

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**  
**(Disciplinary Committee)**

**No. IBBI/DC/10/2018**  
**15<sup>th</sup> October, 2018**

**Order**

In the matter of Mr. Sandeep Kumar Gupta, Insolvency Professional under sub-regulations (7) and (8) of regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 read with section 220 of the Insolvency and Bankruptcy Code, 2016

**Background**

This order disposes of the show cause notice dated 18<sup>th</sup> May, 2018 (SCN) issued to Mr. Sandeep Kumar Gupta, H. No. 93, 2<sup>nd</sup> Floor, DDA Site-1, Shankar Road, New Rajinder Nagar, New Delhi-110060. Mr. Gupta is a professional member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-002/IP-N00115/2017-2018/10280. From the material available on record, the Disciplinary Committee (DC) observes as under:

**1.1** The Board took on record the order dated 26<sup>th</sup> October, 2017 of the Hon'ble Adjudicating Authority (AA) in the matter of Stewarts And Lloyds of India Limited [C.P. (IB)No.213/KB/2017] and the order dated 28<sup>th</sup> February, 2018 of the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of Sandeep Kumar Gupta Vs. Stewarts & Lloyds of India Ltd. & Anr. [CA (AT) (Insolvency) No. 263 and 303 of 2017] carrying certain observations about the conduct and performance of Mr. Sandeep Kumar Gupta as Interim Resolution Professional (IRP) / Resolution Professional (RP) in the corporate insolvency resolution process (CIRP) of Stewarts and Lloyds of India Limited.

**1.2** In its order dated 26<sup>th</sup> October, 2017, the AA observed: -

*".....From the record, it is clear that only one meeting of Committee of Creditors took place on 12<sup>th</sup> June 2017 and after that, no meeting of Committees of Creditors was held, and ultimately at the fag end of 180 days, Interim Resolution Professional has submitted his report that no Resolution Plan has been submitted....."*

*Since the Resolution Professional, Shri Sandeep Kumar Gupta has conducted only one meeting of the Committee of Creditors during 180 days of the period prescribed, even though no Resolution Plan was under consideration, but he did not advertise the notice in the newspaper for inviting proposal from investors / creditor or any other person. Resolution Professional has also not taken consent of Committee of Creditors for being appointed as Liquidator.*

*On perusal of the record, it appears that the Corporate Debtor has filed this petition under section 10 of the Insolvency & Bankruptcy Code, 2016 for merely buying time. It also appears that RP has not taken proper steps for inviting Resolution Plan from investors and he submitted for further directions.*

*In the present case, we think it proper not to appoint Resolution Professional as Liquidator because he was appointed on the recommendation of the Corporate Debtor and he has not taken appropriate steps for completing the Resolution Plan. So the request is being made to*

*Insolvency & Bankruptcy Board of India for recommending a name of Resolution Professional for being appointed as Liquidator.”*

**1.3** Mr. Gupta preferred an appeal against the order dated 26<sup>th</sup> October, 2017 of the AA before the NCLAT asserting that he alone can be appointed as liquidator in the matter in terms of section 34(1) of the Insolvency and Bankruptcy Code, 2016 (Code). In disposing of the appeal vide order dated 28<sup>th</sup> February, 2018, the NCLAT observed as under:

*“9... The Adjudicating Authority also noticed that within 180 days only one meeting of the ‘Committee of Creditors’ took place on 12<sup>th</sup> June, 2017 and thereafter no progress was made as no meeting of ‘Committee of Creditors’ was held. Ultimately just before completion of 180 days, the ‘Resolution Professional’ submitted his report that no ‘Resolution Plan’ has been submitted by any ‘Resolution Applicant’.*

*10.... but as we find that the Adjudicating Authority was not satisfied with the performance of the ‘Resolution Professional’, we hold that the Adjudicating Authority was well within its jurisdiction to engage another person as ‘Resolution Professional’ or ‘Liquidator.’*

**1.4** Vide letter dated 19<sup>th</sup> March, 2018, the Board sought response of Mr. Gupta on observations of the AA and the NCLAT. After considering the response vide mails dated 27<sup>th</sup> and 28<sup>th</sup> March, 2018, it formed a *prima facie* opinion that Mr. Gupta has contravened certain provisions of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations). Accordingly, it issued the SCN. Mr. Gupta replied to the SCN vide letter dated 8<sup>th</sup> June, 2018. He availed an opportunity of personal hearing before the DC on 20<sup>th</sup> July, 2018 along with learned Counsel, Mr. Alok Dheer.

