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INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/62/2021

1st January, 2021

Order

In the matter of Mr. Anil Goel, Insolvency Professional (IP) under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017.

Background

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/R(INSP)/2019/13 dated 13th July, 2020 issued to Mr. Anil Goel, E-10A, Kailash Colony, Greater Kailash-1, New Delhi-110048, who is a Professional Member of the Indian Institute of Insolvency Professional of ICAI (IPA) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00118/2017-18/10253.

- 1.1 In exercise of its power under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, the IBBI appointed an Inspecting Authority (IA) to conduct an inspection of Mr. Anil Goel, on having reasonable grounds to believe that he had contravened provisions of the Code, or the rules or regulations made, or directions issued thereunder.
- 1.2 The IA submitted its final report on 30th January, 2020 to the IBBI and IBBI issued SCN against Mr. Goel on 13th July, 2020 based on the findings of the IA in respect of his role as an Interim Resolution Professional (IRP)/Resolution Professional (RP) in various Corporate Insolvency Resolution Processes (CIRPs) under the Insolvency and Bankruptcy Code, 2016 (Code).
- 1.3 The SCN alleged contraventions of sections 28(1)(f), 208 (2) (a) & (e) of the Code, regulation 35(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulation 7(2) (a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and Clauses 2, 3, 5 & 14 of the Code of Conduct under Schedule 1 of the IP Regulations. Mr. Anil Goel replied to the SCN vide letter dated 27th July, 2020.
- 1.4 The Board referred the SCN, reply of Mr. Goel to the SCN and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the provisions of the Code and Regulations made thereunder. Mr. Goel availed an opportunity of personal hearing before the Disciplinary Committee (DC) on 19th October, 2020 wherein he was represented by Mr. Ankit Goel, Partner, AAA Insolvency Professionals LLP and Mr. Aditya Gauri, Advocate on his behalf.

Show Cause Notice

The contraventions alleged in the SCN are summarized as follows:

2. It is provided in section 5(13) of the Code that Insolvency Resolution Process Costs (IRPC) include the fees payable to any person acting as a resolution professional. However, it has been observed that Mr. Goel authorized an Insolvency Professional Entity (IPE), AAA Insolvency Professional LLP (AAA) to raise invoices for his fee in the CIRPs of VISA Power Limited (VISA), Rasoya Proteins Limited (Rasoya), Loha Ispaat Limited (Loha), REI Agro Limited (REI), Rotomac Global Private Limited (Rotomac), Gujarat Oleo Chem Limited (Gujarat Oleo) and Charbhujia Industries Private Limited (Charbhujia). Therefore, the Board was of the prima facie view that Mr. Goel has violated sections 5(13), 208(2)(a) of the Code, regulation 7(2)(a) & (h) of the IP Regulations and clauses 2, 5 & 14 of the Code of Conduct under Schedule 1 of the IP Regulations.
 - 2.1 Further, according to section 28(1)(f) of the Code, the resolution professional, during a CIRP, shall not undertake any related party transaction without the prior approval of the Committee of Creditors (CoC). However, it has been observed that Mr. Goel failed to take prior approval before availing services of AAA Capital Services (AAACS), a related party entity in the CIRPs of LML Limited (LML), Gujarat Oleo, Loha, Rasoya, Charbhujia and Amar Remedies. Further, in the said CIRPs along with CIRP of VISA, Mr. Goel did not make relationship disclosure for AAACS. Therefore, the Board was of the prima facie view that Mr. Goel has violated sections 28(1)(f) and 208(2)(a) of the Code, regulation 7(2)(a) & (h) of the IP Regulations and clauses 2, 3, 5 & 14 of the Code of Conduct under Schedule 1 of the IP Regulations.
 - 2.2 Further, as per regulation 35(2) of the CIRP Regulations, the resolution professional shall provide the Liquidation and Fair value determined by the registered valuers to the members of the CoC upon obtaining a confidential undertaking from each member. However, it has been observed that in the CIRP of VISA, Mr. Goel discussed the Liquidation and Fair value with the members of the CoC before taking the confidential undertaking. Therefore, the Board was of the prima facie view that Mr. Goel has violated section 208(2)(a) of the Code, regulation 35(2) of the CIRP Regulations, regulation 7(2)(a) & (h) of the IP Regulations and clauses 2, 5 & 14 of the Code of Conduct under Schedule 1 of the IP Regulations.

