

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/147/2023

30th January 2023

ORDER

In the matter of Mr. Abhishek Anand, 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/2022/120/3992 dated 5th September, 2022, issued to Mr. Abhishek Anand, E-103, G.K. Enclave-1, New Delhi, Delhi-110048 (herein referred as “IP”) who is a Professional Member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00038/2016-17/10077.

1. Background

- 1.1 The National Company Law Tribunal, New Delhi Bench (AA) had admitted the application under Section 9 of the Code for corporate insolvency resolution process (CIRP) of Macro Commerce Private Limited (CD) vide Order dated 29th November 2017 and appointed Mr. Abhishek Anand as Interim Resolution Professional. Further, Mr. Anand was confirmed as Resolution Professional vide order of AA dated 25th January 2018. The AA rejected the application filed by RP for approval of the Resolution Plan and passed order for liquidation of CD and Mr. Anil Kumar Sharma was appointed as Liquidator.
- 1.2 In exercise of its powers under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, the IBBI vide Order dated 22nd March 2022 appointed an Inspecting Authority (IA) to conduct an inspection of Mr. Abhishek Anand. The IA shared the draft Inspection Report with Mr. Anand on 20th June 2022 and the IP submitted his reply on 05th July 2022. Thereafter, the IA submitted the Inspection Report to IBBI on 18th July 2022.
- 1.3 The IBBI on 5th September 2022 had issued the SCN to Mr. Anand, based on findings in the inspection report in respect of his role as IRP/RP in the CIRP of CD. The SCN alleged contraventions of several provisions of the Insolvency and Bankruptcy Code, 2016 (Code), IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (CIRP Regulations), the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and the Code of Conduct under regulation 7(2) thereof. Mr. Anand replied to the SCN vide his letter dated 19th September 2022.
- 1.4 The SCN, response of Mr. Anand to the SCN and other material available on record were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Anand availed an opportunity of personal hearing before the DC on 10th January 2023 wherein he

reiterated the submissions made in his written reply.

2. Alleged Contraventions, Submissions of IP and Findings

The contraventions alleged in the SCN and submissions by Mr. Anand are summarized as follows:

2.1 Delay in appointment of Registered Valuers:

- 2.1.1 Regulation 27 of the CIRP Regulations (Amended prior to 06th February 2018) provides that the IRP shall within seven days of his appointment, appoint two registered valuers to determine the fair value and the liquidation value of the CD in accordance with regulation 35 of CIRP Regulations. It was alleged in the SCN that the IP had appointed one valuer on 30th January 2018 and another valuer on 10th March 2018 i.e., after delay of 64 days and 103 days respectively.
- 2.1.2 Accordingly, the Board was of the *prima facie* opinion that IP had, *inter alia*, violated regulation 27 of the CIRP Regulations, and regulation 7(2)(a) and regulation 7(2)(h) read with clause 13 and 14 of the Code of Conduct, of the IP Regulations.

Submission by IP

- 2.1.3 The IP submitted that the delay in appointment of Registered Valuer was due to non-availability of reliable data pertaining to the operations of the CD without which appointment of Registered Valuers could not have been made as without requisite data and records, the Registered Valuers cannot quote their fees and also cannot commence their work and if such data/ record is unavailable, it will become difficult for them to complete the assignment at hand. Once he got the information regarding the assets of the CD, the process of conducting valuation was initiated. He mentioned that considering the practical difficulty in appointment of Registered Valuers within 7 days of appointment of IRP the IBBI was also constrained to amend the Regulation 27 of the CIRP Regulations, w.e.f. 06th February 2018 and substituted the word "*Interim Resolution Professional*" word with "*Resolution Professional*".
- 2.1.4 The IP further submitted that there was typographical error in date in the engagement letter of the valuer Mr. Kishori Lal and the same was issued on 31st January 2018 and the same is evidenced from the correspondence, disclosures and the valuation report.

Findings of DC

- 2.1.5 Regulation 27 of the CIRP Regulation (as applicable on 29th November 2017) when CIRP was initiated in the instant matter) provided as follows:

"27. Appointment of registered valuers.

The interim resolution professional shall within seven days of his appointment, appoint two registered valuers to determine the liquidation value of the corporate debtor in accordance with Regulation 35:"

- 2.1.6 The DC notes that the respective engagement letters of valuers viz. Crest Capital Advisors and Mr. Kishori Lal reflect that they were appointed on 30th January 2018 and 10th March 2018 respectively after a delay of 64 days and 103 days. There is no material available on record to support the averments of IP that there was a typographical error in the date of appointment of Mr. Kishori Lal. Even if the contention of IP with respect to the typographical error in the date of engagement letter of Mr. Kishori Lal is accepted, the fact remains that the appointment of both these valuers was made much beyond the time lines, prescribed under the relevant regulations.
- 2.1.7 Therefore, the DC finds IP in contravention of regulation 27 of the CIRP Regulations, regulation 7(2)(a) and regulation 7(2)(h) read with clause 13 of the Code of Conduct of the IP Regulations.

