

ICSI Institute of Insolvency Professionals

(Disciplinary Committee)

ICSI IIP/DC/04/2021

23rd February, 2021

ORDER

(Under Part III of Disciplinary Policy read with Clause 24(1)(a) of Bye Laws of ICSI Institute of Insolvency Professionals)

Appearance before Disciplinary Committee on 19th January 2021 through video conferencing

For Noticee For Secretariat	Mr. Jitesh Gupta, In person Dr. Binoy Joy (in ex-officio capacity of Managing Director, ICSI IIP) CS Poonam Shukla, Company Secretary CS Radhika, Asst. Director (Legal & Compliance) Ms. Mandavi Bhargava, Research Associate
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1. Background

1.1 This order disposes of the Show Cause Notice dated 8th October, 2020 (SCN) issued to Mr. Jitesh Gupta, resident of 257, Vardhman City Centre-II, Near Shakti Nagar Railway under Bridge, New Delhi, 110052, a professional member of 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-N00144/2017-18/10380.

1.2 ICSI Institute of Insolvency Professionals received a complaint against Mr. Jitesh Gupta in the CIRP of Homestead Infrastructure Development Private Limited filed by various homebuyers. The respective complaint was forwarded to Mr. Jitesh Gupta vide email dated 3rd August, 2020. The matter was placed before the Grievance Redressal Committee. The Grievance Redressal Committee referred the complaint to the Disciplinary Committee (DC) of ICSI IIP on 10th September, 2020.

1.3 Based on the complaint received, documents and information available on record, DC directed the Secretariat to issue show cause notice to Mr. Jitesh Gupta under Bye Law 23 of the Bye Laws of ICSI Institute of Insolvency Professionals (ICSI IIP). Show Cause Notice was issued by the Secretariat on 08th October, 2020.

1.4 Show cause notice was issued by the Secretariat on 08th October, 2020. Mr. Jitesh Gupta sent his reply to the Show Cause Notice on 21st October, 2020 seeking an opportunity to be heard.

1.5 The show cause notice along with the reply and supporting documents were placed before the DC of ICSI IIP for consideration. The DC directed the Secretariat to call upon Mr. Jitesh Gupta for e-hearing opportunity on 19th January, 2021.

1.6 Mr. Jitesh Gupta appeared for e-hearing before the Disciplinary Committee on 19th January, 2021 through video conferencing.

2. Major allegations, submissions of Insolvency Professional and Observations

The major allegations levelled against Mr. Jitesh Gupta based on show cause notice issued inter alia includes-

2.1 Allegation

It has been alleged in the complaint that from August, 2018 i.e. when the application under section 7 under Insolvency & Bankruptcy Code, 2016 (Code) was filed and thereafter admitted in January 2019, there were huge transfer of funds and Insolvency Professional (IP) was aware about it.

Submission by IP

Mr. Gupta in his written reply submitted that data available on the website of MCA portal was only till 2016. Further, he submitted that the records and information of the Corporate Debtor (CD) were not available. Mr. Jitesh Gupta also submitted that he tried several times to seek records from the suspended board of Directors but received no reply. Therefore, in the aforesaid facts and circumstances, IP did not possess any record/information of the CD at that time. Also, he proposed the appointment of forensic auditor before the 1st CoC meeting and the CoC did not approve due to paucity of fund.

Observation

Section 20(2)(a) states that an Interim Resolution Professional has an authority to appoint professionals as may be necessary, only their fee is required to be ratified by the CoC. It has been observed from the reply of Mr. Jitesh Gupta that he intimated the CoC members in the first meeting that a lot of amount was transferred by Corporate Debtor to its subsidiary which is in violation to Section 66 of the Code.

Section 66(1) of the Insolvency and Bankruptcy code (IBC) states “If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit”

The DC also took note that application u/s 66 of IBC has been filed by Mr. Jitesh Gupta on 20th October, 2020, after the issuance of show cause notice dated 08th October, 2020.

