

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/48/2020

01st December, 2020

Order

In the matter of Mr. Arun Mohan, Insolvency Professional (IP) under Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 read with Section 220 of the Insolvency and Bankruptcy Code, 2016 (Code).

Background

- 1 This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/SCN/2020/01/850 dated 16th January, 2020 issued to Mr. Arun Mohan, C - 356, Lohia Nagar, Near Guru Nanak School, Ghaziabad, Uttar Pradesh, 201001 who is a Professional Member of the ICSI Institute of Insolvency Professionals (IPA) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00740/2018-2019/12349.
- 1.1 In exercise of its power under section 218 of the Code read with the IBBI (Insolvency Professional) Regulations, 2016, the IBBI has taken on record the First Information Report (bearing FIR Number - RC-DAI-2020-A-0001) registered on 11th January, 2020 with Central Bureau of Investigation (CBI), Anti-Corruption Bureau (ACB), New Delhi; the Order of Special Judge (PC Act), CBI-13, Rouse Avenue District Court, New Delhi dated 14th January, 2020 whereby the Court remanded Mr. Mohan to judicial custody until 28th January, 2020; and the SCN issued to Mr. Mohan on 15th January, 2020 by his IPA.
- 1.2 The IBBI on 16th January, 2020 had issued the SCN to Mr. Arun Mohan, based on examination of available documentary evidence in respect of his role as interim resolution professional (IRP)/ resolution professional (RP) in the corporate insolvency resolution process (CIRP) of FR Tech Innovations Private Limited (CD). The SCN alleged contraventions of provisions of section 208(2)(a) of the Insolvency and Bankruptcy Code, 2016 (Code), Regulation 7(2)(a), (b), (f), (h) and (i) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and clauses 1,2,3,5,9,12,14,17,24 and 28 of the Code of Conduct under regulation 7(2) thereof. Mr. Arun Mohan replied to the SCN vide letter dated 6th February 2020 and also submitted additional reply vide letter dated 15th July 2020 and 13th August 2020.
- 1.3 The IBBI referred the SCN, response of Mr. Arun Mohan to the SCN, additional reply vide letter dated 15th July 2020 and 13th August 2020 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. Mr. Arun Mohan availed an opportunity of personal hearing

(e-mode) before the DC on 17th August 2020 and sought permission to be represented by his counsel, Mr. K. S. Negi.

Show Cause Notice

- 2 The DC notes from the SCN the contraventions alleged therein as follows:
- 21 The Hon'ble National Company Law Tribunal (AA) Mumbai, vide order dated 14th November, 2019 admitted an application under Section 7 of the Code in the matter of FR Tech Innovations Private Limited, the CD for CIRP and appointed Mr. Arun as an IRP.
- 22 A complaint against Mr. Arun Mohan was filed by Mr. Nishant Bugalia (complainant) on 10.01.2020 with the SP, CBI (ACB), New Delhi alleging that he has demanded a bribe from the complainant in connection with the claim submitted in the matter of CIRP of CD.
- 23 Taking note of the complaint, FIR, bearing number RC-DAI-2020-A-0001 was registered on 11th January 2020 with CBI, ACB, New Delhi against Mr. Arun Mohan on 11.01.2020. The complaint and the verification report of CBI investigation team *prima facie* disclosed commission of offence punishable u/s 120B of Indian Penal Code, 1860 (IPC) read with section 7 and section 7A of Prevention of Corruption Act, 1988 and accordingly Mr. Arun Mohan was arrested. The CBI moved an application seeking judicial remand on 14.01.2020 which was granted by Hon'ble Special Judge (PC Act) CBI-13 vide order dated 14.01.2020.
- 24 SCN was also issued to Mr. Arun Mohan on 15th January 2020 by his IPA.
- 25 The IBBI has granted a registration certificate as an IP to Mr. Arun Mohan under Regulation 7 of IP Regulations which provides that an IP shall, at all times continue to satisfy the requirements under Regulation 4 of the IP Regulations including the condition of fit and proper person as stipulated vide regulation 4(g) of IP Regulations. Among others, integrity, reputation and character are considered to be key determinant of an individual being a fit and proper person.
- 26 Upon careful examination of the aforesaid FIR and order of the Special Judge (PC Act), CBI, it was observed by IBBI that Mr. Mohan has apparently breached the maxims of the Code of Conduct stipulated vide IP Regulations. The presence of aforesaid FIR/ remand for judicial custody for the alleged offences involving demand of bribe, raises serious questions regarding Mr. Mohan being 'fit and proper' to continue as IP.
- 27 It appears that Mr. Mohan has contravened multiple provisions of the Code including section 208(2)(a) of the Code, Regulation 7(2)(a), (b), (f), (h) and (i) of IP Regulations and clauses 1,2,3,5,9,12,14,17,24 and 28 of the Code of Conduct specified thereunder. These contraventions are of serious nature and make one liable for being discontinuance as an IP and taking any assignment under the Code. The IBBI, therefore, issued SCN on 16th January, 2020.

