

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

DC. No. IIIPI/DC/139/2022-23

ORDER

In the matter of Mr. Gaurav Mishra (Respondent) under Clause 15(C) 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 dated 14-11-2022 (SCN) issued to the Mr. Gaurav Mishra respondent R/o F-5, Rajiv Gandhi IT Park, Building Name - Alchemist, IT Park, Chandigarh, 160101. Respondent is a professional member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. **IBBI/IPA-001/IP-P02123/2021-2022/13709**.
- 2.0** The Disciplinary Committee of IIIPI (DC) issued SCN to respondent, based on the reference received from the Monitoring Committee in respect of taking up assignment prior to holding valid registration with IBBI/ without procuring a valid Authorisation for Assignment (AFA), as interim resolution professional (IRP) in corporate insolvency resolution process (CIRP) of **M/s. Alchemist Infra Realty Limited** and as a resolution professional in **M/s. Alchemist Limited**. The SCN alleged the contravention of provisions of Section 206, 207, 208(2)(a) and 208(2)(e) of the Insolvency and Bankruptcy Code, 2016, Regulation 7A, 7(2) (a), 7(2)(h) and 7(2)(i) of IBBI (Insolvency Professional) Regulation, 2016 read with clauses 2, 10 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. Respondent submitted his contention to the SCN vide mail dated 05-12-2022. 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. Sahil Sethi before the DC of IIIPI. 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.

A. M/s Alchemist Infra Realty Limited

- 4.0 Contravention:** The allegation against the respondent is that in the CIRP of M/s Alchemist Infra Realty Limited, it is noted that as per Form 2 filed by respondent before Hon'ble NCLT, New Delhi, he gave his written consent to act as an IRP on 05-07-21. However, he was granted certificate of registration by IBBI only on 12-07-21, which is later than date of consent given by him.
- 5.0 Submissions:** Respondent in this regard submitted that that he gave his consent in Form - 2 in the matter of Alchemist Infra Realty Limited vide Form-2 dated 05-10-2021. The same can be

substantiated from the copy of application which was filed on 20-10-2021 by Technology Parks Limited. Respondent further submitted that inadvertently in the Form-2 date written was 05-07-2021 which was due to typographical mistake and in fact the same was corrected and the date of providing the consent was 05-10-2021 and the corrected Form-2 was provided to applicant and it was filed along with the application on 20-10-2021, which is clearly evident from the Form-2 attached along with the application at page no. 170-171 by the Applicant. The registration was granted to him by IBBI on 12-07-2021 and he gave consent in Form-2 on 05-10-2021.

6.0 Findings: In this regard DC notes that section 206 and 207 of the Code provides that:

“206. No person shall render his services as insolvency professional under this Code without being enrolled as a member of an insolvency professional agency and registered with the Board.”

“207 every insolvency professional shall, after obtaining the membership of an insolvency professional agency, register himself with the Board within such time in such manner and on payment of such fee, as may be specified by regulations.”

Further, Regulation 7(1) of IBBI (Insolvency Professional) Regulations 2016, provides that *“If the Board is satisfied, after such inspection or inquiry as it deems necessary that the applicant is eligible under these Regulations, it may grant a **certificate of registration** to the applicant to carry on the activities of an insolvency professional in Form B of the Second Schedule to these Regulations, within sixty days of receipt of the application, excluding the time given by the Board for presenting additional documents, information or clarification, or appearing in person, as the case may be.”*

7.0 Thus, it is apparent from the above provisions that no person shall render his services as insolvency professional under the Code without being enrolled as a member of an insolvency professional agency and registered with the Board.

8.0 DC in this regard noted and considered all the submissions given by the respondent. DC took note of the fact that there was a typographical error occurred and respondent corrected his mistake as soon as error came into his knowledge. DC also notes that respondent has furnished the correct form before the DC to substantiate his contentions.

