

INSOLVENCY AND BANKRUPTCY BOARD OF
INDIA (Disciplinary Committee)

No. IBBI/DC/43/2020

13th November, 2020

Order

In the matter of Mr. S Rajagopal, 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/2020/16 dated 28th August, 2020 issued to Mr. S Rajagopal, 11/108, 4th Street, Karpagam Avenue R.A. Puram, Chennai, Tamil Nadu, 600028 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-N00082/2017-2018/10223.

- 1.1 The IBBI had issued on 28th August, 2020, the SCN to Mr. S Rajagopal for accepting the assignment as the Interim Resolution Professional (IRP) in the Corporate Insolvency Resolution Process (CIRP) of Coastal Energy Private Limited after 31st December 2019 without holding a valid Authorisation for Assignment (AFA).
- 1.2 Mr. Rajagopal submitted reply to the SCN dated 4th September, 2020. The IBBI referred the SCN, response of Mr. Rajagopal 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 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 IRP in CIRP of Coastal Energy Private Limited after 31st December 2019 for which public announcement was made on 8th January 2020 without holding a valid AFA from the IPA.

Written and oral submissions by Mr. Rajagopal

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

- 3.1 Mr. Rajagopal in his reply submitted that-

- (i) the matter is sub-judice as it is subject matter before the Hon'ble Supreme Court in

Diary No. 4440/2020 and in WP(C) No. 9508/2019 before Hon'ble Delhi High Court.

- (ii) He had accepted the assignment and provided his consent in Form-2 dated 01.03.2019.
- (iii) There was a lack of clarity in the Regulations and ICSI IIP Bye-Laws, therefore the benefit of doubt for not seeking AFA should be given.
- (iv) IPA has also issued the show cause notice dated 24.07.2020 and order dated 07.09.2020 has also been passed and wherein he has been warned to be extremely careful, diligent, strictly act as per law and similar action should not be repeated.

Analysis and Findings

4. The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of Mr. Rajagopal 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. 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 IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016. 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 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.”

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/Liquidator 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 *mala fide* or with negligence.

4.7 In the present matter it is observed that, Mr. Rajagopal had provided his consent to accept the assignment in Form-2 to Indian Overseas Bank on 01.03.2019 prior to the amendment made to IP regulation for CIRP of Coastal Energy Private Limited, before 31st December, 2019. However, it is observed that the date of commencement of the CIRP is 06.01.2020 and the Regulation 7A of IP regulations clearly and unambiguously states that an insolvency professional shall not accept or undertake an assignment after 31st December, 2019 unless he holds a valid AFA. In consequence, he has contravened code of conduct under section 208(2)(a) and(e) of the Code and regulations 7(2)(a) and (h), 7A 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 SCN dated 24.07.2020 was issued by IPA also and order has been passed against Mr. Rajagopal on 07.09.2020 by the Disciplinary Committee of IPA for accepting assignment as IRP after 31st December, 2019 without holding a valid AFA in the matter of Coastal Energy Private Limited, and warned him to be extremely careful,

diligent, strictly act 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. S Rajagopal, for accepting assignment as IRP after 31st December, 2019 without holding a valid AFA in the matter of Coastal Energy Private Limited and had issued a warning, 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 Rajagopal.
 - 5.1 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. S Rajagopal 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: 13th November 2020
Place: New Delhi

