

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/50/2020

4th December, 2020

Order

In the matter of Mr. Satinder Kapur, 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/2020/21 dated 28th August, 2020 issued to Mr. Satinder Kapur, Suite No. 10, 3rd Floor, 1 Link Road, Jangpura Extension, New Delhi - 110014, who is a Professional Member of the ICSI Institute of Insolvency Professionals (IPA) and an IP registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00302/2017-2018/10860.

- 1.1 The IBBI had issued the SCN to Mr. Satinder Kapur on 28th August, 2020 for accepting the assignment as a liquidator in voluntary liquidation process of Buffalogrid Project Private Limited after 31st December 2019 without holding a valid Authorization for Assignment (AFA) issued to him by his IPA.
- 1.2 Mr. Kapur submitted reply dated 5th September, 2020 to the SCN. The IBBI referred the SCN, response of Mr. Kapur 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 in virtual mode before the DC on 10th 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 liquidator in liquidation process of Buffalogrid Project Private Limited after 31st December, 2019 for which public announcement was made on 7th February, 2020 without holding a valid AFA from the IPA;

Written and oral submissions by Mr. Satinder Kapur

3. Mr. Kapur's submissions made in his written reply and during the course of personal hearing are summarized as follows:
 - (i) The requirement to obtain AFA is not applicable to him in the instant case as the acceptance for the present assignment to act as a liquidator was given by him on 28th August, 2019, i.e., before 31st December, 2019. Accordingly, he was under *bonafide* belief that AFA was not required and provisions of Regulation 7A of the said IP Regulations 2016 was not applicable at the time when acceptance was given for appointment as liquidator for voluntary liquidation of Buffalogrid Project Private Limited.
 - (ii) The error has occurred inadvertently and unintentionally resulting from misunderstanding of the newly incorporated provisions.
 - (iii) IPA has also issued the show cause notice dated 24th July, 2020 and order dated 7th September, 2020 has also been passed wherein warning has been issued to Mr. Kapur to be extremely careful and diligent and that he should act strictly as per law and similar action should not be repeated. Further, the IPA directed that Mr. Kapur shall not accept any new assignment without obtaining Authorization for Assignment.

Analysis and Findings

4. The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of Mr. Satinder Kapur 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 31st 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 authorization 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 23rd July, 2019, much before the cut-off date, i.e., 31st December, 2019. Adequate time was given to the professionals to obtain AFA from respective IPAs.

4.3 IPAs can issue authorization for assignment under regulation 12A of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, which reads as under:

“12A. Authorization for Assignment.

(1) The Agency, on an application of its professional member, may issue or renew an authorization for assignment.”

4.4 The Bye-Laws of ICSI Institute of Insolvency Professionals defines in para 4(1)(aa) the expression “Authorization for Assignment” as an authorization 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 to the IPA under para 12A of said Bye laws.

4.5 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.”

4.6 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;”

4.7 The credibility of the processes under the Code hinges upon the conduct and competence of the IP. 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.

- 4.8 In the present matter, Mr. Kapur accepted the assignment as a liquidator in the matter of voluntary liquidation of Buffalogrid Project Private Limited on 28th August, 2019, i.e., before 31st December, 2019, the date on which the said Regulation 7A of the IP Regulations came into force. The Buffalogrid Project Private Limited in its Extra-Ordinary General meeting held on 3rd February, 2020 passed a resolution for voluntary liquidation and on this date his appointment as a liquidator was confirmed.
- 4.9 The DC finds that an order has been passed by the Disciplinary Committee of IPA against Mr. Kapur on 7th September, 2020 wherein it has been mentioned that the Mr. Kapur accepted the assignment on 4th September, 2019. However, on examination of the documents placed on record, the DC finds that the date of acceptance is 28th August, 2019 while the order of Disciplinary Committee of IPA mentions the date of acceptance as 4th September, 2019, which appears to be incorrect.
- 4.10 The Disciplinary Committee of IPA *vide* aforementioned order issued warning to Mr. Kapur to be extremely careful and diligent and that he should act strictly as per law and similar action should not be repeated. IPA further directed that Mr. Kapur shall not accept any new assignment without obtaining Authorisation for Assignment.

Order

5. In view of the fact that ICSI Institute of Insolvency Professionals has already taken disciplinary action against Mr. Satinder Kapur, 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 against Mr. Satinder Kapur.
- 5.1 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Satinder Kapur 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: 4th December, 2020
Place: New Delhi