

Indian Institute of Insolvency Professionals of ICAI

(Disciplinary Committee)

DC. No. - IIIPI/DC/29/2020-21

ORDER

In the matter of Mr. Venkata Sivakumar (Respondent) under Clause 15(2) 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, No. 10/11, Dr. Subbarayan Nagar Main Road, Kodambakkam, Chennai, Tamil Nadu, 600024. 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-P00184/2017-2018/10852. 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 a Liquidator in liquidation proceeding of The Jeypore Sugar Company Ltd. Respondent submitted his contention to the SCN vide letter dated 22-09-2020. 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 inspite of insertion of Regulation 7A in the IP Regulations, vide notification dated 23-07-2019, which requires an IP to procure a valid AFA before undertaking any assignment after 31-12-2019. However, it is noted by the Disciplinary Committee (DC) that appointment of the respondent as a Liquidator was confirmed by the NCLT vide order dated 29-05-2020.

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

- i. That a writ challenging the validity of Regulation 7A and bye-laws 12A is pending before the High Court of Madras.
- ii. That the application of AFA was submitted by him along with fees but was wrongly rejected.
- iii. "The circulars having no legal force were also complied with but without specifying any defect or infirmity...".
- iv. That he was only the Resolution professional confirmed as Liquidator, hence the Regulation 7A will not apply.
- v. During the course of personal hearing, respondent reiterated the submissions made in his written reply with a request to consider the matter liberally and leniently.

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 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”.*

6.0 DC noted the submissions given by the respondent. Pursuant to the submission made by the respondent, DC considered the provisions which have been laid down and is of the view that the assignment as an IRP, RP, Liquidator, Bankruptcy Trustee etc., are all stand-alone assignments. Though at times the same Insolvency Professional (IP) may be appointed as an RP and liquidator. However it is not compulsory that an IP appointed as IRP in any assignment will always continue as an RP and subsequently as the liquidator and therefore IRP, RP and liquidator could be different persons, and hence these are three different assignments.

7.0 In view of the foregoing, the DC noted that since the change of role of an IP from IRP to RP and subsequently to Liquidator are stand-alone assignments and the assignment as Liquidator to which the respondent got confirmed on 29-05-2020, is beyond the prescribed threshold date i.e. 31-12-2019. Therefore, this tantamounts to the non- compliance of the regulatory provisions.

8.0 Taking an overall view of the aforesaid, the DC is of the opinion that Respondent is guilty of Professional Misconduct. 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.

9.0 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 IIPAI, 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 (IIPI) within 30 days of the issue of this order. IIPI 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.

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

11.0 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)

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