

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

DC. No. IIPI/DC/103/2021-22

ORDER

In the matter of Mr. Tarun Batra (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/103/2021-22 dated 07-01-2022 issued to **Mr. Tarun Batra** (Respondent), 380, Sector 3 Extension, HSIIDC, Karnal, Haryana, 132001. 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-P00572/2017-2018/11013.
- 2.0** The Disciplinary Committee of IIPI (DC) issued SCN to the respondent, based on the reference received from Monitoring Committee of IIPI including the findings in the inspection report of Inspection Authority (IA), pertaining to assignment handled by him as an IRP/RP in the CIRP of **SRS Meditech Limited**. The SCN alleged the contravention of the provisions of section 21(8), 208(2)(a) and (e) of the Insolvency and Bankruptcy Code, 2016; Regulation 25(4), 26(4), 27, 33(4), 34, 34A and 40B 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 13, 14 and 27 of the Code of Conduct for Insolvency Professionals, specified under First Schedule of IBBI (Insolvency Professionals) Regulations, 2016; and IBBI Circular No. IBBI/CIRP/23/2019 dated 14-08-2019. The Respondent submitted his contentions to the SCN vide letter dated 04-02-2022.
- 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.
- 4.0 Allegation 1:** Section 21(8) of Insolvency and Bankruptcy Code 2016 provides that “(8) *Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one percent of voting share of the financial creditors.*”

Regulation 25(4) of the CIRP Regulations 2016, provides that “(4) *At the conclusion of a vote at the meeting the resolution professional shall announce the decision taken on items along with the names of the members of the committee who voted for or against the decision, or abstained from voting.*”

Further, Regulation 26(4) of the CIRP Regulations 2016, provides that “(4) *At the conclusion of a vote held under this Regulation, the resolution professional shall announce and make a written record of the summary of the decision taken on relevant agenda item along with the names of the members of the committee who voted for or against the decision, or abstained from voting.*”

However, it was noted that between 2nd to 6th CoC meetings, respondent did not conduct/take voting of the CoC members on certain actions. Major agenda items on which voting was required by the CoC members are as follows:

- i. Ratification of valuer's fees.
- ii. Ratification of transaction auditor fees.
- iii. Publication of expression of interest for inviting resolution applicants.
- iv. Ratification/Approval of the expenses amounting to Rs. 9,25,852/- incurred by you as resolution professional/your team.
- v. Appointment of statutory auditor for the audit of FY 2017-18 and FY 2018-19 for compliance of Company Act, 2013.
- vi. To apprise about the invitation of expression of interest published and expression of interest received from prospective resolution applicants for SRS Meditech Limited and extension of time for submission of resolution plan up to 30th May 2019.
- vii. To apprise the CoC about the application to be moved before NCLT Chandigarh for extension of time beyond the period of 180 days as per the provisions of IBC for further period of 90 days.
- viii. Ratification/approval of the expenses amounting to Rs. 5,66,580/- incurred by you as Resolution Professional/your team.
- ix. Ratification/Approval of the expenses amounting to Rs.7,73,880/- incurred by you as Resolution Professional/your team.
- x. Appointment of process advisor and evaluation of bid received from the resolution applicant.
- xi. Ratification/Approval of the expenses amounting to Rs.4,57,040/- incurred by you as Resolution Professional/your team.

4.1. Submissions: In respect of this allegation, respondent submitted as under:

- i. Ratification of valuer's fees:** Respondent submitted that regulation 27 of the CIRP Regulations, provides for the appointment of valuers without the interference of the CoC. However, appointment of valuers and their fees were duly ratified by the CoC in 2nd meeting as item no.6.
- ii. Ratification of Transaction auditor fees:** Appointment of auditor and his fees were duly ratified by CoC in 2nd meeting as item no.8.
- iii. Publication of EOI for inviting resolution applicants:** Respondent submitted that as per Regulation 36A of CIRP Regulations, it is not mandatory to take voting for publishing of EOI. Although, this agenda was discussed with CoC as agenda no.9 wherein the CoC took note of the same and held that respondent shall publish EOI as per Regulation 36A of CIRP Regulations 2016. Further, the CoC has specified the criteria in accordance with section 25(2)(h) read with Regulation 36A (4) of the CIRP Regulations.
- iv. Ratification/Approval of expenses amounting Rs. 9.25 lac incurred by Resolution Applicant:** Respondent submitted that CoC approved the expenses of RP as item no.10. Relevant portion is produced hereunder:
"RESOLVED THAT, the travelling, boarding & lodging, etc. expenses incurred/ to be incurred by Mr. Tarun Batra, Resolution Professional and his team members in connected with the corporate insolvency resolution process (CIRP) of SRS Meditech Limited be and is hereby approved as per Annexure-1 and 2."

