

ICSI Institute of Insolvency Professionals

(Disciplinary Committee)

ICSI IIP/DC/01/2025

2nd April, 2025

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 3rd January, 2025 (SCN) issued to Mr. Prabhakar Kumar, B-5/41, Ground Floor, Vivekanand Apartment, Sector 8, Rohini, Delhi-110085, 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-N00774/2018-2019/12373.

The inspecting authority (IA) of ICSI IIP conducted online inspection of 5(five) assignments handled by Mr. Prabhakar Kumar and prepared final inspection report, which was duly mailed to IP on 11th December, 2023. The final inspection report was placed before the Monitoring Committee on 16th December, 2024. 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 3rd January, 2025. Mr. Prabhakar Kumar sent his reply to the SCN through e-mail dated 15th January, 2025.

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. Prabhakar Kumar availed an opportunity of personal hearing before the DC on 28th February, 2025.

The DC has considered the SCN, the reply to the SCN, submissions of Mr. Prabhakar Kumar 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 **Shri Ganesh Fire Equipments Private Limited**, during Liquidation, it was observed that the Liquidator on the recommendation of the Stakeholders' Consultation Committee (SCC) in its meeting dated 28th March, 2022, did not conduct the fresh valuations even though he was of the opinion that fresh valuations are required as valuations were done 1.5 years back during CIRP period. However, the members of SCC were of view that taking fresh valuations will increase additional cost. The Liquidator just increased the value of assets by 20-30% over the liquidation value as per valuation report of CIRP for the bidding process.

As per clause 1(4) of schedule I (Mode of sale) under Regulation 33 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the reserve price shall be the value of the asset arrived at in accordance with Regulation 35.

Accordingly, ICSI IIP had prima facie opinion that the IP has not complied with Regulation 33 and 35 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

Submissions made by the IP

The DC noted that the IP in his reply to SCN submitted that 1st SCC meeting was held on 28.03.2022. he was having opinion that fresh valuation of two major assets was required. He, as liquidator, proposed the resolution for appointment of valuers authorizing the liquidator to invite EOI from valuers for appointment but due to reluctant advise of major SCC member “Canara Bank”, shown unwillingness to get the fresh valuation and advised to withdraw the resolution for appointment of registered valuer. The SCC member further advised to sell the assets above 20-30% or any other percentage of the Liquidation value instead of going for valuation again to invite more competitive bidders, instead of raising liquidation cost by way of additional valuation charges. Since, SCC Members advised to withdraw the resolution, he had no option other than withdrawing the resolution in 1st SCC meeting as placed for authorizing Liquidator for inviting EOI for appointment.

The Liquidator, in 4th SCC meeting which was held on 16.08.2022, again reiterated the requirement of Regulation 35 stating the opinion of the Liquidator to obtain the fresh valuation report as the valuation report obtained by erstwhile Resolution Professional was of more than 2 years. He emphasized the requirement of valuation report that he had made opinion with respect to the assets held in the name of Company in terms of Factory Land and Shed in Hajipur, Bihar. After discussion held in 4th SCC meeting, members passed the resolution to appoint two valuers. On the approval of SCC, the liquidator invited quotation from valuers and appointed 2 valuers having lowest quotation for valuation. The appointment letters were issued to them on 20.09.2022, who submitted their valuation report of 06.10.2022 as well as 12.10.2022 respectively.

The delay in appointment of registered valuer was not wilful and intentional but it was caused by the adverse decision of SCC members, who advised to withdraw the resolution, which is being recorded in the minutes of SCC meeting.

Request you to consider the same as procedural delay due to non-consensus of SCC members as well as delay in their approval to proceed for fresh valuation. As a Liquidator, I framed my opinion and advised the SCC, which was not accepted initially but later on it was accepted and consequently the proposal got approved, authorizing me to obtain fresh valuation report.

As a Liquidator, I had withdrawn the resolution in good faith, accepting the decision of SCC members and proceeded accordingly.

Analysis and Finding

The DC noted that the reserve price shall be the value of the asset arrived at in accordance with Regulation 35 of Liquidation Regulations for the Auction of the assets.

Firstly, the decision of the SCC is not binding on the liquidator and if liquidator was of the opinion that fresh valuation is required to be conducted, he could have move forward with the fresh valuation by recording the reasons of taking different decision in writing.

Secondly, if fresh valuation was not conducted, how the reserve price was increased arbitrarily by 20-30% by the Liquidator.

Moreover, the liquidator submitted in his reply that that he got the valuation done in the 5th SCC meeting. However, he has not mentioned that there were 3 properties involved (Kirti Nagar Plant and Machinery, Hazipur plant & Machinery and Hazipur Land and building) out of which 2 properties were sold till 4th SCC meeting.

The Liquidator conducted the valuation only because there were no buyers for the Hazipur property. Even after valuation, the value of the property was more than the auction price. They did not even consider the valuation and eventually went ahead with the auction price already decided.

In view of the above, the IP has not complied with Regulation 33 and 35 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

3. ORDER

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

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

- i. IP to undergo 50 hours Pre-Registration Educational Course (PREC) to improve his understanding of the Code and the Regulations made thereunder.

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)