

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

No. IBBI/Ref-Disc.Comm./03/2018

18th April, 2018

Interim Order

(under sub-regulation (4) of regulation 5 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 in the matter of Mr. Mukesh Mohan, Insolvency Professional)

The Disciplinary Committee of the Insolvency and Bankruptcy Board of India had issued an ex-parte interim order dated 8th March, 2018 against Mr. Mukesh Mohan, Insolvency Professional [Regn. No. IBBI/IPA-001/IP-P00018/2016-2017/10042] pending completion of inspection. A copy of ex-parte interim order is annexed to this order.

2. The ex-parte interim order provided an opportunity to Mr. Mohan to submit a written submission and seek an opportunity of personal hearing. Mr. Mohan, vide his letter dated 23rd March, 2018, has submitted a written submission and availed the opportunity of personal hearing on 12th April, 2018. At the hearing, he reiterated what he has stated in the written submission.

3. Mr. Mohan has submitted para wise response to the findings in the ex-parte interim order. I, however, do not find anything new in his submissions that has not been dealt in the ex-parte interim order or that disproves a finding in the ex-parte interim order. Let me take two examples:

- (i) It has been found in the ex-parte interim order that Mr. Mohan inserted the requirement of the certificate of CA in the Expression of Interest (EoI) issued on 26th December, 2017 without the approval of CoC, in the matter of Carnation Auto India Private Limited. Mr. Mohan has now responded that the “*Committee of Creditors in its meeting held on January 05, 2018 confirmed that the published EoI was in accordance with section 25(2)(h) of the Insolvency and Bankruptcy Code, 2016.*” This only indicates that the EoI was in accordance with the section 25(2)(h) of the Insolvency and Bankruptcy Code, 2016, ignoring for a moment whether the CoC is competent to make this confirmation. It does not say anything about the insertion of requirement of the certificate of CA in the EoI. It does not even say that the EoI, as issued on 26th December, 2017, was approved by the CoC. It cannot say so as the agenda and minutes are silent about this requirement.
- (ii) In the same matter, it has been found in the ex-parte interim order that Mr. Mohan sought approval of the EoI only from one of the creditors. Mr. Mohan has now responded: “*The EoI was further fine-tuned with certain modifications by Punjab National Bank, being only secured lender of the Committee of Creditors during the meeting held on December 21, 2017 and approved the said EoI.*” This confirms that only one creditor modified the EoI. Further, it is important to note that the meeting ‘on 21st December, 2017’ was not a meeting of the CoC.

4. I do not wish to deal with each and every finding in the ex-parte interim order, as the order is annexed to this. More importantly, the ex-parte interim order debars him from undertaking any new assignment. Mr. Mohan has submitted that he is not keeping well. He has further submitted an order of the Hon’ble NCLAT which records that he has tendered resignation to CoCs of three corporate creditors.

5. In view of the above, I find that the fact and circumstance of the case as brought out in the ex-parte interim order have not changed, justifying the dis-continuation, modification or revocation of the directions passed in the said order.

6. I, therefore, in exercise of the powers conferred under sub-section (2) of section 220 of the Code read with sub-regulation (4) of regulation (5) of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017, hereby confirm the directions contained in the ex-parte interim order dated 8th March, 2018.

7. A copy of this order shall be forwarded to Mr. Mukesh Mohan and to Indian Institute of Insolvency Professional of ICAI where he is enrolled as its professional member.

8. A copy of this order shall be forwarded to the Registrar of the NCLT, Principal Bench, New Delhi for information.

Date: 18.04.2018
Place: New Delhi

-*Sd*-
(Dr. Mukulita Vijayawargiya)
Disciplinary Committee and Whole Time Member

Annexure: Ex- parte Interim Order dated 8th March, 2018 (page 3-12).

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

DATED: 08th March, 2018

Order under sub-regulation (4) of regulation 5 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017

The Insolvency and Bankruptcy Board of India (hereafter, Board) has referred the Interim Inspection Report (hereafter, IIR) dated 16.02.2017 to the Disciplinary Committee under sub-regulation (3) of regulation 5 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (hereafter, regulations) for appropriate action urgently.

