

Indian Institute of Insolvency Professionals of ICAI

(Disciplinary Committee)

DC. No. - IIIPI/DC/26/2020-21

ORDER

In the matter of Mr. Sanjay Kumar Agarwal (Respondent) under Clause 15(1) of the Disciplinary Policy of IIIPI 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 dated 31-08-2020 (SCN) issued to the respondent, Draupadi Mansion, 3rd Floor, 11 Brabourne Road, Kolkata, West Bengal ,700001. 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-P00062/2017-2018/10140. 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 Sri Bir Ispat Private Limited and as liquidator in the liquidation process of Hanumanta Engineering Pvt Ltd. Respondent submitted his contention to the SCN vide letter dated 16-09-2020. 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 Sri Bir Ispat Private Limited and as liquidator in liquidation process of Hanumanta Engineering Private Limited after 31-12-2019, without holding a valid AFA.

3.0 Respondent in this regard has made the following submissions.

- i. Respondent submitted that Consent for the assignment in the CIRP of Sri Bir Ispat Limited was given by him on 03-06-2019 and filed form IP1 for the same on 27-09-2019 and the application for initiation of CIRP was admitted by the NCLT vide their order dated 06-01-2020 and he was appointed as the IRP.
- ii. As regards to the assignment as Liquidator of M/s Hanumanta Engineering private Limited, the respondent has submitted that the assignment was allotted to him by the Hon,ble NCLT, Kolkata Bench vide order dated 20-02-2020 which was communicated to him on 24-02-2020.

- iii. Respondent has also submitted that he had not given any consent for his appointment as Liquidator in M/s Hanumanta Engineering private Limited and no Form IP1 was ever filed for the same and even not aware how the order of NCLT states that the consent was given by him.
- iv. Further, the respondent had also stated that the said assignment was not taken by him and communicated to the Registrar of Kolkata Bench vide his email dated 27-05-2020 that the Disciplinary proceedings are pending against him and he cannot take up the assignment.
- v. During the personal hearing, the respondent added that in the CIRP of M/s Hanumanta Engineering private Limited, he informed the situation to the NCLT registrar and also to the Financial Creditors, based upon which, they filed an application for the appointment of new liquidator. Respondent also added that he neither issued public announcement nor any work in the capacity of liquidator was done by him. Additionally, DC during the personal hearing sought an affidavit from the respondent confirming that, no consent was given by him for his appointment as liquidator in the liquidation process of M/s Hanumanta Engineering private Limited, which was submitted by the respondent vide his email dated 02-11-2020.

4.0 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.”

5.0 With regard to the allegation of taking up assignment in the CIRP of M/s Sri Bir Ispat Pvt. Ltd., as IRP by the respondent, it is noted by the DC that 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 03-06-2019, based upon which NCLT appointed the respondent as an IRP vide order dated 06-01-2020.

6.0 As far as allegation in respect of taking up assignment as liquidator in the liquidation process of M/s Hanumanta Engineering private Limited, without having valid AFA is concerned, DC noted the submission made by the respondent that he has not given any consent for the same and has also informed the NCLT registrar, Kolkata Bench about his inability in taking up the assignment as liquidator.

7.0 In view of para 5.0 and 6.0 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 IIIPI, DC hereby decides the respondent as not guilty. Accordingly, the Show Cause Notice is disposed of.

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

9.0 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