

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/119/2022
4th August 2022

ORDER

In the matter of Mr. Rohit Aggarwal, Insolvency Professional (IP) under Section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 and Regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/INSP/2021/77/3614/541 dated 2nd June, 2022, issued to Mr. Rohit Aggarwal, P7B, Green Park, New Delhi, National Capital Territory of Delhi- 110016 who is a Professional Member of the Indian Institute of Insolvency Professional of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00969/2017-2018/11599.

1. Background

- 1.1 Mr. Rohit Aggarwal, IP was appointed as Resolution Professional (RP) in the corporate insolvency resolution process (CIRP) in the matter of Vyom Infrastructure and Projects Private Limited (CD). The Principal Bench, New Delhi (AA) vide Order dated 12.02.2019 had admitted the application under Section 7 of the Code for CIRP of CD and appointed Mr. Ashutosh Jain as interim resolution professional (IRP). Subsequently, the IRP was replaced by Mr. Rohit Aggarwal, RP vide its Order dated 03.04.2019 of the Hon'ble AA.
- 1.2 In exercise of its power under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, the IBBI vide Order dated 25.05.2021 appointed an Inspecting Authority (IA) to conduct an inspection of Mr. Aggarwal, on having reasonable grounds to believe that the IP had contravened provisions of the Code, Regulations, and directions issued thereunder. IA submitted the Inspection Report to IBBI on 07.04.2022. The IBBI on 02nd June 2022 had issued the SCN to Mr. Aggarwal, based on findings in the inspection report in respect of his role as RP in the processes of CD. Mr. Aggarwal replied to the SCN vide email dated 23.06.2022.
- 1.3 The IBBI referred the SCN, response of Mr. Aggarwal 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. Mr. Aggarwal availed an opportunity of personal hearing before the DC on 20.07.2022 wherein he reiterated the submissions made in his written reply and also made a few additional submissions.

2. Show Cause Notice, Submissions and Findings

The contraventions alleged in the SCN and Submissions by Mr. Aggarwal are summarized as follows:

3. Contravention- I

- 3.1 It is observed that IA vide its email dated 25.05.2021 requested Mr. Aggarwal to provide copies of documents by 04.06.2021. Further, Mr. Aggarwal *vide* his e-mail dated 28.05.2021 expressed his inability to accept and abide by the inspection notice. In response to the several reminders issued by IA, Mr. Aggarwal submitted some documents vide email dated 5.08.2021. However, complete documents as per checklist enclosed with the inspection notice were not provided by Mr. Aggarwal to IA. The additional documents/clarifications were asked for by IA on 09.08.2021 followed by reminders, which were provided by Mr. Aggarwal vide email on 28.08.2021. IA vide email dated 10.12.2021 further requested Mr. Aggarwal to submit the duly filled-in checklist followed by a reminder email on 20.12.2021. However, Mr. Aggarwal failed to provide duly filled check list.
- 3.2 According to Regulation 4(4) of the Inspection Regulations, it shall be the duty of the service provider to produce before the IA documents, record, or information in his custody or control and furnish to the IA such statements and information relating to its activities within such time as the IA may require. It is observed that Mr. Aggarwal has not provided crucial information, documents, requisite details as sought by the IA, which is his duty under Regulation 4(4) of the Inspection regulations. In view of the above, the Board is of the *prima facie* view that Mr. Aggarwal has *inter alia* violated Regulation 4(4) of Inspection Regulations read with Clause 18 and 19 of the Code of Conduct.

Submission

- 3.3 Mr. Aggarwal submitted that the IA did not care to check the information and documents submitted. All the relevant information was shared. The emphasis was on the process and the circumstances of the case and the information shared were not considered. No records were handed over to the RP by CD in spite of orders of AA. An application under section 19 was pending before AA.

Findings

- 3.4 It is observed that the regulation 4(4) of the Inspection Regulations states as follows:
“4. Conduct of Inspection.
(4) It shall be the duty of the service provider and an associated person to produce before the Inspecting Authority such records in his custody or control and furnish to the Inspecting Authority such statements and information relating to its activities within such time as the Inspecting Authority may require.”
- 3.5 In the present case it is observed that the IA had requested inspection of all the CIRP records available with the RP vide the notice of inspection dated 25.05.2021 such as minutes of CoC, engagement letters, list of claims, fee agreements, applications filed including section 19 application and orders of AA etc. However, Mr. Aggarwal failed to provide requisite document.

