

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/177/2023

8th June 2023

ORDER

In the matter of Ms. Sonu Jain, Insolvency Professional (IP) under Section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016, and Regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No. Liq-12011/80/2022-IBBI/ 733/ 502 dated 10.04.2023, issued to Ms. Sonu Jain (hereinafter referred to as “IP/ Liquidator”) who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00575/2017-2018/11016.

1. Background

- 1.1 The National Company Law Tribunal, Kolkata Bench, (AA) had admitted the application under section 9 of the Code for Corporate Insolvency Resolution Process (CIRP) of M/s Flower Dealcom Private Limited (CD) vide order dated 16.05.2018 and Ms. Sonu Jain was appointed as Interim Resolution Professional (IRP) *vide* the same order. The name of Ms. Sonu Jain was confirmed as RP on 18.06.2018. The order for liquidation of the CD was passed on 14.11.2018 and Ms. Sonu Jain was appointed as liquidator *vide* the same order.
- 1.2 The IBBI, in exercise of its powers under section 218 of the Code read with regulations 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017, appointed an Investigating Authority (IA) to conduct the investigation in the matter of liquidation process of the CD. The IA served a notice of investigation to the IP on 26.07.2022. Pursuant to the said notice, Ms. Sonu Jain submitted her reply through email dated 01.08.2022. The IA submitted the Investigation Report to the IBBI on 05.01.2023. The IBBI issued the SCN to Ms. Sonu Jain on 10.04.2023 based on findings in the Investigation Report in respect of her role as Liquidator of the CD. Ms. Sonu Jain submitted her reply dated 24.04.2023 to the SCN dated 10.04.2023.
- 1.3 The IBBI referred the SCN, the response of the Liquidator 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 Liquidator availed the opportunity of personal hearing through virtual mode before the DC on 01.06.2023.

2. Alleged Contraventions, Submissions of IP, and Findings

The contraventions alleged in the SCN and submissions by Ms. Sonu Jain are summarized as under:

Contravention

3. Lack of efforts in realization against the investment made by the CD

- 3.1 The Board has observed from the multiple progress reports filed by Ms. Sonu Jain (hereinafter referred to as “Liquidator”, that the investments were made by the CD in five unlisted companies viz. (a) Eagle Vinimay Private Limited, (b) J.S. Trading & Finance Private Limited, (c) Jagmata Dealtrade Private Limited, (d) Poonam Resources Private Limited, and (e) S Rahul Rubber Manufacturing Private Limited. As per Liquidator’s reply to IA and as per the valuation report, the value of the investment in these companies was to the tune of Rs. 10 crores (approx.).
- 3.2 It is also mentioned in the 13th progress report that no action has been taken by the Liquidator for the realization of investments made by the CD in the above-mentioned companies except notices issued to these companies during the 3 years of the liquidation process and no application was filed before AA to ensure action. The AA in this regard made a similar observation in its order dated 01.03.2022 for the dissolution of the CD.
- 3.3 It is a primary duty cast upon the liquidator under section 35 (1)(d) of the Code to take such measures to protect and preserve the assets and properties of the CD as he/she considers necessary. Further, Regulation 39 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Regulations) provides that the liquidator shall endeavor to recover and realize all assets of and dues to the CD in a time-bound manner for maximization of value for the stakeholders.
- 3.4 In view of the above, the Board is of the prima facie view that the Liquidator has contravened provisions of Sections 35(1)(d) & (o), 208(2)(a) & (e) of the Code, Regulation 39 of the Liquidation Regulations and Regulation 7(2)(a) and (h) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clauses 1, 2 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Submission of the Liquidator

- 3.5 The Liquidator has submitted that the investment made by the CD in the aforesaid five companies was a bogus investment. The Investments had been recorded in the Books of the CD only, in fact, no share certificates were issued by the aforesaid companies for the investment. Moreover, the CD’s name is not showing in the list of shareholders in the four companies viz. (i) Eagle Vinimay Private Limited (ii) J. S. Trading and Finance Pvt. Ltd. (iii) Jagmata Dealtrade Private Limited, and (iv) Poonam Resource Private

Limited.

