

Indian Institute of Insolvency Professionals of ICAI
(Disciplinary Committee)

DC. No. - IIIPI/DC/31/2020-21

ORDER

In the matter of Mr. Anurag Nirbhaya (Respondent) under Clause 15(A) 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. Anurag Nirbhaya R/O 204, Sagar Plaza, Plot No.19, District Centre, Laxmi Nagar, New Delhi -110092. 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-P00870/2017-2018/11468. 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 Interim Resolution Professional (IRP) in **Kindle Developers Private Limited** (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 chose to be represented with his counsel Mr. Abhishek Anand before the DC of IIIPI, via video conferencing mode. He made oral submissions before the DC. He was also asked to make written submission with respect to certain allegation, which he made on 09-06-2021.
- 2.0** The first allegation against the respondent was, that he was appointed as IRP by NCLT vide order dated 30-07-2018 and agenda in respect of Information Memorandum was placed before the CoC in the second CoC meeting, which was convened on 25-10-2018 i.e., on the 87th day from the date of his appointment, which is in violation of Regulation 36 (1) of the Insolvency Resolution Process for Corporate Persons Regulation 2016 which states that “*Subject to sub-regulation (4) the resolution professional shall submit the information memorandum in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty fourth day from the insolvency commencement date, whichever is earlier.*”
- 3.0** Respondent in this regard submitted, that the Corporate Insolvency Resolution Process against Corporate Debtor was initiated by the Hon’ble NCLT vide order dated 09.03.2018 and respondent was appointed by the NCLT as ‘Interim Resolution Professional’ (IRP) on 30.07.2018. Copy of the order was received by him on 01.08.2018 and he intimated all members of suspended Board regarding the initiation of CIRP against the CD and provided the gist of information/documents required from the suspended Directors, but no response was received from any of them. All promoter directors of the CD were absconding and there was no single employee of the CD who could provide information/documents requisite in carrying out the CIR Process of CD.

- 4.0** The counsel of the respondent during the personal hearing clarified that as per erstwhile Regulation 36 of the CIRP Regulations, 2016, applicable to the present CIRP of Corporate Debtor i.e., Kindle Developers Private Limited, the duty to prepare Information Memorandum lies on ‘Resolution Professional’ (RP) and not on IRP. Admittedly, he was not appointed as the Resolution Professional.
- 5.0** In the present matter DC notes that on 09-03-2018 an application under section 7 of IBC code 2016 was admitted against the CD and Mr. Yogesh Kumar Tyagi was confirmed as interim resolution professional.
- 6.0** During the course of one of the hearings, before the NCLT, in this matter, the then IRP Mr. Yogesh Kumar Tyagi revealed that he learnt of his appointment as the IRP only on 22-06-2018.
- 7.0** On a subsequent hearing on 30-07-2018 NCLT noted that the order admitting the section 7 application, though pronounced on 09-03-2018 was not uploaded on the NCLT website till 22-06-2018 and subsequent steps could therefore not be taken. On the request of the FC NCLT appointed Mr. Anurag Nirbhya i.e., the respondent as the new IRP in place of Mr. Yogesh Tyagi. Thus CIRP in the instant matter was commenced on 09-03-2018 and the respondent was appointed as an IRP on 30-07-2018.
- 8.0** Further deeming provision of Regulation 17(3) of CIRP Regulations, 2016 amended on 03.07.2018 and applicable to corporate insolvency resolution processes commencing on or after 3-7-2018 states *“that where the appointment of resolution professional is delayed, the interim resolution professional shall perform functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed under Section 22.”*
- 9.0** In view of the foregoing facts, DC notes that order initiating the CIRP of Kindle Private Limited was pronounced on 09-03-2018, and the deeming provision under which IRP could be held responsible, to fulfill the duties of RP as a deemed RP i.e., Regulation 17(3), applies only to CIRP’s initiated on or after 03rd July, 2018. Hence, in the given scenario, DC cannot held respondent guilty of the given charge.
- 10.0** As a matter of fact, DC also noted that though the CIRP was initiated on 09.03.2018 however, respondent was appointed as IRP vide order dated 30.07.2018 after deeming provision of Regulation 17(3) of CIRP Regulations came into force i.e., w.e.f. 03.07.2018.
- 11.0** Second allegation against the respondent was that no approval of the CoC was taken for prequalification criteria, timelines Evaluation Matrix, Earnest Money Deposit, etc., before publishing Form G (EoI).
- 12.0** Respondent in this regard submitted that Form G ‘Invitation for Expression of Interest’ was published, and IM and RFP were prepared based on data available with him. The same were placed