Despite the repeated reminders dated 16.06.2021, 07.07.2021, 03.08.2021, 09.08.2021 and 27.08.2021 the same was not provided. In the draft inspection report IA observed that “The additional documents/clarifications were asked for by IA and the same after reminders by IA, were provided by IP vide return email on 28th August 2021.” Further, the filled in checklist was also not provided to the IA. During CIRP, it is the utmost responsibility of an IP to conduct the entire CIRP in a transparent manner by duly submitting complete copies of records to the Board in a timely manner. Mr. Aggarwal though submitted some documents/information to IA but not all the documents/information, as required by IA. Hence, it can be concluded that Mr. Aggarwal could have been more active in providing documents to the IA. However, in view of constraints due to non-availability of records and application filed under section 19(2) of the Code, Mr. Aggarwal can be given benefit of doubt in this contravention.

4. Contravention-II

- 4.1 Section 25(2)(d) of the Code casts the duty upon IP to appoint accountants, legal or other professionals in the manner specified by the Board. Regulation 27 of the CIRP Regulations provides that the RP shall, within seven days of his appointment but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the CD in accordance with Regulation 35 of CIRP Regulations.
- 4.2 It is observed that CoC in its meeting held on 29.04.2019 decided to appoint two registered valuers to value the financial assets of CD and also ratified the fees to be paid to valuers so appointed. Even when the appointment of the registered valuers as well as fees to be paid to such valuers was approved by the CoC, valuers were not appointed by Mr. Aggarwal which is in violation of Regulation 27 of CIRP Regulations. In his reply to the DIR, he has stated that the valuers were not appointed by him in the instant matter. The same is also evident from the Form-III as submitted by Mr. Aggarwal on the website of IPA. Thus, in view of the above, the Board is of the *prima facie* view that Mr. Aggarwal has *inter alia* violated Section 25(2)(d) of the Code, Regulation 27 of CIRP Regulations and Clause 3, 5 and 13 of Code of Conduct.

Submission

- 4.3 Mr. Aggarwal submitted that the issue in itself shows the lack of application of mind by the IA. Mr. Aggarwal had submitted all the information and reasons for not appointing the Registered Valuers. No records were handed over to Mr. Aggarwal by CD in spite of the Orders of Hon’ble AA. Application under section 19(2) was pending even at the appointment of RP. Where there were no records or assets of the CD, the appointment of Registered Valuers would have been unreasonable and futile.

Findings

- 4.4 In the present matter it is observed that in the 1st CoC meeting held on 29.04.2019 the CoC had decided to appoint two registered valuers to value the financial assets of CD only as no plant and machinery was available and also had ratified the fees for the valuers so appointed. However, as per the Form-III submitted by Mr. Aggarwal on the website of IPA it is noted that no valuers

were appointed at all. The DC notes the submission of Mr. Aggarwal that there was no available records or asset of CD and the appointment of the valuers without any records available would have been unreasonable and futile. The DC also observes that in the aforesaid minutes of the CoC meeting, it was also mentioned that *“The RP Informed that company is not cooperating and has not given the copy of ledger, cash book, bank account statements, accounting data, Cheque books...”* In view of the above, the DC accepts the submission of Mr. Aggarwal.

5. Contravention-III

- 5.1 Regulation 35A(1) of CIRP Regulations provides timelines for forming opinion whether the CD has been subjected to any transaction covered under sections 43, 45, 50 or 66 of the Code. Regulation 35A (2) provides timelines for determination of PUF transactions in the CD subsequent to forming opinion and regulation 35A (3) provides timelines for filing of necessary applications before AA for orders after determination of such transactions.
- 5.2 It is observed that in the CoC meeting held on 29.04.2019, it was discussed that CD has given huge advances of Rs.22.39 crore without any agreement and without any return on investment. It was also recorded in the minutes that an investigation as per available resources shall be attempted by IP. It is pertinent to mention that even though such transactions were noted in the minutes of CoC meeting held on 29.04.2019, no steps were taken by Mr. Aggarwal as per regulation 35A of CIRP Regulations. In view of the above, the Board is of the *prima facie* view that Mr. Aggarwal has *inter alia* violated regulation 35A of CIRP Regulations read with Clause 1, 2, 3 and 14 of the Code of Conduct.

Submission

- 5.3 Mr. Aggarwal submits that the issue is raised by the IA without considering the information and reasons submitted. As for the Minutes of CoC meeting dated 29.04.2019 the IA failed to fully understand to consider the said minutes. CoC specifically denied any process audit and only asked to attempt investigation from existing records and such records never came to the possession of Mr. Aggarwal. This was brought to the notice of IA which was not considered.

