

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

**DC. No. IIIPI/DC/138/2022-23**

**ORDER**

**In the matter of Mr. Rajendra Kumar Jain (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. Rajendra Kumar Jain respondent R/o R.I. Jain & Co., B-701, Geetanjali, Bldg. No. 29, Kher Nagar, Nr.P.F. Office, Bandra, Mumbai. Maharashtra - 400051. 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-P00232/2017-2018/10461**.
- 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 without holding valid Authorization for Assignment (AFA), as an Interim Resolution Professional (IRP) in corporate insolvency resolution process (CIRP) of **M/s Ikontel Solutions Private Limited**. The SCN alleged the contravention of provisions of Section 208(2)(a) and 208(2)(e) of the Insolvency and Bankruptcy Code, 2016, Regulation 7A, 7(2)(h) and 7(2)(i) of IBBI (Insolvency Professional) Regulation, 2016 read with clauses 1, 2, 12 and 14 of the Code of Conduct for Insolvency Professionals, specified under First Schedule of IBBI (Insolvency Professionals) Regulations, 2016. Respondent submitted his contention to the SCN vide mail dated 30.12.2022. 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. Puru Jain 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.
- 3.0 Contravention:** The allegation against the respondent is that in spite of insertion of Regulation 7A IP Regulations, vide notification dated 23-07-2019, which requires any IP to procure a valid AFA before undertaking any assignment after 31-12-2019, he accepted the assignment as an IRP in the CIRP of M/s Ikontel Solutions Private Limited, without holding a valid AFA. The appointment of the respondent as an IRP in the CIRP of M/s Ikontel Solutions Private Limited was confirmed on 16-03-2022, based on his written consent dated 01-12-2021.
- 4.0 Submissions:** Respondent in this regard submitted that the Operational Creditor i.e., M/s. Gupshup Technology India Private Limited approached him in the year 2019, seeking his consent to act as an IRP in their proceedings against the Corporate Debtor. Accordingly, he provided his Written Consent on August 27, 2019, to act as an Interim Resolution Professional if an order admitting their application is passed.
- 4.1** Subsequently, the Operational Creditor approached him again in the year 2021, requesting for a fresh consent form for their proceedings against the same Corporate Debtor, i.e., M/s. Ikontel

Solutions Pvt Ltd., as the NCLT had rejected the first application filed by the operational creditor M/s Gupshup Technology India Private Limited as they had to carry out amendments in their application before the Hon'ble NCLT.

**4.2** Thus, out of abundant caution, the OC requested for a fresh consent form. Accordingly, he provided a fresh Written Consent dated December 1, 2021 to act as an IRP in the proceedings against the Corporate Debtor, which was in continuation of the consent given in the year 2019 (when AFA was not introduced).

**4.3** Respondent also submitted that it is evident that his Written Consent to act as an IRP was given on August 27, 2019, i.e., before the introduction of the AFA requirements w.e.f. January 1, 2020. Therefore, in good faith, he did not believe that he would be required to obtain AFA for this mandate to act as the IRP for the Corporate Debtor.

**5.0 Findings:** The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of the respondent and also the provisions of the Code, rules and the regulations made thereunder noted that the Regulation 7A of IP regulations requires every IP to have AFA before undertaking any assignment after 31st December 2019. Regulation 7A reads as follows:

*“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.”*

**6.0** 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”.

**7.0** 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 01.12.2021, based upon which NCLT appointed the respondent as an IRP vide order dated 16.03.2022.

**8.0** DC notes that the 1<sup>st</sup> petition filed by M/s. Gupshup Technology India Private Limited (petitioner), for which respondent had provided his 1<sup>st</sup> consent Form dated 27-08-2019 was disposed of by the NCLT vide order dated 16-10-2019 with the liberty to the petitioner to file fresh company petition in accordance with law. Pursuant to the said directions, the petitioner filed fresh petition before the NCLT to initiate the CIRP of M/s Ikontel Solutions Private Limited, for which the petitioner sought fresh consent Form from the respondent and accordingly respondent has provided his fresh consent Form dated 01-12-2021, based on which NCLT appointed the respondent as IRP in the CIRP of M/s Ikontel Solutions Private Limited.

**9.0** In view of the foregoing facts DC notes that it is apparent that the 2<sup>nd</sup> Petition was a fresh Petition and not the amended petition and thus, it is difficult to agree with the submissions of

the respondent that the second petition was in continuation to the first petition filed in 2019. The perusal of the order of Hon'ble NCLT Dated 16-10-2019 in C.P. (IB) No. 197/BB/2018 (1<sup>st</sup> Petition) clearly establishes that Hon'ble NCLT had disposed of the 1<sup>st</sup> Petition with the liberty to file fresh petition and thus the second petition filed before the NCLT cannot be construed as a part of first petition. This reflects the poor understanding of law on the part of the respondent. Relevant extracts from the said order are reproduced hereunder:

*“9. For the aforesaid reasons and circumstances and the law on the issue, we are of the considered opinion that the petitioner has failed to make out any case so as to initiate CIRP as prayed for basing on the material already produced. However, liberty is granted to the petitioner to file fresh Company Petition by taking all available pleas with supported documents.*

*10. In the result, C.P. (IB) No.197 /BB/2018 is hereby disposed of by granting liberty to the Petitioner to file fresh Company petition in accordance with law.....”*

- 10.0** DC further notes that respondent provided his fresh written consent to act as an IRP on 01-12-2021 and was subsequently based on the said consent Hon'ble NCLT appointed him as IRP on 16-03-2022, whereas AFA was issued to respondent only on 11-05-22. Thus, respondent's written consent for the appointment as an IRP and his appointment as an IRP was prior to the issuance of AFA. Therefore, this tantamount to the non-compliance of the regulatory provisions.
- 11.0** 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 IIPPI, DC hereby decides to impose 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 (IIPPI) within 30 days of the issue of this order. IIPPI 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.
- 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: 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.**