

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/75/2021

09th August, 2021

ORDER

In the matter of Ms. Kumudini Paranjape, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017.

Background

1. This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/(R)INSP/2020/09 dated 27th May, 2021 issued to Ms. Kumudini Paranjape, R/o. Ecstasy, 803/804, 9th Floor, City of Joy, J.S.D. Road, Mulund (W), Mumbai-400080, who is a Professional Member of the Institute of Insolvency Professionals of ICSI (IPA) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00099/2017-18/10242.
- 1.1 Ms. Kumudini Paranjape was appointed as a liquidator in the matter of voluntary liquidation of six corporate persons which was initiated under section 59 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 3 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (Voluntary Liquidation Regulations), namely, (i) Areva Renewable Energies India Private Limited, (ii) Areva Solar India Private Limited, (iii) Pine Bridge Investments India Advisors Private Limited, (iv) NNIP India Private Limited, (v) Transit Operations India Private Limited and (vi) IVISA Global Facilitation Services Private Limited.
- 1.2 The IBBI, in exercise of its power under section 196 of the Code read with regulation 3 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017, appointed an Inspecting Authority (IA) vide Order dated 06th August 2020 to conduct an inspection of Ms. Kumudini Paranjape, on having reasonable grounds to believe that she had contravened provisions of the Code, Regulations, and directions issued thereunder. The IA submitted its report dated 18.02.2021 to the IBBI.
- 1.3 The IBBI had issued the SCN on 27.05.2021 to Ms. Paranjape, on the basis of material available on record including report of IA, in respect of her role as a liquidator in the voluntary liquidation of the aforesaid six assignments of voluntary liquidations. The IBBI was of the *prima facie* opinion that sufficient cause exists to take action against Ms. Paranjape in terms of section 220 of the Code read with regulations 11 and 12 of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) and regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations). The SCN alleged the contravention of the provisions of sections 208(2)(a) and (e) of the Code, regulation 7(2)(a) and (h) of the IP Regulations and clause 14 of the

Code of Conduct specified in First Schedule of the IP Regulations read with Circular No. IP/004/2018 dated 16.01.2018. Ms. Paranjape replied to the SCN *vide* letter which was received by IBBI on 14.06.2021.

- 1.4 The IBBI referred the SCN, reply of Ms. Paranjape 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. Paranjape availed an opportunity of personal virtual hearing before the DC on 05.07.2021.

Alleged Contraventions and Submissions

Contraventions alleged in the SCN and Ms. Paranjape's written and oral submissions made thereof are summarized as follows.

Contraventions

The contraventions alleged in the SCN are summarized as follows.

- 2.1 Ms. Paranjape was acting as a liquidator for the voluntary liquidation of (i) Areva Renewable Energies India Private Limited, (ii) Areva Solar India Private Limited, (iii) Pine Bridge Investments India Advisors Private Limited, (iv) NNIP India Private Limited, (v) Transit Operations India Private Limited and (vi) IVISA Global Facilitation Services Private Limited. On perusal of the above mentioned 6 assignments wherein voluntary liquidation was initiated, it was observed that the invoice of fee charged by Ms. Paranjape was in the name of Makarand M. Joshi & Co and the same was credited to the account of Makarand M. Joshi & Co. rather than her own bank account despite the clarification provided in the Circular dated 16th January, 2018, the IP shall raise invoice for the services rendered by him/her during any of the processes under the Code in his/her name and such fees shall be credited to their bank account.
- 2.2 IA observed that Ms. Paranjape had submitted that she had checked with the office of IBBI and had received a positive reply regarding whether she can take fees in the name of her partnership firm. However, the same is not substantiated with any supporting documents to evidence that the IBBI has so communicated.
- 2.3 It was observed that Ms. Paranjape was appointed as the liquidator in all the aforementioned assignments in her individual capacity and not as the partner of Makarand M. Joshi & Co. However, the invoices towards her fees as the liquidator of the aforementioned assignments were raised in the name of Makarand M. Joshi & Co and payments towards settlement of the said bills/invoices were made to Makarand M. Joshi & Co rather than your own bank account which clearly demonstrates violation of the Circular No. IBBI/IP/004/2018 dated January 16, 2018. The said circular clearly mentions that an IP shall render services for a fee which is a reasonable reflection of his/her work, raise bills / invoices in his/her name towards such fees, and such fees shall be paid to his/her bank account. The said invoices were raised on the following dates:

