

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

**DC. No. IIPI/DC/121/2021-22**

**ORDER**

**In the matter of Mr. Rakesh Kumar Jain (Respondent), under Clause 15(1) of the Disciplinary Policy of IIPI 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. IIPI/DC/121/2021-22 dated 31-03-2022 issued to **Mr. Rakesh Kumar Jain** (Respondent), 1203/81, 1<sup>st</sup> Floor, Shanti Nagar, Tri Nagar, Northwest, New Delhi-110035. 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-P01297/2018-2019/12068.
- 2.0** The Disciplinary Committee of IIPI (DC) issued SCN to the respondent, based on the reference received from Monitoring Committee of IIPI, pertaining to assignment handled by him as an IRP/RP in the CIRP of **Jiya Agro 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 27 of the Insolvency Resolution Process for Corporate Persons Regulation 2016; Regulation 7(2)(a) and (h) of IBBI (Insolvency Professional) Regulation, 2016, read with clauses 1, 2, 3, 5, 12, 13 and 14 of the Code of Conduct for Insolvency Professionals, specified under First Schedule of IBBI (Insolvency Professionals) Regulations, 2016.
- 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 07-09-2022. Accordingly, on date respondent appeared before the DC, wherein the respondent reiterated the submissions made in the written reply and also made a few additional submissions verbally.
- 4.0 Allegation:** Regulation 27 of the CIRP Regulations provides that *“(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.”*
- 4.1.** It is noted that respondent failed to appoint registered valuers, as prescribed under the Code despite having assets worth Rs. 14.29 cr. including car, furniture, computer, inventories, trade receivables, cash & cash equivalents & short-term loans exist, as per the audited financials of 31st March 2018.
- 4.2.** Further, in this connection respondent submitted to monitoring division that movable asset such as car, furniture, computer, office equipment & cloud servers were not traceable, and the facts were also shared with the members of the CoC. However, it is noted from the minutes of the third CoC meeting that respondent did not apprise the CoC about the fact that assets other than land and building as appearing in the financial statement as on 31-03-2018 were not traceable or missing.

- 4.3.** Also, on perusal of the application filed by respondent, u/s 19 (2) of IBC, before the Adjudicating Authority (AA), it is noted that the fact of non-traceability of the assets were not disclosed.
- 4.4. Submissions:** In response to the above levied allegations, respondent submitted that on 29-08-2019, the Hon'ble NCLT, New Delhi, initiated CIRP of Corporate Debtor by admitting an application filed under Section 9 of IBC and appointed the Respondent as IRP, who was subsequently appointed as RP by the CoC in its first meeting held on 27-09-2019. The respondent informed the Committee that this was his first assignment.
- 4.5.** The respondent submitted that after his appointment as an IRP, he visited the registered office of CD. Later, he visited all other addresses of CD, available on record and internet. However, respondent submits that he was unable to obtain any lead with respect to existence of business and details of assets, which require valuation. He furnished the photographs of his visit along with address and dates.
- 4.6.** The respondent submitted that during his visit to certain premises, he found that different organisations were operating from those premises. Respondent submits that they informed him that they had no clue about Corporate Debtor operating his business from there, and never even heard its name.
- 4.7.** The respondent submitted that despite several email and speed post, the Suspended Directors of Corporate Debtor did not hand over the custody of assets, documents, books of accounts and relevant information to him. Further, no statutory audit of the books was carried out for the Financial Year 2018-19.
- 4.8.** The respondent submitted that on 16-01-2020, a letter was received from Mr. Jyoti, suspended director, wherein, she informed the respondent that all documents pertaining to Corporate Debtor was taken by the Mandi Samiti, Bareilly. She further informed that some goons entered the premises of Corporate Debtor and set records on fire.
- 4.9.** The respondent submitted that he called two valuers empaneled with IBBI for evaluation, however they informed that in absence of any documents and assets, they cannot pursue with valuation.
- 4.10.** The respondent submitted that in view of the facts mentioned, despite his best efforts, due to the following reasons, the registered valuers were not appointed:
- a) No assets of the Corporate Debtor could be traced or were physically in possession of respondent.
  - b) No valuation report could be prepared by registered valuer in absence of physical verification of inventory and fixed assets.
- 4.11.** That in respect to not apprising CoC about respondent's inability of tracing missing assets, the respondent submitted that CoC has no role in appointment of registered valuers. However, he apprised the Committee about all issues pertaining to non-traceability of assets however, he failed to capture clearly in the minutes.

- 4.12.** In case of non-availability of details/location of any asset, conducting valuation was neither possible nor required. Further, the respondent informed that even the appointed liquidator has not been able to trace any assets of the company.
- 4.13.** The respondent submitted that in absence of any assets, appointment of registered valuers would have been completely futile exercise resulting in financial loss to the Corporate Debtor in terms of payment of fees of such valuers.
- 4.14. Finding:** 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. He, 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.
- 4.15.** Regarding 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, no assets of the Corporate Debtor could be traced or were physically in possession of respondent. Due to absence of assets, no valuation report could have been prepared.
- 4.16.** The DC notes that additionally respondent along with his reply to SCN, has furnished photographs of visiting premises of the Corporate Debtor. Further, copies of various emails written to Suspended Directors of Corporate Debtor for custody of assets, documents, books of accounts and relevant information, were also furnished by respondent. DC also notes the submission of the respondent that all the issues pertaining to non-traceability of assets were discussed before the CoC, however, the same has not been clearly recorded in the minutes due to inadvertent error.
- 4.17.** In view of the foregoing facts, DC notes that though respondent failed to record the facts properly in the minutes, however, there was no loss incurred to the corporate debtor. DC heard the respondent and found no malafide intention on the part of the respondent. Also, DC finds no reason to believe that respondent wilfully concealed the material information from the CoC, 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.
- 5.0** 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(1) of the Disciplinary Policy of IIPAI, DC hereby disposes of the SCN with caution to the respondent for being more careful in future while handling CIRPs. DC further 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 and must carefully plan her actions, and promptly communicate with all stakeholders involved for the timely discharge of her duties.

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

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

**Date: 22-10-2022**

**Place: Delhi**

**CERTIFIED TRUE COPY**

**Sd/-**

**Mr. Satish Marathe (Chairman)**

**Mr. Satpal Narang (Member)**

**CA. Aniket Talati (Member)**

**CA. Rahul Madan (Member)**

**Copy to:**

**1. Insolvency and Bankruptcy Board of India.**

**2. Indian Institute of Insolvency Professionals of ICAI- Members Record.**