

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/58/2020

15th December 2020

Order

In the matter of Mr. Abhay Narayan Manudhane, 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/2020/11 dated 27th August, 2020 issued to Mr. Abhay Narayan Manudhane, 201, Shubh Ashish, 129, Model Town, Four Bungalows, Andheri West, Mumbai-400053 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-P00054/2017-2018/10128.

Background

- 1.1 The IBBI had issued on 27th August, 2020, the SCN to Mr. Abhay Narayan Manudhane for accepting the assignment as the Resolution Professional (RP) in the Corporate Insolvency Resolution Process (CIRP) of Housing Development and Infrastructure Limited (CD) after 31st December, 2019 without holding a valid Authorisation for Assignment (AFA) from his IPA.
- 1.2 Mr. Manudhane submitted reply to the SCN on 4th September, 2020. The IBBI referred the SCN, response of Mr. Manudhane 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 e-hearing before the DC on 10th 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 RP in the CIRP of the CD after 31st December, 2019 without holding a valid AFA from the IPA.

Written and oral submissions by Mr. Abhay Narayan Manudhane

3. Mr. Manudhane's submissions made in his written reply and during the course of personal hearing are summarized as follows.
 - (i) Mr. Manudhane given his consent to act as IRP in the CIRP of the CD on 10th

December, 2018 and based on the same, Bank of India had filed an application under section 7 of the Code before Hon'ble National Company Law Tribunal (AA). The AA admitted the application and the CIRP commenced on 20th August, 2019.

- (ii) An appeal before the Hon'ble National Company Law Appellate Tribunal (NCLAT) against the admission order of the AA was filed by the erstwhile Chairman of the CD. The NCLAT admitted the appeal on 3rd September, 2019 and directed that, "*with a view to give opportunity to Chairman of HDIL to settle claim of Bank of India, the IRP not to constitute Committee of Creditors (CoC) till next date*". This direction was vacated by the NCLAT vide order dated 17th December 2020. The 106 days lost during this process were excluded from the CIRP by the AA vide order dated 17th February, 2020.
- (iii) In the first Committee of Creditors (CoC) meeting held on 8th January, 2020, the CoC ratified the appointment of Mr. Manudhane as RP.
- (iv) Since the provision relating to AFA was newly inserted and made effective on 1st January, 2020, Mr. Manudhane was under the impression that it is not applicable for the ratification to act as RP. In early February 2020, when he viewed the provision of AFA on the IBBI Portal, he realized his error and immediately filled up the application for AFA.

Analysis and Findings

4. The DC after taking into consideration the SCN, the reply to SCN of Mr. Manudhane 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 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 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 23rd 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 70 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. Manudhane had provided his consent to accept the assignment as IRP in Form-2 on 10th December, 2018 in the CIRP of the CD and the date of commencement of the CIRP is 20th August, 2019. However, it is also observed that Mr. Manudhane was ratified as RP in the CIRP of the CD in the 1st meeting of the CoC held on 8th January, 2020, *i.e.*, after the threshold date of 31st

December, 2019 without having a valid AFA. Mr. Manudhane has submitted that since the provision relating to AFA was newly inserted and made effective on 1st January, 2020, he was under the impression that it is not applicable for the ratification to act as RP. In early February 2020, when he viewed the provision of AFA on the IBBI Portal, he realized his error. Subsequently, he has applied for AFA but the same has not been granted to Mr. Manudhane till date.

5.1 The DC finds that an order has been passed against Mr. Manudhane on 1st December, 2020 by the Disciplinary Committee of IPA for accepting assignment as Resolution Professional after 31st December, 2019 without holding a valid AFA in the CIRP of the CD and it has been decided that Mr. Manudhane 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. Abhay Narayan Manudhane 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: 15th December 2020

Place: New Delhi