

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
(Disciplinary Committee)

No. IBBI/DC/61/2020

17<sup>th</sup> December 2020

**Order**

**In the matter of Mr. Venkata Sivakumar, 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/2020/2 dated 28<sup>th</sup> August, 2020 issued to Mr. Venkata Sivakumar, No. 10/11, Dr. Subbarayan Nagar Main Road, Kodambakkam, Chennai, Tamil Nadu-600024 who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI (IPA) and an IP registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00184/2017-2018/10852.

**Background**

- 1.1 The IBBI had issued on 28<sup>th</sup> August, 2020, the SCN to Mr. Venkata Sivakumar for accepting the assignment as the Liquidator in the Corporate Insolvency Resolution Process (CIRP) of M/s The Jeypore Sugar Company Limited (CD) after 31<sup>st</sup> December, 2019 without holding a valid Authorisation for Assignment (AFA) from his IPA.
- 1.2 The IBBI referred the SCN, response of Mr. Sivakumar 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 e-hearing before the DC on 10<sup>th</sup> September, 2020.

**Show Cause Notice**

2. The SCN issued by IBBI alleged contraventions of sections 208(2)(a) & (e) of the Insolvency and Bankruptcy Code, 2016 (Code), regulations 7(2)(a) & (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 contained in the First Schedule of the IP Regulations for accepting the assignment as the Liquidator in the CIRP of the CD after 31<sup>st</sup> December, 2019 without holding a valid AFA from the IPA.

**Written and oral submissions by Mr. Venkata Sivakumar**

3. Mr. Sivakumar's submissions made in his written reply and during the course of personal hearing are summarized as follows.

- (i) Mr. Sivakumar was the Resolution Professional (RP) in the CIRP of the CD and was appointed as the Liquidator by the Hon'ble National Company Law Tribunal, Chennai Bench (AA) vide order dated 29<sup>th</sup> May, 2020.
- (ii) The provisions of AFA do not apply to this present matter since no new assignment was taken up by Mr. Sivakumar. He continued with the same assignment wherein he was the RP and now has been appointed as the Liquidator. Therefore, the provisions of Regulation 7A of the IP Regulations are not applicable.
- (iii) Mr. Sivakumar applied for AFA before the IPA, however, the same has been rejected.

### **Analysis and Findings**

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

4.1 The DC notes that the Regulation 7A of IP regulations requires every IP to have AFA before undertaking any assignment after 31<sup>st</sup> 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 condition 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. In other words, without AFA, an IP is not eligible to undertake any assignments or conduct various processes thereof. Regulation 7A was inserted in the IP Regulations vide notification dated 23<sup>rd</sup> July 2019.

4.3 The bye-laws of Indian Institute of Insolvency Professionals of ICAI 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 by the IPs to the IPA under para 12A of said bye-laws. An IP who is more than seventy years of age is ineligible to make an application for AFA under para 12A (2)(e) of the said bye-laws.

4.4 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.”*

4.5 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;”*

4.6 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.

5. In the present matter it is observed that, Mr. Sivakumar was appointed as Liquidator of the CD vide order of the AA dated 29<sup>th</sup> May, 2020. The date of Public Announcement of the Liquidation is 29<sup>th</sup> May, 2020. The notification published on 23<sup>rd</sup> July, 2019, *inter alia*, amended the IP Regulations and holding of AFA has been made one of the essentials for conducting various processes under the Code, to be effective from 1<sup>st</sup> January, 2020. Thus, adequate time was given to the Insolvency Professionals to obtain AFA. The DC notes that Mr. Sivakumar did not hold valid AFA even after more than four months from the date of enforcement of the provisions. The submission of Mr. Sivakumar that liquidation of the CD is not a new assignment is not tenable as the order for liquidation is separately passed under section 33 of the Code and liquidator is appointed subject to his consent as per section 34 of the Code. The CIRP and Liquidation process are entirely separate and require separate consent from the Insolvency Professionals. The public announcements with regard to both the processes

are published separately. Further, similar to CIRP, in the Liquidation process, under section 34 (2) of the Code, the powers of the Board of Directors, Key Managerial Persons etc., are vested in the Liquidator. Section 34(2) reads as under:

*“(2) On the appointment of a liquidator under this section, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.”*

The order of the AA, in this matter, dated 29<sup>th</sup> May, 2020 also provides as under:

*“The Resolution Professional expressed his willingness to continue as the liquidator and has also filed his written consent, which is placed along with the typed set to the application and a perusal of the same discloses the fact that the Resolution Professional is willing to act as the Liquidator of the Corporate Debtor, if appointed by this Tribunal. In the circumstances, V. Venkata Sivakumar, having Reg. No IBBI/IPA-001/IP-P00184/2017-18/10852 is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions.*

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon him.*
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.”*

Mr. Sivakumar has applied for AFA on 31<sup>st</sup> December, 2019 however, the same has not been granted. The DC finds that Mr. Sivakumar has contravened Regulation 7A of the IP Regulations by accepting the assignment as Liquidator of the CD after 31<sup>st</sup> December, 2019 without holding a valid AFA.

- 5.1 The DC finds that an order has been passed against Mr. Sivakumar on 1<sup>st</sup> December, 2020 by the Disciplinary Committee of IPA for accepting assignment as Liquidator after 31<sup>st</sup> December, 2019 without holding a valid AFA in the CIRP of the CD and it has been decided that Mr. Sivakumar is guilty of Professional Misconduct and a penalty of Rs 10,000/- has been imposed.

## **Order**

6. In view of the fact that the Disciplinary Committee of the Indian Institute of Insolvency Professional of ICAI has already passed order in this matter, 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.
- 6.1 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Venkata Sivakumar is enrolled as a member.

6.2 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.

7. Accordingly, the show cause notice is disposed of.

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(Dr. Mukulita Vijayawargiya)

Whole Time Member, IBBI

Date: 17<sup>th</sup> December 2020

Place: New Delhi