

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

No. IBBI/Ref-Disc.Comm./02/2018

13th April, 2018

Order

(under sub-regulation (7) of regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016)

The Insolvency and Bankruptcy Board of India (Board) issued a show cause notice (SCN) dated 29th January, 2018 to Mr. Dhaivat Anjaria, PWC House, 252, Veer Savarkar Road, Shivaji Park, Dadar, Mumbai City, Maharashtra - 400028, who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI, and an Insolvency Professional (IP) [Regn. No. IBBI/IPA-001/IP-P00088/2017-2018/10184] in respect of his services as Interim Resolution Professional (IRP) / Resolution Professional (RP) in the matter of Electrosteel Steels Limited [C. P. (IB) No.361/KB/2017]. Mr. Anjaria responded to the SCN vide his communication dated 5th February, 2018.

2. The Board referred the said SCN alongwith response of Mr. Anjaria to the Disciplinary Committee. Vide letter dated 20th March, 2018, the Disciplinary Committee offered Mr. Anjaria an opportunity of personal hearing on 5th April, 2018 before it. Mr. Anjaria, vide his mail dated 28th March, 2018 responded: “ .., I hope that a personal hearing with the disciplinary committee is not necessary. However, vide communication dated 5th April, 2018, Mr. Anjaria responded: “ ... I am travelling to Delhi today to attend the same (hearing) at 330 pm today along with my advisers”. Accordingly, he appeared for the hearing.

3. I have carefully gone through the SCN, response of Mr. Anjaria to the SCN and other material available on record. I note that that the corporate insolvency resolution process (CIRP) of the corporate debtor, Electrosteel Steels Limited commenced on 21st July, 2017. Mr. Anjaria was appointed as Interim Resolution Professional (IRP) by the Hon'ble Adjudicating Authority. He issued a public announcement on 21st July, 2017 which invited claims by 4th August, 2017 and stated that estimated date of closure of the CIRP is 16th January, 2018. In response to the public announcement, M/s National Sales (Claimant), a proprietorship firm, submitted a claim on 16th August, 2018. The IRP did neither include the claim in the list of operational creditors nor respond to the claimant. The claimant resubmitted the same claim on 3rd October, 2017. It met the same fate. As the IRP failed and neglected to consider the claim, the claimant submitted a complaint to the Board seeking a direction under section 196(g) of the Insolvency and Bankruptcy Code, 2016 (Code) to Mr. Anjaria.

4. I note that the Board, after receipt of the said complaint, sought clarifications from Mr. Anjaria on the complaint vide email dated 17th November, 2017. The Board followed up for a response vide emails dated 21st December, 2017 and 3rd January, 2018. Since Mr. Anjaria failed and neglected to respond to three communications of the Board and the CIRP was to close on 16th January, 2018, the Board issued the SCN on 29th January, 2018 “*to show cause as why disciplinary action should not be initiated against him for failure to respond to the clarifications sought through various mails by IBBI*”.

5. Mr. Anjaria responded vide his communication dated 5th February, 2018 stating that the claim of the claimant was a subject matter of an ongoing legal proceedings. Therefore, he filed an application on 9th January, 2018 before the Adjudicating Authority seeking guidance on admission of disputed claims. Based on the directions of the Adjudicating Authority, he

accorded a hearing to the claimant on 25th January, 2018 and admitted the claim. However, he could not respond to the Board previously as he was taking all steps to address concerns and issues raised by claimants.

6. The CIRP is a time bound process. Failure to complete CIRP within the specified period has severe consequences on stakeholders. Section 23 of the Code mandates the resolution professional to conduct the entire CIRP and manage the operations of the corporate debtor during the CIRP period. The process entails verification of claims, preparation of information memorandum, access to relevant information, examination of resolution plan, etc. Clause 13 of the Code of Conduct for IPs under the IBBI (Insolvency Professionals) Regulations, 2016 mandate an IP to adhere to the timelines specified in the Code and rules, regulations and guidelines thereunder for insolvency resolution. It also mandates an IP to promptly communicate with all stakeholders involved for the timely discharge of his duties. and each of the steps in a CIRP.

7. Section 18(1)(b) of the Code, *inter alia*, provides that an IRP shall collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor and receive and collate all the claims submitted by creditors to him, pursuant to the public announcement. Section 29 of the Code requires the resolution professional to prepare an information memorandum containing relevant information and to provide to resolution applicant access to all relevant information. For this purpose, relevant information means the information required by the resolution applicant for preparation of the resolution plan for the corporate debtor. The financial position and claims are key inputs to the information memorandum and are relevant information for preparation of resolution plan. If a claim is not considered, it has potential to derail the implementation of the resolution plan and thereby frustrate the objective of the Code.

