

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/15/2019
21st February, 2019

In the matter of Ms. Bhavna Sanjay Ruia, Insolvency Professional under sub-regulations (7) and (8) of regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 read with section 220 of the Insolvency and Bankruptcy Code, 2016.

Order

This order disposes of the show cause notice dated 22nd September, 2018 (SCN) issued to Ms. Bhavna Sanjay Ruia, Vishal House, 1st Floor, Plot No. 33, Sector - 19C, Off Palm Beach Road, Vashi, Navi Mumbai, Maharashtra - 400705, who is a Professional Member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional (IP) registered with the with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-002/IPN00371/2017-2018/11065. The SCN alleged contraventions of several provisions of the IBBI (Insolvency Professionals) Regulations, 2016 and the Code of Conduct under regulation 7(2) thereof. Ms. Ruia replied to the SCN vide her letter dated 12th October, 2018. The Board referred the SCN, response of Ms. Ruia to the SCN and other material available on record to the Disciplinary Committee (DC). Learned Advocate, Mr. Saket Gupta appeared for a personal hearing on 16th November, 2018 on behalf of Ms. Ruia and made oral submission. Mr. Gupta sought permission to file written submission which was allowed. Ms. Ruia made written submission vide her letter dated 22nd November, 2018.

Background

2. The Board took note of the following:

2.1 Ms. Bhavna Sanjay Ruia is wife of Mr. Sanjay Kumar Ruia. Both are insolvency professionals registered with the Board.

2.2 An inspection of the records of Mr. Ruia revealed that Mr. Ruia, in the capacity interim resolution professional (IRP) of S. N. Plumbing Pvt. Ltd., filed applications for initiating Corporate Insolvency Resolution Process (CIRP) of 14 corporate debtors (CDs). Ms. Ruia consented to act as IRP for CIRPs of all 14 CDs and contracted for fees as under:

Sl. No.	Name of Corporate Debtor	Fee (₹)
1	Akshay Infrastructure Pvt. Ltd.	4,75,00,000
2	Reliance Industries Ltd.	4,75,00,000
3	Riverview	4,75,00,000
4	Wadhavan Holding Private Ltd.	4,75,00,000
5	Mercury Realty Private Ltd.	4,75,00,000
6	Sanghvi Premises Private Ltd.	1,50,00,000
7	AIGL Properties Ltd.	1,50,00,000
8	Brahmacorp Hotels and Resorts	65,00,000
9	Steiner India Ltd.	65,00,000
10	Lavasa Corporation Ltd.	65,00,000
11	IL&FS Engineering and Construction Company Ltd.	47,50,000
12	Entire Estate Private Ltd.	NA
13	D B Realty Ltd.	NA
14	Peninsula Land	NA

2.3 The Hon’ble Adjudicating Authority observed in three matters as under:

2.3.1 While considering the application for initiation of CIRP of Lavasa Corporation Ltd. (one of the 14 listed in Para 2.2), the Hon’ble Adjudicating Authority, in its order dated 15th March, 2018, noted that Mr. Ruia has proposed appointment of Ms. Ruia as IRP. It observed: *“In this regard a clarification is required from the respected IBBI that whether to facilitate the Insolvency Proceeding in the connected Insolvency Petitions a Relative’s name can be proposed and such an act do not contravene the Code of Conduct as prescribed under First Schedule of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, particularly clause 5 and 6 under the Head “Independence and Impartiality”.*

2.3.2 While considering the application for initiation of CIRP of Akshay Infrastructure Pvt. Ltd. (one of the 14 listed in Para 2.2), the Hon’ble Adjudicating Authority, in its order dated 15th March, 2018, similarly noted that Mr. Ruia has proposed appointment of Ms. Ruia as IRP. It observed: *“In this regard a clarification is required from the respected IBBI that whether to facilitate the Insolvency Proceeding in the connected Insolvency Petitions a Relative’s name can be proposed and such an act do not contravene the Code of Conduct as prescribed under First Schedule of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, particularly clause 5 and 6 under the Head “Independence and Impartiality”.*

2.3.3 While considering the application for initiation of CIRP of Gammon India Ltd. (Not one of the 14 listed in Para 2.2 above), the Hon’ble Adjudicating Authority, in its order dated 04th April, 2018, observed: *“On going through the Petition, it appears that this petition has been filed under Section 9 of the IB Code, 2016, mentioning the claim principal amount as ₹42,74,128 and interest of ₹65,56,142.....*

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On verification of the record, it appears that this Petition has been filed by the professional namely, Mr. Sanjay Kumar Ruia. It appears that the professional who accepted to work as Interim Resolution professional is none other than the wife of the Chartered Accountant who filed this Company Petition.

Normally in Section 9 Petitions, this Bench or IBBI will appoint IRP, of course the Petitioner is also entitled to file consent form from IRP, but by seeing the remuneration, we believe it is exorbitant, because the professional fees for Interim Resolution Professional till first CoC meeting is shown as ₹5,00,00,000 which is so far unheard of in any Company Petition.”

