

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
(Disciplinary Committee)

No. IBBI/DC/55/2020

14<sup>th</sup> December 2020

**Order**

**In the matter of Mr. Ajay Gulati, 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/2020/10 dated 27<sup>th</sup> August, 2020 issued to Mr. Ajay Gulati, C-66, Shivalik, New Delhi -110017 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-P00943/2017-2018/11547.

- 1.1 The IBBI had issued on 27<sup>th</sup> August, 2020, the SCN to Mr. Ajay Gulati for accepting the assignment as the Interim Resolution Professional (IRP) in the Corporate Insolvency Resolution Process (CIRP) of Ardee City Estate Management Private Limited after 31<sup>st</sup> December 2019 without holding a valid Authorisation for Assignment (AFA) issued to him by his IPA.
- 1.2 Mr. Ajay Gulati submitted reply to the SCN dated 7<sup>th</sup> September, 2020. The IBBI referred the SCN, response of Mr. Ajay Gulati 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. The IP availed an opportunity of personal hearing before the DC on 9<sup>th</sup> September 2020.

**Show Cause Notice**

2. The SCN issued by IBBI alleged contraventions 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 contained in the First Schedule of the IP Regulations for accepting the assignment of the IRP in CIRP of Ardee City Estate Management Private Limited after 31<sup>st</sup> December 2019 for which public announcement was made on 15<sup>th</sup> January 2020 without holding a valid AFA from the IPA.

**Written and oral submissions by Mr. Ajay Gulati**

3. Mr. Gulati's submissions made in his written reply and in the course of personal hearing are summarized as follows:
  - 3.1 Mr. Gulati in his reply submitted that-

- (i) he had submitted his Consent Form on 05.02.2019, which was annexed to the application filed under section 9 of the Code by the Operational Creditor before the Hon'ble Adjudicating Authority (AA) and as on the date of issue of the Consent Form he was eligible to be appointed as IRP of the corporate debtor. Further, the application filed by the was heard by the AA on various dates and the order was reserved on 11.09.2019 but it was pronounced on 14.01.2020.
- (ii) He also submitted that there did not exist a requirement as provided in regulation 7A IP Regulations, for him to fulfill or meet with or comply as on the date of issue of Consent Form which could be considered as having an effect on his eligibility or permissibility to accept the assignment. The issuance of Consent Form is by itself an acceptance of an assignment and therefore, regulation 7A of IP Regulations and requirement to obtain AFA did not apply to and were not to be observed in relation to Consent Form issued to an IP on 05.02.2020 which is prior to 01.01.2020.
- (iii) Consent Form once issued by IP cannot be withdrawn by him, except with the leave of AA. Hence, the Consent Form did not permit Mr. Gulati to withdraw his consent and acceptance of the assignment once the CIRP proceedings had been directed against the corporate debtor.
- (iv) He further submitted that he had a bona fide belief that regulation 7A of IP Regulations which requires an IP to obtain AFA, did not apply to the assignment for the reasons that he had issued the Consent Form months earlier to date of applicability of IP Regulations and the bye-law 12A of the Bye-laws of Indian Institute of Insolvency Professionals of ICAI.
- (v) IPA has also issued the show cause notice dated 31.08.2020 and order dated 01.12.2020 has also been passed deciding that the Mr. Gulati is not guilty of Professional Misconduct.

### **Analysis and Findings**

4. The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of Mr. Gulati 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 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 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. 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 23<sup>rd</sup> July 2019, much before 31<sup>st</sup> December, 2019. Adequate time was given to the professionals to obtain AFA from respective IPAs.

- 4.3 The bye-laws of Indian Institute of Insolvency Professionals of ICAI defines in para 4(1)(aa) the expression “authorisation for assignment” means 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. An application for grant of AFA can be made to the IPA under para 12A of 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 The credibility of the processes under the Code depends upon the observance of the Code of conduct by the IRP/RP/Liquidator 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 *mala fide* or with negligence.

- 4.7 In the present matter it is observed that, Mr. Gulati had provided his consent to accept the assignment in Form-2 on 05.02.2019, prior to the amendment made to IP Regulations, vide notification dated 23.07.2019, for acceptance of assignment in matter CIRP of Ardee City Estate Management Private Limited before 31.12.2019 and the date of commencement of the CIRP is 14.01.2020.
- 4.8 The DC finds that an order has been issued against Mr. Gulati on 01.12.2020 by the Disciplinary Committee of IPA on the issue of accepting assignment as IRP after 31.12.2019 without holding a valid AFA in the matter of Ardee City Estate Management Private Limited and it has been decided that the Mr. Gulati is not guilty of Professional Misconduct.

### **Order**

5. In view of the fact that the Disciplinary Committee of the Indian Institute of Insolvency Professionals of ICAI has already passed the 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.
- 5.1 A copy of this Order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Gulati 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: 14<sup>th</sup> December 2020  
Place: New Delhi