v. Appointment of statutory auditor for FY 2017-18-19: Respondent submitted that he apprised the CoC about appointment of Statutory Auditor, i.e., 'M/s Komal Aggarwal & Co.,' Chartered Accountants and accordingly the following resolution was passed in the meeting:

"RESOLVED THAT, M/s Komal Aggarwal & Co. Chartered Accountants is appointed as Statutory Auditor for the FY 2017-18 on remuneration of Rs. 150000/- (including all out of pocket expenses) plus taxes for statutory audit of SRS Meditech Limited."

vi. To apprise about EOI received from PRA's and extension of time for submission of plan up to 30-05-2019: Respondent submitted that he updated CoC about receiving four (4) EOI from proposed resolution applicants. Further, on the same meeting, resolution was passed to extended time for submission of resolution plan up to 30-05-2019. Relevant portion is reproduced hereunder:

"RESOLVED THAT the time for submission of resolution plan by resolution applicant selected is extended to 30-05-2019."

vii. To apprise the CoC about the application to be moved before NCLT for extension of time beyond 180 days: Respondent submitted that he apprised the CoC about CIRP period of CD in item no.7 and the need to extend period of CIRP beyond 180 days for further period of 90 days for maximising valuation of CD. Relevant extracts are reproduced as hereunder:

"RESOLVED THAT the resolution professional is authorised to file an application before Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, for another period of 90 days. He is also authorised to appoint advocate/legal firm for moving the application before NCLT Chandigarh."

viii. Ratification/Approval of expenses amounting Rs. 5.66 lacs incurred by Resolution Professional: Respondent submitted that CoC approved the expenses of RP as agenda item no.9 of the 4th CoC meeting.

ix. Ratification/Approval of expenses amounting Rs. 7.73 lacs incurred by Resolution Professional: Respondent submitted that CoC approved the expenses of RP as agenda item no.9 of the 5th CoC meeting. Relevant portion is produced hereunder:

"RESOLVED THAT, the travelling, boarding & lodging, etc expenses incurred/ to be incurred by Mr. Tarun Batra, Resolution Professional and his team members in connection with the corporate insolvency resolution process (CIRP) of SRS Meditech Limited be and is hereby approved as per Annexure 1 and 2."

x. Appointment of process advisor and evaluation of bid received from Resolution Applicant: Respondent submitted that he apprised CoC about appointment of Sibal & Company, Advocate as process advisor for evaluation of resolution plan of CD. After discussion and deliberations, approved of Sibal & Company was passed as item no. 8 in the 6th CoC meeting. Relevant portion is reproduced hereunder:

"RESOLVED THAT the appointment of Sibal & Company as process advisor be and is hereby approved by the committee of creditors as required under Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2017."

xi. Ratification/ Approval of expenses amounting Rs. 4.57 lakhs incurred by Resolution Professional: Respondent submitted that CoC approved the expenses of RP as agenda item no.9 of the 6th CoC meeting.

Further, respondent submitted that the decisions were approved by SBI (FC) who was major stake holder with voting share of 56.52% and consent was given by other CoC members. None of the FC or member of committee opposed the decision of SBI, who was majority

shareholder. During the course of personal hearing the respondent also submitted that this was his first assignment and any lapse if occurred may be condoned.

4.3. Finding: 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

4.4. The DC notes the submission of the respondent that the decisions were approved by SBI (FC) who was major stake holder with voting share of 56.52% and consent was given by other CoC members. None of the FC or member of committee opposed the decision of SBI, who was majority shareholder. Further, DC also notes that all the costs were ratified by the CoC and the same were duly recorded in the minutes of the respective CoC meetings. However, it is only that respondent has not followed the adequate process while recording the decisions of the CoC members. Further DC also took note of the fact that the CD has been resolved vide NCLT order dated 28-01-2020

4.5. DC heard the respondent carefully and found no malafide intention on the part of the respondent and in the above given scenario, DC takes a lenient view.

5.0 Allegation 2: Regulation 33(4) of the CIRP Regulation provides that *“the amount of expenses ratified by the committee shall be treated as insolvency resolution process cost.”*

Further, Regulation 34 of CIRP Regulation provides that *“the committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.”*

In this connection, it was noted that amount of fee disclosed in Forms and Cost and Relationship Disclosures mismatches with the fees ratified by the CoC in the minutes. The discrepancies noted were as following:

- a) Mismatch in amount mentioned as IRP/RP fees: Amount of Rs. 17,85,000/- has been ratified by the CoC in 1st, 3rd, 5th and 6th CoC meetings. However, Rs. 30,37,500/- was mentioned as IRP/RP fees in CIRP forms/cost and relationship disclosure.
- b) Mismatch in the amount mentioned for legal professionals: Amount of Rs. 47,500/- was ratified by CoC in 3rd and 5th meeting as fees for legal professionals. However, Rs. 6,37,000/- was charged by legal professional as per Form III and CIRP-5.
- c) Mismatch in the amount mentioned for venue of meeting: Amount of Rs. 4,23,164/- has been charged by Security personnel's in CIRP forms. However, Rs. 78,474/- was mentioned in Form III and CIRP-5.
- d) Ratification/approval not taken for e-voting expenses: Amount of Rs.3,339/- was mentioned for E-voting in Form III. However, nothing was ratified by the members of CoC in any of the meetings.
- e) Mismatch in the amount mentioned for Security personnel: Amount of Rs. 4,23,164/- has been charged by Security personnel's in CIRP Forms. However, only Rs. 2,14,760/- was ratified in 1st, 3rd, 5th, 6th CoC meetings.

- f) Mismatch in the amount of publication of Form G: Amount of Rs. 44,352/- was ratified by CoC in 3rd meeting. However, Rs. 36,864/- was mentioned in Form III and Rs. 79,200/- was mentioned in CIRP-5.

5.1. Submissions: The respondent in response to above levied allegation, submitted as under:

- a) **Mismatch in the amount of fees of IRP/RP fees:** Respondent submitted that amount of Rs. 3,61,836/- was ratified by CoC in its 1st CoC meeting held on 14-12-2018. Subsequently RP fees of Rs. 2,25,000/- was approved. The amount mentioned in CIRP forms/cost and disclosure pertains to fees charged by Resolution Professional till approval of resolution plan by NCLT. Since the fees of the IRP and RP was approved and ratified by the CoC in its 1st CoC meeting and he as a Resolution Professional is under obligation to discharge his duties till the approval of resolution plan.
- b) **Mismatch in the amount of fee of legal professionals:** Respondent submitted that he incurred total of Rs. 4.60 lacs towards legal professional fees during CIRP. Out of which, Rs. 2.75 lacs were approved by CoC in its 3rd, 4th, 5th, and 6th CoC. Whereas Rs. 1.85 lacs could not be ratified since various applications and replies were filed after CoC meetings.
- c) **Mismatch in the amount for venue of meeting:** CoC in its 4th, 5th and 6th CoC meeting ratified expenses Rs. 8900/-, Rs. 7800/- and Rs. 8,500/- respectively. The meetings are arranged by third party vendor and payment of the same was done post last CoC meeting as it was not ascertained till last CoC meeting. Total expenses on all the 8 CoC meetings and venue expenses are Rs. 78,474/-, which is inclusive of Rent of conference room in stateman house building in Delhi and cost of food and beverage.
- d) **Ratification/approval not taken for e-voting expenses:** Respondent submitted that e-voting was conducted in 8th CoC meeting, wherein resolution plan was approved and thereafter no CoC meeting took place so consequently expenses incurred for e-voting could not be ratified by CoC.
- e) **Mismatch in amount for security personnel:** Respondent submitted that he incurred total amount of Rs. 4,23,164/- towards the security personnel out of which CoC had ratified an amount of Rs. 2,47,800/- up to a period of 13-07-2019. Whereas the balance amount of Rs. 1,75,364/- was incurred during the period 14-07-2019 to 28-01-2020 which could not be ratified by CoC as the resolution plan was pending for approval before the Hon'ble NCLT and there was no CoC during this period.
- f) **Mismatch in the amount of publication of Form G:** Respondent submitted that an additional amount of Rs. 34,948/- was paid for website renewal and gmail renewal to existing vendor of CD after submission of resolution plan to adjudicating authority. The data was important for completion of CIRP process and online publication of claims of creditors, form G and order of NCLT.

Respondent further added that, on conspectus reading of the above facts regarding mismatches, it is submitted that the amount ratified by CoC was up to a certain time, whereas it took around 6 months for approval of resolution plan by the Hon'ble NCLT. Hence, the amount mentioned in the CIRP forms was inclusive of period till the approval of resolution plan by Hon'ble NCLT.

It is submitted that fees of resolution professional and other professionals appointed by respondent were duly approved and ratified by CoC, however, there are certain expenses incurred by the Resolution professional which could not be ratified by CoC due to non-existence of CoC after approval of resolution plan by CoC.

