

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/60/2020

17th December 2020

ORDER

In the matter of Ms. Sonu Jain, Insolvency Professional (IP) under Section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/INSP/2019/30 dated 24th June 2020, issued to Ms. Sonu Jain, Poddar Court Gate No.2, 18 Rabindra Sarani, Suit No.327, Kolkata, West Bengal- 700001 who 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 (IBBI) with Registration No. IBBI/IPA-001/IP-P00575/2017-18/11016.

Background

1. Ms. Sonu Jain, IP was appointed as an interim resolution professional (IRP) for the corporate insolvency resolution process (CIRP) in the matter of M/s Jhabua Power Limited, Corporate Debtor (CD) vide Order of the Hon'ble National Company Law Tribunal, Bench at Kolkata (Adjudicating Authority) dated 27.03.2019 which admitted an application for CIRP under Section 9 of the Code. However, the Committee of Creditors (CoC) in its 1st meeting dated 26.06.2019 replaced the IRP with Mr. Abhilash Lal as resolution professional (RP). The Hon'ble AA vide its Order dated 24.07.2019 confirmed the appointment of RP.
- 1.1 The IBBI, in exercise of its power under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, appointed an Inspecting Authority (IA) to conduct the inspection of the IP, Ms. Sonu Jain vide Order dated 17th December 2019 on having reasonable grounds to believe that the IP had contravened provisions of the Code, Regulations, and directions issued thereunder. The IA submitted the Inspection Report to IBBI on 14.02.2020.
- 1.2 The IBBI issued the SCN dated 24th June 2020 to Ms. Sonu Jain, based on the findings in the inspection report in respect of her role as an IRP in the CIRP of M/s Jhabua Power Limited, CD. The SCN alleged contraventions of provisions of the Insolvency and Bankruptcy Code, 2016 (Code), IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and the Code of Conduct regulation 7(2) thereof, IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (CIRP Regulations) and IBBI Circular No. IBBI/IP/013/2018 dated 12th June, 2018, IBBI Circular No. IP/004/2018 dated 16th January 2018, IBBI Circular No. IP/005/2018 dated 16th January 2018, IBBI Circular IBBI/RV/019/2018, dated 17th October 2018. Ms. Sonu Jain replied to the SCN vide letter dated 29th July 2020.

- 1.3 The IBBI referred the SCN, response of Ms. Sonu Jain to the SCN 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. Ms. Sonu Jain availed an opportunity of e-hearing before the DC on 18th September 2020. Thereafter, Ms Jain submitted further additional documents vide email dated 18th September 2020 and 13th October 2020 in support of her submissions made during the course of e-hearing.

Alleged Contraventions and Submissions

2. The contraventions alleged in the SCN and Ms. Sonu Jain's written and oral submissions thereof are summarized as therein as follows:

I Contravention

- 2.1 According to IBBI Circular No. IP/004/2018 dated 16th January 2018, IP is under obligation to raise bills/invoices in her name towards fees incurred. It has been observed that Ms. Jain raised four bills dated 04/04/2019, 15/04/2019, 26/04/2019 and 29/07/2019 in respect of IRP fees in the name of her partnership firm Jain Sonu & Associates.
- 2.1.1 It has been observed that Ms. Jain had raised the bill dated 29/07/2019 for an amount of Rs. 25 lakhs towards IRP fees, when the same was already fixed at amount aggregating Rs. 12.50 lac (Rs. 9 Lakh per month along with Rs. 3.5 lakh for technical support) by the CoC in its first meeting dated 26th June 2020.
- 2.1.2 Regulation 33(3) of CIRP Regulations, 2016 specifies that the cost of the IRP is to be borne by the applicant of CIRP and same is to be reimbursed by the CoC to the extent it ratifies. It has been observed from the bills dated 04/04/2019, 15/04/2019, 26/04/2019 and 29/07/2019 that the same were wrongly billed in the name of CD.
- 2.1.3 According to Circular No. IBBI/IP/013/2018 dated 12th June 2018, IRP is directed to disclose fee and other expenses in Form II within 7 days of demitting the office as IRP to the Insolvency Professional Agency (IPA) of which she is a member. It has been observed that cost disclosures were submitted by Ms. Jain with Indian Institute of Insolvency Professionals of ICAI (IPA) on 30th October 2019 i.e. with a delay of around 3 months.
- 2.1.4 The above actions of Ms. Jain are in violation of section 208(2)(a), (b) and (e) of the Code, regulation 33(3) of CIRP Regulations, 2016, regulation 7(2)(h) of the IP Regulations, read with clauses 25, 25A, 26 and 27 of the Code of Conduct under the First Schedule of the IP Regulations, Circular No. IP/004/2018 dated 16th January, 2018 and Circular No. IBBI/IP/013/2018 dated 12th June, 2018.

