

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

DC. No. IIIPI/DC/34/2021-22

ORDER

In the matter of Mr. Hirachand Nemichand Bafna (Respondent), under Clause 15(1) 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) No. IIIPI/DC/38/2021-22 dated 20th July, 2021 issued to **Mr. Hirachand Nemichand Bafna** (Respondent), 21A Soni Bhavan, 1st Floor, Opp. Godiji Temple, Kalbadevi, Mumbai, Maharashtra-400002. 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-P01207/2018-19/11922**.
- 2.0** The Disciplinary Committee of IIIPI (DC) issued SCN to the respondent, based on the reference received from Monitoring Committee of IIIPI including the findings in the inspection report of Inspection Authority (IA), pertaining to assignments handled by him as an IRP in the CIRP of **(a) Ariha Chemical Private Limited; (b) Interspace Solutions Private Limited; and (c) Virgo Home Deziner Private Limited**. The SCN alleged the contravention of the provisions of section 208 (2) (a) and (e) of the Insolvency and Bankruptcy Code, 2016, Regulation 7(2) (a) and (h) of IBBI (Insolvency Professional) Regulation, 2016, read with clauses 1, 3, 5, 9 14, 16 and 19 of the Code of Conduct. The Respondent submitted his contention to the SCN vide email dated 16-08-2021.
- 3.0** The DC referred the SCN, written/oral submissions of the respondent and other material available on record for disposal of the SCN in accordance with the Code and Regulations made thereunder. An opportunity for personal virtual hearing was provided to the respondent on 13-12-2021 however, the respondent expressed his inability to appear before the Disciplinary Committee of IIIPI on the scheduled date of hearing and sought the adjournment. Given the circumstances respondent's matter was adjourned to 16-02-2022 by the Disciplinary Committee. Respondent chose to be represented through his advocate/counsel Mr. Arun Shenoy before the DC of IIIPI via video conferencing mode. Accordingly, on date respondent along with his advocate appeared before the DC, wherein the advocate of the respondent reiterated the submissions made in the written reply and also made a few additional submissions.
- 4.0** The allegation against the respondent was that he appointed M/s. GIS NPA Management Limited as a process advisor and M/s. Fair Law Associate as a legal firm, in all the three assignments handled by him. He failed to supply any record of due diligence for selecting the same process advisor/law firm thereby raising concerns of his impartiality and objectivity.
- 5.0** Respondent in his reply submitted that mere non furnishing certain documents or submitting insufficient documents, cannot make him accused of non-exercise of due diligence, impartiality, and objectivity.

Respondent further submitted that:

- i. That in his opinion he has not come across any bar or restriction under the Code on selecting the same process advisor/law firm in the assignments handled by him.
- ii. That he has appointed M/s GIS NPA Management Ltd as process advisor and M/s. Fair Law Associate as a legal firm consequent to the due diligence that he has undertaken and based on the reputation and confidence that has been generated in him in so far as their working on the subject concerned. The prerogative to appoint a process advisor/legal firm is vested in IP and in his

opinion, he had not done anything which can be stated to be failure tantamount to maintenance of independence impartiality and objectivity

- iii. That he have perused the profile and work done by these entities and also made local enquiries and have gathered that they are technically capable and equipped to undertake the kind of assignment that he had proposed to assign to them and also gathered that they are independent in their field of work and never get influenced by any persons and their integrity is impeccable and maintain a high degree of transparency and confidentiality in their work processes and also do not get or come under the influence of anybody in so far as their professional work is concerned. Moreover, the declaration of relationship was filed with the IIIPI. In light of these facts his act of appointing these persons cannot be alleged to be irregular or does not amount to the non-maintenance of independence impartiality and objectivity.
- iv. During the course of personal hearing the counsel/advocate of the respondent submitted that there is no collusion or personal relation between the respondent and the said agencies. Even the respondent in his entire practice, has never interacted with these two agencies or with any of the partners of these agencies including any employee of the two agencies.
- v. It was further submitted that respondent collected some market information about the ability of the agencies and found that whatever support was required in the CIR processes was being provided by these agencies and thus appointed same agencies in all the three processes.

