

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/191/2023

6<sup>th</sup> October, 2023

**Order**

This order disposes of the Show Cause Notice (SCN) No. COMP- 11012/62/2023-IBBI/765/782 dated 03.07.2023 issued to Vishva Deep Sharma, an Insolvency Professional, registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-001/IP-P01017/2017-18/11668, who is a professional member of the Indian Institute of Insolvency Professional of ICAI, having recorded address with the Board as 4/4 Ground Floor, East Patel Nagar, New Delhi-110008.

**1. Background**

- 1.1. The application for initiating the insolvency resolution process in respect of Mr. Vaibhav Singhal, who extended personal guarantee to the creditors on behalf of the Corporate Debtors, M/a Savemax Wholesale Club Pvt. Ltd. and M/s Bhishan Saroop Ram Kishan Agro Pvt, Ltd. was filed under section 95 of the Insolvency and Bankruptcy Code, 2016 (Code) by Karur Vysya Bank on 28<sup>th</sup> May 2022.
- 1.2. The Hon'ble NCLT, New Delhi, (AA) *vide* order dated 03.08.2022 appointed Mr. Vishva Deep Sharma as resolution personal (RP) to file a report as per section 99 of the Code.
- 1.3. Mr. Sharma appeared before the AA along with the advocate on 05.12.2022 praying for his replacement on health grounds. On 16.01.2023, the advocate for Mr. Sharma again submitted before the AA, for replacement of Mr. Sharma as RP on the grounds of health issues. Furthermore, it was pointed out that the Financial Creditor has filed application for replacement of Mr. Sharma as RP.
- 1.4. While allowing the application for the replacement of Mr. Sharma as RP *vide* order dated 20.02.2023, AA made observations against the conduct of Mr. Vishva Deep Sharma on grounds of non-performance.
- 1.5. Based on the observations of AA, the IBBI, in the exercise of its powers under section 218(1) of the Code read with regulations 3(2) and 3(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) appointed an Investigating Authority (IA) to conduct the investigation or records and affairs pertaining to the RP, Vishva Deep Sharma and his conduct.
- 1.6. Accordingly, a notice under regulation 8(1) of the Inspection Regulation was issued to Mr. Vishva Deep Sharma with a request to clarify the said observation

of the Hon'ble NCLT regarding the non-discharge of his duties as RP in the said matter dated 10.05.2023. Mr. Sharma submitted his response to the said notice vide mail dated 07.06.2023.

- 1.7. Based on the Investigation Report (IR) as submitted by IA on 11.06.2023, the Board issued the SCN to Mr. Vishva Deep Sharma on 03.07.2023. Mr. Vishva Deep Sharma replied to the SCN vide letter dated 14.07.2023.
- 1.8. The Board referred the SCN, written submissions of Mr. Vishva Deep Sharma, 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.
- 1.9. Mr. Vishva Deep Sharma availed the opportunity of personal hearing and appeared before DC on 24.08.2023 through virtual mode.

### **Alleged Contraventions, Submissions, Analysis, and Findings**

The contraventions as alleged in the SCN, Mr. Vishva Deep Sharma's written reply and additional written submissions and oral submissions made during the virtual hearing are summarized as follows.

#### **Contravention**

### **2. Non- filing of report in Insolvency Resolution Process**

- 2.1. It was observed from the order of AA dated 03.08.2022 that Insolvency Resolution Process was initiated against Mr. Vaibhav Singhal, who is personal guarantor to the Corporate Debtors, M/a Savemax Wholesale Club Pvt. Ltd. and M/s Bhishan Saroop Ram Kishan Agro Pvt, Ltd and Mr. Vishva Deep Sharma was appointed as the RP.
- 2.2. However, Mr. Sharma failed to file a report before the Hon'ble AA as required under S. 99(7) of the Code thereby failed to comply with directions of AA. The Hon'ble AA vide order dated 17.11.2022 took notice of the inaction and lack of progress in the Insolvency Resolution Process and observed the following:  
*"None appears on behalf of the RP, We notice that even on the last date i.e. 07.10.2022, none appeared on behalf of the RP. The RP Mr. Vishva Deep Sharma, through appointed vide order dated 03.08.2022 has failed to file the report within the stipulated period. Ltd. Counsel for the applicant/FC too confirms the RP has not contacted them till date."*
- 2.3. On account of the continued failure by Mr. Sharma to act in accordance with the provisions of section 99 of the Code, the application was filed before AA for his replacement as RP. AA while allowing the application for replacement of Mr. Sharma as RP, observed the following :

