

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/20/2020
20th March 2020

Order

In the matter of Mr. Tarun Jaggi, 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).

Appearances before Disciplinary Committee on 16th March 2020	
For Noticee	Mr. Tarun Jaggi, In Person.
For Board	Mr. Om Prakash, Assistant Manager Ms. Rashi Gupta, Research Associate.

1. Background

- 1.1 This Order disposes of the Show Cause Notice (SCN) dated 27th November 2019 issued to Mr. Tarun Jaggi, A-1/292 Ground Floor, Janakpuri, Delhi, 110058, who is a Professional Member of the Indian Institute of Insolvency Professional of ICAI and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-001/IP-P00113/2017-18/10220.
- 1.2 In exercise of its power under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, the Board vide Order dated 24th June 2019 appointed an Inspecting Authority (IA) to conduct an inspection of Mr. Tarun Jaggi, on having reasonable grounds to believe that the IP had contravened provisions of the Code, Regulations, and directions issued thereunder.
- 1.3 The Board on 27th November 2019 had issued the SCN to Mr. Tarun Jaggi, based on findings of an inspection in respect of his role as a liquidator in Voluntary Liquidation of Viber Media India Pvt. Ltd. and MGI Group India Pvt. Ltd. The SCN alleged contravention of Section 208(2)(a) of the Insolvency and Bankruptcy Code, 2016 (Code), several provisions of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and the Code of Conduct under regulation 7(2) thereof, the IBBI (Voluntary Liquidation Process) Regulation 2017 (Voluntary Liquidation Process Regulations). Mr. Tarun Jaggi replied to the SCN vide letter dated 18th December 2019.
- 1.4 The Board referred the SCN, response of Mr. Tarun Jaggi 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. Tarun Jaggi availed an opportunity of personal hearing before the DC on 16th March 2020 where he reiterated the submissions made in his written reply.

2. Consideration of SCN

The DC has considered the SCN, the reply to SCN, oral submissions of Mr. Tarun Jaggi made during personal hearing, additional documents submitted by him, other material available on record and proceeds to dispose of the SCN.

3. Alleged Contraventions, Submissions, Analysis and Findings

A summary of contraventions alleged in the SCN, Mr. Tarun Jaggi's written and oral submissions thereon and their analysis with findings of the DC are as under:

3.1 Contravention:

In the matter of Viber Media Private Limited, the Voluntary Liquidation commenced on 15.1.2018 while public announcement was made in newspapers on 27.6.2019 i.e. after a delay of 18 months (approx.). As per Regulation 14(1) read with Regulation 14(3)(a) of IBBI (Voluntary Liquidation Process) Regulation 2017, liquidator is required to make public announcement within five days from his appointment in one English and one regional language newspaper. Since time-bound public announcement in newspapers, as stipulated in Voluntary Liquidation Process Regulations, is critical to the effective liquidation of the corporate person, therefore, the Board is of the prima facie view that the liquidator has failed to adhere to timelines prescribed under the said Regulations and violated section 208(2)(a) of the Code, regulations 14(1) and 14(3)(a) of Voluntary Liquidation Process Regulations and regulation 7(2)(a) and (h) of IP Regulations read with clauses 10, 13 and 14 of the Code of Conduct as given in the First Schedule of the IP Regulations.

Submission:

RP submits that Viber Media Private Limited was incorporated on 19.12.2014 but because of not having any commercial and economic viability in the near future, shareholder of the company decided to close down the operation of the company and in the shareholder meeting dated 15.1.2018, the initiation of proceedings of voluntary winding up under the provisions of the Code was approved and Mr. Tarun Jaggi was appointed as IP for voluntary winding up proceedings of the company. The company was not having any creditors except some account payable which was already a part of financial statements of the company as on the date of commencement of voluntary winding up proceedings under the Code.

The company made public announcement on time and the same was issued on 17.1.2018 on IBBI website but inadvertently missed to make publication of the same in newspapers and to make that compliance good, he himself made a suo moto request to the IBBI to grant permission and accordingly the publication has been made on 27.6.2019 which was a delayed publication as per the IBBI

Regulations. He also submitted that except the delay in publication in the newspapers, all the reporting and compliances have been made on time before the Board and other respective authorities under IBC Regulations in connection with Viber Media India Private Limited.

