

**ICSI Institute of Insolvency Professionals**

**(Disciplinary Committee)**

**ICSI IIP/DC/ 10/2021**

**12th January, 2022**

**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 08<sup>th</sup> October, 2021 (SCN) issued to Mr. Rajkumar Mahto, resident of Krishna Kewal Housing Society, Flat No.16, Kondhawa Khurd, Pune, Maharashtra-411048, 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-N00723/2018-2019/12209.

**1.2** The inspecting authority (IA) of ICSI Institute of Insolvency Professionals (ICSI IIP) conducted online inspection of 8 assignments handled by Mr. Rajkumar Mahto and prepared final inspection report, which was duly mailed to IP on 22<sup>nd</sup> March, 2021. The final inspection report and subsequent correspondences were placed before the Monitoring Committee on 21<sup>st</sup> 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 8<sup>th</sup> October 2021. Mr. Rajkumar Mahto (IP) sent his reply to the Show Cause Notice through e-mail dated 01<sup>st</sup> November, 2021.

**1.4** The show cause notice along with the reply and supporting documents were placed before the Disciplinary Committee (DC) of ICSI IIP for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Rajkumar Mahto availed an opportunity of e-hearing before the DC on

17.12.2021. Mr. Rajkumar Mahto gave his oral submissions during the e-hearing. IP also submitted documents to the Secretariat as part of his submissions made during the e-hearing.

## **2. Alleged Contraventions and Submissions**

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

### **Contravention**

#### **2.1 Proper e-voting procedure not followed**

In the matter of **Purvi Metals Private Limited**, E-voting was considered by the Insolvency Professional (IP) even though Authorized Representative (AR) of both the financial creditors were present and had voted in the meetings. As per the minutes dated 21.09.2020 of second Committee of Creditors (CoC) meeting, the members approved the appointment of registered valuers and transaction auditors, yet, e-voting was proposed for the same wherein the appointment was not approved by the CoC members.

### **Submission**

In his written submissions, IP submitted that after the meeting, e-voting was done as representatives of Public Sector Undertaking (PSU) Banks approach higher authorities for internal approval resulting in delay of CIRP. The IP submitted that all the CoC members did not vote and requested to extend the e-voting closure time. As proof of his submission, the IP has also submitted a document where CoC asked for extension of e-voting timeline.

### **Analysis**

Regulation 25(5)(b) of IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016 states,

*to seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes.*

Regulation 26(1)(a) of IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016 states,

*“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 IP has also submitted a letter wherein he has informed the CoC that the process under IBC was not being followed as the IP was not being allowed by the CoC to carry out his statutory duties under the Code. The DC observed that even though the IP had tried to undertake his duties under the Code, there was still a contravention wherein the process of e-voting was not carried out properly.

### **Contravention**

#### **2.2 Misapprehension of facts**

In the matter of **RoyalOak Steels Private Limited**, from the communications and records made available to the IA by the IP, the earnest money and net worth criteria communicated to the prospective resolution applicant was different from the one approved in the CoC meeting. The criteria approved in 3<sup>rd</sup> CoC meeting dated 22.01.2020 was earnest money of 10 Lac and net worth of 50 Lac. However, the criteria submitted to one of the prospective resolution applicants, namely, Mr. Sanchit Bajaj of M/s Shyam Steel Industries Limited vide communication dated 03.03.2020 was earnest money of 15 Lac and net worth of 2 Crore.

### **Submission**

IP has accepted that there was an inadvertent error in communicating the correct figures to the Resolution Applicant. However, IP has also mentioned that the correct figures were communicated to the Resolution Applicant telephonically. IP also explained that the Resolution Applicant was hesitant to give the confidentiality undertaking and therefore the required documents of financials, Information Memorandum etc. could not be shared with him.

### **Analysis**

Clause 11 and 12 of the Code of Conduct as stipulated under IBBI (Insolvency Professionals) Regulations, 2016 state that,

*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.*

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.

DC observed that in lieu of lack of any evidence pointing to the fact that the correct information was conveyed at a later stage, there is a violation of clause 11 and 12 of first schedule to Code of Conduct of Insolvency Professionals under Regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016.

### **Contravention**

#### **2.3 Delay in complying with timelines**

In the matter of **Royal Oak Steels Private Limited**, there were multiple delays with respect to complying with the required statutory timelines.

- Delay of 8 months in appointment of registered valuers (valuers were required to be appointed in the month of December 2019, however they were appointed in August, 2020)
- In 5<sup>th</sup> CoC meeting dated 24<sup>th</sup> July, 2020 it was resolved to apply for liquidation, however liquidation application was filed on 21<sup>st</sup> November, 2020 after 4 months
- Transaction audit was completed, however no further action was taken by the IP. The agenda of 5<sup>th</sup> CoC meeting dated 21<sup>st</sup> July, 2020 had the agenda to discuss transaction based audit report, however as per the minutes no such discussion on the transaction audit report was made.
- Delay of 1 month in submission of report certifying the constitution of CoC (The report was required to be submitted to Adjudicating Authority on 21.11.2019, however it was submitted on 23.12.2019)

### **Submission**

IP has submitted in his oral and written submissions that the delays in timelines were due to the outbreak of COVID 19 pandemic wherein since

offices were closed and professionals apart from the insolvency professional also were unable to travel.