6.0 The role of an IP is crucial and critical to fulfil the objective of the Code. It is imperative that an IP functions and discharges his/ her duties independently in a fair and transparent manner and facilitate fulfilment of the objectives of the Code. It is the duty of an IRP/ RP to perform and discharge his/ her duties in accordance with the Code and the Regulations made thereunder, in letter and spirit. The DC notes the allegation against the respondent that he appointed same process advisor and law firm in all the three assignments handled by him, which creates a doubt on the conduct of the respondent. At the same time DC notes the submission of the respondent that the appointment was solely based on the market research conducted by him and he has maintained his independence/ objectivity and exercised his prudence to appoint these professionals based on the reputation and confidence that has been generated in him from their working in respect of services provided by the said firms. The DC also notes that these appointments were made with the approval of CoC.

Further, DC noted the fact there is no evidence on record which can establish any collusion of the respondent with the alleged firms. DC heard the respondent carefully and found no malafide intention on the part of the respondent. Also, DC finds no reason to believe that the respondent appointed the same firms, with any ill intent or with ulterior motive to achieve any undue or unlawful gain for himself or its associated parties. Therefore, the DC is inclined to take a lenient view.

7.0 The next allegation against the respondent was that the respondent had taken the matter of insurance of M/s GIS NPA Management Limited, appointed as process advisor before the CoC during the meetings in all the three assignments handled by him.

8.0 In this regard, respondent in his reply submitted that he only had proposed the insurance but not taken the insurance and have derived no benefit whatsoever by proposing insurance of the process advisor.

Respondent further submitted that:

- i. The matter of insurance was put up before the COC only in one matter but the same was not approved. In the remaining two cases it was only a typographical insertion which has crept in due usage of software tools and the same got included in the agenda on account of software shortcuts that were being used while the agenda was being drafted.

- ii. That no expense was incurred, even though in one matter i.e., Virgo Home Deziner Pvt. Ltd, the same was approved by the CoC but the approval was not used, and no insurance was taken. Therefore, in the light of the fact that no such occurrence took place no violation can be alleged and the same should be seen and considered to be an inadvertent lapse with no selfish or personal interest in this regard.
- iii. As no insurance was taken the question of providing any undue benefit to the process advisor does not arise and therefore the whole contention remains an infructuous issue and to that extent should be considered sympathetically and leniently.
- iv. During personal hearing counsel of the respondent added that when these assignments have started in March 2019, insurance was proposed for the agency assisting the IRP in the light of the various violent incident which had occurred and with a view to take safeguard preventive actions, insurance was proposed. However, no insurance of any person has been taken and no expenses have been incurred or made part of IRPC.

9.0 The responsibilities of the IRP/RP under the Code require highest level of standards, calibre and integrity which inspire confidence and trust of the stakeholders and the society. The role of an IP is vital to the efficient operation of the insolvency and bankruptcy resolution process. The IP forms a crucial pillar upon which rests the credibility of the entire resolution process. For that purpose, the code provides for certain duties, obligations for undertaking due diligence in conduct of insolvency process to establish integrity, independence, objectivity, and professional competence in order to ensure credibility of both process and profession as well.

Section 208 of the Code provides for the functions and obligations of the IP which provides inter alia that the IP shall abide by the Code of Conduct to take reasonable care and diligence when performing his duties and to perform his functions in such manner and subject to such conditions as may be specified. One of the conditions for registration as IP is that an IP shall at all times abide by the Code and Rules, Regulations and Guidelines made thereunder and the bye laws of the insolvency professional agency with which he/she is enrolled.