before the 2nd CoC meeting for approval. As these documents were not approved by the CoC, he did not send anything to the persons who have shown interest in response to Form G. Respondent further stated that the draft EoI was placed before the CoC but the same was never approved by CoC, therefore few terms like prequalification criteria, timelines Evaluation Matrix, Earnest Money Deposit, etc., were not specified in published EoI. Moreover, in meanwhile he was replaced by new RP.

13.0 Counsel of the respondent during personal hearing admitted the lapse, with a request to take a lenient view, since it was the first assignment of the respondent.

14.0 Regulation 36 A (1) of the Insolvency Resolution Process for Corporate Persons Regulation 2016 and Section 25(2)(h) of IBC, 2016 provides as under:

Section 36A(1) of CIRP, 2016 : *The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule at the earliest, not later than seventy-fifth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans*

Section 25 (2) (h) of IBC, 2016: *Invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.*

15.0 Thus Regulation 36A(1) read with section 25(2)(h) makes it mandatory for resolution professional to publish brief particulars of the invitation for expression of interest in Form G of the Schedule at the earliest, not later than seventy-fifth day from the insolvency commencement date, from interested and eligible prospective resolution applicants who fulfil such criteria as may be laid down by him with the approval of CoC.

16.0 In view of the foregoing, DC notes that the respondent published Form G on 14-10-2018 and placed the RFRP (Request for Resolution Plan) and Form G in the 2nd meeting of CoC which was convened on 25-10-2018. Thus, it is apparent that no prior approval was taken for prequalification criteria, timelines evaluation matrix, earnest money deposit, etc., before publishing EoI.

17.0 DC also took note of the NCLT order dated 14-01-2019, wherein NCLT advised Shri Kashi Vishwanath Sivaraman, succeeding Mr. Nirbhaya as RP of CD, to publish a fresh Form G in compliance with the procedure laid down in the Code and attendant rules and regulations.

18.0 An IP is obliged under section 208(2)(a) of the Code to take reasonable care and diligence while performing his duties. Section 208(2)(e) further obliges the IP to perform his functions in such manner and subject to such conditions as may be specified. Section 208(2) reads as under:

“208. Functions and obligations of insolvency professionals.

(2) Every insolvency professional shall abide by the following code of conduct: –

(a) to take reasonable care and diligence while performing his duties; ...

(e) to perform his functions in such manner and subject to such conditions as may be specified.”

19.0 The Insolvency Professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process. From the above stated facts, DC notes that respondent had published Form G in accordance with the timelines as stipulated in IBC but failed to take prior approval from the CoC as specified under section 25(2) (h) of the Code. At the same time DC heard the respondent carefully and finds no malafide intentions on the part of the respondent, taking an overall view of the aforesaid, the DC inclined to take a lenient view for the contravention of section 25(2) (h).

20.0 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(A) of the Disciplinary Policy of IIIPI, DC hereby advise the respondent to perform his duties and functions with utmost care and caution and 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 (IIIPI) within 30 days of the issue of this order. IIIPI shall in turn deposit the said penalty amount in the Insolvency and Bankruptcy Fund. Accordingly, the show cause notice is disposed of.

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

22.0 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)

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