### **Alleged Contraventions**

**2.** The DC observes that though the genesis of the SCN is the order of the AA, it did not carry all contraventions observed in the said order. For example, the order had observed that Mr. Gupta did not advertise the notice in the newspaper for inviting proposal from investors / creditors. Mr. Gupta has, in his response dated 27<sup>th</sup> and 28<sup>th</sup> March, 2018 to the Board, clarified that he, in fact, did invite resolution plans through advertisements in newspapers and submitted evidence of the same. On probably being satisfied of the explanation, the Board did not pursue this contravention through the SCN. This order deals only with the contraventions alleged in the SCN, and not the alleged contraventions observed in the order of the AA. A summary of contraventions alleged in the SCN, Mr. Gupta’s written and oral submissions thereon and the findings of the DC are as under:

**2.1 Contravention:** Mr Gupta, as IRP/RP conducted only one meeting of the CoC during the entire CIRP, particularly when many decisions are required to be taken with the approval of the CoC, including decision to approve a resolution plan or to liquidate the corporate debtor.

**Submission:** Neither the Code nor the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) mandate any particular number of meetings of the committee of creditors (CoC) during a CIRP. Regulation 18 of the CIRP Regulations provides for meetings of the CoC, when the RP considers it necessary or there is a request to that effect by members of the CoC representing thirty-three per cent of voting rights. He did not consider it necessary to have further meetings to save expenses so that realisation would be higher during the liquidation. The CoC had only operational creditors who were of the view that land monetization was the only option available. Further, he did not receive any request from members of the CoC for a meeting.

**Finding:** It is difficult to appreciate that the RP did not consider it necessary to have even one meeting (There was a meeting when he was IRP) of the CoC during the entire CIRP. He did not feel the need even when he did not receive a single resolution plan. He did not feel the need to seek the views of the CoC whether it needed an extension of time permissible under the Code for completion of the CIRP or whether it wanted liquidation of the corporate debtor. As an IP, he is well aware of the remit of CoC and of an IP. He did not receive a request for the meeting of the CoC is a lame excuse, particularly when the CoC comprised only operational creditors. He stepped into the shoes of the CoC and unilaterally decided that no resolution was possible, and he needed to preserve the value to ensure better realisation from liquidation. Therefore, Mr. Gupta failed to act in the best interests of the corporate debtor and creditors. On the contrary, he pursued his own interest vigorously. As the IRP, he felt the need for and had a meeting of the CoC to seek approval for his appointment as RP. He went on an appeal to the NCLAT to assert his right to act as liquidator, when the AA did not allow him because of his conduct and performance.

**2.2 Contravention:** Mr. Gupta was appointed as IRP. His appointment as RP required approval of the CoC by 75% of voting share, while he received only 73.42% of voting share of the CoC before the closure of e-voting window. Therefore, he could not have been appointed as RP.

**Submission:** Mr. Gupta received additional votes through e-mail after voting window was closed, taking the voting share from 73.42% to 78.93%. He provided full details of voting to the AA, which approved his appointment as RP. He has cited the order dated 15<sup>th</sup> September, 2017 of the AA in the matter of Raj Oil Mills Limited where the AA confirmed the appointment of the RP despite having obtained 61.84% of votes with an observation that the votes cast in favour are in excess of the votes cast against. He has also cited the order dated 18<sup>th</sup> April, 2018 of the AA in the matter of RBL Bank Ltd. Vs. MBL Infrastructures Ltd. where the AA approved a resolution plan which received 68.5% of favourable votes during the e-voting window and additional 10% votes through e-mail after e-voting window was closed.