Submissions by Mr. Arun Mohan

- 3 Mr. Mohan replied to the SCN vide letter dated 6th February 2020 and also submitted additional responses vide letter dated 15th July 2020 and 13th August 2020 which are summarized as follows:
- 31 It has been submitted that he was confirmed as Resolution Professional (RP) in the said CIRP of CD in the 1st meeting of Committee of Creditors (CoC) held on 28.12.2019. In the same meeting the claim of wife of the complainant, i.e., Mrs. Namrata Bugalia (who filed a claim of Rs 2,80,000/-) was perused and examined. To obtain additional document in support of the claim, an email was sent to Mrs. Namrata Bugalia on 14.12.2019 followed by a reminder on 16.12.2019 to which she responded by saying that only the initial agreement letter is in her name and there are no other proofs in her name. She provided a copy of the "Acknowledgment & Inventions Agreement" which was signed and executed between her and an erstwhile director of CD. However, this document was made on 6.3.2017 but was shown as executed on 3.3.2017 and thus, the CoC held the same to be a forged and fabricated document which was neither stamped nor specified any consideration to either of the parties.
- 32 Mr. Mohan also submitted that Mrs. Namrata Bugalia neither provided any services to the CD (also admitted by her in email dated 16.12.2019) nor possessed the requisite qualifications or competence to provide such services to the CD. She was neither the employee of CD nor a consultant still she misappropriated a sum of Rs. 15,20,000/- by raising fake and forged invoices. As a consequence, her claim was rejected by Mr. Mohan on the directions of CoC in 1st CoC meeting. The CoC also directed issuance of demand notice and initiation of appropriate legal actions (including criminal proceedings) against the creditors/claimants who had misappropriated the funds of CD (which included Mrs. Namrata Bugalia).
- 33 Accordingly, Mr. Mohan had called the claimants for a meeting to inform them about the decision of CoC and the legal consequences for not repaying the amount which was illegally and unlawfully withdrawn or received or siphoned by them from CD. The call made to Mrs. Namrata Bugalia was answered by her husband, Mr. Nishant Bugalia. Accordingly, a meeting was held on 31.12.2019 at Delhi with Mr. Nishant Bugalia instead of Mrs. Namrata Bugalia. Mr. Mohan denied that in the meeting a sum of Rs 5 lacs was demanded for hushing up the illegal acts of complainant and his wife and contended that the allegations are made with ulterior motive to protect complainant and his wife from civil and criminal proceedings. Thereafter, a demand notice was issued to Mrs. Namrata Bugalia by the RP on 07.01.2020 to refund an amount of Rs. 15,20,000/- (together with interest @12% p.a.) after which a complaint was filed by the complainant against Mr. Mohan.
- 34 Mr. Mohan had submitted that there is a delay of 11 days in filing the complaint from the alleged demand because unsuccessful repeated attempts were made by the complainant to induce Mr. Mohan to give up the contemplated legal/ criminal action against complainant's wife. He further submits that the complainant falsely alleged that he visited the office of Mr. Paresh Kumar on 4.1.2020 and Mr. Mohan was also present. In fact, the complainant called Mr. Mohan on 3.1.2020 and pleaded for a meeting on 4.1.2020 to which Mr. Mohan refused. The same can be substantiated from Mr. Mohan's call records.
- 35 Mr. Mohan also submitted that the complainant again called him on 10.01.2020 for a meeting but he again refused which is also corroborated with verification report of CBI dated 10.01.2020. Further, the complainant concealed about receipt of the demand notice dated

