:

“35. Fair value and Liquidation value.

(1) Fair value and liquidation value shall be determined in the following manner:

...(b) if in the opinion of the resolution professional, the two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and”

6.3.2 However, the amended regulation 35 of the CIRP Regulations, 2016 (w.e.f. 14.06.2022) clarifies the position further as:

“35. Fair value and Liquidation value

(1) Fair value and liquidation value shall be determined in the following manner:

...(b) if the two estimates of a value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value computed in the manner provided in clause (a).

6.3.3 It is observed from the minutes of the 14th CoC meeting dated 12.04.2021 that the RP had sought approval of the CoC in appointment of the third valuer:

“To seek approval for appointment of a new valuer for valuation of Shops, unsold area of shopping arcade for the guiding the COC, take appropriate action in undervalue and adjustment cases. Process to start within 15 days of approval of agenda by CoC. The CoC members may also suggest the name of valuer.

The objective of the same is to revalue the shops which are already sold as well as the unsold shops and to get fresh values for the satisfaction of the home buyers.”

6.3.4 Although the RP had sought the opinion of the CoC in the appointment of the third valuer however, the position of the law has been subsequently settled by the amended regulation 35 of the CIRP Regulations which states that *on receipt of a proposal to appoint a third registered valuer from the committee of creditors the resolution professional may appoint a third registered valuer.* Even though the previous position of the law was that the RP can only appoint a third valuer when he is of the opinion that there is a significant difference between the two estimates of the value but as the amendment to law clarifying the position was brought prior to issue of SCN the issue is being dropped. Moreover, in view of the fact that no third valuer has been appointed in the matter, contravention do not survive.

7.1 Contravention

Delay in filing of application for avoidance transactions

- 7.1.1 Regulation 35A(3) of CIRP Regulations states that where the RP makes a determination under sub-regulation (2), he shall apply to the AA for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date (ICD). It is observed that Mr. Gupta failed to file an application under regulation 35A before the AA within the stipulated time period of 135 days from ICD.
- 7.1.2 In view of the above, the Board is of the *prima facie* view that Mr. Gupta has *inter alia* violated Regulation 35A(3) of CIRP Regulations read with Clause 1, 2, 13 and 14 of the Code of Conduct.

7.2 Submissions made by the IP

- 7.2.1 Mr. Manish Kumar Gupta submitted that the first meeting with more than 500 homebuyers of Project Lotus Zing wherein the homebuyers requested him to carry out the detailed transaction and forensic audit of the CD. Consequent thereof, Mr. Gupta appointed a leading audit firm, E&Y for the purpose of forensic audit.
- 7.2.2 Pursuant thereto, after receipt of the forensic audit report, Mr. Gupta immediately filed an application before the AA for avoidance transaction. Moreover, since the ex-promoters and ex-directors of the CD were not cooperating and supporting the RP in discharging his duties, Mr. Gupta had filed an application under section 19(2) of the Code seeking direction.
- 7.2.3 Resultantly, with limited information in hands, it was not possible for the Mr. Gupta to assess the preferential payments and file the application. In fact, it was only after the forensic audit report that Mr. Gupta came to know about the preferential transaction and subsequent thereof, filed an application before AA.

7.3 Findings

- 7.3.1 The regulation 35A of the CIRP Regulations provides that,
“35A. *Preferential and other transactions.*
(1) *On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.*
(2) *Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date.*
(3) *Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date...*”
- 7.3.2 In ordinary course, the CIRP is to be completed within 180 days from the date of its commencement and the RP has the highest professional responsibility during CIRP. His conduct and performance have a substantial bearing on the survival of an ailing entity. He,

therefore, is expected to function with a strong sense of urgency and with utmost care and diligence. He should endeavor to fast track the process, whenever the situation demands. He is also expected to carefully study and analyse the financial statements of the CD.

- 7.3.3 In the present case it is observed that the CIRP was initiated on 28.08.2019, however, the forensic report of EY was submitted of 24.08.2020. Thereafter, an avoidance application was filed on 09.03.2021 by the RP which is after a period of 559 days from the date of commencement of CIRP and 197 days from date of submission of forensic report. Hence, contravention of regulation 35A(3) of CIRP Regulations read with Clause 1, 2, 13 and 14 of the Code of Conduct.