- a) Areva Renewable Energies India Private Limited: March 24, 2018 and July 6, 2020
- b) Areva Solar India Private Limited: April 3, 2018 and July 6, 2020
- c) Pine Bridge Investments India Advisors Private Limited: February 17, 2018 and March 15, 2019.
- d) NNIP India Private Limited: September 17, 2019, December 2, 2019 and January 13, 2020.
- e) Transit Operations India Private Limited: February 29, 2020 and March 30, 2020
- f) IVISA Global Facilitation Services Private Limited: March 26, 2018 and September 23, 2019.

2.4 Ms. Paranjape as an IP is under an obligation to take reasonable care and diligence while performing her duties as per section 208 of the Code. Her conduct reflects carelessness in running the liquidation process by repeating the same violation in six assignments and the plea taken by her that the Circular dated 16.01.2018 was missed by her without any willful or *mala fide* intention cannot be disguised as a reasonable ground. The said violation has been observed in the six assignments handled by Ms. Paranjape which brings out the fact of her negligence towards duties and functions under the Code. In terms of regulation 7(2)(a) and (h) of the IP Regulations, the certificate of registration granted to her by IBBI is subject to condition that she shall at all times abide by the Code and the regulations made thereunder.

2.5 Ms. Paranjape contravened sections 208(2)(a) and (e) of the Code, regulation 7(2)(a) and (h) of the IP Regulations and clause 14 of the Code of Conduct specified in First Schedule of the IP Regulations read with Circular No. IP/004/2018 dated 16.01.2018.

Submissions by Ms. Paranjape

3.1 Ms. Paranjape submitted that the invoices were raised in the name of M/s Makarand M Joshi & Co where there are only two Partners. Ms. Kumudini being the one of the Partners. It is not a third party or any other entity where she does not have any control or stake. Further, it is Partnership Firm and not Limited Liability Partnership (LLP). She is a partner in that firm since 2009. Further, it is partnership firm which means it has unlimited liability like her as an individual liquidator.

3.2 Ms. Paranjape submitted that the reason she thought billing in the firm name may be allowed was because earlier there was no clarity on fees part in the Code when it was notified. She had undertaken liquidation assignments under the Companies Act, 1956 wherein section 513 of the Companies Act, 1956 allowed any practicing professional Firm to act as liquidator. It prohibited any “body corporate” to act as liquidator. The purpose to prohibit body corporate is for not limiting the liability. The Partnership Firm is not a “body corporate” and the partners have unlimited liability.

3.3 Ms. Paranjape further submitted that as the Code was new when she started getting

enquiries about liquidation. She read the entire Code and understood that there is pre-qualification to act as a liquidator and she needs to clear the examination. So, she got all clearance and then registration with IBBI. She inquired a lot to get the clarity on fees part and she had tried to connect with other IPs to seek their views. But as the Code was new she could not get clear answer. Ms. Paranjape also submitted that she had called IBBI office for getting clarity on the same in April- May 2017 but she got feedback that she can take the fees in Firm's name but she has to act in individual capacity. Since all this happened on landline call, there is no evidence.

- 3.4 Ms. Paranjape also submitted that as she does not have any evidence of the landline call, IBBI may verify her behavior from other examples to form an opinion. Ms. Paranjape submitted that the two engagement letters i.e. Areva Solar India Private Limited and Areva Renewable Energies India Private Limited were signed on 30.08.2017 which was prior to the circular being notified and she continued the same practice. The Circular No. IP/004/2018 was notified on 16.01.2018 but she missed to take notice of it. When the Circular was brought to her notice through preliminary inspection report sent to her on 13.11.2020 she immediately applied for GST Registration.
- 3.5 Ms. Paranjape submitted that she elaborated the process which she undertook before, during and after any assignment. She has submitted that IBBI can verify from all the 6 clients and check with them about the strict approach she had towards compliances. She has submitted that till today she has not given any consent to act as IP in any Corporate Insolvency Resolution Process. She emphasized that she does not undertake any assignment unless she has time to deliver the assignment. The process followed by her before taking any assignment and even during assignment is written with her and converted in the form of information require list, process /flow and checklist.
- 3.6 Ms. Paranjape has submitted that she had always taken proper care and diligence in her work and humbly prays to condone her actions. She has also submitted that to act '*negligently*' means that some loss has been suffered or some unlawful gain has been made. This is merely missing out of a Circular, without any *mala fide* intention. Ms. Paranjape states that she has maintained transparency with her client, Firm and Regulator and no contravention was intended. Since, there was no loss suffered to the Corporate Debtor (CD) under the liquidation or to creditors of the CD or to any other stakeholder due to raising invoice in the name of Firm and there is no unlawful gain made. Further, the M/s Makarand M Joshi & Co has returned all fee collected to Ms. Paranjape's personal account after the Circular was brought to her notice. Hence, Ms. Paranjape submitted that the above instance was a genuine mistake, and it was not done with and intent to misrepresent or mislead any stakeholder in any manner. Further, she accepted that the circular issued by the Board was missed without any wilful or *mala fide* intention.