2. The Board, in exercise of its powers under section 218 of the Insolvency and Bankruptcy Code, 2016 (Code) read with the IBBI (Inspection and Investigation) Regulations, 2017, vide its order dated 04.01.2018, has appointed the Inspecting Authority (hereafter, IA) to conduct an inspection of Mr. Mukesh Mohan, Insolvency Professional, Regn. No. IBBI/IPA-001/IP-P00018/2016-17/10042 on having reasonable ground to believe that Mr. Mohan had contravened the provisions of the Code, regulations made, and directions issued by the Board thereunder. The IA has submitted an IIR on 16.02.2018 under sub-regulation (3) of regulation 5 of the regulations.
3. On examination of the IIR and the documents attached thereto and other material available on record, I observe that –
 - (i) Mr. Mohan was appointed as an Interim Resolution Professional for Carnation Auto India Private Limited, the corporate debtor vide order dated 25.09.2017 of the Adjudicating Authority.
 - (ii) Mr. Mohan was confirmed as a Resolution Professional (hereafter, RP) in the first meeting of the Committee of Creditors (hereafter, CoC) held on 24.10.2017.
 - (iii) The Board came across an advertisement, published by Mr. Mohan in Hindustan Times on 26.12.2017, inviting Expression of Interest (hereafter, EoI) from interested resolution applicants for resolution plan of Carnation

India Auto Private Limited undergoing corporate insolvency resolution process.

(iv) The Board, vide its letter dated 26.12.2017, observed and conveyed the following deficiencies in the said advertisement to Mr. Mohan: -

“(a) *The advertisement does not carry your registration number as IP, and your address and email registered with the IBBI.*

(b) *The last date for submission of the resolution plan stated in the advertisement is January 15, 2017. This is not correct.*

(c) *Resolution Applicant is required to submit an affidavit supported with CA certificate that he is eligible to be a resolution applicant under the Code. The Code does not envisage a certificate from CA, engaged by a resolution applicant, to certify the eligibility of the resolution applicant.”*

(v) The Board, vide the aforesaid letter, advised Mr. Mohan as under: -

“**2.** *You are, therefore, advised to withdraw the aforesaid advertisement immediately and issue a fresh advertisement after addressing the above deficiencies in all newspapers where the advertisement under reference has been published. The cost of such withdrawal and fresh advertisement shall not form part of the insolvency resolution cost.*

3. *You are advised to file a confirmation that actions as called for in Para 2 above have been duly complied with.”*

(vi) Mr. Mohan, vide his letter dated January 01, 2018 and annexures thereto, *inter alia*, submitted as under:

(a) One of the deficiencies (last date for submission of the resolution plan) was a mistake, but “it was a mistake by oversight by all members of Committee of Creditors including myself. The draft advertisement was discussed and approved by the Committee of Creditors in its meeting held on December 05, 2017.”

(b) In his meeting with Forensic Auditors and Punjab National Bank (PNB) on 21st December, 2017, “the draft advertisement for EoI was approved and signed by the Mr. D. Vasudevan, Deputy General Manager of the PNB, one of the members of the CoC after certain modifications as per the observations of the financial creditor.”

(c) As regards to the condition mentioned in Expression of Interest that, “Resolution Applicants also to submit an affidavit supported with CA certificate that they are eligible to be Resolution Applicants under Insolvency and Bankruptcy Code, 2016, all amendments, Rules and

Regulations made thereunder”, he submitted that “the same was approved by the Punjab National Bank, member of Committee of Creditors in the meeting held on December 21, 2017.”

- (d) He submitted that “most of the deficiencies pointed out by the Board in case of EOI of Carnation Auto India Pvt. Ltd. exist in most advertisements for EoI published in the past.”
 - (e) He may be “allowed to issue an addendum for the deficiencies pointed out” by the Board and “the cost of addendum may form part of the corporate insolvency resolution process cost else it will be major penalty on the members of the CoC.”
 - (f) He enclosed a draft EoI in respect of another corporate debtor, Athena Demwe Power Limited seeking “approval of the Board before its issue so that there will be no deficiency in the EoI of Athena Demwe Power Limited.”
- (vii) In response to the letter as at (vi) above, the Board reiterated, vide its letter dated 03.01.2018, its directions contained in its letter dated 26.12.2017 for immediate compliance and report.
 - (viii) After considering the letter as at (vi) above, the Board had reasonable grounds to believe that Mr. Mohan has violated provisions of Code, regulations and directions issued by the Board and accordingly appointed the IA vide its order dated 04.01.2018 to conduct an inspection of Mr. Mohan.
 - (ix) The IA, in pursuance of sub-regulation (1) of regulation (4) of the regulations, served a notice on Mr. Mohan, vide email dated 04.01.2018, informing that it would commence inspection on 15.01.2018.
 - (x) RP sought postponement of the inspection four times, which the IA allowed. The IA vide email dated 23.01.2018 informed to Mr. Mohan that the IA will visit on 24.01.2018 and stated that further extension will not be granted. Accordingly, the IA has visited the office of Mr. Mohan on 24.01.2018 for the inspection as contained in Board order dated 04.01.2018.
 - (xi) Mr. Mohan filed a Miscellaneous Application under section 60 (5) of the Code before the Adjudicating Authority (AA) in matter of Punjab National Bank Vs. M/s Carnation Auto India Pvt. Ltd. On 11.01.2018 seeking, *inter alia*, directions of the Court, “*whether resolution professional to issue*

