

Indian Institute of Insolvency Professionals of ICAI

(Disciplinary Committee)

DC. No. - IIIPI/DC/23/2020-21

ORDER

In the matter of Mr. Manoj Kumar Jain (Respondent) under Clause 15(2) of the Disciplinary Policy of IIIPI read with Clause 24(1)(c) of IBBI (Model Byelaws and Governing Board of Insolvency Professional Agencies) Regulations, (2016)

- 1.0** This order disposes of the Show Cause Notice dated 31-08-2020 (SCN) issued to the respondent, 11, Friends Union Premises CSL, 227, P.D'Mello Road, Opp. ST. George Hospital, Mumbai City, Maharashtra ,400001. Respondent is a professional member of the Indian Institute of Insolvency Professionals of ICAI (IIIPI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-001/IP-P00535/2017-2018/10960. The Disciplinary Committee of IIIPI (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 an Interim Resolution Professional (IRP) in corporate insolvency resolution process (CIRP) of Pacific Multi-Commodity Limited. Respondent submitted his contention to the SCN vide letter dated 07-09-2020. An opportunity for personal hearing was provided to the respondent on 26-10-2020 by the Disciplinary Committee (DC). Accordingly, he appeared before the DC of IIIPI through video conferencing and made oral submissions.
- 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 any IP to procure a valid AFA before undertaking any assignment after 31-12-2019, he accepted the assignment as an IRP in the CIRP of Pacific Multi-Commodity Limited after 31-12-2019, without holding a valid AFA. The appointment of the respondent as an IRP was confirmed by the NCLT vide order dated 02-01-2020
- 3.0** DC noted that the Respondent in his written submission dated 07-09-2020 stated that he accepted the assignment to act as Interim Resolution Professional (IRP) by signing Form 2 on 22-07-2019 and his appointment as an IRP was confirmed by the NCLT by way of an order dated 02-01-2020.
- 4.0** During the Course of personal hearing the respondent stated that the Regulation 7A of the IP Regulation is a newly introduced regulation, and he has given his consent in 2019 which is prior to date of this regulation coming into effect. It should be considered as a technical default and benefit of doubt should be given to him. It was also come to the notice of the

DC, during the hearing, that the respondent was also appointed as a RP in the CIRP of Pacific Multi-Commodity Limited for which he had given his consent in the month of March 2020 without having the AFA.

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 Thus, it is apparent from the said Regulation that one of the essential conditions for undertaking any assignment by an IP is that he should have a valid AFA after 31-12-2019. *“Assignment’ is defined under regulation 2(a) of the IP Regulations as “any assignment of an insolvency professional as interim resolution professional, resolution professional, liquidator, bankruptcy trustee, authorised representative or in any other role under the Code”.*

7.0 DC in this regard noted that the regulation 7A of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 came into effect from 01-01-2020, whereas, respondent had given his consent on 22-07-2019, based upon which NCLT appointed the respondent as an IRP vide order dated 02-01-2020.

8.0 DC further noted that respondent had also given his consent in the month of March 2020 to become RP in the CIRP of Pacific Multi-Commodity Limited without having AFA. DC took cognizance of the additional information and Suo-moto proceeded to review the same based on the provisions which have been laid down. DC is of the view that the assignment as an IRP and assignment as RP are the two stand-alone assignments. Though at times the same Insolvency Professional (IP) may be appointed as an IRP and RP. However, it is not compulsory that an IP appointed as IRP in any assignment will always continue as an RP and therefore IRP and RP could be two different persons, and hence these are two different assignments.

9.0 In view of the foregoing, the DC noted that since the change of role of an IP from IRP to RP is a separate standalone assignment and the assignment as RP to which the Respondent

had given his consent in the month of March 2020, is beyond the prescribed threshold date i.e. 31-12-2019. Therefore, this tantamounts to the non-compliance of the regulatory provisions.

10.0 Taking an overall view of the aforesaid, the Disciplinary Committee in view of para 7.0 holds the Respondent not guilty. Whereas, in view of para 8.0 and 9.0 above, this committee is of the opinion that Respondent is guilty of Professional Misconduct.

11.0 At the same time, the DC also took note of the fact that the regulation was newly introduced and thus, inclined to take a lenient view.

12.0 In exercise of the powers conferred under Regulation 24(1) (c) of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 read with clause 15(A) of the Disciplinary Policy of IIIPI, DC hereby decides to impose a penalty of Rs 10,000/- on the respondent, to be deposited by way of demand draft payable in favour of the Indian Institute of Insolvency Professionals of ICAI (IIIPI) within 30 days of the issue of this order. IIIPI shall in turn will deposit the said penalty amount in the Insolvency and Bankruptcy Fund in terms of clause 24(5) of the Model Bye Laws. Accordingly, the show cause notice is disposed of.

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

14.0 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