

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/97/2022

10th May, 2022

Order

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2020/53 dated 24.03.2022 issued to Mr. Hrisikesh Dasgupta, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 13 of the Insolvency and Bankruptcy Board of India (Investigation and Investigation) Regulations, 2017 and regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

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

1.1. The Hon'ble NCLT, Kolkata Bench, Kolkata (AA) vide order dated 05.10.2018 admitted the application under section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating Corporate Insolvency Resolution Process (CIRP) of Nadia Health Care Private Limited (CD). The AA appointed Mr. Hrisikesh Dasgupta as an Insolvency Resolution Professional (IRP) and who was later confirmed as the Resolution professional (RP). The CD was ordered into liquidation by AA vide order dated 30.07.2019 due to non-receipt of any resolution plan. Mr. Dasgupta has filed an application for dissolution of CD under section 54 of the Code on 01.03.2022 after realization of Rs. 26,65,645.18/- from sale of assets and amount lying in the bank accounts of CD and utilising the same to CIRP and liquidation cost of Rs. 26,66,645.18. It is important to note that realization proceeds have been entirely consummated in the process cost and largely by liquidator as a fee and two operational creditors who have submitted the claims of Rs 5,67,34,167 have not got anything from the proceeds. At CIRP stage Rs 8,21,24,680 were claims as submitted by the sole Financial Creditor (FC), which were reportedly not pursued by the FC at liquidation stage.

2. Issuance of SCN and response:

2.1. The IBBI, in exercise of its powers under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Hrisikesh Dasgupta vide order dated 06.08.2020 on having reasonable grounds to believe that Mr. Hrisikesh Dasgupta had contravened provisions of the Code and Regulations thereunder. A draft inspection report (DIR), prepared by the IA, was shared with Mr. Hrisikesh Dasgupta on 16.12.2020, to which the Mr. Hrisikesh Dasgupta submitted reply vide email dated 31.12.2020. The IA submitted the Inspection Report to IBBI on 15.04.2021.

2.2. The IBBI issued the SCN to Mr. Hrisikesh Dasgupta on 24.03.2022 based on the material available on record in respect of his role as an IRP/RP in the CIRP and as Liquidator in liquidation of CD. The SCN details the contraventions of sections 35(1)(l), 43(1) and section 208(2)(a) and (e) of the Code, Regulation 35A(2) & (3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2017 (CIRP Regulations), Regulation 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and Clause 13 of the Code of Conduct under First Schedule of regulation 7(2) thereof.

2.3. Mr. Hrisikesh Dasgupta replied to the SCN vide mail dated 13.04.2022.

2.4. The Board has referred the SCN, response of Mr. Hrisikesh Dasgupta to the SCN and other material available on record to the undersigned as Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Hrisikesh Dasgupta availed an opportunity of personal hearing before DC on 05.05.2022 in online mode where he was represented by Advocate Mr. Pranay Agarwal. Mr. Dasgupta submitted additional written submissions via email dated 05.05.2022.

3. Alleged Contravention and Submissions:

Contraventions alleged in the SCN and Mr. Gupta's submissions on specific point is summarized as follows:

3.1. Contravention

3.1.1. In the 2nd CoC meeting held on 03.12.2018, Mr. Dasgupta placed his opinion before the Committee of Creditors (CoC) as recorded in the minutes under agenda number 6 para (c) as follows:

“RP informed that from verification of bank accounts of the CD, it transpires that a lot of transactions were carried on involving fund transfer to various names including the directors of CD. As required under the provisions of the code, RP is of prima facie opinion that a forensic / transaction audit be conducted in respect of CD. The CoC considered the same and authorized RP to appoint a suitable forensic auditor to conduct the Forensic / Transaction audit of the CD as required under the provisions of the Code at a fee not higher than Rs. 2.50 lakhs plus applicable taxes.”

3.1.2. Based on the same, forensic auditor was appointed vide appointment letter dated 25.01.2019 and the audit report was received on 21.05.2019. Forensic auditor in his report (Page No. 11) identified certain transactions including payment of unsecured loan aggregating Rs. 180.11 lakh and receipt of amounts from related parties during the review period which are in nature of preferential transactions as per Section 43 of the Code.

3.1.3. According to sub-regulation (2) & (3) of Regulation 35A of CIRP Regulations where the resolution professional is of 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 (ICD) and also file an application before AA before 135th day of ICD, under intimation to the IBBI.

