

# INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

## (Disciplinary Committee)

No. IBBI/DC/170/2023

18<sup>th</sup> May 2023

### ORDER

**In the matter of Mr. Navneet Gupta, 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/12/725/353 dated 16.03.2023, issued to Mr. Navneet Gupta, House No. 1598, First Floor, Sector-22B, Chandigarh, Chandigarh-160022 who is a Professional Member of The Indian Institute of Insolvency Professional of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00361/2017-18/10619.

#### 1. Background

- 1.1 The National Company Law Tribunal, Chandigarh, (AA) had admitted the application under Section 7 of the Code for corporate insolvency resolution process (CIRP) of M/s James Hotels Limited (CD) *vide* Order dated 27.04.2017. The IP was appointed as IRP *vide* order dated 08.05.2017, he was later confirmed as RP by the CoC on 29.05.2017. Mr. Navneet Gupta was appointed as Liquidator *vide* order dated 17.10.2018, when Liquidation was ordered in the said matter.
- 1.2 The IBBI, in exercise of its powers under section 218 of the Code read with regulations 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017 (hereinafter ‘Inspection and Investigation Regulation’), appointed an Investigating Authority (IA) to conduct investigation in the Liquidation proceedings in the matter of the CD. The IA served a notice of investigation to the IP on 30.12.2022, and the IP replied to the notice *vide* e-mail dated 3.02.2023. The IA submitted the Investigation Report to the IBBI on 06.03.2023.
- 1.3 The IBBI issued the SCN to the IP on 16.03.2023 based on findings in the Investigation Report in respect of his role as Liquidator. The IP replied to the SCN *vide* e-mail dated 6.05.2023.
- 1.4 The IBBI referred the SCN, response of the IP to the SCN, and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. The IP availed the opportunity of personal hearing through virtual mode before the DC on 11.05.2023, where he was represented by Mr. Ashish Makhija, Advocate.

#### 2. Alleged Contraventions, Submissions and Findings

The contraventions alleged in the SCN and submissions by the IP are summarized as under:

### 3. Contravention

- 3.1 It is noted that the CIRP was admitted by order dated 27.04.2017 of AA, however, due to failure of CIRP, the AA passed order for liquidation process of the CD vide order dated 17.10.2018 and also appointed the IP as Liquidator. It is noted that in the conduct of the e-auction for sale of the CD as a going concern, the IP issued e-auction notices wherein, he had prescribed a non-refundable process participation fee in addition to the Earnest Money Deposit (EMD). Accordingly, the Board held the prima facie opinion that he had inter alia violated Section 35(1)(d) and 208(2)(a) & (e) of the Code, Regulation 7(2)(h) of IP Regulations read with Clauses 1 and 10 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

#### Submission by the IP

- 3.2 The IP submitted that in order to realize the maximum value for all stakeholders, the liquidator is maintaining the business of the CD on going concern basis as recommended by the CoC. He submitted that the CD was intended to be liquidated as a going concern through e auction mode as provided in IBBI (Liquidation regulations) 2016. He submitted that he made all sincere efforts while discharging his duties as Liquidator of the Corporate Debtor and issued e-auction notices for the sale of CD as a going concern wherein the participation fee was prescribed.
- 3.3 He submitted that at the time when the auction process was conducted proviso to Schedule I (1)(3) of the Liquidation Regulations was not in force and there was no embargo in the Liquidation Regulations against prescribing non-refundable participation fee in the auction process for sale of assets under liquidation. He submitted that charging of participation fees in auction process during Liquidation Process was a general practice followed by the Liquidators at the relevant time since there was no prohibition or clarity as to charging of participation fees to keep out non-serious participants in the process. He submitted that prescription of participation fee in e-auction processes was done primarily to ensure that competent and serious bidders participate in the process of purchasing the corporate debtor as a going concern. He further submitted that the prescription of participation fee would ensure the participation of legitimate bidders who possess the wherewithal and financial capability to execute such a sale.
- 3.4 He submitted that his conduct for prescribing the participation fee has not caused any prejudice or loss to any of the stakeholders of the CD. He submitted that the amount collected from non-refundable participation fees was deposited by the bidders in the liquidation account and no unjust enrichment has been caused to him. He submitted that he has not derived any personal benefit out of it and there was never any active intent by him to violate the law or cause any undue gain to himself or any undue loss to any other party. He submitted that his actions were taken with *bonafide* intent which has neither caused any prejudice or loss to any of the stakeholders nor has impacted their interest on account of such actions. He submitted that he had made all efforts to maximize the value of assets of the corporate debtor and eventually he succeeded to realise the value of assets of the CD to the tune of Rs. 150.05 crore which is more than the liquidation value i.e. Rs.148.05 crore. He submitted that he has successfully sold the CD

as a Going Concern under the Code resulting in almost Nil haircut and maximum recovery of the lender Bank's dues that were even more than the claim amount admitted during the CIRP.

### **Analysis and Finding**

- 3.5 Based on the facts and circumstances of the matter and submissions made by the IP, the DC notes that auction was conducted successfully which evidences that participation fee was not a deterrent for the prospective resolution applicant for participating in the auction process. Hence the DC accepts the submission of IP.

## **4. ORDER**

- 4.1 In view of the foregoing discussion, the DC, in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 disposes of the SCN without any direction.
- 4.2 This Order shall come into force with an immediate effect.
- 4.3 A copy of this order shall be forwarded to The Indian Institute of Insolvency Professional of ICAI where Mr. Navneet Gupta is enrolled as a member.
- 4.4 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.
- 4.5 Accordingly, the show cause notice is disposed of.

Sd/-  
(Ravi Mital)  
Chairperson, IBBI

Dated: 18<sup>th</sup> May, 2023  
Place: New Delhi