

ICSI Institute of Insolvency Professionals

(Disciplinary Committee)

ICSI IIP/DC/02/2024

21st February, 2024

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 8th August, 2023 (SCN) issued to Mr. Pinakin Surendra Shah, A/201 Siddhi Vinayak Towers, B/H BMW Showroom Next to Kataria House, off S.G. Highway Makaraba, Ahmedabad, Gujarat-380051, 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-N00106/2017-18/10248.

In the matter of Saffron Nonwoven Private Limited (“assignment”), Mr. Pinakin Surendra Shah was appointed as the Voluntary Liquidator on 1st May, 2023 and accordingly public announcement was also made on 3rd May, 2023. However, it was observed by the Secretariat that the assignment was undertaken by Mr. Pinakin Surendra Shah without holding valid Authorisation for Assignment. The AFA was valid upto 12th April, 2023. However, no application for renewal was made before ICSI Institute of Insolvency Professionals before undertaking the assignment.

The matter was placed before the Monitoring committee in its meeting dated 31st July, 2023 and after deliberations, SCN was issued on 8th August, 2023. Mr. Pinakin Surendra Shah sent his reply to the SCN through e-mail dated 23rd August, 2023.

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. Pinakin Surendra Shah availed an opportunity of e-hearing before the DC on 3rd February, 2024.

The DC has considered the SCN, the reply to SCN, submissions of Mr. Pinakin Surendra Shah (“IP”), 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 undertook voluntary liquidation assignment on 1st May, 2023 and public announcement was made on 3rd May, 2023 without holding valid Authorisation for assignment (AFA).

The AFA was valid upto 12th April, 2023, however no application for AFA was made by him before ICSI Institute of Insolvency Professionals before undertaking the assignment.

The application for renewal of AFA was made on **27th April, 2023** and again on **30th May, 2023** by him after undertaking the assignment. The applications were rejected since the required CPE hours were not availed and some CIRP forms and disclosures were also not filed with IBBI/ICSI IIP, *as the case may be*.

As per Regulation 7A of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

Regulation 7A of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016

An insolvency professional shall not **accept or undertake** an assignment after 31st December, 2019 unless he holds a valid **authorisation for assignment** on the date of such acceptance or commencement of such assignment, as the case may be:

Provided that provisions of this regulation shall not apply to an assignment which an insolvency professional is undertaking as on-

- a. 31st December, 2019; or
- b. the date of expiry of his authorisation for assignment.

Regulation 12A of IBBI (Model Bye Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016

(3) An application for issue or renewal of an authorisation for assignment, shall be in such form, manner and with such fee, as may be provided by the Agency:

Provided that an application for renewal of an authorisation for assignment shall be made any time before the date of expiry of the authorisation, but not earlier than forty-five days before the date of expiry of the authorisation.

(6) An authorisation for assignment issued or renewed by the Agency shall be valid for a period of one year from the date of its issuance or renewal, as the case may be, or till the date on which the professional member attains the age of seventy years, whichever is earlier.

Regulation 2(1) of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016

(a) “assignment” means any assignment of an insolvency professional as interim resolution professional, resolution professional, **liquidator**, bankruptcy trustee, authorised representative or in any other role under the Code;

(aa) “Authorisation for assignment” means an authorisation to undertake an assignment, issued by an insolvency professional agency to an insolvency professional, who is its professional member, in accordance with its bye-laws;

Section 5(18) of the Insolvency and Bankruptcy Code, 2016

“Liquidator” means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be;

Chapter V deals with Voluntary Liquidation of Corporate Persons.

Accordingly, ICSI IIP made the prima facie opinion that the IP has not complied with Regulation 7A of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and Regulation 12A of IBBI (Model Bye Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.

Submissions made by the IP

The IP submitted that he presumed he was holding valid AFA on the date of acceptance i.e. on 2nd January, 2023, the assignment was valid on the date of commencement (although in absence of valid AFA), was in compliance with Regulation 7A.

He also submitted that the presumption as mentioned above does not amount to guilty of professional or other misconduct.

He further submitted that by oversight he missed the date of renewal of AFA request and requested the committee for a lenient view and condone the delay in filing the particulars for AFA and that the lapse in intimating ICSI IIP for renewal of AFA has not prejudiced the interest of anyone.

During the personal hearing sought, he also highlighted the fact that he has recently resolved one 7,500 Crore going concern assignment "Sintex Industries Limited".

Analysis and Finding

The DC after analysing all the records and submissions, noted that the IP undertook voluntary liquidation assignment without holding valid AFA and he himself accepted the lapse.

In view of the above, the IP has not complied with Regulation 7A of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and Regulation 12A of IBBI (Model Bye Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.

3. ORDER

After considering the allegations in the SCN and submissions made by Mr. Pinakin Surendra Shah 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. Pinakin Surendra Shah have violated certain provisions of the Code and Regulations.

Therefore, the DC hereby cautions the Insolvency Professional to be extremely careful while undertaking any assignment in future and directed the following:

- i. to undergo 50 hours Pre-Registration Educational Course (PREC) to improve his understanding of the Code and the regulations made thereunder.
- ii. that the IP shall apply for issuance of Authorisation for assignment (AFA) only after completion of compliance mentioned above.

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)