

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/31/2020

1st October, 2020

Order

In the matter of Mr. Arun Rajabhau Joshi, Insolvency Professional (IP) under Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016

Background

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/MON/2020/22 dated 28th August, 2020 issued to Mr. Arun Rajabhau Joshi, AR Joshi & Associates, 1st Floor, E-Wing, Bharat Bazar Complex, API Corner, Chikalthana MIDC, Aurangabad, Maharashtra-431006, who is a Professional Member of the ICSI Institute of Insolvency Professionals (IPA) and an IP registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00350/2017-2018/11000.

1.1 The IBBI had issued on 28th August, 2020, the SCN to Mr. Arun Rajabhau Joshi for accepting the assignment in the capacity of Insolvency Resolution Professional (IRP) in the matter of the Corporate Insolvency Resolution Process (CIRP) of M/s Govindam Metals and Alloys Private Limited and M/s Rajit Rolling Mills Private Limited after 31st December, 2019 without holding a valid Authorisation for Assignment (AFA) from his IPA.

1.2 Mr. Joshi submitted reply to the SCN dated 29th August, 2020. The IBBI referred the SCN, response of Mr. Joshi to the SCN and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. The IP availed an opportunity of personal hearing via video conferencing before the DC on 10th September, 2020.

Show Cause Notice

2. The SCN issued by IBBI alleged contraventions of sections 208(2)(a) & (e) of the Insolvency and Bankruptcy Code, 2016 (Code), regulations 7(2)(a) & (h) and 7A of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 1, 2, 11, 12 and 14 of the Code of Conduct contained in the First Schedule of the IP Regulations for accepting the assignment in the CIRP of-

- (i) M/s Govindam Metals and Alloys Private Limited after 31st December, 2019 for which public announcement was made on 24th January, 2020 without holding a valid AFA from the IPA;
- (ii) M/s Rajit Rolling Mills Private Limited after 31st December, 2019 for which public announcement was made on 4th March, 2020 without holding a valid AFA from the IPA.

Written and oral submissions by Mr. Arun Rajabhau Joshi

3. Mr. Joshi's submissions made in his written reply and in the course of personal hearing are summarized as follows.
 - 3.1 Mr. Joshi submitted as follows.
 - (i) He has given consent to act as an IRP in the CIRP of M/s Govindam Metals and Alloys Private Limited on 30th September, 2019 and in the CIRP of M/s Rajit Rolling Mills Private Limited on 8th November, 2019 in Form No. 2 under Rule 9 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, which is prior to 31st December, 2019.
 - (ii) Due to administrative problem, the application for CIRPs of M/s Govindam Metals and Alloys Private Limited and M/s Rajit Rolling Mills Private Limited were admitted on 17th January, 2020 and 25th February, 2020 respectively, which is after 31st December, 2019.
 - (iii) Prior authorization is applicable only to assignments taken after 31st December, 2019 and same is not applicable in his case.
 - (iv) He has diligently completed both the assignments and submitted various disclosures to his IPA as well as to the IBBI, therefore, he totally denied and disagreed with the allegations.
 - (v) He has already attained age of 74 years and cannot apply for an AFA. Further, he will not take any assignment under the Code.
 - (vi) Show Cause Notice was issued to him by his IPA in this regard vide letter dated 24th July, 2020 and he replied to the same on 27th July, 2020.

Analysis and Findings

4. The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of Mr. Arun Rajabhau Joshi and also the provisions of the Code, rules and the regulations made thereunder finds as follows.
 - 4.1 The DC notes that the provisions of the Code and regulations are spelt out in a plain and unambiguous language. Regulation 7A of IP regulations requires for any IP to hold AFA before undertaking any assignment after 31st December, 2019. Regulation 7A reads as follows:

*“7A. 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.”*
 - 4.2 Thus, it is clear from the said Regulation that one of the essential conditions for undertaking any assignment by an IP is that he should have a valid AFA which is issued by the IPA with which he is enrolled. In other words, without AFA, an IP is not eligible

to undertake assignments or conduct various processes thereof after 31st December, 2019. Regulation 7A was inserted in the IP Regulations vide notification dated 23rd July, 2019, much before 31st December, 2019. The same was widely publicized in various programmes. Adequate time was given to the professionals to obtain AFA from respective IPAs. This information was made available on the websites of the IBBI as well as the IPAs.