Alleged Contraventions

3. Based on the above, responses of Ms. Ruia on observations of the Hon’ble Adjudicating Authority and other materials available on record, the Board issued the SCN with the following alleged contraventions:

3.1 Ms. Ruia consented to act as IRP of 15 CIRPs for which applications were filed by a professional, who is her husband. In the process, she compromised her independence, integrity and impartiality;

3.2 Ms. Ruia consented to act as IRPs of 15 CIRPs simultaneously, even though she has absolutely no experience whatsoever and no capacity;

3.3 Ms. Ruia contracted to act as IRPs for exorbitant of fees. She contracted a fee of ₹5.15 crore as IRP for one month and a fee of ₹3 crore as resolution professional (RP) per month, over and above all out of pocket expenses in the CIRP of Gammon India Ltd., which had defaulted a sum of ₹42.74 lakh. She contracted a fee of ₹4.75 crore as professional fee in CIRPs of each of the first five CDs listed in table under Para 2.2 above. Thus, Ms. Ruia and Mr. Ruia engaged in a conspiracy to exploit the ailing CDs, in the pretext of rendering professional services. Further, she entered into contracts to act as RPs of 15 CIRPs with the parties who are not competent to engage her as RP and thereby pre-empted the committee of creditors (CoC) of their legitimate rights to appoint an IP of their choice as RP and fix the fees of the RP.

Response to Allegations

4. A summary of submission of Ms. Ruia seriatim is as under:

4.1 The applications for initiation of CIRPs were filed by Mr. Ruia in his professional capacity, as IRP/ RP of a CD, which is undergoing CIRP. The CoC of the CD has approved appointment of Ms. Ruia as IRP. Further, she is not explicitly debarred from acting as IRP / RP of the CDs under regulations as she has no relationship with any of them.

4.2 At the time of giving consent, Ms. Ruia did not have any assignment in hand. Therefore, she consented to all 15 CIRPs. If she got 2-3 CIRPs, she would recuse herself from other CIRPs by filing withdrawal letter.

4.3 A similar contravention (high fee and agreement with unauthorised persons) in respect of another CIRP have been adjudicated by the Board vide order dated 3rd May, 2018 while disposing of the show cause notice dated 8th March, 2018 suspending her registration for a year. It is trite law that a person cannot be held liable twice for the same mistake.

Findings

5. The findings of the DC seriatim are as under:

5.1 In terms of section 17 of the Insolvency and Bankruptcy Code, 2016 (Code), the management of the affairs of the CD vests in the IRP and the powers of the Board of Directors of the corporate debtor is exercised by the IRP. For all practical purposes, the IRP is the alter ego of the CD undergoing CIRP. Every decision of the CD and in respect of the CD is taken by the IRP. Ms. Ruia dealt with Mr. Ruia, the decision maker for the CD. It requires no rocket science to figure out why Mr. Ruia assigned CIRPs of 15 CDs to one IP, namely, Ms. Ruia, when 2000 IPs were competing for an assignment in the market. It is not a coincidence that 15 assignments from one source landed on her table Ms. Ruia, when she could not have a single assignment otherwise. 15 assignments at one go from one source for an IP having absolutely zero experience establishes that the considerations were something other than merits and there was a deep-rooted conspiracy to bleed the ailing CDs for the benefit of Ruia family. If the conspiracy had materialised, Ms. Ruia would have acted as IRP / RP of CIRPs of 15 CDs and would have earned a professional fee of about ₹50 crore at one go. When relationship triumphs over merits in professional matters, there is no place for independence, integrity and impartiality. A professional must be not only be impartial, but also appear to be impartial. Does a professional appear impartial if she receives professional

assignments for about ₹50 crore at one go from a CD which is under the custody of her husband. Neither Mr. Ruia found any other professional suitable for any of the 15 CIRPs nor Ms. Ruia could get a single CIRP in her career from any source other than her husband. Any conduct, whether explicitly prohibited in the law or not, is unfair if it impinges on independence, integrity and impartiality of an IP or inconsistent with the reputation of the profession.

5.2 CIRP is a serious responsibility of an IP. Section 20 of the Code obliges the IRP to make every endeavour to protect and preserve the value of the property of the CD and manage the operations of the CD as a going concern. Section 23 of the Code mandates the RP to conduct the entire CIRP and manage the operations of the CD during the CIRP period. It is inconceivable that an individual (Ms. Ruia) who is a novice in the profession and has not handled a single CIRP till date, would act as IRP / RP in 15 CIRPs simultaneously and exercise the powers of Boards of Directors of 15 CDs. While the Code aims to rescue the ailing CDs, such conduct of an IP ensures just the opposite. That is why the law prohibits an IP from taking too many assignments, if he is unlikely to devote time to each of his assignment. The argument that Ms. Ruia would withdraw her consent, after she gets a few assignments, is mischievous. Assuming for the sake of argument that she really meant to withdraw her consent, she must not forget the cost of such withdrawal to the insolvency regime and the hardships the CDs and their stakeholders would suffer on account of withdrawal.

