

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/159/2023

1st May, 2023

Order

In the matter of Mr. Dushyant C Dave, Insolvency Professional (IP) under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No. COMP-11016/3/2022-IBBI/14/714/327 dated 06.03.2023 issued to Mr. Dushyant C Dave, R/o 1101, Dalamal Tower, B Wing, Free Press Journal Marg, Nariman Point, Mumbai, Maharashtra, 400021 who is a Professional Member of the Insolvency Professional Agency of Institute of Cost Accountants of India (IPA-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-003/IP-N00061/2017-2018/10502.

1. Background

- 1.1. The Hon'ble NCLT, Ahmedabad Bench (AA) *vide* order dated 10.03.2021 commenced the liquidation process of M/s Shirpur Power Private Limited (CD) and appointed Mr. Dushyant C Dave as liquidator.
- 1.2. The IBBI, in exercise of its powers under section 218 of the Code read with regulation 7(2) and 7(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations) appointed an Investigating Authority (IA) to conduct the investigation of Mr. Dushyant C Dave. In compliance with regulation 8(1) of Investigation Regulations, IA served notice to Mr. Dushyant C Dave on 26.12.2022. Pursuant to the said notice, Mr. Dushyant C Dave replied via emails dated 04.01.2023 and 17.01.2023. Thereafter, IA submitted the Investigation Report (IR) on 25.01.2023 to the Board.
- 1.3. The IBBI issued the SCN to Mr. Dushyant C Dave on 06.03.2023, based on the findings in the investigation report in respect of his role as liquidator of CD and material available on record. Mr. Dushyant C Dave submitted his reply to SCN *vide* email dated 17.03.2023.
- 1.4. The IBBI referred the SCN, response of Mr. Dushyant C Dave 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. Mr. Dushyant C Dave availed opportunity of personal hearing through virtual mode before the DC on 12.04.2023.

1.5. The DC has considered the SCN, the reply to SCN, submissions of Mr. Dushyant C Dave, and other material available on record and proceeds to dispose of the SCN.

2. Alleged Contraventions, Submissions, Analysis and Findings

The contravention alleged in the SCN and Mr. Dushyant C Dave's written and oral submissions thereof are summarized as under:

3. Contravention

Excessive Liquidator Fees.

- 3.1. The Board has observed that in the 10th Committee of Creditors (CoC) meeting held on 03.02.2021 it was resolved that the fee of liquidator was fixed as 48% of the fees prescribed under regulations 4(2) and 4(3) of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations). Further, in the first Stakeholders Consultation Committee (SCC) meeting held on 15.05.2021, it was acknowledged by the SCC that the liquidator will be paid a monthly fee of Rs. 3.50 lakhs and the same shall be adjusted from the final fee payable to the IP based on the sale proceeds. It is observed that Mr. Dushyant C Dave in the present matter have not excluded liquidation costs while arriving at fee based on the amount of realisation and further has calculated his fee based on the percentages given for first six months, whereas the sale has completed after a period of one year from Liquidation Commencement Date (LCD).
- 3.2. In view of the above, the Board held the prima facie view that Mr. Dushyant C Dave has contravened provisions of section 35(1)(d) & (o) of the Code, regulation 4 of the Liquidation Regulations and regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clause 25, 26 and 27 of the Code of Conduct for IPs under First Schedule of IP Regulations (Code of Conduct).

Submissions by Mr. Dushyant C Dave

- 3.3. Mr. Dushyant C Dave submitted that the difference in the total liquidator's fee is a sum of Rs. 55,510/- only. He has proactively credited this difference in his books to the account of the CD already. Since the liquidation proceedings are still underway with additional amounts expected to be realised and distributed, he will calculate the Liquidator's Fee accordingly after adjusting such credits. Mr. Dushyant C Dave has further submitted that AA extended the liquidation period on the basis of exclusion of 355 days and on the basis of the aforementioned extension granted on the basis of exclusion of 355 days, the Liquidator's Fee has been calculated correctly.

Findings

- 3.4. The DC notes that Mr. Dushyant C Dave had not excluded the liquidation cost while arriving at fee based on the amount of realisation. However, Mr. Dushyant C Dave has proactively credited

this difference to the account of the CD already. The DC takes a sympathetic view in this matter. Further, with regard to fee computation on percentages provided in Fee table under Liquidation Regulations, the DC accepts the submission of Mr. Dushyant C Dave in view of order of AA of allowing exclusion of extension of 355 days.

4. Order

- 4.1 In view of the forgoing discussion, the DC, in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby warns Mr. Dushyant C Dave to be extremely careful and ensure full compliance with the provisions of the Code and Regulations made thereunder in his assignments.
- 4.2 The Order shall come into force with immediate effect in view of para 4.1.
- 4.3 A copy of this order shall be forwarded to the Insolvency Professional Agency of Institute of Cost Accountants of India where Mr. Dushyant C Dave is enrolled as a member.
- 4.4 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.
- 4.5 Accordingly, the show cause notice is disposed of.

Sd/-
(Ravi Mital)
Chairperson, IBBI

Dated: 1st May, 2023
Place: New Delhi