2.2 Failure to take custody and control of assets of CD:

- 2.2.1 Mr. Anil Kumar Sharma, the liquidator of the CD, in his application under section 34(3) read with section 19(2) had stated that the Mr. Anand had not taken control and custody of the assets of the CD.
- 2.2.2 In his reply to the draft inspection report, Mr. Anand admitted that he did not take control and custody of the assets of the CD since ex-management of the CD was all along co-operating. Laxity and negligence in taking control and custody of the assets of CD resulted in the movement of the assets of the CD by the ex-management.
- 2.2.3 In view of the foregoing, the Board was of the *prima facie* opinion that the IP had, *inter alia*, violated sections 18(1)(f), 25(1) and 25(2)(a) of the Code, regulation 7(2)(a) and 7(2)(h) read with clause 3, 5 and 14 of the Code of Conduct of IP Regulations.

Submission by IP

- 2.2.4 The IP submitted that in order to keep the CD as going concern as obligated on him under section 20 of the Code, he in good faith decided not to take certain assets of the CD such as desktops, laptops and software in his physical custody. These were remained at the office of the CD for operational purposes. Apart from these laptops and expired software there were no tangible or intangible assets which he was aware of.
- 2.2.5 The IP also submitted that the CD was operating from the premises of Pantel Group which was part of common management of CD and considering the nature of business and nature of the assets of the CD, and also that the ex-management of the CD were also management of the Resolution Applicant and ex-management of the CD has all along cooperated with the IP, he in good faith decided not to appoint a separate security agency.
- 2.2.6 Further, post submission of resolution plan there was considerable time gap till the order of Liquidation was passed (application for approval of the Resolution Plan was filed on 31st August 2018 and finally disposed of on 25th October 2019) and during this time ex-promoter kept IP in dark and changed the office of the Pantel Group and moved the

movable assets.

Findings of DC

2.2.7 Section 18 of the Code provides as follows:

“18. Duties of interim resolution professional

(1) The interim resolution professional shall perform the following duties, namely:-

.....

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including-.....”

2.2.8 Further, section 25 of the Codes provide as follows:

“25. Duties of resolution professional.

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;...”

2.2.9 On perusal of the allegations made in the SCN and the submissions made by the IP, the DC notes that reasons of stated cooperation by the ex-management and resulting good faith of IP for not taking physical control of the assets of the CD are not tenable. The IP even chose not to employ separate security personnel to safeguard the assets. It shows negligence, carelessness and abdication of duty by Mr. Anand which resulted in siphoning of the assets of CD by promoters during the period of CIRP.

2.2.10 In view of the foregoing, DC finds Mr. Anand in violation of section 18(1)(f), 25(1) and 25(2)(a) of the Code, regulation 7(2)(a) and 7(2)(h) read with clause 3 and 14 of the Code of Conduct of IP Regulations.

2.3 Implementation of resolution plan without approval of AA:

2.3.1 The successful resolution plan for the CD, as approved by the CoC in its meeting on 22nd August 2018, had provision in clause 4(c) for upfront payment of Rs. 60,00,000 (Rupees Sixty Lakh only) at the time of submission of offer. The bank statement of the CD indicates credit of Rs. 60,00,000 on 29th August 2018.

2.3.2 It is noted from the IP's reply to the inspecting authority on draft inspection report that even before the approval of resolution plan in terms of section 31 of the Code, the IP had made payment of Rs. 34,65,000 towards statutory dues and Rs. 13,50,000 towards his fee

out of the upfront payment of Rs 60,00,000. The resolution plan was later rejected by the AA vide its order dated 25th October 2019 and ordered liquidation of the CD.

- 2.3.3 Accordingly, the Board was of the *prima facie* view that the IP had, *inter alia*, violated sections 31 and 208(2)(a) of the Code, and Regulation 7(2)(a) and 7(2)(h) read with Clause 1, 2, 3, 9 and 14 of the Code of Conduct of IP Regulations.

Submission by IP

- 2.3.4 The IP submitted that the successful resolution applicant i.e. Pantel Technologies Private Limited was part of the same management as of the CD. Further, in the resolution plan submitted by the Resolution Applicant, it was clearly mentioned in Clause 4(c) towards "Payment Plan" that, "Upfront payment of Rs 60,00,000 at the time of submission of offer for (CIRP cost Rs. 17.67 lakh applicable taxes on CIRP Cost will be paid additionally + statutory dues of Rs 35.12 Lakh). The same was utilised accordingly by the IP as approved by the CoC of the CD. The above payment was made by the Resolution Applicant as "Upfront Payment" and not as the Earnest Money, and the request for payment of the Statutory Dues towards PF and TDS were made on specific request of the Resolution Applicant itself.
- 2.3.5 The IP further submitted that as per section 31 of the Code, there is no bar on Resolution Applicants to ask for the utilization of their own money, as by submitting a resolution plan the Resolution Applicant has bided itself to the CD. Accordingly, once the resolution plan was submitted, the Resolution Applicant performs the resolution plan unless until it is rejected by the AA.

