

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. . IBBI/DC/204/2024

5<sup>th</sup> February 2024

**Order**

This order disposes of the Show Cause Notice (SCN) No. IBBI/C/2022/00676/714/288 dated 20.02.2023 issued to Ms. Maya Gupta, an Insolvency Professional (IP), registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-002/IP-N00363/2017-18/11061 and a professional member of Insolvency Professional Agency (IPA) of the ICSI Institute of Insolvency Professionals (ICSI-IIP), having residential address registered with IBBI as 3685/7, Narang Colony, Trinagar, New Delhi – 110035.

**1. Background**

- 1.1. The Hon'ble National Company Law Tribunal (NCLT), New Delhi, Principal Bench (AA) *vide* order dated 23.03.2022 admitted the application under Section S7 of the Insolvency and Bankruptcy Code, 2016 (Code) filed by the State Bank of India for initiating the Corporate Insolvency Resolution Process (CIRP) against M/s Action Ispat and Power Private Limited (CD) and appointed Ms. Maya Gupta as Interim Resolution Professional (IRP).
- 1.2. The IBBI, in the exercise of its powers under Section 218(1) of the Code read with Regulations 3(2) and 3(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection and Investigation Regulations) appointed an Investigating Authority (IA) to conduct the investigation of records and affairs pertaining to the CD, wherein Ms. Maya Gupta was the IRP.
- 1.3. In compliance to Regulation 8(1) of the Inspection and Investigation Regulation, IA served the notice of investigation on 06.07.2022. Pursuant to the said notice, Ms. Maya Gupta replied *vide* mail dated 14.07.2022. Accordingly, Investigation Report (IR) was submitted by the IA to Board on 15.10.2022..
- 1.4. On perusal of the Investigation Report, Board was of the prima facie opinion that Ms. Maya Gupta had contravened provisions of the Code and Regulations framed thereunder and issued SCN to Ms. Maya Gupta on 20.02.2023. Ms. Maya Gupta submitted her reply dated 06.03.2023 to the SCN.
- 1.5. The Board referred the SCN, and the response to the SCN of Ms. Maya Gupta, to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Ms. Maya Gupta availed an opportunity for a personal hearing through virtual mode before the DC on 03.08.2023.
- 1.6. The DC has considered the SCN, the reply to the SCN, oral and written submissions of Ms. Maya Gupta, and proceeds to dispose of the SCN.

## **Alleged Contraventions, Submissions, Analysis, and Findings**

The contraventions alleged in the SCN and Ms. Maya Gupta's written and additional written submissions and oral submissions thereof are summarized as follows:

### **Contravention**

#### **2. Non-Conduct of CoC Meeting**

- 2.1. It was observed that Ms. Maya Gupta conducted the 1<sup>st</sup> meeting of Committee of Creditors (CoC) on 03.05.2022 wherein various agendas pertaining to the CIRP process were discussed. The agenda regarding the confirmation of IRP to RP was rejected with 59.11% voting share. The CoC also resolved to arrange a proposal for interim finance for approval and resolution in the next CoC meeting.
- 2.2. Further in the same 1<sup>st</sup> CoC Meeting, CFM Asset Reconstruction Private Limited (CFM ARC) one of the Financial Creditors (FC) having voting share of 59.11%, proposed to put an agenda for a shorter notice period for calling the CoC meetings from 5 days to 48 hours. Ms. Maya Gupta being Chairperson of the meeting, informed that no such agenda was circulated prior to the meeting through the circulation of notice of the CoC Meeting, thereby this agenda was agreed to be taken up in the subsequent meeting for resolution. Nonetheless, Ms. Maya Gupta agreed to convene the meetings at a shorter notice period. This was recorded in the minutes of the 1<sup>st</sup> CoC meeting,
- 2.3. Thereafter, CFM ARC, vide e-mail dated 22.05.2022 requested Ms. Maya Gupta to convene the 2<sup>nd</sup> CoC meeting on 25.05.2022 at 11.30 am and proposed, *inter alia*, the agenda item for change of RP. However, Ms. Maya Gupta vide e-mail dated 23.05.2022 informed CFM ARC that she would not be able to call the 2<sup>nd</sup> CoC meeting at shorter notice due to pre-occupancy in conducting the CIRP. *Vide* e-mail dated 26.05.2022, CFM ARC again requested Ms. Maya Gupta to call a meeting of CoC at a shorter notice period. *Vide* e-mail dated 03.06.2022. Ms. Maya Gupta sought certain details from CFM ARC. *Vide* e-mail dated 04.06.2022 CFM ARC raised concern that its repeated request for calling CoC meeting was being ignored.
- 2.4. As per Regulation 18(3) of the CIRP Regulations, it is mandatory on the part of IRP to conduct the CoC meeting and place any proposal received before CoC if the same is made by members of the committee having at least thirty-three per cent of the voting rights. In the said matter, CFM ARC, having 59.11% of voting rights, vide its email dated 22<sup>nd</sup> May 2022, requested Ms. Maya Gupta to conduct the CoC meeting with one of the agenda for replacement of IRP. However, despite that Ms. Maya Gupta delayed conducting the CoC meeting.
- 2.5. In view of the above the Board held the *prima facie* view that Ms, Maya Gupta contravened Section 208(2)(a) and 208(2)(e) of the Code, Regulation 18 (3) of CIRP Regulations, 7(2)(a) and 7(2)(h) of the IP Regulations read with clause 1, 2, 3 and 14 of the Code of Conduct, as specified in the first schedule of IP Regulations.