Submission

- 2.2 With regard to the aforesaid contravention, Ms. Jain submitted as follows.
- 2.3 Ms. Jain submitted that the invoice which was issued in the name of Jain Sonu & Associates was a typographical error. She submitted rectified bill, in the name of Sonu Jain before COC on 26.06.2020. The CoC had both the bills but they deducted TDS in Ms. Jain's name and transferred the net amount to Jain Sonu & Associates Bank Account. The

revised bill also had PAN number of Ms. Jain and the bank details but the CoC intentionally chose to not pay into her account. It was done for the purpose of doubling Ms. Jain's tax liability, leading to income reflecting in both Jain Sonu & Associates and Ms. Sonu Jain's Income Tax File. The tax will also be paid unnecessarily in both the account. Further, Ms. Jain had to deposit GST in government account from Jain Sonu & Associates GST Number as the GST had come and deposited against her Registration Number. Further, the CoC was not ready to rectify their error when informed. Hence, the invoice was already issued in Ms. Jain's name and there has been no violation.

- 2.3.1 CoC comprised of 12 FC and she had asked FC as to what amount should she raise as invoice. The CoC had suggested to tentatively provide a bill. Ms. Jain was also informed that the proposed RP Abhilash Lal had quoted Rs. 31.50 Lakhs and as per the volume of work done in the CD, she decided to raise the bill of Rs. 25 Lakhs per month tentatively which was justified as per her understanding. The CoC however outrightly rejected the fees proposed by her. In the next CoC meeting which was conducted by newly appointed RP, the fee was then finalized and the revised invoice reflected the same. This invoice was raised as it was required by the FC to quote tentative fees. The revised bill where the amount was raised with consistency was later provided.
- 2.3.2 Ms. Jain was not proposed by operational creditor, FLSmidth Private Limited (applicant) and was directly appointed by AA. With the appointment letter she had visited to FL Smidth Private Limited's office at Chennai but they had refused to bear any fees and expense of IRP, as they had not proposed her appointment. Ms. Jain had then enquired from the FC in whose name the invoices were to be raised and was informed to issue it in the name of CD and to make it a part of CIRP cost. Thus, she had her invoice raised in the name of CD.
- 2.3.3 The order dated 24.07.2019 passed by NCLT replacing the IRP by RP, Mr. Abhilash Lal stated that IRP fees shall be considered when it will be raised by RP. The disclosure requirement was not possible to be fulfilled as her fees were not decided till her removal. Subsequent to several reminders and follow up with RP and CoC, payment was released. Post removal the 2nd CoC Meeting had taken place on 09.08.2019, wherein fees as Rs. 12.50 Lakhs per month was confirmed, but was communicated to Ms. Jain on 27.08.2019 almost 18 days later. The CoC had intentionally withheld Ms. Jain's payment till 23.09.2019 which is 1.5 months from the date of passing of resolution. Further, expense related to IRP's travel to CD's office at Delhi and visit to Jabalpur plant from Kolkata amounting Rs. 1,65,566/- is unpaid along with Rs. 2,00,000/- out of Pocket Expense. Even though these expenses are part of CIRP cost it was neglected by CoC and RP and they are still outstanding. So, after several requests for reimbursement to no avail the IRP filed the Cost disclosure.
- 2.3.4 Valuers were appointed by her who were subject to CoC approval for appointment, but no confirmation was received from CoC. As valuers appointment was also the part of CIRP cost, it was expected from RP and CoC to communicate. Without getting CoC approval Ms. Jain was unable to file disclosure. Also Ms. Jain was informed by CoC that they will appoint valuer as they wanted, irrespective of the delay to timeline. However, Ms. Jain filed the cost disclosure on 30.10.2019 with IPA assuming that any subsequent revision will be dealt later.