Analysis:

Regulation 14 of IBBI (Voluntary Liquidation Process) Regulation 2017 provides as under:

“(1) The liquidator shall make a public announcement in Form A of Schedule I within five days from his appointment.

(2) The public announcement shall-

a) call upon stakeholders to submit their claims as on the liquidation commencement date; and

b) provide the last date for submission of claim, which shall be thirty days from the liquidation commencement date.

(3) The announcement shall be published-

(a) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate person and any other location where in the opinion of the liquidator, the corporate person conducts material business operations;

(b) on the website, if any, of the corporate person; and

(c) on the website, if any, designated by the Board for this purpose.”

Thus, Regulation 14 of Voluntary Liquidation Process Regulations makes it mandatory for the Liquidator to make public announcement in Form A of Schedule I within five days from the date of his appointment. Such public announcement must be published in newspapers and on the website designated by the Board and also on the website of the corporate person, if any.

Undisputedly, the public announcement was published on the website of the Board within the stipulated period of five days from the date of appointment of Liquidator i.e. on 17.01.2018. Further, the Liquidator, during personal hearing submitted that the corporate person i.e. Viber Media India Private Limited did not have any website and thus, the requirement of Regulation 14 (3)(b) was not applicable.

With regard to publication of the public announcement in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate person, the Liquidator admitted that such announcement was not made within the time as stipulated under Regulation 14(1) above.

It is pertinent to mention that the provision regarding publication has been made to intimate the public at large about the liquidation proceedings of the corporate person so that an opportunity is accorded to all stakeholders to file their claims, if any, as on the liquidation commencement date. The submission of Liquidator, during personal hearing, that there were no creditors of the corporate person cannot

be a ground for not making public announcement in newspapers as per Regulation 14(3)(a) of Voluntary Liquidation Process Regulations. Further, belated publication cannot hold good for the compliance of the provisions of aforesaid Regulation. This perhaps has happened either due to lack of knowledge or non-serious attitude of the Liquidator towards compliances.

The Liquidator in his written reply to SCN dated 18.12.2019 and also during personal hearing admitted that he inadvertently missed making the public announcement in the newspapers.

Findings:

An IP must strictly adhere to the timelines prescribed under the provisions of the Code and the regulations made thereunder. He must act with utmost care and caution and must not be negligent while performing his duties during insolvency resolution or liquidation, as the case may be. Further, compliance of law after the time prescribed by the Code cannot be treated as ‘compliance’ of law.

In the present case, the Liquidator admitted that he inadvertently missed making the public announcement in the newspapers within prescribed time i.e. five days from his appointment. Thus, the Liquidator has contravened the provisions of section 208(2)(a) of the Code, regulations 14(1) and 14(3)(a) of Voluntary Liquidation Process Regulations and regulation 7(2)(a) and 7(2)(h) of IP Regulations read with clauses 10, 13 and 14 of the Code of Conduct as given in the First Schedule of the IP Regulations.

3.2 Contravention:

In the matter of MGI Group India Private Limited, the Voluntary Liquidation commenced on 8.5.2018 while public announcement was made in newspapers on 10.1.2019 i.e. after a delay of approx. 8 months. As per Regulation 14(1) read with Regulation 14(3)(a) of IBBI (Voluntary Liquidation Process) Regulation 2017, liquidator is required to make public announcement within five days from his appointment in one English and one regional language newspaper. Time-bound public announcement in newspapers, as stipulated in Voluntary Liquidation Process Regulations, is critical to the effective liquidation of the corporate person. Therefore, the Board is of the prima facie view that the liquidator has failed to adhere to timelines prescribed under the said Regulations and violated section 208(2)(a) of the Code, regulations 14(1) and 14(3)(a) of Voluntary Liquidation Process Regulations and Regulation 7(2)(a) and (h) of IP Regulations read with clauses 10, 13 and 14 of the Code of Conduct as given in the First Schedule of the IP Regulations.

Submission:

RP submits that MGI Group India Private Limited was incorporated on 12.1.2012 but the shareholders decided to close operations because there was no commercial

and economic viability in the near future. In the shareholder meeting dated 8.5.2018, the initiation of proceedings of voluntary winding up under the provisions of the Code was approved and Mr. Tarun Jaggi was appointed as IP for voluntary winding up proceedings of the company. The company was not having any creditors except some account payable which was already a part of financial statements of the company as on the date of commencement of voluntary winding up proceedings under the Code.

