

Indian Institute of Insolvency Professionals of ICAI
(Disciplinary Committee)

DC. No. - IIIPI/DC/198/2023-24

ORDER

In the matter of Mr. T. Satishan (Respondent) under Clause 15(2) (A) of the Disciplinary Policy of IIIPI read with Clause 24(1)(c) & 24(2)(d) 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) dated 11-10-2024 issued to the respondent Mr. T Satishan, A-1001 Mahindra Splendour LBS Marg, Mumbai, Maharashtra. 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-P00105/2017-2018/10212.
- 2.0** The Disciplinary Committee of IIIPI (DC) issued SCN to respondent, based on the reference received from the Monitoring Committee of IIIPI including the findings in the inspection report of Inspection Authority (IA), pertaining to assignment handled by him as Interim Resolution Professional (IRP)/ Resolution Professional (RP) in the CIRP **(a) M/s Splendid Metal Products Limited**. The SCN alleged the contravention of the provisions of Section 18(1) (a), 20(2) (a), 25(2) (a), (d), and (f), 208 (a) and (e) of the Insolvency and Bankruptcy Code, 2016, Regulations 27 of the Insolvency Resolution Process for Corporate Persons Regulation 2016, Regulation 7(2) (a), (bb), (h) and (i) of IBBI (Insolvency Professional) Regulation, 2016, read with clauses 5, 9, 10, 14, 16 and 19 of the Code of Conduct for Insolvency Professionals, specified under First Schedule of IBBI (Insolvency Professionals) Regulations, 2016, the IBBI Circular No. IP/003/2018 dated 3rd January 2018, and Circular No. IBBI/IP/013/2018 dated 12th June 2018. The Respondent submitted his reply to the SCN vide letter dated 15-10-2024.
- 3.0** The DC referred to 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 03-12-2024, wherein respondent himself presented pleadings and additional submissions before the DC virtually.
- 4.0 Contravention:** - In the Corporate Insolvency Resolution Process of Splendid Metal Products Limited, the respondent was asked by the Inspecting Authority (IA) to clarify the evaluation and selection criteria adopted for the appointment of BRIG Resolutions as the process advisor. The respondent submitted that as per the prevailing practice, BRIG Resolutions made an offer to the financial creditor for the CIRP engagement, suggesting the respondent's name as IRP and BRIG as the process advisor. The CoC selected BRIG based on their experience in stressed resolution and the past experience of their promoters.

From the response submitted by the respondent to IA it is prima facie arising that the decision of appointment of BRIG resolutions as a process advisor was taken by the CoC and not by the respondent whereas, under the Code it is the authority of an IP to appoint such professional, as may be required. It is also noted that the respondent did not provide with the IA any evidence substantiating the diligence which he had exercised while appointing BRIG as a process advisor in the CIRP of the CD therefore, it is difficult to ascertain whether the fees charged by BRIG was reasonable and within the ambit of Circular No. IBBI/IP/013/2018 dated 12-06-2018.

Additionally, the scope of work provided for BRIG Resolutions includes tasks that fall within the duties of the IRP under the Code, such as taking charge of documents, conducting CoC meetings, and preparing the Information Memorandum. Delegating these duties to BRIG Resolutions raises concerns that the respondent may have outsourced his statutory responsibilities.

4.1 Submission by the respondent: - In response to the allegation, respondent submitted that the appointment of BRIG Resolution Services Pvt Ltd. ("BRIG") was though recommended by the creditors as per then prevailing practice, before the initiation of CIRP, however, post respondents' appointment as RP he had evaluated the profile of BRIG and satisfied on their ability to aid, advise and support him during the CIRP period.

4.1.1 Respondent further submitted that, he informed BRIG that he is not bound by the recommendation of creditors in availing of the support service and the appointment is made within the power conferred to the Interim Resolution Professional as enshrined in Circular No. IBBI/IP/013/2018 dated 12 June 2018.

4.1.2 Respondent further submitted that as regards the fee payable to BRIG, the same was found to be reasonable considering the size of Corporate Debtors spread in 3 states, Viz. Telangana, Andhra Pradesh and Tamil Nadu. Fees of professionals and service providers during a CIRP, being part of the insolvency resolution process, are evaluated and approved by the CoC. The process followed in this case was understood to be similar to the appointments of process advisors of major cases during the early period of CIRP.

4.1.3 Respondent further submitted that with a sense of responsibility the duties prescribed in Section 18 and 25 of IBC code were adhered to; in performing the duties viz Collection of all information, verification of claims, control and custody of assets and to discharge duties prescribed vide various regulations of IBBI. The aid, advice and support from BRIG were availed within the scope of support services and without any delegation of authority or any outsourcing of duties. The party was assigned only tasks in the nature of only clerical administrative support. Respondent further submitted that he assures that further care to avoid any oversight /lapses in discharging duties under IBC Code shall be followed in all future assignments.