II Contravention

- 3.1 Regulation 27 of the CIRP Regulations states that a RP 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 CD. Further, in this regard IBBI Circular IBBI/RV/019/2018 (w.e.f 1st February 2019) specifies that only valuers registered with the Board under the Companies (Registered Valuers and Valuation) Rules, 2017 may be appointed by the IP during the CIRP. In the aforementioned matter, Ms. Jain appointed LSI Engineering & Consultants Ltd and AAA Valuation Professionals LLP on 12th July 2019. However, it has been observed that appointed valuers who were not registered with the Board. The aforesaid conduct is in violation of Section 208(2)(a) and (e) of the Code, regulation 27 of CIRP Regulations 2016 and Regulation 7(2)(a), (h) and (i) of the IP Regulations, read with clause(s) 10 and 14 of the Code of Conduct as given in the First Schedule of the IP Regulations and Circular No. IBBI/RV/019/2018 dated 17th October, 2018.

Submission

- 3.2 With regard to the aforesaid contravention Ms. Jain submitted that there is no contravention of provisions as the valuer appointment letters that IRP had sent were subsequently cancelled by CoC later on and the RP has presently appointed another set of Valuers. The date when the valuers were appointed Ms. Jain was no longer part of CIRP process. So, no non-compliance is in existence.
- 3.2.1 It is further submitted that as per Circular dated 13th August 2019 to issue the appointment letter in the name of RV or RVO only if they are registered and in the present case Ms. Jain had already issued appointment letter before the clarification was issued. Ms. Jain has vide e-mail dated 13.10.2020 submitted the e-mail reply of the valuers stating that appointment letter issued by Ms. Sonu Jain as IRP was not approved by CoC and a fresh appointment letter was issued by Mr. Abhilash Lal, the appointed RP.

III Contravention

- 4.1 According to Circular No. IP/005/2018 dated 16th January 2018, an Insolvency Professional shall disclose his relationship, if any, with (i) the Corporate Debtor, (ii) other Professional(s) engaged by him, (iii) Financial Creditor(s), (iv) Interim Finance Provider(s), and (v) Prospective Resolution Applicant(s) to the Insolvency Professional Agency of which he is a member, within a period of three days. It was observed that you have made a delay of more than three months in submitting relationship disclosure with relation to your appointment as IRP of the CD. You were appointed as IRP on 27/03/2019 and disclosure was made on 04/07/2019. It has also been observed that you have issued appointment letter dated 8th April 2019, 9th April 2019, 15th April 2019, 19th April 2019 and 14th May 2019 for the appointment of professional during the period April to July 2019 specifically in respect of M/s Jhabua Power Limited. The relationship disclosures pertaining to the appointment of professionals made by you in the course of CIRP were submitted by you only on 11th January 2020, after the Inspecting Authority had sought

documents from you relating to such appointments and disclosures. The aforesaid conduct is in violation of Section 208(2)(a) and (e) of the Code, Regulation 7(2)(h) of the IP Regulations, read with clause 14 of the Code of Conduct as given in the First Schedule of the IP Regulations Circular No. IP/005/2018 dated 16th January, 2018.

Submission

- 4.2 With regard to the aforesaid contravention Ms. Jain submitted that she had been informed by Axis Bank, the lead FC that she was to be replaced as IRP. They had informed her on 07.09.2018 that it was decided to appoint Abhilash Lal as IRP instead and they are filing before NCLT to remove her. Hence, the IRP had been waiting for NCLT for a revised order appointing Abhilash Lal and re-initiating the process. However, the same did not happen and finally the CoC apprised that they have decided to replace her as IRP and appoint Abhilash Lal as RP. Due to uncertainty of being removed and re-initiation of process, IRP did not file disclosure. On being replaced in meeting IRP had filed her appointments as disclosure so that no non-compliance takes place. The professionals appointed were not charging fees from CoC and had entered into contract in her personal capacity not as IRP. They were paid remuneration from IRP's pocket. However, while making disclosure these professionals were included to be on safe side and had no intent of non-compliance associated with it.

IV Contravention

- 5.1 It has also been observed that the IRP had shared her profile and profile of her team members to the CoC members vide email dated 26th June 2019. However, IRP have failed to bring out the fact before the CoC that CA firm M/s Jain Sonu & Associates and the employees of the firm are her related parties. The aforesaid conduct is in violation of Section 208(2)(a) and (e) of the Code, Regulation 7(2)(h) of the IP Regulations, read with clause 12, 14 and 16 of the Code of Conduct as given in the First Schedule of the IP Regulations.

