

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/98/2022

12th May, 2022

ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/R(INSP)/2020 15/496/3218 dated 24.03.2022 issued to Ms. Kalpana G, under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) and regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations). She is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00756/2017- 18/11288.

1. Developments in relation to resolution/liquidation of the Corporate Debtor

- 1.1. The Hon'ble NCLT (AA) *vide* Order dated 05.10.2018 in CP (IB) No.343-7-HDB-2018 admitted the application under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating Corporate Insolvency Resolution Process (CIRP) against M/s. Southern Online Bio-Technologies Limited (Corporate Debtor/CD) and appointed Ms. Kalpana G as the Interim Resolution Professional (IRP). Later, the Committee of Creditors (CoC) resolved to appoint her as the Resolution Professional (RP) on 22.11.2018. While ordering the liquidation of the CD, the AA *vide* Order dated 16.07.2019 also appointed her as the Liquidator.
- 1.2. After several attempts of auction during liquidation, Ms. Kalpana G issued sale certificate to the successful bidder on 02.01.2020. Since the CD was sold as a going concern during liquidation, an application for closure of the liquidation process was filed with the AA. Accordingly, AA ordered closure of the liquidation proceedings against CD on 22.06.2020.
- 1.3. The CD was sold with the realisable amount being Rs. 51.89 crore as against the admitted claims of Rs. 513.05 crore. This entails approx. 90% haircut to the Financial Creditors.

2. Issuance of Show Cause Notice (SCN) and hearing before DC

- 2.1. On having reasonable grounds to believe that Ms. Kalpana G had contravened certain provisions of the Code, Regulations and Circulars issued thereunder, the IBBI, in exercise of the powers conferred to it under section 218 of the Code read with the Inspection Regulations, appointed an Inspecting Authority (IA) to conduct the inspection of Ms. Kalpana G *vide* Order dated 12.10.2020. On 24.03.2021, the IA submitted the draft inspection report (DIR) to the IBBI and shared the same with Ms. Kalpana G. Ms. Kalpana

G, *vide* e-mail dated 07.04.2021, submitted her response on the DIR to the IA. Accordingly, the IA submitted the Inspection Report to IBBI on 16.04.2021.

- 2.2. Based on the material available on record including the Inspection Report, the IBBI issued a SCN to Ms. Kalpana G on 24.03.2022. The SCN alleged contraventions of sections 208(2)(a) and (e) of the Code, read with regulation 35A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and clause 3 and 5 of the Code of Conduct as specified in the First Schedule of the IP Regulations. Ms. Kalpana G replied to the SCN on 11.04.2022.
- 2.3. The IBBI referred the SCN, response of Ms. Kalpana G 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. Ms. Kalpana G availed the opportunity of hearing in person before DC on 04.05.2022.

3. Consideration of the SCN

The DC has considered the SCN, response of Ms. Kalpana G to the SCN and other material available on record and accordingly, proceeds to dispose the SCN.

4. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Ms. Kalpana G's submissions thereof are summarized below:

Contravention - I

4.1. Delay in filing of application for avoidance transactions

- 4.1.1 Regulation 35A of CIRP Regulations mandates an IP to form an opinion as to whether the CD has been subjected to any transaction covered under sections 43, 45, 50 or 66 of the Code. On determination of the same, an IP is mandatorily required to file an application before AA for appropriate relief, within 135th day of the insolvency commencement date (ICD).
- 4.1.2 Ms. Kalpana G had failed to file the said application within the prescribed timeline. The said application was filed on 24.01.2020 i.e. after 341 days of the prescribed timeline and after 223 days of the date of receipt of the forensic report.

4.2 Submissions made by the IP

With regard to the aforesaid contravention, Ms. Kalpana G made the following submissions -

- 4.2.1 The CIRP against the CD commenced on 05.10.2018 and Ms. Kalpana G came across the avoidance transactions by 06.12.2018 i.e. within 63 days from the ICD. Thereafter, she felt it desirable to have a forensic audit. Accordingly, she placed the matter for appointment of forensic auditor as agenda item in the 2nd CoC meeting on 13.12.2018. The CoC approved the proposal for appointment of a forensic auditor and enlarged the

look back period for forensic audit to 5 years. Accordingly, Ms. Kalpana G obtained the quotations and appointed a forensic auditor on 10.01.2019.

- 4.2.3 The forensic auditor sought various information and clarifications. However, in spite of regular follow ups with the suspended directors to provide the required information to the forensic auditor, the suspended directors took lot of time to provide the requested information and sought extension of time for submission of documents and explanations. When Ms. Kalpana finally placed the forensic audit report before the CoC, the CoC decided to discuss the same in the Joint Lenders Meeting (JLM) and accordingly, there was delay in receiving the inputs from the JLM/CoC. By the time she received JLM's inputs, the CD had gone into liquidation.
- 4.2.4 As Ms. Kalpana G was appointed as the Liquidator of the CD, soon after receiving JLM's inputs, she discussed the matter in the Stakeholders Consultation Committee's (SCC) meeting held on 18.12.2019 and filed the application for avoidance of transactions before the AA. The AA disposed the matter on 22.06.2020 i.e. during the liquidation period.
- 4.2.5 She further submitted that the delay in filing application is on account of the process of obtaining (i) the forensic audit report, (ii) replies from the suspended board of directors, and (iii) the views of the JLM/CoC. Lastly, she submitted that the time lag in between receiving the forensic audit report and filing the application is due to waiting for the explanations of suspended directors and views of JLM/CoC, which she felt will sustain the application before the AA.

