

Indian Institute of Insolvency Professionals of ICAI

(Disciplinary Committee)

DC No. - IIIPI/DC/06/2019-20

ORDER

In the matter of Mr. Sanjay Kumar Ruia (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 01-07-2019 (SCN) issued to the respondent, Vishal House, 1st Floor Plot No. 33, Sector-19C, Vashi, Navi Mumbai-400705. 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-P00353/2017-2018/10654.The Disciplinary Committee of IIIPI (DC) issued SCN to respondent, based on the order passed by the IBBI in respect of his role as an Interim Resolution Professional (IRP)/ Resolution Professional (RP) in corporate insolvency resolution process(CIRP) of three assignments handled by the respondent, a) M/s Sanjay Private Limited (as RP); b) M/s Global Proserv Ltd (as IRP/RP); and c) M/s S.N Plumbing private Ltd (as IRP/RP). Respondent submitted his contention to the SCN vide letter dated 10-07- 2019. An opportunity for personal hearing was provided to the respondent on 23-10-2019 by the DC. Accordingly, he appeared before the DC of IIIPI through video conferencing. Since the internet network quality was not-good on the part of respondent to record the oral submissions of the respondent properly, hence, the DC rescheduled the personal hearing on 27-11-2019 and advised the respondent to appear personally before the DC of IIIPI. Accordingly, the respondent on date appeared personally, made oral and written submissions before the DC. In response to the direction issued on 27.11.2019, the respondent submitted documents on 02.12.2019.

A. In the CIRP of Sanjay Strips Private Ltd.:

2.1 In the case of Sanjay Strips, the respondent submitted a proposal of a consolidated fee of Rs.85.50 lakhs in September 2017 as IRP and RP to the Hon'ble NCLT, Hyderabad Bench based on the turnover of period ending 2014-15. Committee noted that the Company had filed information in the [MGT-7 (Annual Returns)] indicating a turnover of Rs. 236.31 crore for the FY 2014-15. Since the fee was quoted based on financial information 2014-15, the respondent revised his fee to Rs. 1 lakh, upon observation made by the Hon'ble NCLT. Subsequently, AA vide order dated 13th November, 2017, appointed the respondent as IRP on being satisfied of the fee as per the revised term sheet. In spite of having agreed before the NCLT and order of AA, the respondent sought approvals of the Committee of Creditors (CoC) for a higher fee of Rs.6 lakh as IRP and of Rs.4 lakh per month as RP.

2.2 Committee noted that the Respondent in his written submission dated 10-07-2019 had admitted that he should not have relied on the figures of the year 2014-2015 for an assignment to be taken in the year 2017. Respondent has further asserted that post his appointment, he got to know about the work involved in the CIRP and in light of the huge work involved during the CIRP he requested the Committee of Creditors to ratify his fees from Rs.1 lakh to Rs.6 lakhs as IRP and

Rs.4 lakhs per month as RP. Accordingly his conduct should not tantamount to Professional Misconduct.