Submission

- 5.2 With regard to the aforesaid contravention Ms. Sonu Jain submitted that the appointment of the professionals was made directly by her and their payment is also directly made by her and not CoC. No firm personnel had been recruited for handling this assignment by CoC. The staff assisting IRP are not related or covered under any definition of related party. Moreover CA. Vinay Bansal, CA. Priya Jain, CA. Charupreeti Jain they are residents of Delhi, A.N. Mishra is resident of Patna, Bihar, and Aditya Ahirwar, Om Prakash Mishra CA. Pratik Agarwal and CA. Ritu Shukla are residents of Jabalpur, Madhya Pradesh. It was first time for Ms. Jain to be working with them. Also, IRP cannot handle alone an entire CIRP and requires a team to manage the operations and day to day working to continue as going concern. They all had been appointed by Ms. Jain to assist her as her employee and not any separate professional as required to be appointed by CoC approval. No person involved in the assignment was related to Ms. Jain's firm, and her firm is also

not involved in the assignment, therefore there is no requirement to inform CoC about it separately.

V Contravention

- 6.1 Regulation 6(1) of the CIRP Regulations states that an IP shall make a public announcement immediately on his appointment as an IRP. Board has observed that CIRP commenced on 27th March 2019 while the requirement of public announcement was completed by IRP on 2nd May 2019 (i.e with a delay of 35 days). The aforesaid conduct is in violation of Section 208(2)(a) and (e) of the Code, Regulation 6(1) of the CIRP Regulations.

Submission

- 6.2 With regard to the aforesaid contravention Ms. Jain submitted that the IRP had been appointed on 27.03.2019 and the public announcement was made on 01.04.2019. The newspaper along with Form A was sent to the backend server manager. Out of laggardness, the CD had uploaded the public announcement directly on the face of the Group Company website, which looked unorganized on the website. IRP had requested through this email to make separate tab and relocate the link of public announcement. It was just the re-arrangement of a hyperlink on the website. The public announcement was made on 1st April, 2019 when the mail from NCLT had come.
- 6.2.1 Since the Corporate Debtor had been non-cooperative since inception, she had to visit the office herself and handed over the signed Public Announcement to scan and upload directly from the corporate office. So, no non-compliance had taken place. Further, the IRP had received 5 claims of OC till 1st May, 2019 as the public announcement had been present on the website of the Corporate Debtor just after initiation of case. Its logical to expect that the claim had come from the notice being seen by the OC on the website of the CD as its frequently visited by the stakeholders of the company.

Analysis and findings

- 7 The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of Ms. Sonu Jain and also the provisions of the Code, rules and the regulations made thereunder finds as follows:

Bills for fee of Interim Resolution Professional

- 7.1 Under the Code, the IRP plays a central role in resolution process of the CD, she is appointed by the Adjudicating Authority as an officer of the Court to conduct the resolution process and it is the duty of the IRP to conduct CIRP with integrity, transparency and accountability in the process ensuring that all the stakeholders are kept informed. Hence, an IRP is obliged under the Code to take reasonable care and diligence while performing her duties, including incurring expenses and disclosure of the same in a timely manner. She must, therefore, ensure that not only fee payable to her is reasonable, but also other

expenses incurred by her are reasonable. Thereby ensuring an effective insolvency regime, this would in turn foster public confidence. Therefore, it becomes imperative for an IP to perform her duties with utmost care and diligence. Section 208(2) of the Code provides that every insolvency professional 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;

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

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

Further, the clause 25 of the Code of Conduct as given in the First Schedule of the IP Regulations provides:

25. An insolvency professional must provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable regulations.

7.2 The IBBI Circular No. IP/004/2018 dated 16th January, 2018 on ‘Fees payable to an insolvency professional and to other professionals appointed by an insolvency professional’ states that:

“3. In view of the above, it is clarified that an insolvency professional shall render services for a fee which is a reasonable reflection of his work, raise bills / invoices in his name towards such fees, and such fees shall be paid to his bank account. Any payment of fees for the services of an insolvency professional to any person other than the insolvency professional shall not form part of the insolvency resolution process cost.”

