

INSOLVENCY AND BANKRUPTCY BOARD OF
INDIA
(Disciplinary Committee)

No. IBBI/DC/32/2020

12th October, 2020

Order

In the matter of Mr. Pranav Kumar, 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/2020/19 dated 28th August, 2020 issued to Mr. Pranav Kumar, 3F, CS-70, Third Floor, Ansal Plaza, Sector-1, Vaishali, Ghaziabad - 201010, Uttar Pradesh, 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-N00263/2017-2018/10776.

- 1.1 The IBBI had issued the SCN to Mr. Pranav Kumar on 28th August, 2020 for accepting the assignment of the Corporate Insolvency Resolution Process (CIRP) of Crayons Advertising Private Limited (CD) after 31st December 2019 without holding a valid Authorisation for Assignment (AFA) by his IPA.
- 1.2 Mr. Kumar submitted reply to the SCN dated 7th September, 2020. An opportunity of personal hearing was scheduled on 9th September, 2020, however, he did not avail such opportunity. The IBBI referred the SCN, response of Mr. Kumar 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.

Show Cause Notice

2. The SCN issued by IBBI alleged contraventions 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 contained in the First Schedule of the IP Regulations for accepting the assignment of the CIRP of CD after 31st December, 2019 for which public announcement was made on 23rd March, 2020 without holding a valid AFA from the IPA.

Written submissions by Mr. Pranav Kumar

3. Mr. Kumar's submissions made in his written reply are summarized as follows.
 - (i) He had accepted and given consent to the assignment of CD in September 2019, as a result of which he was of the view that need for AFA was not applicable as the assignment was not accepted or undertaken after 31st December, 2019.
 - (ii) The NCLT took 6 months to decide the application and make the appointment of

Mr. Kumar as an Interim Resolution Professional, as proposed by the creditors in their application.

- (iii) It is a matter of record and also noted in the order of NCLT dated 19.03.2020, just four days prior to lockdown, that his name was proposed by the petitioner/ applicant in the petition which was admitted for hearing on 14.09.2019. His consent to act as an insolvency professional in Form 2 was given prior to the date of admission of the petition and the same was attached as part of the petition.
- (iv) Since his consent to act was given prior to the 31st December 2019 and the same was confirmed by NCLT in March 2020, he assumed that NCLT has taken clearance from IBBI for his appointment before confirming his appointment and thus, IPA as well as IBBI must be aware of his appointment in the matter.
- (v) On the date of appointment, he was otherwise eligible for appointment and not in any default. In fact, during more than 19 years of his practice, he has been upholding the spirit of the professional in highest possible standards, helping institutions in possible measures such as peer reviewer, resource person, quality reviewer and he is strongly committed to maintaining high ethical standards and code of conduct of the institution he is a member of.
- (vi) This lapse of non-filing of AFA form is on account of a different understanding of the provision and no intent of default is involved. He has also made an application for AFA on the portal which is pending.
- (vii) Consideration may also be given to the fact that sudden lockdown has created difficulty in operations of the office. He received the order passed by Hon'ble NCLT on 21st March 2020 and on 23rd March 2020, a lock down was announced. He had very little time to make public announcement and performed his duties under mental pressure, resource crunch and constraints.
- (viii) On the same cause of action/ perceived default, he has also received a SCN from his IPA and has also received the order passed by them.
- (ix) He reassured that he will be more diligent and seek a relief from any punitive action as this is a first case of default caused by a difference of opinion with no intent of defying the authority or non-obedience to the code of conduct for IP.

Analysis and Findings

4. The DC after considering the SCN, written submissions of Mr. Kumar and also the provisions of the Code and the regulations made thereunder proceeds to dispose of the SCN.

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 an 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 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. 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 23rd July 2019, much before 31st December, 2019. Adequate time was given to the professionals 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 IP who intends to obtain AFA can make an application 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 An IP is a special professional who is dealing with a CD in distress. 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 malafide or with negligence.

- 4.7 In the present matter, Mr. Kumar gave consent for the CIRP of Crayons Advertising Private Limited on 2nd September, 2019 which was prior to 31st December, 2019. However, due to administrative issues the CIRP commenced vide order of admission passed by Adjudicating Authority (NCLT, New Delhi), dated 19th March, 2020.
- 4.8 The DC finds that SCN was issued to Mr. Kumar with respect to the issue of accepting assignment as Interim Resolution Professional without holding AFA after 31st December, 2019 and an order has been passed against Mr. Kumar by the Disciplinary Committee of IPA on 7th September, 2020. The Disciplinary Committee of IPA has issued a warning to Mr. Kumar in view of the fact that the date of commencement of the CIRPs is after 31st December, 2019 but the acceptance for the assignments has been given by Mr. Kumar prior to 31st December, 2019.

Order

5. In view of the fact that ICSI Institute of Insolvency Professionals has already taken disciplinary action against Mr. Pranav Kumar for accepting assignment as Interim Resolution Professional after 31st December 2019 without holding a valid AFA in the matter of Crayons Advertising Private Limited, 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. Pranav Kumar.
- 5.1 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Pranav Kumar 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: 12th October 2020
Place: New Delhi