

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/211/2024

12 April 2024

Order

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/63/2023-IBBI/814/1448 dated 27.10.2023 issued to Ms. Jovita Reema Mathias who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00337/2017-2018/10941 and a Professional Member of the ICSI Institute of Insolvency Professionals residing at A-1, 302, 3rd Floor, Shubham Centre, Cardinal Gracious Road, Andheri East, Mumbai Suburban, Maharashtra – 400099.

1. Background

1.1 The Hon'ble NCLT, Mumbai (AA) *vide* order dated 29.08.2018, admitted application under section 10 of the Insolvency and Bankruptcy Code, 2016 (Code) filed by M/s Maiia Commodity Management Private Limited (Corporate Debtor/CD) on the basis of special resolution passed in extraordinary general meeting dated 25.04.2018 of CD, for initiating Corporate Insolvency Resolution Process (CIRP) against it. In the same order, Ms. Jovita Reema Mathias was appointed as Interim Resolution Professional (IRP) of CD and was later confirmed as Resolution Professional (RP). Subsequently, one resolution plan was received from erstwhile directors of the CD. The Committee of Creditors (CoC) in its 8th CoC meeting dated 14.02.2019 rejected the resolution plan so received for the reason that it is not in the best interest of the CD and decided to liquidate the CD with 96.32% voting. The AA passed order for the liquidation of the CD on 25.07.2019 and appointed Ms. Jovita Reema Mathias as the liquidator. In the 18th progress report for the quarter ending on 31.12.2023 filed before the AA, Ms. Jovita Reema Mathias informed that CD does not have any immovable assets. Most of the assets of CD are in form of receivables and she is in process of realizing the same. Ms. Jovita Reema Mathias further stated that she has initiated process for refund of income tax of Rs. 34,82,448/- (Rupees Thirty four lakhs eighty two thousand four hundred and forty eight only) for assessment year 2019-2020. She also stated that application has also been filed before the AA pertaining to recovery of amount from certain bank which is pending adjudication. Due to pending litigations, she is not able to proceed with the dissolution of the CD.

1.2 The Board, in exercise of its powers under section 218 of the Code read with regulation 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations) appointed an Investigating Authority (IA) to conduct the investigation of Ms. Jovita Reema Mathias. Accordingly, a notice under regulation 8(1) of the Investigation Regulations was issued to Ms. Jovita Reema Mathias on 15.05.2023 with a request to clarify the observations made by the AA in its order dated 31.03.2022. She submitted her reply to the

said notice on 20.05.2023 and made additional submissions on 06.06.2023. Thereafter, the IA submitted investigation report to the Board on 19.06.2023.

- 1.3 The IBBI issued the SCN to Ms. Jovita Reema Mathias on 27.10.2023 based on the findings in the investigation report in respect of her role as a liquidator of the CD. She replied to the SCN on 10.11.2023.
- 1.4 The IBBI referred the SCN, reply to SCN to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Ms. Jovita Reema Mathias availed the opportunity of personal hearing before the DC on 16.02.2024. She filed additional submissions on 21.02.2024 to the queries raised by the DC.
- 1.5 The DC considered the SCN, the reply to SCN, submissions of Ms. Jovita Reema Mathias and proceeds to dispose of the SCN.

2. Alleged Contraventions, Submissions, Analysis and Findings

The contravention alleged in the SCN and Ms. Jovita Reema Mathias's written and oral submissions thereto are summarized in the following paragraphs.

3. Contravention

Non-representation of CD before AA.

- 3.1 It was noted that as on 31.03.2022, the liquidation process of the CD had been continuing for more than two and a half years, against the mandated period of one year for its completion as provided under regulation 44(1) of the IBBI (Liquidation Process) Regulations, 2016. Despite this substantial delay in the process, Ms. Jovita Reema Mathias chose not to appear before the AA in the hearing held on 31.03.2022.
- 3.2 In reply submitted to the IA, Ms. Jovita Reema Mathias mentioned that she faced certain technical issues in joining through Webex on the said hearing before the AA, due to which she could not join. However, not only did she fail to appear before the AA on the said date, but she also did not instruct her counsel in the matter, as observed from the following remarks of the AA in its order dated 31.03.2022:

“The Bench when enquired the counsel appearing for the Liquidator, he mentioned that he does not have any instruction from the liquidator. The Bench further notice that the Liquidator Ms. Jovita Reema Mathias is also not present before this Bench.

Keeping in view that the Liquidator has not completed the liquidation process even after 3 years and she decides not to appear before this Bench in spite of mentioning in the cause list that the liquidator should be present before this Bench. The Bench, therefore, would request the IBBI to look into the conduct of the liquidator and take appropriate action against her.”