7.3 The DC observes in the present case that the Ms. Jain had raised bills for professional fees dated 04.04.2019, 15.04.2019, 26.04.2019 and 29.07.2019, in the name of her partnership firm and not in her own name but the IRP has submitted that the issuance of bills in the name of Jain Sonu & Associates was a typographical error, which was rectified and submitted to the CoC on 26.06.2020. However, the DC notes that the rectification was made by Ms. Sonu Jain in pursuant to this contravention being pointed out by the Inspecting Authority in the Draft Inspection Report dated 03.02.2020. It is also noted that the TDS has been deducted from Ms. Jain’s account and by her submission the CoC had transferred the net amount to the account of her partnership firm. In view of the above, it is observed that there is a clear contravention of the IBBI Circular No. IP/004/2018 dated 16.01.2018 by the IRP as the invoices have to be raised in the name of the IRP rendering the services and payment has to be made in Ms. Jain’s bank account but due to the erroneous bills submitted, the CoC mistakenly made payment in the bank account of Jain Sonu & Associates. However, as Ms. Jain rectified the error by submitting revised bills on the same. Hence, a lenient view may be taken.

7.4 It is observed that in Ms. Jain has raised the bill no. 64/2019-20 dated 29.07.2019 for an amount of Rs. 25 Lakh towards IRP fees but in the 1st CoC Meeting dated 26.06.2019 in the Agenda no. 2 it had been mentioned in the minutes thereof that,

“CoC further negotiated with IRP to reduce her fees and keep IRP service fees: 9,00,000.00 P.M., Technical Support: 3,50,000.00 P.M. plus Rs. 200,000 one time Out of Pocket Expense.

IPR further mentioned COC about her efforts towards the Corporate Debtor which deserves a monthly remuneration Rs. 25,00,000.00/-. (IRP service fees: 9,00,000.00, Technical Support: 11,00,000.00, Business Process advisor: Rs. 5,00,000.00). Further other expenses related to filing and miscellaneous expenses have amounted to Rs. 2,00,000/-. CoC being aware of the efforts have proposed IRP service fees: 9,00,000.00 P.M., Technical Support: 3,50,000.00 P.M. plus Rs. 200,000 one time Out of Pocket Expense. IRP mentioned it as an unjust remuneration against her effort.

*“**RESOLVED THAT** IRP service fees: 9,00,000.00 P.M., Technical Support: 3,50,000.00 P.M. plus Rs. 200,000 one time Out of Pocket Expense to be paid to IRP Sonu Jain as fees plus reimbursement of Expenditure”*

7.5 The IRP has submitted that the CoC had suggested her to tentatively provide the bill and as per the volume of work and she had decided that Rs. 25 Lakhs per month tentatively was justified but the same was rejected by the CoC in the 2nd CoC Meeting and the fees were then finalised. The relevant excerpts from the 2nd CoC dated 09.08.2019 is as under: *“RP informed the CoC that the IRP had raised invoices worth INR 11,092,000 and requested CoC for their approval.*

CoC felt that the invoices were higher in value than the amount that was negotiated with the IRP – a fact that had not been mentioned clearly in the minutes. After discussions amongst themselves, the suggested the following:

- An amount of INR 12.5 lakhs per month be paid to the IRP for the period of work as this was the negotiated amount

- An agreed one time amount of INR 2 lakhs to be paid as OPE reimbursement

*- Above amounts to be paid after adjusting for any outstanding / pending reimbursements
CoC members also requested RP to pay the above after handover of all information and documents.”*

7.6 The DC finds from the above, that the negotiations on the IRP fees were completed in the 1st CoC meeting, wherein the CoC had resolved to pay a monthly fee of Rs. 12.5 Lakh with Rs. 2 Lakh as out of pocket expenses to the IRP. Despite the finalising of fees, Ms. Jain had submitted a bill of Rs. 1,10,92,000/- and in the 2nd CoC meeting it was informed that the *invoices were higher in value than the amount that was negotiated.* The CoC members again reiterated in the 2nd CoC meeting the resolution of 1st CoC meeting on the fees that is to be paid to Ms. Jain.

7.7 The Regulation 33 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states as follows:

“33. Costs of the interim resolution professional.

