

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/158/2023

1st May 2023

ORDER

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

This Order disposes of the Show Cause Notice (SCN) No. COMP-11016/3/2022-IBBI/10/722/321 dated 03.03.2023, issued to Mr. Ravinder Kumar Goel, resident of Flat No. 211, Platinum Tower, Peer Muchalla, Dhakoli, Sahibzada Ajit Singh Nagar, Punjab -160104 who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-001/IP-P00705/2017-2018/11252.

1. Background

- 1.1 The Hon'ble National Company Law Tribunal, Chandigarh Bench (AA) vide its Order dated 08.08.2018 commenced the liquidation process of the Supreme Tex Mart Ltd (Corporate Debtor/CD), with the ongoing Resolution Professional appointed as Liquidator. Later, Mr. Ravinder Kumar Goel was appointed as Liquidator for the CD by the AA vide its Order dated 01.11.2019.
- 1.2 The IBBI in exercise of its powers under Section 218(1) of the Code, read with Regulation 7(1) and 7(2) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to conduct investigation in the Liquidation proceedings of the CD. IA served the notice of investigation as per Regulation 8(1) of Inspection and Investigation Regulations on 02.01.2023. Pursuant to the said notice, Mr. Ravinder Kumar Goel replied vide email dated 10.01.2023 and 24.01.2023. Thereafter, IA submitted investigation report to the Board on 30.01.2023.
- 1.3 Based on the findings of the investigation report and material available on record, the IBBI issued the SCN to Mr. Ravinder Kumar Goel on 03.03.2023. The reply of the Mr. Ravinder Kumar Goel on the SCN was received by the Board on 20.03.2023.
- 1.4 The SCN, response of Mr. Ravinder Kumar Goel to the SCN and other material available on record were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Ravinder Kumar Goel availed an opportunity of personal hearing before the DC on 05.04.2023 where he was represented by his advocate Mr. Deep Bisht. Mr. Ravinder Kumar Goel submitted additional written submission vide e-mail dated 08.04.2023.
- 1.5 The DC has considered the SCN, the reply of SCN, submissions of Mr. Ravinder Kumar Goel,

and other material available on record and proceeds to dispose of the SCN.

2. Alleged Contraventions, Submissions and Findings

The contraventions alleged in the SCN and submissions by the Mr. Ravinder Kumar Goel are summarized as under:

3. Contraventions

Excessive fees charged by the Liquidator.

- 3.1 The Board has observed that Mr. Ravinder Kumar Goel had informed the IA that no fee for the liquidator was fixed by the Committee of Creditors (CoC) and therefore the same is payable as under Regulation 4(2)(b) of the Liquidation Regulations which provides for payment of liquidator's fee as a percentage of the amount realized (excluding other liquidation cost) and amount distributed.
- 3.2 As per the 10th Quarterly Progress Report, Mr. Ravinder Kumar Goel had stated that the previous liquidator had certified liquidation cost as Rs. 14,10,11,331.37/-. The Board has observed that while calculating fee as liquidator, Mr. Ravinder Kumar Goel had not deducted the liquidation cost from the amount realized to arrive at the fee payable as required under Regulation 4(2)(b) of Liquidation Regulations and therefore, excess liquidator's fee on realization has been calculated, resulting in over payment which is in violation of Regulation 4(2)(b) of Liquidation Regulations.
- 3.3 The Board is therefore of the *prima facie* opinion that Mr. Ravinder Kumar Goel has *inter alia* contravened section 35(1)(d) & (o) and 208(2)(a) & (e) of the Code, Regulation 4 of the Liquidation Regulations and Regulation 7(2)(h) read with Clauses 1, 3 and 25 the Code of Conduct of the IP Regulations.

Submissions by Mr. Ravinder Kumar Goel

- 3.4 Mr. Ravinder Kumar Goel has submitted that the erstwhile liquidator had in affidavit to the AA has mentioned the liquidation cost to the tune of Rs. 85,48,361/-. Further, at the time of handing over of documents/data to him, the erstwhile Liquidator had informed that there is unpaid amount to the extent of Rs.14.10 crores payable to the suppliers of goods and services during the Liquidation period when the company was running as a going concern. These suppliers have filed interlocutory applications before the AA which are still pending for adjudication.
- 3.5 Upon commencement of liquidation on 08.08.2018. definition of Liquidation Cost which existed was the one where the amount outstanding against supplies made during Liquidation period was not included in it. Moreover, because of the clarification issued vide Circular dt. 26.08.2019, Ravinder Kumar Goel was not able to include such dues towards the Liquidation Cost. The issue with regard to Liquidation cost was also adjudicated by AA in an application filed by creditor namely State Bank of India with a prayer for appointment of a competent person to conduct the audit of the Liquidation costs of the CD for the period 29.09.2017 to 31.10.2019. Mr. Ravinder Kumar Goel further submitted that on directions of the AA in its Order dated 28.09.2022, he had appointed an independent auditor to conduct the audit of books of conduct of the CD and to

ascertain the actual CIRP/Liquidation cost. The auditor has estimated the Liquidation cost as around Rs 6.68 crores. The report of the auditor is filed before the AA which is pending adjudication and therefore the issue of unpaid amount to supplier of goods and services has not attained finality.

- 3.6 It is for the aforesaid reason that the Liquidator has not been able to include the outstanding amounts for supplies made during Liquidation period towards Liquidation Cost. So unless, this issue is decided by the AA, Mr. Ravinder Kumar Goel is not able to include such amounts towards the Liquidation Cost on his own. In any case, the unpaid amount to the supplier of goods and services during CIRP/Liquidation process is pending for adjudication before the AA. Without prejudice to the aforesaid submission, Mr. Ravinder Kumar Goel has undertaken to return the excess amount received in consideration towards the liquidator's fee in the account of Liquidation estate, in case the AA directs to do so after considering all the relevant facts and circumstances.

