

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

F. No. IBBI/IP/MON/2018/26
New Delhi, Dated 17th July, 2019

In the matter of Mr. Tapas Mallik, an erstwhile Insolvency Professional registered under regulation 9 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016

Order

This order disposes of the notice dated 25th January, 2019 issued to Mr. Tapas Mallik, resident of 1/C, Jelia Para Lane, Bowbazar, Kolkata-700012, who was registered as an Insolvency Professional (IP) with the Insolvency and Bankruptcy Board of India (Board) with registration No. IBBI/IPA-003/IP-00020/2016-17/1279 under regulation 9 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations). In accordance with sub-regulation (3) of regulation 9 of the IP Regulations, the registration of Mr. Mallik expired on 30th June, 2017.

2. Section 206 of the Insolvency and Bankruptcy Code, 2016 (Code) stipulates that no person shall render his services as an IP under this Code without being enrolled as a member of an insolvency professional agency and registered with the Board.

3. The Adjudicating Authority (AA), vide its order dated 14th November, 2017, admitted an application for commencement of corporate insolvency resolution process (CIRP) of Sangamyug Commercial Pvt Ltd. Mr. Mallik rendered services as the Interim Resolution Professional (IRP) in the said CIRP, on being appointed as such by the AA. The Board took a prima facie view that Mr. Mallik, who did not have a valid registration as an IP on the relevant time, rendered services as an IP, in contravention of section 206 of the Code.

4. Accordingly, the Board issued a notice dated 25th January, 2019 to Mr. Mallik alleging contravention of section 206 of the Code and proposing to take appropriate action permissible under the Code against him. The notice called upon Mr. Mallik to make submission if he did not agree with the prima facie view of the Board. Mr. Mallik responded vide his letter dated 11th February, 2019. He also availed an opportunity for personal hearing on 1st July, 2019.

5. I have considered the notice, the written and oral submissions of Mr. Mallik and material available on record.

6. Mr. Mallik has submitted that he had given his consent on 7th February, 2017 to serve as an IRP, while he had a valid registration, which was to expire on 30th June, 2017. However, he was appointed as IRP by the AA vide its order dated 14th November, 2017. He was informed of such appointment by a mail dated 30th November, 2017. He immediately replied, vide mail dated 30th November, 2017, that he was not willing to proceed with the case as his registration had expired. He also submitted that he had submitted this fact orally to the AA. However, he was not relieved by the AA and hence, he had to serve as the IRP, unwillingly.

7. I find the sequence of the events as under:

No.	Date	Event
1	07.02.2017	Mr. Mallik had given consent to act as the IRP of the CIRP, when he held valid registration as an IP.
2	14.11.2017	The AA appointed Mr. Malik as IRP of the CIRP, with instruction to list the matter on 30 th November, 2017.
3	30.11.2017	The AA recorded: <i>“It appears that by our order dated 14/11/2017 IRP was appointed but till date the order has not been communicated to him.”</i> , with instruction to list the matter on 4 th December, 2017.
4	30.11.2017 (3.41PM)	The Registry of the AA forwarded a copy of the order dated 14 th November, 2018 of the AA to Mr. Mallik.
5	30.11.2017 (6.05PM)	Mr. Mallik responded to the Registry of the AA: <i>“Since the validity of my IP registration has expired, I am not in a position to go ahead in response to your notice.”</i>
6	04.12.2017	The AA recorded: <i>“ .. IRP is directed to file progress report within 7 days from today.....IRP is directed to appear in person on 20/12/2017. ”</i> , with instruction to list the matter on 20 th December, 2017.
7	20.12.2017	The AA recorded: <i>“By our order dated 04/12/2017 Interim Resolution Professional (IRP) was directed to appear in person today. But it appears that Office has not sent any notice to IRP.”</i>

8. From the above, I find that Mr. Malik had made it clear to Registry of the AA that he did not have a valid registration as IP on the relevant time, in response to Registry’s communication dated 30th November, 2017. It appears that some orders of the AA were not communicated to the IRP, as recorded by the AA in its orders dated 30th November, 2017 and 20th December, 2017. It is not clear if the fact that Mr. Mallik did not have a valid registration was placed before the AA for its consideration. I cannot accept or reject the submission of Mr. Mallik that he had orally submitted to the AA that he did not have a valid registration, as no order of the AA records such oral submission. Since he had conveyed that he did not have a valid registration by mail to the Registry, it is likely that he might have also submitted this before the AA.

9. It, therefore, appears that despite making it clear that he did not have a valid registration as an IP, he was made to serve as the IRP in the CIRP. In such circumstances, it is difficult to hold Mr. Mallik liable for contravention of section 206 of the Code. In view of this, I dispose of the notice without any direction.

-Sd-
(Dr. M. S. Sahoo)
Chairperson