*“As regards the earlier RP, Mr. Vishva Deep Sharma, who was appointed as such on 03.08.2022 by this Tribunal and he did not discharge his duties/function as mandated by law and our order dated 03.08.2022, we deem it appropriate to send a copy of this order to IBBI to look into the conduct of the RP and take appropriate action.”*

- 2.4. It was observed that an inordinate delay of 201 days was caused in the Insolvency Resolution Process due to the failure by Mr. Sharma to examine the application filed under section 95 of the Code, within the stipulated time and submit a report to the AA in accordance with the provisions of 99(7) of the Code, adversely affecting the interests of the stakeholders. Even after becoming aware about his appointment as RP in the month of November Mr. Sharma did not take any action in informing AA regarding his inability to act as RP.
- 2.5. It was observed that Clause 15(a) and 15(b) of the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (recommendation)(second) Guidelines, 2021, prevents an IP included in the panel of IBBI, based on expressions of interest, to withdraw his interest or to decline to act as IRP, Liquidator, RP, or Bankruptcy Trustee, as the case maybe, if appointed by the AA. Further, Form A (Expression of Interest to act as an IRP, Liquidator, RP or Bankruptcy Trustee in any process relating to any corporate or individual Debtor) also mentions in its undertaking that submission of the form is an unconditional consent to act as an IRP, Liquidator, RP and Bankruptcy Trustee at sole discretion of the AA during the validity period of the panel under the guidelines. However, in the present case despite being included in the panel based on the expression of interest, the IP failed to take up the assignment thereby acted in contravention of the said provisions/undertaking.
- 2.6. Hence Board was of the *prima facie* view that Mr. Sharma contravened sections 99(7), 208(2)(a) & (e) of the Code, Regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016, read with Clauses 1, 3, 13, 14 and 15 of the Code of Conduct for Insolvency Professional under first Schedule to the IBBI (Insolvency Professionals) Regulations 2016, and Clause 15(a) & (b) of the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2021.

#### **Submissions of Mr. Vishva Deep Sharma**

- 2.7. Mr. Sharma submitted that he is a senior citizen and is not keeping well. He is highly unstable for past one and half year and has been making frequent visit to the hospital. Therefore, he was not able to attend office on a regular basis. On account of the said unavoidable circumstances, he was not aware of his appointment as RP

in company petition No. IB-417/ND/2022 titled as “Karur Vysya Bank Vs. Vaibhav Singhal”.

- 2.8. Mr. Sharma submitted that he became aware of his appointment only when the Karur Vysya Bank personnel visited his office on November 24, 2022, post the order of AA dated 17.11.2022. He submitted that he had informed representative of Karur Vaishya Bank about his ill health and his inability to take up the assignment, vide WhatsApp message dated 03.12.2022.
- 2.9. Mr. Sharma further submitted that on next hearing i.e. 05.12.2022, he along with his advocate appeared before AA and requested for his replacement due to his health issue. Thereafter on the next date fixed in the matter, i.e. 12.12.2022, AA could not hear the matter due to paucity of time and matter was adjourned to 16.01.2023. On 16.01.2023, advocate of Mr. Sharma, informed AA that application for replacement of Mr. Sharma as RP has been filed by the Financial Creditor Karur Vysya Bank. Since the said application for replacement of RP was not on record and no body appeared for Financial Creditor, the matter was adjourned to 20.02.2023.
- 2.10. Mr. Sharma further submitted that non-compliance of the order of AA was neither intentional nor deliberate and tendered unconditional apology and expressed regret for the situation caused due to his non-compliance.