8.1 Contravention

Incorrect determination of claim amount of homebuyers

- 8.1.1 As per Regulation 16A (7) of CIRP Regulations, the voting share of a creditor in a class shall be in proportion to the financial debt which includes an interest at the rate of eight per cent per annum unless a different rate has been agreed to between the parties.
- 8.1.2 It is observed that Mr. Gupta had decided against inclusion of delay penalty as per Builder-Buyer Agreement that was executed by the CD for causing delay in completion of project as part of the claims and proceeded to consider claims with simple interest of 8%. This led to incorrect determination of claims of homebuyers and resultant incorrect constitution of CoC. It has also resulted in avoidable litigations by the allottees. It is only in July 2021 (i.e., after about 23 months into CIRP) that Mr. Gupta felt a need to take legal opinion and then proceed to revise the list of creditors.
- 8.1.3 In view of the above, the Board is of the *prima facie* view that Mr. Gupta *inter alia* violated Section 3 (6) of the Code, regulation 16A (7), regulation 14 of the CIRP Regulations read with clause 13 and 14 of the Code of Conduct.

8.2 Submissions made by the IP

- 8.2.1 Mr. Manish Kumar Gupta submitted that he had already included 8% simple interest in the claim amount. Further, with the concurrence of AR and in the interest of homebuyers, the delay penalty has been added in the claim amount. The reliance is placed on the minutes of the 1st CoC meeting wherein it was discussed that all claims have been admitted with simple interest @ 8%. Interest has been calculated from 1.01.2014 for allottees of towers 7 & 8 and from 1.07.2014 for rest of the allottees and claims from residents who have court order for interest, their claims have been admitted with interest as per court orders.
- 8.2.2 In terms of the minutes of the 1st CoC meeting, it can be seen that Mr. Gupta has duly informed the CoC that flats/units in Tower 1, 2,3, 4, 5, 6, 15 & 16 are delivered to the homebuyers and hence Mr. Gupta has not considered the claims of those homebuyers who had already taken the possession of the flat.
- 8.2.3 In fact, the legal advisor M/s GS Law Firm also gave the same legal opinion. On the other hand, given the shortage of fund, existing land dispute, huge demand of NOIDA and other

OC, it was not sure as to whether the flats in towers 7, 8, 9, 10, 11, 12A & 14 would be delivered or not. In such situation, it was prudent to include interest @8% in the claim amount as no interest amount was mentioned in the Builder Buyer Agreement.

8.2.4 Admittedly, in this regard, the homebuyers had filed an application before the AA and in compliance of the directions of the AA, Mr. Gupta had conducted the meeting with the CoC members and submitted a report before the AA. Therefore, the issue has already been decided by the AA.

8.3 Findings

8.3.1 The regulation 16A (7) of the CIRP Regulations states as follows:

“16A. Authorised representative.

(7) The voting share of a creditor in a class shall be in proportion to the financial debt which includes an interest at the rate of eight per cent per annum unless a different rate has been agreed to between the parties.”

8.3.2 It has been alleged that due to the incorrect determination of claims of homebuyers to not include 8% simple interest led to incorrect constitution of the CoC. It is observed from the minutes of the 1st CoC meeting it has been noted that only for two towers the interest was allowed,

“2. All claims have been admitted with simple interest @ 8%. Interest has been calculated from 1 January 2014 for allottees of towers 7 & 8 and from 15 July 2014 for rest of the allottees.

3. Claims from residents who have taken possession of flats, given settlement affidavit and pot having any court orders have not been admitted.

4. Claims from residents who have court order for interest, their claims have been admitted with interest as per court orders.”

8.3.3 It is observed from the minutes of the 8th CoC meeting dated 02.09.2020 that petitions were filed by the allottees protesting the decision of RP,

“Update about all legal cases with honorable NCLT and various applications filed by allottees or group of allottees: RP apprised that;

a. Various petitions were filed by some allottees raising issues about the process of resolutions, 8% increase, delay penalty, CAM charges etc. before NCLT. Hon'ble NCLT directed to conduct a meeting of the petitioners to resolve/ explain the issues on 23.08.2020. RP conducted a meeting of buyers and explained the position to them MOM was circulated.”

8.3.4 It is also observed from the minutes of the 12th CoC meeting dated 09.02.2021 that,

“Consideration of Delay Penalty in the Books of Accounts:

In view of accrual concept of accounting in pursuance of Companies Act, 2013, considering the Builder Buyer Agreement, RP hereby apprised and informed to AR that he has considered the amount of all the delay penalty relating to all the home buyers and taken on record for all the home buyers whether they have taken the possession or not including both delivered or undelivered towers including the possession/ possession for

fit out and including e-Possession. Accordingly the necessary provision has been made in this regard in the books of accounts.

... Such liability shall be treated as Other Creditors and will not be added in the financial claim. It will not be adjusted against the current dues and hence those home buyers who have not paid their dues towards their flat are requested to pay as this amount shall not be adjusted. This will be payable later on as per availability of surplus and through IBC process only.

