

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

DC. No. IIIPI/DC/44/2021-22

ORDER

In the matter of Ms. Madhu Juneja (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/44/2021-22 dated 01-12-2021 issued to **Ms. Madhu Juneja** (Respondent), 4704 Ashoka Enclave, Plot No. 8A, Sector 11, Dwarka, New Delhi- 110075. 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-P00044/2017-18/10118**.

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 her as an IRP/RP in the CIRP of **(a) Tafcon Projects (India) Private Limited; (b) Him Valves and Regulators Private Limited; (c) Dalmia Biz Medicare Private Limited (d) Jai Sai Ram Steel Private Limited**. The SCN alleged the contravention of the provisions of section 14(1)(b), 21(2), 208 (2) (a) and (e) of the Insolvency and Bankruptcy Code, 2016, Regulation 13, 14, 24(6) (7) and 27 of the Insolvency Resolution Process for Corporate Persons Regulation 2016, Regulation 7(2) (a) (h) and (i) of IBBI (Insolvency Professional) Regulation, 2016, read with clauses 3, 5, 9, 11, 13, 14, and 23B of the Code of Conduct for Insolvency Professionals, specified under First Schedule of IBBI (Insolvency Professionals) Regulations, 2016, Circular No. IP/005/2018 dated 16th January, 2018 and Circular No. IP/013/2018 dated 12th June, 2018. The Respondent submitted her contentions to the SCN vide letter dated 28-12-2021.

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 13-04-2022 however, due to some unforeseen circumstances respondent's matter was adjourned to 06-05-2022. Respondent chose to be represented through an authorized representative Mr Surinder Kumar. Accordingly, on date respondent appeared before the DC along with her representative, wherein the respondent reiterated the submissions made in the written reply and also made a few additional submissions.

A. Tafcon Projects (India) Private Limited.

4.0 Allegation: In the CIRP of Tafcon Projects (India) Private Limited, Form C of Mrs. Pooja Kapoor has been submitted jointly with Mr. Dhruva Kapoor and Ms. Vrinda Kapoor on behalf of the deceased Mr. Ajay Kapoor. However, the said creditor before his demise was appointed as the director of the Corporate Debtor since 2008 and when the loan amount was disbursed by Mr. Ajay Kapoor, he was a related party of the Company. Thus, the said claimant (his representative) is one of the Creditors falls under the category of Related Party

u/s 5(24)(a). As such, said claimant/creditor cannot have any right of representation, participation or voting in a meeting of the committee of creditors.

The said Creditor has submitted the claim form under Form C and the same has been accepted by the respondent.

4.1 Submissons: Respondent in her reply submitted that Mr Ajay Kapoor was director of the Corporate Debtor till the date of his death on 12-06-2016. After his death Mrs Pooja Kapoor, Mr. Dhruv Kapoor & Ms. Vrinda Kapoor, the legal heirs of Mr. Ajay Kapoor became the financial creditors of the Corporate Debtor. As none of these legal heirs were director of the corporate debtor and also none of these legal heirs singly or even jointly were holding shares of more than 20% of the total share capital of the corporate debtor. Hence as on the date of start of the CIRP i.e. 18-07-2018 and even till the withdrawal of the CIRP i.e. 13-12-2018, the legal heirs were not related party in relation to the corporate debtor in terms of section 5(24) of the Insolvency and Bankruptcy Code, 2016 (the IBC). Hence it is humbly submitted that the respondent has not erred in granting them voting right in the meetings of committee of creditors of the corporate debtor and as such has not violated any provision of the IBC and Regulations made there under.

4.2 Findings: The DC notes that section 5(24) provides as under:

(24) "related party", in relation to a corporate debtor, means-

(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;

(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;

(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid- up share capital;

(f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;

(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;

(j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;

(k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;

(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;

(m) any person who is associated with the corporate debtor on account of-

(i) participation in policy making processes of the corporate debtor; or

- (ii) having more than two directors in common between the corporate debtor and such person; or*
- (iii) interchange of managerial personnel between the corporate debtor and such person; or*
- (iv) provision of essential technical information to, or from, the corporate debtor;*

4.3 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 for 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.

