

APPELLATE PANEL OF ICSI INSTITUTE OF INSOLVENCY
PROFESSIONALS

Appeal No. 1 of 2021

(Dates of virtual hearing: 22nd February, 2021 & 01st March 2021)

(Arising from the Order of Disciplinary Committee of ICSI IIP, dated
19th January 2021 in ICSI IIP/DC/02/2021)

Parties Present:

For Appellant:-

Mr. Prabhjit Singh Soni
Mr. G.P. Madaan
Mr. Aditya Madaan

Appellant: In Person
Counsel for Appellant
Counsel for Appellant

For ICSI IIP:-

Dr. Binoy J. Kattadiyil
Ms. Ankita Agarwal
Ms. Mandavi Bhargava

MD, ICSI IIP
Executive
Research Associate

ORDER

1. This appeal has been preferred by the appellant Mr. Prabhjit Singh Soni against the following order dated 19th January, 2021 passed by the Disciplinary Committee (DC) of the ICSI IIP :-

(a) 'Imposed a penalty of Rs. 2,00,000/- (two lakhs only) on Mr. Prabhjit Singh Soni and the same to be deposited by a demand draft payable in favour of the ICSI Institute of Insolvency Professionals within 1 (one) month of the issue of this order. The Agency shall in turn deposit the said penalty amount in the Insolvency and Bankruptcy Fund;



(b) Recovery cost for an amount of Rs. 50,000/- (fifty thousand only) as cost for the proceedings before the Disciplinary Committee of ICSI IIP and the same to be deposited by a demand draft payable in favour of the ICSI Institute of Insolvency Professionals within 1 (one) month of the issue of this order;

(c)Suspended Mr. Prabhjit Singh Soni for a period of 1(one) year from the date of issuance of this order and;

(d) Directed Mr. Prabhjit Singh Soni to undergo 50 hours Pre-registration Education Course.

(e)Mr. Prabhjit Singh Soni shall, however, continue to conduct and complete the assignments/processes he has in hand, if any, as on the date of this order. '

2. The facts of the case, shorn of details, are that in exercise of its powers under Part III of the Disciplinary Policy of ICSI IIP, on the basis of complaints received against the appellant, DC had issued two Show Cause Notices to him on 22nd January 2020, and on the basis of inspection conducted on all the assignments handled by the appellant, the DC issued a third show cause notice to him on 09th June 2020. In all these show cause notices, the appellant was asked to show cause as to why appropriate disciplinary action should not be taken against him for alleged violation of relevant provisions of Insolvency and Bankruptcy Code, and other connected Regulations including the Code of Conduct.
3. The appellant had submitted his para wise response to all the three Show Cause Notices contending that he had not acted in violation of any of the provisions of the Act or Regulations.
4. The DC heard the matter through virtual mode on 25th August 2020 and 18th September 2020 when the appellant appeared along with his Advocate. After hearing the appellant on those days, the DC passed the following order on 14th December 2020:

“4.1 On perusal of documents and information on record, the Disciplinary Committee finds that Mr. Prabhjit Singh Soni, Insolvency

By: Prabhjit Singh Soni

Professional (IBBI/IPA-002/IP-N00065/2017-18/10143) has contravened Sections 21(6)(a), 20(2)(a), 28(1)(a) and 208 (2) of the Code , Regulation 16A, 33(4), 36(1), 36(B)(3), 36(B)(4), 36(4) of IBBI (CIRP) Regulations, 2016 and Regulation 7(2)(h) of the Regulations read with clauses 1, 2, 5, 13, 14 and 21 of the code of conduct of the IP Regulations.

4.2. In view of the aforesaid facts, the Disciplinary Committee holds that Mr. Prabhjit Singh Soni is guilty of professional misconduct. DC after considering the seriousness of violations and in its power conferred under Part III 4 (e) of the Disciplinary Policy of ICSI IIP, deems it fit to refer the matter to IBBI for final decision.

Therefore, the aforesaid three show cause notices' are disposed of.

4.3. This order shall come into force from the date of its issue.

4.4 A copy of this order shall be forwarded to the Insolvency and Bankruptcy Board of India.”

5. On receipt of the above order, IBBI sent an e-mail communication as follows to ICSI IIP on 25th December 2020, stating:

“1. We have received an order passed by the Disciplinary Committee (DC) of ICSI IIP, wherein it has been concluded that Mr. Prabhjit Singh Soni, professional member of ICSI IIP and an Insolvency Professional (IP) registered with IBBI "is guilty of professional misconduct." However, after considering the seriousness of violations, the DC of ICSI IIP has referred the matter to IBBI for final decision

2. In this connection, it is pertinent to note that in terms of Clause 24 (2) of the Schedule to the IBBI (Model Bye Laws and Governing Board of IPA) Regulations, 2016 [Model Bye-Laws Regulations], the DC of ICSI IIP can pass appropriate orders after coming to the conclusion of the Show Cause Notice (SCN). Such orders would normally be expulsion, suspension, cancellation of authorization of assignment, admonishment of the professional member, imposition of penalty upon him or directions relating to costs.

3. A mere reference to the Board after finding such serious contraventions, is not intended in the Model Bye Laws Regulations, because, such a references can be made for a specific purpose under Clause 24 (2) (e) of the Model Bye-Laws Regulations only for the

purposes specified therein. In all other cases, though DC is not precluded from making reference for additional action by IBBI, it has to reach decision for other actions as per said Clause 24 (2).

4.. Therefore, while IBBI is examining the matter separately, we request you to reconsider the matter for appropriate order at your end, in terms of Clause 24 (2) of Schedule to the Model Bye-Laws Regulations."

6. On the basis of the communication by IBBI as above, the DC passed the impugned order on 19th January 2021, which has now been appealed against.
7. In his detailed appeal, the appellant has not only challenged the decisions of the DC on each of the charges, he has also pointed out a number of procedural lapses on the part of the DC. He has questioned as to whether, after passing the order dated 14th December, 2020 disposing of the SCNs, the DC could have passed further orders on 19th January 2020 imposing punishment.
8. The appeal was heard on 22nd February and 1st March 2021. On 22nd February, Mr. Aditya Madaan, Advocate appearing for the appellant argued, by elaboration, that DC had committed various procedural irregularities and reserved his arguments on merits for the next hearing date. In the next hearing date, i.e. on 1st March 2021, Mr. G.P. Madaan represented the appellant and submitted that before arguing on merits, he would like to argue on the legal competency of the DC in passing the order dated 19th January 2021, which the Panel allowed him to do.
9. According to the learned counsel, with the issue of the order dated 14th December 2020, the DC had become functus officio and hence it could not have passed any further orders on the SCNs. Even otherwise, he further submitted that passing of the order dated 19th January 2021 by DC also amounted to review of its order dated 14th December 2020, which it could not have done as DC has not been vested with any power of review in the Bye-Laws or in the Disciplinary Policy. Referring to the judgments of Supreme Court in **Dr Smt Kuntesh Gupta vs Management of Hindu Mahavidyalaya (1987 SCC (4) 525: Kapra Mazdoor Etka Union v Management of M/s Birla Cotton Spinning and Weaving Mills Ltd**

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(2005) 13 SCC 777, he submitted that without express conferment of powers of review, no judicial or quasi-judicial authority can review its own order. Referring to the judgment of Supreme Court in **S.Nagaraj v State of Karnataka 1993 Supp (4) SCC 595**, the learned counsel submitted that in this case, the Supreme Court has held that any re-examination or reconsideration of an earlier order would amount to review. In the present case, the learned counsel submitted that since the DC had disposed of the SCNs by the order dated 14th December 2020, any further order on the same SCNs would amount to reconsideration, and hence amounts to review.

10. Summing up his arguments, the learned counsel submitted that since he has raised the jurisdictional issue, the same may be decided first before he makes his submissions on merits of the case.
11. Mr. Binoy, MD, ICSI IIP submitted that DC of ICSI IIP had power to refer the matter to IBBI under Bye Law 24 (2) (e) for taking appropriate action and when the same being referred back to impose penalty, the action of DC to impose penalty would not amount to any review as the findings on the charges remained as they were. He also stated that since IBBI is the Regulator, the DC was bound to act as per the direction of the Regulator.
12. The Panel has considered the submissions of the learned counsel for the appellant and also that of the MD ICSI IIP. The learned counsel has assailed the order of the DC on dual grounds- that DC had become functus officio and that DC has no power to review its own order.
13. The doctrine of “functus officio” holds that once an empowered body renders a decision on the issues adjudicated by it, it cannot reexamine that decision. Therefore, what is to be examined is whether by its order dated 14th December, 2020, DC has rendered its decision on adjudication of the allegations in the SCNs. It is to be noted that the DC derives its powers from its Disciplinary Policy framed under the Bye-Laws of ICSI Institute of Insolvency Professionals. The SCNs issued to the appellant, as is evident from the SCNs, were under Bye Law 23 and Part III of the Disciplinary Policy of the ICSI Institute of Insolvency Professionals. While Bye Law 24 specifies the nature of orders that could be passed in a disciplinary proceeding, Part III 4 of the Disciplinary Policy more or less

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provides for the same nature of orders. One of the orders that could be passed, as provided both in Bye Law 24(2)(e) and Part III 4(e) is:

“reference of the matter to IBBI, which may include, in appropriate cases, recommendation of the amount of restitution or compensation that may be enforced by IBBI”

14. The order of DC dated 14th December, 2020, as extracted earlier, reads

“4.2. In view of the aforesaid facts, the Disciplinary Committee holds that Mr. Prabhjit Singh Soni is guilty of professional misconduct. DC after considering the seriousness of violations and in its power conferred under Part III 4 (e) of the Disciplinary Policy of ICSI IIP, deems it fit to refer the matter to IBBI for final decision”.

The order further says,

“Therefore, the aforesaid three show cause notices are disposed of.”

15. In terms of Part III (4) of the Disciplinary Policy, the DC can pass one or more of the orders specified in that part. A reading of Part III 4(e) indicates that DC can pass two kinds of orders under this clause- one is reference of the matter to IBBI simpliciter and another is reference of the matter with recommendation of the amount of restitution or compensation for enforcement by IBBI. In the present case, the DC had decided to pass the order of referring the matter for final decision and had closed the SCNs. It had not kept any seisin to pass any further order.

16. In this connection it is essential to refer the judgment of Supreme Court (SC) in *Kapra Mazdoor Etki* case (supra), wherein SC has examined as to when an authority becomes functus officio after passing an order. In that case, the Industrial Tribunal passed an award and the same was also published. As per Section 17 of the Tribunal Act, the award would become enforceable in 30 days after its publication. Before the expiry of 30 days, an application was made for recall of the Award, which the Tribunal did two days before the expiry of 30 days. In these circumstances, the Supreme Court upheld the decision of the High Court that since the award was

recalled before it became enforceable, the Tribunal had not become functus officio. The Appellate Panel examined whether the above ratio could be applied in the present case but found that it is not possible for two reasons. One is that the order dated 14th December 2020 itself specifically states that the order would come to force from the date of the order, that is, immediately. Secondly, even if it is taken that because of the said stipulation the order would come into force from the date of passing the order, it was erroneous as the Disciplinary Policy itself states that the order of the DC would come into force after 30 days of the order, then also, the DC had become functus officio when it passed the second order on 19th January 2021, that is 30 days after the original order was passed on 14th December 2020. Thus, the Panel agrees with the learned counsel for the appellant that since the DC had become functus officio, it had no power to pass the impugned order on 19th January 2021.

17. In so far as the issue of review is concerned, in **S.Nagaraj** case (supra) Supreme Court has held that any re-examination or reconsideration of an earlier order would amount to review. The order of 19th January 2021 was passed on the request of IBBI to reconsider the order of 14th December 2020. Hence the said reconsideration and passing of the order on 19th January 2021 was definitely a review of the order of 14th December 2020. As pointed out by the learned counsel, relying on the SC judgment in **Smt Kuntesh Gupta (supra) and Kapta Mazdoor Ekta (supra)**, the DC should have been empowered to review its orders. Mr. Binoy could not point out any provision either in the Bye-Laws or in the Disciplinary Policy clothing the DC with the power of review. Thus, the Panel finds substance in the submissions of the learned counsel for the appellant in this regard.
18. In so far as Mr. Binoy contention that DC was bound to abide by the directions of the Regulator is concerned, it is to be noted that the DC discharging the functions like a quasi-judicial body is not bound by the directions of any external agency, exception being this appellate Panel or a competent judicial forum.
19. Accordingly, the appeal is allowed by setting aside the order of the DC dated 19th January 2021 on both the preliminary grounds that the DC had become functus officio on that date and that it had no power of review. It



is made abundantly clear that the Panel has not gone into the merits of the case.



(P.K Malhotra)
Chairperson



(S. Balasubramanian)
Member



(Ranjeet Pandey)
Member

Dated: *March 19, 2021*
Place: New Delhi