The company made public announcement on time and the same was issued on 9.5.2018 on IBBI website but the company inadvertently missed to make publication of the same in newspaper and to make that compliance good, he himself made a suo moto request to the IBBI to grant the permission and after permission was given by IBBI, publication has been made on 10.1.2019 which was a delayed publication as per the IBBI Regulations. He also submitted that except the delay in publication in the newspaper, all the reporting and compliances have been made on time before the Board and other respective authorities under IBC Regulations in connection with MGI Group India Private Limited.

Analysis:

Regulation 14 of IBBI (Voluntary Liquidation Process) Regulation 2017 provides as under:

“(1) The liquidator shall make a public announcement in Form A of Schedule I within five days from his appointment.

(2) The public announcement shall-

- a) call upon stakeholders to submit their claims as on the liquidation commencement date; and*
- b) provide the last date for submission of claim, which shall be thirty days from the liquidation commencement date.*

(3) The announcement shall be published-

- (a) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate person and any other location where in the opinion of the liquidator, the corporate person conducts material business operations;*
- (b) on the website, if any, of the corporate person; and*
- (c) on the website, if any, designated by the Board for this purpose.”*

Thus, Regulation 14 of Voluntary Liquidation Process Regulations makes it mandatory for the Liquidator to make public announcement in Form A of Schedule I within five days from the date of his appointment. Such public announcement must be published on the website designated by the Board and also on the website of the corporate person.

Undisputedly, the public announcement was published on the website of the Board within the stipulated period of five days from the date of appointment of Liquidator i.e. on 09.05.2018. Further, the Liquidator, during personal hearing submitted that

the corporate person i.e. MGI Group India Private Limited did not have any website and thus, the requirement of Regulation 14 (3)(b) was not applicable.

With regard to publication of the public announcement in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate person, the Liquidator admitted that such announcement was not made within the time as stipulated under Regulation 14(1) above.

It is pertinent to mention that the provision regarding publication has been made to intimate the public at large about the liquidation proceedings of the corporate person so that an opportunity is accorded to all stakeholders to file their claims, if any, as on the liquidation commencement date. The submission of Liquidator, during the personal hearing, that there were no creditors of the corporate person, cannot be a ground for not making public announcement in newspapers as per Regulation 14(3)(a) of Voluntary Liquidation Process Regulations. Further, belated publication cannot hold good for the compliance of the provisions of aforesaid Regulation. This perhaps has happened either due to lack of knowledge or non-serious attitude of the Liquidator towards compliances.

Further, it has also been observed that the Liquidator made a suo moto request to the Board to grant the permission to make a belated public announcement in the newspapers to which the Board, vide letter dated 28.12.2018, clearly responded that,

“This is clearly in contravention to the regulations. Hence, you are required to give suitable reply regarding the same.”

The language used by the Board is neither permissive nor corrective in nature. On the other hand, the Board took the view that the liquidator has contravened the provisions of the Code and shall give suitable reply regarding the same. The Board further directed the Liquidator to issue public announcement immediately keeping in consideration the interests of all the stakeholders and not to condone the contraventions committed by the Liquidator.

Further, the Liquidator in his written reply to SCN dated 18.12.2019 and also during personal hearing admitted that he inadvertently missed making the public announcement in the newspapers.

Findings:

IP is required to conduct the entire CIRP/ Liquidation proceedings following his appointment for the benefit of all stakeholders. He must diligently perform his duties and must adhere to the timelines prescribed under the provisions of the Code and the regulations made thereunder. Further, compliance of law made after the time as stipulated by the Code cannot be treated as ‘compliance’ of law in the strict sense.

In the present case, the Liquidator admitted that he did not make the public announcement in the newspapers within five days from his appointment. Thus, the Liquidator has contravened the provisions of section 208(2)(a) of the Code, regulations 14(1) and 14(3)(a) of Voluntary Liquidation Process Regulations and regulation 7(2)(a) and 7(2)(h) of IP Regulations read with clauses 10, 13 and 14 of the Code of Conduct as given in the First Schedule of the IP Regulations.

