

Indian Institute of Insolvency Professionals of ICAI

(Disciplinary Committee)

DC. No. - IIPI/DC/21/2020-21

ORDER

In the matter of Mr. Kishan Gopal Somani (Respondent) under Clause 15(1) of the Disciplinary Policy of IIPI read with Clause 24(1)(c) of IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, (2016).

1.0 This order disposes of the Show Cause Notice(SCN) dated 31-08-2020 issued to the respondent Mr. Kishan Gopal Somani R/o 4th Floor, 3/15 Asaf Ali Road, New Delhi, National Capital Territory of Delhi, 110002. Respondent is a Professional member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-001/IP-P00300/2017-2018/10544. The Disciplinary Committee of IIPI (DC) issued SCN to respondent, based on the reference received from the Monitoring Committee in respect of taking up assignment without holding valid Authorization for Assignment (AFA), as Liquidator in liquidation process of Advance Surfactants India Limited. Respondent submitted his contention to the SCN vide letter dated 21-09-2020. An opportunity for personal hearing was provided to the respondent on 14-10-2020 by the Disciplinary Committee (DC), however, the respondent did not appear before the Disciplinary Committee of IIPI on the scheduled date and time of the hearing. Given the circumstances respondent's matter was adjourned to 26-10-2020, respondent choose to be represented by counsel Mr Rahul Kumar before the DC of IIPI, through video conferencing. Respondent counsel made oral submissions before the DC.

2.0 The allegation against the respondent is that in spite of insertion of Regulation 7A in the IP Regulations, vide notification dated 23-07-2019, which requires for an IP to have AFA before undertaking any assignment after 31st December 2019. he accepted the assignment as liquidator in the liquidation process of Advance Surfactants India Limited, without holding a valid AFA. The appointment of the respondent as liquidator was confirmed by the NCLT vide order dated 21-01-2020.

3.0 Respondent in this regard has made the following submissions in his written reply:

- I. That he had given his written consent to Committee of Creditors in its meeting held on 22-11-2019 to act as Liquidator in terms of Section 34(4) and accordingly, as per the decision of COC, same was filed with NCLT on 28-11-2019 itself, much before the cut off date of 31-12-2019. The Liquidation order was passed on 14-01-2020 by the Principal Bench of NCLT and his appointment was confirmed as Liquidator based on his "Written Consent to act as Liquidator".

- II. Respondent further submitted that the order dated 14-01-2020 merely changed the status of the respondent from Resolution Professional to Liquidator and therefore in such a situation authorisation for accepting any new assignment would not apply as the assignment was in continuance to previous assignment as IRP/RP.

4.0 Submissions of Counsel of respondent, made during the personal hearing are summarized as follows.

- (i) That his client (respondent) had given his written consent to act as the Liquidator on 22.11.2019 when the respondent had a valid authorization. However, the order of the Adjudicating Authority approving liquidation came on 21-01-2020. The reasons for the same were beyond the control of the respondent.
- (ii) Regulation 7A IBBI (Insolvency Professional) Regulation, 2016 also envisages a situation where the date of providing an undertaking to the Adjudicating Authority is relevant and not the date of formal acceptance.
- (iii) That in several precedents the Adjudicating Authority has repeatedly taken a view that the time spent in court for approval of applications is to be excluded from the period of Corporate insolvency.
- (iv) That notwithstanding anything contained above, and without prejudice to the same, it is submitted that the reason behind not having a valid authorization post 31-12-2019 is the upper age limit imposed by the IBBI on persons acting as Resolution Professionals. That the same has been challenged by the respondent before the Hon'ble Supreme Court and the matter is sub judice presently.
- (v) That the Disciplinary Committee of IBBI in the same matter has passed an order, wherein the DC does not find any lapse on the part of the respondent.

5.0 The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of the respondent and also the provisions of the Code, rules and the regulations made thereunder noted that the Regulation 7A of IP regulations requires every IP to have AFA before undertaking any assignment after 31st December 2019. Regulation 7A reads as follows:

“7A. An insolvency professional shall not accept or undertake an assignment after 31st December, 2019 unless he holds a valid authorisation for assignment on the date of such acceptance or commencement of such assignment, as the case maybe:

Provided that provisions of this regulation shall not apply to an assignment which an insolvency professional is undertaking as on-

(a) 31st December, 2019; or

(b) the date of expiry of his authorisation for assignment.”

6.0 The DC notes that as per clause 12A(2)(e) of IBBI (Model Bye Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, an IP who is above 70 years of age cannot make an application for grant of AFA. Therefore, the respondent could not apply for obtaining grant of AFA and hence, could not hold AFA.

7.0 The DC noted and considered all submissions given by the respondent and is of the opinion that respondent is not guilty of Professional Misconduct, as the regulation i.e. 7A of IP Regulations came into effect from 01-01-2020 whereas the respondent had given his consent on 22-11-2019 and appointment of the respondent as liquidator was confirmed by the NCLT, based on his written consent provided on 22-11-2019.

8.0 In view of the above, in exercise of its powers conferred under Clause 24(1) (c) of IBBI (Model Bye Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 read with clause 15(1) of the Disciplinary Policy of IIPPI, DC hereby decides the respondent as not guilty. Accordingly, the Show Cause Notice is disposed of.

9.0 This order shall come into force from the date of its issue.

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

Date: 01-12-2020

Place: Delhi

CERTIFIED TRUE COPY

Sd/-

Mr. Satish Marathe, (Chairman)

CA. Atul Gupta, (Member)

Mr. Satpal Narang, (Member)

CA. Rahul Madan, (Member)

Copy to:

1. Insolvency and Bankruptcy Board of India.
2. Indian Institute of Insolvency Professionals of ICAI- Members Record