

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/140/2022
15th November, 2022

ORDER

In the matter of Mr. Gopal Lal Baser, Insolvency Professional under Section 220 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017.

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2021/90/3677/551 dated 16th June 2022 issued to Mr. Gopal Lal Baser, who is a Professional Member of ICSI Institute of Insolvency Professionals (ICSI-IIP) and an Insolvency Professional ('IP') registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-002/IP-N00553/2017-2018/11677 dated 16.06.2022.

1. Background

- 1.1 Mr. Gopal Lal Baser was appointed as an interim resolution professional ('IRP') for the corporate insolvency resolution process ('CIRP') in the matter of Wianxx Impex Private Limited, Corporate Debtor ('CD') *vide* order of the National Company Law Tribunal, New Delhi Bench, New Delhi ('AA') dated 23.08.2019 which admitted an application filed by Financial Creditor Srei Equipment Finance Ltd. for CIRP under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code'). He was later confirmed as Resolution Professional ('RP').
- 1.2 The IBBI, in exercise of its powers under section 218 of the Code read with IBBI (Inspection and Investigation) Regulations, 2017 ('Inspection Regulations') appointed an Inspecting Authority ('IA') to conduct the inspection of Mr. Gopal Lal Baser on having reasonable grounds to believe that he had contravened provisions of the Code and Regulations. The IA submitted draft inspection report dated 22.03.2022 to Mr. Baser and Mr. Baser submitted his reply to the draft inspection report on 08.04.2022. IA submitted the Final Inspection Report in accordance with regulation 6(4) of the Inspection Regulations to IBBI on 11.05.2022.
- 1.3 The IBBI issued the SCN to Mr. Gopal Lal Baser on 16.06.2022, based on the findings in the inspection report and material available on record. Mr. Gopal Lal Baser replied to the SCN *vide* email dated 01.07.2022. The IBBI referred the SCN, response of Mr. Gopal Lal Baser 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. Mr. Gopal Lal Baser availed an opportunity of e-hearing before the DC on 20.07.2022. Mr. Gopal Lal Baser was represented by Advocate, U.K. Singhal who made submissions during the e-hearing. The DC has considered the SCN, the reply to SCN, oral and written submissions of Mr. Gopal Lal Baser, other material available on record and proceeds to dispose of the SCN.

2. Alleged Contraventions and Submissions

- 2.1 Contravention alleged in the SCN and Mr. Gopal Lal Baser's written and oral submissions thereof are summarized as follows.

3. Contravention

- 3.1 It is observed from the minutes of the 6th meeting of committee of creditors (CoC) held on 17.10.2020 that Mr. Gopal Lal Baser conducted e-voting on two resolutions, namely (i) for approval and ratification of the interim finance under Section 28(1)(a) and (ii) approval of extension of the time period under Section 12 of the Code. It is, however, seen that Mr. Gopal Lal Baser started e-voting on the proposed resolutions on 15.10.2020 at 8 pm and closed on 16.10.2020 at 9 pm., i.e., before 6th meeting of CoC was held. The said minutes further reveal that in this spell of voting, out of 136 participants, 134 voted in favour of the first resolution and two voted against it, whereas 136 participants voted in favour of the second resolution. It is also mentioned in the said minutes that 82 participants were yet to vote and voting window for them would be opened again on 19.10.2020 at 9 AM and closed on same day at 10 PM. After the 6th CoC meeting, voting window was indeed opened again on 19.10.2020 at 9 am and closed on 19.10.2020 at 10 pm.
- 3.2 On perusal of e-voting results, it is seen that a total of 139 participants voted on the resolution 1 out of whom only 5 voted on 19.10.2020. Similarly, a total of 141 participants voted on resolution 2 out of whom only 5 voted on 19.10.2020. The date of votes of remaining has been shown as 15.10.2020 and 16.10.2020. The voting conducted by Mr. Gopal Lal Baser prior to the 6th CoC meeting held on 17.10.2020 can only be preliminary views which the Authorized Representative (AR) is required to ascertain as per Regulation 16A (9) of CIRP Regulations. The second proviso to Regulation 16A (9) clearly mentions that such preliminary views shall not be considered as voting instructions by the creditors.
- 3.3 By taking into account votes cast by creditors in class prior to meeting of 6th CoC for declaring a resolution as passed, the board is prima facie of the view that Mr. Gopal Lal Baser had *inter-alia* violated Section 208(2)(a) and 208(2)(e) of the Code, Regulation 16(A)(9) of the CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IBBI (Insolvency Professional) Regulations, 2017 ('IP Regulations') read with Clause 1, 2, 3 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations ('Code of Conduct').

Submissions

- 3.4 Mr. Gopal Lal Baser submitted that on 17.10.2020, RP convened 6th CoC meeting and had duly circulated the notice & agenda of the 6th CoC meeting to all of its members, including Mr. B. N. Kalra, the AR of the Creditors in Class on 14.10.2020. Thereafter, the AR circulated the notice and agenda for the 6th CoC meeting to all Creditors in Class on the same day. The AR, in order to solicit the views of Financial Creditors in Class in an efficient and effective manner on the proposed agenda items included in the meeting notice, requested the RP to coordinate with the e-Voting Agency to enable all creditors in class to submit their views and representations. Subsequently, at AR's request, the window was opened for a

suitable amount of time, i.e., 25 hours, on 15.10.2020 at 8:00 PM and was closed on 16.10.2020 at 9:00 PM.

