

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)**

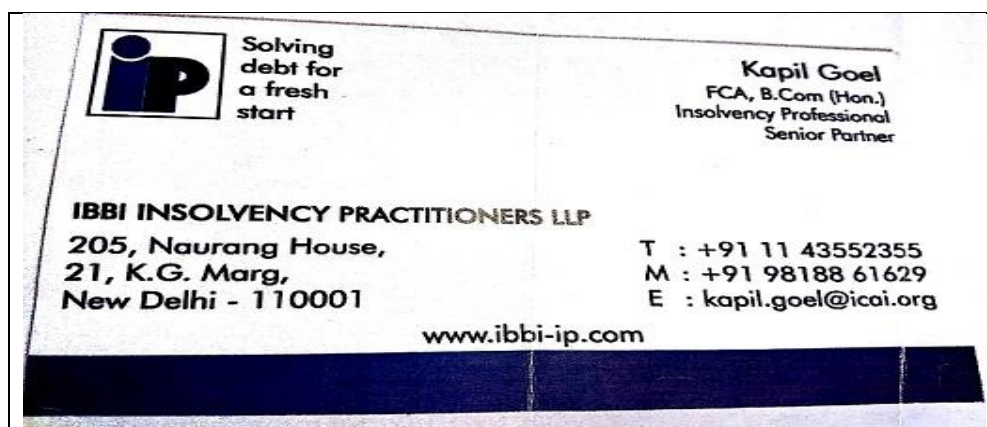
No. IBBI/DC/09/2018
6th September, 2018

ORDER

In the matter of Mr. Kapil Goel, Insolvency Professional under sub - regulations (7) and (8) of regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016

1. BACKGROUND

- 1.1 The Insolvency and Bankruptcy Board of India (Board) issued a show-cause notice dated 23rd March, 2018 (SCN) to Mr. Kapil Goel, 205, Naurang House, 21 KG Marg, New Delhi – 110001. Mr. Goel is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional registered with the Board with registration number IBBI/IPA-001/IP-P00625/2017-2018/11081. Mr. Goel responded to the SCN vide his reply dated 3rd April, 2018. The Board referred the SCN, response of Mr. Goel to the SCN and other material available on record to the Disciplinary Committee (DC).
- 1.2 From material available on record, the DC notes the following sequence of events leading to the issuance of the SCN:
- 1.2.1 Mr. Goel was registered as an insolvency professional by the Board on 28th September, 2017.
- 1.2.2 Mr. Goel, along with Mr. Tilak Raj Chawla, incorporated an LLP with the name “IBBI Insolvency Practitioners LLP” on 8th November, 2017.
- 1.2.3 An anonymous paper indicating the name “IBBI Insolvency Practitioners LLP” and its website ‘www.ibbi-ip.com’ was received in the IBBI. The same is reproduced as under:



- 1.2.4 The Board from the Company Master Data on the website of the Ministry of Corporate Affairs, found that Mr. Kapil Goel along with Mr. Tilak Raj Chawla had incorporated on 8th November, 2017 a Limited Liability Partnership having its name as “IBBI Insolvency Practitioners LLP” (LLP).

- 1.2.5 The Board then sought a clarification from Mr. Goel vide letter dated 25th January, 2018 as to how and under what authority the abbreviated name of the Board had been used in the name of LLP “IBBI Insolvency Practitioners LLP” incorporated by him, as this gave a misleading impression that the LLP has been incorporated by the IBBI or is in some way related to the Board.
- 1.2.6 Mr. Goel, vide letter dated 12th February, 2018, submitted that the use of the abbreviation “IBBI” was without any intention and motive to gain any material benefits. He further submitted that after receipt of the letter from the Board, he had made an application to the Registrar of Companies (RoC) on 9th February, 2018 to change the name of the said LLP to “XPRT Insolvency Practitioners LLP”.
- 1.2.7 After about a month, the Board verified the Company Master Data on the website of the Ministry of Corporate Affairs whether the expression ‘IBBI’ has been dropped from the name ‘IBBI Insolvency Practitioners LLP’ or not. Since it was not done, the Board, vide e-mail dated 9th March, 2018, again sought reasons for delay from Mr. Goel.
- 1.2.8 Mr. Goel, vide mail dated 10th March, 2018 informed the Board that the RoC has raised objections in the form for change of name and he has filed a fresh form for the same on 7th March, 2018.
- 1.2.9 Mr. Goel, vide a mail dated 15th March, 2018, forwarded a communication dated 15th March, 2018 received by him from the Registrar of Companies, objecting to the form submitted by him for rectification of name.
- 1.2.10 On consideration of the responses of Mr. Goel on the clarifications sought by the Board and record of the Company Master Data on the Ministry of Corporate Affairs website and other material available on record, the Board formed a *prima facie* opinion that Mr. Goel has contravened provisions of regulation 7(2)(b) and clause 1 and 2 of Code of conduct in the First schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016. Accordingly, it issued the SCN under regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (Regulations) on 23rd March, 2018, asking him to show cause why suitable actions permissible under section 220(2) of the Code, including cancellation of registration, should not be taken against him.
- 1.2.11 Mr. Goel responded to the SCN, vide e-mail dated 3rd April, 2018, and availed of an opportunity of personal hearing on 23rd April, 2018.

2. Show Cause Notice

The DC notes the following from the SCN:

- (a) The use of the word “IBBI” in the name of the LLP is misleading, as it gave an impression that the LLP had been incorporated by the IBBI or is in some way associated with the Board.
- (b) The submission of Mr. Goel that he used the abbreviation ‘IBBI’ without any intention and motive to gain material benefit was *prima facie* not acceptable from a qualified Chartered Accountant and a registered insolvency professional.
- (c) Even after advice by the Board, the Company Master data on the website of the MCA continued to display the name “IBBI Insolvency Practitioners LLP”.

- (d) The failure of Mr. Goel to change the name of the LLP despite repeated requests by the Board casts serious doubts on his intention as well as the understanding of the law by Mr. Goel.
- (e) Clause 2 of the First Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 states that an insolvency professional must not represent any facts or situations and should refrain from being involved in any action that would bring disrepute to the profession.
- (f) Mr Goel has contravened the provisions of regulation 7(2) (b) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and clauses 1 and 2 of the Code of Conduct in the First Schedule thereof.

3. Submissions by Mr. Goel

A summary of submissions made by Mr. Goel in reply dated 3rd and 4th April, 2018, and oral submissions made on 23rd April, 2018 is as under:

- (a) He used the abbreviation 'IBBI' without any intention and motive to gain material benefit.
- (b) The LLP has not gained any material benefit out of the name.
- (c) An application has been made to the Registrar of Companies (RoC) for a change of name of the LLP.
- (d) As objections were raised by the RoC on 9th February, 2018 with regard to the form for change of the name of the LLP, Mr. Goel resubmitted the form on 7th March, 2018.
- (e) That the name of "IBBI Insolvency Practitioners LLP" has been proposed to be changed to "XPRT Insolvency Practitioners LLP".

4. Analysis and Findings

4.1 The DC has carefully considered the SCN, written and oral submissions of Mr. Goel and other material available on record and finds as follows:

- (a) It is an undisputed fact that the Insolvency and Bankruptcy Board of India is a statutory body. For any purpose under the Code, by custom and practice, the abbreviation 'IBBI' stands for the Insolvency and Bankruptcy Board of India. For all practical purposes 'IBBI' denotes the Board. The market has been using the terms 'IBBI', the Board, and the Insolvency and Bankruptcy Board of India interchangeably. The website of the Board is www.ibbi.gov.in.
- (b) "IBBI Insolvency Practitioners LLP" is not promoted by the Board. There is no relationship whatsoever between the "IBBI Insolvency Practitioners LLP" and the Board except that Mr. Goel, registered by Board as an insolvency professional and is a partner of "IBBI Insolvency Practitioners LLP". The use of 'IBBI' by a commercial entity, without any authorisation from IBBI is not permissible.
- (c) Mr. Goel is a qualified Chartered Account and a registered insolvency professional. He knows the implications of using the name IBBI. As a registered professional, he cannot do anything that misleads the stakeholders of insolvency and bankruptcy. It is illegal to use 'IBBI' as part of the name of LLP promoted by an insolvency professional.
- (d) Mr. Goel even does even admit that he did something illegal. His only defence is that he does not have intent and motive to gain material benefit. It is too naïve to believe that Mr. Goel does not have intent to make any gain when he uses the name of the IBBI to an entity promoted by him.

- (e) He was registered as an insolvency professional on 28th September, 2018. He got the “IBBI Insolvency Practitioners LLP” incorporated on 8th November, 2017. Though, he has been procrastinating and submitting details repeatedly to RoC for change of name, but such details have been incomplete. Thus, he is not in a hurry to make rectification of the illegal act, even after advised by the Board. The Board brought it to the notice of Mr. Goel on 25th January, 2018. He submitted an application for change in name to RoC, as claimed by him, on 9th February, 2018. He did not submit the application properly. The RoC objected to it. Mr. Goel resubmitted again incomplete details in the form for change of name on 7th March, 2018. The RoC again objected vide mail dated 15th March, 2015 requiring him to submit the form, complete in all respects latest by 14th April, 2018.
- (f) Mr. Goel, vide his communication dated 4th April 2018, stated “name has been approved. The same is for your information and record.” However, the fact is that RoC only conveyed its no objection to the availability of proposed name “XPRT Insolvency Practitioners LLP”. This is yet another attempt by Mr. Goel to mislead the DC.
- (g) Mr. Goel informed on 4th May, 2018 that he has entered into a new LLP agreement on 3rd May, 2018.
- (h) Mr. Goel, vide mail dated 6th August, 2018 has informed that he wishes to close the LLP and submitted relevant papers for the same to the RoC.
- (i) DC notes that even on the date of issue of this Order, the Company Master Data on the website of the Ministry of Corporate Affairs carries the name “IBBI Insolvency Practitioners LLP”.
- (j) The DC notes that clause 2 of the Code of Conduct for Insolvency Professionals under the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 casts an obligation on an insolvency professional not to misrepresent any facts or situations and to refrain from being involved in any action that would bring disrepute to the profession. It is difficult to fathom that a qualified Chartered Accountant and a registered insolvency professional did not find it improper to use the abbreviation “IBBI” in the name of the LLP.
- (k) By virtue of section 188(2) of the Code, the Board is a body corporate having a perpetual succession and a common seal. Section 15(2)(b) of the Limited Liability Partnership Act, 2008 explicitly states that no Limited Liability Partnership shall be registered by a name which is a body corporate. Mr. Goel circumvented the said provision by using the abbreviation “IBBI” in incorporating the LLP by the name “IBBI Insolvency Practitioners LLP”.

5. Conclusion

- 5.1 An insolvency professional exercises the powers of Board of Directors of a corporate debtor during the period of CIRP. He conducts the entire CIRP and manages the operations of the corporate debtor during the CIRP period. His responsibilities during CIRP are detailed in the Code and relevant regulations. He has similar onerous responsibilities in liquidation of corporate debtors, and individual insolvencies and bankruptcies. These responsibilities require absolute integrity which inspire confidence and trust of the stakeholders.

5.2 Mr. Goel mislead the stakeholders of the insolvency and bankruptcy by incorporating a LLP by name, “IBBI Insolvency Practitioners LLP”. It also misled the Board stating that name change has been approved. He has been procrastinating for the last eight months to change the name despite continuous follow up, including a show cause notice, from the Board. These actions of Mr. Goel are contravention of the provisions of clauses 1, 2, 10, 12, 14 and 24 of the Code of Conduct in the First Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

6. **ORDER**

6.1 Mr. Goel has misled the stakeholders, the Board and the DC. His conduct is in violation of section 208 read with regulations 7(2)(a) and 7(2)(b) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and clauses 1, 2, 10, 12, 14 and 24 of the Code of Conduct in the First Schedule for Insolvency Professionals under the said Regulations.

6.2 In view of the above, the Disciplinary Committee, in exercise of the powers conferred under section 220 (2) of the Code read with sub-regulations (7) and (8) of regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016, hereby, issues the following directions:

- (a) Mr. Goel shall not take up any new assignment till “IBBI Insolvency Practitioners LLP” is removed from the Company / LLP Master Data of the Ministry of Corporate Affairs; and
- (b) Mr. Goel’s registration as an insolvency professional shall be suspended for three months from the date of issue of this order. This direction of suspension shall come into force on expiry of 30 days from the date of its issue.

6.3 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Kapil Goel is enrolled as a professional member.

6.4 A copy of this order shall be forwarded to the Secretary, NCLT, New Delhi for information.

Sd/-

(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Dated: 6th September, 2018

Place: New Delhi