

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/14/2018
28th January, 2019

In the matter of Mr. Sandip Kumar Kejriwal, 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 9th August, 2018 (SCN) issued to Mr. Sandip Kumar Kejriwal, Martin Burn House, Room No-322, 1, R. N. Mukherjee Road, Kolkata, West Bengal - 700001. Mr. Kejriwal is a professional member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-002/IP-N00236/2017-18/10687. The SCN alleged contraventions of several provisions of the Insolvency and Bankruptcy Code, 2016 (Code), the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016 and the IBBI (Insolvency Professionals) Regulations, 2016. Mr. Kejriwal replied to the SCN vide his mail dated 7th September, 2018. The Board referred the SCN, response of Mr. Kejriwal to the SCN and other material available on record to the Disciplinary Committee (DC) for disposal. Mr. Kejriwal appeared for a personal hearing on 29th October, 2018 and made oral submission.

2. The DC has carefully considered the oral and written submissions of Mr. Kejriwal and material available on record and proceeds to dispose of the SCN.

Background

3. The SCN arises from the alleged conduct of Mr. Kejriwal as Interim Resolution Professional (IRP), and subsequently as Resolution Professional (RP) in corporate insolvency resolution processes (CIRPs) of two corporate debtors (CDs), namely, (a) Upadan Commodities Private Limited, and (b) Maa Tara Industrial Complex Pvt. Ltd. The undisputed facts leading to issue of SCN are as under:

A. Upadan Commodities Private Limited

3.1 The Hon'ble Adjudicating Authority (AA), vide order dated 29th August, 2017, admitted an application under section 9 of the Code for CIRP of the CD, Upadan Commodities Private Limited and appointed Mr. Kejriwal, proposed by the applicant, as IRP with a direction to list the matter on 4th October, 2017 for submission of progress report by the IRP.

3.1.1 Mr. Kejriwal did not file the progress report. The AA, in its order dated 4th October, 2017, observed:

"... even after expiry of more than 30 days, no progress report has been filed by the Interim Resolution Professional.

The IRP is directed to remain present in the Court on the next date of hearing and submit his report.

List on 16-10-17 for submission of p report by the Interim Resolution Professional."

3.1.2 Mr. Kejriwal did not appear before the AA. Nor did he submit the progress report. The AA, in its order dated 16th October, 2017, observed:

“None appeared.

.. but till date no report has been filed by the IRP. Let the notice be issued on IRP.

List on 16th November, 2017.”

3.1.3 Mr. Kejriwal filed the first progress report stating that he fell ill on 4th September, 2017 and remained on bed till 22nd October, 2017 and hence could not publish Form A (Public Announcement). He sought extension of the period of appointment of the IRP and permission to take steps for making public announcement. The AA, in its order dated 25th October, 2017, observed:

“Ld. IRP, Shri Sandip Kumar Kejriwal is present and filed a report. On perusal of the report it appears that he has not complied with the statutory requirement of publication of notice in the newspapers and holding the meeting of the Committee of Creditors (CoC) which are mandatory.

IRP is directed to comply with the provisions of Insolvency & Bankruptcy Code, 2016, failing which action will be initiated. Report may be filed within 15 days.

List on 13/11/2017.”

3.1.4 Mr. Kejriwal filed the progress report. The AA took it on record on 13th November, 2017 with a direction to list the matter on 30th November, 2017 for further consideration. In order dated 30th November, 2017, the AA observed:

“Ld. IRP has filed the progress report but he has not annexed the minutes of CoC meeting. IRP is directed to file the minutes of CoC meeting along with the attendance sheet without which it cannot be ascertained whether he is appointed as RP or not.”

3.1.5 Mr. Kejriwal filed a progress report stating that a committee of creditors (CoC) comprising only one operational creditor was constituted on 15th November, 2017. He issued a notice on 15th November, 2017 convening a meeting of the CoC on 20th November, 2017 with advice to the sole operational creditor to submit resolution plan within four days. The CoC met on 20th November, 2017 where no resolution plan was submitted by the sole operational creditor. In the said meeting, Mr. Kejriwal offered himself for appointment as RP. Accordingly, the CoC resolved to appoint Mr. Kejriwal as RP. The progress report included a few letters he had written to the CD seeking books of accounts.

3.1.6 The CoC met for 2nd time on 18th December, 2017 where it was informed that Mr. Kejriwal was resigning. The CoC resolved to appoint another insolvency professional as RP. Mr. Kejriwal filed an application dated 19th December, 2017 stating that he resigned as RP with effect from 18th December, 2017 due to personal reason. The AA, in order dated 20th December, 2017, observed:

“Let show cause notice be issued against the IRP as to why after accepting the work of resolution professional, he is resigning, without prior permission of the adjudicating authority.”

3.1.7 The AA, vide order dated 16th January, 2018 appointed a new RP who conducted the CIRP. On conclusion of the CIRP, the AA issued an order for liquidation of the CD vide order dated 1st March, 2018 with the following observation:

“Vide order dated 29th August 2017, the petition was admitted by appointing Mr. Sandeep Kumar Kejriwal as the Resolution Professional for initiating corporate insolvency resolution process. Mr. Sandeep Kumar Kejriwal however, discontinued from completing the resolution process by resigning himself without prior notice and without permission of this Adjudicating Authority. Upon his resignation one Mr. Basudeo Agarwal was appointed as the Resolution Professional.

