

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 July, 2025 (SCN) issued to Mr. Bhrugesh Amin, 4305, Auris Serenity, Tower-1, New Link Road, Malad West, Mumbai Suburban, Maharashtra-400064, 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-N00353/2017-2018/11003.

A grievance was received against Mr. Bhrugesh Amin through Insolvency and Bankruptcy Board of India on 29.11.2024 and the Grievance redressal committee referred the matter to the Disciplinary Committee on 24.01.2025. The letter issued by the GRO of ICSI IIP, reply of the IP and other relevant documents were placed before the Disciplinary committee in its meeting held on 18th June, 2025 and the committee decided to issue the SCN and the SCN was issued.

The SCN was issued by the Secretariat on 7th July, 2025. Mr. Bhrugesh Amin sent his reply to the SCN through e-mail dated 28th July, 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. Bhrugesh Amin availed an opportunity of personal hearing before the DC on 21st October, 2025.

The DC has considered the SCN, the reply to the SCN, submissions of Mr. Bhrugesh Amin and 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

In the matter of **Smaaash Entertainment Private Limited**, (“SEPL/Corporate Debtor”), the corporate debtor runs various gaming centers across India. It was observed that there were discrepancies in cash noticed between the MIS on revenue generation as provided by the Corporate Debtor centres as well as the MIS provided for revenue & EBIDTA numbers and actual cash deposited in bank. There were issues in the internal control of the Corporate Debtor, delay in bookkeeping, delay in tax deposit and delay in finalisation of accounting records by the Corporate Debtor.

The Corporate Insolvency Resolution Process (“CIRP”) of SEPL was initiated on 06th May, 2022 and the IP highlighted the cash discrepancies before the committee of creditors (“CoC”) first time in 7th CoC, held on November 2, 2022, nearly after 6 months. After the 7th CoC meeting, IP initiated the actions such as surprise visits in centres, emailing the core team of CD, stopping capex and major repairs immediately, change in reporting structure, appointment of Independent Cash Flow Monitoring Agency, appointment of independent agency to verify the Cash Transaction, filing police complaint, firing employees etc.

As per the report submitted by KPMG, which was appointed to do the transaction review with approval of CoC, there was short deposit of cash collected amounting to Rs. 3,30,35,242 out of which Rs.

2,47,24,196/- was deposited in Smaaash Leisure Limited, Yes Bank Account, wholly owned subsidiary of SEPL.

Mr. Shripal Morakhia, suspended director of SEPL has alleged in the grievance, the connivance of IP in siphoning of funds from SEPL to Smaaash Leisure Limited, wholly owned subsidiary of SEPL. He mentioned in the grievance that the IP has sought cash payments from the suspended director, suggesting improper financial arrangements and potential misuse of Corporate Debtor's funds. Mr. Shripal Morakhia transferred INR 2.5 crore in Smaaash Leisure Limited and later gone back on the deal and eventually the IP wrote to employees on missing cash and simultaneously 5 complaints were filed with respective state police.

From the records made available, prima facie it appears that the IP has not taken control and custody of assets of the corporate debtor timely which led to siphoning of funds from corporate debtor's account. Moreover, from the date of commencement of CIRP, the authorised signatory for all the financial transactions should be the Insolvency professional only, how can the transactions amounting to Rs. 3,30,35,242/- be carried out without the knowledge of Insolvency professionals for 6 months, the transaction audit appears to be an afterthought.

Though, there is no direct evidence of bribery or connivance with the suspended management, however by joining the dots some linkages may be drawn.

Accordingly, ICSI IIP had prima facie opinion that the IP has not complied with Section 17, 18 of the code read with clause 1,2,3,5,12,13,17, of code of conduct for Insolvency professionals as per Regulation IBBI (Insolvency Professionals) Regulations, 2016.

Submissions made by the IP

The IP submitted that it is pertinent to note that IP has initiated and demonstrated all required action and steps in relation to handling CIRP including not limited to taking custody and control of assets of the Corporate Debtor by taking the committee of Creditors in concurrence for each any every event and critical decision making including but not limited to Section 28 provisions of IBC Code 2016 At no point did I withhold or conceal any material information from the Committee of creditors or any stakeholders in fact, IP made to a point to promptly communicate all important developments and ensure everything was discussed transparency in COC meetings.

