

ORDER

(Under Part III of Disciplinary Policy read with Clause 24(2) of Bye Laws of ICSI Institute of Insolvency Professionals)

1. Background

This Order disposes of the Show Cause Notice dated 16th January, 2026, ("SCN") issued to Mr. Rajat Mukherjee ("Insolvency Professional"), Flat No-302 Daga Complex-II 103/5 B K Street, Uttarpara, Hugli, West Bengal-712258, 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) with Registration No. IBBI/IPA-002/IP-N00493/2017-2018/11723.

The inspecting authority (IA) of ICSI IIP conducted online inspection of 3 (three) assignments handled by the Insolvency Professional and prepared final inspection report, which was duly mailed to IP on 7th August, 2025. The final inspection report was placed before the Monitoring Committee on 30th October, 2025. The Monitoring Committee in its meeting directed the Secretariat to issue a SCN, based on the findings in the inspection report.

The SCN was issued by the Secretariat on 16th January, 2026. The Insolvency professional sent his reply to the SCN through e-mail dated 30th January, 2026.

The SCN along with the reply and supporting documents were placed before the Disciplinary Committee of ICSI IIP for its disposal in accordance with the Code and Regulations made thereunder. The Insolvency Professional availed an opportunity of e-hearing before the DC on 18th May, 2026 through his authorised representative Advocate Kunal Kanungo.

The SCN, the reply filed by the Insolvency Professional, supporting documents and all other records pertaining to the matter were placed before the Disciplinary Committee for disposal in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016, the Regulations framed thereunder and the Disciplinary Policy of ICSI IIP.

The DC has considered the SCN, the reply to the SCN, submissions of the learned counsel representing the Insolvency Professional and other materials available on record.

2. Alleged Contravention, Submissions, Analysis and Findings

It was observed that in the matter of **Genix Automation Private Limited ("GAPL")**, the Information Memorandum prepared by the Insolvency Professional did not contain information with regard to the Fair Value of the Corporate Debtor which is necessary as per Regulation 36(2)(ka) of IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016.

As per Regulation 36(2) of IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016,

The information memorandum shall highlight the key selling propositions and contain all relevant information which serves as a comprehensive document conveying significant information about the corporate debtor including its operations, financial statements, to the prospective resolution applicant and shall contain the following details of the corporate debtor.....

(ka) fair value:

Provided that the committee may decide not to disclose the fair value if, for reasons to be recorded in writing, it considers such non-disclosure to be beneficial for the resolution process.

Accordingly, ICSI IIP had prima facie opinion that the IP has not complied with Regulation 36(2)(ka) of IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016.

Submissions made by the IP

The Insolvency Professional submitted that GAPL was admitted to the CIRP by the Hon'ble NCLT, Mumbai Bench vide admission order dated 16th May, 2024 and thereafter the Insolvency Professional was appointed as Resolution Professional on 5th August, 2024 by the NCLT.

The property was in the possession of a new buyer, as the premises had been sold by financial creditor under the provisions of SARFAESI Act. The sole member of the CoC confirmed that all assets mortgaged to it by the Corporate Debtor had been disposed of. The sole member of the CoC reiterated that all mortgaged assets had been sold and confirmed they have no further knowledge of any remaining assets or records belonging to the Corporate Debtor. An Interlocutory Application under section 19(2) of the IBC was also filed seeking co-operation from the suspended directors thereby resulting in the suspended director Mr. Uday Nikam joining the 2nd CoC Meeting and assuring cooperation.

The Corporate Debtor when admitted to CIRP was not a going concern, all its assets were sold and that there was no tangible asset available with the Corporate Debtor apart from the goodwill and brand value.

The IP submitted that with this background the 3rd COC meeting was conducted and thereafter, it was decided by COC to go ahead with the invitation for expression of interest. It was submitted that the status of the Information Memorandum and the Request for Resolution Process as also the appointment of valuers was in knowledge of the COC member on real time basis. The COC member in its commercial wisdom directed the Insolvency Professional to proceed with the publication of Form-G pending receipt of the valuation report as there are no tangible asset and waiting for valuation report will result in further delay.

In the IM it was categorically mentioned that ***“prior to initiation of CIRP, the financial creditor had sold all of GAPL's tangible assets under the SARFAESI Act. Since the GAPL hasn't been in operation for very long, all compliance requirements have been obviously broken.”*** It was further mentioned in the IM that ***“Since the GAPL had a storied past, we go to the company's then-current brochure to determine the company's goodwill and brand value, which potential buyers may utilise today; the said brochure also be the part of the IM”***. Hence, proper disclosure qua the status of asset and the available information available for valuation was part of the Information Memorandum.

It was clear from the minutes and voting summary excerpts given below that the identified divergence was not intentional and was approved by the CoC. The CoC considered such non-disclosure to be beneficial for the resolution process time line and besides, no specific writing style was mentioned in the regulation itself.

The relevant excerpts of the minutes of CoC are produced below:

The excerpts of the 2nd CoC Meeting dated 11-09-2024 item no: 5,6,7 & 8 as below:

“RP apprised that Today we are at the 118th day of the process, and the directed timelines of the procedure have already been severely breached, within this period, we failed to appoint valuers, prepare an IM, publish Form-G/EoI, and determine PUFEE transactions due to non-submission of the books of accounts and other related documents. At the same time, it was noted in the first CoC meeting that the CD has not maintained any books of accounting since 2014 and has ceased operations along with the release of all staff members. All of the physical assets of the CDs were sold out by the Secured Creditor, the F.C., in this procedure, in accordance with the SARFAESI Act 2002. In this juncture, Mr

Nikam, member of the SBoD of CD intervened and promised to provide necessary documents within a short while positively and all the present members discussed and deliberated in this issue at length. Therefore, further decisions on appointment of Professionals and charting out next roadmap were withheld till the next meeting”.

