

ICSI Institute of Insolvency Professionals

(Disciplinary Committee)

ICSI IIP/DC/03/2024

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. Kondisetty Kumar Dushyantha, No. 404/2,7th Main, 9th Main, 2nd Block, Jayanagar, Bengaluru, Karnataka-560011, 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-N00237/2017-18/10688.

The inspecting authority (IA) of ICSI IIP conducted online inspection of 5(five) assignments handled by Mr. Kondisetty Kumar Dushyantha and prepared final inspection report, which was duly mailed to IP on 21st March, 2023. The final inspection report was placed before the Monitoring Committee on 31st July, 2023. The Monitoring Committee in its meeting directed the Secretariat to issue a SCN, based on the findings in the inspection report.

The SCN was issued by the Secretariat on 8th August, 2023. Mr. Kondisetty Kumar Dushyantha sent his reply to the SCN through e-mail dated 14th 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. Kondisetty Kumar Dushyantha availed an opportunity of personal hearing before the DC on 3rd February, 2024 along with Mr. Arun Sri Kumar (Advocate), Mr. Shubhansh Thakur (Advocate) and Mr. Hari Babu Thota, Insolvency Professional.

The DC has considered the SCN, the reply to the SCN, submissions of Mr. Kondisetty Kumar Dushyantha 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 **India Brewery & Distillery Private Limited**, during Corporate Insolvency resolution process (CIRP), the IP has appointed Southern Resolution Professionals LLP (“Southern”) for support services. Southern has 2 directors, the IP and Hari Babu Thota, an Insolvency professional and it is not an Insolvency Professional Entity registered with IBBI. It is prohibited under the Regulations to appoint related parties. Further, the IP did not submit relationship disclosure with ICSI IIP w.r.t Southern and no appointment letter was provided.

Accordingly, ICSI IIP had prima facie opinion that the IP has not complied with IBBI circular dated 16th January, 2018, Clause 16 and 23B of Code of conduct for IPs as per Regulation IBBI (Insolvency Professionals) Regulations, 2016.

Submissions made by the IP

The IP submitted that the CIRP was commenced on 25.02.2021. In the first CoC meeting held on 02.04.2021, it was decided to appoint Southern, however after understanding the facts of the Corporate

Debtor, based on information available and having perused the pronouncements on related party aspects, it was internally decided on 07.04.2021 not to avail the service from Southern Resolution Professionals LLP. Thus, appointment was never made and hence, disclosure requirement didn't arise. An internal note in this regard was discussed and relied to arrive on the decision for non-appointment of Southern Resolution Professionals LLP.

The IP also submitted that engagement did not fructify as appointment letter was not issued. Nothing has been claimed or paid against the same till date, to Southern Resolution Professionals LLP. No payments have been made to Southern Resolution Professionals LLP or any of its partners as evidenced by the Bank Statements of India Brewery & Distillery Private Limited.

Analysis and Finding

The DC noted that the IP in his reply to SCN submitted that only after 4 days of appointment of Southern it was decided not to avail the services through an internal document. However, no CoC intimation or approval was taken by the IP. Moreover, as per the records submitted by IP, in CoC meeting dated 3rd April, 2023 (*after submission of final inspection report to IP*), an agenda to annul the appointment of Southern was passed.

The DC does not take the cognizance of the internal note as it has not been approved by any competent authority.

The IP's submission that the appointment did not fructify as appointment letter was not issued does not subsist as invoice was raised by Southern and raising invoice amounts to acceptance of appointment only.

Moreover, as per the records made available during the Inspection, invoice of Rs. 1,92,000/- plus GST i.e., Rs. 2,26,560/- was raised by Southern on 9th April, 2021. The invoice of Rs. 2,26,560/- raised by Southern was adjusted as "IP fee taken as advance"

In view of the above, the IP has not complied with IBBI circular dated 16th January, 2018, Clause 16, and 23B of Code of conduct for IPs as per Regulation IBBI (Insolvency Professionals) Regulations, 2016.

2.2 CONTRAVENTION

In the matter of **Conglome Techno Constructions Pvt Ltd**, during Liquidation the IP admitted the claims of various unsecured financial creditors after the last date to accept the claims without the approval w.r.t modification of list of stakeholders from the Adjudicating Authority.

Accordingly, ICSI IIP had prima facie opinion that the IP has not complied with Regulation 31(3) of Liquidation Regulations, 2016.

Submissions made by the IP

The IP submitted that the homebuyers' claims were provisionally admitted for the limited purpose only to facilitate formation of Stakeholder's Consultation Committee as there were no other claims received during the liquidation process other than the secured financial creditor.

The Liquidator in bona-fide interest received the claims forms and on a provisional basis admitted the claims. The Liquidator had clearly sought them to get the approval of NCLT to condone the delay in submission of claim forms. However, the Liquidator did not receive application for condonation till demitting the office.