corrigendum against the direction of the Board or to withdraw the EOI dated 26.12.2017 and to issue fresh EOI in contravention to the direction of CoC”.

- (xii) Mr. Mohan served a copy of the aforesaid application on the Board on the date of its listing on 15.01.2018 before the AA.
- (xiii) The IA, vide e-mail dated 07.02.2018, requested Mr. Mohan to provide certain documents pertaining to the processes conducted by him as an IP by 12.02.2018.
- (xiv) The IA did not receive any of the documents as sought at (xv) above till the submission of the first monthly report, which was due on 15th February, 2018. The IA communicated its displeasure to Mr. Mohan vide e-mail dated 16.02.2018.
- (xv) On failing to get cooperation from Mr. Mohan, the IA submitted the IIR on 16.02.2018 to the Board on the basis of material available on record, wherein it is stated that IA is of the considered opinion that the conduct of Mr. Mohan in the ongoing cases is violative of provisions of the Code, rules and regulations thereunder and in the interest of all the stakeholders, it is appropriate that relevant facts are brought to the notice of the Disciplinary Committee for further action, if any, pending completion of the inspection.
- (xvi) The Board has referred the IIR dated 16.02.2017 under sub-regulation (3) of regulation 5 of the regulations to the Disciplinary Committee, for appropriate action urgently.

4. The findings of the IIR, *inter alia*, are as under: -

- (a) The agenda and minutes of the meeting of the CoC held on 05.12.2017 show that the CoC approved the draft advertisement for EoI and that draft did not contain the requirement of a CA certificate for determination of eligibility of the resolution applicants.
- (b) The minutes of the meeting of the RP with Forensic Auditors and PNB held on 21.12.2017 show that an officer of the PNB, who is one of the creditors, made changes in the draft advertisement for EoI and finalized the draft, incorporating the requirement of CA certificate. This change does not have approval of the CoC.
- (c) Mr. Mohan issued the advertisement inviting EoI from the prospective resolution applicants for Carnation India Auto Private Limited on 26.12.2017. The advertisement carried the requirement of CA certificate for eligibility of

resolution applicant, and did not carry the registration number, email id. And address of Mr. Mohan registered with the Board. It sought EoI by 15.01.2017, which being an incorrect date- a date in long past.

- (d) The Board took notice of the deficiencies in the advertisement that EoI did not carry the registration number, email id. And address of Mr. Mohan registered with the Board, incorrect date of submission of resolution plan and requirement of submission of an affidavit supported with CA certificate that he is eligible to be a resolution applicant under the Code. The Board advised Mr. Mohan, vide its letter dated 26.12.2017, to withdraw the advertisement and to issue a fresh advertisement after addressing the deficiencies highlighted in that letter.
- (e) The minutes of meeting of CoC held on 05.01.2018 show that Mr. Mohan informed CoC that he issued the advertisement approved by the CoC on 05.12.2017. However, the fact is that he issued the advertisement approved by a member of CoC on 21.12.2017 and the advertisement issued is substantially different from what was approved by the CoC on 05.12.2017. In a meeting with the forensic auditor and one financial creditor on 21.12.2017 (not a meeting of CoC), the EoI was actually finalized.

(i) The minutes of the meeting of CoC on 05.01.2018 is extracted here:

“It was informed to the Committee of Creditors that in compliance to the decision of the Committee of Creditor in its meeting held on November 14, 2017 and December 05, 2017, Resolution Professional got published, advertisement of Expression of Interest for Resolution Plan in Economics Times, Hindustan Times, Times of India on all editions on December 26, 2017 as per the draft approved by the Committee of Creditors.”

Chairman informed to the Committee of Creditor that the draft was again fine-tuned by the Deputy General Manager of Punjab National Bank during the meeting held on December 21, 2017 at the office of the Resolution Professional, 1106-1107, New Delhi House, Barakhamba Road, Connaught Place, New Delhi-110001.”