**Finding:** The DC observes from the progress report dated 15<sup>th</sup> July, 2017 that Mr. Gupta received certain votes by e-mail after closure of voting window. He did not hide any relevant information from the AA. After considering the said progress report, the AA appointed him as RP. Where the AA has appointed him as RP after having full facts about voting, it is not advisable to allege irregularity in his appointment as RP.

**2.3 Contravention:** Mr. Gupta was appointed as IRP vide order dated 1<sup>st</sup> May, 2017 of the AA. He was required to appoint valuers within seven days of his appointment. However, it appears from 4<sup>th</sup> progress report dated 8<sup>th</sup> September, 2017 that Mr. Gupta received valuation reports only in August, 2017. This indicates that he failed to either appoint the valuers within seven days of his appointment as IRP or follow up with them for valuations. Consequently, the information memorandum carrying the liquidation value was not submitted to the members of the CoC within fourteen days of the first meeting of the CoC.

**Submission:** There was a delay of two days in appointment of valuers. Given that it was in the initial days of the implementation of the Code and there was not much clarity about the availability of registered valuers as section 247 of the Companies Act, 2013 dealing with registered valuers were not notified, the delay of two days was incidental. The valuers took a little longer time as ascertainment of liquidation valuation of assets was an entirely new concept for them and the assets to be valued were located at multiple places in different States such as West Bengal, Jharkhand, and Maharashtra.

**Finding:** In the initial days of a new law, a minor delay of two days in appointment of valuers is not serious enough to attract a penal action. Mr. Gupta has also provided details of follow up

with valuers for obtaining valuation reports. Though Mr. Gupta could have done better, the lapse is explicable.

**2.4 Contravention:** The fact that Mr. Gupta did not receive any resolution plan was not informed to the CoC. Instead of working for resolution of the corporate debtor, he worked for its liquidation.

**Submission:** Despite his efforts, Mr. Gupta did not receive any resolution plan. He brought the fact of non-receipt of any resolution plan to the notice of the AA through the progress report.

**Finding:** A limited liability firm is a contract between equity and debt. As long as debt is serviced; equity, represented by a Board of Directors, has complete control of the firm. When the firm fails to service the debt, control of the firm shifts to creditors, represented by a Committee of Creditors (CoC) for resolving insolvency. The CoC alone is entitled under the Code to decide the fate of the corporate debtor, whether through resolution or liquidation. The Code empowers and facilitates the CoC to decide the fate of the corporate debtor and consequently of its stakeholders. The institution of IP is a key facilitation. An IP, who is appointed by the AA on the recommendation of the CoC, can not substitute itself for the CoC. It is for the CoC to decide whether it needs additional time for resolution or to liquidate the corporate debtor. Mr. Gupta kept the CoC in dark for months, in fact, the entire duration when he was the RP. The contention that Mr. Gupta made the best efforts to receive resolution plans is preposterous. He issued advertisement on 15<sup>th</sup> September, 2017 inviting resolution plans by 25<sup>th</sup> September, 2017 and thereby expected a resolution plan within 10 days! He did not share the most critical information (whether any resolution plan has been received or not) in a CIRP with the CoC. While he deprived the CoC of its rights to resolve insolvency of the corporate debtor, he pursued his appointment as RP and as liquidator and worked to preserve value for better realisation from liquidation. It is obvious that he worked for liquidation.

## Order

**3.** Mr. Gupta has submitted that the NCLAT has held that there was no misconduct on his part and hence the SCN should be dropped. The DC, however, notes the observation of the NCLAT: “... *the observations made in the impugned order should not be construed to be misconduct on the part of the appellant, ...*”. It also notes that the SCN carries specific allegations and remit of the DC is limited to examination of the SCN.

