

ICSI Institute of Insolvency Professionals

(Disciplinary Committee)

ICSI IIP/DC/03/2023

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. Madan Gopal Jindal, SCO 7-8, 4th Floor, Jandu Tower, G.T. Road, Miller Ganj, Ludhiana, Punjab-141003, 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-N00137/2017-2018/10352.

The inspecting authority (IA) of ICSI IIP conducted online inspection of 5 (five) assignments handled by Mr. Madan Gopal Jindal and prepared final inspection report, which was duly mailed to IP on 5th September, 2022. The final inspection report was placed before the Monitoring Committee on 12th August, 2022. The Monitoring Committee in its meeting directed the Secretariat to issue a Show Cause Notice (SCN), based on the findings in the inspection report.

SCN was issued by the Secretariat on 7th October, 2022. Mr. Madan Gopal Jindal sent his reply to the SCN through e-mail dated 26th 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. Madan Gopal Jindal availed an opportunity of personal hearing before the DC on 17th May, 2023 along with Mr. Karanveer Jindal, Advocate.

The DC has considered the SCN, the reply to the SCN, submissions of Mr. Madan Gopal Jindal and other material available on record.

2. Alleged Contravention, Submissions, Analysis and Findings

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

2.1 CONTRAVENTION

In the matter of **Bourn Hall International India Private Limited**, the IP did not allow the withdrawal of claim of M/s Aryan Wellness Private Limited, *the only operational creditor* of the Corporate Debtor. The reason the IP gave for rejection of “withdrawal of claim” was “that there is no specific law in CIRP to deal with withdrawal of claim”.

In conjunction, the IP extended the matter for 259 days wherein after public announcement and acceptance of claims no steps were taken as enlisted in the Code, i.e. control & custody of assets were not taken, Information Memorandum was not prepared, valuation was not done etc. and eventually application for liquidation was filed.

The lack of steps taken to keep the company as a going concern along with the refusal to withdraw the claim and the prolonged time period spanning 259 days to bring a conclusion to the process, diminish the chances of an outcome other than that of Liquidation for the Corporate Debtor.

The basic objective of the Insolvency and Bankruptcy Code, 2016 is reorganisation & resolution in time bound manner for maximisation of value of assets, to promote entrepreneurship, availability of credit and balancing the interests of all the stakeholders. The Insolvency and Bankruptcy Code of India has envisaged onerous duties and responsibilities on an Insolvency Professional which also includes keeping the company as a going concern since a single organisation generates various job opportunities in society.

Accordingly, ICSI IIP made the prima facie opinion that the IP has not complied with Section 12A, 17, 18, 20, 25, 208(2)(a) of the Code, Regulation 30A of IBBI (Insolvency Professionals), Regulations, 2016, Clause 9, 10, 11, 14 of Code of conduct for IPs as per Regulation IBBI (Insolvency Professionals) Regulations, 2016.

Submissions made by the IP

The IP submitted that Section 10 application was filed by the Corporate Debtor i.e. Bourn Hall International India Private Limited and the case was admitted on 29th May, 2020 and he was appointed as the Interim resolution professional (IRP). The public announcement was made on 30th May, 2020 and in response to it, IP received claim from Aryan Wellness Private Limited through Mr. Rajesh Kumar Arya. On 19th June, 2020, IRP received email and a letter (without affidavit) for withdrawing the claim. The IP submitted that he found no provision in the Law about dealing with the process of withdrawal of claims under CIRP, however there are provisions under Liquidation regulations which deals with the withdrawal of claims.

So, there is nothing in CIRP about the withdrawal of claims once these are being submitted. The Legislature specifically allowed withdrawal of claims in Liquidation and specifically did not allow it during CIRP.

M/s Aryan Wellness Private Limited, the only operational creditor, becomes the only member of committee of creditors. It is to be noted that in the first CoC meeting, M/s Aryan Wellness was represented through its director who did not object to the rejection, rather passed the resolutions with 100% voting share further they attended all the 4 CoC meetings Therefore, the IP did not violate any provisions of the Code and Regulations.

Further, the allegation that the case was extended to 259 days with no action and ultimately application for Liquidation was filed, is wrong and based on misconceptions. The IP took all the possible steps to resolve the corporate debtor. The entire CIRP was during the COVID period. The RP visited the registered office, neither the employees nor management were available for identification of the assets. IP filed an application under section 19(2) before the NCLT Chandigarh which is still pending adjudication. The COC authorized RP to file extension application with NCLT and NCLT granted 90 days extra time in CIRP on 14th December, 2020.

There were no assets and no business in the CD. There was no need to appoint registered valuers. In the name of assets there are only bank balance in the current account and the fixed deposit which are under lien. The application to get the lien vacated is pending for adjudication. The Statutory auditors also failed to provide the required financial statements in spite of number of communications.

The IP submitted that he had taken control and custody of the bank balances lying in the current accounts of the various banks and then meanwhile in the CoC meeting dated 12th February, 2021, the CoC passed the resolution for the Liquidation of the Corporate Debtor.

The IP also submitted that he was handling various litigations for and on behalf of the Corporate Debtor including the arbitration proceedings for the protection of interest of the corporate debtor.

So, keeping in view of the above facts, the IP has not violated any of the alleged provisions of the Code and Regulations.

Analysis and Finding

The DC after analysing all the records and submissions, considered the fact that there are no clear provisions under the Code which has been violated by the IP, however necessary directions from the Adjudicating Authority should have been taken when the letter of withdrawal was received.

3 ORDER

After considering the allegations in the SCN and submissions made by Mr. Madan Gopal Jindal 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 hereby disposes of the SCN with the advice to diligently and carefully perform his functions provided under the Code and should follow the Insolvency and Bankruptcy Code in true letter and spirit.

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)