

# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

## (Disciplinary Committee)

DC. No. IIIPI/DC/39/2021-22

### ORDER

1. This order disposes of the Show Cause Notice (SCN) dated 29<sup>th</sup> October 2021, issued to Mr. Avil Jerome Menezes (Respondent), R/o 416, Crystal Paradise Cooperative Society Limited, Dattaji Salvi Marg, above Pizza Express, Off Veera Desai Road, Andheri West, Mumbai City, Maharashtra-400053. Respondent is a professional member of the Indian Institute of Insolvency Professionals of ICAI (IIIPI) and registered with IBBI with Registration No. IBBI/IPA-001/IP-P00017/2016-2017/10041.
2. The DC considered the reference made by Grievance Redressal Committee and reviewed the records to issue Show Cause Notice (SCN). The SCN was issued for alleged contravention of the following provisions:
  - I. Section 208(2)(a) of The Insolvency and Bankruptcy Code 2016, requires that an Insolvency Professional (IP), *"To take reasonable care and diligence while performing his duties."*
  - II. Regulation 7(2)(h) of IBBI (Insolvency Professional) Regulation 2016, requires that an Insolvency Professional, *"abide by the Code of Conduct specified in the First Schedule to these Regulations."*
  - III. Clause (12) of the Code of Conduct for insolvency professionals requires, *"An insolvency professional must not conceal any material information or knowingly make a misleading statement to the Board, the Adjudicating Authority or any stakeholder, as applicable."*
  - IV. Clause (14) of the Code of Conduct for insolvency professionals requires, *"An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code."*
  - V. Clause (15) of the Code of Conduct for insolvency professionals requires, *"An insolvency professional must make efforts to ensure that all the communication to the stakeholders, whether in the form of notices, reports, updates, directions, or clarifications, is made well in advance and in manner which is simple, clear, and easily understood by the recipients."*
3. A summary of contravention alleged in the SCN, written response submitted by the respondent and thereupon the findings of the DC are as under:
4. **Contravention:** In the present matter, the respondent did not circulate note/ letter dated 15.06.2018 forwarded to him by one of the Financial Creditor, namely Ashok Commercial Enterprise, with a request to place it before the CoC members in the CoC meeting held on 18-06-2018.

- 5. Submission:** The respondent in his written submission dated 7<sup>th</sup> November 2021, has stated that it was to his discretion that whether the letter should be placed before CoC or not. There is no explicit provision compelling him to mandatorily place letter before CoC. Further, to justify his discretion, he shared a circular issued by IBBI, bearing no. IBBI/CIRP/2021, dated 16<sup>th</sup> April 2021 on “Consideration of matters/issues by the committee of creditors on request by members of the committee.”
- 6. Finding:** An insolvency professional is bestowed with myriad duties. An insolvency professional is expected to exercise due diligence while performing his duties. His diligence should be reflected not only during the corporate insolvency resolution process but also while fulfilling any obligation as a professional member under the Code. The circular granting authority to IRP/RP on exercising discretion with respect to matters or issues to be taken to CoC for consideration, was issued in year 2021. Hence, he could not take the benefit of ex post facto law that wasn’t even anticipated when omission occurred. At the same time DC took note of the fact that at the material time when the omission occurred there was no explicit provision under the Code, mandating the respondent to place the alleged letter before the CoC. DC also took note of the fact that the complainant being a CoC member was himself present in the CoC meeting and have all the liberty to raise issues during the meeting and thus keeping in view all facts, DC is inclined to take a lenient view in the matter.
7. 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(1) of the Disciplinary Policy of IIIPI, DC pronounces the respondent as non-guilty. However, DC advises the respondent to be diligent and more careful in future about compliance with regulations and guidelines laid down by IBBI. Accordingly, the show cause notice is disposed of.
8. This order shall come into force from the date of its issue.
9. A copy of this order shall be forwarded to the Insolvency and Bankruptcy Board of India.

**Date: 04-01-2022**

**Place: Delhi**

**CERTIFIED TRUE COPY**

**Sd/-**

**Mr. Satish Marathe, (Chairman)**

**CA. (Dr.) Debashis Mitra (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.