Similarly, this delay penalty liability shall not be adjusted towards the payment of flats as proposed in the Pool & Build Scheme for remaining towers. Exact and final text will be available in minutes of meeting of 12th CoC releasing soon..."

8.3.5 Further, in the minutes of the 18th CoC meeting dated 14.07.2021 it was discussed as follows:

"Further, RP had a meeting with the new legal team i.e. BBS Legal on the same subject matter and the team confirmed the same as above and hence RP agreed that all the homebuyers whose principal amount has been settled by offering possession of their respective flat(s), but their claim of delay penalty is still outstanding, ought to be admitted/ accepted, subject to collation/ verification.

RP appraised the same to CoC through AR, Thereby, RP would like to request all the homebuyers, both from delivered and undelivered towers, to send their pending/ revised claims on the email id claimslotuszing@gmail.com for RP to verify and confirm...

..about the delay penalty claim and there is delay (upto CIRP commencement date), the claim for such amounts ought to be accepted / admitted by the RP and in such cases. In the instant case, the claim of delay penalty is still outstanding/ unsettled even if the flat is delivered.

Further, the RP informed that there are many cases where homebuyers were compensated partly by making the adjustment in the ledger in the account of the delay penalty and offered maintenance services on discounted rate and hence the same should also be considered; on this, the officials advised that it would be more appropriate if we consider both items & adjust the same in the final amount of delay pending or whatever seems fit but the claim against delay penalty / compensation should be treated as financial creditors even for the delivered towers.

AR questioned the RP whether such claim of delay penalty be recognized for the Financial Creditors whose flats are undelivered. The RP answered that the same should also be added to the financial value of the Corporate Debtor."

8.3.6 In the present context it is observed that the current position of law as held by the Supreme Court in *Swiss Ribbons vs. Union of India*, is that the RP while admitting claims does not have quasi-judicial powers, but merely has administrative powers. This position was further developed in *Navneet Kumar Gupta v. Bharat Heavy Electricals Limited*, where it has been held that the RP cannot reject a claim without taking the evidence which substantiates the claim into account. It is observed in the present issue that the RP had only allowed for the interest inclusion in claims for two towers, however, later on due to filing of applications by rest of the homebuyer and as per subsequent direction of AA to

review the issue, the RP allowed the delay penalty after consultation with legal advisors. Although the DC notes that there has been a delay of 23 months in inclusion of penalty amount, the DC finds that the action was rectified on directions of the AA and on further discussion with the homebuyers. Hence, the DC takes a lenient view for this contravention.

9.1 Contravention

Appointment of related parties to the CD as Consultant

- 9.1.1 It is observed that Mr. Gupta appointed Mr. Ravi Bhargav, Ms. Neetu Mann and Mr. Sujit Kumar Singh, as consultants to assist him for a monthly fee of Rs. 2.5 lakh per month individually vide letter dated 2.09.2019. It is seen that Mr. Ravi Bhargav was a director of the CD till 4.02.2019. Mrs. Neetu Mann is related to a director Mr. Naveen Mann of the holding company of the CD. Further, minutes of 4th CoC meeting reveal that Mr. Ravi Bhargav, Ms Neetu Mann and Mr. Sujit Kumar Singh were paid Rs. 12 lakh, Rs. 7 lakh and Rs. 2.5 lakh respectively as consultancy charges.
- 9.1.2 The assignment letter records that the aforementioned individuals were appointed as consultants as they “*are substantially aware about the past affairs*” and that “*they also have material information not only about the company but also about the entire group... and hence it is vital to keep such people as consultant.*”
- 9.1.3 It is observed from minutes of the meetings, that Mr. Gupta did not disclose the fact that the consultants appointed by him were ex-directors/ employees of the CD. It is also noted that in the relationship disclosures filed by Mr. Gupta to IPA, he mentioned relationship of these consultants with CD as ‘*nil*’ and also that these appointments were made on arm’s length basis whereas the fact is they were ex-directors, relative of director of holding company/ex-employees of CD and hence cannot be said to be meeting the requirements of appointment of professionals at arm’s length basis. Hence Mr. Gupta has submitted misleading information in the disclosure made to IPA and also acted *mala fide*.
- 9.1.4 Thus, the Board is of the *prima facie* view that Mr. Gupta has *inter alia* violated clause 1, 2, 12 and Clause 14 of the Code of Conduct.

