

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)**

No. IBBI/DC/196/2023

8th December, 2023

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/COMP/2022-23/00956IBBI/C/2022/00694/241/703 dated 13.02.2023 and COMP-11011/32/2022-IBBI/388/730 dated 31.03.2023 issued to Mr. Manish 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 (Investigation Regulations). Mr. Manish Gupta is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with registration No. IBBI/IPA-001/IP-P01131/2018- 19/11826 and a Professional Member of Insolvency Professional Agency of the Indian Institute of Insolvency Professionals of ICAI (IIIP-ICAI) having residential address registered with IBBI at M P R & Co., E-62, LGF, Lajpat Nagar-II, New Delhi, National Capital Territory of Delhi- 110024.

1. Developments in relation to resolution/liquidation of the CDs

Horizon Concept Private Limited/ CD-1

1.1. The Hon'ble NCLT, New Delhi Bench-III (AA) *vide* order dated 01.10.2019 admitted the application under section 7 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of M/s Horizon Concept Private Limited (CD). Mr. Manish Gupta was appointed as the Interim Resolution professional (IRP) thereon.

Vardhman Buildtech Private Limited/CD-2

1.2. The Hon'ble NCLT, New Delhi Special Bench (AA) *vide* order dated 29.01.2019 admitted the application under section 7 of the Code filed by Ms. Priyanshi Arora for initiating CIRP of M/s Vardhman Buildtech Private Limited (CD). Mr. Manish Gupta was appointed as the Interim Resolution professional (IRP) thereon. He was later appointed as resolution professional (RP). The AA *vide* order dated 28.01.2022 approved the resolution plan of Mr. Vivek Gupta, resolution applicant, after approval by CoC with 97.30% voting share.

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

2.1. On receipts of complaints, the Board, in exercise of the powers conferred to it under section 218 of the Code read with the Investigation Regulations appointed three Investigating Authority (IA) to conduct the investigation of Mr. Manish Gupta in CIRP of CD-1 and CD-2

IA-1 in CIRP of CD-1

- 2.2. The investigation notice was issued to Mr Manish Gupta by IA on 16.08.2022. Mr. Manish Gupta did not submit his reply to investigation notice despite repeated reminders *vide* email dated 21.09.2022 and 06.10.2022. Thereafter, the IA-1 submitted the investigation report to the Board.

IA-2 & 3 in CIRP of CD-2

- 2.3. The investigation notice was issued to Mr Manish Gupta by IA-2 & 3 on 07.07.2022 and 13.10.2022 respectively. Mr. Manish Gupta did not submit his reply to investigation notice despite repeated reminders. Thereafter, the IA-2 and IA-3 submitted the investigation report to the Board.
- 2.4. Based on the material available on record including the investigation reports, the Board issued the SCNs to Mr. Manish Gupta on 13.02.2023 and 31.03.2023. The SCNs alleged contravention of various provisions of the Code and its underlying regulations..
- 2.5. The Board referred 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.
- 2.6. The DC gave opportunity to Mr. Manish Gupta to submit his reply to the SCNs on 24.04.2022 and opportunity for personal hearing on 17.05.2023. Mr. Manish Gupta requested three weeks to submit reply *vide* email dated 16.05.2023. On 17.05.2023, he was given last opportunity to reply to the SCNs. However, no reply was received. Mr. Manish Gupta was given another opportunity to submit reply to the SCNs and personal hearing before DC on 03.11.2023. Mr. Manish Gupta neither responded to any of the *op-cited* communications nor appeared before the DC. He left no scope for conclusion of the SCNs by the DC but to decide on the alleged contraventions on the basis of available material on the case.

3. Alleged contraventions and submissions of the IP

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

Common contraventions in CIRP on both CD-1 and CD-2.

