

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

DC. No. IIIPI/DC/131/2022-23

ORDER

This order disposes of the Show Cause Notice (SCN) dated 16th September, 2022 issued to Mr. Shyam Sundar Rathi (respondent), E 2707, Oberoi Splendor, Opp. Majas Bus Depot, Jogeshwari Vikhroli Link Road, Andheri (E), Mumbai, Maharashtra, -400060. Respondent is a professional member of the Indian Institute of Insolvency Professionals of ICAI (IIIPI) and registered with IBBI with Registration No- IBBI/IPA-001/IP-P00038/2017-18/10099. The Monitoring Committee of IIIPI observed lapse with respect to submission of Half Yearly Return (HYR), which every IP is required to file bi-annually, latest by 15th October and 15th April each year, irrespective of having or not having assignments.

2.0 The DC considered the reference made by Monitoring Committee and reviewed the records to issue Show Cause Notice (SCN). The SCN was issued for alleged contravention of the following provisions:

- I. Section 208(2)(a) of the Code requires that an Insolvency Professional (IP) *“to take reasonable care and diligence while performing his duties.”*
- II. Section 208(2)(e) of the Code requires an Insolvency Professional (IP) *“to perform his functions in such a manner and subject to such conditions as may be specified.”*
- III. Clause 16 of the Model Bye-Laws and Governing Board of Insolvency Professional Agencies, Regulation 2016, requires that *“A professional member shall submit information, including records of ongoing and concluded engagements as an insolvency professional, in the manner and format specified by the Agency, at least twice a year.”*
- IV. Clause 6.1.1 (i)(c) of Monitoring Policy of IIIPI, states, *“Action against Defaulters on Non-Submission of Half Yearly Return*

iii. Such cases of delay shall be referred by Monitoring Committee to Disciplinary Committee after allowing maximum period of 3 months for those members who have assignments during the period and members who do not have any assignment during the period after allowing maximum period of one year.”

- V. Regulation 7(2) (a) IBBI (Insolvency Professional) Regulation, 2016, which requires that *"the registration of an IP shall be subject to the conditions that he 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."*
- VI. Regulation 7(2) (h) IBBI (Insolvency Professional) Regulation, 2016, which requires an IP to abide by the Code of Conduct specified in the First Schedule to these Regulations.
- VII. Clause 14 of the Code of Conduct of IIIPI requires that *"An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code."*
- VIII. Clause 19 of the Code of Conduct of IIIPI requires that *"An insolvency professional must provide all information and records as may be required by the Board or the insolvency professional agency with which he is enrolled."*

3.0 A summary of contravention alleged in the SCN and the observation of the DC are as under:

4.0 Contravention: Clause 16 of the Model Bye-Laws of Governing Board of Insolvency Professional Agencies states that *"A professional member shall submit information, including records of ongoing and concluded engagements as an insolvency professional, in the manner and format specified by the Agency, at least twice a year."* In terms of Clause 16, respondent is required to submit half-yearly return to Insolvency Professional Agency (IPA) within 15 days from the end of the respective Half Year. It is noted that respondent failed to adhere to the requirement, as specified above, for the period October 2021 to March 2022 despite having assignment.

5.0 Finding: An insolvency professional is bestowed with a myriad of 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 noted that despite repeated reminders respondent did not file his pending Half Yearly Returns.

6.0 Accordingly, in exercise of the powers conferred under Regulation 24(1) (c) of the Insolvency and Bankruptcy Board of India (Model Byelaws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 read with clause 15(C) of the Disciplinary Policy of IIIPI, DC hereby disposes the show cause notice with the following directions:

- i. Complete all the pending compliances within 30 days from issuance of this order;
- ii. If respondent fails to comply with the directions issued at point i, as stated supra, he shall be additionally liable to pay the penalty of Rs. 50,000/-, as a penal action for non-compliance. The penalty amount is to be deposited by way of demand draft payable in favour of the Indian Institute of Insolvency Professionals of ICAI (IIPI) within 30 days after the expiry of the stipulated time period mentioned in point i;
- iii. If respondent fails to pay the penalty of Rs. 50,000/- within the stipulated time mentioned at point ii, as stated supra, his membership will be suspended pending compliances. However, he shall continue to comply with all the duties and responsibilities prescribed under the Code, during such suspension.
- iv. In view of the abovesaid directions, Authorization for Assignment (AFA) of the respondent will remain suspended.
- v. This order shall come into force from the date of its issue.

Date: 22-05-2023

Place: New 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.