## Submissions of Ms. Maya Gupta

- 2.6. Ms. Maya Gupta submitted that, *vide* email dated 20.05.2022, she had sent an email to CoC member and informed them about the immediate steps that need to be taken after taking possession of assets from the Official Liquidator for making arrangements for the repair of the boundary wall at the plant of the CD at Jharsuguda. The local persons residing nearby the plant were creating nuisance and were not allowing the security agency to engage workers for repairing the boundary wall. In view of the utmost safety of the assets of the CD, she was in continuous discussion with the local residents therein and the security guards and other contractors to make arrangements for the repair of the wall.
- 2.7. Due to pre-occupancy in repair work of boundary wall of the plant, which was broken at various places, she was able to reply to the email to CFM ARC on 03.06.2022, in response to its email dated 26.05.2022. She *vide* email dated 03.06.2022, asked the CFM ARC to provide the supporting documents to attach with the agenda matters to place before the CoC meeting. However, no supporting documents were ever provided by the complainant, CFM ARC.
- 2.8. Ms. Maya Gupta issued notice and agenda for calling the 2<sup>nd</sup> meeting of CoC on 10.06.2022, for convening a meeting on 15.06.2022, however, the same was adjourned on request of the complainant to 18.06.2022. At the 2<sup>nd</sup> COC meeting, all the agenda matters were placed before the CoC. The proceedings of the meeting were put on recording. However, due to technical issue, the system through which recording was going on, unfortunately got shut down and could not be started. Though all the members of CoC were physically present, CFM ARC proposed to adjourn the meeting and the same was agreed by all the members of CoC. The next date for the meeting was fixed on 01.07.2022.
- 2.9. Ms. Maya Gupta submitted that the grounds of the complaint were baseless since the resolution for a shorter notice period was passed in the 4<sup>th</sup> CoC meeting. Resolution Plan was also approved by CoC for which the application is pending with the Adjudicating Authority.
- 2.10. Ms Gupta submitted that during the pendency of the application for her replacement, she received a request for confirmation as the Resolution Professional therefore the application for her replacement was withdrawn. The agenda matter was duly voted upon and approved in the 7<sup>th</sup> COC meeting dated 14.11.2022 in view of carrying CIRP process efficiently by her in accordance with the law. In pursuant to passing of the resolution as above, the Adjudicating Authority, confirmed the appointment of Ms. Maya Gupta as the RP *vide* its order dated 22.02.2023 in IA No. 5912 of 2022.
- 2.11. Ms. Maya Gupta clarified that there are huge assets of the CD in Orissa, which were occupied and therefore needed immediate attention and protection. Various cameras and security guards were required to be arranged therein for securing the assets.
- 2.12. It was further submitted that the CoC had not given the CIRP cost and the payments towards expenses were made in piecemeal, making it difficult for her

to carry on the CIRP.