9.2 Submissions made by the IP

- 9.2.1 Mr. Manish Kumar Gupta submitted that no information/ documents were available with the CoC or Mr. Gupta and the ex-management of the CD was not cooperating with the RP to provide even the basic information in relation to the transactions, books of account and other documents of the CD. Resultantly, Mr. Gupta and COC in all fairness believed that they need to hire/ appoint consultants, who were earlier employees of the Three C Group and had substantial knowledge of the affairs of the CD so that the material information could be collated about the CD and also transactions undertake with the Group.
- 9.2.2 Pursuant thereof, Mr. Gupta conducted interviews of several employees of the CD and its group companies with the objective to ascertain the knowledge of such individual regarding the affairs of CD. Accordingly, Mr. Ravi Bhargav, Ms. Neetu Mann and Mr. Sujit Kumar were selected for the position of consultant to assist in the entire CIRP. It is

however pertinent to mention here that Mr. Gupta had no past relationship or association with the above persons prior to their appointment. Be that as it may, as soon Mr. Gupta came to know that they are either directors or related to the directors, Mr. Gupta terminated the services of the said consultants. The said fact was also disclosed to the CoC and recorded in the 12th meetings of the CoC.

- 9.2.3 It is pertinent to mention here that similar allegation was made in the earlier Show Cause Notice dated 08.01.2021 issued by IBBI, which was duly responded. In view of above, Mr. Gupta submits that once he has been punished for the same breach, initiating another enquiry on same alleged would amount to double jeopardy and is bad in law.

9.3 Findings

- 9.3.1 The IBBI Circular No. IP/005/2018 dated 16.01.2018 on '*disclosure by Insolvency Professionals and other Professionals appointed by Insolvency Professionals conducting Resolution Processes*' the rationale for submission of relationship disclosure form by IP has been provided as follows:

"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."

- 9.3.2 It is observed that Mr. Ravi Bhargav, Ms. Neetu Mann and Mr. Sujit Kumar Singh, were appointed as consultants on 02.09.2019 on the grounds that they were ex-employee *with awareness about the past affairs and having material information not only about the company but also about the entire group*. It is also noted that in the 4th CoC Meeting dated 08.01.2020 when the expenses for the consultants were being ratified from the CoC, the disclosure regarding the relationship was not made. Also in the disclosure forms submitted regarding the appointment of Mr. Ravi Bhargav, Ms. Neetu Mann and Mr. Sujit Kumar Singh, the relationship with CD has been mentioned as NIL. This is a clear case of misleading the stakeholders and defeats the purpose of making disclosure of appointments of professionals. In order to promote transparency, the cost and relationship disclosures are to be provided timely by the IPs which is to be displayed on the website of IPA so that all the stakeholders can be uniformly informed of the expenses incurred and professionals that are engaged in the CIRP of the CD. Hence, the DC finds that Mr. Gupta has contravened clause 1, 2, 12 and Clause 14 of the Code of Conduct.

10.1 Contravention

Failure in recovering dues owed to CD in respect of debenture purchase/termination agreement with the CD's holding company

- 10.1.1 It is observed that debenture purchase agreement (DPA) was entered between CD and its holding company namely Three C Infra Private Limited vide agreement dated 10.05.2018 for a consideration paid by CD to its holding company. The said DPA was later terminated on 19.07.2019 i.e. just a month before ICD and the consideration amount was to be paid back to CD by Three C Infra Private Limited which did not happen.

- 10.1.2 It is further observed that vide order dated 20.08.2019, Hon'ble High Court of Delhi

passed an order in *Three C Infra Private Limited vs Parsvanath Rail Land Project Limited* recording the settlement between Three C Infra Private Limited and Parsvanath Rail Land Project Limited in the matter of agreement for allotment of debentures and held that Rs. 65.5 crores plus 2% simple interest be given to Three C Infra which would keep this money in escrow account for a period of four weeks from the date of release of money after which it could use this money if it does not receive notice of any proceedings or orders of any appropriate court or authority. Later vide order dated 1.10.2019, the Registry arrived at the amount to be released to Three C Infra at Rs. 72,71,87,520 (net of TDS). It is, thus, clear that money was released into the escrow account only after 1.10.2019 and it was there for 4 weeks thereafter.