3.3 **Contravention:**

In the matter of MGI Group India Private Limited, the Liquidator appointed Deloitte Haskins & Sells for auditing the books of accounts of the CD. However, they were providing auditing services to the CD even before commencement of voluntary liquidation proceedings. The Liquidator's reply, "as it is a members voluntary winding up of the company and members has decided to continue with the audit services of existing auditor" is not tenable and hence cannot be accepted since Regulation 11(2) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulation 2017 clearly prohibits the IP from engaging professional who has served as an auditor to the corporate person at any time during the five year preceding the liquidation commencement date.

Further, section 208(2)(a) provides that the IP should take reasonable care and diligence while performing his duties. He cannot shirk from his responsibility by putting the onus on the members of the company as it was his duty to ensure compliance with the Code and the Regulations.

Therefore, the Board is of the prima facie view that the Liquidator has violated section 208(2)(a) of the Code, regulation 11(2) of Voluntary Liquidation Process Regulations and regulation 7(2)(a) and (h) of IP Regulations read with clauses 3, 10 and 14 of the Code of Conduct as given in the First Schedule of the IP Regulations.

Submission:

It is submitted that MGI Group India Private Limited has commenced its liquidation by way of Members Voluntary Winding up with effect from 8.5.2018 under the IBC Regulations and Deloitte Haskins & Sells has been the statutory auditor of MGI Group India Private Limited prior to commencement of liquidation of the company.

There were no creditors on the date of commencement of voluntary winding up of the Company and members decided to continue with the audit services of existing auditor i.e. Deloitte Haskins & Sells, Mumbai who were the group auditors of the members shareholding companies, for the audit of financial statements for the liquidation period.

In terms of Regulation 38 of Voluntary Liquidation Process Regulations, final report comprising of audited statement of account from the statutory auditor since liquidation commencement date is required to be submitted with the Board and Registrar of Companies. As the existing auditors were group auditors of the Company and it has been decided by the members of the company under voluntary winding up to use the existing auditors for audit services of the company under liquidation and as per that no new formal engagement of professionals specifically falling under Regulation 11 of Voluntary Liquidation Process Regulations has been done.

It is further submitted that the intent of Regulation 11 of Voluntary Liquidation Process Regulations is to ensure the independence of the professional engaged by the liquidator for carrying the services sought to be rendered by the professional to the company under liquidation. Thus, there is no non-compliance or contravention of any of the provisions of the Code and regulations.

Analysis:

Regulation 11(2) of IBBI (Voluntary Liquidation Process) Regulation 2017 clearly provides as under:

“The liquidator shall not engage a professional under sub-regulation (1) who is his relative, is a related party of the corporate person or has served as an auditor to the corporate person at any time during the five years preceding the liquidation commencement date.”

An IP must maintain complete independence in his professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences.

The members of the corporate person under voluntary winding up may take various decisions, however, it is the duty of the Liquidator to act in accordance with the provisions of the Code and the regulations made thereunder. Further, the IP must act independently and must not compromise his authority in favor of the members of the corporate person.

In view of the provisions contained in Regulation 11(2) of the Voluntary Liquidation Process Regulations, it was incumbent upon the Liquidator to discontinue the services of Deloitte Haskins & Sells, who has been the statutory auditor of MGI Group India Private Limited immediately prior to commencement of liquidation. It has been submitted by the Liquidator in his written submissions and also during personal hearing that as the existing auditors were group auditors of the Company and it has been decided by the members of the company under voluntary winding up to use the existing auditors for audit services of the company under liquidation because of the trust reposed on them, he agreed to continue the services of Deloitte Haskins & Sells is untenable since such a continuation is in

contravention of regulation 11(2) of Voluntary Liquidation Process Regulations.

During the personal hearing, the Liquidator was asked to produce any resolution passed by the members in this regard, however, the Liquidator denied of having any such resolution.

It has also been observed that Deloitte Haskins & Sells wrote a letter dated 26.11.2018 addressed to the Liquidator, Mr. Tarun Jaggi wherein the firm accepted the audit engagement for auditing the special purpose financial information of MGI Group India Private Limited under voluntary liquidation, as required under Regulation 38 of the IBBI (Voluntary Liquidation Process) Regulation 2017 for the period from 8.5.2018 to 15.12.2018. The opening lines of the abovementioned letter states, *“We refer to the letter dated 20th November 2018 requesting us that we audit the special purpose financial information of MGI Group India Private Limited...”*.