4.3 Findings

From the submissions made by Ms. Kalpana G, it is evident that within 63 days of ICD, she had already come across some information about possibility of avoidance transactions. The DC notes that even after coming across this information, she did not take any expeditious steps to form her opinion about the avoidance transactions. She has unnecessarily waited for directions of CoC/JLM to form her opinion. She was under no obligation to follow the direction of CoC to enhance the claw back period from 2 years to 5 years, however, she conceded to the wishes of the CoC. This also point towards her avoidable considerations in dealing such situations. The fact remains that, on the basis of the available facts and documents, when she came across some avoidance transactions, she should have formed an opinion, made determination and filed an avoidance application before AA. By not doing so within the prescribed time period, she has failed to perform the duty cast on her under the provisions of the Code and Regulations made thereunder.

Contravention – II

4.4 Abdication of duty regarding appointment of registered valuers

- 4.4.1 As per section 25 of the Code, appointment of professionals is one of the duties of the IP. Clause 3 and 5 of the Code of Conduct as specified in the First Schedule of the IP Regulations, *inter-alia*, requires an IP to remain objective in her professional dealings by ensuring that her decisions are made without any undue influence of any party, and conduct the CIRP / liquidation independent of external influences.

4.4.2 Ms. Kalpana G appointed two registered valuers namely Mr. Samir Ghosh and Mr. Kanakarao on 20.11.2018. However, she did not disclose the fact of their appointment to the CoC in 2nd CoC meeting dated 13.12.2018 during the discussion on appointment of registered valuers. Furthermore, the minutes of the meeting record that CoC had opted for appointment of registered valuers namely RBSA Valuations Advisors LLP and GAA Advisory. Moreover, on 17.12.2018, Ms. Kalpana G confirmed appointment of the registered valuers as indicated by the CoC. The appointment of CoC suggested registered valuers has been acknowledged by Ms. Kalpana G in her reply dated 07.04.2021 and re-confirmed during the personal hearing. As appointment of professionals is the duty of the IP, Ms. Kalpana by appointing registered valuers as opted by CoC, has contravened clause 3 and 5 of Code of Conduct as specified in the First Schedule of the IP Regulations.

4.5 Submissions made by the IP

4.5.1 During the 2nd CoC meeting, Ms. Kalpana apprised the CoC of appointment of the registered valuers, and handed over the copies of their appointment letters and profiles along with the quotations, to the members of the CoC for their confirmation and ratification. Where at, the CoC members have perused and discussed in detail on the profiles, experience and quotations of registered valuers appointed. The CoC felt it desirable to appoint big valuation firms instead on L1 basis, namely M/s. RBSA Valuations Advisors LLP, Mumbai and M/s. GAA Advisory, Mumbai, for better credibility of valuation reports. Ms. Kalpana also submitted that generally the CoC members have concern to keep the costs in lower level and therefore, she appointed the IBBI registered local valuers who have quoted lower remuneration. Further, she also mentioned in the letters of appointment that the said appointment is subject to approval of the CoC.

4.5.2 She further submitted that accepting the proposal of CoC for appointing bigger valuation firms is not going to impact the process and on the other hand, it may add better credibility to valuation and therefore, agreed for appointment of valuers suggested by CoC. Further, by mere acceptance of the agencies suggested by CoC does not amount to compromise of independence on the part of IP, especially when these firms are also IBBI's registered valuers.

4.6 Findings

4.5.3 Though Ms. Kalpana G claims that appointment of two registered valuers by her was disclosed and discussed in the 2nd CoC meeting, but the same is not reflecting in the minutes of the 2nd CoC meeting. It seems that Ms. Kalpana G simply accepted views of CoC about appointment of registered valuers without taking her independent action in this regard. Further, from the minutes of CoC meeting, it does not appear that Ms. Kalpana G has expressed her independent view with regard to appointment of registered valuers.

Order

5.1 In view of the submission made by Ms. Kalpana G, and materials available on record, DC notes that Ms. Kalpana G should have been more careful and vigilant in conducting the CIRP process and should have taken independent decisions without depending heavily on the views of the CoC.

5.2 Though the deficiencies as noticed and conceded by Ms Kalpana G appear to be minor in nature, however, in the context of messaging with regard to the independent role of Insolvency Professional as envisaged under the Code and Regulations framed thereunder, such acts of omission have larger ramifications. The scheme of checks and balances stand compromised if the independence in decision making by the stakeholders is not protected, in letter and spirit.

5.3 In view of above, the SCN is disposed of with caution to Ms. Kalpana G for being more careful in future while handling CIRPs. In case, such repetitive instances are noticed in future, the matter will be treated as wilful negligence and action will be taken accordingly.

5.4 The Adjudication Division of the IBBI is directed to keep this Order in active record as negative points against her warranting continuous vigil, and follow other cases being handled by her to deter her from making such mistakes.

The SCN is disposed of accordingly.

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(Sudhaker Shukla)

Whole Time Member, IBBI

Dated: 12 May, 2022

Place: New Delhi