

ICSI Institute of Insolvency Professionals

(Disciplinary Committee)

ICSI IIP/DC/12/2022

Parties Present

Mr. Vijay Kumar Sharma, Respondent and
Adv. Anuj Tiwari, Counsel for the Respondent

Date of Hearing: June 03, 2022

June 16, 2022

ORDER

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

This order disposes of the Show Cause Notice dated December 30, 2021 (SCN) issued to the respondent, resident of A-52, Lower Ground Floor, Nirman Vihar, New Delhi-110092, 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-N00035/2016-17/10074.

1. Background

1.1 Respondent filed an application for obtaining Authorization for Assignment ("AFA") wherein he disclosed the fact that criminal proceedings titled as *Serious Fraud Investigation Office (SFIO) Vs. Mohd. Iqbal & Others. - Complaint Case No. 720/17* are pending against him in Dwarka District Court. ICSI IIP rejected the application for issuance of AFA pursuant to Regulation 12A (b) of the IBBI (Model Bye-laws and Governing Board of IPA) Regulations, 2016. Respondent filed an appeal before the Membership Committee of ICSI IIP against the order of rejection of his AFA. The Membership Committee *vide* order dated December 28, 2021 rejected the appeal.

1.2 The appeal was rejected on the basis of information where on the directions of the Ministry of Corporate Affairs (MCA), a complaint was filed by Serious Fraud Investigation office (SFIO) against the respondent with Institute of Company Secretaries of India (ICSI) for professional or other misconduct under the

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2.2 The alleged contraventions against the IP make him a person not 'fit and proper' in terms of the Explanation to clause (g) of regulation 4 of the IBBI (Insolvency Professionals) Regulations, 2016.

3. Reply and Observations

3.1 Respondent had filed his preliminary objections to the SCN on February 10, 2022. The Respondent had requested for the withdrawal of the SCN on the ground that SCN was issued *sans* jurisdiction and is liable to be recalled forthwith. Further, the Respondent had relied on the matter of *Kranti Associates v. Masood Ahmed Khan* and Para 2 of Part III of Disciplinary Policy of ICSI IIP, stating that SCN can only be issued subsequent to a meeting of the Disciplinary Committee whereby the Disciplinary Committee is of the considered opinion that the complaint, information, reference or direction, warrants issuance of show-cause notice. Hence, the office of Deputy Director had no power whatsoever to issue any Show Cause Notice *sans* any meeting of the Disciplinary Committee whereby the considered opinion of the Disciplinary Committee is recorded.

3.2 The Disciplinary Committee of ICSI IIP has provided the opportunity of personal hearing on June 03, 2022 on the request of the Respondent. The respondent contended that the alleged misconduct being relied upon, pertained to a period before his registration as a professional member with the ICSI IIP under the provisions of IBC.

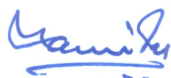
3.3 Respondent made written submissions vide e-mail dated June 06, 2022, post making arguments at the personal hearing. The submissions reiterated that the alleged misconduct pertains to a period before March 24, 2017, the day on which the respondent was registered as an Insolvency Professional with ICSI IIP.

3.4 Regulation 2(1)(g) of IBBI (Insolvency Professional) Regulations, 2016, a professional member is defined as,

"professional member" means an individual who has been enrolled as a member of an insolvency professional agency;"

Regulation 23 of IBBI (Model Bye Laws and Governing Board of IPA) Regulations, 2016,

"The Agency may initiate disciplinary proceedings by issuing a show-cause notice against professional members-"



Company Secretaries Act, 1980 (DC/544/2020) and the same being pending before the Disciplinary Committee of ICSI.

1.3 In addition to this, another complaint of professional or other misconduct was filed by M/s. MMR Construction Company Private Limited (through Shri Mohit Singh Raghav, Shri Mahipal Singh Raghav and Shri Mohit Singh Raghav) against the respondent under the Company Secretaries Act, 1980 (DC/378/2017) and the same was also pending before the Disciplinary Committee of ICSI at the time of issuance of this SCN.

1.4 A Show cause notice (SCN) was issued to the respondent on December 30, 2021 under Clause 23(d) of the Bye Laws of ICSI Institute of Insolvency Professionals (ICSI IIP) and Part III of the Disciplinary Policy of ICSI IIP.

1.5 The show cause notice along with the reply and supporting documents were placed before the Disciplinary Committee of ICSI IIP for consideration.

2. Alleged Contravention

2.1 In light of the criminal proceedings pending against the respondent and complaint filed by Serious Fraud Investigation office (SFIO) with Institute of Company Secretaries of India (ICSI) for professional or other misconduct under the Company Secretaries Act, 1980 (DC/544/2020), the following provision can be perused:

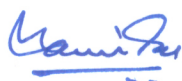
Regulation 4 of IBBI (Insolvency Professionals) Regulations, 2016,
Eligibility.

4. No individual shall be eligible to be registered as an insolvency professional if he

...
(g) he is not a fit and proper person;

Explanation: For determining whether an individual is fit and proper under these Regulations, the Board may take account of any consideration as it deems fit, including but not limited to the following criteria-

- (i) integrity, reputation and character,
- (ii) absence of convictions and restraint orders, and
- (iii) competence, including financial solvency and net worth.



After considering the submissions and going through the definitions, DC considered and agreed on the submissions made by the respondent.

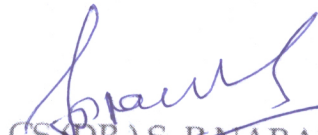
3.5 The Committee has not gone into the merits of the alleged misconduct.

Order

- 1) It seems that the alleged misconduct by the respondent pertained to a period prior to him becoming a '*professional member*' of ICSI IIP as per the provisions of IBC and its Regulations, hence out of the preview of this disciplinary proceedings. Accordingly, the show cause notice is disposed of.
- 2) A copy of this order shall be forwarded to the Insolvency and Bankruptcy Board of India.
- 3) Parties shall bear their own costs.



CA GOPAL KRISHNA AGARWAL
(CHAIRPERSON)



CS (DR.) S. PNARANG
(MEMBER)



CS MANISH GUPTA
(MEMBER)