... He (Mr. Basudeo Agarwal, Resolution Professional) was not in receipt of any Resolution Plan in response to the publication and that he was not in receipt of any documents or information from the I.R.P. (Mr. Sandip Kumar Kejriwal) who was firstly appointed in the case in hand.

..... Since he (Mr. Sandip Kumar Kejriwal) has resigned on 18.12.2017 without seeking prior permission of the Adjudicating Authority this Bench was compelled to obtain another proposal from I.B.B.I recommending the name of a resolution professional under section 16 (3) (a) of I&B Code. That is also one of the reasons in delaying the completion of insolvency resolution process.”

B. Maa Tara Industrial Complex Pvt. Ltd.

3.2 The AA, vide order dated 8th September, 2017, admitted an application under section 9 of the Code for CIRP of the CD, Maa Tara Industrial Complex Pvt. Ltd. and appointed Mr. Kejriwal, proposed by the applicant, as IRP with a direction to list the matter on 10th October, 2017 for submission of progress report by the IRP.

3.2.1 Mr. Kejriwal did not file the progress report. The AA, in its order dated 10th October, 2017, observed:

“... But till date, no report has been filed by the IRP.

The Interim Resolution Professional is directed to file the progress report within ten days from the date of this order.

List on 25-10-17 for further orders.”

3.2.2 Mr. Kejriwal filed the first progress report stating that he could not prepare the progress report and issue public announcement as he fell ill from 4th September, 2017 to 22nd October, 2017. He sought extension of the period of appointment of the IRP and permission to take steps for making public announcement. The AA, in its order dated 25th October, 2017, observed:

“Ld. IRP, Shri Sandip Kumar Kejriwal is present and filed a report. On perusal of the report it appears that he has not complied with the statutory requirement of publication of notice in the newspapers and holding the meeting of the Committee of Creditors (CoC) which are mandatory.

IRP is directed to comply with the provisions of Insolvency & Bankruptcy Code, 2016, failing which action will be initiated. Report may be filed within 15 days.

List on 13/11/2017.”

3.2.3 Mr. Kejriwal filed a progress report stating that a CoC comprising only one operational creditor was constituted on 14th November, 2017. He issued a notice on 14th November, 2017 convening a meeting of the CoC on 19th November, 2017 with advice to the sole operational creditor to submit resolution plan within four days. The CoC met on 19th November, 2017 where no resolution plan was submitted by the sole operational creditor. In the said meeting, Mr. Kejriwal offered himself for appointment as RP. Accordingly, the CoC resolved to appoint Mr. Kejriwal as RP. While taking note of the progress report, the AA, in its order dated 30th November, 2017, observed:

“Ld. IRP has filed the progress report but he has not annexed the minutes of CoC meeting. IRP is directed to file the minutes of CoC meeting along with the attendance sheet without which it cannot be ascertained whether he is appointed as RP or not.”

3.2.4 The CoC met for 2nd time on 18th December, 2017 where it was informed that Mr. Kejriwal was resigning. The CoC resolved to appoint another insolvency professional as RP. Mr. Kejriwal filed an application dated 19th December, 2017 stating that he resigned as RP with effect from 18th December, 2017 due to personal reason. The AA, in order dated 20th December, 2017, observed:

“Let show cause notice be issued against the IRP as to why after accepting the work of resolution professional, he is resigning, without prior permission of the adjudicating authority.”

3.3 Vide several mails, the Board sought comments on observations of the AA, and Mr. Kejriwal responded to these mails. It also sought certain documents which Mr. Kejriwal provided. On consideration of the responses and documents provided by Mr. Kejriwal, the Board issued the SCN.

Contraventions and Findings

4. The DC observes that both the CIRPs are strikingly similar. Both CDs belong to the same group and are under the same management. Both CIRPs were triggered by the same operational creditor, around the same time. The CoC in both cases comprised the sole operational creditor. The conduct of Mr. Kejriwal was similar in both the CIRPs. He has provided similar response to the alleged contraventions. A summary of contraventions alleged in the SCN, Mr. Kejriwal’s written and oral submissions thereon and the findings of the DC are as under:

4.1 **Contravention:** The SCN makes broadly three allegations.

a. Mr. Kejriwal did not conduct CIRP as required under section 23 of the Code. He did not submit progress report to AA in time, make public announcement in time, appoint registered valuers, prepare and circulate information memorandum, invite resolution plans under section 25(2)(h) of the Code, convene the meetings of CoC with adequate notice, etc. Rather, he invited resolution plan only from the sole member of the CoC, without providing information memorandum, asking him to submit resolution plan in four days.

b. Mr. Kejriwal did not run the CDs as a going concern, as required under section 20 of the Code. He never took over the management of the CDs. He did not seek direction of the AA if he did not receive the required co-operation from the CDs.

c. Mr. Kejriwal resigned as RP in both the CIRPs, without prior permission of the AA, though he consented to act as IRP and as RP in both cases. After he offered himself for appointment as RP in both the CIRPs, the CoC appointed him as RP.