8. In this matter, I find that-

- (i) Mr. Anjaria, as IRP, did not consider the claim of the claimant. He did not even respond to him. He was subsequently appointed as RP on 21st August, 2018. As RP, he did neither consider the claim nor respond to the complainant. He utterly disregarded his statutory duty under section 18(1)(b) of the Code, which mandates him to receive and collate all claims. He contravened the provisions of section 18(1) (b) of the Code.
- (ii) The CIRP was estimated to close on 16th January 2018. Mr. Anjaria disregarded the claim of the claimant and remained incommunicative. He sent a mail on 22nd January, 2018, that is, after the estimated closure date of CIRP, to the claimant, based on guidance of the Adjudicating Authority. Therefore, Mr. Anjaria disregarded the timeline provided under the Code and thereby contravened clause 13 of the Code of Conduct which mandates him to adhere to timeline.
- (iii) Mr. Anjaria repeatedly failed to respond to the claimant despite follow up. It is no excuse that he was otherwise busy. If he does not have resources to manage a CIRP in time, he should not take up an assignment. Thus, Mr. Anjaria contravened clause 13 of the Code of Conduct which requires him to promptly communicate to his stakeholders.
- (iv) Mr. Anjaria also disregarded repeated requests of the Board for a response on the complaint. He responded to the Board only after a show cause notice was issued to him. He made the stakeholder as well as the Board helpless. It is unbecoming of a professional to ignore repeated requests of the claimant and the Board for the entire CIRP period. Therefore, he failed to comply with the provisions of section 196(1)(g) and (h) of the Code which empowers the Board to monitor the performance of an IP and call for information and records from an IP. He also failed to comply with clauses 1 and 19 of the code of Conduct which require an IP to be honest, straight forward and forthright and to provide all information and records, as may be required by the Board.

- (v) Failure to consider a claim not only deprives the claimant of his rights, but also deprives the potential resolution applicants to have complete information required to submit a complete resolution plan. While implementing the resolution plan, if the resolution applicant discovers a liability to a claimant which has not been factored into the plan, the resolution plan will be frustrated. This failure on the part of Mr. Anjaria is serious dereliction of the duty cast on an IP under section 23 read with section 25(2)(e) and 29 of the Code and regulation 36 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This has potential to vitiate the entire CIRP and frustrate the objectives of the Code.
- (vi) Mr. Anjaria is required under section 208(2)(d) of the Code to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board. He did not provide a copy of the proceeding to the Board.

9. I, therefore, find that Mr. Anjaria contravened the following provisions of-

- (a) Sections 18(1)(b), 23, 25(2)(e), 29, 196(1)(g) and (h) and 208(2)(d) of the Code.
- (b) Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016; and
- (c) Paragraphs 1, 13, 14 and 19 of the Code of Conduct in First Schedule of the IBBI (Insolvency Professionals) Regulations, 2016.

10. Section 220(3) of the Code envisages a penalty which can be three times the amount of loss caused or likely to have been caused to the person concerned. In this case, Mr. Anjaria ultimately admitted a claim of Rs. 72,09,150/-. Thus, Rs. 72,09,150/- is the amount of loss likely to have been caused to the claimant, ignoring for a moment the potential damage to the resolution plan. Considering the fact that Mr. Anjaria is new to the insolvency profession and the claim was ultimately admitted, a penalty equal to one tenth of the total fee payable to him as IRP and RP in the CIRP of Electrosteel Steels Ltd. would meet the ends of justice.

11. I, therefore, in exercise of the powers conferred under section 220 (2) of the Code read with sub-regulation (8) of regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016, hereby, impose a monetary penalty equal to one tenth of the total fee payable to him as IRP and RP in the CIRP of Electrosteel Steels Ltd. Mr. Anjaria shall deposit the penalty amount by a crossed demand draft payable in favour of the Insolvency and Bankruptcy Board of India within 30 days of the issue of this order. The Board in turn shall deposit the penalty amount in the Consolidated Fund of India. Accordingly, the show cause notice is disposed of.

12. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI of which Mr. Anjaria is a professional member.

Sd/-

Date: 13.04.2018
Place: New Delhi

(Dr. Mukulita Vijayawargiya)
Disciplinary Committee and Whole Time Member