DC noted that respondent had proposed the insurance of GIS NPA Management Limited (process advisor) before the CoC in all the three assignments. Whereas Code and its allied regulations does not provide for insurance of the any professional appointed by IPR/RP during CIRP. Taking the insurance matter of GIS NPA Management Limited before the CoC reflects poor understanding of law of the respondent. At the same time DC notes the submission of the respondent that he had only taken up the matter of insurance only in one CIRP and in the remaining two CIRPs it was only a typographical insertion on account of software shortcuts that were being used while the agenda was being drafted. The DC further notes the submission of the respondent that no insurance of any person has been taken and no expenses have been incurred or made part of IRPC.

The DC also noted the fact that in the CIRP of Virgo Home Deziner Private Limited the insurance of GIS NPA Management Limited was approved by the CoC. However, despite approval of the CoC, respondent himself decided not to proceed with the same and ultimately there was no loss incurred to the corporate debtor.

An IP is expected to ensure that the expenses incurred during the CIRP is reasonable so that the CD, who is already entangled in a web of unsustainable liabilities is not further over-burdened with exorbitantly high IRPC. Therefore, an IP must maintain balance between discharging the duties and responsibilities as an IP and the cost incurred for doing the same. Keeping in view of above, DC is inclined to take a lenient view.

10.0 The next allegation against the respondent was that respondent failed to provide the following documents to the IA: -

- (a) Copy of engagement letters appointing professionals & Declaration of independence from the appointed professionals in all the three assignments
- (b) Copy of latest financial statements in Arhia Chemicals Private Limited and
- (c) Report certifying constitution of committee of creditors in Virgo Home Deziner Private Limited.

11.0 In this respect respondent in his reply submitted that the copy of engagement letter of all the professionals were provided in response to the interim inspection report.

Respondent further submitted that:

- i. In respect of the latest financial statements, it was submitted that the latest financial statement that were made available and provided to him pertains to year ending 31-03-2016 after which no data was available or provided or filed with MCA.
- ii. That respondent proposed audit which was approved by the CoC but due to data not being available with him and non-cooperative attitude adopted by the representatives of the corporate debtor the same could not be taken to a logical conclusion. During personal hearing the counsel of the respondent added that the latest/last balance sheet/financial statement that is available with the respondent is year 2016, which was provided and question of providing anything beyond that does not arise.
- iii. That the inspection was carried out on 23-11-2020 during which the Covid Pandemic restrictions were in force and the same prevented his staff members from attending office and this action of not being able to provide the necessary papers to the inspection authority should also be seen in a lenient manner. Respondent added that during the inspection dates his son was suffering from Covid and had to be quarantined at his residence and the stress that he was undergoing in so far as family members being infected with the disease also was a reason for not being able to provide of the data at the time of inspection.

12.0 The DC notes the allegation that the respondent did not provide certain information/documents asked for by the IA. It is duty of an IP to produce all records in his custody or control and furnish such statements and information relating to its activities within such time as the IA may require. Respondent was asked to provide certain documents of the assignments being handled by him. Respondent was unable to submit the required documents to the IA in the stipulated timelines, as provided by IA.

During the personal hearing, as to the allegation of non-submission of information to the IA, respondent submitted that lockdown was in effect and his son was suffering from Covid and had to be quarantined at his residence and the stress that he was undergoing in so far as family members being infected with the disease also was a reason for not being able to provide of the data at the time of inspection. The DC notes that the pandemic situation is as an exceptional circumstance and accepts respondents' contention as the pandemic situation was beyond his control and the same appears to have caused delay in submission of the information. Therefore, the DC takes a lenient view.

13.0 In view of the facts, as stated above, the DC is inclined to take a lenient view. 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 IIPAI, DC hereby disposes of the SCN without any adverse directions against the respondent. However, DC hereby issues the following advises to the respondent: -

- (i) That the respondent should take reasonable care and be extremely careful, diligent while performing his duties under the Code.
- (ii) That respondent should maintain and upgrade his professional knowledge and skills to render competent professional services.

- (iii) That respondent must ensure that he maintains written contemporaneous records for any decision taken by him, the reasons for taking the decisions, and the information and evidence in support of such decision.

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

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

Date: 16/03/2022
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.