

ICSI Institute of Insolvency Professionals

(Disciplinary Committee)

ICSI IIP/DC/02/2023

6th June, 2023

ORDER

(Under Part III of Disciplinary Policy read with Clause 24(2) of Bye Laws of ICSI Institute of Insolvency Professionals)

1. Background

This order disposes of the Show Cause Notice dated 7th October, 2022 (SCN) issued to Mr. Anish Gupta, 413 Autumn Grove, Near Lokhandwala Foundation School, Lokhandwala, Kandivali -E, Mumbai, Maharashtra, 400101, a professional member of ICSI Institute of Insolvency Professionals (ICSI IIP) and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-002/IP-N00285/2017-2018/10843

The inspecting authority (IA) of ICSI IIP sent an inspection notice on 19th January, 2022 to Mr. Anish Gupta (IP) for online inspection from 07th February, 2022 to 09th February, 2022 which was rescheduled on IP's request to 23rd to 25th February, 2022. The IP did not submit the complete documents to the inspecting authority even after repeated reminders.

The matter was placed before the Monitoring committee in its meeting dated 12th September, 2022 and after deliberations, SCN was issued by the Secretariat on 7th October, 2022. Mr. Anish Gupta sent his reply to the SCN through e-mail dated 25th October, 2022.

The SCN along with the reply and supporting documents were placed before the Disciplinary Committee of ICSI IIP for its disposal in accordance with the Code and Regulations made thereunder. Mr. Anish Gupta availed an opportunity of e-hearing before the DC on 17th May, 2023.

The DC has considered the SCN, the reply to SCN, submissions of Mr. Anish, other material available on record.

2. Alleged Contravention, Submissions, Analysis and Findings

The contravention alleged in the SCN and submissions by the IP are summarized as under:

CONTRAVENTION

The IP did not submit the documents for conducting the inspection to the IA even after repeated reminders. The following series of events occurred:

Inspection notice was sent on 19th January, 2022 to conduct the inspection from 07th February, 2022 to 09th February, 2022 which was rescheduled on IP's request to 23rd to 25th February, 2022

The Inspecting Authority sent repeated reminders via emails on 3rd March, 2022, 9th March, 2022 and 11th March, 2022 for providing the complete documents.

Till 22nd March, 2022, complete set of documents were not provided. Later, IP again applied for extension till 15th April, 2022 which was granted.

On 20th May, 2022, documents of 7 assignments handled by IP were sent via google drive link which required permission from the creator of the link, to access the documents. Till the date of issuance of SCN, open access to the documents was not provided to the IA even after repetitive emails & calls.

Submissions made by the IP

The IP submitted that at the time inspection notice received on 19th January, 2022 and various reminders on various dates, I was handling many matters of CIRP and Liquidation concurrently and also being the Company Secretary in whole time practice, had to deal with various due date compliances under the Companies Act, SEBI LODR Guidelines etc.

The IP further mentioned that due to delay in getting approval from NCLT in allowing petitions for liquidation or other prayers, 3-4 cases of CIRP/Liquidation process started simultaneously at the same time due to which IP got additional work pressure. Further dues dates for completion of 1 years for voluntary liquidation matters were also due during February and March, 2022 period.

The IP also submitted that during the period, IP was handling various matters simultaneously for CIRP/Liquidations and it took lot of time in preparation, consulting with law firms, preparation and filing of petitions /IA etc before the NCLT Bench, appearance before the Bench on each of the dates along with the Law firms advocates. Further, during period from January 2022 to May 2022, five of the staff including trainees have left the firm and insolvency professional could not find timely replacement of staff during the period inspite of taking interviews of various trainees and company secretaries.

The IP also submitted that the gave access to those 7 assignments well in time.

Analysis and Finding

The DC noted that as on date of inspection, IP was handling 18 assignments, but access to only 7 assignments were provided by the IP that too password protected. Further, after the issuance of SCN, he provided the documents w.r.t 3 more assignments on 12th December, 2022, later on documents w.r.t 3 more assignments on 1st January, 2023, then documents w.r.t 2 more assignments on 1st March, 2023.

The documents w.r.t few assignments were still pending as on date of Disciplinary Committee meeting.

The DC is of the view that Insolvency professional Agencies are the front-line regulators of the Insolvency and Bankruptcy Code, 2016. They have been bestowed with multiple functions one of them is to ***“inspect the insolvency professionals”***.

An Insolvency professional is expected to always cooperate with its Insolvency professional Agencies.

As per Section 208(2)(c) of the Code, every insolvency professional shall abide by the following Code of Conduct:-

.....*“to allow the insolvency professional agency to inspect the records”*

Further, as per Clause 18 of Code of conduct for IPs as per Regulation IBBI (Insolvency Professionals) Regulations, 2016.

“An insolvency professional must appear, co-operate and be available for inspections and investigations carried out by the Board, any person authorised by the Board or the insolvency professional agency with which he is enrolled.”

In view of the above, the IP has not complied with Section 208(2)(c), Clause 18 of Code of conduct for IPs as per Regulation IBBI (Insolvency Professionals) Regulations, 2016.

3 ORDER

After considering the allegations in the SCN and submissions made by Mr. Anish Gupta 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 that Mr. Anish Gupta have violated the Code and Regulations by not cooperating with ICSI IIP and have acted negligently.

Therefore, the DC hereby directs and directed the following:

- i. Levy of penalty of Rs. 50,000/- (Rupees Fifty thousand only) 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.
- ii. The Secretariat shall conduct the detailed inspection of Mr. Anish Gupta and submit the report to the committee;
- iii. that Mr. Anish Gupta should cooperate with ICSI IIP in the inspection and in all the future correspondences;
- iv. Mr. Anish Gupta 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.

CERTIFIED TRUE COPY

Sd/-

MR. GOPAL KRISHAN AGARWAL
(CHAIRMAN)