**3.1** The Bankruptcy Law Reform Committee, which conceptualised the Code, has visualised the role of the IP vis-à-vis that of the CoC. It made the following observations in this regard:

a. “*For the 180 days for which the IRP is in operation, the creditors committee will analyse the company, hear rival proposals, and make up its mind about what has to be done.*”;

b. “*These Insolvency Professionals will be delegated the task of monitoring and managing matters of business by the Adjudicator, so that both creditors and the debtor can take comfort that economic value is not eroded by actions taken by the other. The role of the professional is also critical to ensure a robust separation of the Adjudicator’s role into ensuring adherence to the process of the law rather than on matters of business, while strengthening the efficiency of the process.*”;

c. “*With a creditor committee in place, the RP has a wider role, in addition to monitoring and supervising the entity, and controlling its assets. In carrying out this role, if there are questions of business that arise, she can call on the creditors committee to give clarification or guidance on how she can proceed.*”; and

*d. "The creditors committee will have the power to decide the final solution by majority vote in the negotiations."*

**3.2** A corporate debtor undergoing CIRP represents interests of several stakeholders. Many of them pin their hopes on the outcome of the CIRP. The Code assigns specific responsibilities in a CIRP to various constituents. An IP has the responsibility to run the corporate debtor as a going concern and conduct the entire CIRP. He has responsibility to run the process and assist the CoC in making business decisions such as resolution and liquidation. It is the CoC only which can decide if and how insolvency of a corporate debtor is to be resolved or it must be liquidated. It is not the job of an IP to take a decision, directly or indirectly, or by omission or commission, for or on behalf of the CoC or substitute itself for CoC. In the instant case, Mr. Gupta deprived the CoC of its right to decide the fate of the corporate debtor and thereby pushed the corporate debtor into liquidation. Probably, Mr. Gupta does not know the full implications of what he did.

**3.3** It is difficult to appreciate the contention of Mr. Gupta that no law required him to have a certain number of meetings of the CoC and, therefore, he did not violate any law. It cannot be appreciated in the context of either the basic premise of the Code which provides a market mechanism for resolution of insolvency nor the role envisaged in the Code for an enlightened and empowered IP having the responsibility to run the corporate debtor as a going concern and conduct the entire CIRP. Mr. Gupta did not have a single meeting of the CoC in his term as the RP. How does one justify that the CoC has no role whatsoever in a CIRP? The Code envisages definite roles for different constituents. It is unimaginable that a constituent does not play its role or is not allowed to play its role or encroaches upon another's role. By not allowing and facilitating the CoC to play its rightful role, Mr. Gupta has dealt a fatal blow to the basic premise of the Code. He also failed to protect the interests of the corporate debtor and creditors and stepped into the shoes of the CoC. Therefore, Mr. Gupta has contravened provisions of sections 31(2) and 208(2)(a) of the Code read with regulation 7(2)(a) and 7(2)(g) of the IP regulations and clauses 9, 10, 12, 14, 15 of the Code of Conduct.

**3.4** The DC is conscious of the fact that the insolvency regime is new in India. The institution of insolvency profession is new and emerging. This CIRP is the very first assignment of Mr. Gupta. He has tendered an unconditional apology for all his inadvertent and unintentional errors in his understanding. Further, the role of an IP in India is significantly different from that in matured jurisdictions, particularly in the UK. These may call for some leniency.

**3.5** In view of the above, the Disciplinary Committee, 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 Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, hereby:-

(i) imposes on Mr. Gupta a monetary penalty equal to one hundred percent of the total fee payable to him as IRP and as RP in the CIRP of Stewarts & Lloyds of India Ltd. and directs him to deposit the penalty amount by a crossed demand draft payable in favour of the Insolvency and Bankruptcy Board of India within 30 days of the issue of this order. The Board in turn shall deposit the penalty amount in the Consolidated Fund of India; and

(ii) directs Mr. Gupta to undergo the pre-registration educational course specified under regulation 5(b) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 from his Insolvency Professional Agency to improve his understanding of

the Code and the regulations made thereunder, before accepting any assignment under the Insolvency and Bankruptcy Code, 2016.

Accordingly, the show cause notice is disposed of.

**3.7** A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Gupta is enrolled as a professional member.

**3.8** A copy of this order shall be forwarded to the Secretary, National Company Law Tribunal, New Delhi for information.

Sd/-

(Dr. M. S. Sahoo)  
Chairperson

Sd/-

(Dr. Mukulita Vijayawargiya)  
Whole Time Member

Date: 15<sup>th</sup> October, 2018  
Place: New Delhi