

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
(Disciplinary Committee)

No. IBBI/DC/65/2021

11<sup>th</sup> January, 2021

**Order**

**In the matter of Mr. U. Balakrishna Bhat, 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/2020/13 dated 28<sup>th</sup> August, 2020 issued to Mr. U. Balakrishna Bhat, A005, Western Edge II, Off Western Express Highway, Behind Metro Cash and Carry, Borivali (E), Mumbai City, Maharashtra - 400066, who is a Professional Member of the Indian Institute of Insolvency Professional of ICAI (IPA) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00658/2017-2018/11107.

**Background**

- 1.1 The IBBI had issued the SCN dated 28<sup>th</sup> August, 2020, to Mr. U. Balakrishna Bhat for accepting the assignment as Resolution Professional (RP) in corporate insolvency resolution process (CIRP) of Torus India Limited (CD) after 31<sup>st</sup> December, 2019 without holding a valid Authorisation for Assignment (AFA) issued to him by his IPA.
- 1.2 Mr. U. Balakrishna Bhat submitted reply to the SCN *vide* email dated 3<sup>rd</sup> September, 2020. The IBBI referred the SCN, reply of Mr. U. Balakrishna Bhat 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 personal hearing before the DC on 10<sup>th</sup> September, 2020.

**Show Cause Notice**

- 2 The SCN issued by IBBI alleged contravention of sections 208(2)(a) and 208(2)(e) of the Insolvency and Bankruptcy Code, 2016 (Code), regulations 7(2)(a), 7(2)(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 for Insolvency Professionals contained in the First Schedule of the IP Regulations for accepting the assignment as the RP in CIRP of the CD after 31<sup>st</sup> December, 2019 without holding a valid AFA from the IPA.

## Written and oral submissions by Mr. U. Balakrishna Bhat.

3. Mr. Bhat's submissions made in his written reply and during the course of personal hearing are summarized as follows.
  - (i) Mr. Bhat submitted that the acceptance to act as the IRP in the present assignment was given by him on 5<sup>th</sup> June, 2018 by signing consent in Form 2, *i.e.*, before 31<sup>st</sup> December, 2019, the date on which the said Regulation 7A of the IP Regulations came into force. He further submitted that the Hon'ble NCLT, Amravati admitted the application for initiation of CIRP of the CD *vide* order dated 20<sup>th</sup> December, 2019 and appointed him as the IRP. He was later confirmed as RP in the first CoC meeting held on 17<sup>th</sup> January, 2020. Thus, he was under *bonafide* belief that provision of Regulation 7A of the said IP Regulations 2016 was not applicable at the time when consent was given for appointment as IRP for the CD.
  - (ii) He has further stated that he did not have any malafide intention for not obtaining the AFA and that the said lapse was not intentional and he earnestly apologized for the same. He stated that he had applied for an AFA from his IPA, *i.e.*, IIPICAI and the same is pending with the IPA.

## Analysis and Findings

4. The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of Mr. Bhat and also the provisions of the Code, rules and the regulations made thereunder find 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 for any IP to have AFA before undertaking any assignment after 31<sup>st</sup> 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 essential conditions 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 as a professional member. In other words, without AFA, an IP is not eligible to undertake assignments or conduct various processes thereof. Regulation 7A was inserted in the IP Regulations *vide* notification dated 23<sup>rd</sup> July, 2019, much before 31<sup>st</sup> December, 2019. Adequate time was given to the professionals to obtain AFA from respective IPAs.
  - 4.3 The bye laws of Indian Institute of Insolvency Professional of ICAI 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 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 byelaws 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 depends upon the observance of the Code of conduct by the IRP/RP during the process. 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, Mr. Bhat had given consent to accept the assignment as IRP in Form-2 on 5<sup>th</sup> June, 2018 in the CIRP of the CD and the date of commencement of the CIRP is 20<sup>th</sup> December, 2019. However, it is also observed that Mr. Bhat was ratified as RP in the CIRP of the CD in the 1st meeting of the CoC held on 17<sup>th</sup> January, 2020, i.e., after the threshold date of 31<sup>st</sup> December, 2019 without having a valid AFA. Mr. Bhat has submitted that since the provision relating to AFA was newly inserted and made effective on 1<sup>st</sup>

January, 2020, he was under the impression that it was not applicable for the ratification to act as RP. The DC finds that though acceptance of assignment was given prior to cut off date, *i.e.*, 31<sup>st</sup> December, 2019, however, notification for the same was notified on 23<sup>rd</sup> July, 2019. Mr. Bhat should have applied for AFA especially in view of acceptance given for the assignment and at least after coming into force of the provision of regulation 7A of the IP Regulations. He applied for AFA on 4<sup>th</sup> August, 2020, approximately after 8 months of the admission of the application on 20<sup>th</sup> December, 2019.

- 4.8 The DC finds that an order has been passed against Mr. Bhat on 1<sup>st</sup> December, 2020 by the Disciplinary Committee of IPA for accepting assignment as RP after 31<sup>st</sup> December, 2019 without holding a valid AFA in the CIRP of the CD and it has been decided that Mr. Bhat is guilty of Professional Misconduct and a penalty of Rs 10,000/- has been imposed.

### **Order**

5. In view of the fact that the Disciplinary Committee of the Indian Institute of Insolvency Professional of ICAI has already passed order in this matter, 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.
- 5.1 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Bhat 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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(Dr. Mukulita Vijayawargiya)  
Whole Time Member, IBBI

Dated: 11<sup>th</sup> January, 2021  
Place: New Delhi