

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/59/2020

16th December, 2020

Order

In the matter of Mr. Manoj Kumar Jain, Insolvency Professional (IP) under Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/MON/2020/7 dated 27th August, 2020 issued to Mr. Manoj Kumar Jain, 11, Friends Union Premises CSL, 227, P D'Mello Road, Opp. ST. George Hospital, Mumbai - 400001, who is a Professional Member of the Indian Institute of Insolvency Professional of ICAI (IPA) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00535/2017-2018/10960.

Background

- 1.1 The IBBI had issued the SCN dated 27th August, 2020, to Mr. Manoj Kumar Jain for accepting the assignment as Interim Resolution Professional (IRP) in corporate insolvency resolution process (CIRP) of Pacific Multi-Commodity Limited (CD) after 31st December, 2019 without holding a valid Authorisation for Assignment (AFA) issued to him by his IPA.
- 1.2 Mr. Jain submitted reply to the SCN vide email dated 4th September, 2020. The IBBI referred the SCN, reply of Mr. Jain and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. The IP availed an opportunity of personal hearing before the DC on 10th September, 2020.

Show Cause Notice

2. The SCN issued by IBBI alleged contravention of sections 208(2)(a) and 208(2)(e) of the Insolvency and Bankruptcy Code, 2016 (Code), regulations 7(2)(a), 7(2)(h) and 7A of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 1, 2, 11, 12 and 14 of the Code of Conduct for Insolvency Professionals contained in the First Schedule of the IP Regulations for accepting the assignment of IRP in CIRP of CD after 31st December, 2019 for which public announcement was made on 7th January, 2020 without holding a valid AFA from the IPA.

Written and oral submissions by Mr. Manoj Kumar Jain

3. Mr. Jain's submissions made in his written reply and during the course of personal hearing are summarized as follows.

3.1 Mr. Jain in his reply submitted as follows.

- (i) The acceptance for the present assignment was given by him on 22nd July, 2019 by signing consent in Form 2 that is before 31st December, 2019, the date on which the said Regulation 7A of the IP Regulations came into force. Accordingly, he submits that provisions of Regulation 7A shall not be applicable to the acceptance or undertaking of assignment before 31st December, 2019 and he was under *bonafide* belief that provisions of Regulation 7A of the said IP Regulations 2016 was not applicable at the time when consent was given for appointment as IRP for CD.
- (ii) The error has occurred inadvertently and unintentionally resulting from oversight/misunderstanding of the newly incorporated provisions.

Analysis and Findings

4. The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of Mr. Manoj Kumar Jain and also the provisions of the Code, rules and the regulations made thereunder finds as follows.

4.1 The DC notes that the provisions of the Code and regulations are spelt out in a plain and unambiguous language. Regulation 7A of IP regulations requires for any 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 may be:

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.”

4.2 Thus, it is clear 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 which is issued by the IPA with which he is enrolled as a professional member. In other words, without AFA, an IP is not eligible to undertake assignments or conduct various processes thereof. Regulation 7A was inserted in the IP Regulations vide notification dated 23rd July, 2019, much before 31st December, 2019. Adequate time was given to the professionals to obtain AFA from respective IPAs.

4.3 The bye laws of Indian Institute of Insolvency Professional of ICAI defines in para 4(1)(aa) the expression “Authorisation for Assignment” as an authorisation to undertake an assignment, issued by an insolvency professional agency to an insolvency

professional, who is its professional member, in accordance with its bye-laws regulation. An application for grant of AFA can be made to the IPA under para 12A of said bye laws.

- 4.4 Further, Section 208 of the Code also casts an obligation to abide by the code of conduct and comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member. Section 208(2) provides as follows:

“208. Functions and obligations of insolvency professionals.-

(2) Every insolvency professional shall abide by the following code of conduct: –

(a) to take reasonable care and diligence while performing his duties;

(b) to comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member; and

(e) to perform his functions in such manner and subject to such conditions as may be specified.”

- 4.5 The DC further notes that the certificate of registration granted to an IP is subject to the condition that he should follow at all times the provisions of the Code and Regulations and the bye-laws of Insolvency Professional Agency of which the IP is a member and also follow the Code of Conduct specified in the First Schedule to the IP Regulations. In this regard, clauses(a) and (h) of regulation 7 (2) of the IP Regulations provide as follows:

“7. Certificate of registration.

(2) The registration shall be subject to the conditions that the insolvency professional shall –

(a) 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;

(h) abide by the Code of Conduct specified in the First Schedule to these Regulations;”

- 4.6 The credibility of the processes under the Code depends upon the observance of the Code of conduct by the IRP/RP during the process. Section 208(2) of the Code provides that every IP shall take reasonable care and diligence while performing his duties and to perform his functions in such manner and subject to such conditions as may be specified. Further, the Code of Conduct specified in the First Schedule of the IP regulations enumerates a list of code of conduct for insolvency professionals including maintaining of integrity and professional competence for rendering professional service, representation of correct facts and correcting misapprehension, not to conceal material information and not to act with *mala fide* or with negligence.
- 4.7 In the present matter, Mr. Jain has given consent for the CIRP of CD on 22nd July, 2019 i.e. prior to the notification relating to AFA. He was appointed as IRP by National Company Law Tribunal, Mumbai Bench vide order dated 2nd January 2020 initiating CIRP of CD on application under section 7 of the Code by Stepping Stone Financial Services Private Limited claiming to be financial creditor and public announcement was

made by IRP on 7th January, 2020.

- 4.8 The DC finds that an order by the Disciplinary Committee of the IPA dated 1st December 2020 has been passed disposing the SCN issued by IPA dated 31st August 2020 to Mr. Jain, on the issue of accepting assignment as IRP after 31.12.2019 without holding a valid AFA in the CIRP of Pacific Multi-Commodity Limited which further noted that Mr. Jain has also given consent in March 2020 to become resolution professional (RP) in the CIRP of Pacific Multi-Commodity Limited without having AFA. The Disciplinary Committee of IPA observed that assignment of IRP and RP are two stand-alone assignments and assignment as RP to which Mr. Jain has given his consent in month of March 2020 is after the cut-off date of 31st December 2019. The Disciplinary Committee of IPA held Mr. Jain not guilty of professional misconduct for accepting assignment of IRP but imposed penalty of Rs. 10,000/- on Mr. Jain for accepting assignment of RP after 31st December 2020.

Order

5. In view of the fact that the Disciplinary Committee of the Indian Institute of Insolvency Professional of ICAI has already passed order in this matter, the DC, in exercise of the powers conferred under Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016, disposes of the SCN without any direction.
- 5.1 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Jain is enrolled as a member.
- 5.2 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.
6. Accordingly, the show cause notice is disposed of.

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(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Dated: 16th December, 2020
Place: New Delhi