### **Analysis**

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

DC also observed that although timely resolution is one of the objectives of the Code and the IP had not filed an application for condonation of delay in this process, the DC notes that at the time of the abovementioned timelines, Covid 19 pandemic was at its peak and hence the DC takes lenient view in lieu of lockdown situation due to Covid.

### **Contravention**

#### **2.4 Non ratification of fees**

In the matter of **Royal Oak Steels Private Limited**, from the records made available to the IA, it was observed that the IP did not get the fees ratified from the CoC. For instance, as per the cost disclosure filed at ICSI IIP website portal, Rs. 3,45,000/- was paid to other professionals and 15,000/- was paid to accounting professionals, however no details of the same were mentioned in minutes. Moreover, no engagement letters for the appointed professionals was provided to the IA.

### **Submission**

IP submitted that the required ratification of all fees and expenses were done during the CIRP. IP has also submitted that the required documents, i.e., the engagement letters for appointed professionals are also available and the same were shared by the IP with the secretariat after the e-hearing.

### **Analysis**

Regulation 34 of IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016 states that,

*The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.*

*Explanation. - For the purposes of this regulation, "expenses" include the fee to be paid to the resolution professional, fee to be paid to insolvency*

*professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.*

The DC noted that it is necessary to get the expenses ratified and also to provide documents to the IA. It is the duty of the IP to maintain transparency in all processes of the CIRP and to ensure that all documents must be maintained and all approvals must be duly complied with. In light of the relevant documents being made available to ICSI IIP, the DC has taken a lenient view of the same.

## **Contravention**

### **2.5 Non ratification of fees**

In the matter of **M.S. Shipbreaking Private Limited**, From the records made available, it was observed by the IA that the IP did not get the fees ratified from the CoC. For instance, As per the cost disclosure filed at ICSI IIP website portal,

- IRP fees is mentioned as Rs. 5,40,000/- and amount ratified by CoC is mentioned as Rs. 3,50,000/- However, no such amount was deliberated or approved in CoC minutes. Additionally, on the contrary, as per appointment letter issued to the IRP fees of only Rs. 80,000/- was mentioned.
- IA observed that there is no uniformity in the records maintained by IP. Different amounts have been mentioned in different documents.
- Fees of legal professionals is mentioned as Rs. 4,00,000/- and Rs. 30,000/- was mentioned as amount ratified by CoC. However, no such amount was deliberated or approved in CoC minutes.

## **Submission**

The IP has submitted in both his written and oral submissions that all fees and amounts have been ratified by the CoC. The IP also ensured that the amount has been different in the portal of IBBI and ICSI IIP as consolidated amount of fee has been entered into. The IP also satisfied the contention by providing the required documents related to ratification of fee by the CoC

## **Analysis**

Regulation 34 of IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016 states that,

*The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.*

*Explanation. - For the purposes of this regulation, "expenses" include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.*

The DC noted that it is necessary to get the expenses ratified and also to provide required documents to the IA. It is the duty of the IP to maintain transparency in all processes of the CIRP and to ensure that all documents must be maintained and all approvals must be duly complied with. In light of the relevant documents being made available to ICSI IIP, the DC has taken a lenient view of the same.

## **Contravention**

### **2.6 Non maintenance of records**

The IP did not provide complete records in most of his assignments to the IA i.e. engagement letters, report certifying constitution of CoC, proof of circulation of notice, agenda, minutes, signed attendance sheets, copy of IM, list of creditors etc.

## **Submission**

IP in his oral submissions stated that he has shared all the documents with the Inspecting Authority beforehand. However, if more documents are required, the IP ensured that the documents as required by ICSI IIP shall be provided.

## **Analysis**

Section 208(2) of the Insolvency and Bankruptcy Code, 2016 states that

*(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 noted that it is the duty of the IP to maintain transparency in all processes of the CIRP and to ensure that all documents must be maintained and all approvals must be duly complied with.

### **Order**

3.1 After considering the allegations in the SCN and submissions made by Mr. Rajkumar Mahto 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. 50,000/- (Rupees Fifty Thousand 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/NEFT 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) to improve his understanding of the Code and the regulations made thereunder before applying for issuance of Authorisation for Assignment (AFA).
- iv. The DC observes that Mr. Rajkumar Mahto should be careful and take due care in the future.
- v. Mr. Rajkumar Mahto shall, however, continue to conduct and complete the assignments/ processes he has in hand as on date of this order.
- vi. 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)