He submitted that the following actions were taken by the IP:

1. Common resource and Common Overhead Agreement

The company and its subsidiary (Smaaash Leisure Limited, SLL) were into the same gaming business and shared common resources and such as IT infrastructure, accounting software, personnel, and office space. With approval of CoC common overhead agreement was executed wherein SLL will remit the % of share in common overhead expenses. However, despite the SLL's failure to honor the expenses. There was no stoppage of services.

The RP issued multiple written communications via email to SLL's management and common senior management team, seeking payment of outstanding dues. SLL acknowledged its liability through email and committed to a payment plan, but never honored any of the commitment. Due to continued non-compliance, the RP directed employees of the Corporate Debtor to discontinue all support services to SLL until further notice.

2. How the RP and support team put control over daily collection

In order to verify cash generation at CD's operational centres, the RP immediately put in place a multi-level verification process.

- **System-Based Recording:** Gaming revenue was recorded via the centralized “Semox” system and Food & Beverage revenue was recorded in the “SNC” system.
- Each centre prepared **manual daily collection reports** showing receipts from cash, UPI, and third-party apps (Swiggy, Magicpin, Zomato). A monthly check was done to reconcile amounts from third-party platforms, considering their settlement cycles.
- **Cross-Verification:** Manual collection reports were matched with data from Semox and SNC to check for accuracy.
- **Accounting Reconciliation:** Entries in Tally were reviewed and reconciled with bank statements to confirm actual revenue deposits.

3. **How common resources (team) and Director of SLL mismanaged the cash**

- **Planned Cash Mismanagement:** A deliberate act of cash siphoning was orchestrated by Mr. Mayur Shah (DGM Finance who later joined Mr. Morakhia), Mr. Shripal Morakhia, and certain Centre Heads.
- **System Manipulation:** Collection data in Semox (gaming) and SNC (F&B) was manipulated at the source under their instructions.
- **Diversion of Funds:** Documentary evidence shows Mr. Mayur Shah (on instructions from Mr. Morakhia) directed centres to withhold cash and deposit it into SLL’s accounts, diverting revenue belonging to the CD.
- **Falsified Records:** Tally entries were aligned with manipulated system data and doctored reports to conceal the diversion.
- This was not due to weak internal controls but a deliberate misuse of authority and collusion by key employees and management of SLL.

4. **How RP unearthed the discrepancies in Cash Deposits**

During the start of October 2022, during a routine review of SPEL's cash collection reports, the RP team noticed discrepancies between reported collections and entries in the Semox and SNC systems. The RP quickly escalated the issue and flagged it to the core team responsible for cash collection, deposit, and utilization.

5. **Action undertaken by RP against discrepancies of cash deposit**

- Email to Mr. Mayur Shah, DGM Finance and Mr. Shirish Kotmire, CEO
- Informing COC about the Cash Mismanagement
- Site Visits by RP’s Team.
- Appointment of KPMG to review transactions related to cash mismanagement and their findings in the report.
- Appointment of Grant Thornton as Cash Flow Monitoring Agency to strengthen the payment process
- Response from DGM Finance on the cash Mismanagement Issue
- Filing of Police Complaint

Few of the common employees, acting under the instructions of the suspended promoter, deliberately manipulated entries in software and Tally systems, and withheld critical information to conceal financial discrepancies. This created a deceptive sense of normalcy and delayed the

detection of fraud, which only came to light during a routine review in October 2022 when recurring inconsistencies triggered further investigation.

Taking control of Assets

With reference to committee's view that RP failed to take the control and custody of assets, IP submitted that upon identification of irregularities during October, 2022, immediate steps were taken which are informing the CoC, getting transaction review, appointing independent cash monitoring agency, initiating DC action against KMP, filing police complaint etc. These steps, taken in a structured and time-bound manner, evidence the RP's diligence and commitment to preserving the assets and interests of the Corporate Debtor.