Contravention – I

3.1. Non-cooperation with Inspecting Authorities in conduct of Investigation and non-submission of records to the Board.

- 3.1.1. It is noted that the IA-1 on 16.08.2022 served upon Mr. Manish Gupta the notice of investigation requiring him to submit the requisite documents and records pertaining to

CIRP of the CD-1. The notice of investigation was followed by reminders *vide* e-mails dated 21.09.2022 and 06.10.2022 requesting him to provide reply and submit relevant documents. However, despite repeated reminders by the IA-1 to submit reply, he failed to provide any response. Thereafter, the IA-1 was constrained to finalise and submit the investigation report on 19.12.2022 based on the materials available on record as four months had already elapsed since the notice of investigation was served on him. It is, thus, evident that Mr. Manish Gupta have not rendered necessary cooperation with the IA-1 in submission of relevant records for investigation thereby frustrating the entire investigation process.

- 3.1.2. Similarly, a notice of investigation was sent by the IA-2 on 07.07.2022 to Mr. Manish Gupta asking for his reply along with supporting documents in the matter of CD-2. On his failure to respond to the said notice, a reminder was sent *vide* email dated 10.08.2022 requesting him to submit his response. However, he again failed to submit his reply to the notice of investigation by IA-2.
- 3.1.3. Further, it has been observed that another investigation notice was served to him on 13.10.2022 by the IA-3 requesting for his reply to the investigation notice along with supporting documents in CIRP of CD-2. In response to the investigation notice, he requested for 15 days extension. The notice of investigation was followed by a reminder *vide* email dated 17.11.2022. On his failure to submit the reply to notice of inspection along with requisite documents even during extended period, another reminder was sent by the IA-2 *vide* email dated 22.11.2022. However, he failed to submit your reply along with the required documents to the IA-2.
- 3.1.4. It is, thus, evident that Mr. Manish Gupta has failed to submit the reply/records/documents within the time prescribed by all the IAs and further has not extended sufficient and appropriate co-operation to all the IAs, as may be required to carry out the inspection, which is his duty under regulation 8(4) of the Investigation Regulations.
- 3.1.5. It is also observed that, in CIRP of CD-1, no 'Forms' along with the enclosures thereto have been submitted by Mr. Manish Gupta to the Board on an electronic platform of the Board as is required under regulation 40B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations).
- 3.1.6. Similarly, Mr. Manish Gupta has only filed CIRP Form 1 in the CD-2 and have failed to file the other forms as mentioned in regulation 40B of the CIRP Regulations.
- 3.1.7. In view of the above, the Board held the *prima facie* view that Mr. Manish Gupta has contravened section 208(2)(e) of the Code, regulation 8(4) and 8(8) of Investigation Regulations, regulation 39A(4) and 40B of the CIRP Regulations, regulation 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with and clauses 13,14, 18 and 19 of the Code of Conduct under First Schedule of the IP Regulations.

3.2. Summary Findings

3.2.1. Since Mr. Manish Gupta did not provide any reply to the notices of investigation and SCNs issued thereafter based on the reports submitted by respective IAs, the DC proceeds to make findings on the basis of material available on records. The DC notes that Mr. Manish Gupta did not reply to the notices sent to him by different IAs on numerous occasions.

3.2.2. Further he has not filled any forms listed in regulation 40B of the CIRP Regulations. The purpose of different forms is narrated as below:

| Form No. | Period covered and scope |
|-----------------|--|
| CIRP 1 | From Commencement of CIRP till Issue of Public Announcement: This includes details of IRP, CD, and the Applicant; admission of application by AA; public announcement; details of suggested Authorised Representatives; non-compliances with the provisions of the Code and other laws applicable to the CD; etc. |
| CIRP 2 | From Public Announcement till confirmation / replacement of IRP: This includes details of Authorised Representative selected by IRPs for a class of creditors; taking over management of the CD; receipt and verification of claims; constitution of CoC, first meeting of CoC; confirmation / replacement of IRP; applications seeking cooperation of management (if any); expenses incurred on or by IRP; relationship of IRP with the CD, Financial Creditors and Professionals; support services taken from IPE; noncompliances with the provisions of the Code and other laws applicable to the CD; etc. |
| CIRP 3 | From Appointment of RP till issue of IM to Members of CoC: This includes details of RP; details of registered valuers; handing over of records of CD by IRP to RP; taking over management of the CD; applications seeking co-operation of management (if any); details in IM; non-compliances with the provisions of the Code and other laws applicable to the CD; etc. |
| CIRP 4 | From Issue of IM till issue of RFRP: This includes expression of interest; RFRP and modification thereof; evaluation matrix and modification thereof; non-compliances with the provisions of the Code and other laws applicable to the CD; etc. |
| CIRP 5 | From Issue of RFRP till completion of CIRP: This includes updated list of claimants; updated CoC; details of the resolution applicants; details of resolution plans received; details of approval or rejection of resolution plans by CoC; application filed with AA for approval of resolution plan; details of resolution plan approved by the AA; initiation of liquidation, if applicable; expenses incurred on or by RP; appointment of professionals and the terms of appointment; relationship of the RP with the CD, Financial Creditors, and |

