

ICSI Institute of Insolvency Professionals

(Disciplinary Committee)

ICSI IIP/DC/ 11 /2021

12th January, 2022

ORDER

(Under Part III of Disciplinary Policy read with Clause 24(1)(a) of Bye Laws of ICSI Institute of Insolvency Professionals)

1. Background

- 1.1** This order disposes of the Show Cause Notice dated 08thSeptember, 2021 (SCN) issued to Mr. Jayaraman Manivannan, resident of Plot No. 53B, 8/330, Vishalakshi Nagar Fourth Cross Street, Santhosapuram, Chennai, Tamil Nadu-600073, a professional member of ICSI Institute of Insolvency Professionals and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/IPA-002/IP-N00534/2017-2018/11695.
- 1.2** The inspecting authority (IA) of ICSI Institute of Insolvency Professionals (ICSI IIP) conducted inspection of 15 assignments handled by Mr. Jayaraman Manivannan and prepared final inspection report, which was duly mailed to IP on 18th December, 2020. The final inspection report and subsequent correspondences were placed before the Monitoring Committee on 24th August 2021. The Monitoring Committee in its meeting directed the Secretariat to issue a show cause notice, based on the findings in the inspection report.
- 1.3** Show Cause Notice was issued by the Secretariat on 8th September 2021 to Mr. Jayaraman Manivannan (IP). The IP via e-mail dated 6th October, 2021 sought extension till 7th November, 2021 to file his reply. The DC acceded to the request of the IP and granted him extension to send his reply as per the extension sought. The IP sent his reply to the Show Cause Notice through e-mail dated 01st November, 2021 and requested for e-hearing
- 1.4** The show cause notice along with the reply and supporting documents were placed before the Disciplinary Committee (DC) of ICSI IIP for disposal of the

SCN in Accordance with the Code and Regulations made thereunder. Mr. Jayaraman Manivannan was offered an opportunity of e-hearing before the DC on 24th November 2021. However, he did not appear for the e-hearing on the said date. Another opportunity of e-hearing was given by the DC to the IP on 17th December 2021. The IP after confirming his presence for the same, was not present for his e-hearing opportunity. The DC is passing this order ex-parte based on the show cause notice, written submissions by the IP and other documents placed on record.

2. Major Alleged Contraventions

The contraventions alleged in the SCN are as follows:

Contravention

2.1 Non maintenance of records

In most of the assignments handled by the IP and inspected by the IA including *Thiripura Chits Private Limited, Everwin Textile Mills Private Limited, U Foam Private Limited, Parikh Fabrics Private Limited, Premsons Super Steels Private Limited, Shri Sakthi Papers India Private Limited, Priyadarsini Limited, Supraja Textiles Private Limited, RCM Infrastructure Limited, Polyex Private Limited, Aeon Paper Mills Private Limited, Truefix Media Transformation Private Limited, Honeycomb Technologies Private Limited, Shree Ganesh EPC Private Limited, Cape Engineers Private Limited*, it was observed that the IP had not maintained proper and complete records of the assignment either in electronic form or in hard copy . The list of documents not made available to the IA had been repeatedly asked from the IP but IP failed to provide the documents

2.2 Non submission of records/disclosures

In most of the assignments handled by IP and as inspected by the IA including *Thiripura Chits Private Limited, Everwin Textile Mills Private Limited, U Foam Private Limited, Parikh Fabrics Private Limited, Premsons Super Steels Private Limited, Shri Sakthi Papers India Private Limited, Priyadarsini Limited, Supraja Textiles Private Limited, RCM Infrastructure Limited, Polyex Private Limited, Aeon Paper Mills Private Limited, Truefix Media Transformation Private Limited, Honeycomb Technologies Private Limited, Shree Ganesh EPC Private Limited, Cape Engineers Private Limited*, it was observed that the IP had not submitted CIRP forms on the IBBI Portal,

relationship disclosures and cost disclosures on the ICSI IIP, even after several reminders.

2.3 Non maintenance of website of Corporate Debtor

In the matter of *U Foam Private Limited*, the website of Corporate Debtor www.ufoam.com did not contain any details of the CIRP. Since, the Corporate Debtor is a going concern; it is duty of the insolvency professional to keep the stakeholders informed about the insolvency resolution process as per provisions of the Code.

2.4 Working as deemed Resolution Professional

In the matter of *Premsons Super Steels Private Limited* and *Shri Sakthi Papers India Private Limited*, the interim resolution professional was replaced and a new resolution professional was appointed in the 1stCoC meeting, however order of appointment of Resolution professional came after few months. During that period, the IRP is deemed to work as the Resolution professional. However, no steps were taken for the corporate insolvency resolution process.