The IP submitted that he was the Liquidator for very short period of time. The Liquidation assignment was initiated on 06.01.2021, copy of order was received on 03.02.2021, certified copy was issued on 04.02.2021 and an IA was filed for relinquishment of my duties as liquidator on 29.04.2021.

During the personal hearing, the IP also submitted that in Karnataka, as a general practice, the creditors need to file for the condonation of delay before the Adjudicating Authority.

Analysis and Finding

The DC considers the submissions made by the IP.

2.3 CONTRAVENTION

In the matter of **Manali Sugars Limited**, during Corporate Insolvency resolution process (CIRP), as per the minutes of 3rd CoC meeting dated 2nd August, 2021, M/s. Bilagi Sugar Mill Limited jointly with Mr. Jawahar Vasant Rao Hunagund, prospective resolution applicants submitted the deposit amount, which was treated as interim finance by the IP.

The conditions for giving the interim finance as mentioned in the minutes were:

- i. The deposit provided along with expression of interest of Rs.16,45,00,000/- shall be treated as interim finance;
- ii. The prospective resolution applicant shall make balance payment of Rs.8,55,00,000/- as interim finance for the ensuing sugarcane crushing season immediately and be treated as payment required to be made while submitting the Resolution Plan;
- iii. The interest on the interim finance provided shall be NIL, if the resolution plan that shall be submitted by the Bilagi Sugar Mill Limited jointly with Mr. Jawahar Vasant Rao Hunagund is approved by the Committee of Creditors and Adjudicating Authority;
- iv. The interest at the rate of 17% per annum shall be paid if Bilagi Sugar Mill Limited jointly with Mr. Jawahar Vasant Rao Hunagund do not submit a resolution plan or resolution plan that shall be submitted is rejected by the Committee of Creditors and the Adjudicating Authority;
- v. The interim finance (i.e. principal and interest) shall be repaid on or before 31st March 2022 or any other date as proposed by the resolution applicant whichever is earlier in accordance with the provisions of Section 53(1) of the Insolvency and Bankruptcy Code as Corporate Insolvency Resolution Process Cost;

Ultimately, the resolution plan of M/s. Bilagi Sugar Mill Limited jointly with Mr. Jawahar Vasant Rao Hunagund only was approved by CoC and later by the Adjudicating Authority.

ICSI IIP had prima facie opinion that the above conditions are not in consonance with the Code, Regulations and code of conduct of the IP and the IP has not complied with 36A(4)(d) of IBBI (CIRP) Regulations, 2016, Clause 3, 5 and 9 of the Code of conduct for IPs as per IBBI (Insolvency Professionals) Regulations, 2016.

Submissions made by the IP

The IP submitted that

- the deposit received along with the expression of interest was interest free refundable deposit.
- Considering the importance and urgency of the interim finance to run the crushing season, after deliberation of the matter with all the CoC members and with the approval of the Hon'ble

NCLT, Bengaluru Bench vide its order dated 7th August 2021, the interim finance was availed from the resolution applicant with interest at the rate of 17%.

- However, as far as the deposit that was required to be submitted along with the expression of interest, the IP in consultation with the CoC members (as approved at the 2nd meeting held on 15th June, 2021) had fixed the refundable deposit in accordance with Regulation 36A(4)(d) of IBBI (CIRP) Regulations.
- Further, as the corporate debtor was in CIRP and the crushing season was approaching, the IP contacted all the CoC members for availing interim finance.
- Further, the IP submitted the budget which was required to run the process before the CoC members. However, none of the CoC members came forward to lend money. The IP also approached many of the third-party lenders but interest rates were very high.
- During the process, the resolution applicant came forward and proposed to consider and treat the refundable deposit amount as interim finance.
- There was no condition for treating the refundable deposit as interim finance. However, the resolution applicant proposed for 17% interest only if the resolution applicant do not submit a resolution plan or resolution plan that shall be submitted is rejected by the committee of creditors and the Adjudicating Authority.
- Further, considering the stakes involved in the corporate debtor, it was the best available option and the CoC with their commercial wisdom had approved the same.
- The IP further stated that, during the crushing season, the said amount was utilised, and the production was possible as expected and the said amount was recovered out of the sale proceeds and kept as fixed deposit in the bank account.

The IP also submitted that the Corporate Debtor has the license for 5 lakhs tons' sugar cane crushing. It has over 4207 employees, to avoid consequences of non-operation or delayed operations of the factory of the Corporate Debtor and to keep the company as a going concern, the proposal of the Prospective Resolution applicant was presented before the CoC. The resolution for taking interim finance was approved by 62.85%, rejected by 21.41% and 15.74% members abstained from voting. As the interim finance was paramount importance to ensure that the CD as going concern, the IP filed an application before the Hon'ble NCLT for its approval to exclude the voting percentage of the CoC members who had abstained from voting upon the resolution seeking the approval on terms and conditions of the interim finance. Considering and perusing the importance of the interim finance, the Hon'ble NCLT approved the application on 7th August, 2021.