- 2.3** Committee observed that an Insolvency Professional is expected to exercise due diligence while performing his duties. Quoting fee at the outset based on the old annual returns of FY 2014-15 to fix his professional, fees, reflects gross negligence on the part of the respondent. Further, it was expected from him that when he agreed for Rs. 1 Lakh in NCLT by that time due diligence must have been completed. Rather, agreeing on what has been decided in NCLT, Respondent sought ratifications of higher amount of fees as IRP from CoC at different occasions which is evident from perusal of the minutes of the CoC meeting dated 27-12-2017, 19-01-2018, 03-02-2018 and mail dated 19-01-2018 sent by the South Indian Bank Ltd. (CoC member).
- 2.4** Looking into the conduct of Respondent, the Disciplinary Committee is of the view that respondent has inter alia violated Regulation 7 (2) (h) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 1, 2, 3, 10, 14 and 25 of the Code of Conduct.
- 2.5** As far as the allegation of claiming the travel expenses beyond the permissible limit is concerned, the committee agreed with the contention of Respondent, wherein, he submitted that there was a typographical mistake. Allegation against Respondent was that in spite of agreed amount of Rs. 2 Lakh, he submitted the claim of 3.25 Lakh which got rectified in the next meeting by Respondent. The same was confirmed from the documents available on record and in IBBI order dated 17-04-2019 at point No. 2.1.1.3 stating *“The revised term sheet provides for an advance of Rs.2 lakh towards reimbursement of certain expenses and hence claim of Rs. 2.25 lakh is not inconsistent with the term sheet.”*
- 2.6** That next allegation against the respondent is that he signed the term sheet with the operational creditor, who is not legally competent to appoint RP or fix his fee, to the effect that the respondent would himself work as RP with a professional fee of Rs.12.5 lakh and thereby attempted to deprive the CoC of its legitimate right to appoint a RP of its choice and fix fee. The respondent in his written submission stated that IBC has not prescribed any format of the term sheet to be entered into between the client and the proposed IRP. His signing of term sheet with the operational creditor should not be considered as pre-emptive measure for curtailing of legitimate rights of the CoC, neither it shall in any case indicate possibility of collusion of interest with the operational creditor. He further stated that he is very well aware that it is the authority of the CoC to appoint the Resolution Professional and fix the remuneration accordingly.
- 2.7** Committee noted that as per Section 22(2) the committee of creditors, may, in the first meeting, by a majority vote of not less than sixty-six per cent of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional. However, from the response submitted by the respondent it is safely concluded that the respondent despite being well aware of the law, still attempted to secure his appointment as a RP by signing the term sheet with the operational creditor, even before commencing CIRP in the instant matter.
- 2.8** Section 20 requires that the interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern. Upon evaluation of the various allegations levelled against the Respondent, Committee observed that every action of the respondent is to extract maximum amount of fee contrary to his duties and professional standards as an IP. Therefore, the Disciplinary Committee of IIIPI is of the view that the respondent inter alia violated provision of

section 20 and Regulation 7 (2) (h) of the IP Regulations read with clause 1, 2, 5, 10, 12, 14 and 27 of the Code of Conduct.

B. In the CIRP of M/s Global Proserv Ltd

- 3.1** In this case, the allegation against Respondent is that the Inspection Authority (IA) sought a copy of term sheet from the respondent, which the respondent failed to provide within the stipulated time as given by the IA. Though, later respondent provided the term sheet to the IA, which not only delayed the process but also not carrying details related to fee as IRP and RP. On being inquired, Respondent in his written submission has accepted that he failed to submit the term sheet due to his oversight within the stipulated time given by the Inspecting Authority. However, the same was duly provided by him at the time of reply to the SCN issued by the Board. Respondent also reiterated that there is no prescribed format of term sheet mentioned in the code or any rules there under.
- 3.2** On perusal of the documents and material available on record the Disciplinary Committee noted the non -co-operative attitude of the respondent during the inspection conducted by the Board and for such non -co-operative attitude respondent found defending himself on the pretext of oversight. In view of the above, Committee is of the opinion that the respondent has contravened the provisions of sections 208(2)(a) of the Code, and regulations 7 (2) (a) and (h) of the IPR read with clauses 1, 2, 5, 10, 12, 14, 16, 18, 19, 25 and 27 of the Code of Conduct.

C. In the CIRP of S.N. Plumbing Private Limited.

- 4.1** The next allegation against the respondent is that in the CIRP of S.N. Plumbing Private Limited, respondent had contracted a consolidated professional fee of Rs.50 lakh plus out-of-pocket expenses, with the applicant who had a claim of Rs.13.76 lakh only. It is being alleged that a contract for such an amount made to recover a significantly lower amount defies common logic and clearly indicates the intentions of the respondent to inflate Insolvency Resolution Process Cost.
- 4.2** Respondent in this regard has submitted that the consolidated fee of Rs. 50 Lakhs for the entire matter was quoted based on the balance sheet of the Corporate Debtor and not on the basis of the claim of the Operational Creditor after scrutinizing the accounts. The respondent has further submitted that company was a going concern and had few on-going operations which were necessary to be looked into and managed and in order to manage the affairs of the company for which he was supposed to appoint certain professionals. Therefore, the amount quoted by the respondent is the amount which was a clear reflection of the work he had to perform.
- 4.3** During personal hearing in this regard, respondent asserted that it is a general practice in the market to quote the IRP fees along with the fee to be charged as RP, if confirmed as RP. At the same time, the respondent during the personal hearing accepted the fact that according to law he only has to quote the IRP fee without including a fee for RP. Further, the respondent submitted that the Mumbai bench of NCLT has ratified "fee of Rs.1crore 62 lakhs as a part of CIRP", whereas, the Committee noted that he could not collaborate such contentions from the said order.
- 4.4** Committee on this allegation was of the opinion that IBC bestows massive responsibility on the IRP and it would not be an exaggeration to say that the same is the most important pillar in the entire process. Clause 25 of the Code of Conduct for Insolvency Professionals under the IBBI