(ii) The minutes of the meeting of Mr. Mohan with Forensic Auditor and PNB on 21.12.2017 is extracted here:

“Resolution Professional requested PNB to vet the Expression of Interest for Resolution Plan for Carnation Auto India Private Limited. After detailed discussion the Expression of Interest was finalised, which is enclosed with these minutes and forms an integral part of these minutes”.

- (f) Mr. Mohan was specifically directed by the Board vide email dated 06.03.2017, at the time of issuance of the Certificate of Registration as an Insolvency Professional, to quote Registration Number, email id and address registered with the Board in all his future correspondences with various agencies relating to insolvency professional related work. But he did not comply with these directions in the advertisement inviting EoI.
- (g) In the matter of Athena Demwe Power Limited, Mr. Mohan wanted approval of EoI from the Board before its issue though there is no such provision in the Code. Thus, he tried to push the EoI to the Board for approval.
- (h) The Hon’ble NCLAT in Export Import Bank of India Vs. Resolution Professional JEKPL Pvt. Ltd., Company Appeal (AT)(Insolvency) No. 304 1of 2017, vide its order dated 08.12.2017, directed Mr. Mohan to take into consideration the claim of the appellant and request the CoC to notice the same and bring it to the notice of the AA. However, Mr. Mohan did not bring to the notice of this fact to the AA while submitting the resolution plan for the approval of NCLT, Allahabad Bench, under section 31(1) of the Code. This was taken into cognizance by the Hon’ble NCLAT in Export Import Bank of India Vs. Resolution Professional JEKPL Pvt. Ltd., Company Appeal (AT)(Insolvency) No. 304 of 2017 while passing the order dated 09.02.2018, as under: -

“It appears that in spite of our order dated 08.12.2017, the Resolution Professional Mr. Mukesh Mohan persuaded the matter before the Adjudicating Authority suppressing the aforesaid order passed by this Appellate Tribunal. A request was also made to take the matter out of turn. we issue notice on Mr. Mukesh Mohan to state as to why a proceeding for Contempt be not initiated against him.”

5. On examination of the IIR and documents enclosed thereto, I find the following contraventions of the Code, regulations and the directions of the Board by Mr. Mohan:

A. In matter of Carnation Auto India Private Limited

- (i) An insolvency professional is required to quote in all his communications, his address and email, as registered with the Board, and his Registration Number as an insolvency professional granted by the Board. Mr. Mukesh did not comply with this requirement in the advertisement for EoI dated 26.12.2017 despite direction given to him vide email dated 06.03.2017. Thus, he contravened clause (i) of sub-regulation (2) of regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.
- (ii) The Board directed Mr. Mohan vide letter dated 26.12.2017, to issue a fresh advertisement after removing the three deficiencies observed by it in the advertisement for EoI dated 26.12.2017(as referred to in para 2(iv) above). Mr. Mohan did not comply with these directions of the Board issued under section 196(1)(g) of the Code.
- (iii) While asking for a fresh advertisement, the Board stated vide the aforesaid letter: “the cost of such withdrawal and fresh advertisement shall not form part of the insolvency resolution process cost”. However, Mr. Mohan stated in his application before the AA that the fresh advertisement would impose burden on the corporate debtor. He made similar mis-presentation to the Board in his letter dated 01.03.2018 Thus, he attempted to mislead the AA and the Board in contravention of clauses 1, 2, 9, 12 and 14 of the Code of Conduct under the first schedule of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulation, 2016.
- (iv) Mr. Mohan stated in his letter dated 01.01.2018 to the Board and in the application before the AA that the advertisement made by him was in accordance with the best market practice. He enclosed several advertisements in support of his contention. The fact, however, is that none of the advertisements provided by him required a certificate from a CA to provide a certificate of eligibility of resolution applicants. Thus, he attempted to mislead the Board and the AA in contravention of clauses 1, 2, 3, 12 and 14 of the Code of Conduct.
- (v) Section 25(2)(h) of the Code requires a resolution professional to lay down criteria with the approval of the CoC. Mr. Mohan stated in the application before the AA and in the letter to the Board dated 01.01.2018 that the CoC has approved the advertisement for EoI. The fact, however, is that the advertisement approved

by the CoC does not require a certificate from a CA. Thus, Mr. Mohan added the requirement of a certificate from a CA without approval of the CoC and thereby contravened section 25(2)(h) of the Code. He also attempted to mislead the AA and the Board in contravention of clauses 1, 2 3, 12 and 14 of the Code of Conduct under the first schedule of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulation, 2016.

