

INSOLVENCY AND BANKRUPTCY BOARD OF
INDIA
(Disciplinary Committee)

No. IBBI/DC/40/2020

09th November, 2020

Order

In the matter of Mr. Pritpal Singh Dua, 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/2020/18 dated 28th August, 2020 issued to Mr. Pritpal Singh Dua, 5, Sant Isher Singh Nagar, Pakhowal Road, Ludhiana, Punjab who is a Professional Member of the ICSI Institute of Insolvency Professionals (IPA) and an IP registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00256/2017-2018/10770.

Background

- 1.1 The IBBI had issued the SCN to Mr. Pritpal Singh Dua on 28th August, 2020 for accepting the assignment of the voluntary liquidation in Liquidation process of I V Share and Stock Brokers Ltd after 31st December 2019 without holding a valid Authorisation for Assignment (AFA) from his IPA.
- 1.2 Mr. Dua submitted reply to the SCN dated 5th September, 2020. The IBBI referred the SCN, response of Mr. Dua 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 virtual personal hearing before the DC on 10th September 2020.

Show Cause Notice

2. The SCN issued by IBBI alleged contraventions of sections 208(2)(a) & (e) of the Insolvency and Bankruptcy Code, 2016 (Code), regulations 7(2)(a) & (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 liquidator in voluntary liquidation process of I V Share and Stock Brokers Ltd after 31st December 2019 for which public announcement was made on 20th February 2020 without holding a valid AFA from the IPA;

Written and oral submissions by Mr. Pritpal Singh Dua,

3. Mr. Dua's submissions made in his written reply and in the course of virtual personal hearing are summarized as under.
- 3.1 Mr. Dua in his reply admitted that undertaking of assignment of voluntary liquidation without holding AFA is an occurrence of mistake or unintentional compliance. He submitted as follows.
 - (i) The IP had accepted to act as a liquidator was verbally finalized well before 31 December 2019 and the shareholders of CD had accorded their approval to his appointment as a voluntary liquidator by way of a special resolution on 21.02.2019. The IP had also informed IBBI and IPA of his appointment vide letter dated 21.02.2020 and draft of public announcement thereof was submitted to IBBI on 21.02.2020. The information on appointment was also given to the Registrar of Companies.
 - (ii) The preliminary report dated 29.02.2020 was submitted to CD and forwarded to IBBI, IPA and Registrar of Companies on 06.03.2020. That even during curfew (due to lockdown) information as required by IBBI was provided instantly to IBBI and IPA vide email dated 14.05.2020. The Form under Regulation 7(2) (ca) of IP Regulations has been filed with IBBI. The IP submits that he has neither misrepresented the facts and has intimated every development in the voluntary liquidation to IBBI and IPA.
 - (iii) There was a *bonafide* error of judgment amounting to lapse in procedure, which has not prejudiced either the Company or any other stakeholders.
 - (iv) This was his first and only assignment under the Code and he has not undertaken any assignment under the Code.
 - (v) He was under *bonafide* belief that AFA is required in cases of appointment of IRP/RP which are made by order of the AA in CIRP or liquidation under section 33 of the Code and not in voluntary liquidation process. Further, the voluntary liquidation was of a company which had no liabilities and no running business.
 - (vi) There was no clarity whether an IP, who has been appointed by the AA as an IRP/RP in a case can undertake a process, if a disciplinary proceeding has been initiated against him by the IPA. Therefore, it is putting limitation on extent of regulatory control exercised by an IPA over IPs.
 - (vii) IPA has also issued the show cause notice dated 22.07.2020 and order dated 7.09.2020 has also been passed imposing penalty of Rs. 10,000/- and he should not be subjected to different disciplinary proceedings for the same alleged cause of action.
 - (viii) He has applied for AFA on 15.07.2020 and had requested IPA to grant *post facto* approval vide email dated 15.07.2020 but the same has not been accepted due to show cause notice issued IPA.

Analysis and Findings

4. The DC after taking into consideration the SCN, the reply to SCN, the oral and written

submission of Mr. Dua 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 every 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 fundamental condition 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 any 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. There was sufficient time for the IPs to obtain AFA from respective IPAs.

- 4.3 The bye-laws of ICSI Institute of Insolvency Professionals defines in para 4 (1) (aa) the expression “authorisation for assignment” as 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 regulation. An application for grant of AFA can be made by the IPs 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 bye-laws 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 hinges upon the conduct and competence of the IP. 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. Dua had mentioned the acceptance of assignment of voluntary liquidation in matter of I V Share and Stock Brokers Ltd before 31.12.2020 however, the documents were not signed until February by one of the key directors. Mr. Dua had given his written consent to act as a voluntary liquidator on 13.02.2020 as reflected in Form IP-I as submitted by Mr. Dua. His appointment was approved by special resolution dated 20.02.2020 in the extraordinary general meeting of CD. Mr. Dua had given his written consent without holding valid AFA, i.e., after 31.12.2019 which is in express contravention of regulation 7A of IP Regulations. The requirement of holding a valid AFA also applies to IPs undertaking voluntary liquidation process under the Code. In consequence, he has contravened code of conduct under section 208(2)(a) and(e) of the Code and regulations 7(2)(a) and (h) and 7A of the 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.
- 4.8 The DC finds that an order has been passed against Mr. Dua on 7.09.2020 by the Disciplinary Committee of IPA for accepting assignment as voluntary liquidator after 31.12.2019 without holding a valid AFA in the matter of I V Share and Stock Brokers Ltd, and imposed penalty of Rs. 10,000/- for contravention of regulation 7A of IP Regulations.

Order

5. In view of the fact that ICSI Institute of Insolvency Professionals has already taken disciplinary action against Mr. Pritpal Singh Dua, for accepting assignment as Voluntary Liquidator after 31.12.2019 without holding a valid AFA in the matter of I V Share and Stock Brokers Ltd, 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. Pritpal Singh Dua.
- 5.1 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Pritpal Singh Dua 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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Dated: 09th November 2020

(Dr. Mukulita Vijayawargiya)

Place: New Delhi

Whole Time Member, IBBI