5.3 The DC notes that a fee of ₹5 crore for her services, plus all out of pocket expenses, as IRP for one month or ₹3 crore as RP per month is not a reasonable reflection of the work necessarily and properly undertaken by her. Further, Ms. Ruia contracted with the applicant, who is not legally competent to appoint RP, to the effect that she would work as RP and she would work for a professional fee of ₹3 crore per month. She locked in her appointment as RP before the competent authority, that is, CoC is born and denuded the competent authority of its rights to choose an IP as RP and fix his fees. The DC does not wish to labour further, as Ms. Ruia has admitted to the alleged contraventions. It has adjudicated the same contravention by Ms. Ruia in the CIRP of Madhucon Projects Limited vide its order dated 3rd May, 2018.

5.3.1 The only issue that remains is whether she would be liable for contraventions in the CIRP of Gammon India Ltd. and 14 other CDs or not, in view of disciplinary action taken against her in CIRP of Madhucon Projects Ltd. The simple question is if one commits the same offence sixteen times at different points of time, and the offence committed first has been adjudicated, will the subsequent offences go unpunished? The trite law cited by Ms. Ruia requires that one cannot be tried again on the same charges and on the same facts. This is a principle applied for crimes. The DC is not dealing here with a crime and hence the trite law is, strictly speaking, of no avail. Even if this principle is applied, it is still of no avail to Ms. Ruia. The DC is dealing with contraventions in 15 separate CIRPs. Contravention in the CIRP of Madhucon Projects Ltd. is a separate cause of action than the contraventions in the CIRP of Gammon India Ltd. and 14 other CDs.

5.3.2 If Ms. Ruia had slightest regard for the rule of law, she would have immediately withdrawn or modified her consent / terms in respect of Gammon India Ltd. and 14 others, when the Hon'ble Adjudicating Authority raised concern about her conduct vide its order dated 22nd November, 2017 in the matter of Shri Shrikrishna Rail Engineers Private Limited

vs. Madhucon Projects Limited and referred the matter to IBBI for appropriate action. It observed:

“In view of the above, the Adjudicating Authority is of the considered view that remuneration quoted by the IRP is quite exorbitant and the same needs to be referred to IBBI. Though there are no prescribed set of Rules and Regulations/Guidelines at present with regard to the fee payable to the IRP/RP, the Adjudicating Authority is of the considered view that the fee quoted by the professionals should be reasonable, commensurate with work to be handled. In view of the above we recommend the matter to IBBI for taking appropriate action/remedial measure against the proposed IRP including disciplinary action if any, as deemed fit.”

5.3.3 Instead of mending her ways, she continued to indulge in similar conduct even after 22nd November, 2017 for several CIRPs, as if there is no law in the land and in utter disregard of the strictures of the Hon’ble Adjudicating Authority. She continued on a consent spree with objectionable terms in at least seven CIRPs (at Sl. Nos. 1, 2, 4, 6, 12, 13 and 14 in table under Para 2.2 above) after 22nd November, 2017.

6. The DC notes, as rightly stated by Ms. Ruia, that her registration as an insolvency professional was suspended vide order dated 3rd May, 2018 for contravention in CIRP of Madhucon Projects Ltd. She has repeated the same contravention in CIRPs of 15 CDs covered in the SCN in conspiracy with her husband and has seriously compromised her independence, impartiality and integrity. She consented to take up 15 assignment simultaneously, much beyond her capacity, putting the life of 15 CDs at risk. She has, therefore, contravened provisions of sections 17, 20, 23 and 208(2)(a) and (e) of the Code, regulations 7(2)(a), (b) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 and clauses 1, 2, 3, 5, 9, 10, 11, 12, 14, 22, 25, and 27 of the Code of Conduct specified thereunder. The DC finds that, by her deliberate and collusive conduct, Ms. Ruia has rendered herself a person not a fit and proper person to continue as an IP.

7. Order

7.1 In view of the above, the Disciplinary Committee, in exercise of the powers conferred under section 220 (2) of the Code read with sub-regulations (7) and (8) of regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016, hereby cancels registration of Ms. Bhavna Sanjay Ruia, Insolvency Professional [Registration No. IBBI/IPA-002/IP-N00371/2017-2018/11065] and debars her from seeking fresh registration as an insolvency professional or providing any service under the Insolvency and Bankruptcy Code, 2016 for ten years.

7.2 This Order shall come into force on expiry of 30 days from the date of its issue.

7.3 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Ms. Bhavna Sanjay Ruia is enrolled as a professional member.

7.4 A copy of this order shall be forwarded to the Secretary, National Company Law Tribunal, New Delhi for information.

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(Dr. M. S. Sahoo)
Chairperson, IBBI
Date: 21st February, 2019
Place: New Delhi

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(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI