

ICSI Institute of Insolvency Professionals

(Disciplinary Committee)

ICSI IIP/DC/ 08/2021

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 08thSeptember, 2021 (SCN) issued to Mr. Rajendran Shanmugam, resident of 2nd Floor, Hari Krupa, 71/1, Mc Nicholas Road, Chetpet, Chennai, Tamil Nadu -600031, a professional member of ICSI Institute of Insolvency Professionals and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-002/IP-N00098/2017-2018/10241.
- 1.2** The inspecting authority (IA) of ICSI Institute of Insolvency Professionals (ICSI IIP) conducted inspection of 13 assignments handled by Mr. Rajendran Shanmugam and prepared final inspection report, which was duly mailed to IP on 29th December, 2020. The final inspection report and subsequent correspondences were placed before the Monitoring Committee on 24th August 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 8th September, 2021. Mr. Rajendran Shanmugam (IP) sent his reply to the Show Cause Notice through e-mail dated 11th September, 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. Rajendran Shanmugam availed an opportunity of e-hearing before the DC on 24.11.2021.

Mr. Rajendran Shanmugam was represented by Mr. Satwinder Singh, Advocate who made submissions during the e-hearing.

2. Alleged Contraventions and Submissions

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

Contravention

2.1 Non appointment of Registered Valuers

In the matter of **Arohi Infrastructure Private Limited** Insolvency Professional (IP) appointed only 1 (one) registered valuer i.e. M/s SPR & Co. for the financial assets. However, as per **Regulation 27** of Insolvency and Bankruptcy Board of India (Insolvency Resolution process for corporate persons) Regulations, 2016 (“CIRP Regulations”) 2 (two) registered valuers were required to be appointed to determine the fair value and the liquidation value of the corporate debtor

Submission

Regarding appointment of valuers in respect of financial assets of the Corporate Debtor, it is submitted that lack of availability of information on the financial assets of the Corporate Debtor was an obstacle for IP from engaging two registered valuers in respect of financial assets. The IP also submitted that quotations were invited for the appointment of valuers but lack of availability of information on the financial assets of the Corporate Debtor was an obstacle for RP from engaging two registered valuers in respect of financial assets. In his submissions, IP also stated he had filed an application for non – cooperation after which the financial information of the CD was received by the IP. The IP had also invited quotations for appointment of valuers, however due to lack of information no valuer had agreed to be appointed. The IP also informed that all proceedings were informed to the Committee of Creditors (“COC”).

Analysis

Regulation 27 mandates appointment of two registered valuers. Regulation 27 reads as follows:

Regulation 27 of CIRP Regulations states that,

(1) The resolution professional shall, within seven days of his appointment but not later than forty-seventh day from the insolvency commencement date,

appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35.

The IP had appointed one valuer and invited quotations from valuers. DC took note of the same.

Contravention

2.2 Lack of transparency w.r.t. appointment of professionals

In the matter of **Arohi Infrastructure Private Limited**, IP appointed various professionals while handling the process, however there was no transparency in the appointments and the fees paid to them. The exact fees paid to the IP and the professionals could not be ascertained by the inspecting authority due to different amounts mentioned at different places. The IP had not mentioned remuneration of professionals appointed in the engagement letters as well..

Submission

IP mentioned that due to various difficulties faced during the initial process of uploading details of CIRP costs and different formats introduced by ICSI IIP/IBBI at different point of times, the costs disclosures may vary, but IP has taken every step to reconcile and the final reconciled cost disclosures has also been submitted the ICSI IIP. The IP submitted that there was an oversight when the invoices were being issued. The IP also apprised the DC about the time and efforts taken by IP despite of not being paid his any fee for this assignment.

IP has accepted that there was an inadvertent error in failing to mention the scope of work clearly in the invoices

Analysis

Under the Code, RP plays a central role in resolution process of the CD, he is appointed by the Adjudicating Authority as an officer of the Court to conduct the resolution process and it is the duty of RP to conduct CIRP with integrity and accountability in the process and to take reasonable care and diligence while performing his duties. Therefore, it becomes imperative for an IP to perform his duties with utmost care and diligence. Section 208(2) of the Code provides that every insolvency professional shall abide by the Code of conduct. It reads as follows:

"208. Functions and obligations of insolvency professionals.-

(2) Every insolvency professional shall abide by the following code of conduct:

(a) to take reasonable care and diligence while performing his duties;

- (b) to comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member;*
- (c) to allow the insolvency professional agency to inspect his records;*
- (d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and*
- (e) to perform his functions in such manner and subject to such conditions as may be specified''*

DC observed that there are deviations with respect to fees paid in the disclosures submitted to ICSI IIP and the disclosures made in the CIRP Forms on the IBBI Portal.

Contravention

2.3 Appointment of Related Party

In the matter of **TD Toll Road Private Limited, Shree Ganesh EPC Private Limited and Krishna Industrial Corporation Limited**, IP had appointed Mr. S. Srinivasan, Practicing Company Secretary as e-voting scrutinizer; however IP and Mr. S. Srinivasan are partners of the same firm "SR Srinivasan & Co. LLP" which contradicts clause 23B of the Code of Conduct of Insolvency professionals as the clause states that an insolvency professional shall not engage or appoint any of his relatives or related parties, for or in connection with any work relating to any of his assignment.

Submission

IP assured the secretariat that even though it was a related party, the transaction was done on an arm length basis for a nominal amount of Rs. 30,000. In his oral submissions, the IP mentioned that if anyone else would have been appointed, the fee charged would have been more and the work would be delayed. IP also assured the DC that the amount paid to Mr. Srinivasan has been returned.

Analysis

Regulation 23B of Code of conduct mandates an Insolvency Professional shall not engage any of his relatives. Regulation 23B reads as follows:

Regulation 23B of Code of conduct for IPs,

"23B. An insolvency professional shall not engage or appoint any of his relatives or related parties, for or in connection with any work relating to any of his assignment."

The DC observed that appointment of related parties is contravened by the Code of Conduct made available for the IPs.

Contravention

2.4 Non-Disclosure Undertaking

In the matter of **TD Toll Road Private Limited**, IP did not obtain non-disclosure undertaking from all the COC members (out of six (6) Financial Creditors, non-disclosure undertaking from only two (2) were obtained) which is a prerequisite before issuing information memorandum, RFRP, evaluation matrix fair value/liquidation value etc. as per CIRP Regulations.

Submission

IP has taken confidentiality undertaking through mail from all COC members, which is annexed as part of his written reply.

Analysis

IP submitted the undertakings received through e-mail. DC took note of the same.

Contravention

2.5 Updating list of creditors

In the matter of **Empee Distilleries, Nagarjuna Oil Corporation Limited, Shree Ganesh EPC Private Limited and Raihan Healthcare Private Limited**, as per the COC minutes made available to the IA, there was agenda to consider the updated list of creditors, however the updated list of creditors was not filed before the 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

In his written submission the IP iterated that a plain reading of **Regulation 13** states that the list of creditors should be intimated to the Adjudicating Authority when it is made. He also mentioned that IBBI had only developed a portal for uploading list of creditors to be effective from 13th November 2020. During his oral submissions, the IP also stated that the portal for uploading updated list of creditors has been introduced by IBBI also in November 2020.

The IP further relied on the judgment of *Essar Steel (Supreme Court)* wherein it was stated that the resolution professional shall verify each claim as on the insolvency commencement date, and thereupon maintain a list of creditors containing the names of creditors along with the amounts claimed by them, the amounts admitted by him, and the security interest, if any, in respect of such claims, and constantly update the aforesaid list. The contention of the IP holds that the Regulation and related judgments ask for updating of list of creditors and not for filing the same before the AA.

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 took note of the submissions made by IP.

Contravention

2.6 Final list of Resolution Applicants

In the matter of **Empee Distilleries**, from the records made available, without circulation of final list of resolution applicants with the CoC members and resolution applicants, the IP went for the 2nd round of Expression of Interest (EOI). However, as per Regulation 36A (10), (11), (12) the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.

Submission

IP in his reply has mentioned that the provisional list of Resolution Applicants was put forth in the 4th COC meeting, and since there was no change in the

final list, it was not circulated again. Though the final list was not separately communicated, the resolution plans received from the following Prospective Resolution Applicants were submitted to the CoC after duly examining them for all compliance under IBC. The IP also ensured the DC that there was no objection from the Adjudicating Authority or the COC. IP also stated that every step taken by him has been minutised and informed to CoC.

Analysis

In respect of the issue of list of eligible prospective resolution applicants provision **Regulation 36A of CIRP Regulations** provides as follows:

(10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.

(11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) maybe made with supporting documents within five days from the date of issue of the provisional list. (12) On considering the objections received under sub-regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.

DC noted that though there was no material lapse still there were procedural lapses on the part of IP. DC observed that even though the process was not disrupted due to diversion from the Regulation, the correct procedure as mentioned in the Regulations was also not followed.

Contravention

2.7 Overlap in payments being made

In the matter of **Nagarjuna Oil Corporation Limited**, IP appointed Mr. V Gopalan as the professional advisor in the corporate debtor and separately a consultancy company (Janhar Management Consultancy Private Limited) owned by Mr. V Gopalan was also appointed. Same person was appointed twice (once in personal capacity and then through his company). As per the bank statements available in records, Rs. 12,83,000/- was paid to Janhar Management and Rs. 9,16,500/- was paid to V Gopalan.

Further, the explanation provided by the IP to the IA that the same person was not appointed twice, however, Mr. V Gopalan was appointed in personal

capacity and then through his company and payments were made to them for different periods. IA observed from the records made available that invoices of “Janhar Management Consultancy” are from September to December, 2017 but for the month November, 2017, there is overlapping of invoice from Mr. V Gopalan & Janhar Management Consultancy Private Limited.

Submission

IP has submitted a list showing the payments made Mr. V Gopalan in his individual capacity and there was no overlap of payment being made to the advisor and his company. It was submitted that the appointment of Dr. V. Gopalan and Janhar Management Consultancy Private Limited were for different periods and all the payments were duly approved by the COC. The IP in his oral submissions stated that Dr. Gopalan was engaged in his individual capacity. There was also no injury or loss to the Corporate Debtor or any other stakeholder. IP also admitted that there was no difference in the work done

IP also submitted that since the law was in its nascent stage in the year 2017 and the jurisprudence for appointing professionals was still being developed, **the contravention may be viewed leniently**. IBBI came out with its Circular on ‘Fee and other Expenses incurred for Corporate Insolvency Resolution Process’ in June 2018 and this matter dates back to 2017.

Analysis

IBBI circular dated 12.06.2018 states that,

6. Keeping the above in view, the IP is directed to ensure that:- (a) the fee payable to him, fee payable to an Insolvency Professional Entity, and fee payable to Registered Valuers and other Professionals, and other expenses incurred by him during the CIRP are reasonable; (b) the fee or other expenses incurred by him are directly related to and necessary for the CIRP; (c) the fee or other expenses are determined by him on an arms’ length basis, in consonance with the requirements of integrity and independence; (d) written contemporaneous records for incurring or agreeing to incur any fee or other expense are maintained; (e) supporting records of fee and other expenses incurred are maintained at least for three years from the completion of the CIRP; (f) approval of the Committee of Creditors (CoC) for the fee or other expense is obtained, wherever approval is required; and (g) all CIRP related fee and other expenses are paid through banking channel.

IP in his written submission provided a tabular chart showing details of payments made by the IP and stated that there was no overlap in the payments made, however after seeing at the invoices DC observed that professional fees

for the month of November 2017 has been charged in two invoices, which clearly that there was overlapping of invoice for the month of November, 2017

Contravention

2.8 Invoices not proper

In the matter of **Nagarjuna Oil Corporation Limited**, invoices have not been provided by the IP thus the correctness of scope of work cannot be ascertained.

Submission

IP submitted that no payment was made without an invoice. Moreover, if any invoice is missing it might be due to shifting of their office in September 2019. All available invoices were provided with the reply. The IP in his oral submissions also stated that any such lapse is unintentional and all further compliances will be made by him with regard to invoices.

Analysis

IBBI circular dated 12.06.2018 states that,

“Para 16 of the Code of Conduct for IPs in the Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 provides that an IP must maintain 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 action”

DC took cognizance of the fact that the IP has accepted that non availability of invoices was inadvertently because of shifting of offices. However, either physical or electronic copy was not made available to the IA and the DC noted this as a procedural lapse on part of the IP.

Contravention

2.9 Preservation of records

In the matter of **Nagarjuna Oil Corporation Limited**, IP had not provided copy of invoices, engagement letters, provisional lists & final list of resolution applicants, proofs of circulations, etc. However, IPs needs to maintain the complete records of CIRP for atleast 3 years after the conclusion of the assignment.

Submission

IP submitted that documents like provisional list, final list of resolution applicants were introduced by amending the Regulation 36A vide IBBI (CIRP) 3rd Amendment Regulation, 2018 with effect from 3rd July 2018 which were not applicable to the CIRP of Nagarjuna Oil Corporation Limited. IP submitted that all applicable documents relating to CIRP are still maintained by IP in electronic mode and if required shall be submitted to ICSI IIP. However, for the sake of continuity in proceedings, all hard copies of the documents were handed over to the Liquidator in the interest of facilitating the liquidation process.

Analysis

With respect to preservation of records, Regulation 39A of IBBI (CIRP) Regulations provides as follows:

“39A.Preservation of records. The interim resolution professional or the resolution professional, as the case may be, shall preserve a physical as well as an electronic copy of the records relating to corporate insolvency resolution process of the corporate debtor as per the record retention schedule as may be communicated by the Board in consultation with Insolvency Professional Agencies”

The DC observed that the documents were not made available to the IA even after the final inspection report was issued and shared with the IP with a list of documents not provided. The DC observed that preservation of records is an important aspect of acting as an IP for any assignment.

3. Order

3.1 After considering the allegations in the SCN and submissions made by Mr. Rajendran Shanmugam 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. Under the Code, RP plays a central role in resolution process of the CD, he is appointed by the Adjudicating Authority as an officer of the Court to conduct the resolution process and it is the duty of RP to conduct CIRP with integrity and accountability in the process and to take reasonable care and diligence while performing his duties.
- ii. To levy a penalty of Rs. 1,00,000/- (Rupees One lakh only) for the continuous procedural lapses and direct contraventions 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. To submit proof of return of professional fees of Rs. 30,000/- in the related party transaction.
- iv. The DC observes that Mr. Rajendran Shanmugam should be careful and take due care in the future.
- v. Mr. Rajendran Shanmugam shall, however, continue to conduct and complete the assignments/ processes he has in hand as on date of this order

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

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

CERTIFIED TRUE COPY

-sd-

MR. GOPAL KRISHNA AGARWAL
(CHAIRPERSON)

-sd-

DR. S. P. NARANG
(MEMBER)

-sd-

CS DEVENDRA DESHPANDE
(MEMBER)