3.1.4. IBBI observed that even after the receipt of the audit report, Mr. Dasgupta has failed to file an application before the AA under section 43 of the Code till date and accordingly, failed to adhere to the timelines as stated under the Regulation 35A (2) & (3) read along with Regulation 40A of CIRP Regulations. It may also be considered that Mr. Dasgupta was appointed as liquidator of the CD vide order dated 30.07.2019. However, he failed to comply with Section 35 (1)(l) read along with section 43(1) of Code which casts duty on the liquidator to determine preferential transactions and to file application for avoidance of such transaction. In view of the above, the conduct of Mr. Dasgupta is prima-facie not in consonance with Section 35(1)(l), 43(1), 208(2)(a) and 208(2)(e) of Code, Regulation 35A (2) & (3) of CIRP Regulations, Regulation 7(2)(h) of IP Regulations read with clause 13 of Code of Conduct.

3.2. Submissions

3.2.1. With regard to the aforesaid contravention, submission of Mr. Dasgupta may be summarized as below:

3.2.2. Mr. Dasgupta submitted that as per observations in 2nd CoC, he formed an opinion on preferential and other transactions within 59 days of the commencement of CIRP which was within timeline of 75 days under the provisions of the Code. Pursuant to the 2nd CoC meeting, quotations were called from the auditors and 3 quotes were received. The 3rd CoC meeting was held on 20.12.2018 and the agenda for appointment of forensic auditor was kept at agenda item no. 4. However, due to want of quorum, the said meeting was adjourned to 21.12.2018. Even on 21.12.2018 the CoC meeting could not be held due to absence of the sole CoC member. In the 4th CoC meeting held on 11.01.2019 the matter for appointment of forensic auditor was kept at agenda item no. 4 but the CoC deferred the matter to the next CoC meeting. It was only in the 5th CoC meeting held on 21.01.2019 that the CoC decided to appoint R. Dokania & Co. Chartered Accountants, at agenda item no. 4, to conduct forensic audit of the accounts of CD. Thus, R. Dokania & Co. was appointed as forensic auditor *vide* appointment letter dated 25.01.2019. In the said letter of appointment, it was clearly stated that the audit was to be completed within 20 days and that the report was to be submitted within 30 days of the issue of the appointment letter dated 25.01.2019. Mr. Dasgupta submitted that he formed opinion within the stipulated time, but the approval for appointment of forensic auditor took a total of 53 days due to the CoC not turning up in the CoC meetings or deferring the matter to the next meeting.

3.2.3. Mr. Dasgupta further submitted that pending the receipt of the forensic audit report, the CoC in its 8th meeting held on 16.04.2019 resolved, with 100% voting share, to recommend liquidation of the CD as no resolution plan was received. As such an application being CA (IB) No. 5571KB/2019 was filed before the AA for liquidation of the CD and the AA passed the order for liquidation on 30.07.2019 and appointed the Mr. Dasgupta herein as the Liquidator. The report of forensic auditor was to be received within

25.02.2019 but it was received only on 21.05.2019, i.e., after 117 days instead of the scheduled submission period of 30 days. Further, the report was based on un-audited accounts and assumptions. Page numbers 12, 13 and 14 of the forensic audit report provides a list of disclaimers and limitations including disclaiming of responsibility with regard to matters of legal nature amongst other things. The report stated the unavailability of documents and further on page number 8 it reads "*The Transactions seems to be in the nature of Preferential Transactions as per Section 43 of the Code.*" Thus, the report is inconclusive with regard to certainty of the nature of the transactions being considered. Thus, Mr. Dasgupta was unable to make a determination on preferential and other avoidable transactions within 115 days from the commencement of CIRP.

3.2.4. Mr. Dasgupta submitted that he had been requesting the erstwhile directors of CD to submit its audited accounts as no documents were available at the registered which in reality the residential address of parents of erstwhile Director of the CD. The erstwhile directors failed to submit the audited balance sheet to Mr. Dasgupta on the pretext that it was with the statutory auditor of the CD, Mrs. Neha Mor. Despite several follow ups with the erstwhile Directors and the statutory auditor of the CD no documents were provided by them. Subsequently he filed an application being MA No. 1774/KB/2019 under Regulation 9 of the IBBI (Liquidation Process) Regulations, 2016, seeking cooperation of statutory auditor. The AA *vide* order dated 12.03.2020 directed the statutory auditor of the CD, Mrs. Neha Mor to cooperate with Mr. Dasgupta. Despite the order of the AA and the notice dated 12.08.2020 on behalf of the Liquidator, the statutory auditor did not cooperate with him. Mr. Dasgupta submitted that in the absence of such audited accounts of the CD, he was unable to determine any avoidable or fraudulent transactions, only on the basis of the forensic audit.

