

ICSI Institute of Insolvency Professionals
(Disciplinary Committee)

ICSI IIP/DC/ 09/2021

15th December, 2021

ORDER

(Under Part III of Disciplinary Policy read with Clause 24(1)(a) of Bye Laws of ICSI Institute of Insolvency Professionals)

1. Background

- 1.1 This order disposes of the Show Cause Notice dated 08thOctober, 2021 (SCN) issued to Mr. Mahesh Venkataraman, 39/19 Aspen Court, 3rd Floor, R.A. Puram 6th Main Road, R.A. Puram, Chennai, Tamil Nadu-600028, a professional member of ICSI Institute of Insolvency Professionals (ICSI IIP) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-002/IP-N00307/2017-18/10865.
- 1.2 The inspecting authority (IA) of ICSI IIP conducted inspection of 10 assignments handled by Mr. Mahesh Venkataraman and prepared final inspection report, which was duly mailed to IP on 30th March, 2021. The final inspection report and subsequent correspondences were placed before the Monitoring Committee on 21st September, 2021. The Monitoring Committee in its meeting directed the Secretariat to issue a show cause notice, based on the findings in the inspection report.
- 1.3 Show Cause Notice was issued by the Secretariat on 8thOctober, 2021. Mr. Mahesh Venkataraman sent his reply to the Show Cause Notice through e-mail dated 14th October, 2021.
- 1.4 The show cause notice along with the reply and supporting documents were placed before the Disciplinary Committee of ICSI IIP for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Mahesh Venkataraman availed an opportunity of e-hearing before the DC on

24.11.2021. Mr. Mahesh Venkataraman made his submissions during the e-hearing.

2. Alleged Contraventions and Submissions

The contraventions alleged in the SCN and Mr. Mahesh Venkataraman written and oral submissions thereof are summarized as follows:

Contravention

2.1 Delay in statutory timelines

In the matter of **Brinzk Powertech Private Limited**, Insolvency Professional (IP) did not comply with the timelines as indicated under the Insolvency and Bankruptcy Code and Regulations.

Invitation for expression of interest in Form G was published with a delay of two months. Insolvency was commenced on 26.06.2018, due date to publish Form G was 30.09.2018, however it was published on 24.11.2018 though it was approved by Committee of Creditors (COC) in the month of October 2018 only.

Liquidation was commenced on 18.09.2019, Preliminary report, progress reports and asset memorandum during liquidation have been submitted with a delay of 3 months .

- **Submission**

The IP has submitted that the delay in publishing the Form G was due to the fact that enough information was not available and the approval of COC was also pending for publication of Form G.

With regard to liquidation, the preliminary report was delayed due to non-availability of complete information and the progress reports were filed in delay due to the lockdown imposed because of the COVID 19 pandemic.

IP also submitted that though the delay was for valid reasons, the delay may be condoned and excused as a one-time occurrence.

- **Analysis**

Regulation 36A(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that:

“(1) The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule at the earliest, not later than seventy-fifth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.”

Regulation 13 of IBBI (Liquidation Process) Regulations, 2016 states that:

“the liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy five days from the liquidation commencement date”

Regulation 15 of IBBI (Liquidation Process) Regulations, 2016 states that:

“The liquidator shall submit Progress Reports to the Adjudicating Authority as under- (a) the first Progress Report within fifteen days after the end of the quarter in which he is appointed; (b) subsequent Progress Report(s) within fifteen days after the end of every quarter during which he acts as liquidator; and Provided that if an insolvency professional ceases to act as a liquidator during the liquidation process, he shall file a Progress Report for the quarter up to the date of his so ceasing to act, within fifteen days of such cessation”

The DC notes that the IP has accepted the violation of the statutory timelines. DC is of the view that objective of Insolvency and Bankruptcy code (IBC) is to perform the duties in a time bound manner and such delays in compliance with the timelines is in contravention of the objectives of the Code.

Contravention

2.2 Incorrect information

In the matter of **Brinzk Powertech Private Limited**, correct information was not provided in the minutes of COC.

As per the polling papers of 2nd COC meeting dated 15th September, 2018:

- i. The resolution in which both the Financial Creditors signed for interim finance, 10 Lakh was approved. However, in the minutes 30 Lac was mentioned.
- ii. Resolution for accounting and tax related work was not signed by a majority creditor (Mohd. Sheikh with 82 percent stake). However, it was taken note of as approved in the minutes.

- **Submission**

IP has mentioned that the amount of 30 lacs was mentioned for blanket approval and the actual amount was released in stages. IP has claimed that the amount mentioned as 10 lacs is a typographical error.

IP has mentioned that the resolution for accounting and tax related work was approved by the major creditor and as the amount was not decided beforehand, the poll sheet has not been signed. The IP mentioned in his reply that these were typographical inadvertent errors.

As part of his oral submissions, the IP mentioned that the CD was made into a going concern with just 10 lakh INR as interim finance and so the rest of the amount was not raised from the Financial creditors.

- **Analysis**

After considering the submissions made by IP, DC is of the view that IP has chalked out these errors to being typographical in nature, however, the facts misrepresented have not been clarified in subsequent meetings or documents.

Clause 11, 12 and 16 of first schedule to Code of Conduct of Insolvency Professionals under Regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016.

“11. An insolvency professional must inform such persons under the Code as may be required, of a misapprehension or wrongful consideration of a fact of which he becomes aware, as soon as may be practicable.

12. An insolvency professional must not conceal any material information or knowingly make a misleading statement to the Board, the Adjudicating Authority or any stakeholder, as applicable.

16. An insolvency professional must ensure that he maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his decisions and actions.”

Contravention

2.3 Non submission of updated list of creditors

In the matter of **Brinzk Powertech Private Limited**, as per the records available to the IA, there was updation in the list of creditors, however the updated list of creditors was not submitted to Adjudicating Authority. Though, as per

Regulation 13 of CIRP Regulations, the IRP/RP shall maintain list of creditors and file with the Adjudicating Authority.

- **Submission**

The IP submitted that the final list of creditors was submitted to the Adjudicating Authority. IP has requested for leniency due to the inadvertent delay in filing the final list of creditors.

- **Analysis**

With respect to list of creditors, Regulation 13(2) of CIRP Regulations provides as follows:

Regulation 13(2) reads as under:

“(2) The list of creditors shall be – (a) available for inspection by the persons who submitted proofs of claim; (b) available for inspection by members, partners, directors and guarantors of the corporate debtor or their authorised representatives; (c) displayed on the website, if any, of the corporate debtor; (ca) filed on the electronic platform of the Board for dissemination on its website: Provided that this clause shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020; (d) filed with the Adjudicating Authority; and (e) presented at the first meeting of the committee.”

The DC noted that the final list was eventually submitted to the Adjudicating Authority as admitted by the IP.

Contravention

2.4 Appointment of unregistered valuers

In the matter of **Brinzk Powertech Private Limited**, as per the records available to the IA, during liquidation, the IP appointed Mr. Keshav Arvind Chikodi, registered valuer for land, building, machinery and other minor assets. However, he was registered only in the category of Land and Building.

The IP appointed Mr. Parag Sheth, registered valuer for land, building, machinery and other minor assets, however, he was registered only in the category of Land and Building.

- **Submission**

The IP has submitted the list of valuers appointed by him in his written submissions, and has denied the allegation by the secretariat. The IP explained that the registered valuers were correctly appointed for their respective asset classes. The IP submitted appointment letters for the registered valuers as part of his reply.

- **Analysis**

With respect to the Regulation 35 of IBBI (Liquidation Process) Regulations, 2016 regarding valuation, regulation 35 provides the as follows:

“In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor”

The DC observed that all valuers appointed have been registered in their respective asset classes and there is no violation of any provision.

Contravention

2.5 Delay in making public announcement

In the matter of **Tech Megacorp International Private Limited**, IP has made the public announcement with a delay of 2 months i.e. liquidation was commenced on 6/06/2018 and public announcement was made on 10.08.2018.

Further, Liquidation commencement date has been mentioned as 22.06.2018 in the public announcement, however as per the order, liquidation order was passed on 06.06.2018 and certified copy was issued on 08.06.2018.

- **Submission**

The IP submitted that there were changes to be made in the dissolution order passed by the Adjudicating Authority, correct information was not available for publishing the public announcement, hence there was a delay. The IP also submitted that the public announcement was made out of IP's own funds and these delays have also been informed to the Adjudicating Authority. IP has admitted that there was delay in timelines.

- **Analysis**

With respect to Public announcement, Regulation 12(1) of IBBI (Liquidation Process) Regulations, 2016 states as under:

“The liquidator shall make a public announcement in Form B of Schedule II within five days from his appointment.”

The DC observed that even though public announcement was not made because of lack of complete information and cooperation from the COC, there was still a delay of one of the most important functions of the liquidation process. The DC also noted that the IP has admitted that there has been a procedural delay in prescribed timelines and has prayed for condoning of the same.

Contravention

2.6 Delay in statutory timelines and non-submission to Adjudicating Authority

In the matter of **Tech Megacorp International Private Limited**, IP did not comply with the timelines indicated under the Insolvency and Bankruptcy Code and Regulations. For instance:

- i. During Liquidation, the list of stakeholders and preliminary report has been submitted to Adjudicating authority in delay. Liquidation was commenced on 22.06.2018 and the Due date of submitting the aforesaid documents to AA was 20.08.2018, however it was submitted on 28.02.2019. There was a delay of more than 6 months. (Contravention of Regulation 13 of Liquidation Regulations)
- ii. During Liquidation, progress reports have not been submitted to Adjudicating Authority. (Contravention of Regulation 15 of Liquidation Regulations)
- iii. During CIRP, the report certifying constitution of CoC not submitted to Adjudicating Authority. (Contravention of Regulation 17 of CIRP Regulations)

- **Submissions by the IP**

The IP in his written and oral submissions, admitted to there being a delay. He submitted that there were inadvertent delays that were not intentional and were not prejudicial to any stakeholders.

- **Analysis**

Timelines are the soul of the Insolvency and Bankruptcy Code and observed on the part of the Insolvency Professional.

Regulation 13, 15 & 17(1) provides as under:

Regulation 13 of IBBI (Liquidation Process) Regulations, 2016 states that:

“the liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy five days from the liquidation commencement date”

Regulation 15 of IBBI (Liquidation Process) Regulations, 2016 states that:

“The liquidator shall submit Progress Reports to the Adjudicating Authority as under- (a) the first Progress Report within fifteen days after the end of the quarter in which he is appointed; (b) subsequent Progress Report(s) within fifteen days after the end of every quarter during which he acts as liquidator; and Provided that if an insolvency professional ceases to act as a liquidator during the liquidation process, he shall file a Progress Report for the quarter up to the date of his so ceasing to act, within fifteen days of such cessation”

Regulation 17(1) of IBBI (CIRP) Regulations states that:

“The interim resolution professional shall file a report certifying constitution of the committee to the Adjudicating Authority within two days of the verification of claims received under sub-regulation (1) of regulation 12.”

The DC observed that the IP has admitted that there has been a procedural delay in prescribed timelines. DC observed that procedures are a part of total compliance with the law and hence it is necessary to comply with the timelines as prescribed.

Contravention

2.7 Improper E-Voting

In the matter of **Diamond Engineering (Chennai) Private Limited**, for matters relating to e-voting, the approval of Financial Creditors were taken on mails as mentioned in the 11thCoC meeting dated 3rd July, 2018.

- **Submission**

The IP in his written submissions has submitted that since in the said matter CIRP was commenced in 2017, so there was no clarity with regard to how e-

voting has to be conducted and therefore it was done by show of hands or as was possible for the IP. In his oral submissions, the IP stated that since the COC members were unable to understand the e-voting procedure, it was done by way of e-mails. The IP submitted that this was a one-time thing and the same may be condoned.

- **Analysis**

Regulation 26(1) of the CIRP Regulations are relevant in this regard which provides as under:

““voting by electronic means” or “electronic voting system” means a “secured system” based process of display of electronic ballots, recording of votes of the members of the committee and the number of votes polled in favour or against, such that the voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security;”

The DC noted that process of e-voting is an important aspect on the part of Practicing Company Secretary and Insolvency Professional t. DC also noted that it is the duty of the IP to make the COC aware of and understand the e-voting process. DC also took cognizance of the fact that the IP has submitted that lack of proper procedure was not intentional and the Resolution Plan was approved by the COC in the present case.

Contravention

2.8 Incomplete CIRP Forms

The IP in some of his assignments has not filled the CIRP Forms properly with most forms being left blank or incomplete. Despite several reminders, the IP did not modify the CIRP forms.

- **Submission**

The IP in his written and oral submission stated that he has taken note of the same and will rectify the same.

- **Analysis**

Regulation 40B of IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016 states that

“40B Filing of Forms. (1) The insolvency professional, interim resolution professional or resolution professional, as the case may be, shall file the Forms, along with the enclosures thereto, on an electronic platform of the Board...”

The DC observed that the CIRP forms are still incomplete despite several reminders forwarded to IP. Filing forms and providing complete information in it is an important aspect of compliance in CIRP.

3. Order

3.1 After considering the allegations in the SCN and submissions made by Mr. Mahesh Venkataraman in light of the provisions of the Code, regulations and the relevant circulars, the DC, in exercise of the powers conferred under Part III of the Disciplinary Policy of ICSI IIP observed and directed the following:

- i. Insolvency professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process. It is the duty of an IRP/ RP to perform and discharge his/ her duties in accordance with the Code and the Regulations made thereunder, in letter and spirit to achieve the objectives of the Code.
- ii. To levy a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) for the continuous lapses in timelines amounting to direct contravention of the objective of the Code and its Regulations and deposit the same by a demand draft payable in favour of the ICSI Institute of Insolvency Professionals within 30 days of the issue of this order. The Agency shall in turn deposit the said penalty amount in the Fund constituted under Section 222 of the Code.
- iii. IP to undergo 50 hours Pre-Registration Educational Course (PREC) and complete CIRP Forms with correct information on the IBBI portal for all the assignments before applying for issuance of Authorisation for Assignment (AFA).
- iv. The DC advised that Mr. Mahesh Venkataraman should be careful and take due care in the future.
- v. Mr. Mahesh Venkataraman shall, however, continue to conduct and complete the assignments/ processes he has in hand as on date of this order.

3.2 This order shall come into force after 30 days from the date of its issue.

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

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MR. GOPAL KRISHNA AGARWAL
(CHAIRPERSON)

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DR. S. P NARANG
(MEMBER)

-sd/-

CS DEVENDRA DESHPANDE
(MEMBER)