4.2 Submission: Mr. Kejriwal has broadly made three submissions: (a) he did not have funds to make public announcement; (b) he did not get co-operation from the CD; and (c) he was not well from 4th September, 2017 to 22nd October, 2017. As regards resignation, he has stated in the letter of resignation that he resigned on personal reason. He responded vide his mail dated 2nd January, 2018 that he resigned because he did not get fee and CD did not co-operate.

4.3 Finding: The DC finds that:-

a. Mr. Kejriwal has absolutely no defence as to why he did not conduct the CIRP. He has nothing to say as to, for example, why he did not invite resolution plan under the then provisions of section 25(2)(h) from prospective lenders, investors, and any other persons to put forward resolution plans. The sole purpose of CIRP is consideration and approval of resolution plan to resolve insolvency. The heart of the process is resolution plan. He did not invite resolution plans. He did not even prepare or provide the required information to prospective resolution applicants.

b. As regards his excuse of non-co-operation from CDs to manage the operations of the CDs as a going concern, there is absolutely no evidence that he wanted to take over management of the CDs. For the sake of formality, he wrote a few letters to the CDs seeking certain documents. He never brought it to the notice of the AA under section 19 of the Code that he was having any non-co-operation from the CDs. He did not make any effort whatsoever to run the CDs as a going concern.

c. One can consider illness as an excuse. But that does not justify him to cling on to the CIRPs indefinitely till he recovered. The CIRP of Maa Taara Industrial Complex Pvt. Ltd. was admitted on 8th September, 2017, while Mr. Kejriwal claims to be on bed since 4th September, 2017. He could have brought its to the notice of the AA which may have appointed another IRP.

d. His excuse for resignation has also no merit. He has been appointed by the AA with a solemn objective and a statutory responsibility. He cannot run away just because he did not receive fee. Despite having experience of 2-3 months as IRP in both CIRPs, he volunteered to be appointed as RP for both the CIRPs in the meetings of the CoCs held on 19th and 20th November, 2017.

4.4 Mr. Kejriwal has displayed utter misunderstanding of the provisions of the Code and regulations. For example, the regulations required that the IRP shall appoint two valuers within seven days of his appointment. To the allegation that he did not appoint valuers, he has explained that the CoC would not approve resolution process cost, which includes the fees of valuers. The regulations required the IRP to appoint valuers much before the constitution of the CoC. Therefore, the apprehension that CoC would not approve the fee of valuers is misplaced. Similarly, Mr. Kejriwal claims that he resigned because the CD did not co-operate. It is difficult to appreciate that Mr. Kejriwal was having non-co-operation from CDs for the preceding three months before volunteering to be appointed as RP. In fact, it is unimaginable that an IRP, who is in control of the CD for the last four months, suddenly finds that the CD did not co-operate and he had to resign even without using section 19 of the Code. It is preposterous that Mr. Kejriwal invited resolution plans from only one operational creditor and allowed it only four days to submit resolution plan, as against statutory requirement of invitation of resolution plans from prospective lenders and investors.

Conclusion

5. An IP is not just another professional. He is dealing with a CD in distress. He needs to go beyond the call of duty to address the distress. The DC unfortunately finds that Mr. Kejriwal did not discharge any of his statutory responsibilities as IRP or RP either to manage the operations of the two CDs as going concern under section 20 of the Code or to conduct the resolution processes of the two CDs under section 23 of the Code. He has, therefore, violated provisions of sections 18, 20, 23, 25(2)(g), 25(2)(h), 29, 208(2)(a), and 208(2)(e) of the Insolvency and Bankruptcy Code, 2016, regulations 6(1), 19(1), 27 and 36 of the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016 and regulation 7(2)(a) and 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 read with clauses 1, 2, 3, 5, 10, 12, 13, 14, and 25 of the Code of Conduct under the said Regulations. It, however, finds in his favour two mitigating factors, namely, (a) Mr. Kejriwal was not well for some time during the relevant period, and (b) the CDs were practically not going concerns to start with.

6.1 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 Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, hereby:-

- (a) imposes on Mr. Kejriwal a monetary penalty equal to one hundred percent of the total fee payable to him as IRP and as RP in the CIRPs of Upadan Commodities Private Limited and Maa Taara Industrial Complex Pvt. Ltd. and directs him to deposit the penalty amount by a crossed demand draft payable in favour of the Insolvency and Bankruptcy Board of India within 30 days of the issue of this order. The Board shall in turn deposit the said penalty amount in the Consolidated Fund of India.
- (b) directs Mr. Kejriwal to undergo the pre-registration educational course specified under regulation 5(b) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 from his Insolvency Professional Agency to improve his understanding of the Code and the regulations made thereunder, before accepting any assignment under the Insolvency and Bankruptcy Code, 2016.

Accordingly, the show cause notice is disposed of.

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

6.3 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals, where Mr. Kejriwal is enrolled as a professional member.

6.4 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

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(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Date: 28th January, 2019

Place: New Delhi