- 3.5 Mr. Gopal Lal Baser further stated that on 17.10.2020, he took on record the aforesaid voting of preliminary views, however, it was inadvertently recorded as e-voting on the proposed agenda items in the minutes circulated by him for 6th CoC meeting. The aforesaid minutes were duly circulated by him to all members of CoC including the AR on 17.10.2020, in accordance with Regulation 25(5) of the CIRP Regulations. Subsequently, the AR circulated the minutes of the meeting to all Creditors in Class in line with Regulation 25(6) of the CIRP Regulations.
- 3.6 Mr. Gopal Lal Baser submitted that the voting lines for voting on the proposed resolution of the 6th meeting of CoC were opened to all the members of CoC on 19.10.2020 and the list of all members who were provided with the facility to cast their vote electronically on proposed Resolutions was submitted by e-voting agency via mail dated 18.10.2020. After the closing of e-voting portal, the e-voting agency shared the final voting results providing the complete details of the e-voting, inter alia, resolutions proposed for the voting.
- 3.7 Mr. Gopal Lal Baser submitted that only handful of FCs in a Class had cast their vote upon the proposed resolutions in the e-voting which took place on 19.10.2020 and were entirely in favour of the proposed resolutions of 6th CoC meeting, which as per Section 25a(3a) of the Code approved the proposed resolutions. However, taking into consideration this fact that even though the link was open for all, the views of FCs in class remain unchanged and the same was considered and communicated as their final decision with a bona-fide intent by Mr. Gopal Lal Baser. Mr. Gopal Lal Baser submitted that to keep the transactions and other things informed, he further circulated the voting results to all the CoC members including the AR on 20.10.2020. The AR further shared the results with FC in a Class.
- 3.8 He further submitted that, an agenda was placed before the members of CoC in the subsequent meeting convened on 18.11.2020 wherein the minutes of 6th meeting of CoC were taken on record by the members of CoC. Mr. Gopal Lal Baser submitted that the inadvertent error in interpretation of the recent amended Regulation 16A(9) was neither intentional nor deliberate. There was no *malafide* on his part as he always carried out the CIRP process in a smooth manner and it was just the first time that the RP could not fully interpret the recent amended regulation 16A(9) which was made on 07.08.2020. As a matter of record, Mr. Gopal Lal Baser conducted a total of 20 CoC Meetings and no mistake or error was ever made.

Analysis and Findings

- 3.9 The DC notes from the perusal of the minutes of the 6th CoC meeting that the meeting was held on 17.10.2020 and the preliminary views were taken before starting the meeting on 15.10.2020 at 8 pm till 16.10.2020 at 9 p.m. Further, the DC noted that the minutes clearly state that out of total 136 participants for the voting, 82 participants were yet to vote on both the proposed resolutions. The voting window opened again on 19.10.2020 at 9 am and closed

on 19.10.2020 at 10pm. On perusal of the documents of voting results, DC noted that the voting link for casting the vote post the 6th CoC meeting was shared with all CoC members. However, the voting results were compiled in such a manner that the preliminary views of the CoC members, who had earlier casted their votes, were taken as final votes and the votes of CoC members who had voted on 19.10.2020 were added with the voting of the CoC members who had previously casted their preliminary views before 6th CoC meeting.

3.10 It is to be noted that second proviso to the Regulation 16A(9) of the CIRP Regulations states that preliminary views shall not be considered as voting instructions by the creditors. Hence, the DC is of the view that the conduct of Mr. Gopal Lal Baser considering the preliminary views of creditors who had voted prior to meeting of the CoC, as final views and based on that, declaring an agenda approved is a negligence as considering preliminary votes taken prior to the discussions/ deliberations in the CoC when full information has not been supplied and informed decision has not been made goes against the provisions of the Code. Hence, this is a contravention of regulation 16(A)(9) of the CIRP Regulations and clause 3 of the Code of Conduct for IP provided in the first schedule of IP Regulation.

4. Order

4.1 In view of the foregoing contravention, the DC, 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,

- i. imposes a penalty of Rs. 2,50,000/- (Rs. Two Lakhs fifty thousand only) on Mr. Gopal Lal Baser 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, and
- ii. warns Mr. Gopal Lal Baser to be more cautious in future and directs him to strictly comply with the applicable provisions of the Code and its underlying Regulations while performing his duties.

4.2 This Order shall come into force immediately in view of para 4.1 above.

4.3 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals of which Mr. Gopal Lal Baser 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, New Delhi, for information.

4.5 Accordingly, the show cause notice is disposed of.

Dated: 15th November, 2022
Place: New Delhi

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(Ravi Mital)
Chairperson, IBBI