Hence, the IP submitted that the provisions of Regulation 36A(4)(d) of IBBI (CIRP) Regulations are complied with.

Analysis and Finding

The DC considered and took note of the fact that for keeping the company as going concern, interim finance from Prospective Resolution applicant was taken with the approval of CoC.

Moreover, the DC also considered that Hon'ble NCLT has already approved the resolution plan submitted by M/s. Bilagi Sugar Mill Limited jointly with Mr. Jawahar Vasantryo Hunagund.

Accordingly, the submissions made by IP have been considered by DC.

2.4 CONTRAVENTION

In the matter of **Manali Sugars Limited**, during CIRP, as per the bank statements, payments have been made to the related parties of the IP as per the following details,

- Southern Resolution Professionals LLP (on 29th November, 2021 amount of 1,00,000/-, 7th January, 2022 amount of 1,20,000/-)
- K Dushyantha and Associates (on 30th August, 2021 amount of Rs. 25,06,578/-)

The payments were made to the **related parties** as a part of remuneration to the IP. The payments were made to the bank account of other entities for the services of IP.

Accordingly, ICSI IIP held the prima facie opinion that the IP has not complied with IBBI circular dated 16th January, 2018 (*Fees payable to an insolvency professional*) and Clause 25C of the Code of conduct for IPs as per IBBI (Insolvency Professionals) Regulations, 2016

Submissions made by the IP

The IP submitted that K Dushyantha Kumar is a sole proprietor of K Dushyantha and Associates which is a sole proprietorship concern recognised with the ICSI and has bank account in the name and style of “K Dushyantha and Associates”. W.r.t, Southern Resolution Professions LLP, it is a LLP in which the IP is the Designated Partner.

There is no separate service availed/invoices raised by both the above entities as prohibited in IBBI Circular dated 16th January 2018 in connection with the fees payable to an Insolvency Professional. All the invoices are raised by the IP himself. However, payments mentioned in SCN were credited to the bank account of the said LLP (i.e. Rs.1,00,000/- on 29th November 2021 and Rs.1,20,000/- on 7th January 2022). The IP undertook to refund the above said amount to the bank account of the CD if directed and to receive the payment on the personal account.

The IP during personal hearing admitted that by oversight Rs. 2,20,000/- was paid to Southern Resolution Professions LLP.

During hearing, he also highlighted the clarification circular issued by IBBI on 1st February, 2024 wherein it was clarified that *“for the purposes of clause 25C of Code of Conduct specified in First Schedule to IP Regulations, the bill or invoice may be raised in the name of the IPE or the professional or the firm in which such professional is a partner”*.

Accordingly, the IP mentioned that he is in compliance with IBBI circular dated 16th January, 2018 (Fees payable to an insolvency professional) and Clause 25C of the Code of conduct for IPs as per IBBI (Insolvency Professionals) Regulations, 2016.

Analysis and Finding

The DC considered the payment made to “K Dushyantha and Associates” a sole proprietorship firm of the IP, as payment was made to the IP itself.

With regard to the payment made to “Southern Resolution Professions LLP”, w.r.t remuneration of IP amounting to 2,20,000/- have been made to the bank account of related party which has been agreed by the IP itself during the meeting.

Further, the DC did not consider the clarificatory circular issued by IBBI on 1st February, 2024, as circular is applicable in those cases, where payment is made to the entity, in which IP is partner and

invoice is raised and said payment has been made to entity as payment to IP itself. However, in this case, payments were made to directly to “Southern Resolution Professions LLP” without establishing the fact that payment is being made to IP on the invoice raised by entity for and on behalf of its partner.

In view of the above, the IP has not complied with IBBI circular dated 16th January, 2018 (Fees payable to an insolvency professional) and Clause 25C of the Code of conduct for IPs as per IBBI (Insolvency Professionals) Regulations, 2016 with regard to payment made to “Southern Resolution Professions LLP”.

3. ORDER

After considering the allegations in the SCN and submissions made by Mr. Kondisetty Kumar Dushyantha 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. Kondisetty Kumar Dushyantha have violated certain provisions of the Code and Regulations and have acted negligently in forming the duties.

Therefore, the DC hereby Reprimands the Insolvency Professional and advised him to be extremely careful while performing duties in future and directed the following:

- i. Levy of penalty of Rs. 3,00,000/- (Rupees Three Lac only) for contravention of the Code, its Regulations and Circulars 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. IP to undergo 50 hours Pre-Registration Educational Course (PREC) to improve his understanding of the Code and the Regulations made thereunder.
- iii. The Authorisation for assignment (AFA) shall stands suspended from the date of issuance of Show Cause Notice till the completion of compliance of above-mentioned points (i) & (ii)

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)