4.1.4 Respondent during personal hearing submitted that though BRIG was recommended by PNB, however, post commencement of CIRP of the CD, BRIG as a process advisor was appointed by him after evaluating the capability of BRIG in handling stressed assets. Respondent further submitted that BRIG assisted him during CIRP for 10 months and after completion of most of the

work of the CIRP, respondent replaced BRIG with some other professional to assist him, pursuant to which cost was also reduced to Rs. 5.5 lakhs from Rs.15 lakhs per month including the fee of respondent.

4.2 Findings: - DC notes that section 20(2)(a) and section 25(2)(d) of the Code specifically empowers the IRP and the RP respectively to appoint accountants, legal, or other professionals as may be necessary to ‘protect and preserve the value of the property and manage the operations of the corporate debtor as a going concern’ and ‘to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor’ respectively. Thus, it becomes clear that the power of appointment of professionals has been conferred upon IRP/RP for running of CD’s business.

Further Para 6 of the Circular No. IBBI/IP/013/2018 dated 12th June 2018, provides that, the IP is directed to ensure that:

(a) the fee payable to him, fee payable to an Insolvency Professional Entity, and fee payable to Registered Valuers and other Professionals, and other expenses incurred by him during the CIRP are reasonable;

(b) the fee or other expenses incurred by him are directly related to and necessary for the CIRP;

(c) the fee or other expenses are determined by him on an arms’ length basis, in consonance with the requirements of integrity and independence;

(d) written contemporaneous records for incurring or agreeing to incur any fee or other expense are maintained;

(e) supporting records of fee and other expenses incurred are maintained at least for three years from the completion of the CIRP;

Further Clause 16 of the Code of Conduct clearly provides that “*an insolvency professional must ensure that he maintains written contemporaneous records for any decision taken, the reason for taking the decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his decisions and actions.*”

4.2.1 DC notes the submission of the respondent made during the personal hearing that Post the appointment of respondent as IRP, as per then market practice, based on the recommendation of the financial creditor, the respondent evaluated BRIG's profile before proceeding with the appointment. However, the respondent has not provided enough documentary evidence to prove that proper due diligence was carried by the respondent in selecting BRIG. Specifically, there is no evidence of a transparent evaluation process or written records as required by Circular No. IBBI/IP/013/2018 dated 12th June 2018. The Code requires the IRP/RP to maintain written contemporaneous records for any decision made, including the reasons for the decision. The absence of such evidence indicates violation of Clause 16 the Code of Conduct specified under First Schedule of the IP Regulations.

4.2.2 DC further notes the submission of the respondent that BRIG assisted him during CIRP for 10 months and after completion of most of the work of the CIRP, respondent replaced BRIG with some other professional to assist him, pursuant to which cost was also reduced to Rs. 5.5 lakhs

from Rs.15 lakhs per month including the fee of respondent as RP. DC also noted the fact that the fee of BRIG was approved/ratified by the CoC in its commercial wisdom.

4.2.3 DC further notes that it was alleged in the SCN that the scope of work provided by the respondent in respect of BRIG Resolutions includes tasks that fall within the duties of the IRP/RP under the Code, such as taking charge of documents, conducting CoC meetings, and preparing the Information Memorandum. DC notes that Section 18 and 25 of the Code specifically demarcate the primary duties entrusted upon IRP/RP, including but not limited to, as stated supra.

4.2.4 DC notes the submission of the respondent that the duties prescribed in Section 18 and 25 of IBC were adhered completely. The services of BRIG were availed within the scope of support services and without any delegation of authority or any outsourcing of duties. In this regard, DC perused the engagement letter available on record and finds that the heading of the letter in respect of BRIG Resolutions reads as “*Support to Resolution Professional during the conduct of CIRP*” followed by the work to be done point wise, wherein at some points respondent had specifically mentioned that support is required, and, on some points, it was not mentioned specifically. It may be ascertained from the Scope of work that the points covered therein were in the nature of support services and could not be construed that the duties of IRP/RP were performed by BRIG. In view of the same, the DC opines that the contravention as alleged in the SCN is not made out.

5.0 Contravention: - From the valuation report provided by the respondent to the IA, it was observed that the respondent submitted a single/sole valuation report, signed by Ms. Medha Kulkarni, for all three classes of assets (Plant and Machinery, Land and Building, and Financial and Securities). However, Ms. Medha Kulkarni is only registered as a valuer for Securities and Financial class of assets. In this regard, the IA sought clarification from the respondent. In response to the information sought by the IA, the respondent submitted that in 2019, there were not many registered entities available as there are today, and that the rules for valuation were still emerging and not as developed as they are now. To optimize coordination efforts, Ms. Medha Kulkarni was designated as a single point of contact for all the valuers.