- (1) *The applicant shall fix the expenses to be incurred on or by the interim resolution professional.*
- (2) *The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).*
- (3) *The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.*
- (4) *The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.”*

7.8 DC finds from the material available on record that the bills raised by Ms. Jain dated 04.04.2019, 15.04.2019, 26.04.2019 and 29.07.2019 were addressed to the CD. Ms. Jain has submitted that the IRP appointment was not proposed by the operational creditor, FLSmidth Private Limited instead, it was the AA that appointed Ms. Jain as IRP. On perusal of the Order dated 27.03.2019 of the AA it is observed that the Applicant, FLSmidth Private Limited had not suggested any name for IRP and the AA directly appointed Ms. Jain as IRP, with the further direction to Applicant to pay sum of Rs. 50,000/- to IRP as advance fees. However, as per the submission of Ms. Jain when the IRP had approached FL Smidth Private Limited for payment of fees they had refused to bear any fees and expense as they had not proposed her appointment. Ms. Jain had then enquired CoC in whose name the invoice is to be raised and was informed to issue it in the name of CD and to make it a part of CIRP cost. Hence, DC finds that there does not appear to be any contravention by Ms. Jain as the applicant refused to bear the cost and the CoC had ratified the fees of IRP and informed her to issue the bills in the name of the CD.

Cost Disclosure by IRP

8. The IBBI Circular No. IBBI/IP/013/2018 dated 12.06.2018 states as follows:
“9. *Further, the IP is directed to disclose fee and other expenses in the relevant Form in Annexure C to the Insolvency Professional Agency of which he is a member:*
(a) *for all concluded CIRPs by 15th July, 2018, and*
(b) *for ongoing and subsequent CIRPs within the time as specified in the relevant Form.”*
Further, the Form II: Insolvency Resolution Process Cost of Corporate Debtor for the period under IRP under the Annexure C also provides that the Form is *to be submitted by the IRP within Seven Days of his demitting office as IRP.*
- 8.1 The DC notes that the Cost Disclosure was submitted by Ms. Jain on 30th October 2019 to the IPA which is 3 months from date of demitting office as IRP from Order dated 24th July 2019 of AA replacing IRP with RP, Mr. Abhilash Lal. However, the Ms. Jain has submitted that the disclosure requirement was not possible as her fees were not decided till her removal. The DC also notes that Ms. Jain had made several reminders and follow up vide e-mails dated 31.07.2019, 13.08.2019, 16.08.2019, 17.08.2019 and 18.08.2019 with RP and CoC. In the 2nd CoC meeting dated 09.08.2019, wherein the bills of IRP was considered and the CoC again ratified the fees of Rs. 12.50 Lakhs per month it was communicated to Ms. Jain on 27.08.2019. Ms. Jain has further submitted that the payment were then made on 23.09.2019 and even then expense related to her travel to CD’s office

at Delhi and plant visit from Kolkata amounting Rs. 1,65,566/- along with Rs. 2,00,000/- out of Pocket Expense is unpaid.

- 8.2 Ms. Jain further adds that she had engaged valuers, whose appointment was subject to the CoC approval but as no confirmation was received from CoC, hence she was unable to file disclosure. As valuers appointment was also the part of CIRP cost, it was expected from RP and CoC to communicate and the CoC vide e-mail dated 12.07.2019 had requested IRP to wait till such approval from CoC. Therefore, Ms. Jain filed the cost disclosure on 30.10.2019 with IPA on the information available, assuming that any subsequent revision will be dealt with later on. The submission of the IRP is found to be satisfactory and no contravention could be made out.

Appointment of Valuers by the Interim Resolution Professional

9. Under the Code valuation is conducted in a CIRP to estimate the fair value and liquidation value of the assets of the CD, which enables the CoC and the prospective resolution applicants to make an informed decision regarding the fate of CD. It is the endeavour of the Code to maximize the value of assets of the CD and the same may be ensured by adopting uniform valuation standards. Based on the information supplied in the valuation report, the CoC takes the crucial decision- whether to continue with the resolution process or resolve to liquidate. Further, it also facilitates the RP to invite prospective resolution plans. Therefore, to establish the credibility of the process and generate confidence among the stakeholders, the Code requires IRP to engage registered valuers for the purpose of the CIRP. The Regulation 27 of the CIRP Regulation provides that:

“27. Appointment of registered valuers

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, the IBBI Circular No. IBBI/RV/019/2018 dated 17.10.2018 states that:

“6. In view of the above, every valuation required under the Code or any of the regulations made thereunder is required to be conducted by a ‘registered valuer’, that is, a valuer registered with the IBBI under the Companies (Registered Valuers and Valuation) Rules, 2017. It is hereby directed that with effect from 1st February, 2019, no insolvency professional shall appoint a person other than a registered valuer to conduct any valuation under the Code or any of the regulations made thereunder.”