2.2 Allegation

Few homebuyers along with Authorized Representative were allowed to attend the CoC meeting.

Submission by IP

Mr. Jitesh Gupta submitted that all the home buyers whosoever were present at the time of meeting were allowed to attend the meeting for transparency but only as a spectator and they had no say in the CoC meeting.

Observation

Section 25A (1) states:

“The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means”

The DC observed that IP allowed homebuyers only to attend the meeting as spectators and not given them any voting power.

2.3 Allegation

On perusal of order of NCLT dated 6th November, 2019, it appears that, it was not brought to the notice of NCLT that CIRP against holding company named Homestead Infrastructure Pvt. Ltd is already initiated and as per the order of NCLT homebuyers of project “Michael Schumacher World Tower” have already submitted their claims with Homestead Infrastructure Development Pvt. Ltd.

Submission by IP

Mr. Jitesh Gupta submitted that there were several other creditors who filed their claims apart from the creditors who invested in the project of “Michael Schumacher World Tower”. Further, he submitted that he had informed NCLT about the same. Also, as per IBC, 2016, CIRP process of two corporate i.e. of Parent Company and subsidiary company should run separately.

Observation

On the basis of submissions given by Mr Jitesh Gupta that he informed the NCLT that CIRP of both the companies namely Homestead Infrastructure Development Private Limited and Golden Peacock Residence Pvt.Ltd have been initiated, DC observed that there was no violation by the Insolvency Professional.

2.4 Allegation

The Complainant has provided bank statement evidencing payment to some homebuyers still the claims of those homebuyers were accepted by Mr. Jitesh Gupta.

Submission by IP

Mr. Jitesh Gupta submitted that in view of Regulation 14(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of

claims made under sub regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.

Observation

As per the documents given in the reply it has been observed that IP had admitted claims based on the proof of debt that was provided by the claimants with their claim form. IP had no information or bank statements about the debt from the CD. IP provisionally admitted claims and rectified it later hence, strictly no contravention could be made out.

2.5 Allegation

The complainant alleges that the fees of Registered Valuer was not approved from CoC.

Submission by IP

IP during his e-hearing submitted that the fee of registered valuer in the CIRP of Homestead Infrastructure Development Private Limited was not paid due to paucity of fund. Therefore the amount was not ratified by the CoC.

Observation

Regulation 34 of the IBBI (CIRP) Regulations states that the CoC has to fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs. It is further explained that the “expenses” shall, inter alia, include the fee to be paid to the resolution professional or any other professionals that may be appointed by the Resolution Professional.

The Disciplinary Committee observed that Mr. Jitesh Gupta in his written reply have submitted “expenses” as mentioned in Regulation 34 of the IBBI (CIRP) does not include that the fee of registered valuer should be ratified. This displays his lack of knowledge of the provisions of the Code and Regulations.

3. Order

3.1 A Corporate Insolvency Resolution Process rests on the shoulders of an IP. He is duty bound to preserve and protect the assets of the CD as well as run the CD as a going concern. The list of duties and responsibilities of an IP in a CIRP have been exhaustive in the Code and Regulations made thereunder. IP has failed to adapt the best practices under the Code and regulations

3.2 After giving an opportunity of being heard, perusal of documents and based upon the information available on record, the Disciplinary Committee is of the view that Mr. Jitesh Gupta has displayed misunderstandings of the provisions mentioned under the Code.

3.3 Disciplinary Committee in its power conferred under Part III 4 (e) of the Disciplinary Policy of ICSI IIP issue reprimand and directs Mr. Jitesh Gupta to undergo 50 hours Pre-registration Educational Course before taking any new assignment.

3.4 This order shall come into force after 30 days from the date of its issue.

3.5 A copy of this order shall be forwarded to the Insolvency and Bankruptcy Board of India.

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MR. GOPAL KRISHNA AGARWAL
(CHAIRPERSON)

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DR. S. P NARANG
(MEMBER)