

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

**DC. No. - IIIPI/DC/13/2019-20**

**ORDER**

In the matter of Mr. Amit Gupta (Respondent) under Clause 15(B) 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 (SCN) dated 22-04-2021 issued to the respondent Mr. Amit Gupta R/O 702, Janki Centre, Off Veera Desai Road, 29, Shah Industrial Estate, Mumbai City, Maharashtra- 400053. 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-P00016/2016-2017/10040. The Disciplinary Committee of IIIPI (DC) issued SCN to respondent, based on the reference received from the Grievance Redressal Committee pertaining to assignment handled by him as Resolution Professional (RP) in **Hindustan Dorr Oliver** (Corporate Debtor). Respondent submitted his contention to the SCN vide letter dated 13-05-2021. An opportunity for personal hearing was provided to the respondent on 05-06-2021 by the Disciplinary Committee. Respondent choose to be represented along with his counsel Ms. Pooja Mahajan and Ms. Mahima Singh before the DC of IIIPI, accordingly respondent appeared before the DC of IIIPI through video conferencing along with his legal counsel. The legal counsel and the respondent made oral submissions before the DC.
- 2.0** The allegation against the respondent was, that he failed to take the charge of one of the bank account of the CD in State Bank of India IOCL Refinery Campus Branch, Paradeep, Odisha. No steps were taken by him to take charge of the said bank account and numerous withdrawals to the tune of more than Rs. 2 crores happened without the knowledge and control of the respondent.
- 3.0** Respondent in this regard submitted, that at the time of commencement of CIRP, the company was managed by team of independent professionals who assisted and co-operated him during the CIRP period. There were also no instances of promoter hiding the information. When he took charge of CD, he was not provided any detail of the said account by the Ex-CFO of the Company (complainant in the present matter) who worked with him during the entire CIRP period and did not ever highlight the above said issue. Moreover, the accounts team was headed by Ex-CFO/complainant.
- 4.0** It was also submitted that only after liquidation order was passed, and due to certain differences, the complainant filed the said complaint.
- 5.0** Respondent also submitted that he has taken control of more than 30 accounts of the corporate debtor, across various banks for various projects and there is no reason why he should not take control of one account while rest all has already been taken.

- 6.0** It was further submitted by the respondent that the complainant had filed an application before the Hon'ble Adjudicating Authority, Mumbai Bench with identical averments as made in the complaint and the Hon'ble Adjudicating Authority was pleased to dispose the application without any adverse comment/strictures.
- 7.0** During the course of personal hearing the counsel of the respondent added that the said account is maintained at site office of the CD and that the amount spent from the said account was Rs.1.13 crores and not Rs.2 crores and when the transactions came to the knowledge of the respondent, he immediately investigated and took control/custody of the said account. Moreover, all the transactions from the account were made for labour and site expenses. Respondent during personal hearing submitted that it was his first assignment and thus requested for a lenient view.
- 8.0** An insolvency professional is expected to exercise due diligence while performing his duties. His diligence should reflect during the corporate insolvency resolution process. As per section 25 (2) (a) it is the duty of Resolution Professional to take immediate custody and control of all the assets of the CD, including the business records of CD. However, it has been observed that the respondent failed to take the charge/control of the account of the Company maintained with State Bank of India IOCL Refinery Campus Branch, Paradeep, Odisha.
- 9.0** In respect of the allegation, DC noted that there is a contravention of section 25(2)(a) of the code. The account left for custody reflects negligence on the part of the respondent. At the same time, DC notes the submission of the respondent that there was no data available with him/provided to him by the then CFO/company official responsible for handover of the financial information of CD, so, there was no way he could have identified the transactions made. The DC further notes the submission of the respondent that when the respondent came to know about the cash withdrawals from the abovesaid account, he immediately thereafter, took control of it, which reflects his bonafide intent and good faith. DC also took note of the fact that all the transaction occurred from the alleged bank account were made for site expenses and ultimately there was no loss incurred to the corporate debtor.
- 10.0** In view of the foregoing, DC also took note of section 19 (1) of the Code which mandates the personnel of the Corporate Debtor to extend co-operation to the Resolution Professional. Also, in this complaint, no evidence was provided by complainant (Ex-CFO) to substantiate that respondent has ever wilfully or mischievously abstained from taking control of the said bank account during CIRP. DC heard the respondent and found is no malafide intention on the part of the respondent. Also, DC finds no reason to believe that the bank account left for custody/control was an intentional or deliberate act performed by the respondent. Therefore, the DC inclined to take a lenient view for the contravention of section 25(2) (a).
- 11.0** Accordingly, 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, DC hereby issues a 'reprimand' to him and advises respondent to exercise due caution and be more careful while handling any assignments. Accordingly, the show cause notice is disposed of.

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

**13.0** A copy of this order shall be forwarded to the Insolvency and Bankruptcy Board of India.

**Date:30/07/2021**

**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