- 10.1.3 It is also observed from the minutes of the 18th CoC meeting held on 14.07.2021, that the details of the Debenture Purchase Agreement were presented to the CoC members. It is significant to mention that the DPA was dated 10.05.2018 and Mr. Ravi Bhargav (an Ex-Director of the CD) had signed the said agreement on behalf of the CD who was appointed as consultant in the CIRP by him on the pretext that he was substantially aware about the past affairs of not only the CD but also about the entire group. After ICD, Mr. Gupta had more than two months' time when the settlement amount was in the escrow account and as IRP/RP, he should have made a claim for the amount receivable to the CD on account of cancellation of DPA, which he failed to do so. Hence, Mr. Gupta grossly failed to secure the assets of the CD and take appropriate control and custody of the assets of the CD.
- 10.1.4 In view of the above, the Board is of the *prima facie* view that Mr. Gupta has *inter alia* violated sections 18 (1), 20, 25(1), 25(2)(a) of the Code, clause 2, 3, 5, 9 and 13 of the Code of Conduct.

10.2 Submissions made by the IP

- 10.2.1 Mr. Manish Kumar Gupta submitted that, Parsvnath Rail Land Project Private Limited had allotted Debentures to Three C Infra Private Limited as evident from the balance sheet of Three C Infra Private Limited for the year 2013-14, 2014-15 and 2015-16. Subsequent thereof, Three C Infra Private Limited has entered into and executed Debenture Takeover Agreement dated 10.05.2018 with the CD. However, the said Debenture Takeover Agreement was cancelled on 19.07.2019 and till such time there was no transfer or endorsement of the Debentures in favour of the CD.
- 10.2.2 The Hon'ble High Court of Delhi vide its order dated 20.08.2019 has even directed the release of part money against such debentures to the tune of Rs.65.50 crores to Three C Infra Private Limited. Subsequent thereof, Mr. Gupta was appointed as the IRP of the CD on 28.08.2019 and took charge of office of the CD on 02.09.2019. Mr. Gupta took sincere and *bona fide* efforts to procure the accounts, records and bank statement of the CD. While Mr. Gupta was on the process of collating documents, the 1st CoC Meeting was convened on 16.10.2019. In the said meeting, Mr. Gupta proposed appointment of a Law Firm for taking legal assistance in relation to various financial transactions of the CD and the same was approved on the CoC. Resultantly, until October 2019, the undersigned had no knowledge or information about such Debentures.

- 10.2.3 Immediately after coming to know about the same sometime in November 2019 reviewed the provisional Balance Sheets upto 28.08.2019 (date of appointment of IRP), which showed the amount in respect of the Debenture. However, the amount was not shown in the final Balance Sheet for the year 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 as the Debenture Transfer Agreement was terminated. Mr. Gupta then enquired about the said transaction from the suspended Directors and CFO, who also confirmed that that the amount was not due and recoverable by the CD.
- 10.2.4 In view of above facts, the allegation with regard to failure to recover the dues of the CD in respect of the Debenture are wholly wrong, baseless, and misconceived as the CD has no entitlement pursuant to cancellation of the Agreement.

10.3 Findings

- 10.3.1 The section 25 of the Code provides that it is the sacrosanct duty of the RP to protect and preserve the assets and value of the CD so as to ensure that there is value maximization for all the stakeholders of the CD. The section 25 provides as follows:

“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: -

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings...”

- 10.3.2 It is observed that a DPA agreement was entered into between Three C Infra Private Limited and CD on 10.05.2018 wherein it was agreed by CD to purchase debentures for a consideration of Rs. 65.5 crores but the DPA was terminated without repayment on the consideration amount. Further, vide order dated 20.08.2018, the Hon’ble High Court of Delhi passed an order on debenture subscription issue and observed as follows:

“10. Therefore, while the dispute between the petitioner company and respondents no.1 and 2 stands resolved, there is a likelihood of claims being made with respect of the monies that the petitioner company will receive by various homebuyers association including the three that I have referred to hereinabove.

11. Thus, in my view, the best course that can be adopted in the given facts and circumstances is that the money as per the terms of settlement arrived at between the petitioner company and respondents no.1 and 2 can be released to the petitioner company which will keep the same in a separate escrow account albeit for a period of four (4) weeks from the date of receipt of funds.”

- 10.3.3 The DC observes from the above that the Hon’ble Delhi High Court had recorded a

settlement of dispute in *Three C Infra Pvt Ltd. v Parsvanath Rail Land Project Limited*, and had directed to keep money in the escrow account for resolving any claims from parties that did not receive notice of the proceedings for a period of 4 weeks from the date of receipt of funds. As per the order dated 01.10.2019 it is observed that Rs. 72.71 crores was released to Three C Infra Pvt Ltd. However, it is noted that no material has been placed on record to demonstrate that such amount was not recoverable or the requests was raised by the RP to compensate for the consideration amount paid on account of the cancellation of the DPA even though the same was discussed with the CoC in its 18th meeting dated 14.07.2021 nor has RP shown any steps taken by him to protect the interest of CD in the aforesaid matter. Hence, there is a severe dereliction of duty on the part of the RP as he failed to protect the interests of the CD. Therefore, there is a contravention of sections 18 (1), 20, 25(1), 25(2)(a) of the Code, clause 2, 3, 5, 9 and 13 of the Code of Conduct.

