

INSOLVENCY AND BANKRUPTCY BOARD OF
INDIA
(Disciplinary Committee)

No. IBBI/DC/33/2020

13th October, 2020

Order

In the matter of Mr. Ajay Kumar, 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. Ajay Kumar, A Kumar & Associates, I/J-1, First Floor, Chandi Vyapar Bhawan, Exhibition Road, Patna, Bihar-800001, 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-N00354/2017-2018/11004.

- 1.1 The IBBI had issued the SCN to Mr. Ajay Kumar on 28th August, 2020, for accepting the assignment of the voluntary liquidation of Sambodhi Healthcare Private Limited and Modern Cold Storage Limited after 31st December, 2019 under the Code without holding a valid Authorization for Assignment (AFA) issued to him by his IPA.
- 1.2 Mr. Kumar submitted reply to the SCN dated 2nd September, 2020. The IBBI referred the SCN, response of Mr. Kumar 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. A personal e-hearing was scheduled on 10th September, 2020, however, the IP did not avail the opportunity of personal hearing before the DC.

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 voluntary liquidation of-
- (i) Sambodhi Healthcare Private Limited after 31st December, 2019 for which public announcement was made on 8th March, 2020 without holding a valid AFA from the IPA;
 - (ii) Modern Cold Storage Limited after 31st December, 2019 for which public announcement was made on 16th March, 2020 without holding a valid AFA from the IPA.

Written submissions by Mr. Ajay Kumar

3. Mr. Kumar's submissions made in his written reply are summarized as follows.
 - (i) The promoters/suspended directors of the both the companies contacted the IP in November 2019 with objective of initiation of voluntary liquidation. However, it was only around first week of March, 2020 that the decision to voluntary liquidate was finalized;
 - (ii) He was under the impression that application for AFA has been made by his office and it was beyond his knowledge that due to some technical errors the submission of the application was not successful;
 - (iii) Due to onset of COVID-19 lockdown, it was impossible to retrieve any documents from his office;
 - (iv) He has stated that his actions are unintentional and without any *mala fide*;
 - (v) He has confirmed that beyond public announcement he has not taken any further steps in the assignments and has not accepted any fee for the said assignments.

Analysis and Findings

4. The DC after taking into consideration the SCN, the reply to SCN, the written submission of Mr. Ajay Kumar 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.”

- 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. This requirement applies to undertaking of processes/assignments under the Code including voluntary liquidation. ‘Assignment’ is defined under regulation 2(a) of the IP Regulations as “*any assignment of an insolvency professional as interim resolution professional, resolution professional, liquidator, bankruptcy trustee, authorised representative or in any other role under the Code*”. 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.

- 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.

4.4 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.”*

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 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, Mr. Kumar accepted the assignment of voluntary liquidation in matter of Sambodhi Healthcare Private Limited and Modern Cold Storage Limited without holding valid AFA after 31.12.2019 which is in express contravention of regulation 7A of IP Regulations, which is applicable to voluntary liquidation as well. 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. Kumar on 7.09.2020 by the Disciplinary Committee of IPA for accepting assignment as Voluntary Liquidator after 31.12.2019 without holding a valid AFA in the matter Sambodhi Healthcare Private Limited and Modern Cold Storage Limited, and imposed penalty 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. Ajay Kumar, for accepting assignment as Voluntary Liquidator after 31st December, 2019 without holding a valid AFA in the matter of Sambodhi Healthcare Private Limited and Modern Cold Storage 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. Ajay Kumar.

- 5.1 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Ajay Kumar 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.

LEGAL MEDIA GROUP

LEGAL
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

-sd-

(Dr. Mukulita Vijayawargiya)

Whole Time Member, IBBI

Dated: 13th October 2020

Place: New Delhi