Findings of DC

- 2.3.6 Section 31 of the Code (as per the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 as on 17th August 2018) provides as follows:
“31. Approval of resolution plan. –
(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan..”
- 2.3.7 It becomes clear from the reading of section 31 of the Code that a resolution plan needs to be approved by the Adjudicating Authority and only after such approval, it becomes binding on the stakeholders. The provisions of resolution plan do not come into effect until the same is approved in accordance with section 31. Therefore, the implementation of any provision of resolution plan cannot happen in absence of approval of resolution plan by the Adjudicating Authority. It must be noted that the Adjudicating Authority may also reject the resolution plan in terms of section 31(2) and in such case no part of the resolution plan can be implemented.

- 2.3.8 The DC also notes that the IP has shown undue haste and taken his fee of Rs 13,50,000 from such upfront payment received. In view of the foregoing, the DC is of the opinion that IP is in contravention of section 208(2)(a) of the Code, and Regulation 7(2)(a) and 7(2)(h) read with Clause 1, 2, 3, 9 and 14 of the Code of Conduct of IP Regulations.

2.4 Non-compliance of Circular No. IBBI/IP/013/2018 dated 12th June 2018:

- 2.4.1 The IP had not filed the fee and cost disclosures as mandated by the IBBI vide Circular No. IBM/IP/013/2018 dated 12th June 2018. Accordingly, the Board was of the *prima facie* view that the IP had, *inter alia*, violated IBBI Circular No. IBBI/IP/013/2018 dated 12th June 2018 and Clause 1, 2, 13 and 14 of the Code of Conduct of IP Regulations.

Submission by IP

- 2.4.2 The IP has submitted that he had filed the fee and cost disclosures of the CD on the website of the ICSI IIP and may be due to some technical issue the same was not reflecting on the website of the IPA. Further, the Cost Disclosure in Form III was emailed to the ICSI IIP vide email dated 26th November 2019 on its designated email ID: reporting@icsiip.com. The inadvertent delay caused in filing Form III was also admitted in the said email. The Form III was also uploaded on the website of IBBI on 25th May 2022.

Findings of DC

- 2.4.3 IBBI Circular no. IBBI/IP/013/2018 dated 12th June 2018 on '*Fee and other Expenses incurred for Corporate Insolvency Resolution Process*' states that:

*"9. Further, the IP is directed to disclose fee and other expenses in the relevant Form in Annexure C to the Insolvency Professional Agency of which he is a member:
(a) for all concluded CIRPs by 15th July, 2018, and
(b) for ongoing and subsequent CIRPs within the time as specified in the relevant Form."*

- 2.4.4 Annexure C of the said Circular states that the Form has to be submitted by the RP within seven days of his demitting office as RP. In the present case, Mr. Anand had demitted office as RP on 25th October 2019 and vide an e-mail dated 26th November 2019 to the IPA had sent the Form III for uploading. Further, he has admitted to inadvertent delay and requested to condone the same.
- 2.4.5 In view of the foregoing, the DC is of the opinion that Mr. Anand has contravened IBBI Circular No. IBBI/IP/013/2018 dated 12th June 2018 and Clause 13 of the Code of Conduct of IP Regulations. However, in view of the non-substantial delay and no adverse consequence resulting from it, the DC takes a lenient view on this issue.

3. ORDER

- 3.1 In view of the foregoing, the DC is of the view that Mr. Abhishek Anand failed to take

custody and control of the assets of CD and used the amount deposited by resolution applicant without getting the plan approved by AA and violated section 18(1)(f), 25(1), 25(2)(a), 31, 208 of the Code and regulation 7(2)(a), 7(2)(h) read with clause 3 and 14 of the Code of Conduct of IP Regulations.

- 3.2 The DC, in exercise of the powers conferred under section 220(2) of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Mr. Abhishek Anand (Registration No. IBBI/IPA-002/IP-N00038/2016-17/10077), for a period of one year.
- 3.3 This Order shall come into force on expiry of 30 days from the date of its issue.
- 3.4 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Abhishek Anand is providing his services, if any.
- 3.4 In view of the above Order, a copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Anand is enrolled as a member for their further necessary action.
- 3.5 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.
- 3.5 Accordingly, the show cause notice is disposed of.

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(Shri Jayanti Prasad)
Whole Time Member, IBBI

Dated: 30th January 2023

Place: New Delhi