

Indian Institute of Insolvency Professionals of ICAI
(Disciplinary Committee)

DC. No.IIPI/DC/68/2021-22

ORDER

This order disposes of the Show Cause Notice (SCN) dated 24th December 2021 issued to Mr. Mahesh Kumar Agarwal (respondent), 11 E-1 Bigjos Tower, Netaji Shubhash Palace, Pitampura, TV tower, New Delhi-110034. Respondent is a professional member of the Indian Institute of Insolvency Professionals of ICAI (IIPI) and registered with IBBI with Registration No-IBBI/IPA-001/IP-P-02015/2020-2021/13082. The Monitoring Committee of IIPI observed lapse with respect to submission of Half Yearly Return (HYR), which every IP is required to file bi-annually, latest by 15th October and 15th April each year, irrespective of having or not having assignments.

2.0 The DC considered the reference made by Monitoring 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 Code requires that an Insolvency Professional (IP) “*to take reasonable care and diligence while performing his duties.*”
- II. Section 208(2)(e) of the Code requires an Insolvency Professional (IP) “*to perform his functions in such a manner and subject to such conditions as may be specified.*”
- III. Clause 16 of the Model Bye-Laws and Governing Board of Insolvency Professional Agencies, Regulation 2016, requires that “*A professional member shall submit information, including records of ongoing and concluded engagements as an insolvency professional, in the manner and format specified by the Agency, at least twice a year.*”
- IV. Clause 6.1.1 (i)(c) of Monitoring Policy of IIPI, states, “*Action against Defaulters on Non-Submission of Half Yearly Return*
iii. Such cases of delay shall be referred by Monitoring Committee to Disciplinary Committee after allowing maximum period of 3 months for those members who have assignments during the period and members who do not have any assignment during the period after allowing maximum period of one year.”

- V. Regulation 7(2) (a) IBBI (Insolvency Professional) Regulation, 2016, which requires that *“the registration of an IP shall be subject to the conditions that he at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled.”*
- VI. Regulation 7(2) (h) IBBI (Insolvency Professional) Regulation, 2016, which requires an IP to abide by the Code of Conduct specified in the First Schedule to these Regulations.
- VII. Clause 14 of the Code of Conduct of IIIPI requires that *“An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code.”*
- VIII. Clause 19 of the Code of Conduct of IIIPI requires that *“An insolvency professional must provide all information and records as may be required by the Board or the insolvency professional agency with which he is enrolled.”*

3.0 A summary of contravention alleged in the SCN and the observation of the DC are as under:

4.0 Contravention: Clause 16 of the Model Bye-Laws of Governing Board of Insolvency Professional Agencies states that *“A professional member shall submit information, including records of ongoing and concluded engagements as an insolvency professional, in the manner and format specified by the Agency, at least twice a year.”* In terms of Clause 16, respondent is required to submit half-yearly return to Insolvency Professional Agency (IPA) within 15 days from the end of the respective Half Year. It is noted that respondent failed to adhere to the requirement, as specified above, for the period ending in *30th September 2020*.

5.0 Finding: An insolvency professional is bestowed with a myriad of 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. In the present matter, DC noted that despite repeated reminders respondent did not file his pending Half Yearly Returns.

6.0 Accordingly, in exercise of the powers conferred under Regulation 24(1) (c) of the Insolvency and Bankruptcy Board of India (Model Byelaws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 read with clause 15(1) of the Disciplinary Policy of IIIPI, DC hereby disposes the show cause notice with the following directions:

- I. Complete all the pending compliances within 30 days from issuance of this order;

- II. If respondent fails to comply within the stipulated time, subsequently, it shall lend him liable for penal action.
- III. Till the compliance with the abovesaid directions, Authorization for Assignment (AFA) of the respondent will remain suspended.

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

Date: 14-06-2022

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.