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|--------|--|
| | Professionals; support services taken from IPE; non-compliances with the provisions of the Code and other laws applicable to the CD; etc. |
| CIRP 6 | <p>Event Specific: This includes:</p> <ol style="list-style-type: none"> a. Filing of application in respect of preferential transaction, undervalued transaction, fraudulent transaction, and extortionate transaction; b. Raising interim finance; c. Commencement of insolvency resolution process of guarantors of the CD; d. Extension of period of CIRP and exclusion of time; e. Premature closure of CIRP (appeal, settlement, withdrawal, etc.); f. Request for liquidation before completion of CIRP; and g. Non implementation of resolution plan, as approved by the AA. |
| CIRP 7 | <p>Activity requiring filing of Form CIRP 7, if not completed by the specified date</p> <ol style="list-style-type: none"> 1. Public announcement is not made by T+3rd day 2. Appointment of RP is not made by T+30th day 3. Information memorandum is not issued within 92 days from the date of public announcement 4. RFRP is not issued within 10 days from the date of issue of information memorandum to the committee 5. CIRP is not completed by T+180th day |
| CIRP 8 | Intimating details of opinion and determination under regulation 35A, on or before the one hundred and fortieth day of the insolvency commencement date |

As can be noted from above, every forms is required to be filed at particular stage or occurrence of an event in CIRP. The purpose of the forms is to enable IPs to easily comply with the statutory obligation of submission of records relating to the conduct of CIRP and the resolution plan and copy of records of every proceeding under section 208(2)(d) of the Code. They also facilitate the Board to effectively monitor the processes and the performance of IPs. Hence, non-filing of any of the above form leaves the Board in a blind spot where it is unable to view the progress of the processes and the professional.

3.2.3. The combination of non-filing of the CIRP forms and non-cooperation with the IAs by Mr. Manish Gupta is seen as a deliberate dereliction of duties which otherwise any IP is mandated to perform under the statute. Hence the DC upholds the above contraventions alleged in both the SCNs.

Horizon Concept Private Limited/ CD-1

Contravention-II

3.3. Non-conduct of the CIRP proceedings

- 3.3.1. It is observed that subsequent to initiation of CIRP of CD-1 Mr. Manish Gupta made a public announcement and invited claims from the creditors of the CD. Meanwhile an application no. IA 868/2019 was filed seeking initiation of the group insolvency of the CD-1 and Horizon Buildcon Pvt. Ltd. (the parent company), by consolidating two separate CIRP of these two entities. The said consolidation petition is yet to be decided. The said issue regarding group insolvency is for consolidation of the CIRP matters of the present CD-1 which is being considered before the AA as per its order dated 22.04.2022 and 21.12.2022.
- 3.3.2. It is further observed that no further steps have been taken by Mr. Manish Gupta for conducting the CIRP of the CD-1 and as per the complaint he has also been unresponsive to the creditors submitting their claims. It is also alleged in the complaint dated 05.08.2022 that he has not even constituted any CoC. Hence, he has failed to conduct CIRP in accordance with the provisions of the Code and also to manage the affairs of the CD-1 as a going concern and to maximize the value of the assets.
- 3.3.3. In view of the above, the Board held the *prima facie* view that he has *inter alia* violated sections 17, 18, 20, 208(2)(a) and (e) of the Code, regulations 40A of the CIRP Regulations and clauses 1, 2, 13 and 14 of the Code of Conduct.