3.2.5. Mr. Dasgupta submitted that due to lockdown and several restrictions were imposed from 25.03.2020 in the wake of Covid 19 pandemic, AA *vide* order dated 08.12.2020, excluded a period of 160 days from the liquidation period and further extended the liquidation period by one year. Further, various restrictions/prohibitions were re-imposed in various states to curb the second wave of Covid 19 from April 2021. As soon as the restrictions for 2nd wave of Covid were relaxed, the meeting of Stakeholders Consultation Committee (SCC) was called on 14.09.2021 adjourned to 15.09.2021 and on 21.09.2021 to discuss, amongst other things, the issues related to non-availability of audited accounts of the CD and non-cooperation from the statutory auditor of the CD but no one was present in the said meetings. Mr. Dasgupta submitted that no creditor/stakeholder was interested in the liquidation process of the CD or satisfaction of their claims, hence it was not possible for him to recover amounts from suspected PUFÉ transactions and that too at his own cost from his pension money. Mr. Dasgupta submitted that the available assets of the CD has been disposed of and the amounts lying in the bank accounts of the CD has been transferred to the liquidation account of the CD. The sale proceeds and amounts lying in the bank accounts of the CD has been utilised to pay the CIRP cost and liquidation cost. Therefore, he filed an application for dissolution of the CD under section 54 of the Code on 01.03.2022.

3.2.6. Mr. Dasgupta also quoted few instances where the AA has made adverse observations upon filing of avoidance applications without proper determination.

3.2.7. Mr. Dasgupta further submitted that he did not file application under section 19(2) of the Code because during the CIRP there was cooperation by the Directors of CD but when the erstwhile directors did not provide the audited financials of CD even in the liquidation period, citing the excuse that it is with the statutory auditor of the CD, who had not done audit for non-payment of her fees, the Liquidator filed an application under Regulation 9 of the Liquidation Regulations seeking cooperation from the statutory auditor of the CD. The said application was allowed by the Hon'ble Tribunal on 12.03.2020. The Liquidator had also sent notices informing the erstwhile management of the said order but to no avail.

4. Summary Findings

4.1. The following table present the important events related to the CD as emerged from the submissions made by Mr. Dasgupta.

Date	Event
05.10.2018	ICD
03.12.2018	Date of forming opinion by Mr. Dasgupta in 2 nd CoC
21.01.2019	CoC decided to appoint Dokania & Co. Chartered Accountants as forensic auditors
25.01.2019	Appointment letter was issued to forensic auditor.
16.04.2019	CoC resolved to liquidate the CD
21.05.2019	Report received from forensic auditor
30.07.2019	Liquidation order passed by AA
11.09.2019	Letter to Statutory Auditor of CD Mrs. Neha Mor after erstwhile directors failed to submit the audited balance sheet on the pretext that it was with statutory auditor.
16.09.2019	Reply by Mrs. Neha Mor that she has not been paid fees by erstwhile management.
	Application filed by Mr. Dasgupta under regulation 9 of Liquidation Regulations.
12.03.2020	Order by AA directing Mrs. Neha Mor to cooperate with Mr. Dasgupta.
12.08.2020	Letter by Mr. Dasgupta to Mrs. Neha Mor for requesting to provide the documents related to CD.
08.12.2020	AA excluded 160 days from liquidation period and extended liquidation period by 1 year.
14.09.2021, 15.09.2021 and 21.09.2021	Meeting of SCC called to discuss non-availability of audited accounts of CD and non-cooperation from Statutory Auditor but no one was present.
01.03.2022	Application for dissolution of CD filed under section 54 of the Code.

4.2. The DC notes the submission of Mr. Dasgupta that as chairperson of CoC, he informed its member in 2nd CoC meeting about transactions which were carried out involving fund transfer to various names including directors of CD and was of prima facie opinion that a forensic/transaction audit be conducted in respect of CD. Thereafter, CoC considered

and authorized the RP to appoint suitable forensic auditor. After approval by CoC, Mr. Dasgupta vide letter dated 25.01.2019, appointed M/s R. Dokania & Co. to conduct forensic audit with fees of Rs. 2,50,000/-. Thereafter he copied the letter of assignment to the director of the CD to cooperate with the forensic auditor.