This manifests that the Liquidator himself requested Deloitte Haskins & Sells to audit the special purpose financial information of MGI Group India Private Limited under voluntary liquidation.

Findings:

The Liquidator compromised his independence and conceded to the decision taken by the members of the company under voluntary winding up to continue the services of the existing auditors for auditing the financial information of the company under liquidation in disregard to the provisions contained in the Code.

He has, therefore, acted in contravention of the provisions contained in Section 208(2)(a) of the Code, regulation 11(2) of Voluntary Liquidation Process Regulations and regulation 7(2)(a) and 7(2)(h) of IP Regulations read with clauses 3, 10 and 14 of the Code of Conduct as given in the First Schedule of the IP Regulations.

4. Conclusion:

4.1 The Code is a law for insolvency resolution, as evident from the long title to the Code, which reads as under:

“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India,”

4.2 To achieve the objectives of the Code, a key supporting institution is insolvency profession. He conducts the entire insolvency resolution process and if ordered,

liquidation process. During such conduct, an IP must maintain complete independence in his professional relationships and should conduct the insolvency resolution, liquidation process, as the case may be, independent of external influences.

4.3 In this matter, the DC observes that Mr. Tarun Jaggi, while acting as a Liquidator displayed a negligent attitude during the conduct of voluntary liquidation process which can be elaborated as below:

- a) He failed to publish the public announcement in the newspapers within the time prescribed under regulation 14(1) of Voluntary Liquidation Process Regulations in the voluntary liquidation of Viber Media India Pvt. Ltd. and MGI Group India Pvt. Ltd.
- b) He engaged M/S Deloitte Haskins & Sells for auditing financial information of MGI Group India Pvt. Ltd. under voluntary liquidation when they were also the statutory auditors prior to commencement of voluntary liquidation which is in contravention of Regulation 11(2) of Voluntary Liquidation Process Regulations

4.4 Thus, Mr. Tarun Jaggi has displayed utter misunderstanding of the provisions of the Code and Regulations made thereunder. He has, therefore, contravened provisions of:

- (a) Sections 208(2)(a) of the Code,
- (b) Regulation 11(2), Regulation 14(1) and Regulation 14(3)(a) of IBBI (Voluntary Liquidation Process) Regulation 2017, and
- (c) Regulation 7(2)(a) and 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 read with clause 3, 10, 13 and 14 of the Code of Conduct under the said Regulations.

5. Order

5.1 The DC is conscious of the fact that the profession of IP is in a stage in which IPs are striving to learn. However, it is incumbent upon the IPs to perform their duties diligently and act strictly in accordance with the provisions of the Code and the regulations made thereunder. They must endeavor to build and safeguard the reputation of the profession which should enjoy the trust of the society and inspire confidence of all the stakeholders.

DC is also aware of the fact that the IP himself came forward and sought permission to make public announcement belatedly though there is no such provision. Further, non-compliance of law is not tolerable, however, coming forward at his own deserves some leniency.

- 5.2 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) and (8) of Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016, issues the following directions:
- 5.2.1 The DC hereby imposes on Mr. Tarun Jaggi a monetary penalty of Rs. 1,00,000/- (Rs. One Lakh only) and directs him to deposit the penalty amount by a crossed demand draft payable in favour of the 'Insolvency and Bankruptcy Board of India'. The Board in turn shall deposit the penalty amount in the Consolidated Fund of India.
- 5.2.2 Mr. Tarun Jaggi shall not accept any new assignment as an IP till he deposits the monetary penalty of Rs. 1,00,000/- (Rs. One Lakh only) with the Board and produces evidence to the Board of such deposit.
- 5.3 This Order shall come into force on expiry of 30 days from the date of its issue.
- 5.4 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Tarun Jaggi is enrolled as a member.
- 5.5 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.
- 5.6 Accordingly, the show cause notice is disposed of.

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(Dr. Navrang Saini)
Whole Time Member, IBBI

Dated: 20.03.2020
Place: New Delhi