- 2.13. Ms. Maya Gupta submitted that her conduct has been diligent and sincere, adhering to the Insolvency and Bankruptcy Code, 2016. She submitted that there has been no violation of Regulation 18(3) and the CIRP Regulations and Regulation 7(2)(a) & (h) of the IP Regulations read with Clause 1, 2, 3 and 14 of the Code of Conduct.

### **Analysis and Findings**

- 2.14. The DC notes that in terms of Regulation 18(3) of CIRP Regulations, the RP is under obligation to the place before the CoC, a proposal received from the member of the CoC having at least 33% of voting right. One of the members of the CoC, CFM ARC, having 59.11% of voting rights, vide email dated 22.05.2022 had requested Ms. Maya Gupta to conduct the CoC meeting with one of the agenda for replacement of IRP. Vide the said email dated 22.05.2022, CFM ARC had requested Ms. Gupta to conduct the meeting of CoC on 25.05.2022. Though in the 1<sup>st</sup> CoC meeting Ms. Gupta had agreed to convene the meetings at a shorter notice, she did not conduct the 2<sup>nd</sup> CoC meeting at shorter notice inspite of repeated request made for the same by CFM ARC *vide* e-mail dated 22.05.2022, 26.05.2022 and 04.06.2022. The 2<sup>nd</sup> CoC meeting was conducted on 18.06.2022 and after some deliberation, due to some technical issue in virtual conference, the meeting was adjourned to 01.07.2022. In the adjourned 2<sup>nd</sup> CoC meeting, the agenda for confirmation of IRP as RP could not be confirmed as two CoC members having collective voting share of 55.75% did not vote. The 3<sup>rd</sup> CoC was adjourned on the request of some CoC members and ultimately in the 4<sup>th</sup> CoC meeting held on 22.07.2022, the proposal of confirming IRP as RP was rejected. Thereafter, an application was filed before the AA for replacement of IRP. During pendency of this application for replacement, in the 7<sup>th</sup> CoC meeting held on 14.11.2022, resolution was passed for appointing Ms. Maya Gupta as the RP and for withdrawing application filed before the AA for replacement of Ms. Maya Gupta. This resolution was also voted in favour of Ms. Maya Gupta by CFM ARC who had filed the complaint before the IBBI. The DC further notes that the resolution plan for the CD was approved by CoC on 27.12.2022 and the same was also approved by the AA on 26.09.2023.
- 2.15. In view of the aforesaid, though DC accepts the submission of Ms. Maya Gupta, however, the fact that Ms. Gupta did not call CoC meeting as requested by CFM ARC, holding 59.11% of the voting share, cannot be ignored, which is violation of Regulation 18(3) of the CIRP Regulations.

### **3. Order**

- 3.1. In view of the foregoing discussion and considering the facts and circumstances of the matter, the DC finds that Ms. Maya Gupta had contravened Regulation 18(3) of CIRP Regulations. However, considering the fact that CoC had subsequently passed resolution to withdraw the application filed before the AA for her replacement and confirmed her as RP, the DC takes a lenient view.

- 3.2. The DC also noted and considered the fact that the AA has approved the resolution plan of the CD vide order dated 26.09.2023. The DC, therefore, in exercise of the powers conferred under Section 220(2) of the Code read with IBBI (Insolvency Professionals) Regulations, 2016 and the IBBI (Inspection and Investigation) Regulations, 2017, hereby, warns Ms. Maya Gupta to be extremely careful while handling assignments under the Code and ensure full compliance with the provisions of the Code and Regulations made thereunder.
- 3.3. This Order shall come into force with immediate effect in view of paragraph 3.2 of the order.
- 3.4. A copy of this order shall be sent to the CoC/ Stake Holders Consultation Committee (SCC) of all the Corporate Debtors in which Ms. Maya Gupta is providing her services, if any, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Ms. Maya Gupta.
- 3.5. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Ms. Maya Gupta is enrolled as a member.
- 3.6. A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.
- 3.7. Accordingly, the show cause notice is disposed of.

Dated:5<sup>th</sup> February, 2024  
Place: New Delhi

Sd/-  
(Jayanti Prasad)  
Whole Time Member  
Insolvency And Bankruptcy Board of India