- 3.6 The Liquidator has also submitted that as per the Balance Sheet dated 31.03.2015 of the CD, an investment of Rs. 2,00,00,000/- is not showing for the shares in S Rahul Rubber Manufacturing Pvt. Ltd. But at the same time in the Balance Sheet dated 31.03.2015 of S Rahul Rubber Manufacturing Pvt. Ltd (Ms. Rahul) is showing the entry of Rs. 2,00,00,000/- in the name of the CD as shareholders. How it can be possible that the balance sheet of the CD as on 31.05.2015 not showing any investment in M/s Rahul, but the balance sheet as on 31.03.2015 of M/s Rahul is showing an investment in the name of the CD?
- 3.7 The Liquidator also submitted that in the Balance Sheet year ending 31.03.2016 the investment of 20,000 shares is showing in M/s Rahul, but no amount had been transferred for investment in the shares from the bank account of the CD between 01.04.2015 to 31.03.2016. How the shares can be issued without the amount being transferred to M/s Rahul?
- 3.8 The Liquidator has also submitted that these companies were managed by the Auditor and Operational Creditor of the CD and situated at 2B, Grant Lane, 2nd Floor, Room No. 74, Kolkata, West Bengal, 700 012, which is the registered address of CA Arun Jain.
- 3.9 CA Arun Kumar Jain, Auditor of the CD was handling all the investment Companies & was involved in PUFEE Transactions. In fact shares were never issued and the amount was never transferred for investment in these companies. Hence, Liquidator could not realize the same.
- 3.10 The Liquidator has also submitted that various letters were sent to these companies for providing the share certificates, moreover, the Liquidator had personally visited the office of these Companies multiple times for extracting the details of the share certificates. But Liquidator did not receive any share certificates or other details. Even the AA vide order dated 25.11.2021 instructed the registry to issue the notice to these companies to appear physically on the next date of hearing but no one appeared on behalf of these companies before the AA on the next date of hearing.
- 3.11 As per the valuation report of Sandeep Kumar Goswami (as per page No. 3 observations no. 5) wherein it is recorded that the CD does not have any other realizable fixed assets and hence liquidation value may be taken as a Nil. The certificate from Rakesh Kumar Aggarwal- Second Valuer in this matter was obtained wherein it is clearly mentioned that there is no scope of realization of the investment, so the liquidation value is Nil.
- 3.12 She submitted that as Liquidator she had not contravened the provisions of sections 35 (1) (d) & (o), 208 (a) & (e) of the Code, Regulation 39 of the Liquidation Regulations and Regulation 7 (2) (a) & (e) of the IP Regulations read with clauses 1, 2, and 14 of the Code of Conduct as specified in the first Schedule of IP Regulations (Code of

Conduct) as there was no possibility of realization of the investments as showing in the balance sheet of the CD.

Analysis and Finding

- 3.13 It is noted that Liquidator had made several attempts to retrieve the value from the investments made by the CD. She sent various letters to the Companies viz. Eagle Vinimay Private Limited (ii) J. S. Trading and Finance Pvt. Ltd. (iii) Jagmata Dealtrade Private Limited, and (iv) Poonam Resource Private Limited, and (v) S Rahul Rubber Manufacturing Private Limited vide letter/ email dated 31.08.2019 (as an RP) thereafter on 30.12.2021. The Liquidator again sent emails to these companies on 20.01.2022, 22.01.2022, and 09.02.2022, the copies of the email and proof of deliveries are also annexed with the reply to the SCN. The Liquidator got the notices issued from AA to the aforesaid five companies, but nobody appeared for these companies.
- 3.14 DC notes that both the valuers in their report clearly mentioned that the company did not recognize any income from investment during the year 2016-17 and 2017-18 & till 15.05.2018 from the investment of Rs. 10 crores. Further it is mentioned that the CD does not have any other realizable assets and there is no scope of realization of the investment hence the liquidation value was taken as Nil.
- 3.15 DC further notes the submission of Ms. Sonu Jain that she had intimated NCLT under section 66 of the Code and she also informed Income Tax Authority about such transactions.
- 3.16 Hence, it appears that circumstances have been such that she could not do much to get the funds back as evidentiary money trail was not available with her. Owing to this, on this count, DC is inclined to take a lenient view.

4. Non-opening of Liquidation Bank Account

- 4.1 It is observed on perusal of AA's order dated 01.03.2022 that the Liquidator failed to open a bank account of the CD as required under Regulation 41(1) of the Liquidation Regulations. In Liquidator's reply to the IA, she has admitted to not having opened a Bank account after the initiation of the liquidation process of the CD.
- 4.2 Regulation 41(1) of the Liquidation Regulations provides that the liquidator shall open a bank account in the name of the CD followed by the words 'in liquidation', in a scheduled bank, for the receipt of all payments due to the CD.
- 4.3 In view of the above, the Board is of the prima facie view that the Liquidator has contravened provisions of 208(2)(a) & (c) of the Code and Regulation 41(1) of the Liquidation Regulations.

Submission of the Liquidator

- 4.4 The Liquidator has submitted that there was not a single penny available with the CD, hence it was not possible to open the Bank Account. When Liquidator approached Union Bank of India to open a Bank account, the Bank official stated that minimum amount of Rs. 10,000/- has to be deposited for opening the Bank Account.
- 4.5 The Liquidator further submitted that she had not received any amount either during the CIRP or during Liquidation (CIRP Costs or Liquidation costs or IRP/ Liquidator fee) even though she had complied with all the applicable provisions of the Code and Regulations. Since there was no fund with CD, she could not deposit Rs.10,000(Rupees ten thousand only) for opening the Bank account and for this reason Bank account could not be opened.

Analysis and Findings

- 4.6 The requirements related to compliances are supposed to be known to the professional while taking the assignment. Therefore, one can't shield behind non availability of funds as a valid reason for not opening the account. Thus IP was duty bound to open the account and for facilitating the same she should have persuaded the OC for contributing this token amount.