Findings of the DC

- 3.7 The DC notes that in accordance with regulation 4(2)(b) of the Liquidation Regulations, the liquidator should exclude the liquidation costs from the realized amount, while calculating his fee. However, the amount payable to the suppliers of goods and services are pending adjudication with the AA. Since Mr. Ravinder Kumar Goel has undertaken to return the excess amount received in consideration towards the liquidator's fee in the account of Liquidation estate, the DC takes a sympathetic view of the matter. Ideally, Mr. Ravinder Kumar Goel should not have taken fees on amount payable to suppliers. He should forthwith return this excess fee to the CD and can again claim fees after AA has decided this issue.
- 3.8 Further, it is to be noted that Liquidation cost defined under regulation 2(1)(ea) of the Liquidation Regulations inter alia includes cost incurred in conducting the liquidation process e.g., remuneration payable to professionals, cost incurred by the liquidator etc. The DC observes Mr. Ravinder Kumar Goel while computing his fee as per regulation 4(2)(b) of the Liquidation Regulations has also not deducted the remuneration payable to professionals, cost incurred by the liquidator etc. Therefore, the DC finds that Mr. Ravinder Kumar Goel has violated Regulation 4 of the Liquidation Regulations along-with sections 35(1)(d) & (o) and 208(2)(a) & (e) of the Code, and Regulation 7(2)(h) read with Clauses 1, 3 and 25 the Code of Conduct of the IP Regulations.

4. Charging of Participation Fees during Auction Process:

- 4.1 The Board has observed in the notice dated 22.08.2020 for the conduct of the e-auction for sale of the CD as a going concern, that Mr. Ravinder Kumar Goel had prescribed a participation fee of Rs.2,36,000 in addition to the Earnest Money Deposit (EMD) of Rs. 28.75 Crores. Further, the subsequent auction notices dated 10.10.2020 and 30.11.2020 also prescribed the non-refundable participation fee of Rs.1,18,000/- in each auctions.
- 4.2 The Board noted that the intent and the objective of the Code is to maximize value of assets of the CD and therefore, in order to maximize the realisation under the auction, it is imperative that

greater participation take place in the process. The prescription of participation fee limits the competition, and in this case it led to failure of the auctions.

- 4.3 Accordingly, the Board is of the *prima facie* opinion that Mr. Ravinder Kumar Goel have *inter alia* violated Section 35(1)(d) and 208(2)(a) & (e) of the Code and Regulation 7(2)(h) read with Clauses 1 and 10 of the Code of Conduct of IP Regulations.

Submissions by Mr. Ravinder Kumar Goel

- 4.4 Mr. Ravinder Kumar Goel has submitted that the participation fee was prescribed with the sole purpose of inviting the genuine and serious bidders. Mr. Ravinder Kumar Goel has further submitted that at the time of issuance of auction notices there was no clarity or provision with regard to the participation fee in an auction under the liquidation process. There was no provision which prohibited the participation fee in an auction under the liquidation process. The proviso to clause 3 under Auction in Schedule I Mode of Sale of Liquidation Regulations was inserted by the IBBI only on 30.09.2021. Mr. Ravinder Kumar Goel has further submitted that the prescription of participation fee has not caused any prejudice or loss to any of the stakeholders of the CD and also IP has not derived any personal benefit out of it.

Findings of the DC

- 4.5 The DC notes that the provision regarding prohibition on imposition of any type of participation fee from the prospective buyers was inserted in the Liquidation Regulations by the Board vide amendment dated 30.09.2021. Hence, the DC accepts the submission of Mr. Ravinder Kumar Goel.

5. ORDER

- 5.1 In view of the foregoing, the DC finds that Mr. Ravinder Kumar Goel has over-charged his fee by not deducting the liquidation cost from his fees computed as per regulation 4(2)(b) of Liquidation Regulations. Mr. Ravinder Kumar Goel should not have taken the fees on the amount payable to suppliers even though this was pending adjudication before AA. He should forthwith return this excess fee to the CD and can again claim the amount after AA has decided this issue. The DC further notes that during the personal hearing, Mr. Ravinder Kumar Goel has submitted to credit the difference in fee in the account of the CD. In view of the amount is pending adjudication before AA and the submission made by Mr. Ravinder Kumar Goel, the DC takes a sympathetic view in this matter.
- 5.2 The DC, therefore, in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby directs Mr. Ravinder Kumar Goel to recompute his fee for liquidation assignment after deducting the Liquidation costs (both actual and contingent) in accordance with the regulation 4(2)(b) of the Liquidation Regulations. On recomputation, such difference in fee received by Mr. Ravinder Kumar Goel shall be credited in the account of the CD.

- 5.3 In addition, the DC imposes a penalty of Rs.1,00,000/- on Mr. Ravinder Kumar Goel for not calculating the liquidator's fee as per the provisions of the Code read with regulations and directs him to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of "penalty imposed by IBBI" on <https://bharatkosh.gov.in> within 45 days from the date of issue of this order and submit a copy of the transaction receipt to the Insolvency and Bankruptcy Board of India. The DC also warns Mr. Ravinder Kumar Goel to be extremely careful and ensure full compliance with the provisions of the Code and Regulations made thereunder in his assignments.
- 5.4 This Order shall come into force on expiry of 30 days from the date of its issue.
- 5.5 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Ravinder Kumar Goel is enrolled as a member.
- 5.6 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.
- 5.7 Accordingly, the show cause notice is disposed of.

Sd/-

(Ravi Mital)
Chairperson, IBBI

Dated: 1st May 2023

Place: New Delhi