Submissions by Mr. Goel

3. Mr. Goel *vide* reply dated 27th July, 2020 submitted submissions to the observations in the SCN with respect to specific provisions of the Code.
 - 3.1 With regard to the issue of raising of invoices by AAA, it is submitted that an IPE is recognized by the IBBI as per the provisions enumerated Chapter V of the IP Regulations. As per law, an IP can be a member of an IPE. The sole objective of IPE as defined in the IP Regulations is to provide support services to the IPs who are its partners or directors. Further, the fee paid to the respective IPE forms part of the IRPC as per regulations 33 & 34 of the CIRP Regulations. It is submitted that Mr. Goel has disclosed the fee which was

payable to him, fee payable to the IPE and fee payable to professionals engaged by him. The IBBI Circular no. IBBI/IP/004/2018 dated 16th January, 2018 directed all IPs to raise invoices in their respective names and thereby the amendment to the CIRP Regulations, which provided for payment to IP and IPE to be shown separately, was only effective from 1st April, 2018. It is submitted that the said Circular was not applicable at the time of receipt of payments in the said CIRPs. The invoices raised by AAA were pertaining to support services provided by AAA in the said CIRPs. Further, it was not clear at that time that the IPE can raise separate invoices which was later clarified by IBBI Circular No. IBBI/IP/013/2018 dated 12th June, 2018.

- 3.2 It is submitted that Mr. Goel, in all the said CIRPs except REI has taken due approvals for his individual fees and fees to be allocated to the IPE respectively. It is further submitted that the amount that shall be billed in the name of the IPE and in the name of Mr. Goel himself was also duly conveyed and ratified by the respective CoCs. The major reasons for raising invoices directly in favour of the IPE instead of Mr. Goel himself was to avoid double incidence of Goods and Services Tax (GST) and TDS (Tax Deducted at Source).
- 3.3 With regard to the issue of related party transaction without approval of CoC, it is submitted that AAACS is an associate concern of Mr. Goel providing security services and also assistance to Mr. Goel for undertaking physical control of the assets of the Corporate Debtors under CIRP along with inspection of the security personnel deployed for the assets. The expenditure incurred by AAACS while providing assistance to Mr. Goel was listed under the heads- a) Expenditure incurred for taking control, custody, physical possession of the assets of the Corporate Debtors and b) Expenses incurred for inspection of security guards deployed at the assets of the Corporate Debtors. Therefore, it is submitted that since the invoices raised by AAACS were solely in the nature of reimbursements qua the expenditure incurred by AAACS, it does not fall under the term Related Party Transaction and thus, does not attract the provisions of section 28(1)(f) of the Code. Further, during personal hearing, Mr. Goel has referred to Para 3 of IBBI circular dated 16th January, 2018 which provides that an Insolvency Professional shall disclose his relationship, if any, with
(i) the Corporate Debtor, (ii) other Professional(s) engaged by him, (iii) Financial Creditor(s), (iv) Interim Finance Provider(s), and (v) Prospective Resolution Applicant(s). He has submitted that the assistance provided by AAACS does not fall within the purview of the said circular, and hence, the requirement to disclose relationship does not arise in his case.
- 3.4 Mr. Goel has provided relevant extracts from minutes of the meetings of the various CoCs to demonstrate the disclosure of his relation with AAACS and the permissions to delegate as per section 28(2)(h) of the Code. In light of the same, it is submitted that this is not the case of appointment of a professional for carrying out any function of the CIRPs but the case reimbursement of expenses taken from Corporate Debtors which are incurred by Mr. Goel either through his own employees or through the employees of an associate concern with no profit earned on it.
- 3.5 With regard to the issue of Liquidation and Fair Value having discussed with CoC members without taking confidentiality undertaking, it is submitted that even after requisite efforts,

no Expression of Interests (EOIs) from prospective resolution applicants were received by Mr. Goel in the CIRP of VISA. In the 7th CoC meeting dated 6th August, 2018, the members had requested Mr. Goel to share the Fair and Liquidation Value as no EOIs were pending. Mr. Goel had informed that the confidentiality undertaking was required to be submitted before the same could be shared with the members. The 8th CoC meeting dated 11th September, 2018 was held 7 days before elapse of the 270-day period of CIRP. Since no EOIs had been received and CIRP was about to come to a closure, Mr. Goel thought that the objective of maintaining confidentiality had expired and the CoC was keen to know the Liquidation Value. Therefore, the Liquidation Value was briefly explained, however, no copies of report were given without confidentiality undertaking from the members.

