

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

**DC. No. IIPI/DC/140/2022-23**

**ORDER**

**In the matter of Mr. Anurag Nirbhaya (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/140/2022-23 dated 14-11-2022 issued to **Mr. Annurag Nirbhaya** (Respondent), 04, Sagar Plaza, Plot No.19, District Centre, Laxmi Nagar New Delhi -110092. Respondent is a professional member of the Indian Institute of Insolvency Professionals of ICAI (IIPI) and registered with IBBI with Registration No –**IBBI/PA-001/IP-P00870/2017-18/11468**.
- 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 assignments handled by him as an IRP/RP in the CIRP of **Lucra Jewels Private Limited**. The SCN alleged the contravention of the provisions of section 25 (2) (d), 208 (2) (a) and (e) of the Insolvency and Bankruptcy Code, 2016, Regulation 35A of the Insolvency Resolution Process for Corporate Persons Regulation 2016, Regulation 7(2) (a), (h) of IBBI (Insolvency Professional) Regulation, 2016, read with clauses 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 09-02-2023 however, due to some unforeseen circumstances respondent's matter was adjourned to 24-04-2023. Respondent chose to be represented with his counsel Mr. Abhishek Anand before the DC of IIPI. Accordingly, on date respondent appeared before the DC, along with his counsel, wherein the counsel of the respondent reiterated the submissions made in the written reply and also made a few additional submissions.
- 4.0 Allegation:** In the CIRP of Lucra Jewels Private Limited, it is noted that the respondent being an RP, in compliance with Regulation 35A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016, shall on or before seventy fifth day of Insolvency Commencement Date, form an opinion with respect to, whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66. Where it is of the opinion that the corporate debtor has been subjected to any such transactions, a RP shall decide on or before the one hundred and fifteenth day of the insolvency commencement date. Where the RP makes the determination, he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date.

In respect to the above and draft inspection report respondent submitted that agenda item for forensic audit was put before the CoC in its 2nd meeting to be held on 13-08-19, which was deferred and discussed in 3rd meeting held on 14-09-19, whereby CoC denied for such

appointment. However, it is noted that it is primary responsibility of a RP to determine avoidable transactions of the CD, which cannot be abdicated to CoC.

**5.0** Respondent in his reply submitted that post initiation of CIRP, he visited the registered office of the CD, however, at the time of visit, he discovered that no such company was operating at the registered address and even the directors of the company as reflecting on the MCA's data were fraudulently appointed in view of the written statement provided by the directors of the Company.

**5.1.** Respondent further submitted that:

- i. That neither any information nor any documents were made available to him by the suspended Board of Directors at the time of initiation of the CIRP or even during the CIRP. In view of the non-cooperation, in accordance with the Section 19(2) of the Code he was constrained to file an application dated 25-07-2019 before the Hon'ble NCLT as no information has been received by him from the management or the statutory Auditors of the Corporate Debtor (CD) despite several reminders.
- ii. That in the meantime CoC, which was constituted with only one operational creditor was of the opinion to withdraw the CIRP, and in the fourth meeting of the Committee of Creditors of the Corporate Debtor, it was resolved by the CoC to file an application under section 60(5) of the Code, seeking to withdraw the CIRP. Accordingly, the said application was filed by him, which was admitted by the NCLT vide its order dated 27-01-2021.
- iii. The counsel of the respondent during the personal hearing submitted that the respondent placed the item in respect of appointment of auditor only for discussion and not for approval for his appointment.

**6.0** In respect of the allegation DC notes that the, Regulation 35 A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 Code provides as under:

***“35A. Preferential and other transactions –***

- (1) On or before the seventy fifth day of Insolvency Commencement Date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.*
- (2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions, covered under sections 43,45,50 or 66 he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board.*
- (3) Where the resolution professional makes a determination, under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirtieth day of the insolvency commencement date.”*

**6.1.** Further, section 25 (2) (d) of the Code also provides as under:

***“25. Duties of resolution professional. –***

- (1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.”*

(2) For the purpose of sub-section (1), the resolution professional shall undertake the following actions, namely: -

(d) appoint accountants legal or other professionals in the manner as specified by the Board ;

**6.2.** The objective of the Code is to resolve insolvencies, promote entrepreneurship, maximize valuation of assets, make available credit and balance the interests of all stakeholders, in a time bound manner. The IP is conferred under the Code, with vast powers to manage the affairs of the CD and to conduct the process of insolvency resolution. 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, to achieve the objectives of the Code. 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.

**6.3.** In the instant matter DC observes from the minutes of the 3<sup>rd</sup> and 4<sup>th</sup> CoC meeting dated 14-09-2019 and 26-09-2019 respectively, the following was recorded regarding the appointment of transaction and Forensic Auditor:

*“The chairman informed to the members of Committee that the Transaction auditor and Forensic auditor is required to be appointed for conducting transaction audit of the corporate debtor for a review period of two years before the commencement of CIRP.*

*The CoC discussed the proposal and suggested not to appoint transaction auditor and forensic auditor.”*

**6.4** 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 the 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 the instant matter, on a bare reading of the minutes of the meeting, DC notes that it was the CoC who suggested to not to appoint the auditors and thus it can be ascertained that respondent has compromised his independence and did not appoint the auditors as per the procedure envisaged under the Code. At the same time DC took note of the difficulties explained by the respondent. Further DC notes from the submission of the respondent that in the 2<sup>nd</sup> and 4<sup>th</sup> CoC meeting issue pertaining to ‘appointment of transaction and forensic auditors’ was discussed and since the CoC was more inclined towards the withdrawal of the CD, CoC suggested to not appoint the auditors.

**6.5.** DC also noted the fact that the withdrawal of the CD was admitted by the NCLT vide its order dated 27-01-2021 and even in case if respondent would have appointed the auditor, the process of appointing the auditors will become a futile exercise. DC also notes that at the time when this lapse occurred, the implementation of the Code was in the nascent stage and the legal jurisprudence of this new insolvency regime was evolving.

**6.6.** 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 and ultimately the CIRP of the CD was withdrawn.

**6.7.** DC heard the respondent carefully and found no malafide intention on the part of the respondent and in view of the circumstances, as stated in the foregoing paragraph, respondent cannot be held completely responsible for the lapse that has occurred. In this backdrop DC is inclined to take a lenient view.

**7.0** 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 IIPPI, 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 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, 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.

**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: 22-05-2023**

**Place: Delhi**

**CERTIFIED TRUE COPY**

**Sd/-**

**Mr. Satish Marathe (Chairman)**

**Mr. Deepak Anurag (Member)**

**CA. Rahul Madan (Member)**

**Copy to:**

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

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