11.1 Contravention

Permitting submission of resolution plan by resolution applicant earlier declared ineligible

- 11.1.1 Combined reading of sub-regulations (1), (6), (10), (11) and (12) of Regulation 36A of CIRP Regulations makes it clear that a RP shall prepare a list of eligible prospective resolution applicants (PRAs) on the basis of Expression of Interest (EOI) received in response to invitation of EOI published by the RP. Further, regulation 36B(1) requires a RP to issue the information memorandum, evaluation matrix and a request for resolution plans to every PRA in the provisional list and also to every PRA who has contested the decision of the RP against its non-inclusion in the provisional list. Regulation 39 of CIRP Regulations (as amended on 3.07.2018) further states that a PRA in the final list may submit resolution plan(s) prepared in accordance with the Code and these Regulations to the RP electronically within the time given in the request for resolution plans. Further, clause 14 of Code of Conduct requires an IP to not act with *mala fide* or be negligent while performing his functions and duties under the Code.
- 11.1.2 It is observed the from minutes of 3rd CoC meeting held on 27.12.2019 and 5th CoC meeting held on 15.02.2020 that the extended last day to submit EOI in the CIRP of CD ended on 8.01.2020 and final list of PRAs was published on 20.01.2020 respectively wherein Laxmi Trading Company has been shown as ineligible.
- 11.1.3 It is also noted that Laxmi Trading Company was earlier declared as ineligible due to deficiency in documents submitted by them at the time of submission of expression of interests. However, Mr. Gupta brought an agenda in the 6th CoC meeting held on 12.03.2020 for considering proposal of Laxmi Trading Company to submit resolution plan.
- 11.1.4 In view of the above, the Board is of the *prima facie* view that Mr. Gupta has *inter alia* violated regulation 36A, 36B and 39 of the CIRP Regulations read with clause 14 of the Code of Conduct.

11.2 Submissions made by the IP

- 11.2.1 Mr. Manish Kumar Gupta submitted that he was acting in line with the legislative intent and preamble to the Code which envisage resolution of the insolvency of debtors in a time-bound manner and to ensure maximization of debtor's assets to secure interests of all concerned stakeholders.
- 11.2.2 Admittedly, Mr. Gupta had in the 3rd CoC meeting declared Laxmi Trading Company as temporarily ineligible to act as the PRA in view of non-submission of complete documents. However, Mr. Gupta had further informed the CoC that intimation in this regard has been sent to Laxmi Trading Company directing to remove/ cure the deficiencies with the prescribed time period.
- 11.2.3 Subsequently, the time period for submission of EOI was extended with the due consent/ approval of the CoC on 3rd and 5th CoC meeting. In the meantime, Laxmi Trading Company provided complete documents as sought by Mr. Gupta before the expiry of the time period for submitting the EOI. Resultantly, RP informed the CoC that since Laxmi Trading Company has provided the relevant documents, the Resolution Plan of Laxmi Trading Company could be considered by the CoC. Moreover, at no point of time LTC was permanently declared as ineligible to act as PRA.
- 11.2.4 Therefore, while keeping the objective in mind, Mr. Gupta took the proposal of Laxmi Trading Company to CoC members for its consideration. Moreover, in case, there is any deficiency or defect in the Resolution Plan, then with the approval of CoC members, the Resolution Applicant can rectify the deficiencies. There is no provision in the Code which states that the Resolution Plan cannot be change/ altered in accordance with the members of the CoC. Mr. Gupta had a *bona fide* believed that an opportunity ought to be given to the Resolution Applicant to place its resolution plan before the CoC members for consideration and a chance to rectify the defects in the interest of the stakeholders particularly when the main objective under the Code is maximisation of the value of the assets of the CD.

11.3 Findings

- 11.3.1 It is observed from the minutes of the 3rd CoC meeting dated 27.12.2019 that the last date of submission of the EoI was extended to 08.01.2020. That the final list of PRAs was published on 20.01.2020 respectively wherein Laxmi Trading Company has been shown as ineligible. However, it has been alleged that Mr. Gupta brought an agenda in the 6th CoC meeting held on 12.03.2020 for considering proposal of Laxmi Trading Company to submit resolution plan.
- 11.3.2 The regulation 39 of the CIRP Regulations provides as follows:

“(1B) The committee shall not consider any resolution plan-

(a) received after the time as specified by the committee under regulation 36B; or

(b) received from a person who does not appear in the final list of prospective resolution applicants; or

(c) does not comply with the provisions of sub-section (2) of section 30 and sub-regulation

(1).”