3.3 In view of the above, the Board held the prima facie view that Ms. Jovita Reema Mathias had contravened section 35(1)(k), 208(2)(a) & (e) of the Code, regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clause 14 of the Code of Conduct specified thereunder.

4. Submissions by IP.

4.1 Ms. Jovita Reema Mathias submitted in her reply to SCN clarifying that she had no intention to disrespect the orders of the AA and submitted that there was no order of the AA directing her to remain present in person at the time of the hearing scheduled on 31.03.2022. She further submitted that the liquidation of the CD was substantially complete so far as the assets had already been sold. However, the liquidation process is not able to be closed due to pendency of certain litigation and receipt of income tax refund of Rs. 1.47 crores. Various applications were filed both for and against the liquidator, which has been listed from time to time even before 31.03.2022.

4.2 She has placed on record various orders of the AA and submitted that prior to 31.03.2022, the matter was taken up for hearing on 23.11.2021 and 04.02.2022. On either of these dates, the AA did not issue any direction for her personal presence. Also, her counsel did not inform her any requirement regarding her personal presence. As such, she was under the *bona fide* belief that her presence was neither called for nor required. As a general matter of course, she had logged in through video conferencing at the time of hearing of matter wherein she has been appointed as a RP or liquidator. She submitted that on 31.03.2022, her office was facing connectivity issues due to which she was unable to remain logged in. She further submitted that she did not receive any intimation from her counsel that her personal presence has been ordered or directed by the AA else she would have made any alternate arrangements to ensure her virtual presence at least.

4.3 She submitted that she was informed subsequently by a colleague about the practice of the National Company Law Tribunal, Mumbai Bench, around the time was to insert a line into the cause list that they are required to be present. She submitted that it was the duty of her counsel to check the cause list and inform her of the same; as she has no legal background, and thus, not aware of the technical and procedural aspects of the functioning of the AA and being an IP can only abide by the specific orders or directions which are passed.

4.4 Thus, in the absence any intimation that there was any specific direction requiring her presence before the AA, she could not be present. Further, she was subsequently informed that the AA had orally asked her counsel as to why the pending litigation could not have been avoided, to which the AA sought a specific answer in this regard from her and was not satisfied with what was submitted by her counsel.

- 4.5 The DC raised the following queries on 16.02.2024 during the personal hearing -
(a) any steps taken for clarification of observation in AA order dated 31.03.2022;
(b) communication with your counsel regarding having no instructions from the liquidator.
Ms. Jovita Reema Mathias replied to the said queries vide mail dated 21.02.2024 and submitted that she was advised against filing an appeal since she could seek recall on the next date of hearing. *Vide* order dated 31.03.2022, she was required to be present in court on 10.05.2022 wherein she was advised to put forward her position in clarity before the bench and request the bench to recall the previous order. However, the matter could not be taken up due to paucity of time and thereafter the bench changed. The said matter was not taken on subsequent dates for the same reason. The probable course should have been to file an application for recall of the order before the AA, however under advice, she chose the above course.
- 4.6 She submitted that the counsel Mr. Piyush Deshpande, appeared before the AA on 31.03.2022, under instructions from main counsel Mr. Amir Arsiwala. She had shared proper instructions with Mr. Arsiwala who was instructed to appear in the matter. However, as he was appearing before another bench, he instructed his junior to appear before the relevant bench which passed the order dated 31.03.2022, to seek a passover, so that Mr. Arsiwala could appear and apprise the bench about the matter.
- 4.7 When the bench enquired from Mr. Piyush Deshpande about instructions, being a junior counsel, he said that he had no instructions. However, the true position was that Mr. Arsiwala, his senior, was instructed in the matter and had adequate instructions to apprise the AA about the updates on the matter. The subsequent proceedings in the matter and timely filing of the updated reports indicate towards the progress made in the matter and her efforts in completing the liquidation. She annexed the copy of email sent to the counsel updating him with the status of income tax refund in the case of CD.
- 4.8 She submitted that she acted under legal advice in appearing before the AA on subsequent dates for appraising the AA about the progress in the matter and praying for recall of order dated 31.03.2022. However, the matter could not be taken up. She submitted that present situation could have been avoided if she would have been able to apprise the AA about the actual progress on 10.05.2022 and could have persuaded the AA to recall the order dated 31.03.2022. However, the matter was not taken up on subsequent dates. She apologised for not being present before the AA on 31.03.2022 and submitted that no penal action be taken for this avoidable inadvertence.