Additionally, the IA requested copies of invoices raised in the name of the valuers appointed other than Ms. Medha Kulkarni, along with separate engagement letters issued by the respondent to those valuers to ascertain whether the fees were paid separately to each valuer, or if they were paid solely to Ms. Medha Kulkarni for further distribution.

5.1 Response submitted by the respondent:- Respondent in this regard submitted that the appointment of Ms. Medha Kulkarni was made after independently evaluating Mr. G.V. Appa Ran (Reg. No: IBB/RV/08/2018/10365) for Land & Building and Mr. R. J. Ram (Reg. No: IBB/RV/02/2019/11214) for Plant & Machinery valuation, which was done on the basis of competitive bidding. The respective sections in the valuation report have been signed by them separately.

5.1.1 Respondent further submitted that the appointment letter to Ms. Medha Kulkarni for the combined valuation exercise and the invoice on a combined basis were made for administrative convenience. However, he has subsequently understood that this was a procedural error committed through oversight. Respondent further submitted that he regretted the oversight and assured that utmost

care will be taken in the future assignments to comply with relevant rules, regulations and guidance notes.

5.2 Findings – The Code casts important duties on a resolution professional to carry on the business of the corporate debtor during the insolvency resolution process and to resolve the corporate debtor in accordance with the provisions of the Code. Section 25(2) (d) of the Code, allows the Resolution Professional to appoint such professionals as he deems necessary for this purpose.

Further, Regulation 27 of IBBI (CIRP) Regulations 2016 provides as follows: “*the resolution professional shall, within seven days of his appointment but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35.*”

Further Circular of IBBI No. IP/003/2018 dated 03-01-2018 provides:

“... Sub: Insolvency professional not to outsource his responsibilities. ...

It is hereby directed that an insolvency professional shall not outsource any of his duties and responsibilities under the Code.”

Further Regulation 7 (2) (bb) of IP Regulations 2016 provides that registration of an IP shall be subject to the condition that he shall not outsource any of his duties and responsibilities under the Code, except those specifically permitted by the Board.

5.2.1 Further the Code also envisages delegation of authority by a resolution professional, albeit with the approval of CoC. Section 28(1)(h) of the Code provides as follows –

“28. Approval of committee of creditors for certain actions. –

(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely: -

(h) delegate its authority to any other person;”

5.2.2 Respondent in his reply to the SCN also during the personal hearing admitted that Ms Medha Kulkarni was appointed as single point of contact, for appointing other two valuers, it is also admitted that engagement letters and invoices were raised by respondent on a combined basis however, only for the administration convenience. More so

5.2.3 In view of the submission made by respondent, and materials available on record, DC notes that the respondent has violated Section 25(2) (d), 208(2)(a) & (e) of the Code, Regulation 27 of the CIRP Regulation 2016, Regulation 7(2)(a), 7(2) (bb) and 7(2)(h) of IP Regulations, Circular of IBBI No. IP/003/2018 dated 03-01-2018 read with Clause 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct) for allowing Ms. Medha Kulkarni to appoint other two registered valuers. The contravention in terms of outsourcing of responsibilities is established beyond doubt which is not consistent with the applicable provisions of the Code.

Order

5.0 The whole CIRP hinges on the effective functioning of its duties by the IP, entrusted on him/her by the Code and regulations. An IP has a larger responsibility towards the whole insolvency ecosystem. The Code of Conduct as prescribed in the IBBI (Insolvency Professional) Regulations acts as a charter of professional norms which establishes the credibility of the whole process. The acts of Insolvency Professional should therefore be in consonance with the letter and spirit of the Code Rules, Regulations made thereunder.

In view of the submissions made by the respondent and material available on record, DC notes that the respondent has conducted the CIRPs of the CDs in a manner far from being satisfactory without having due regard for the provisions of the Code and the regulations made thereunder. Keeping in view the nature of contraventions as detailed above and upon considering the fact that respondent was new to insolvency profession at the time when lapses have been made by the respondent, in exercise of the powers conferred under Regulation 24(1) (c) and 24(2) (d) of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 read with clause 15(2)(A) of the Disciplinary Policy of IIIPI, DC hereby disposes of the SCN with the following directions: -

- (i) Considering the lapses, the DC imposes a penalty of Rupees One Lakh (Rs. 1,00,000/-) on 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 deposit the said penalty amount in the Insolvency and Bankruptcy Fund.
- (ii) That the respondent should take reasonable care and be extremely careful, diligent while performing his duties under the Code.
- (iii) That respondent should maintain and upgrade his professional knowledge and skills to render competent professional services.
- (iv) 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.

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

7.0 A copy of this order shall be forwarded to the Insolvency and Bankruptcy Board of India.

Date: 21-01-2025

Place: Delhi

CERTIFIED TRUE COPY

Sd/-

Mr. Satish Marathe, (Chairman)

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.