4.4 The DC notes the submission of the respondent that Mr Ajay Kapoor was director of the Corporate Debtor till the date of his death on 12-06-2016. After his death Mrs Pooja Kapoor, Mr. Dhruv Kapoor & Ms. Vrinda Kapoor, the legal heirs of Mr. Ajay Kapoor became the financial creditors of the Corporate Debtor. DC further note the submission of the respondent that none of the legal heirs were director of the corporate debtor and also none of the legal heirs singly or even jointly were holding shares of more than 20% of the total share capital of the corporate debtor.

On a combined reading of the facts presented by the respondent and related provisions, DC notes that the heirs of the demised Mr Ajay Kapoor did not fall under the category of the related party as on the date of admission of claims. In the given backdrop there appears no contravention on the part of the respondent.

5.0 Allegation: The next allegation against the respondent was that the amount deposited by the customers in the overdraft (OD) Account cannot be set off against the claim of the Financial Creditor. The amount deposited by the Customers in the OD Account is the asset of the Corporate Debtor and respondent as RP does not have the authority to utilize such amount of the CD to adjust against the claim of a financial Creditor.

5.1 Submissions: In this regard respondent in her response submitted that she reduced the claim amount of Federal Bank to calculate the true proportion of representation of Federal Bank in the committee of creditors and these facts were brought to the notice of the CoC and were disclosed to the Hon'ble Adjudicating Authority in second status report filed by the respondent on 10-11-2018.

Respondent further submitted that she received an email from ex directors of the corporate debtor on 23-10-2018 regarding putting the agenda of settlement of the claim of the applicant in the next CoC of the Corporate Debtor (Email is part of CA No. 724/2018 of suspended directors). On 26-10-2018, the federal bank, the main financial creditor wrote to the corporate debtor that they will not have any objection if the account of the operational creditor/applicant of the corporate debtor is settled, and payment is made from overdraft account of the federal bank. On 30-10-2018, the suspended directors made an application before the Hon'ble Adjudicating Authority for termination of the CIRP on the ground of their intention and readiness to pay to the OC/Applicant of the CIRP out of the funds of the

corporate debtor on which notice was issued to RP to file the reply. The RP filed her reply on that application on 28-11-2018 and this application remained subjudice till 13-12-2018 when the CIRP was ultimately withdrawn on an application filed by the RP on 12-12-2018.

- 5.2 Finding:** Under the Code, RP plays a central role in resolution process of the CD, he/she is appointed by the AA as an officer of the Court to conduct the resolution process and it is the duty of RP to conduct CIRP with integrity and accountability in the process and to take reasonable care and diligence while performing his/her duties. Therefore, it becomes imperative for an IP to perform his duties with utmost care and diligence.
- 5.3** The DC also notes the submission of the respondent that she reduced the claim amount of Federal Bank to calculate the true proportion of representation of Federal Bank in the committee of creditors and these facts were brought to the notice of the CoC and were disclosed to the Hon'ble Adjudicating Authority in second status report filed by the respondent on 10-11-2018.
- 5.4** The DC also notes the fact that ultimately the CIRP of the CD was withdrawn on 13-12-2018. DC has gone through the records carefully and based on the clarifications submitted by the respondent DC finds no malafide intention on the part of the respondent. Also, DC finds no reason to believe that the lapse occurred was an intentional or deliberate act performed by the respondent. Therefore, the DC inclined to take a lenient view.
- 6.0 Allegation:** Regulation 24(7) of the Insolvency Resolution Process for Corporate Persons Regulation 2016 provides that the resolution professional shall circulate the minutes of the meeting to all the participants by electronic means within forty-eight hours of the said meeting. However, it is noted that respondent failed to circulate the minutes as per the requirement under the Code. In this connection, respondent submitted before IA that the minutes were physically handed over to the COC Members after getting it signed by all the COC Members in the meeting itself. Therefore, circulation of the minutes of the meeting via electronic mode not done.
- 6.1 Submission:** The respondent in this connection has submitted that all the minutes were written in the meeting itself and physically signed and exchanged by all the members at the spot itself as such one original copy of minutes were immediately physically handed over to each of the participant of the meeting and also there was no absentee in the meeting as there was always 100% attendance in the meetings. In the opinion of the respondent, the purpose of the law is to circulate the minutes to all the members and invitees of the CoC in time which has been done by the respondent with due diligence and honesty. There is no complaint against the respondent from any quarter for non-receipt of minutes by it. As such the respondent has done her duties honestly and judiciously and has not violated any provision of the IBC or the regulations made thereunder.
- 6.2 Findings:** With regard to the issue of non-circulation of the minutes of the CoC meetings via electronic mode, as specified under Regulation 24(7) of the Insolvency Resolution Process for Corporate Persons Regulation 2016, the DC notes the submission of the respondent that all the minutes were written in the meeting itself and physically signed and exchanged by all the members at the spot itself as such one original copy of minutes were immediately physically handed over to each of the participant of the meeting and also there was no absentee in the meeting as there was always 100% attendance in the meetings.