### **Analysis and Findings**

- 2.11. Once an RP is appointed by AA in the application filed by the Financial Creditor under section 95 of the Code, RP is bound to file the report under Section 99 of the Code in a timely manner. For this to happen, first order condition is that information about his appointment should be made available to the RP concerned in a time bound manner. In the instant case , RP has reported that he got the information about his appointment with a lag after two months of the order of the AA; in the context of this delay, subsequent trigger points also got delayed.
- 2.12. However, as pointed out by him, deteriorating health condition prevented him from taking required due diligence in the case. The sequence of events suggests that Mr. Sharma became aware about the order of AA dated 03.08.2022 only on 24.11.2022 when representative of Financial Creditor Karur Vysya Bank contacted him. On 03.12.2022, Mr. Sharma informed the representative of Karur Vysya Bank that due to medical reasons, he will not be able to take up the assignment. Thereafter on the next date fixed in the matter, i.e. 05.12.2022, he appeared before AA and apprised his inability to take up the assignment on medical grounds.
- 2.13. The DC has taken note of the order passed by Hon’ble AA, Hyderabad Bench, dated 22.04.2022 in State Bank of India vs. K Supriya & Vishwa Infrastructure and Services Pvt. Ltd. and order dated 23.06.2022 passed by Hon’ble AA, Bengaluru Bench in State Bank Of India vs. Mr. Naseer Ahmed, wherein RP appointed was allowed to withdraw the assignment on health ground and new RP was appointed.

- 2.14. The DC further notes that para 6 of the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2023, issued on 12.06.2023 provides the following-:

*“The IPs will not withdraw their consent or refuse to accept the appointment unless otherwise permitted by the National Company Law Tribunal or Debt Recovery Tribunal or the Insolvency and Bankruptcy Board of India, in accordance with the law. Any refusal to act as IRP, Liquidator, RP or BT, as the case may be, on being appointed by the AA, without sufficient justification, will be treated as deviation from consent and name will be removed from panel for six months.”*

- 2.15. The DC notes that Mr. Sharma after becoming aware of the order of AA on 24.11.2022, had duly informed the applicant about his inability to take the assignment owing to health conditions on 3.12.2022. Further, he appeared before the AA and informed about his inability to take up the assignment on health ground on 5.12.2022. Chronology is clearly showcasing the sequence of event and eagerness to get himself replaced but the efforts made by him to approach the AA to get the order of replacement are not found to be sufficient. Instead, FC approached the AA for his replacement and his advocate merely followed the status and intervening on 16.01.2023, he informed AA that FC has already filed an application for replacement which may be agreed. However, considering the reasons explained by Mr. Sharma, citing health issues, and unconditional apology tendered by him, the DC is inclined to take lenient view.

### **3. Order**

- 3.1 In view of the foregoing discussion and considering the facts and circumstances of the matter and material available on records, the DC finds that there was no intentional and deliberate delay on the part of Mr. Vishva Deep Sharma. However, under the statute there is no option not to keep the process rolling till AA's directions on replacement are obtained. He erred in not approaching the AA directly, pursuing the application filed by the FC help only in the margin.
- 3.2 His omissions have delayed the process, therefore he is warned to be careful in future and if his health and age is not conducive for taking the assignments under the Code then he should take a call on whether or not he wants to continue as Insolvency Professional. Any repeat of such a conduct will be viewed seriously.
- 3.3 The DC in exercise of the powers conferred under section 220 (2) of the Code read with Regulation 13 of the Investigation Regulations disposes the SCN with caution to Mr. Vishva Deep Sharma to be more careful and diligent in handling assignments under the Code and Regulations made thereunder.
- 3.4 This Order shall come into force immediately in view of para 3.3 of the order.

- 3.5 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Vishva Deep Sharma is providing his services, if any.
- 3.6 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Vishva Deep Sharma is enrolled as a member.
- 3.7 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
- 3.8 Accordingly, the show cause notice is disposed of.

Dated: 6<sup>th</sup> October, 2023  
Place: New Delhi

Sd/-  
(Sudhaker Shukla)  
Whole Time Member, IBBI