- 4.3. However, above submission is contrary to the spirit of Section 18(a) read with Section 23(2) of the Code provides that it is duty of IRP to collate all information related to the assets, finances and operations of the CD for determining financial position of the CD. Sections 18(a) and 23 (2) of the Code are reproduced below:

“18. Duties of interim resolution professional

The interim resolution professional shall perform the following duties, namely:-

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to –

- (i) business operations for the previous two years;*
- (ii) financial and operational payments for the previous two years;*
- (iii) list of assets and liabilities as on the initiation date; and*
- (iv) such other matters as may be specified;”*

“23 Resolution professional to conduct corporate insolvency resolution process.-

(2) The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.”

- 4.4. Therefore mere copying a letter to Mr. Saurav Saha director of CD for cooperating with forensic auditor in providing access to documents and records pertaining to CD as and when requisitioned by them is materially insufficient. Efforts required to reconstruct the missing gap in the desired information and convincing Mr. Saha to provide the documents are not apparent from the submissions. The law sufficiently empowers the RP and liquidator to seek information from any source including erstwhile management and also provides remedial action in case the cooperation is not forthcoming.
- 4.5. Further, Mr. Dasgupta accepted report dated 21.05.219 from forensic auditor and paid fees to them taking these as process cost. The DC observes that it was duty of Mr. Dasgupta to make determination and file avoidance application. He sought appointment of a forensic auditor, which was approved by the CoC. It was duty of Mr. Dasgupta to provide sufficient information to the forensic auditor. His submission that the report is unreliable due to insufficiency of documents, is an afterthought if his statement that there was cooperation from erstwhile directors during CIRP period is taken into consideration. The DC also considers that reconstruction of audited accounts was also part of the duty of Mr. Dasgupta.
- 4.6. The forensic audit report at page 11 stated that *“The Company failed to provide us with the Relevant Information that were necessary for the Audit.”* In light of above, it can be concluded that Mr. Dasgupta appointed forensic auditor without sufficient information and documents being procured by him from CD. Mr. Dasgupta did not make effort to

obtain the audited balance sheet from erstwhile management even when they were cooperating during CIRP and did not file any application under section 19(2) of the Code for obtaining the same in case of any non-cooperation in submitting the documents pertaining to CD including audited balance sheet.

- 4.7. Later on, he filed application under regulation 9 of Liquidation Regulations only against the statutory auditor not against the directors of suspended board of the CD for cooperation. Further, the DC observes that when the statutory auditor did not provide the audited reports for financial years 2017-2018, 2018-2019 and from the period of 01.04.2019 to 30.07.2019 along with any other documents related to CD as per direction of AA vide order dated 12.03.2020 and requested by him by letter dated 12.08.2020, Mr. Dasgupta did not file any contempt petition against statutory auditor Mrs. Neha Mor.
- 4.8. The DC observes that under section 35(1)(1) of the Code it is duty of liquidator to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions. The liquidator is not required to depend on SCC for filling applications under sections 43, 45, 50 or 66 of the Code.
- 4.9. In light of laxity and delay on part of Mr. Dasgupta in making efforts to obtain documents related to CD required to form opinion regarding transactions covered under section 43, 45, 50 and 66, the DC finds that Mr. Dasgupta has not acted in diligence while performing his duties under the Code and has contravened section 35(1)(1), 43(1), 208(2)(a) and 208(2)(e) of Code, Regulation 35A (2) & (3) of CIRP Regulations, Regulation 7(2)(h) of IP Regulations read with clause 13 of Code of Conduct.

5. Order

- 5.1. In view of above, a case of said contravention is established beyond doubt and the DC is arrived to the conclusion that, in exercise of the powers conferred under section 220 (2) of the Code read with sub-regulations (7) and (8) of Regulation 11 of the IP Regulations and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 reasonable action is warranted.
- 5.2. The DC hereby imposes a penalty on Mr. Hrisikesh Dasgupta equal to 25 percent of the fees he has received in the CIRP and Liquidation processes 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. In case Mr Dasgupta fails to deposit the said monetary penalty within 45 days, his registration as IP will remain suspended w.e.f. from 46th day from the date of issue of this order.
- 5.3. A copy of this order shall be sent to the CoCs of all the Corporate Debtors in which Mr. Dasgupta 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.

5.4. A copy of this order shall be forwarded to the Insolvency Professional Agency of Institute of Cost Accountants of India where Mr. Hrisikesh Dasgupta is enrolled as a member.

5.5. 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.

5.6. Accordingly, the show cause notice is disposed of.

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(Shri Sudhaker Shukla)
Whole Time Member, IBBI

Dated: 10th May, 2022

Place: New Delhi