6.3 DC notes that though the respondent has not circulated the minutes of the meeting via electronic means however, the respondent immediately handed over the physical copies of the minutes to each of the participant of the meeting after the meeting. DC has gone through the records carefully and based on the clarifications submitted by the respondent DC finds no malafide intention on the part of the respondent and therefore, DC takes a lenient view.

7.0 As per Regulation 27 of the Insolvency Resolution Process for Corporate Persons Regulation 2016 “*the resolution professional shall within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35.*” However, it is noted that respondent failed to appoint registered valuers, as prescribed under the Code.

7.1 In response to this allegation respondent submitted that delay in appointment of valuers was attributed to the facts that at the time of appointment of the respondent, fixed assets register of the corporate debtor was not complete. The substantial time was spent by the respondent to identify the assets of the corporate debtor and make an inventory of that with the help of the management of the corporate debtor. After identification of assets, quotations were invited from various valuers registered with IBBI on 27-09-2018 and considering the lowest quotations, the appointment of first valuer was made on 29-09-2018 and the appointment of second valuer was made on 01-10-2018. Respondent also requested to condone the delay.

7.2 The IP is to maintain integrity, by being honest, straight forward and forthright in all his professional relationships while conducting business during CIRP. His conduct has a substantial bearing on performance and outcome of the processes under the Code. IP, therefore, is expected to function with reasonable care and diligence to ensure credibility of the process. It is imperative for an IP to perform his duties and functions with utmost care and diligence in time bound manner.

7.3 Regulation 7(2)(a) and 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professional), Regulations, 2016 provides as under:

“7. *Certificate of Registration:*

(1)

(2) *The registration shall be subject to the conditions that the insolvency professional shall–*

(a) 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”.

(h) abide by the Code of Conduct specified in the First Schedule to these Regulations; and...”

Clauses 13 and 14 of First Schedule of Code of Conduct for Insolvency Professionals under Regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016 states as follows:

Clause 13: An insolvency professional must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan his actions, and promptly communicate with all stakeholders involved for the timely discharge of his duties.

Clause 14: An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code”.

7.4 The DC notes that regulation 27 of the CIRP Regulations provides for appointment of professionals. The regulation is reproduced below:

“27. Appointment of Professionals. (1) The resolution professional shall, within seven days of his appointment but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35.”

7.5 With regard to the issue of non-appointment of the registered valuers to determine the fair value and liquidation value of the CD by the respondent, the DC notes that it is duty of RP to appoint two registered valuers within forty-seventh day of the ICD. Since time is the essence in relation to running processes under the Code, and even minor delays have snowballing effect in terms of deterioration of value. In the instant case, the DC notes the submission of the respondent that at the time of appointment of the respondent, fixed assets register of the corporate debtor was not complete. The substantial time was spent by the respondent to identify the assets of the corporate debtor and make an inventory of that with the help of the management of the corporate debtor. After identification of assets, quotations were invited from various valuers registered with IBBI on 27-09-2018 and considering the lowest quotations, the appointment of first valuer was made on 29-09-2018 and the appointment of second valuer was made on 01-10-2018.

7.6 The DC has gone through the records carefully and is of the view that, under the given circumstances as explained by the respondent, the delay in appointment of valuers is due to reasonable and genuine cause and therefore, DC accepts the submission of the respondent.

