

INSOLVENCY AND BANKRUPTCY BOARD OF
INDIA
(Disciplinary Committee)

No. IBBI/DC/39/2020

6th November, 2020

Order

In the matter of Mr. S. Radha Krishna, 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/2020/23 dated 28th August, 2020 issued to Mr. S. Radha Krishna, A 501, Akbar Towers, VSR Enclave, Anandbagh Malakjiri, Hyderabad, Telangana - 500047, 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-N00724/2018-2019/12206.

- 11 The IBBI had issued the SCN to Mr. S. Radha Krishna on 28th August, 2020 for accepting the assignment as Liquidator in Voluntary Liquidation process of S.V.C. Estates Private Limited after 31st December, 2019 without holding a valid Authorisation for Assignment (AFA) issued to him by his IPA.
- 12 Mr. Radha Krishna submitted reply dated 4th September, 2020 to the SCN. The IBBI referred the SCN, response of Mr. Radha Krishna 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) and 208(2)(e) of the Insolvency and Bankruptcy Code, 2016 (Code), regulations 7(2)(a), 7(2)(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 of the liquidator in Liquidation process of S.V.C. Estates Private Limited after 31st December 2019 for which public announcement was made on 17th February, 2020 without holding a valid AFA from the IPA;

Written and oral submissions by Mr. Radha Krishna

3. Mr. Radha Krishna's submissions made in his written reply and in the course of personal hearing are summarized as follows:

3.1 Mr. Radha Krishna in his reply submitted as follows:

- (i) Mr. Radha Krishna gave the acceptance for the present assignment to act as a liquidator on 16th December, 2019, *i.e.*, before 31st December 2019, the date on which the said Regulation 7A of the IP Regulations came into force. IP submitted that the consent, acceptance, fixing of remuneration and approval of board regarding the voluntary liquidation was prior to 31st December, 2019. Accordingly, he was under *bonafide* belief that AFA was not required and provisions of Regulation 7A of the said IP Regulations 2016 was not applicable at the time when acceptance was given for appointment as a liquidator for S.V.C. Estates Private Limited.
- (ii) That the error has occurred inadvertently and unintentionally resulting from misunderstanding of the newly incorporated provisions.
- (iii) IPA has also issued the show cause notice dated 22nd July, 2020 to which he replied on 4th August, 2020. He further made written submissions on 25th August, 2020 during the personal hearing before IPA. The order of Disciplinary Committee of IPA is awaited.
- (iv) Mr. Radha Krishna submitted that he has applied for AFA on 8th July, 2020 but the same has been rejected due to show cause notice issued to him on 22nd July, 2020 by his IPA.

Analysis and Findings

4. The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of Mr. S Radha Krishna 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 authorization 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. 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 (1) of said Bye Laws which reads as under:

“12A. Authorisation for Assignment.

(1) The Agency, on an application by its professional member, may issue or renew an authorization for assignment”.

- 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 bye-laws 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 hinges 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, Mr. Radha Krishna accepted the assignment as a liquidator in the matter of S.V.C. Estates Private Limited on 17th February 2020 without holding a valid Authorisation for Assignment (AFA) after 31.12.2019 which is in express contravention of regulation 7A of IP Regulations. In consequence, he also contravened code of conduct under section 208(2)(a) and (e) of the Code and regulations 7(2)(a) and (h) of the 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.
- 4.8 The DC finds that an order has been passed against Mr. Radha Krishna on 7th September 2020 for contravention of regulation 7A of IP Regulations by the Disciplinary Committee of IPA for accepting assignment as Liquidator after 31.12.2019 without holding a valid AFA in the matter of S.V.C. Estates Private Limited, wherein warning has been issued to Mr. Radha Krishna to be extremely careful and diligent and that he should act strictly as per law and similar action should not be repeated.

Order

5. In view of the fact that ICSI Institute of Insolvency Professionals has already taken disciplinary action against Mr. Radha Krishna for accepting assignment as Liquidator after 31.12.2019 without holding a valid AFA in the matter of S.V.C. Estates 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. S. Radha Krishna.
- 5.1 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Radha Krishna 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.

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(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Dated: 6th November, 2020
Place: New Delhi