(Insolvency Professionals) Regulations, 2016 require that an insolvency professional must provide services for remuneration which is charged in a transparent manner, and is a reasonable reflection of the work necessarily and properly undertaken. He shall not accept any fees or charges which is not reasonable. However, asking for almost 4 times of total claim of the operational creditor cannot be categorised as reasonable. As evident from assessment of assignments handled by respondent of M/s Sanjay strips Pvt. Ltd, M/s Global Proserv Ltd. and M/s S.N. Plumbing Pvt. Ltd., the respondent was never even near reasonable when it comes to charging his fee. Even the respondent, inspite of having agreed for a particular fee in NCLT tried to inflate the fee through operational creditor and repeatedly placed the matter for CoC approval. More so, when being asked by IBBI, he opted not to give the information by giving particular column blank. Therefore, contentions of the respondent that the fee quoted by him was a reasonable reflection of his work is not acceptable and thereby contravened the provisions of sections 20, 208(2)(a) of the Code regulations 7(2)(a) and (h) of the IPR and clauses 1, 2, 3, 5, 10, 14 and 25 of the Code of Conduct thereof.

- 4.5** It has been further alleged that respondent, as an IRP of S. N. Plumbing Pvt. Ltd., filed applications for initiating CIRP of 14 CDs and proposed to appoint his spouse, Ms. Bhavana Ruia as IRP of CIRP of all 14 CDs. Ms. Ruia consented to act as IRP of 15 CIRPs, including these 14, for which applications were filed by a professional, who is her spouse. The Disciplinary Committee, therefore, observed that Mr. Ruia appointed his spouse as IRP, which is a clear case of conflict of interest. In response of this allegation, Respondent submitted that he proposed the name of his spouse for appointment as IRP because all the IPs he approached, wanted a signing amount, whereas his wife had consented to not take any fee upfront for acting as an IRP and therefore it would not have been an additional burden for the CoC/RP. As alleged in the Show cause notice and observed by the Committee, it is difficult to appreciate the contentions raised by the respondent that what all respondent did was only with a view to reduce the additional burden on CoC and CD in bearing the expense of CIRP.
- 4.6** Committee noted that being Professional, there is a clear case of Conflict of Interest and it would have been better if the Respondent could have submitted his in-ability to proceed with rather appointing relative (spouse) on a position which could hamper his independence, which is clear case of contravention of the provisions of sections 20, 23, 208(2)(a) of the Code regulations 7(2)(a) and (h) of the IPR and clauses 1, 2, 3, 5, 9, 10, 12, 14 and 25 of the Code of Conduct thereof.

5.0 Decision

In view of para 2.4, 2.8, 3.2, 4.4 and 4.6 above, this Committee is of the view that Respondent is guilty of various Professional Misconduct and 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, issues the following directions:

- (i) The Membership of Mr. Sanjay Ruia as an Insolvency Professional with IIPAI of ICAI, having Membership No.IBBI/IPA-001/IP-P00353/2017-2018/10654, is hereby suspended for the period for which his registration has been suspended by IBBI vide order dated 17-04-2019;
- (ii) Mr. Ruia shall not seek or accept any process or assignment or render any services under the Code during the period of suspension. He shall, however, continue to conduct and complete the assignments / processes he has in hand as on date of this order; and

(iii) Mr. Ruia shall:

- (a) undergo the pre-registration educational course specified under Regulation 5(b) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 from IIIPI, and
- (b) work for at least six months as an intern with a senior insolvency professional, at any time during the period of suspension, to improve his understanding of the Code and the regulations made thereunder.

(iv) Since the matter is related to professional misconduct and respondent being a Chartered Accountant, a copy of this order may also be send to The Institute of Chartered Accountants of India (ICAI) for any future course of action, if required.

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

Date: 30-05-2020

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