- 3.6 During the personal hearing, Mr. Goel along with Mr. Ankit Goel, Partner, AAA Insolvency Professionals LLP and Mr. Aditya Gauri, Advocate, reiterated the submissions made in writing and prayed to this DC to consider the contentions of Mr. Goel and drop the SCN.

Analysis and Finding

4. The DC, after considering the SCN, oral and written submissions of Mr. Goel and the provisions of the Code as well as the regulations made thereunder, proceeds to dispose of the SCN.
- 4.1 The DC notes that section 5 (13) of the Code states that the IRPC shall include the amount of fees payable to the resolution professional. Thus, it is essential that, the resolution professional raises his invoices in his name with regard to the services provided by him under the Code. Section 5(13) provides as under:
- “*insolvency resolution process costs*” means—
- (a) *the amount of any interim finance and the costs incurred in raising such finance;*
 - (b) *the fees payable to any person acting as a resolution professional;*
 - (c) *any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;*
 - (d) *any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and*
 - (e) *any other costs as may be specified by the Board.”*
- 4.2 The DC further notes that explanation to regulation 33 and 34 of the CIRP Regulations clarifies that the “expenses” incurred on or by the interim resolution professional/resolution professional shall constitute the IRPC and shall include the fee paid to the interim resolution professional/resolution professional, fee to be paid to IPE, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional/resolution professional. Thus, it is clear that the fee to be paid to the IPE for provision of support services shall be part of the “expenses” within IRPC.
- 4.3 The DC notes the submission of Mr. Goel that the invoices which were raised in the name of AAA, in fact, included the expenses incurred by AAA, the IPE engaged for provision of

support services. Mr. Goel is a partner in AAA and has, further, submitted that the primary reason for raising invoices of the name of AAA instead of Mr. Goel was to avoid double incidence of GST and TDS. Further, the DC notes that the period during which the invoices were raised in the name of AAA ranges from May 2017 till October 2018.

- 4.4 An IPE is a service provider registered with the IBBI under the provisions of the Code and regulations made thereunder. During a CIRP, an IP is free to engage an IPE for the purpose of providing support services. In the present matter, the IPE, AAA, was engaged in various CIRPs by Mr. Goel, who is a partner in the same as well. The IBBI Circular no. IBBI/IP/004/2018 dated 16th January, 2018 directed all IPs to raise invoices in their respective names and thereby the amendment to the CIRP Regulations, which provided for payment to IP and IPE to be shown separately, was only effective from 1st April, 2018. The invoices which were raised by AAA on behalf of Mr. Goel were raised before 1st April, 2018, and, therefore, the said circular was not applicable to him.
- 4.5 Section 28(1)(f) of the Code mandates the IP to seek approval of the CoC before undertaking any related party transaction. The DC notes that AAACS is an associate concern of Mr. Goel and AAACS assisted Mr. Goel in order to take physical custody and control of the assets of the Corporate Debtors, viz., LML, Gujarat Oleo, Loha, Rasoya, Charbhujia, Amar Remedies and VISA, and also to inspect the security personnel deployed at the locations where the assets of these Corporate Debtors were situated. It has been submitted by Mr. Goel that AAACS was reimbursed regarding the expenses borne by it for providing assistance to Mr. Goel. The DC notes that the minutes of the CoC meetings in the various CIRPs demonstrate that requisite approval has been taken by Mr. Goel under section 28(1)(h) of the Code for taking assistance of AAACS. Further, the DC notes the submission of Mr. Goel that Para 3 of IBBI circular dated 16th January, 2018 provides that an Insolvency Professional shall disclose his relationship, if any, with (i) the Corporate Debtor, (ii) other Professional(s) engaged by him, (iii) Financial Creditor(s), (iv) Interim Finance Provider(s), and (v) Prospective Resolution Applicant(s) and that the disclosure as per para 3 of the IBBI Circular dated 16th January, 2018 was not required in his case. In this regard, the DC has also taken on record the CIRP-5 Form filed by Mr. Goel wherein he has mentioned assistance provided by AAACS under other expenses. Hence his submission is tenable as the assistance provided by AAACS does not fall within the purview of para 3 of the said circular.
- 4.6 The DC notes that, as per regulation 35(2) of the CIRP Regulations, the fair value and liquidation value can be disclosed to the members of the CoC after receipt of resolution plans and on receiving an undertaking from the members to the effect that such member shall maintain confidentiality of the information and not use the same for undue gain/loss to itself or any other person. Regulation 35(2) of the CIRP Regulations is as under:

“(2) After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to

itself or any other person and comply with the requirements under sub-section (2) of section 29;”

- 4.7 In the CIRP of VISA, Mr. Goel did not receive any Resolution Plans and decided to disclose the fair and liquidation value to the members of the CoC since the CIRP was nearing completion of its 270-day period. However, the DC notes that the minutes of the 8th CoC meeting dated 11th September, 2018 reflect that the report regarding fair and liquidation value was not disclosed to the members and their attention was invited towards providing the requisite confidentiality undertaking before disclosure of the fair and liquidation value. The relevant extract of the minutes of the 8th CoC meeting are as under:

“Item no. 5

To take note of the fair value and liquidation value of the corporate debtor

The registered valuers namely United Surveyors & Valuers and Adroit Technical Services Private Limited were appointed by the Resolution Professional upon receiving ratification of the members of Committee of Creditors. The scope of assignment of the valuers were to determine the Fair Market Value and Liquidation Value of the fixed assets and current assets including land and building, plant and machineries, current and non-current assets as per Regulation 35(1) of IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018.

Since the RP did not receive any Resolution Plan from any Resolution Applicants and the extended period of 270 days will end on 18th September, 2018, and thereafter there is no more time to publish another Expression of Interest inviting Resolution Applicants once again. Henceforth, the RP discussed in brief the Liquidation and Fair Value determined by the registered valuers with the members of the COC. According to Regulation 35(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018, after receipt of resolution plans the RP is required to provide the fair and liquidation value to all members o COC on receiving a confidentiality Undertaking. Therefore, once the RP receives the confidentiality Undertaking from al the members of COC, he will be sharing the detailed report submitted by the registered valuers.”

- 4.8 The Code enVISAgEs the role of an Insolvency Professional to manage the entire resolution process of a Corporate Debtor. The RP is appointed by the Adjudication Authority and is given wide power by them to effectively run and manage the entity as a going concern, and also to manage the assets of the entity at all times during the process of CIRP. Further, they also have the corresponding responsibility to abide by the Code, rules, regulations and guidelines at all times. In order to do so, the Insolvency Professionals may appoint IPEs for provision of support services and may delegate their authority to other persons in order to complete routine tasks that need to be completed during the CIRP.
- 4.9 In light of the above, this DC finds that-
- (a) The invoices raised by AAA for the work conducted by Mr. Goel were issued before the circular of IBBI clarifying separate invoices to be raised by the IP and the IPE.

Since, Mr. Goel was also partner in AAA, such invoices were raised in order to avoid double incidence of taxes.

- (b) The services were availed by Mr. Goel from AAACS in the CIRPs of LML, Gujarat Oleo, Loha, Rasoya, Charbhujia, Amar Remedies and VISA with the approval of the respective CoCs under section 28(1)(h) of the Code and have been reimbursed by him with regard to expenses made by AAACS in assisting Mr. Goel for physically taking over the custody and control of the assets of these Corporate Debtors and also assisting him in inspection of security personnel.
- (c) Regarding the disclosure of relationship of Mr. Goel with AAACS, it does not fall within the purview of Para 3 of IBBI circular dated 16th January, 2018.
- (d) The detailed report of the Fair and Liquidation Value in the CIRP of VISA has not been shared with the members of the CoC before obtaining confidentiality undertaking. However, he discussed in brief about the Fair and Liquidation Value as there was no time to publish another EOI and no chance of receiving resolution plans. Hence, lenient view may be taken in this regard.

Order

- 5. In view of the above, the Disciplinary Committee, in exercise of the powers conferred under section 220 of the Code read with sub-regulations (7) and (8) of regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017, disposes of the SCN without any directions to Mr. Anil Goel. However, it is advised that he should take reasonable care and due diligence while performing the functions as Insolvency Resolution Professional or Resolution Professional under the Code.
 - 5.1 The Order shall come into force with immediate effect as the SCN has been disposed of without any directions.
 - 5.2 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Anil Goel is enrolled as a member.
 - 5.3 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, for information.
- 6. Accordingly, the show cause notice is disposed of.

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(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Date: 1st January, 2021
Place: New Delhi