The excerpts of the 3rd CoC Meeting dated 07-10-2024 item no: 5 as below:

“RP apprised that Today we are at the 144th day of the process, and the directed timelines of the procedure have already been severely breached. RP also referred to the 1st & 2nd CoC minutes and requested financial creditor (FC) to submit confidentiality undertaking. Representative of FC handed over the same and also requested to focus on publication of Form G at the earliest. The member present decided to keep on hold the matter of ratifying the Information Memorandum; Request for Resolution Plan & Evaluation Matrix. Mr Newalkar representative of OARC recommended voting on this matter for an open and transparent decision-making process, which agreed by the RP and he also suggested voting thru’ e-mail only, as last, which Mr. Nawalkar also agreed.

The excerpts of the 3rd CoC Voting Summary dated 11-10-2024 as below:

To ratify the Invitation for Expression of Interest prepared as per Regulation 36A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 & circulated by the Resolution Professional is be and hereby approved along with approve the Form-G publications immediately.

RESOLVED THAT Invitation for Expression of Interest prepared as per Regulation 36A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 & circulated by the Resolution Professional is be and hereby approved along with approve the Form-G publications immediately.

The excerpts of the 4th CoC dated 23-10-2024 (where the IM, RFRP & EM approved and adopted, at the same time fees of the appointed valuers also voted for) as below:

“RP shared the draft IM, RFRP, and EM for the useful and effective input on it with the goal of making the process more active after receiving a confidentially undertaking from the financial creditor at the last meeting. RP recommended that the corporate debtor's company brochure be included with the information memorandum in order to aid potential resolution applicants in making well-informed decisions.” Mr Newalkar reserved his comments and requested a short time to revert back at the time of voting.

The Insolvency Professional also submitted the following in the conspectus of above circumstances:

- An exhaustive Interlocutory Application seeking the approval of resolution plan was filed before the NCLT which contained copies of i) Admission Order, ii) Form A, iii) Form G, iv) valuation report, v) Final list of PRAs, vi) Information Memorandum, vii) RFRP, viii) Evaluation Matrix, ix) letter of intent, x) Network Certificate of SRA, xi) all the COC minutes, xii) Form –H and xiii) Compliance Report Certified by RP.
- the NCLT after taking due consideration of all the documents in annexures in the interlocutory application, did not find any irregularity in the CIRP process and approved the resolution plan.
- The COC was at all times not only abreast with the process of publication of Form-G and finalisation of the Information Memorandum but also the CIRP process was conducted under the aegis of the decisions of the COC.
- A bare reading of Regulation 36(2) itself shows that the disclosure of the “fair value” is not compulsory in circumstances where COC does not deem it beneficial for CIRP. In this case, the circumstances that the only asset available was the goodwill/ brand value of the Corporate Debtor and no other tangible asset, the COC decided not to wait for the valuation report and proceed with publication of Form-G and information memorandum wherein the brochure of the Corporate Debtor was attached so that the PRAs could evaluate themselves. I can produce

relevant information and confirmation from the CoC member in this regard, if required by the Learned Committee.

- the Regulations are directory in nature and their application has to be seen in consonance with the sections and purpose of the Code.
- The CoC member supported the entire CIRP, took decision to proceed without waiting for valuation report in interest of timely resolution & maximisation of value, and approved the resolution plan in exercise of its commercial wisdom.
- No prospective resolution applicant made any inquiry regarding the fair value of the Corporate Debtor.
- No objection to the resolution plan was received by the IP or NCLT and no appeal has been preferred by anybody against the Resolution Plan Approval order citing any irregularity in CIRP.

During the personal hearing, learned counsel representing the Insolvency Professional placed on record the letter received from the sole CoC member stating that *“they firmly resolved to move forward with the CIRP procedure without waiting for the valuation report. Additionally, it was resolved that we would reveal the fair value during the negotiation if there were any prospective resolution applicant for the form G and also the Information memorandum will be updated if the Form G needs to be made available once more”*.

Analysis and Findings

The Disciplinary Committee (DC) duly considered the submissions made on behalf of the Insolvency Professional (IP) and observed that the non-disclosure of fair value in the Information Memorandum falls within the discretion of the Committee of Creditors (CoC). It was noted from the records that the CoC had approved the Information Memorandum after due consideration of this aspect.

Furthermore, once the assets have been sold under the provisions of the SARFAESI Act, the relevance of fair market valuation is largely extinguished. Moreover, the resolution plan has already been approved by the Adjudicating Authority. Consequently, there is no merit in pursuing the issue any further. The Committee is of the view that it would be futile to pursue this issue any further.

3. ORDER

After considering the allegations in the SCN and submissions made on behalf of the IP in light of the provisions of the Code, Regulations and the relevant Circulars, the DC, in exercise of the powers conferred under Part III of the Disciplinary Policy of ICSI IIP observed that Mr. Rajat Mukherjee has not violated any provision of the Insolvency and Bankruptcy Code, 2016 and rules, Regulations made thereunder. Accordingly, the SCN is dropped and the proceedings are closed.

3.2 This Order shall come into force after 30 days from the date of its issue.

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

CERTIFIED TRUE COPY

Sd/-

JUSTICE (RETD.) SH. M. M. KUMAR
(CHAIRMAN)