3.4. Summary Findings

- 3.4.1. The DC notes that Mr. Manish Gupta has not supplied any reply to the complaints received against him in CIRP of CD-1 which was investigated by the investigating authority. The complainants alleged that Mr. Manish Gupta has not constituted committee of creditors (CoC) and not conducted any meeting of CoC. He has not replied to the claims filed by the creditors. It was further alleged that he has not been appearing before AA which is further buttressed by the observation of the AA *vide* order dated 23.11.2023 that “*Neither the main Counsel, Mr. Gupta engaged by the RP nor the RP himself has appeared before this Tribunal.... It is observed that in many matters specially the Resolution Plan matters of Home Buyers, the cases are important and have to be adjudicated on priority. However, it is seen that continuously in this particular case, neither the RP appears nor his counsel appears.*”

The conduct of RP is not satisfactory and IBBI should take required action so that such conduct is not repeated by the RP's engaged in the home buyers cases which have to be resolved on priority. Let a copy of this order be sent to IBBI''

3.4.2. There is no iota of doubt the Mr. Manish Gupta remained unresponsive and refrained from filing of forms, replying to investigating authority to attending the business of a CD-1 and conducting of CoC meeting and manage affairs of CD-1 lead to conclusion that Mr. Gupta had not performed his duties diligently and continuously remained unresponsive. Mr. Manish Gupta did not care to reply to the issues raised in the SCN, which conclusively demonstrates his indifferent attitude towards the work.

Vardhman Buildtech Private Limited/CD-2

Contravention-III

3.5. Delay in filing of Form E

3.5.1. From the documents available on record, it is observed that Mr. Manish Gupta filed Form E for the FY 2021-2022 only on 28.11.2022. The regulation 7(2)(ca) provides that 0.25 of the professional fee earned by IP shall be paid to the Board on or before the 30th of April every year in Form E, however the Form E was filed by him with a delay of almost 7 months i.e on 28.11.2022. In view of the above, the Board held the *prima facie* view that Mr. Manish Gupta have *inter alia* violated regulation 7(2)(ca) of IP Regulations read with clauses 1, 13 and 14 of the Code of Conduct.

3.6. Summary Findings

3.6.1. Since Mr. Manish Gupta has not provided any reply on the above issue, the DC proceeds to make findings on the basis of material available on records. A bare perusal of Form E highlights that he has paid interest for late payment of fees as per regulation 15 of the IP Regulations which establishes the delay in filing of Form E by Mr. Manish Gupta. Hence the DC upholds the above contravention.

4. Order

4.1. The DC notes that, on similar and other contraventions, Mr. Manish Gupta is already under suspension for a period of two years in CIRP of JC World Hospitality Private Limited, vide order no. No. IBBI/DC/149/2023 dated 3rd February, 2023.

4.2. Repeated contraventions and not providing any reasons for being un-responsive to the communications of the Board and his continuous absence from proceedings as observed by the AA, clearly demonstrate that Mr. Manish Gupta is neither keen nor professionally fit to pursue assignments under the Code. If Insolvency Professional (IP), becomes unresponsive to the various authorities and stakeholders in the eco system of Insolvency

Resolution Process, it will lead to derailment of the entire resolution process of the corporate debtor for which the IP is appointed. Keeping this in view, 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 cancels the registration of Mr. Manish Gupta (registration No. IBBI/IPA-001/IP-P01131/2018- 19/11826).

- 4.3. This Order shall come into force after expiry of 30 days from the date of this order.
- 4.4. A copy of this order shall be sent to the CoC/Stake Holders Consultation Committee (SCC) of all the corporate debtors in which Mr. Manish Gupta is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Manish Gupta.
- 4.5. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Manish Gupta is enrolled as a member.
- 4.6. 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.
- 4.7. Accordingly, the show cause notice is disposed of.

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(Sudhaker Shukla)
Whole Time Member, IBBI

Date: 8th December, 2023

Place: New Delhi