B. M/s Alchemist Limited

9.0 Contravention: In the CIRP of M/s Alchemist Limited, it is noted that respondent accepted assignment as an RP without holding valid AFA. Respondent gave his written consent to act as an RP on 15-01-22 and was appointed as RP on 10-02-22, whereas AFA was allotted to him only on 18-04-22.

10.0 Submission: Respondent in this regard submitted that he gave his consent in specified Form AA to act as Resolution Professional in the matter of Alchemist Limited on 15-01-2022. The Hon'ble NCLT, New Delhi vide its order dated 10-02-2022 appointed him as Resolution Professional of Alchemist Limited.

11.0 Respondent further submitted the reasons for not obtaining AFA prior to his appointment as IRP/RP:

- (i) He submitted that he became the member of Insolvency Professional Agency of ICAI on 23-09-2020 and registered with Insolvency and Bankruptcy Board of India on 12-07-2021.
- (ii) Please take note of the Point 5 (CPE requirements on Page N0.2) of Circular/Guidelines issued by IBBI on 06-08-2029 wherein it was stated that the minimum CPE of 10 Hours may be exempted by the IPA for a year on application by IP, provided that the IP undertakes a minimum of 60 hours in every rolling block of 3 years. Perhaps the same could not be appropriately interpreted by him and impress upon the fact that AFA is not required till one year from the date of Registration with IBBI.
- (iii) He added that in his particular case he was registered with IBBI in July 2021, and it was interpreted that AFA requirement is not applied on him till July 2022. Therefore, he could not apply to the IPA for issuance of AFA and accordingly CPE Hours also could not be earned.
- (iv) Respondent further requested to condone the lapse occurred due to misinterpretation of Guidelines / Circular of IPA/IBBI.

12.0 Findings: The DC in this respect noted that Regulation 7A of IP regulations clearly provides that:

*“7A. An insolvency professional shall not accept or undertake an assignment after 31st December, 2019 unless he holds a valid authorisation for assignment on the date of such acceptance or commencement of such assignment, as the case maybe:
Provided that provisions of this regulation shall not apply to an assignment which an insolvency professional is undertaking as on-
(a) 31st December, 2019; or
(b) the date of expiry of his authorisation for assignment.”*

13.0 Thus, it is apparent from the said Regulation that one of the essential conditions for undertaking any assignment by an IP is that he should have a valid AFA after 31-12-2019. “Assignment” is defined under regulation 2(a) of the IP Regulations as “any assignment of an insolvency professional as interim resolution professional, resolution professional, liquidator, bankruptcy trustee, authorised representative or in any other role under the Code”.

14.0 DC in this regard noted that the regulation 7A of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 came into effect from 01-01-2020, whereas respondent had given his consent on 15-01-2022.

15.0 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. 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. DC notes that respondent applied for Authorisation for Assignment (AFA) on 04-04-2022 and AFA was issued to him only on 18-04-2022 whereas respondent provided his written consent to act as an RP on 15-01-2022 and was subsequently based on the said consent Hon’ble NCLT appointed him as RP on 10-02-2022. DC further notes that in both the CIRPs respondent has provided his consent without procuring a valid AFA, thus, respondent’s written consent for the appointment as an IRP/RP and his appointment as an IRP/RP was prior to the issuance of AFA. Therefore, this tantamount to the non- compliance of the regulatory provisions.

16.0 Taking an overall view of the aforesaid, the Disciplinary Committee is of the opinion that Respondent is guilty of Professional Misconduct. 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(C) of the Disciplinary Policy of IIIPI, DC hereby imposes a penalty of Rs 50,000/- on the respondent, to be deposited by way of demand draft payable in favour of the Indian Institute of Insolvency Professionals of ICAI (IIIPI) within 30 days of the issue of this order. IIIPI shall in turn will deposit the said penalty amount in the Insolvency and Bankruptcy Fund in terms of clause 24(5) of the Model Bye Laws. Accordingly, the show cause notice is disposed of.

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

18.0 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.