2.5 Non-filing of financial statements at MCA website

There is no record for preparation and filing of financial statements after 31st March, 2016 of the Corporate Debtor available at the MCA website.

2.6 Non filing of cooperation application

As per the Committee of Creditors' (COC) minutes, the management of the corporate debtor was not cooperating, however the resolution professional did not file an application before Adjudicating Authority even though COC had asked the IP to do that.

Written Submissions of the IP

- IP submitted that all documents asked for by the Inspecting Authority has already been provided by them. He also submitted that most of the documents could not be provided to the Inspecting Authority as he was not available in his office at that time.
- IP submitted that CIRP forms, disclosure and time-based reporting have been submitted on ICSI portal, however CIRP forms at the time of issue of this order are pending. IP claimed that he is in process of uploading

the documents on IBBI portal and the same will be completed in due course. IP submitted that he tried several times to upload the same in the initial period but due to error and big file size couldn't complete.

Analysis

After considering the written submissions of IP, DC is of the view that IP had sought extension at the time of inspection, at the time of submission of reply to the inspecting report, at the time of submission of reply to the show cause notice as well as for the e-hearing before the DC. Extension was granted at each stage as was sought by IP.

The submission of the IP that documents and records were not submitted and not provided by him due to his unavailability at the time of inspection is untenable.

From the written submissions, the DC noted that the reply to the show cause given by the IP was evasive and the IP was trying to digress from the allegations made. The DC noted that despite numerous reminders, CIRP forms and disclosures were not filed on the IBBI and ICSI IIP portal respectively, the same was aberrated by the IP by mentioning that his compliances were complete with respect to filing of half yearly returns, however DC took lenient view for the same.

DC noted that the written submissions made by the IP were evasive thus showing clear lack of due diligence of the procedures and compliances as prescribed under the Code.

Under the Code, RP plays a central role in resolution process of the CD, he is appointed by the Adjudicating Authority as an officer of the Court to conduct the resolution process and it is the duty of RP to conduct CIRP with integrity and accountability in the process and to take reasonable care and diligence while performing his duties. Therefore, it becomes imperative for an IP to perform his duties with utmost care and diligence.

Section 208(2) of the Code provides that every insolvency professional shall abide by the Code of conduct and regulation 40B provides for filing of forms.

It reads as follows:

Section 208(2) of the Code states that,

(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;*
- (c) to allow the insolvency professional agency to inspect his records;*
- (d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to 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.*

Regulation 40B of the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016 states that,

Filing of Forms.

(1) The insolvency professional, interim resolution professional or resolution professional, as the case may be, shall file the Forms, along with the enclosures thereto, on an electronic platform of the Board, as per the timelines stipulated against each Form...

3. Order

3.1 After considering the allegations in the SCN and written submissions made by Mr. Jayaraman Manivannan in light of the provisions of the Code, regulations and the relevant circulars, the DC, in exercise of the powers conferred under Part III of the Disciplinary Policy of ICSI IIP observed and directed the following:

- i. Under the Code, RP plays a central role in resolution process of the CD, he is appointed by the Adjudicating Authority as an officer of the Court to conduct the resolution process and it is the duty of RP to conduct CIRP with integrity and accountability in the process and to take reasonable care and diligence while performing his duties. An IP is obliged under section 208(2) of the Code to take reasonable care and diligence while performing their duties and file forms as per regulation 40B of the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016.
- ii. To levy a penalty of INR 2,00,000 (Rupees Two lakh only) for the continuous procedural lapses despite reminders, the lack of due diligence in fulfilling compliances and direct contraventions of the Code and its Regulations. IP must deposit the same by a demand draft payable in favour of the ICSI

Institute of Insolvency Professionals/NEFT within 30 days of the issue of this order. The Agency shall in turn deposit the said penalty amount in the Fund constituted under Section 222 of the Code.

- iii. IP to undergo 50 hours Pre-Registration Educational Course (PREC) to improve his understanding of the Code and the regulations made thereunder and complete CIRP Forms and disclosures with correct information on the IBBI portal for all the assignments before applying for issuance of a valid Authorisation for Assignment (AFA).
- iv. The DC observes that Mr. Jayaraman Manivannan should be careful and take due care in the future.
- v. Mr. Jayaraman Manivannan shall, however, continue to conduct and complete the assignments/ processes he has in hand as on date of this order.
- vi. This order shall come into force after 30 days from the date of its issue.

3.2 A copy of this order shall be forwarded to the Insolvency and Bankruptcy Board of India.

3.3 Accordingly, the Show Cause Notice is disposed of.

CERTIFIED TRUE COPY

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MR. GOPAL KRISHNA AGARWAL
(CHAIRPERSON)

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DR. S. P. NARANG
(MEMBER)