

**ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS
(MEMBERSHIP COMMITTEE)**

ICSI IIP/MC/1/2021

**IN THE MATTER OF: APPEAL FILED BY MR. PRABHJIT SINGH SONI (IP-N00065)
AGAINST REJECTION OF HIS APPLICATION FOR ISSUANCE OF AUTHORISATION
FOR ASSIGNMENT (AFA) BY ICSI IIP**

ORDER

UNDER CLAUSE 12 A (2) (f) OF THE BYE LAWS OF ICSI IIP

1. Vide this order we shall dispose-off Appeal No. 3 of 2021 dt. 2nd April 2021 filed by Mr. Prabhjit Singh Soni impugning ICSI IIP's order/intimation dt. 26th March 2021 whereby appellant's application dt. 20th March 2021 seeking issuance of Authorisation for Assignment (AFA) was rejected on the ground that a show cause notice dt. 26th March 2021 has been issued to the appellant by IBBI.
2. Before we consider facts of the case, it may serve us some purpose to note the relevant portion of the provision under which appellant has been denied issuance of AFA. The language of Bye law 12A(2)(f) of ICSI IIP's Bye laws is as follows:

“12A. Authorisation for Assignment ... (2) A professional member shall be eligible to obtain an authorisation for assignment, if he ... (f) has no disciplinary proceeding pending against him before the Agency or the Board;

3. Reverting now to the relevant facts of the case, as presented before us. Three show cause notices (bearing reference number ICSI IIP/02/2020, ICSI IIP/03/2020 and ICSI IIP/04/2020 respectively) were issued by ICSI IIP to the appellant herein concerning his acts and omissions vis-a-vis some CIRP assignments undertaken by him. These show cause notices were issued pursuant to the deliberations held by the Disciplinary Committee and directions issued for the issuance of the same.
4. The DC further in its meeting held on 18th March 2020 took note of the SCN issued, the response received and the documents adduced. Thereafter, on DC's directions, an e-hearing opportunity was provided to the appellant on 25th August 2020 and 18th September 2020 wherein he was represented by his legal counsel. The appellant was thereafter found guilty of professional misconduct vide DC's order dt. 14th December 2020. However, keeping in view serious violations committed by the appellant, the DC thought it fit to refer the matter to IBBI

for their final decision. The three show cause notices issued to the appellant were accordingly disposed-off vide DC's order dt. 14th December 2020.

5. Upon receiving a copy of DC's aforementioned said order dt. 14th December 2020, the IBBI, vide its communication dt. 24th December 2020, informed ICSI IIP as follows:
“... 2. 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)**”
...
“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 Such orders would normally be expulsion, suspension, cancellation of authorisation of assignment, admonishment of the professional member, imposition of penalty upon him or directions relating to costs.”
6. Therefore, it is evident that while asking the DC of ICSI IIP to pass appropriate orders concerning appellant's conduct, IBBI informed that it is examining the matter separately.
7. The matter was accordingly placed before ICSI IIP's DC, wherein, vide its orders dt. 19th January 2021, the DC, *inter alia* imposed a penalty of Rs. 2,00,000/- and a cost of Rs. 50,000/- on the appellant apart from suspending him for 1 year.
8. The aforementioned order dt. 19th January 2021 (passed by ICSI IIP's DC) was challenged by the appellant herein before the Appellate Panel. The main ground of challenge thereof was that since the DC has disposed-off all SCN vide its order dt. 14th December 2020, it became *functus officio* and so could not validly pass any further order in the matter.
9. This Committee was informed that though the appellant was found guilty of professional misconduct by the DC, however, based on the technical plea, his appeal was allowed by the appellate panel. Thus, vide its orders dt. 19th March 2021, the appellate panel set aside DC's order dt. 19th January 2021. However, while holding that the DC had become *functus officio* and had no power of review, the appellate panel specifically recorded that **it has not gone into merits of the case.**
10. This Committee was further informed that a show cause notice dated 26th March 2021 (IBBI/IP/MON/SCN/2021/PSS/297/1684), as issued by the IBBI, is still in operation and pending disposal. In the said SCN, the appellant has been informed of different acts and omissions committed by the appellant w.r.t. 3 different CIRP assignments handled by him. He has accordingly been called upon to show cause as to why one or more actions as permissible under ss. 220(2) to (5), IBC r/w Reg. 11 of IBBI (IP) Regulations, 2016 be not initiated against him concerning such CIRP assignments .

11. Therefore, in view of the fact that a show cause notice dt. 26th March 2021 has been issued by IBBI to the appellant, and is pending disposal, his AFA application came to be rejected by ICSI IIP as per 12A(2)(f) of Bye Laws of ICSI IIP.
12. We have perused all the documents placed on record and have also considered the factual matrix and legal contentions raised by the appellant in his appeal. We sought clarifications from the Secretariat as to whether issuance of a show cause notice would amount to commencement of disciplinary proceedings and the same was answered in affirmative. In support thereof, the Secretariat drew our attention to the language of Regulation 23 of the IBBI (Model Bye-Laws and Governing Board of IPA) Regulations, 2016 which reads as follows:

“23. The Agency may initiate disciplinary proceedings by issuing a show-cause notice against professional member...”

It is evident from the language of above provision that once a show cause notice is served on an IP the same would translate into commencement of disciplinary proceedings against him/her.
13. Once we have concluded that disciplinary proceedings as initiated by the IBBI against the appellant were pending at the time of refusal of issuance of AFA, the language of Bye law 12A(2)(f) (*supra*) puts it beyond any doubt that the impugned order is valid in law.
14. Clause 12A(8) of the bye-laws of ICSI IIP provides that the Membership Committee shall pass an order disposing of the appeal by a reasoned order within fifteen days of the date of receipt of the appeal. Accordingly, the Membership Committee of ICSI IIP, in exercise of its powers conferred under Clause 12A(8) (*supra*) rejects present appeal filed by Mr. Prabhjit Singh Soni on the grounds that disciplinary proceedings are pending against him before the Board as per the Bye Law 12A(2)(f) of the Bye Laws of ICSI IIP and upholds ICSI IIP’s decision of rejecting appellant’s appeal for renewal of AFA.
15. Finding no merit in the appeal, the same is hereby dismissed.
16. No orders as to costs.

Date: April 16, 2021



(Ashishkumar Chauhan)
Chairman, Membership Committee
For and on behalf of Membership Committee of ICSI IIP