7.1.2020 in his complaint dated 10.1.2020 and when he failed to lure the RP till 10.01.2020 to give up the legal actions, he lodged the complaint with CBI on false allegations.

- 36 Further, Mr. Mohan submitted that the CBI arrested him on the basis of a fake and fictitious complaint and CBI themselves admitted in their verification report dated 10.01.2020 that they have failed to verify the allegations against him. In the verification report dated 11.01.2020 also, CBI failed to establish false and fictitious allegations against him.
- 37 The CBI Court also did not notice any commission of offence as alleged in the order dated 14.1.2020 and he was remanded to judicial custody for investigation only. The lack of any evidence of commission of any offence is also evident from order dated 25.01.2020 passed by Special Judge, CBI Court granting bail to Mr. Mohan.
- 38 The CoC confirmed the appointment of Mr. Mohan w.e.f. 28.12.2019 in the 1st CoC meeting. Thus, on the date of allegation, i.e., 10.01.2020, Mr. Mohan was performing his duties as RP. However, in order to facilitate the CBI officials to register FIR, the complainant falsely regarded the role of RP as IRP appointed by NCLT. Since, Mr. Mohan was appointed by CoC, he cannot be termed as a public servant within the meaning of section 2 of Prevention of Corruption Act and accordingly FIR cannot be registered by CBI against him.
- 39 Mr. Mohan is eligible to continue to be registered as an IP and is a 'fit and proper' person and have strictly adhered to the code of conduct as mandated under the First Schedule to IP Regulations in addition to abide by the conditions if any imposed by the IBBI.
- 3.10 Mr. Mohan had submitted additional responses to SCN vide letter dated 15.07.2020 and 13.08.2020. In his additional responses, he had submitted that before issuing of the SCN, statutory requirements of Section 217, 218, 219 and 220 of the Code were not complied by the IBBI since no independent investigation was conducted and thus, the SCN is illegal, unlawful and void ab initio. Also, the SCN issued by the IBBI is in violation of the Inspection & Investigation Regulations (Reg 7, 8, 9(2), 9(3), 10(1), (2) and (3), 11(1) and (2)) and thus, the same is invalid and cannot be referred by the IBBI for adjudication.
- 3.11 It was further submitted that section 232 of the Code has not included IPs as public servants. Also, the provisions of the Code are different from Prevention of Corruption Act, 1988 (PC Act) and any complaint filed under the PC Act cannot be equated or considered as a ground for issuing SCN under the Code unless independent inspection and investigation is conducted.
- 3.12 Mr. Mohan also submitted that actions during CIRP in the present matter has been taken under authorisation and to implement decision of CoC in good faith, the same is protected under section 233 of the Code.
- 3.13 A criminal writ petition has been filed by Mr. Mohan before Hon'ble High Court with a prayer to quash the FIR and to set aside the order dated 14.01.2020 passed by Ld. Special Judge, (PC Act) CBI 13 which has been admitted, however, CBI has failed to file their reply.
- 3.14 Mr. Mohan appeared, for personal hearing (e-mode), before the DC along with his counsel on 17th August 2020 wherein his counsel reiterated the submissions made in his written reply. Mr. Mohan submitted that the FIR was falsely lodged and it was nothing but a strategy to not to refund an amount of Rs. 15,20,000/- (together with interest @ 12% p.a.) as per the demand

notice served to Mrs. Namrata Bugalia after approval by CoC. He further submitted that during judicial remand, no investigation was conducted as there was no basis for the complaint. He also submitted that Mrs. Bugalia was not an employee of the CD and nor she visited the office of CD at any point of time.