5. Analysis and Findings.

- 5.1 The DC observes that the adverse observation of the AA as emerging from its order dated 31.03.2022 is that Ms. Jovita Reema Mathias was not present during the course of hearing before the AA despite standing instructions in the cause list for IP to appear in their matters via VC. The cause list of the AA for 31.03.2022 stated that *“The IRP, RP & LIQUIDATOR should be present in person (VC) during the Hearing.”* making it mandatory for the IP to be present before AA during the proceedings of its case.
- 5.2 Another adverse observation evident from the order dated 31.03.2022 is that the counsel present on behalf of the liquidator stated that *“he does not have any instruction from the liquidator.”*
- 5.3 It is pertinent to note that under the Code, IRP/RP/liquidator after his appointment is required to take charge of the CD and perform all necessary actions under the Code for resolution of the CD. Such scope of charge is wide and includes performing various tasks on behalf of the liquidator. Thus, vide provision of section 35(1)(i) of Code, he has been entitled to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities. The intent of the Code is very clear which provides *“to discharge his duties, obligations and responsibilities”* which means that although any assistance has been availed by liquidator, it does not discharge the liquidator from the duties enlisted rather it is merely an assistance availed by liquidator to get the duties and obligations discharged. Therefore, plea of the Ms. Jovita Reema Mathias that she did not receive any intimation from her counsel or did not know about the practice of the NCLT, Mumbai Bench requiring the presence of an IP through VC does not augur well and shows lack of awareness and seriousness required for discharging the duties as an IP.
- 5.4 Regarding the observation of the AA that the counsel was not having any instruction from the liquidator, the DC observed that she has brought out in her reply that she had updated the counsel with the latest status of the case a day before the date of hearing before the AA and also furnished copy of an email to the counsel written a day prior to the date of hearing fixed before the AA. However, Ms. Jovita Reema Mathias has submitted that the junior of the counsel was before the AA as the counsel engaged by her was before another bench. Since, junior counsel had instructions for pass over and was not aware of the facts of the case, he could not make submissions before the AA. Since, Ms. Jovita Reema Mathias could not attend the hearing because of connectivity issues, she should have informed the counsel or his junior counsel regarding the difficulty faced by her in attending the hearing before the AA to apprise the bench about her situation. Such lack of effort reflects a lackadaisical attitude on her part.

5.5 Further, on the issue as to why the same could not be brought before the AA at a later stage for modification of its order, Ms. Jovita Reema Mathias has explained with copy of orders of subsequent date that the matter could not be taken up. However, the DC notes that the matter was listed on next date, i.e., 10.05.2022 where there is no record of submissions made by Ms. Jovita Reema Mathias. The DC notes that on 10.05.2022, one of the members of the bench was same as that on 31.03.2022. Further, on the next date of hearing i.e. on 23.06.2022, the same bench which heard the matter on 31.03.2022 was present. Constitution of the bench was finally changed after 23.06.2022 only. Further, such change in composition does not create any bar for presenting case before the AA. Hence, the DC holds that appropriate corrective measures were not taken showing that she did not have full conviction of her defence about the adverse remarks made.

5.6 In view of the forgoing discussion and AA order dated 31.03.2022, the DC finds that Ms. Jovita Reema Mathias did not represent the CD before the AA effectively as alleged in SCN. Thus, the DC holds that Ms. Jovita Reema Mathias has failed to act as per section 35(1)(k), 208(2)(a) & (e) of the Code, regulation 7(2)(a) & (h) of the IP Regulations read with clause 14 of the Code of Conduct specified thereunder.

6. Order

6.1 In view of the forgoing discussion, SCN, reply to the SCN, oral and written submissions made by Ms. Jovita Reema Mathias, the DC finds that Ms. Jovita Reema Mathias has not represented the CD before the AA effectively as alleged in SCN.

6.2 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 hereby:

(a) warns Ms. Jovita Reema Mathias to be more careful in future and directs her to strictly comply with the applicable provisions of the Code and its underlying Regulations while performing her duties and

(b) imposes penalty of Rs.50,000/- (Rupees fifty thousand only) and directs Ms. Jovita Reema Mathias to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of “penalty imposed by IBBI” on <https://bharatkosh.gov.in> within 45 days from the date of issue of this order and submit a copy of the transaction receipt to the Insolvency and Bankruptcy Board of India.

6.3 This Order shall come into force with immediate effect in view of the paragraph 6.2 of the order.

6.4 A copy of this order shall be sent to the CoC/Stakeholders Consultation Committee (SCC) of all the corporate debtors in which Ms. Jovita Reema Mathias is providing her services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Ms. Jovita Reema Mathias.

6.5 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Ms. Jovita Reema Mathias is enrolled as a member.

6.6 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.

6.7 Accordingly, the show cause notice is disposed of.

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(Sandip Garg)

Whole Time Member

Insolvency And Bankruptcy Board of India

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(Jayanti Prasad)

Whole Time Member

Insolvency And Bankruptcy Board of India

Dated: 12 April 2024

Place: New Delhi