- (vi) The CoC as a collective body of financial creditors has certain powers and responsibilities under the Code. No individual creditor has a specific power or responsibility. Section 21(8) of the Code requires that all decisions of the CoC shall be taken by a vote of not less than seventy-five per cent of voting share of the financial creditors. The fact, however, is that Mr. Mohan sought approval of the EoI from only from one creditor, namely, Punjab National Bank, in a special meeting he had with forensic auditors and not in a meeting of CoC. Thus, Mr. Mohan acted upon the action of one of the creditors, and not the CoC, which is in contravention of section 21(8) of the Code. In the process, he compromised his independence in contravention of clause 5 of the code of Conduct.
- (vii) Section 23(1) of the Code requires an insolvency professional to conduct entire resolution process. In this case, Mr. Mohan asked an interested party, i.e., resolution applicant, to perform the task of certifying its eligibility through certificate of a CA engaged by such applicant and thereby contravened section 23(1) of the Code and compromised the integrity of the process in contravention of clauses 1 and 14 of the said Code of Conduct. He brought in a requirement not envisaged under the Code adding cost in terms of time and money in contravention of clause 13 of the Code of Conduct.
- (viii) An insolvency professional is registered by the Board on satisfaction of his talent (qualification and experience) and character (fit and proper). Accordingly, he is entrusted with key responsibilities under the Code. He is engaged as a resolution professional by the CoC. He cannot outsource his responsibilities to a third person. A key responsibility of the insolvency professionals is ascertaining whether a prospective resolution applicant is eligible under the Code to submit a resolution plan. Mr. Mohan, in the instant case, outsourced his responsibility to a third person to certify eligibility of resolution applicants in contravention of sections 23(1) and 30(2)I of the Code.

(ix) Mr. Mohan made false statements in his letter dated 01.01.2018 and contravened the provisions of the Code and regulations under section 70 (2) read with section 235A.

B. In the matter of JEKPL Pvt. Ltd.

(x) The Hon'ble Appellate Authority directed Mr. Mohan to take into consideration the claim of the appellant (Export Import Bank of India) and request the CoC to notice the same and bring it to the notice of AA. It appears that Mr. Mohan did not comply with this direction. Nevertheless, the IA should conclude the facts in this regard in its final report.

C. In the matter of Athena Demwe Power Limited

(i) Mr. Mohan sought approval of the Board for advertisement for EoI. Such approval is not envisaged under the Code. In the process, he tried to avoid responsibility cast on him under the Code and delayed the resolution process in contravention of clause 13 of the Code of Conduct. It is the duty of the resolution professional to conduct the entire resolution process.

6. Thus, Mr. Mohan has attempted to mislead the CoC, the AA, and the Board, outsourced his responsibilities to a third person, acted beyond his authority without the approval of the CoC, acted for and on behalf of one of the creditors, and thereby contravened provisions in sections 21(8), 23(1), 25(2)(h), 30(2)I, 70 (2), 235A of the Code and regulation 7 (2) (i) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulation, 2016 and clauses 1, 2, 3, 5, 9, 12, 13 and 14 of the Code of Conduct under First schedule of these regulations.

7. Given the responsibilities of an insolvency professional, it is necessary to take urgent action to contain further damage, pending completion of inspection. I, therefore, in exercise of the powers conferred under section 220 (2) of the Code read with sub-regulation (4) of regulation (5) of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017, hereby, issue following directions:-

(a) Mr. Mukesh Mohan, Insolvency Professional, Registration No. No. IBBI/IPA-001/IP-P00018/2016-17/10042 is hereby debarred from undertaking any new assignment, either as an Interim Resolution Professional, Resolution Professional, Liquidator or otherwise, under the Code;

(b) The direction as at (a) above shall come into force with immediate effect and shall cease to have effect on expiry of 90 days from the date of the order; and

(c) The Inspecting Authority shall complete the inspection and submit inspection report by 15th April, 2018, as specified in the order dated 04.01.2018 of the Board.

8. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Mukesh Mohan is enrolled as its member.
9. A copy of this order shall be forwarded to the Registrar of the NCLT, Principal Bench, New Delhi for information.
10. If Mr. Mukesh Mohan is aggrieved by this order, he may submit his written submissions and may seek an opportunity of hearing within 15 days from the date of receipt of this order.

Date: 08.03.2018

Place: New Delhi

Sd/-

(Dr. Mukulita Vijayawargiya)

Disciplinary Committee