Findings

- 5.4 The DC observes that in the minutes of 1st CoC meeting it was recorded as follows:
“Financial Analysis of the Company
The duly audited balance sheet of previous two years i.e 31.3.2017 and as of 31.3.2018 is already shared to the COC members which proves that huge advances has been given by the CD without any agreement and without any return on Investment. The amount is Rs 22.39 Cr. An investigation as per available resources shall be attempted by the RP as transaction and process audit is denied by the COC. Discrepancies if any shall be notified to the COC as well as to the NCLT in due course”
- 5.5 With regard to non-determination of avoidance transactions allegation, IA had mentioned in its report that *“no section 19 application or documents in support of efforts taken by IP in collecting the records or contacting the auditors is available on record. Despite the availability of audited*

balance sheets with IP, there is no exercise performed by IP to determine the preferential, undervalued, extortionate credit and fraudulent trading or wrongful trading transactions as mandated under Regulation 35A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.”

5.6 The DC further notes that submission of Mr. Aggarwal that he never came into the possession of records of CD and the CoC had only instructed Mr. Aggarwal to attempt to investigate such transactions as per regulation 35A of CIRP Regulation based on the records available. The DC also notes that reply of Mr. Aggarwal as follows:

a) Even prior to the appointment of RP the IRP in this matter has filed an Application under section 19 as CD was not cooperating and did not provide any documents, records or any such other information. This section 19 application was pending on the date of COC meeting dated 29.04.2019 and was not decided till the conclusion of the process which was concluded vide Order dated 06.06.2020 of the Hon'ble AA (NCLT) on the withdrawal of application filed by the applicant.

b) It is very much evident that the RP has no such resources available for carrying out any such investigation. This fact was time and again brought to the notice of COC and also before the Hon'ble AA.

c) CD did not appear in the court even after issuance of warrants.

5.7 The DC also observes that in the minutes of 1st CoC meeting it was stated that:

“The RP Informed that company is not cooperating and has not given the copy of ledger, cash book, bank account statements, accounting data, Cheque books and so much of advances and diversion of funds has been noticed during preliminary review.

...

The COC discussed in detail that the Accounting records of the company are lying with N.K Sodhani & Co, Chartered Accountants being the auditors so RP should take action for recovery of records as well as to inform the NOIDA authority and issue notices to the companies where funds have been given as is being depicted in the audited annual accounts made upto 31.3.2018.

....

Item No 5.

A discussion on future plans.

The RP Informed that he will complete all the process as per IBC code and shall bind those company or individuals to whom advances have been given by the CD and shall also try to bring resolution applicant to resolve the matter.”

5.8 In view of the above, the DC observes that neither from the records available nor from the submission of Mr. Aggarwal any such attempts to investigate avoidance transactions by Mr. Aggarwal as per regulation 35A of CIRP Regulation can be made out. The Code and regulation 35A of the CIRP Regulations clearly specify that onus of forming an opinion and determining the avoidance transaction rests with the RP. For avoidance transaction application, CoC's directions is not a

precondition as a duty is imposed on the RP to preserve and protect the assets of CD. Hence, in the absence of any documentary proof in substantiating the conduct of Mr. Aggarwal with regard to determination of avoidance transactions, the DC finds that the conduct of Mr. Aggarwal is not satisfactory.

6. Contravention-IV

- 6.1 The Board Circular No. IP/005/2018 dated 16.01.2018, mandates IP to disclose his relationship, if any, with CD, with other professional(s) engaged by him to Insolvency Professional Agency of which he is a member, within 3 days of his appointment. It is observed from the website of Indian Institute of Insolvency Professionals of ICAI with which Mr. Aggarwal enrolled, that disclosures in terms of the Board Circular No. IP/005/2018 dated 16.01.2018, in the matter of the aforementioned CD has been made with a substantial delay.

Name of the party	Appointment as	Date of appointment	Disclosure as per Circular dated 16 th January, 2018	Delay
Sandeep Bhatt	Assistant	08.04.2019	31.05.2020	416
Mukesh Kumar	Assistant	08.04.2019	31.05.2020	416
Vaibhav Mahajan	Advocate	01.07.2019	25.12.2019	174

- 6.2 In view of the above, the Board is of the *prima facie* view that Mr. Aggarwal has *inter alia* violated Clause 1, 2, 13 and 14 of the Code of Conduct and IBBI circular no. IP/005/2018 dated January 16, 2018.