11.3.3 In the present instance it is observed that the RP had allowed for consideration of proposal of the Laxmi Trading Company to submit resolution plan when the language of the Regulations is crystal clear that the CoC cannot consider plan from a party that is not included in the final list of PRAs. Hence, there is a contravention of the regulations 36A, 36B and 39 of the CIRP Regulations read with clause 14 of the Code of Conduct

12.1 Contravention

Failure to place agenda for replacement of RP

12.1.1 Section 27 of the Code provides that where, at any time during the CIRP, the CoC is of the opinion that an RP appointed under section 22 is required to be replaced, it may replace him with another RP. Further, regulation 18 of CIRP Regulations further provides that a RP may convene a meeting of the committee as and when he considers necessary and shall convene a meeting if a request to that effect is made by members of the committee representing thirty-three per cent of the voting rights. Also, IBBI Circular No. IBBI/CIRP/2021 dated 16.04.2021 *inter alia* clarifies that when members of the CoC having less than 33% of the voting rights request the RP, along with a note, to place the note for consideration in a meeting of the CoC, the RP shall consider the request expeditiously on merits and if he considers it necessary, he shall place the note for consideration in the ensuing meeting of the CoC.

12.1.2 It is observed that some of the members of the CoC has been proposing to include the agenda for Mr. Gupta’s replacement as RP in the CIRP of CD since 8th CoC meeting. However, Mr. Gupta consistently rejected the same on the ground that the requisite 33% voting share has not been met for inclusion of this agenda for discussion in CoC and also on the ground that the agenda cannot be included as no new name was proposed. By not placing the agenda for his replacement for discussion and consideration of the CoC, Mr. Gupta has acted in self-interest and exhibited bias against minority opinion.

12.1.3 In view of the above, the Board is of the *prima facie* view that Mr. Gupta has *inter alia* violated section 27 of the Code, regulations 18 of CIRP Regulations, clauses 3 and 10 of Code of Conduct and IBBI Circular No. IBBI/CIRP/2021 dated 16.04.2021.

12.2 Submissions made by the IP

12.2.1 Mr. Manish Kumar Gupta submitted that regulation 18 the CIRP Regulations provides that a RP *may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to that effect is made by members of the committee representing thirty-three per cent of the voting rights.*

12.2.2 Regulation 19 of the CIRP Regulations requires a notice in writing for calling a meeting of the CoC. Regulation 21 requires that the notice for a meeting of the CoC shall contain a list of matters to be discussed, the list of issues to be voted, and copies of all documents relevant to the matters to be discussed and issues to be voted upon at the meeting.

- 12.2.3 It is clear from a joint reading of the provisions of regulations 18, 19 and 21 of the CIRP Regulations that members of the CoC having 33% of the voting rights may request the RP to convene a meeting of the CoC. Such request shall include a note proposing the matters to be discussed or issues to be voted upon, along with relevant documents, if any. On receipt of the request, the RP shall convene a meeting of the CoC for consideration of the note.
- 12.2.4 It is stated that even though Mr. Gupta was getting lot of calls and requests for placing the agenda of replacement of RP in the next CoC but he requested the Home Buyers to obtain consent of 33% of the voting rights for inclusion of such agenda in terms of CIRP Regulations as at all times the requisite criteria were not fulfilled.
- 12.2.5 Mr. Gupta places reliance on the minutes of meetings of CoC meetings which records as under:
“AR also placed all emails in the meeting and apprised that he has received around 100 emails in last 7 days from allottees, with a request of removal of Resolution Professional Mr. Manish Kumar Gupta. However, no name of new RP was proposed in any email. Since, number of emails are very large, AR directed to RP to mention the below reply of AR in minutes for all such mails. “AR replied that, COC members may propose name of new Resolution Professional with his consent in FORM AA and same shall be forwarded to RP to make the agenda item for voting in next meeting.”
- 12.2.6 Further, the minutes of meetings of 20th CoC meetings records as under:
“The AR submitted that though he has received some of the requests of the homebuyers for bringing the agenda of replacement of RP but the request received by him do not have prerequisite numbers to satisfy the threshold limit of total voting strength as required under the Regulations and clarification issued by IBBI. Hence agenda could not be brought and discussed. RP further informed to AR that there are some homebuyers who have approached to Hon’ble NCLT in this matter and the same is sub-judice as well to that extent.”
- 12.2.7 As a matter of fact, the Board has also filed an application for removal of Mr. Gupta. It is pertinent to mention that Mr. Gupta has tendered his resignation as the RP of Three C Projects Private Limited on 02.07.2022. In view of the same, application filed by Board was disposed as infructuous and Mr. Ajit Kumar was appointed as RP.