- 9.1 Thus, from a bare perusal of the provisions of the regulations and circular made thereunder, it is clear that it is the duty of the IRP to appoint registered valuers within 7 days of his appointment, but not later than 47th day from the insolvency commencement date to determine the fair value and liquidation value of the CD. The IBBI further clarified in explicit terms through the aforesaid circular that no IP shall appoint a person other than a registered valuer to conduct any valuation under the Code or any of the regulations made thereunder.

9.2 In the present case, DC notes that Ms. Jain had appointed LSI Engineering & Consultants Ltd and AAA Valuation Professionals LLP on 12th July 2019, who were not registered with the IBBI. However, Ms. Jain contended that there is no contravention as the valuer appointment letters that she had sent were subsequently cancelled by CoC later on and the RP has presently appointed a different set of valuer. The date when the valuers were appointed she was no longer part of CIRP. Ms. Jain further submitted that she had already issued appointment letter before the clarification was issued in Circular dated 13th August 2019 but it is noted that the engagement was made in contravention of the IBBI Circular No. IBBI/RV/019/2018 dated 17.10.2018 which was effective on that date. Moreover, the DC notes that the Ms. Jain had appointed LSI Engineering & Consultants Ltd and AAA Valuation Professionals LLP in contravention of the regulation and circular. However, the appointment of valuer was later cancelled by CoC and registered valuers were appointed by the RP, Mr. Abhilash Lal as per the regulations. Hence, DC is of the view that lenient view may be taken.

Relationship Disclosure by IRP

10. CIRP under the Code is a non-adversarial resolution process where the defaulting CD cedes control to an IP, who is responsible for managing the affairs of the company as a going concern while preserving its value. In order to promote transparency, the cost and relationship disclosures are to be provided timely by the IPs which is to be displayed on the website of IPA so that all the stakeholders can be uniformly informed of the expenses incurred and professionals that are engaged. The Circular No. IP/005/2018 dated 16th January 2018 provides that an IP shall disclose her relationship, if any, with (i) the Corporate Debtor, (ii) other Professional(s) engaged by her, (iii) Financial Creditor(s), (iv) Interim Finance Provider(s), and (v) Prospective Resolution Applicant(s) to the IPA of which she is a member, within a period of three days. However, Ms. Jain, who was appointed on 27.03.2019 delayed in submitting relationship disclosure of her appointment for more than three months to 04.07.2019. Further, it is observed that Ms. Jain issued appointment letters dated 08.04.2019, 09.04.2019, 15.04.2019, 19.04.2019 and 14.05.2019 for the appointment of professionals in the course of CIRP of the CD but the relationship disclosures pertaining to the appointment of these professionals were submitted by her on 11.01.2020, after the IA sought these documents for inspection.

10.1 The submission of the Ms. Jain that she had been informed by Axis Bank, the lead Financial Creditor on 07.09.2018 that she was to be removed as IRP and it was decided to appoint Mr. Abhilash Lal as IRP instead and Ms. Jain had been waiting for AA to take out a revised order appointing Mr. Abhilash Lal and re-initiating the process is not tenable. Even though there was the uncertainty of IRP being replaced, she still made the appointment of professionals to assist in the conducting of CIRP, but the disclosure of relationship which was to be made within 3 days of appointment of such professionals was not made. Also the submission of IRP that the professionals appointed were not charging fees from CoC and had entered into contract in her personal capacity not as IRP is erroneous as the professionals appointed by IRP were engaged in handling the matters related to CIRP of CD and disclosure of relationship is required in such instances.

However, the names of the professionals appointed were also later included in the relationship disclosure. Hence, the DC finds that there is a delay in disclosure of relationship by Ms. Jain which is in contravention of regulation 7(2)(h) of the IP Regulations, read with clause 13 and 14 of the Code of Conduct as given in the First Schedule of the IP Regulations and Circular No. IP/005/2018 dated 16th January, 2018.