5. Excessive Delay in conducting the liquidation process:

- 5.1 The Board has observed that the liquidation process was initiated vide order dated 14.11.2018 by the AA wherein Ms. Sonu Jain (the Liquidator) was also appointed as Liquidator. It is noted that in Liquidator's reply to IA dated 01.08.2022, the Liquidator had informed that there was no cash flow in the CD and she was bearing all the expenses out of her own pocket. Further, as per the 13th Progress Report it is observed that besides the investment in the 5 Companies, there were no other realizable assets. It is also mentioned in the progress report that on 03.09.2019, 10.12.2019, and 20.12.2019 the Liquidator was instructed to file an application for dissolution and in the 8th Progress Report dated 30.09.2020 the Liquidator was also of the opinion that an application for dissolution should be filed.
- 5.2 Further, no substantial action was taken by the Liquidator during the liquidation process except for issuing the public announcement, and notices to the five unlisted companies were sent for the realization of investments. However, it is observed that no effort has been made on the Liquidator's part for early dissolution even when the realizable properties of the CD were insufficient to cover the cost of the liquidation process. The dissolution application was filed only on 12.11.2020 after a period of 911 days from the liquidation initiation even when it was clear that there were no realizable assets.
- 5.3 In view of the above, the Board is of the prima facie view that the Liquidator has contravened provisions of Sections 35(1)(o) of the Code, Regulations 14 and 44 of the Liquidation Regulations, Regulation 7(2)(a) & (h) of the IP Regulations read with

clause 13 of the Code of Conduct of the said IP Regulations.

Submission of the Liquidator

- 5.4 The Liquidator has submitted that the AA on 03.09.2019, 20.11.2019, and 10.12.2019 had directed the Liquidator to file the dissolution application, but during the complete lockdown due to Covid-19 pandemic her office was closed. The dissolution Application was filed on 12.11.2020 only after a delay of 85 days but it was within 2 years of liquidation order.
- 5.5 The Liquidator has further submitted that the Hon'ble Supreme Court vide order dated 10.01.2022 had excluded the period from 15.03.2020 to 28.02.2022 for computing the period prescribed under section 23 (4) and 29A of the Arbitration & Conciliation Act, 1996, Section 12 of the Commercial Court Act, 2015 and provisions (b) and (c) of section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribed periods(s) of limitation for instituting proceedings out of limits (which the court or tribunal can condone delay). Hence, after excluding the Covid-19 period as per the Supreme Court order from 15.03.2020 to 12.11.2020 (the date of filing the dissolution application) only 85 days of delay have happened for filing the dissolution application because the Liquidator had no money for filing the dissolution application.
- 5.6 The Liquidator further submitted that she approached the Operational Creditor for payment for filing the dissolution application, but they did not give any money. The Delay in filing the dissolution application is unintentional due to not having funds for filing the dissolution application.
- 5.7 The Liquidator also stated that in the hearing dated 01.09.2021, the AA rejected the application of dissolution which was filed on 12.11.2020 on the grounds that investment is there in the 5 companies & liquidator should realize it. The AA also directed the registry to issue a notice to the investing companies to appear physically on the next date of hearing, but no one appeared on behalf of the investing companies on the next date of hearing i.e., 28.12.2021 even after the direction of the AA, thereafter, the AA had passed an order of dissolution on 14.02.2020.

Analysis and Finding

- 5.8 The Liquidator has admitted in her reply that AA directed Ms. Sonu Jain on 03.09.2019, 20.11.2019, and again on 10.12.2019 for filing dissolution application, but the dissolution application was filed on 12.11.2020. The Liquidator took plea of lockdown for delay in filing application for dissolution. The plea of the Liquidator cannot be accepted in view of the fact that AA had directed for filing dissolution application in the month of November 2019, whereas lockdown had been imposed in the month of March 2020. Hence DC finds that dereliction of duty on the part of the Liquidator is evident in not filing application for dissolution, in compliance of the order passed by AA.

6. Order

- 6.1 In view of the foregoing discussion, the DC, in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 disposes of the SCN with warning to Ms. Sonu Jain to be more careful and vigilant in complying with the directions issued by AA in her existing as well as future assignments. It is noted that in few instances earlier also Ms. Sonu Jain has been found in erring in her judgements. Therefore, Ms Jain, henceforth required to extend rigorous due diligence on her handling of various procedures being performed by her under the Code.
- 6.2 This Order shall come into force with immediate effect in view of para 6.1 of the order.
- 6.3 A copy of this order shall be forwarded to The Indian Institute of Insolvency Professionals of ICAI where Ms. Sonu Jain is enrolled as a member.
- 6.4 A copy of this shall be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.
- 6.5 Accordingly, the show cause notice is disposed of.

Dated: 8th June, 2023
Place: New Delhi

Sd/
(Sudhaker Shukla)
Whole Time Member, IBBI