

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/57/2020

15th December 2020

Order

In the matter of Mr. Rajesh Samson, 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/2020/2 dated 27th August, 2020 issued to Mr. Rajesh Samson, Deloitte Touche Tohmatsu India LLP, 7th Floor, Building 10, Tower B, DLF Cyber City Complex, DLF City Phase II, Gurugram-122002 who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI (IPA) and an IP registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00240/2017-2018/10469.

Background

- 1.1 The IBBI had issued on 27th August, 2020, the SCN to Mr. Rajesh Samson for accepting the assignment as the Interim Resolution Professional (IRP) in the Corporate Insolvency Resolution Process (CIRP) of South East U.P. Power Transmission Company Limited (CD) after 31st December, 2019 without holding a valid Authorisation for Assignment (AFA) from his IPA. The public announcement was made on 17th July 2020.
- 1.2 Mr. Samson submitted reply to the SCN on 3rd September, 2020. The IBBI referred the SCN, response of Mr. Garg 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 personal hearing before the DC on 9th September, 2020 and submitted further written submissions in relation to the matter on 13th 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 as the IRP in the CIRP of the CD after 31st December, 2019 for which public announcement was made on 17th July, 2020 without holding a valid AFA from the IPA.

Written and oral submissions by Mr. Rajesh Samson

3. Mr. Samson's submissions made in his written replies and during the course of personal hearing are summarized as follows.
 - (i) Mr. Samson had filed the written consent to act as the IRP of the CD in Form 2 on 4th April, 2019. Thereafter, on 11th April, 2019, an application for initiation of the CIRP under section 7 of the Code was filed by the financial creditor before the Hon'ble National Company Law Tribunal, Allahabad Bench (AA) recommending to appoint Mr. Samson as the IRP.
 - (ii) The acceptance of assignment by Mr. Samson took place on 4th April, 2019, *i.e.*, much prior to the introduction of Regulation 7A of the IP Regulations on 23rd July, 2019. The section 7 application was filed by the financial creditor on 11th April 2019 and admission order was passed by the AA on 16th July, 2020.
 - (iii) The AFA application by Mr. Samson was submitted on 22nd May, 2020 to his IPA.
 - (iv) The Committee of Creditors (CoC) in its 1st meeting held on 13th August, 2020 unanimously voted to appoint Mr. Shailesh Verma as the Resolution Professional in the CIRP of the CD, thereby replacing Mr. Samson. This was confirmed by the AA vide order dated 7th September, 2020.

Analysis and Findings

4. The DC after taking into consideration the SCN, the reply to SCN of Mr. Samson and also the provisions of the Code, rules and the regulations made thereunder finds as follows.
 - 4.1 The DC notes that the 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 essential 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.
 - 4.3 The bye-laws of Indian Institute of Insolvency Professionals 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 by the IPs to the IPA under para 12A of said bye-laws. An IP who is more than 70 years of age is ineligible to make an application for AFA under para 12A (2)(e) of the 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 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 malafide or with negligence.

5. In the present matter, Mr. Samson gave written consent to act as an IRP in the CIRP of the CD on 4th April, 2019 and application under section 7 of the Code was filed before the AA on 11th April 2019. He was appointed as IRP by the AA vide order dated 16th

July, 2020 initiating CIRP of the CD on an application under section 7 of the Code by Power Finance Corporation Limited claiming to be financial creditor and public announcement was made by IRP on 17th July, 2020. Mr. Samson gave his consent prior to the cut off date, *i.e.*, 31st December, 2019. Further, he was granted AFA on 21st July, 2020. The DC finds that an order by the Disciplinary Committee of the IPA dated 1st December 2020 has been passed disposing the SCN issued by IPA dated 31st August 2020 to Mr. Samson, on the issue of accepting assignment as IRP after 31st December, 2019 without holding a valid AFA in the CIRP of the CD, wherein Mr. Samson was not held guilty of Professional Misconduct as Mr. Samson had given his consent on 4th April, 2019 and appointment of IRP was confirmed by the AA based on his written consent.

Order

6. 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.
 - 6.1 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Rajesh Samson is enrolled as a member.
 - 6.2 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.
7. Accordingly, the show cause notice is disposed of.

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(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Date: 15th December 2020
Place: New Delhi