B. Him Valves and Regulators Private Limited.

8.0 The next allegation against the respondent was that as per Regulation 24(6) of the Insolvency Resolution Process for Corporate Persons Regulation 2016 “the resolution professional shall ensure that minutes are made in relation to each meeting of the committee and such minutes shall disclose the particulars of the participants who attended the meeting in person, through video conferencing, or other audio and visual means.

Further, Regulation 24(7) provides that the resolution professional shall circulate the minutes of the meeting to all the participants by electronic means within forty-eight hours of the said meeting. However, it is noted that the minutes of the meetings of the committee of creditors did not disclose the mode of participation of the attendees of the meeting. Also, respondent failed to circulate the minutes as per the requirement under the Code.

8.1 In respect of this allegation respondent submitted that only one meeting of committee of creditors was held in this corporate insolvency resolution process (CIRP) on 30-10-2019 at 10.00 a.m., as the order of Adjudicating Authority for admission of application under section 9 of the IBC was set aside by Hon'ble Appellate Tribunal on 11-12-2019.

The minutes of the meeting of CoC were properly recorded at the spot and were exchanged between the signatories at the spot. In this CIRP there was only one member of CoC who was

physically present in the meeting. The attendance of the participants was recorded in the minutes itself. Since the suspended directors of the corporate debtor were not present in the meeting, the minutes were circulated to them (as well as to the member of CoC who was present physically and who got the original copy at the spot itself) through email on 01-11-2019. Respondent also added that as such circulation of minutes to the sole member of CoC was done in time and circulation of minutes to suspended directors was delayed by a few hours only which may kindly be condoned as the purpose of the Code and CIRP regulations is not defeated by delay of a few hours.

- 8.2** With regard to the issue of non-circulation of the minutes of the CoC meetings via electronic mode, as specified under Regulation 24(7) of the Insolvency Resolution Process for Corporate Persons Regulation 2016, the DC notes the submission of the respondent that the minutes of the meeting of CoC were properly recorded at the spot and were exchanged between the signatories at the spot. DC also notes the submission of the respondent that there was only one member of CoC who was physically present in the meeting. Since the suspended directors of the corporate debtor were not present in the meeting, the minutes were circulated to them (as well as to the member of CoC who was present physically and who got the original copy at the spot itself) through email on 01-11-2019.
- 8.3** The DC notes that respondent handed over the physical copy of the minutes to the member of the CoC who were present in the meeting of the CoC and further circulated the minutes of the meeting to the suspended directors/ CoC members who were not present in the meeting, via email dated 01-11-2019. DC has gone through the records carefully and based on the clarifications submitted by the respondent DC finds no malafide intention on the part of the respondent and therefore, DC takes a lenient view.

C. Jai Sai Ram Steel Private Limited.

- 9.0** As per Clause 23B of Code of Conduct for Insolvency Professionals as specified under first schedule of IBBI (Insolvency Professionals) Regulations, 2016, an insolvency professional shall not engage or appoint any of his relatives or related parties, for or in connection with any work relating to any of his assignment. However, it is noted that respondent appointed her husband Mr. Surinder Kumar to render advice/assistance/ support services.
- 9.1** Respondent in this regard has submitted that the CIRP of the CD started on 16-05-2019. The matter was withdrawn on 29-05-2019. In between, she had to visit the office of the CD at Delhi and factory of the CD at the remote area of Sonapat (Haryana) to take possession of CD. Also, she had to attend the proceedings of the Hon'ble Appellate Authority where the Appeal for withdrawal of CD was moved and she was made a party to that. In these matters, she took the assistance and advice of Mr. Surinder Kumar, who is her husband and her partner in CA Firm M/s S K Juneja & Associates, without any remuneration. For the sake of transparency, she disclosed his appointment to the IPA for the information of all stakeholders. It is reiterated that she took his assistance without paying any remuneration because of his being spouse of the respondent and well-wisher.
- 9.2** The DC notes that Regulation 7(2)(a) and 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professional), Regulations, 2016 provides as under:
“7. *Certificate of Registration:*
(1)
(2) *The registration shall be subject to the conditions that the insolvency professional shall–*

(a) at all times abide by the Code, rules, regulations, and guidelines thereunder and the byelaws of the insolvency professional agency with which he is enrolled".

(h) abide by the Code of Conduct specified in the First Schedule to these Regulations; and..."

Clause 23B of the Code of Conduct for Insolvency Professionals, specified under First Schedule of IBBI (Insolvency Professionals) Regulations, 2016, provides as follows:

"23B. an insolvency professional shall not engage or appoint any of his relatives or related parties, for or in connection with any work relating to any of his assignment."

9.3 Under the provisions of the Code, an IP is recognized as an important component of the ecosystem who has been entrusted with a wide range of functions for the conduct of CIRP. The credibility of the whole process under the Code hinges upon the conduct and professional competence of IP who is required to observe the code of conduct. The IP Regulations provides in the First Schedule the Code of Conduct to be followed by the IPs during the processes. Code of Conduct is a charter of professional norms which establishes the credibility of the process. During the course of CIRP, an IP is expected to act independently and perform his duties and functions with utmost care and caution.

9.4 With regard to the issue of appointment of Mr. Surinder Kumar made by respondent (respondent husband) to render advice/assistance/ support services. The DC notes the submission of the respondent that she took the assistance and advice of Mr. Surinder Kumar, who is her husband and her partner in CA Firm M/s S K Juneja & Associates, without any remuneration. The DC also notes that Clause 23B of the Code of Conduct for Insolvency Professionals, specified under First Schedule of IBBI (Insolvency Professionals) Regulations, 2016 was substituted for Clause 23 with effect from 23-07-2019 and in the instant matter CIRP of the CD was commenced on 16-05-2019 and ended/withdrawn on 29-05-2019 i.e. period prior to the amendment in Clause 23 of the Code of Conduct. It is also relevant to note that after issuance of such amendment, there was compliance by her in accordance with Clause 23B of the Code of Conduct and there is no repeat of such conduct. Hence, the DC takes a lenient view.

D. Common issue among the CIRPs

10.0 Para (3) of IBBI Circular No. IP/005/2018 dated 16th January, 2018, requires that an insolvency professional shall disclose his relationship, if any, with (i) the Corporate Debtor, (ii) other Professional(s) engaged by him, (iii) Financial Creditor(s), (iv) Interim Finance Provider(s), and (v) Prospective Resolution Applicant(s) to the Insolvency Professional Agency of which he is a member, within three days from the event.

In this connection, frequent delays on the part of the respondent have been noted while filing the relationship disclosures, among CIRPs.

Further as per IBBI Circular No. IBBI/IP/013/2018 dated 12th June 2018, where IP is required to disclose fee and other expenses in the relevant Form provided in Annexure C of the said Circular to the Insolvency Professional Agency of which he is a member, within a specified time limit. However, in the CIRP of Tafcons Private Limited, it is noted that Form

III was supposed to be filed within 7 days of demitting of office as RP i.e., by 20th December 2018 whereas, Form III was filed on 21st January 2019.

- 10.1.** In this regard, respondent in her reply admitted the delays which have been occurred. Respondent further submitted that the CIRPs were the initial assignments of the respondent. She also added that not only this law was new but also this circular was very much new and hence the delays in making disclosures may kindly be condoned as these delays were unintentional and have not harmed anybody.
- 10.2** 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. In the present matter DC notes the submission of the respondent that circular was very much new and hence the delays in making disclosures may kindly be condoned as these delays were unintentional and have not harmed anybody. The DC further notes that at the time when these delays/lapses occurred, the implementation of the Code was in the nascent stage and the legal jurisprudence of this new insolvency regime was evolving. In this backdrop, DC is inclined to take a lenient view
- 11.0** 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 IIIPI, DC hereby disposes of the SCN without any adverse directions against the respondent. However, DC hereby advises the respondent as follows: -
- (i) That the respondent should take reasonable care and be extremely careful, diligent while performing her 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 adhere to the time limits prescribed in the Code and the rules, regulations, and guidelines thereunder for insolvency resolution, liquidation, or bankruptcy process, as the case may be, and must carefully plan her actions, and promptly communicate with all stakeholders involved for the timely discharge of her duties.
- 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: 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.