Submission

- 6.3 Mr. Aggarwal submits that there is some delay in this process but it was unintentional and not even material in the process. It has time and again been submitted by Mr. Aggarwal that he was not paid by CoC or CD and getting the work done was very difficult and trying, and these disclosures could not have been filed without information received from those professionals. It is also to be considered that this was the first CRIP of Mr. Aggarwal and that too where cooperation was not received from CD or even CoC.

Findings

- 6.4 In the present matter it is observed from the website of IPA with which Mr. Aggarwal is enrolled that disclosures of relationship with professionals engaged by him in terms of the IBBI Circular No. IP/005/2018 dated 16.01.2018, has been made with a substantial delay. It is observed that three appointments have been made of Mr. Sandeep Bhatt (Assistant), Mr. Mukesh Kumar (Assistant) and Mr. Vaibhav Mahajan (Advocate) and the disclosure of the same has been published at a delay of 416 days in case of Mr. Bhatt and Mr. Kumar and 174 days in case of Mr. Mahajan. The submission of Mr. Aggarwal that he was not paid by the CoC or that the disclosure could not have been filed without information received from those professionals is untenable as the appointments were made by Mr. Aggarwal and the information required in the disclosure form were readily available with him. Further, filing of disclosure form does not entail

any expenses. This conduct of Mr. Aggarwal shows his reluctance to confirm with the provisions of the Code and perform a crucial duty of ensuring transparency and accountability in conduct of the CIRP. Hence, contravention could be made out.

7. Contravention-V

- 7.1 Board Circular No. IBBI/IP/013/2018 dated 12.06.2018 stipulates that Form – III has to be submitted by the RP within seven days of his demitting office as RP. It is noted that Mr. Aggarwal in Form III has mentioned the date of demitting office of the RP as 9.06.2020. It is, however observed that Mr. Aggarwal filed Form-III with the IPA on 21.07.2020. As Form III has been filed by Mr. Aggarwal with a delay of 35 days, the Board is of the *prima facie* view that Mr. Aggarwal has *inter alia* violated Board Circular No. IBBI/IP/013/2018 dated 12.06.2018 and Clause 1, 2, 13 and 14 of the Code of Conduct.

Submission

- 7.2 The delay was inadvertent and unintentionally caused due to some glitch in the IPA website. This was duly informed to IA. The Form III was timely filed but does not appear when Mr. Aggarwal refilled the same.

Findings

- 7.3 It is observed in the present case that the Form -III (Insolvency Resolution Process Cost of Corporate Debtor for the period under RP) has to be submitted within a period of 7 days from the date of demitting office but the same was submitted after a delay of 35 days. Mr. Aggarwal submits that it was an inadvertent and unintentionally delay due to technical issue in the IPA website. However, no e-mail communication/ intimation of the issue to the IPA or any record of the same has been substantiated by Mr. Aggarwal. However, delay of 35 days did not have any adverse consequences on the process, lenient view is being taken.

8. ORDER

- 8.1 In view of the above, the DC notes that there were practical challenges particularly with regard to non-availability of documents and non-cooperation of the CD in the CIRP of the CD. At the same time, the DC also finds that the conduct of Mr. Rohit Aggarwal depicts that he has failed to understand the Code/Regulations in letter and spirit as statutory duties enshrined in the Code/Regulations had not been performed meticulously and carefully. It is pertinent to mention that an IP has the highest professional responsibility. He, therefore, should endeavour to perform all his tasks with due diligence and utmost care. Hence, the DC, in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016, hereby, disposes of the SCN with a warning to Mr. Rohit Aggarwal to be extremely careful and ensure full compliance with the provisions of the Code and Regulations made thereunder in all his assignments, well within the prescribed timelines.
- 8.2 The DC also directs that Mr. Rohit Aggarwal shall (i) undergo pre-registration educational course specified under regulation 5(b) of the IP Regulations from the IPA where he is registered

and (ii) work for at least three months as an intern with a senior IP. Mr. Rohit Aggarwal shall not accept any new assignment under the Code till the successful completion of pre-registration education course and internship as directed above.

- 8.3 This Order shall come into force with an immediate effect in view of paras 8.1 and 8.2 above.
- 8.4 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professional of ICAI where Mr. Rohit Aggarwal is enrolled as a member for their further necessary action.
- 8.5 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.

Accordingly, the show cause notice is disposed of.

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(Ravi Mital)
Chairperson, IBBI

Dated: 4th August 2022
Place: New Delhi