4.3 The bye-laws of ICSI Institute of Insolvency Professionals defines in para 4(1)(aa) the expression “authorisation for assignment” as 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 regulation. An application for grant of AFA can be made to the IPA under para 12A of said bye-laws. Every professional member of the IPA with which he is enrolled should keep himself abreast with new professional developments.

4.4 The credibility of the processes under the Code depends upon the observance of the Code of conduct by the IRP/RP during the process. Section 208(2) of the Code casts an obligation to abide by the code of conduct, take reasonable care and diligence while performing his duties and comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member. Section 208(2) provides as follows:

“208. Functions and obligations of insolvency professionals.-

(2) Every insolvency professional shall abide by the following code of conduct: –

(a) to take reasonable care and diligence while performing his duties;

(b) to comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member; and

(e) to perform his functions in such manner and subject to such conditions as may be specified.”

4.5 The DC further notes that the certificate of registration granted to an IP is subject to the condition that he should follow at all times the provisions of the Code and Regulations and the bye-laws of Insolvency Professional Agency of which the IP is a member and also follow the Code of Conduct specified in the First Schedule to the IP Regulations. In this regard, clauses(a) and (h) of regulation 7 (2) of the IP Regulations provide as follows:

“7. Certificate of registration.

(2) The registration shall be subject to the conditions that the insolvency professional shall –

(a) at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled;

(h) abide by the Code of Conduct specified in the First Schedule to these Regulations;”

4.6 The Code of Conduct specified in the First Schedule of the IP regulations enumerates a list of code of conduct for insolvency professionals including maintaining of integrity and professional competence for rendering professional service, representation of correct facts

and correcting misapprehension, not to conceal material information and not to act with malafide or with negligence.

- 4.7 In the present matter, the DC notes that Mr. Joshi accepted the assignment of CIRPs in matter of Indian M/s Govindam Metals and Alloys Private Limited on 30th September, 2019 and M/s Rajit Rolling Mills Private Limited on 8th November, 2019, which is evident from the consent form (Form 2) submitted along with the application for initiating CIRPs. However, due to administrative issues, the CIRPs commenced after 31st December, 2019, viz., 17th January, 2020 and 25th February, 2020. It is also noted that he is more than 70 years of age, is ineligible to apply for AFA and does not intend to take further assignments under the Code,
- 4.8 The DC finds that an order has been passed against Mr. Joshi on 7th September, 2020 by the Disciplinary Committee of IPA with respect to the issue raised in this SCN, *i.e.*, accepting assignment as an Interim Resolution Professional after 31st December, 2019. The Disciplinary Committee of IPA has issued warning to Mr. Joshi in view of the fact that the date of commencement of the CIRPs is after 31st December, 2019 but the acceptance for the assignments has been given by Mr. Joshi prior to 31st December, 2019.

Order

5. In view of the fact that Mr. Arun Rajabhau Joshi being more than 70 years of age is ineligible to apply for AFA under the Code and that Disciplinary Committee of ICSI Institute of Insolvency Professionals has already taken disciplinary action against Mr Joshi with regard to the issue of undertaking assignments without holding valid AFA, the DC, in exercise of the powers conferred under Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016, disposes of the SCN without any direction against Mr. Arun Rajabhau Joshi.
- 5.1 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Arun Rajabhau Joshi is enrolled as a member.
- 5.2 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.
6. Accordingly, the show cause notice is disposed of.

-Sd-

(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Dated: 1st October, 2020
Place: New Delhi