12.3 Findings

- 12.3.1 The section 27 of the Code it is provided as follows:
*“27. Replacement of resolution professional by committee of creditors. –
(1) Where, at any time during the corporate insolvency resolution process, the committee or creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.”*
- 12.3.2 It is observed from the minutes of the 8th CoC meeting dated 02.09.2020 that,
“RP further replied that, come allottees have already moved an application to Honourable

NCLT for removal of RP and now matter is sub-judice and same removal must be decided and approved by court also...

RP further apprised that, some allottees have already filed application before Honourable NCLT against RP by putting some false allegations and now matter is sub-judice. So the matters for those, application is already pending before court then there is no relevance of sending email to RP again and again by same applicants (those have filed application before honourable NCLT) and we should wait for decision of court. In compliance of court order RP has also conducted meeting with these allottees. Some members are sending emails then whats app and then they are sending the sms..”

It is observed from the discussions held in the 18th CoC meeting dated 14.07.2021 that,

“To seek approval for the replacement of Resolution Professional, Mr. Manish Kumar Gupta in pursuance of the request of some of the home buyers as on the date.

The Resolution Professional apprised to CoC through AR that he has received an email on subject proposing the 'Replacement of RP' along an excel sheet form which was pre-filled was claimed the sender of the email home buyers filled which subject matter of verification...

8. In view of the above data, it is hereby clear that in reference to the point no. 5 above, the request for bringing the voting agenda did not met with the legal required in pursuance of Insolvency & Bankruptcy Code, 2016 of minimum 33% voting share to bring the agenda for the voting.”

It is observed that Mr. Gupta has under some or the other pretext refrained from bringing the agenda for the replacement of the RP. The DC observes that to defer the issue of replacement the RP has stated that the application for replacement is sub-judice before the AA even when express power has been vested with the CoC for replacement of the RP under section 27 of the Code. It is also noted that the RP has also refused to bring in the agenda on the ground that 33% voting share is required to bring the agenda item in the CoC meeting. Even though regulation 18 of the CIRP Regulation as on 14.07.2021 provided for minimum threshold of 33% is in regards to convening a CoC with minimum 33% of the CoC members request and it did not pertain to introducing agenda. Hence, clear contravention could be made out of section 27 of the Code, regulations 18 of CIRP Regulations, clauses 3 and 10 of Code of Conduct and IBBI Circular No. IBBI/CIRP/2021 dated 16.04.2021.

13. Order

- 13.1 The Disciplinary Committee is aware of the previous orders dated 22.07.2021 and 26.05.2022 and the present order being the third in row, it appears that Mr. Manish Kumar Gupta is a habitual offender and has not learnt from mistakes committed and penalty imposed. In this matter too, as recorded above, on several counts, the contraventions of serious nature have been established. During the oral hearing, Mr. Gupta has pleaded that though the contraventions were result of oversight and no ill-intention was involved in violating established norms of statute, nevertheless, keeping in view the gravity of

contravention the DC has arrived to the conclusion that action under section 220 of the Code read with regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017, is required to be taken against the erring professional.

- 13.2 In view of the above, the Disciplinary Committee, in exercise of the powers conferred under Section 220 of the Code read with Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017, disposes of the SCN with the directions:
- (i) Mr. Manish Kumar Gupta is suspended for a period of three years from the date of coming into force of this Order.
 - (ii) This period of three years will run concurrently with the previous suspension imposed vide DC order dated 26.05.2022 till 26.06.2024 and the rest of the period of suspension will continue till 23.10.2025 to account for three years of suspension in toto.
- 13.3 The Order shall come into force on expiry of 30 days from the date of its issue.
- 13.4 A copy of this order shall be sent to the CoC of all the CDs in which Mr. Gupta is providing his services. The CoC may decide whether to continue his services or not. In case, CoCs' decide to discontinue his services, an appropriate application may be filed before AA.
- 13.5 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Manish Kumar Gupta is enrolled as a member.
- 13.6 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.
- 13.7 Accordingly, the show cause notice is disposed of.

-Sd-
(Sudhaker Shukla)
Whole Time Member, IBBI

Dated: 23rd September, 2022
Place: New Delhi