5.2 Finding: The DC notes that Section 5(13) of the Code defines the term “Insolvency Resolution Process Costs” (IRPC) as follows –

“5 (13). "Insolvency resolution process costs" means—

- (a) the amount of any interim finance and the costs incurred in raising such finance;*
- (b) the fees payable to any person acting as a resolution professional;*
- (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;*
- (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and*
- (e) any other costs as may be specified by the Board.*

Further, Regulation 31 of CIRP Regulations, 2016 provides that:

31. “Insolvency Resolution Process Costs under Section 5(13)(e) shall mean –

- (a) amounts due to suppliers of essential goods and services under Regulation 32;*
- (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);*
- (c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;*
- (d) expenses incurred on or by the interim resolution professional fixed under Regulation 34; and*
- (e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.*

The DC also notes that Regulation 33(4) of the CIRP Regulations provides:

“33(4) Costs of the interim resolution professional:

- (1) ...*
- (4) the amount of expenses ratified by the committee shall be treated as insolvency resolution process cost.”*

5.3. DC further notes the submission of the respondent that fees of resolution professional and other professionals appointed by respondent were duly approved and ratified by CoC. Further DC notes that order approving resolution plan was passed by Hon’ble NCLT on 28-01-2020, and hence till then no CoC meeting was held, resulting into time gap of approximately 6 months. From 8th CoC meeting till submission of Forms, certain running expenses were incurred, which could not be recorded in CoC minutes, due to non-existence of CoC. Therefore, there is a difference in amount as recorded in minutes of CoC meetings in comparison to amount mentioned under Forms. Looking into the circumstances, and situations/facts as clarified by the respondent, the DC finds no malafide intention on the part of the respondent and in the above given scenario, no contravention can be attributed on part of the respondent.

6.0 Allegation 3: Para 9 of the IBBI circular No. IBBI/CIRP/023/2019 dated 14-08-2019, directs that an IP shall file electronically –

- a. “The Forms along with relevant information and records, which have become due on or before 15th September 2019 in respect of all CIRPs, both closed and ongoing, conducted by him, by 30th September 2019; and*
- b. The Forms along with relevant information and records, which will become due on or after 16th September 2019 in respect of CIRPs conducted by him, by the timelines as specified in the Table under Para 7 of the said circular.”*

Further, para 10 of the circular, clarifies that –

- a. *“An IP shall be liable to action permissible under this Circular read with the applicable provisions of the Code and the Regulations made thereunder for:*
 - i. *Failure to file a Form along with relevant information and records,*
 - ii. *Inaccurate and incomplete information and/or records filed in or along with a Form, and*
 - iii. *Delay in filing.*
- b. *The action under (a) includes refusal to issue or renew authorisation for assignment; and*
- c. *Timely filing of complete and accurate information along with information and records is the sole responsibility of the IP.”*

6.1. In connection with the above said circular it is noted that information provided w.r.t. CIRP forms (CIRP-2, 3 and 4) was incomplete and certain discrepancies in information was noted:

6.2. Submissions: In this regard respondent in his reply submitted that the forms were introduced after the CIRP of Corporate debtor by inserting Regulation 40B in the CIRP Regulation. At that point of time, there was no clear information on documents to be uploaded with forms. Considerable difficulties were being faced in filing of forms. However, respondent managed to file and submit the forms with all available information and records in order to comply with the regulations in best possible manner. The respondent further submitted that he made efforts to apprise the Authority with fullest possible manner, hence, in view of aforesaid facts, he requested that lenient view should be considered by the Authority. During the personal hearing respondent added that it was his first assignment and provided the information in the best possible manner.

6.3. 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. In the present matter DC notes the submission of the respondent that circular was very much new and hence, there was no clear information on documents to be uploaded with forms however, he managed to file and submit the forms with all available information and records to comply with the regulations in best possible manner. The DC further notes that at the time when these 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

7.0 Allegation 4: 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.”* It is noted that respondent failed to appoint valuer for Securities and Financial Assets.

7.1. Submissions: The respondent submitted that as required in Regulation 27, he appointed two registered valuers on 31-12-2018 for liquidation value of Plant and Machinery, which were only assets available with Corporate Debtor. Respondent has further added that, he was not in position to make valuation of financial assets of the CD since he was not in possession of updated books of accounts due to fire accident and non-availability of the promoters who were in police custody. Further, there is no cash and cash equivalents available with the CD

due to pendency in the books of accounts. The books of account and financial statements of the CD were manipulated by suspended directors; hence, they were not showing any correct position of CD.

7.2. 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.

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. In the instant case, the DC notes the submission of the respondent that he was not in possession of updated books of accounts due to fire accident and non-availability of the promoters who were in police custody. DC also notes the submission of the respondent that the books of account and financial statements of the CD were manipulated by suspended directors hence, they were not showing any correct position of CD

7.6. DC heard the respondent carefully and found no malafide intention on the part of the respondent and in the above given scenario, no contravention can be attributed on part of the respondent.

7.7. 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 IIPPI, 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 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 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.

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

9.0 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.