The actions were deliberately concealed from the RP and his supporting entity team through falsified reports and doctored entries, making early detection challenging despite implementation of reasonable controls. It was only upon a pattern of inconsistencies noticed during regular reviews that the deeper issue came to light, which was then promptly acted upon and escalated to the CoC. The delayed action after realization is due to appointment of independent agencies at the direction of the CoC.

Right from the beginning, the RP has been transparent and never concealed or misrepresented any facts, information. The issue, along with every development at each stage, was shared with the CoC members, further it was brought to the attention of the auditor, and the same was properly disclosed in the financial statements. These financial statements were also uploaded to the data room; accordingly, all prospective resolution applicants were also fully informed about the cash mismanagement. It is for this reason, that there is no evidence of fraud against the RP and no action were initiated or questions raised by the CoC. The RP has not been involved in any malicious activity and has been fulfilling its duties in a transparent and honest manner to the best interest of the Corporate Debtor.

Allegation w.r.t involvement with suspended management & siphoning of funds

The RP has never asked any consideration or undue favour from the suspended Director of the CD. This appears to be a deliberate attempt by suspended director to harass and attempt to falsely frame the RP and disrupt the CIRP. Mr. Morakhia's own statement admitting he used SEPL's cash receipts for the benefit of SLL is directly contradictory to the explanation given by Mr. Mayur Shah, who claimed the funds were utilized for SEPL.

Notably, none of the documents submitted in the IBBI complaint mention or implicate the RP. Additionally, Mr. Mayur Shah has not provided any documentary proof or authorization to justify the said payments. The erstwhile management is habituated of undertaking fraudulent activities for its benefit and to the disadvantage of the Corporate Debtor and the CoC.

The RP has always taken prior approval from the CoC for all required capital expenditure and for entering into any related party transactions. This clearly shows that the RP was transparent, acted within the legal framework, and always kept the CoC informed to ensure the process was fair and above board.

Allegation of bribery or connivance with suspended management

At no point during the CIRP there has been any instance of any engagement or association on my part with the suspended management that could be construed as compromising the independence or objectivity required under the Insolvency and Bankruptcy Code, 2016.

He further submitted that although several desperate attempts and false allegations were made by Mr. Morakhia against him by filing frivolous applications Mr. Morakhia has failed to provide any evidence in support or prove the same in a court of law. Throughout the Corporate Insolvency Resolution Process (CIRP), he submitted that he has consistently acted in good faith and in compliance with all applicable legal and ethical standards.

He also submitted that all actions undertaken during the CIRP of SEPL were carried out in good faith, with due diligence, professional independence, and in strict adherence to the provisions of the Insolvency and Bankruptcy Code, 2016, as well as the Code of Conduct applicable to Insolvency Professionals. At no stage was there any act or omission on my part that could reasonably be construed as professional misconduct or a breach of ethical obligations.

During the physical hearing, the IP also informed the members of the DC that he has handled 9 cases till now and out of those 9 cases, the 7 cases in which he was IRP & RP (in other 2 cases he was IRP only) was resulted in Resolution. He submitted that the corporate debtor has been resolved and all the details of recovery actions have already been informed to the successful resolution applicant. He remarked that for three years he continued the business as going concern and 500 people were employed. He mentioned that after identifying the gap, the entire system was changed and checks & balances were placed. The entire system was designed by the suspended management with the help of employees with malafide intention.

Analysis and Finding

The DC took note of all the submissions made by the Insolvency professional through his written submissions & through personal hearing and was of the view that the IP could have taken the help of independent expert from the initiation of CIRP only. There is negligence and lack of vigilance on part of IP, though it appears that there is no malafide intention. The fraud was done with technical complexities within the well-established electronic system by the management of the corporate debtor and it was difficult to gaze the level of mischief. He has fairly explained his position and thereafter he has controlled it also.

3. ORDER

After considering the allegations in the SCN and submissions made by IP 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. Bhrugesh Amin have violated certain provisions of the Code and Regulations, however keeping a lenient view, the DC hereby issues caution to the Insolvency Professional and advise him to be extremely careful, diligent, vigilant, strictly act as per law. 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/-

JUSTICE (RETD.) SH. M. M. KUMAR
(CHAIRMAN)