

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/53/2020

08th December 2020

Order

In the matter of Mr. Romesh Chander Sawhney, 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/2020/3 dated 27th August, 2020 issued to Mr. Romesh Chander Sawhney, 850/GH-13, Paschim Vihar, New Delhi-110087 who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI (IPA) and an IP registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00274/2017-2018/10518.

- 1.1 The IBBI had issued on 27th August, 2020, the SCN to Mr. Romesh Chander Sawhney for accepting the assignment as the Interim Resolution Professional (IRP) in the Corporate Insolvency Resolution Process (CIRP) of MLP Developers & Promoters Private Limited after 31st December 2019 without holding a valid Authorisation for Assignment (AFA) issued to him by his IPA.
- 1.2 Mr. Romesh Chander Sawhney submitted reply to the SCN dated 2nd September, 2020. The IBBI referred the SCN, response of Mr. Romesh Chander Sawhney 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 9th 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-
 - (i) MLP Developers & Promoters Private Limited after 31st December 2019 for which public announcement was made on 28th January 2020 without holding a valid AFA from the IPA;

Written and oral submissions by Mr. Romesh Chander Sawhney

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

3.1 Mr. Sawhney in his reply submitted that-

- (i) he had submitted his expression of interest in the MLP Developers & Promoters Private Limited on 5th April 2019 when the matter was filed before the Hon'ble NCLT, Chandigarh Bench in the month of April 2019 prior to the amendment of regulation 7A to the IP Regulations.
- (ii) he submits that he is a senior citizen aged about 63 years and could not attend office due to sudden health problem in the month of December 2019. As he did not have any assignment in hand on 1st January 2020 and his office staff could not interpret regulation 7A of the IP Regulations and thought it was not applicable to them.
- (iii) it was an unintentional procedural lapse without any ill motive, resulting from oversight of the newly incorporated provisions. Also, he has not received any fees or any monetary gain from this assignment till date.
- (iv) he further submits that he had applied for AFA on 9th June 2020 by filing an online application on Form No. AA with the IPA to rectify the procedural lapse. He has been a member of the Institute of Chartered Accountants of India since 1984 and served impeccably for more than 36 years and he has strictly observed various guidelines and never faced any disciplinary proceedings in his career. Since the insolvency regime in India is new and emerging, he is striving to learn and cope up with the fast changes. He also assures that he will be extremely careful, diligent, strictly act as per law and not repeat this action in future.
- (v) IPA has also issued the show cause notice dated 31.08.2020 and order dated 1.12.2020 has also been passed deciding that the Mr. Sawhney is not guilty of Professional Misconduct.

Analysis and Findings

4. The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of Mr. Sawhney 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 Indian Institute of Insolvency Professionals of ICAI defines in para 4(1)(aa) the expression “authorisation for assignment” means 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. 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/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. Sawhney had provided his consent to accept the assignment in Form-2 on 05.04.2019 prior to the amendment made to IP regulation for acceptance of assignment in matter CIRP of MLP Developers & Promoters Private Limited before 31.12.2020. However, it is observed that the date of commencement of the CIRP is 27.01.2020.

4.8 The DC finds that an order has been passed against Mr. Sawhney on 01.12.2020 by the Disciplinary Committee of IPA for accepting assignment as IRP after 31.12.2019 without holding a valid AFA in the matter of MLP Developers & Promoters Private Limited and decided that the Mr. Sawhney is not guilty of Professional Misconduct.

Order

5. In view of the fact that the Indian Institute of Insolvency Professionals of ICAI has already taken disciplinary action against Mr. Sawhney, 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. Romesh Chander Sawhney.

5.1 A copy of this Order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Sawhney 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: 08th December 2020
Place: New Delhi