Analysis and Findings

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

4.1 Under the Code, the RP plays a key role in resolution process of the CD. IP is appointed by the Adjudicating Authority as an officer of the Court to oversee the resolution process and it is the duty of the RP to conduct CIRP with integrity, transparency and accountability in the process ensuring that all the stakeholders are kept informed, thereby ensuring an effective insolvency regime, which would in turn foster public confidence. Therefore, it becomes imperative for an IP to perform his duties with utmost care and diligence. Section 208(2) of the Code provides that every IP shall abide by the Code of conduct. It reads 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;”*

4.2 It is the duty of the IP to ensure that his conduct would not undermine the credibility of the process. Therefore, while granting certificate of registration to an IP they are subjected to follow the Code of Conduct specified in the First Schedule to the IP Regulations to ascertain that the IP is a fit and proper individual. In this regard, clauses (a), (b), (f), (h) and (i) 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;
(b) at all times continue to satisfy the requirements under Regulation 4;
(f) take adequate steps for redressal of grievances;
(h) abide by the Code of Conduct specified in the First Schedule to these Regulations; and
(i) abide by such other conditions as may be imposed by the Board.”*

4.3 Mr. Arun Mohan was appointed as an IRP vide Order dated 14th November 2019 of the AA for the CIRP in the matter of FR Tech Innovations Private Limited.

4.4 The DC notes that a complaint dated 10.01.2020 was filed against Mr. Mohan by Mr. Nishant Bugalia followed by a FIR on 11.01.2020. Mr. Mohan was arrested on 10.01.2020 and was sent to judicial custody on 12.01.2020. CBI prepared the first verification report on 10.01.2020 itself, i.e., the day of filing of complaint by the complainant and a further verification report on 11.01.2020. The bail application moved before Ld. Special Judge (PC Act) was allowed vide order dated 25.01.2020.

45 The DC also notes that the FIR against Mr. Mohan is yet to culminate into a charge sheet, however, the submission of Mr. Mohan that before issuing of the SCN, statutory requirements of section 217, 218, 219 and 220 of the Code were not complied with by the IBBI since no independent investigation was conducted and thus, the SCN is illegal, unlawful and *void ab initio* is untenable. Regulation 11 of the IP Regulations gives power to IBBI to issue SCN based on findings of an inspection, investigation or on material otherwise available on record, if the facts *prima facie* disclose any contravention of the Code, Rules or the Regulations thereof. Regulation 11 of the IP Regulations states as follows:

“(11) Disciplinary proceedings.

(1) Based on the findings of an inspection or investigation, or on material otherwise available on record, if the Board is of the prima facie opinion that sufficient cause exists to take actions permissible under section 220, it shall issue a show-cause notice to the insolvency professional.”

46 The DC also notes that a criminal writ petition has also been filed by Mr. Mohan before Hon’ble High Court of Delhi against CBI praying that the Petitioner is not a public servant and, for quashing the FIR and any other proceeding emanating therefrom which was admitted vide order date 24.02.2020. The Hon’ble High Court of Delhi, *vide* Order dated 03.11.2020, adjourned the matter at the request of the counsel appearing for CBI on the ground of medical emergency. Thus, the matter is next posted on 15.12.2020 and the Hon’ble Court also clarified that no further adjournments would be granted.

Order

5. In view of the above, the DC, in exercise of the powers conferred under section 220(2) of the Code read with sub-regulations (7), (8) and (10) of Regulation 11 of IBBI (Insolvency Professional) Regulations, 2016, issues the following directions:
- (i) Mr. Arun Mohan shall not seek or accept any process or assignment in any capacity under the Code, till he is exonerated of the charges.
 - (ii) A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Arun Mohan is enrolled as a member.
 - (iii) A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, for information.
6. Accordingly, the show cause notice is disposed of.

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(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Dated: 01st December, 2020
Place: New Delhi