Analysis and finding

- 4 The DC after considering the oral and written submissions of Ms. Paranjape in response to the allegations made in the SCN, and also the provisions of the Code and the regulations made thereunder, proceeds to dispose of the SCN as follows.
- 4.1 That the Code casts strenuous responsibilities on an IP to run the affairs of the CD in distress as a going concern and to maximize the value of the assets. Such responsibilities of an IP require the highest level of professional excellence, dexterity and integrity. The role of IP is vital to the efficient operation of the insolvency and bankruptcy resolution process. A well-functioning system of resolution driven by a competent IP plays a significant role in cementing together the interests of the CD with those of the creditors. It is for this reason that the need of specialized professionals to complete the resolution processes has been unequivocally emphasized.
- 4.2 The UNCITRAL Legislative Guide on Insolvency Law recognizes the role of an IP in the following words: *“However appointed, the insolvency representative plays a central role in the effective and efficient implementation of an insolvency law, with certain powers over debtors and their assets and a duty to protect those assets and their value, as well as the interests of creditors and employees, and to ensure that the law is applied effectively and impartially. Accordingly, it is essential that the insolvency representative be appropriately qualified and possess the knowledge, experience and personal qualities that will ensure not only the effective and efficient conduct of the proceedings and but also that there is confidence in the insolvency regime.”*
- 4.3 The role of an IP encompasses a wide range of functions and it is incumbent upon an IP, under section 208(2) of the Code, to take reasonable care and diligence while performing his functions and duties. Section 208(2)(a) and (e) of the Code reads as under:
*“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;
...
(e) to perform his functions in such manner and subject to such conditions as may be specified.”*
- 4.4 It is the duty of the IP to ensure that his conduct would not undermine the credibility of the process. Therefore, while granting certificate of registration to an IP they are subjected to follow the Code of Conduct specified in the First Schedule to the IP Regulations. In this regard, regulation 7(2) (a) and (h) of the IP Regulations provides 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;

...”

- 4.5 In this country, ignorance of law is not an excuse for any non-compliance or contravention even for a layman. In case of a professional, ignorance and negligence are serious lapses though not malpractices and adversely affects the professional competence. Clause 14 of Code of Conduct specified for Insolvency Professionals prescribed under the First Schedule of the Insolvency Professional Regulations stipulates:
“14. An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code.”
- 4.6 Further, vide Circular No. IP/004/2018 dated 16.01.2018, the IBBI has clarified that:
“.....an insolvency professional shall render services for a fee which is a reasonable reflection of his work, raise bills / invoices in his name towards such fees, and such fees shall be paid to his bank account...”
- 4.7 The DC observes that the invoices in the six voluntary liquidations were raised after the Circular no. IP/004/2018 was issued on 16.01.2018 as follows:
- a) Areva Renewable Energies India Private Limited: 24.03.2018 and 6.07.2020
 - b) Areva Solar India Private Limited: 03.04.2018 and 06.07.2020
 - c) Pine Bridge Investments India Advisors Private Limited: 17.02.2018 and 15.03.2019.
 - d) NNIP India Private Limited: 17.09.2019, 2.12.2019 and 13.01.2020.
 - e) Transit Operations India Private Limited: 29.02.2020 and 30.03.2020
 - f) IVISA Global Facilitation Services Private Limited: 26.03.2018 and 23.09.2019.
- 4.8 The DC also notes that Ms. Paranjape has stated that she has unintentionally missed on taking notice of the Circular no. IP/004/2018 dated 16.01.2018. Further, Ms. Paranjape has also submitted that her fees raised in the name of M/s Makarand M Joshi & Co, where she is a partner, for the said voluntary liquidations has been returned to her personal account after the Circular was brought to her notice by the IA. Further, on examination of the documents submitted by Ms. Paranjape, it is observed that the bill was raised for an amount of Rs. 64 lakhs and the same was credited to the personal account of Ms. Paranjape on 11.06.2021 and 12.06.2021. Ms. Paranjape has also submitted an Affidavit and the certificate of her Chartered Accountant certifying that the professional fee charged of Rs. 64 Lacs in the 6 assignments of voluntary liquidations against which SCN was issued has been remitted by M/s Makarand M Joshi & Co. back to her account and the GST amount of Rs. 5,84,000/- has also been deposited by the firm in her name. Ms. Paranjape also submitted the certificate from the Chartered Accountant Firm, Nirbhik Agarwal & Co. dated 04.08.2021 which is stated as under:

“After due verification of her books of accounts, we hereby certify that the fees inadvertently collected by M/s Makarand M Joshi And Co. for voluntary liquidation assignment(s) carried on by Mrs. Kumudini Dinesh Bhalerao has been duly remitted back to her in her personal account.

We hereby also certify that necessary taxes on the above fees has been duly paid by the client.”

- 4.9 In the present matter after the issuance of said Circular, Ms. Paranjape should have been careful in raising invoices for the services rendered. The Circular expressly clarifies as to raising of invoices by IPs for the fee and crediting the same into the personal account of their name. Ms. Paranjape failed in taking note/ notice of Circular which was available on the website of IBBI, Newsletter of IBBI and was widely deliberated in various foras and capacity building programmes. The DC observes that it is the duty of every IP to maintain and upgrade their professional knowledge and skills to render competent professional service. The DC also notes the fact that the fee credited into the account of M/s Makarand M Joshi & Co has been transferred back to her personal account after being pointed out by IA otherwise she would have continued such non-compliance.
- 4.10 Thus, it is clear that she did not change her practice of raising invoice in the name of her Firm even when the Circular was issued but only after the error was pointed out by the IA. In view of this, Ms. Paranjape’s conduct in this regard appears to be negligent as she did not take reasonable care and due diligence and there was non-compliance of Circular by her, which is not expected from a professional. Moreover, it was not only in one matter but it continued in six matters. Further, it was not her first case where such lapse has occurred.
- 4.11 In view of the above, DC notes that there is a contravention of the provisions of sections 208(2)(a) and (e) of the Code, regulation 7(2)(a) and (h) of the IP Regulations and clause 14 of the Code of Conduct specified in First Schedule of the IP Regulations and non-compliance Circular No. IP/004/2018 dated 16.01.2018 by Ms.Paranjape.

Order

5. In view of the above, the Disciplinary Committee, in exercise of the powers conferred under Section 220 of the Code read with Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017, disposes of the SCN with the following directions: -
- (i) Ms. Kumudini Paranjape shall undergo pre-registration educational course from the IPA of which she is a member.
 - (ii) Ms. Kumudini Paranjape shall pay a penalty equal to ten percent of the fee she had received in the six assignments of voluntary liquidations and directs her to deposit the penalty amount by a crossed demand draft payable in favour of the

“Insolvency and Bankruptcy Board of India” within 45 days from the date of issue of this order. The Board in turn shall deposit the penalty amount in the Consolidated Fund of India.

- (iii) Ms. Kumudini Paranjape shall not accept any new assignment as an IP under the Code till she deposits the penalty amount with the Board under (ii) and completes pre-registration educational course under (i) and produces evidence to the Board of such deposit and educational course.
- (iv) Ms. Kumudini Paranjape shall, however, continue to conduct and complete the assignments/processes she has in hand, if any, as on the date of this order.
- (v) This Order shall come into force on expiry of 30 days from the date of issue of this Order.
- (vi) A copy of this Order shall be forwarded to the Indian Institute of Institute of Insolvency Professionals of ICSI where she is enrolled as a member.
- (vii) A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, for information.

6. Accordingly, the show cause notice is disposed of.

Dated: 09th August, 2021
Place: New Delhi

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(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI