

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/52/2020

7th December, 2020

Order

In the matter of Mr. Sarvesh Kashyap, 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/2020/26 dated 28th August, 2020 issued to Mr. Sarvesh Kashyap, Shop No. 7, DDA Market, E-Block, East of Kailash, New Delhi - 110065, 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-N00127/2017-2018/10296.

Background

- 1.1 The IBBI had issued the SCN dated 28th August, 2020, to Mr. Sarvesh Kashyap for accepting the assignment as Liquidator in Liquidation process of Komorebi Exports Private Limited (CD) after 31st December, 2019 without holding a valid Authorisation for Assignment (AFA) issued to him by his IPA.
- 1.2 Mr. Kashyap submitted reply to the SCN vide email dated 4th September, 2020. The IBBI referred the SCN, reply of Mr. Kashyap 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 9th 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 the liquidator in liquidation process of CD after 31st December, 2019 for which public announcement was made on 7th February, 2020 without holding a valid AFA from the IPA.

Written and oral submissions by Mr. Sarvesh Kashyap

3. Mr. Kashyap's submissions made in his written reply and during the course of personal hearing are summarized as follows.
 - 3.1 Mr. Kashyap in his reply submitted as follows.
 - (i) The acceptance for the present assignment was given by him on 5th September, 2019 that is before 31st December, 2019, the date on which the said Regulation 7A of the IP Regulations came into force. Accordingly, he was under *bonafide* belief that AFA was not required as it was a continuing process and provisions of Regulation 7A of the said IP Regulations 2016 was not applicable at the time when consent was given for appointment as liquidator for CD.
 - (ii) The error has occurred inadvertently and unintentionally resulting from oversight/misunderstanding of the newly incorporated provisions.
 - (iii) IPA has also issued the show cause notice dated 24th July 2020 and order dated 7th September 2020 has also been passed wherein warning has been issued to Mr. Kashyap to be extremely careful and diligent and that he should act strictly as per law and similar action should not be repeated. Further, the IPA directed that Mr. Kashyap shall not accept any new assignment without obtaining AFA.

Analysis and Findings

4. The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of Mr. Sarvesh Kashyap 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.

43 The bye laws of ICSI Institute of Insolvency Professionals 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.

44 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.”

45 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;”

46 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 malafide or with negligence.

47 In the present matter, Mr. Kashyap was appointed as an interim resolution professional by National Company Law Tribunal, Allahabad Bench (AA) vide order dated 10th January 2019 initiating corporate insolvency resolution process (CIRP) of CD and was

confirmed as resolution professional by the Committee of Creditors (CoC) in its second meeting on held on 12th February, 2019 and the same was approved by AA. Approval of decision of CoC for extension of CIRP period for another 90 days beyond 180 days was granted by AA vide order 9th July, 2019. The resolution plan of the resolution applicant, namely, Aastha Garments, was discussed during the 10th, 11th and 12th meeting of CoC respectively held on 24th July 2019, 9th August, 2019 and 5th September 2019. In the 12th meeting, it was resolved by the CoC to liquidate the CD as the resolution plan is not commercially viable. In the same meeting CoC authorized Mr. Kashyap to intimate the decision of CoC to AA and recommended Mr. Kashyap name for appointment as a liquidator. The AA passed an order for liquidation dated 5th February, 2020 and appointed Mr, Kashyap as liquidator.

- 4.8 The DC finds that an order has been passed against Mr. Kashyap on 7th September 2020 for contravention of regulation 7A of IP Regulations by the Disciplinary Committee of IPA for accepting assignment as Liquidator after 31.12.2019 without holding a valid AFA in the matter of CD, wherein warning has been issued to Mr. Kashyap to be extremely careful and diligent and that he should act strictly as per law and similar action should not be repeated

Order

5. In view of the fact that ICSI Institute of Insolvency Professionals has already given warning to Mr. Kashyap for undertaking assignment as Liquidator after 31st December, 2019 without holding a valid AFA in the matter of Komorebi Exports Private Limited. 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 against Mr. Sarvesh Kashyap.
- 5.1 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Sarvesh Kashyap 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: 7th December, 2020
Place: New Delhi