

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/49/2020

4th December, 2020

Order

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

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/MON/2020/25 dated 28th August, 2020 issued to Mr. Pinaki Sircar, 31/7, N.C. Chowdhury Road, Kolkata, West Bengal-700042, 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-N00063/2017-2018/10141.

Background

- 11 The IBBI had issued on 28th August, 2020, the SCN to Mr. Pinaki Sircar for accepting the assignment as the Liquidator in Liquidation process of M/s Bansal Refineries Private Limited (CD) after 31st December, 2019 without holding a valid Authorisation for Assignment (AFA) from his IPA. The order of Liquidation was passed by the National Company Law Tribunal (NCLT), Kolkata Bench (AA) on 17th January, 2020 due to failure of the Corporate Insolvency Resolution Process (CIRP) of the CD.
- 12 Mr. Sircar submitted reply to the SCN, dated 5th September, 2020. The IBBI referred the SCN, response of Mr. Sircar 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 e-hearing 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 as the liquidator in Liquidation process of M/s Bansal Refineries Private Limited after 31st December, 2019 for which public announcement was made on 21st January, 2020 without holding a valid AFA from the IPA.

Written and oral submissions by Mr. Pinaki Sircar

3. Mr. Sircar's submissions made in his written reply and during the course of personal hearing are summarized as follows.
 - 3.1 Mr. Sircar in his reply submitted that-
 - (i) he was under the absolute *bona fide* belief and impression that he had duly submitted the application for AFA prior to the last date of 31st December, 2019.
 - (ii) the actual non-submission of the AFA had happened due to a *bona fide* error in understanding the technical process of complete submission of the AFA despite taking reasonable care and diligence.
 - (iii) he had submitted the AFA on 14th December, 2019, well prior to 31st January, 2019 and the auto-filled date stamp is still present on the uploaded form.
 - (iv) a perusal and consideration of the Step by Step Guide-AFA would elucidate the *bona fide* error and the reasons behind the same.
 - (v) upon completion of step 5, he received a notation that form had been saved and that AFA was 'submitted'. He was under the true belief and impression that AFA had been duly submitted and will be processed in due course in accordance with and under the aegis of IBBI and the IPA.
 - (vi) The decision for liquidation was taken by the Committee of Creditors (CoC) of the CD on 19th December, 2019. He was the appointed resolution professional (RP) in the CIRP of the CD and the same continued till the matter was taken up by the AA on 2nd January, 2020 when the AA noted that the CoC had not objected to his appointment as Liquidator and also directed him to file his consent within two days, which was done by him.
 - 3.2 During the personal hearing, Mr. Sircar reiterated the submissions made by him in writing and prayed to this DC to pass orders quashing the SCN and granting him the AFA.

Analysis and Finding

4. The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of Mr. Pinaki Sircar 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 have 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.”

- 42 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. Regulation 7A was inserted in the IP Regulations vide notification dated 23rd July 2019, much before 31st December, 2019. Adequate time was given to the professionals to obtain AFA from respective IPAs.
- 43 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.
- 44 Further, Section 208 of the Code also casts an obligation to abide by the code of conduct 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.”

- 45 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;”

- 46 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 provides that every IP shall take reasonable care and diligence while performing his duties and to

perform his functions in such manner and subject to such conditions as may be specified. Further, 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 CoC took a decision to liquidate the CD on 19th December, 2019 and thereafter, Mr. Sircar filed his written consent to act as Liquidator on 2nd January, 2020. The application for liquidation was considered by the AA and order for liquidation was passed on 17th January, 2020. The consent to act as a Liquidator has been given by Mr. Sircar on 2nd January, 2020 which is after 31st December, 2019. The DC notes that Mr. Sircar did not hold a valid AFA either on the date of consent to act as liquidator i.e. 2nd January, 2020 or on the date of passing of liquidation order i.e. 17th January, 2020. This is in violation of the provisions of regulation 7A of the IP Regulations.
- 4.8 Mr. Sircar has submitted that he submitted the application for AFA on 14th December, 2019, followed the steps 1 to 6 of the Step by Step Guide-AFA, but he did not follow all the steps i.e. 10 steps. As per his submission, he was under *bona fide* belief that the AFA had been duly submitted after following steps 1 to 6 and would be processed in due course in accordance with and under the aegis of IBBI and the IPA. However, the DC notes that the Step by Step Guide-AFA has clearly provided for 10 steps. Since, Mr. Sircar was following the Step by Step Guide, it is not clear as to why he did not follow steps 7 to 10 of the process. The DC, thus, finds that the contention of Mr. Sircar in this regard is untenable and unjustified. An IP is required to closely follow the complete process. The conduct of leaving the process of authorization without its completion reflects his negligence towards the basic requirement to undertake the professional assignment.
- 4.9 The DC, further, finds that an SCN has been issued by the IPA against Mr. Sircar and an order has been passed against Mr. Sircar on 7th September, 2020 for accepting assignment as Liquidator after 31st December, 2019 without holding a valid AFA in the matter of M/s Bansal Refineries Private Limited. The IPA has imposed penalty on him of Rs. 10,000/- for contravention of regulation 7A of IP Regulations.

Order

5. In view of the fact that ICSI Institute of Insolvency Professionals has already taken disciplinary action against the IP, Mr. Pinaki Sircar for accepting assignment as Liquidator after 31st December, 2019 without holding a valid AFA in the matter of M/s Bansal Refineries Private Limited, 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. Pinaki Sircar.
- 5.1 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Pinaki Sircar 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: 4th December, 2020
Place: New Delhi