

**Indian Institute of Insolvency Professionals of ICAI
(Disciplinary Committee)**

DC No. - IIIPI/DC/05/2018-19

ORDER

- 1.0** In the matter of Mr. Vasudeo Agarwal (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)
- 2.0** This order disposes of the Show Cause Notice dated 01st July, 2019 (SCN) issued to respondent, 5 Fancy Lane, 3rdFloor, Kolkata, West Bengal-700001. 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-P00186/2017-2018/10365. The Disciplinary Committee of IIIPI issued SCN to respondent, based on the order passed by the IBBI in respect of his role as an interim resolution professional (IRP) or resolution professional (RP) in corporate insolvency resolution process (CIRP) of Upadan Commodities Private Limited. Respondent replied to the SCN vide letter dated 9th July, 2019. An opportunity for personal hearing was provided to respondent on 23rd October, 2019 by IIIPI. Accordingly, he appeared before the DC through Video conferencing and made oral submissions. In this case the NCLT, Kolkata Bench vide its order dated 29th August 2017 had appointed Mr. Sandeep Kumar Kejriwal as Interim Resolution Professional (IRP) in the Corporate Insolvency Resolution Process (CIRP) of M/s Upadan Commodities Private Limited (the Corporate Debtor) wherein Committee of Creditors (CoC) comprised of only one operational creditor i.e. Mr. Arun Kumar Jain (i.e. the applicant) who was also the auditor of the Corporate Debtor. Subsequently, the Hon'ble NCLT, Kolkata Bench vide its order dated 16th January 2018 appointed Respondent as Resolution Professional (RP) in the aforesaid matter consequent to the resignation of Mr. Sandeep Kumar Kejriwal.
- 3.0** We noted that respondent had sent a letter dated 31st January 2018 to the Corporate Debtor informing that he had been appointed as the IRP and seeking certain records and also issued a notice dated 31st January, 2018 convening the third meeting of CoC on 12th February 2018. Respondent filed the first progress report on 1st February 2018 with the adjudicating authority informing the aforesaid letter and notice. As noted, the meeting of the CoC did not take place as the sole creditor was absent. The sole creditor, vide his letter dated 15th February 2018, consented for holding the meeting of the CoC on 19th February 2018. Respondent also sent a letter dated 15th February 2018 to the sole creditor seeking his help to locate the Corporate Debtor. The CoC met on 19th February 2018, wherein the director of the corporate debtor was present along with the sole creditor and decided not to seek extension of time for CIRP beyond 27th February 2018.
- 3.1** In view of that respondent filed the second progress report dated 22nd February, 2018 expressing his inability to continue with the resolution process for want of co-operation from the Corporate Debtor and decision of the CoC not to seek extension of the CIRP. Accordingly, Adjudicating

Authority vide order dated 1st March, 2018, initiated the liquidation process of the Corporate Debtor and appointed respondent as the Liquidator. Respondent requested the NCLT not to appoint him as the liquidator for personal reasons, who was then being discharged after taking note of the progress report.

- 3.2** Allegation on the respondent here is that the Respondent did not take over the management of operations of the Corporate Debtor which is in contravention of the provisions of section 23 of the Code. Respondent in view of the above fact explained about the non-co-operative attitude of the Corporate Debtor, previous IRP, operational creditor etc., and the same was also brought before the Hon'ble NCLT vide progress report dated 22nd February 2018. Since RPs have been empowered under section 23(2) of the Code to exercise powers and perform duties as are vested or conferred on the IRP under section 20 of the Code. Committee noted that the Respondent should have filed an application to the Adjudicating Authority under section 19(2) of the Code for necessary directions, which he failed to do. Though respondent has explained the difficulties faced by him, he could have dealt with those difficulties/challenges in more efficient manner.
- 3.3** Another charge on the Respondent is that he failed to prepare information memorandum, appoint Registered valuers, publish Expression of Interest etc. which is in contraventions of the provisions of section 25(g) of the Code and Regulation 27 of the CIRP Regulations. Wherein the respondent denied the allegations and explained the difficulties faced by him while conducting the CIRP.
- 3.4** Committee noted that CIRP is a time bound process, failure to complete CIRP within the specified period may result in severe consequences to stakeholders. Section 23 of the Code mandates the resolution professional to conduct the entire CIRP and manage the operations of the corporate debtor during the CIRP period. The process entails preparation of Information Memorandum, access to relevant information, appoint registered valuers etc. Clause 13 of the Code of Conduct for IPs under the IBBI (Insolvency Professionals) Regulations, 2016 mandate an IP to adhere to the timelines specified in the Code and rules, regulations and guidelines thereunder for insolvency resolution. It also mandates an IP to take prompt decisions/steps for the timely discharge of his duties and each of the steps in a CIRP. Respondent as the resolution professional (RP) had a statutory duty to prepare information memorandum and to appoint registered valuers, to determine the fair value and the liquidation value of the corporate debtor. However, respondent failed to fulfill the statutory requirement as specified under the Code. Respondent should have taken pro-active steps to appoint such registered valuers failing in the same reflects his negligence in conducting the CIRP as per the law and therefore, have contravened the provisions of section 25(g) of the Code and Regulation 27 of the CIRP Regulations.
- 3.5** At the same time, the committee took note of the fact that the CIRP was required to close on 27-02-2018 but the appointment of the Respondent was confirmed on 16-01-2018 only after the lapse of 140 days. Thus, Respondent was required to complete the CIRP in remaining 40 days. Further, the CoC comprising of the sole operational creditor did not seek extension of the CIRP period this makes the task more challenging for IP.

4.0 Taking an overall view of the aforesaid, the Disciplinary Committee, 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(B) of the Disciplinary Policy of IIIPI, hereby issues a warning and advise Respondent to exercise due caution and be more careful while handling any assignments.

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

Date: 17th December, 2019

Place: Delhi

CERTIFIED TRUE COPY

Sd/-

Shri Ashok Haldia, Chairman

Dr. S.P. Narang, Member

CA. Atul Kumar Gupta, Member

Copy to:

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