

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

DC. No. IIIPI/DC/170/2023-24

ORDER

1.0 This order disposes of the Show Cause Notice (SCN) dated 08th February 2024 issued to o 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 2022 to March 2023 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, the respondent did not file his pending Half Yearly Returns. At the same time DC also took note of the fact that vide orders dated 13-02-2023 and 22-05- 2023, the respondent had already been penalized with a penalty of Rs. 50,000/- each, aggregating to Rs. 1,00,000 orders. Further the membership of the respondent has already been suspended by virtue of the above-said orders. The same fact was also considered by the DC in its order dated 25-10-2023.

6.0 Accordingly, in view of the foregoing, 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(A) (g) of the Disciplinary Policy of IIIPI, DC hereby decides that, since the membership of the respondent has already been suspended as stated supra, and it will remain suspended till the pendency of such compliances, no additional penalty is warranted. However, the respondent shall continue to comply with all the duties and responsibilities prescribed under the Code, during such suspension.

7.0 In view of the above said directions, Authorization for Assignment (AFA) of the respondent will remain suspended.

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

CERTIFIED TRUE COPY

Sd/-

Date: 27-09-2024

Place: New Delhi

Mr. Satish Marathe, (Chairman)

Dr Debashis Mitra, (Member)

Mr. Rajvir Singh, (Member)

CA Rahul Madan, (Member)

Copy to:

1. Insolvency and Bankruptcy Board of India.

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