- 10.2 The Code of Conduct as given in the First Schedule of the IP Regulations provides that:
“12. An insolvency professional must not conceal any material information or knowingly make a misleading statement to the Board, the Adjudicating Authority or any stakeholder, as applicable.
14. An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code.
16. An insolvency professional must ensure that he maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such 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.”
- 10.3 Further, in the present issue the DC notes that, Ms. Jain had shared her profile and profile of her team members to the CoC members vide email dated 26th June 2019. However, it has been alleged that Ms. Jain had failed to inform the CoC that CA firm M/s Jain Sonu & Associates and the employees of the firm are her related parties. Ms. Sonu Jain has replied to the aforementioned allegation stating that the appointment of the professionals was made directly by her and their payment is also made by her and not CoC. Further, no firm personnel has been recruited for handling this assignment by CoC. Moreover CA. Vinay Bansal, CA. Priya Jain, CA. Charupreeti Jain they are residents of Delhi, A.N. Mishra is resident of Patna, Bihar, and Aditya Ahirwar ,Om Prakash Mishra CA. Prateek Agarwal and CA. Ritu Shukla are residents of Jabalpur, Madhya Pradesh and it was first time for Ms. Jain to be working with them.
- 10.4 The DC also noted that Ms. Jain has submitted that the IRP cannot handle the entire CIRP alone and requires a team to manage the day to day operations to continue as going concern. The staffs had all been appointed by Ms. Jain to assist her as her employees and are drawing their salaries from her and are not separate professionals as required to be appointed by CoC approval. No person involved in the assignment was related to Ms. Jain’s firm, and her firm is also not involved in the assignment, therefore there is no requirement to inform CoC about it separately. In view of the submission of Ms. Jain, the DC is of the opinion that IRP can take assistance from the back office support in managing the day to day operation of CD and no specific disclosure is required for the same. However, if the fees of the support staff are paid from CIRP Cost on ratification of the CoC the same has to be duly disclosed but in the present instance the personnel were employed directly by IRP and their fees were not charged from CIRP cost. Hence, there is no requirement of informing the CoC of the relationship as related party of the support staff. Thus, there is no contravention in this regard.

Public Announcement by IRP

11. The public announcement is made by the IRP immediately after the appointment, to inform the public that a CD is undergoing CIRP. It is the vital first step after initiation of CIRP as it provides an opportunity to the creditors submit their claims of liability against the CD which are to be considered while resolving insolvency. Regulation 6(1) of the CIRP Regulations provides that an IP shall make a public announcement immediately on his appointment as an IRP. The regulation 6(1) of the CIRP Regulation reads as follows:

“6. Public announcement.

(1) An insolvency professional shall make a public announcement immediately on his appointment as an interim resolution professional.

Explanation: ‘Immediately’ means not later than three days from the date of his appointment.”

- 11.1 In the present matter the DC notes that, the CIRP commenced on 27.03.2019 and as per the Inspection report the public announcement was uploaded on website of IBBI on 28th March 2019 and was published in two newspapers the Economic Times and Dainik Statesman (Kolkata) on 1st April, 2019. However, the public announcement was uploaded on the website of CD on 02.05.2019. Ms. Jain has submitted that the newspaper along with Form A was sent to the backend server manager but the public announcement was mistakenly uploaded directly on the face of the Group Company website, which looked unorganized. Therefore, Ms. Jain had requested through email dated 02.05.2019 to make separate tab and relocate the link of public announcement and it was mere re-arrangement of the hyperlink on the website. Further, Ms. Jain also submitted that she had already received 5 claims from Operational Creditors vide e-mails dated 09.04.2019, 10.04.2019, 13.04.2019, 23.04.2019, 26.04.2019 based on the public announcement present on the website of the CD and the newspaper. Hence, it is observed that public announcement was made within stipulated time and five claims were also received subsequently and mere re-arrangement of link on the website does not amount to delay in publishing. Thus, the DC is of the view there is no contravention with regard to publication of public announcement.

ORDER

12. In view of the above, there is a delay in disclosure of relationship by Ms. Jain which is in contravention of regulation 7(2)(h) of the IP Regulations, read with clause 13 and 14 of the Code of Conduct as given in the First Schedule of the IP Regulations and Circular No. IP/005/2018 dated 16th January, 2018.
- 12.1 The DC, therefore, 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 the IBBI (Insolvency Professionals) Regulations, 2016 and regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017, hereby warns that Ms. Sonu Jain should take reasonable care and be extremely careful, diligent and that she should act strictly as per law and similar action should not be repeated.

13. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Ms. Sonu Jain is enrolled as a member.
14. 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.
15. Accordingly, the show cause notice is disposed of.

Dated: 17th December 2020
Place: New Delhi

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(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI