

# **INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

## **(Disciplinary Committee)**

No. IBBI/DC/259/2025

02 January 2025

### **ORDER**

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/120/2023-IBBI//833/41 dated 29.01.2024, issued to Mr. Ankit Kumar Agarwal, who is a Professional Member of Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-001/IP-P-01708/2019 -2020/12634.

#### **1. Background**

- 1.1 The National Company Law Tribunal, New Delhi Bench (AA) had admitted the application filed under Section 9 of the Code filed by the Operational Creditor (OC) – M/s Sonia Forgings Private Limited for initiating corporate insolvency resolution process (CIRP) of Mass Metals Private Limited (CD) vide Order dated 07.11.2019 and appointed Mr. Vishnu Dutt as Interim Resolution Professional. Further, Mr. Ankit Kumar Agarwal was appointed as the Resolution Professional vide order of NCLT dated 19.12.2020.
- 1.2 The Board in the exercise of its powers under Section 218 of the Code, read with Regulations 7(2) and 7(3) of Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to investigate the CIRP of the CD.
- 1.3 The IA served a notice of investigation under regulation 8(1) of the Inspection and Investigation Regulations on 04.09.2023. However, no reply was received by the IA. Consequently, the IA submitted the Investigation Report to the Board on the basis of materials available on record.
- 1.4 Based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the IBBI issued the SCN to Mr. Ankit Kumar Agarwal on 29.01.2024. The SCN alleged contraventions of several provisions of the Code, the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (CIRP Regulations) and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations). On receipt of no response, when Mr. Ankit Agarwal was contacted over his mobile number and for his convenience, the SCN was sent on

his Whatsapp on 17.12.2024 and the hardcopy of the same was sent on 18.12.2024 and received by Mr. Ankit Kumar Agarwal on 20.12.2024. Mr. Ankit Kumar Agarwal replied to the SCN vide his email dated 24.12.2024.

- 1.5 The SCN and other materials available on record were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Ankit Kumar Agarwal availed an opportunity of personal hearing before the DC on 27.12.2024.

## **2. Alleged Contraventions, Submissions of Mr. Ankit Kumar Agarwal and findings of the DC**

### **Alleged Contravention in the SCN**

- 2.1 A secured financial creditor filed an appeal before the NCLAT Delhi (Appellate Authority) against Mr. Ankit Kumar Agarwal for rejecting their claim on grounds of delay. The notice on this appeal was sent to Mr. Ankit Kumar Agarwal on 20.05.2022, wherein the erstwhile legal counsel of Mr. Ankit Kumar Agarwal appeared on his behalf and pleaded to allow her withdrawal of appearance on behalf of Mr. Ankit Kumar Agarwal. The same was allowed by the Appellate Authority on 12.10.2022.
- 2.2 Subsequently, despite the repeated notices sent to Mr. Ankit Kumar Agarwal by the registry on the directions of the Hon'ble NCLAT Delhi (Appellate Authority) in the said appeal, as noticed from the orders dated 24.04.2023, 20.07.2023 and 21. 07.2023 directing Mr. Ankit Kumar Agarwal to appear before the Appellate Authority, he failed to appear and the Appellate Authority made adverse observation against Mr. Ankit Kumar Agarwal vide order dated 02.08.2023 for not appearing before the Appellate Authority despite the specific direction given to him. The said adverse observations of Hon'ble NCLAT are as under:

*“10. In such circumstances, where the scheme of the Act is such in which the RP has a pivotal role, does it behove for the RP to avoid his appearance in the Court despite various notices issued to him and is not even keeping a track of the case when he had engaged his counsel, namely, Honey Satpal who had to leave the case in between only for the reason that she was not receiving any instructions from him*

*11. In such circumstances, we deprecate the conduct of the RP in the strongest words and direct the Registrar of this Court to send this order to the Insolvency and Bankruptcy Board of India (IBBI) and also to the agency to which the RP is associated/registered, for the purpose of taking necessary action, in accordance with law so that this Court may not be taken for a ride by the*

*RP, like Respondent No. 1 in future because of whose absence, the present appeal is not making any head way .”*

- 2.3 It was also observed that a notice of investigation was issued to Mr. Ankit Kumar Agarwal on 04.09.2023 by IA requesting him to provide response to the observations made by the Appellate Authority. However, despite subsequent reminders sent vide e-mail dated 29.12.2023 and 08.01.2024 seeking his reply, Mr. Ankit Kumar Agarwal failed to provide any response to the said notice of investigation sent to him.
- 2.4 Regulation 8(2) of the Inspection and Investigation Regulations provides that the IA may require the service provider or an associated person to submit records as may be required, before the commencement of investigation. Regulation 8(8) of the Inspection and Investigation Regulations requires an Insolvency Professional to give to the IA all assistance which the IA may reasonably require. Further, Clause 18 of the Code of Conduct also require that the IP must cooperate and be available for investigation carried out by the Board. It is alleged in the SCN that despite receipt of information requisition from IA as aforesaid, Mr. Ankit Kumar Agarwal has deliberately disobeyed the notices of IA and evaded the same.
- 2.5 It is alleged in the SCN that the non- cooperation by Mr. Ankit Kumar Agarwal as aforesaid, apart from being in contravention of provisions of Section 208(2)(e) of the Code, Regulation 8(2), 8(4) and 8(8) of Inspection and Investigation Regulations, Regulation 7(2)(h) of the IP Regulations read with Clauses 18 and 19 of the Code of Conduct specified in the First Schedule of IP Regulations, also substantiate the strong observations of Hon'ble NCLAT, against unbecoming conduct of Mr. Ankit Kumar Agarwal in avoiding appearance.

#### **Submissions by Mr. Ankit Kumar Agarwal**

- 2.6 Mr. Ankit Kumar Agarwal in his submissions has submitted that the remuneration as RP was paid to him until June 2020 as the resolution plan was discussed and finalised in June 2020. He further submitted that Primus Resolutions was the Insolvency Professional Entity (IPE) in this case which was taking 70% of the remuneration and 30% was coming to him. The email of the CD was owned by the IPE and Mr. Ankit Kumar Agarwal did not had access to it.
- 2.7 Mr. Ankit Kumar Agarwal further submitted that the records of the CIRP was maintained by the IPE, and it was their responsibility as part of the fee sharing arrangement. Mr. Ankit Kumar Agarwal further submitted that the advocate was not appointed by him and all her appearance in

NCLT/NCLAT after approval of resolutions were not directed by him and therefore, he does not hold any responsibility of her conduct.

- 2.8 Mr. Ankit Kumar Agarwal has further contended that the fiduciary responsibility as RP ended from June 2020 once he offboarded as RP and the fiduciary contract ended and therefore, he did not deem necessary to keep track of any proceedings on the case. Further, he submitted that the IPE was responsible to verify the claims which were reviewed by him on sample to ensure that work is done with integrity.

### **Analysis and Findings of the DC**

- 2.9 The DC notes that the submissions by Mr. Ankit Kumar Agarwal reflect his ignorance of the duties bestowed upon a Resolution Professional under the Code. Mr. Ankit Kumar Agarwal has contended that his fiduciary responsibility as RP ended from June 2020 when his remuneration was stopped when the resolution plan was submitted to the AA. He has further supplemented his contention by stating that he resigned as director from the IPE who was primarily responsible for the CIRP as it was getting 70% of the remuneration. The email relating to CIRP of the CD was owned by IPE and he does not have any access to it.
- 2.10 In this regard, the DC notes that contrary to the assertion of Mr. Ankit Kumar Agarwal, the duties of the Resolution Professional do not end with the submission of resolution plan with the AA. A Resolution Professional plays a critical role in the whole insolvency resolution process and is the key to the outcome of the insolvency resolution process. The BLRC Report, 2015 captures the importance of resolution professional as follows –

*“This entire insolvency and bankruptcy process is managed by a regulated and licensed professional namely the Insolvency Professional or an IP, appointed by the adjudicator. In an insolvency and bankruptcy resolution process driven by the law there are judicial decisions being taken by the adjudicator. But there are also checks and accounting as well as conduct of due process that are carried out by the IPs. **Insolvency professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process.***

*An IP may hold any of the following roles under the Code:*

- 1. Resolution professional (RP) to resolve insolvency for a firm or an individual;*

2. *Bankruptcy Trustee in an individual bankruptcy process;*

3. *Liquidator in a firm liquidation process;*

*In administering the resolution outcomes, the role of the IP encompasses a wide range of functions, which include adhering to procedure of the law, as well as accounting and finance related functions. The latter include the identification of the assets and liabilities of the defaulting debtor, its management during the insolvency proceedings if it is an enterprise, preparation of the resolution proposal, implementation of the solution for individual resolution, the construction, negotiation and mediation of deals as well as distribution of the realisation proceeds under bankruptcy resolution. In performing these tasks, **an IP acts as an agent of the adjudicator. In a way the adjudicator depends on the specialized skills and expertise of the IPs to carry out these tasks in an efficient and professional manner.***

- 2.11 Further, there are several duties of the Resolution Professional which exists even after the approval of resolution plan by the AA, e.g. the duty to forthwith send copy of the order of AA approving or rejecting the resolution plan to the resolution applicant under regulation 39(5) of the CIRP regulations; the mandate to intimate each claimant, the principal or formulae, as the case may be, for payment of debts under the resolution plan, within fifteen days of approval of resolution plan by the AA under regulation 39(5A) of the CIRP Regulations; etc.
- 2.12 Further, as per section 39A (4) of the CIRP Regulations, resolution professional is obliged to produce the records as may be required under the Code and the Regulations. This regulation is to ensure that records are maintained and produced wherever required. This duty entrusted on the RP also ensures that if any action regarding the process is in dispute even after conclusion of the CIRP, the RP, being the custodian of records of the CIRP, shall have to produce the records before appropriate authority, so that the dispute can be resolved based on those records. So, this regulation casts a natural duty on the IP to defend the actions taken by him during the process by adducing necessary evidence in that regard.
- 2.13 Accordingly, in view of the foregoing, the DC finds that a Resolution Professional cannot claim that he has no duty after the approval of resolution plan in a particular CIRP. The duty of an Insolvency Professional, in respect of resolution professional of his assignment, continues at all time times, as and when required, including his accountability towards the AA or Appellate Authority or Board with respect to that CIRP. In the instant matter, when the appeal with respect to rejection of claim by Mr. Ankit Kumar Agarwal during his assignment as RP in the CIRP of

the CD, was pending before the Appellate Authority, it was the bounden duty of Mr. Ankit Kumar Agarwal, as a professional, to appear before the Appellate Authority as and when required to defend his action of rejecting the claim.

- 2.14 On perusal of the NCLAT Order dated 02.08.2023, the DC observes that notice from NCLAT was issued to Mr. Ankit Kumar Agarwal on three different e-mail ids viz. [massmetals@primusresolutions.in](mailto:massmetals@primusresolutions.in), [ankit.agarwal@outcomess.com](mailto:ankit.agarwal@outcomess.com), and [legal@primusresolutions.in](mailto:legal@primusresolutions.in). He has submitted that the email of mass metals resolution was owned by IPE. However, he has not submitted any contentions regarding non-receipt of email on other two email ids, including his personal email id. Further, while registering with the Board as Insolvency Professional, Mr. Ankit Kumar Agarwal has the duty to give only those email-ids, which are accessible to him.
- 2.15 Accordingly, the non-appearance of Mr. Ankit Kumar Agarwal and his contention that he should not be made accountable after the completion of his assignment (on his part) falls short of the professional conduct of Mr. Ankit Kumar Agarwal.
- 2.16 Mr. Ankit Kumar Agarwal has also submitted that the records of the CIRP are maintained by IPE, and it was their responsibility as part of the fee sharing agreement. Also, as per Mr. Ankit Kumar Agarwal, the IPE was responsible to verify the claims which were reviewed by him on sample to ensure that work is done with integrity. Although during the personal hearing, Mr. Ankit Kumar Agarwal had promised to provide the said fee-sharing agreement, the same has not been provided by him to substantiate his submissions. Further, the DC notes that in terms of section 25(2)(e) of the Code read with regulation 13 of the CIRP regulations, it is the duty of Resolution Professional to verify the claims received by him and maintain an updated list of the claims. Further, under regulation 39A of the CIRP Regulations, it is the duty of the Resolution Professional to preserve copies of all such records which are required to give a complete account of the CIRP.
- 2.17 The DC further notes that in terms of regulation 27(2) of the CIRP Regulations, a resolution professional may appoint any professional to assist him in discharge of his duties, in conduct of the CIRP. However, the onus of responsibility and accountability of the duties of Resolution Professional is not shifted onto the other professional so appointed by the Resolution Professional. It remains with the Insolvency Professional. Further, a Resolution Professional cannot outsource his duty to any other person including an IPE. The IBBI circular No.

IP/003/2018 dated 03.01.2018 had clarified that an insolvency professional shall not outsource any of his duties and responsibilities under the Code.

- 2.18 Further, in terms of regulation 8(4) of the Inspection and Investigation Regulations, a Resolution Professional is required to produce before the Investigating Authority such records in his custody or control and furnish to the Investigating Authority such statements and information relating to its activities within such time as the Investigating Authority may require.
- 2.19 The DC notes that a resolution professional is the major driving force of the CIRP, and the information provided by the resolution professional allows the Board to carry out various crucial functions entrusted upon it under the Code. The Board needs all and accurate information of the CIRPs to carry out its statutorily mandated functions of promoting the development of and regulating the working of regulated entities and other institutions; formulating standards for functioning of regulated entities, monitoring the performance of regulated entities; collecting and maintaining the records relating to insolvency cases; promoting transparency and best practices in governance; conducting periodic study and research; etc.
- 2.20 Accordingly, the monitoring of regulated entities through inspections and investigations is an important activity exercised by the Board. It is the duty of all regulated entities to cooperate with the Board in exercising its statutory mandate for the overall purpose of achieving the objectives of the Code. Not extending support to the Board is an act of dissidence by such an Insolvency Professional and makes mockery of the statutory obligations enshrined under the Code. Therefore, the same needs to be viewed sternly and strictly.
- 2.21 Accordingly, the DC finds Mr. Ankit Kumar Agarwal to be in contravention of Section 208(2)(e) of the Code, Regulation 8(2), 8(4) and 8(8) of Inspection and Investigation Regulations, and Regulation 7(2)(h) of the IP Regulations read with Clauses 18 and 19 of the Code of Conduct specified in the First Schedule of IP Regulations

### **3. ORDER**

- 3.1 In view of the foregoing, the DC in the 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-

- (i) Cancels the registration of Mr. Ankit Kumar Agarwal (Registration No. IBBI/IPA-001/IP-

P-01708/2019 -2020/12634), and

- (ii) Imposes a penalty of Rs. 1,00,000/- (Rupees one lakh only) on Mr. Ankit Kumar Agarwal and directs him 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 15 days from the date this order takes effect and shall submit a copy of the transaction receipt to the Insolvency and Bankruptcy Board of India

- 3.2 This Order shall come into force 30 days after the date of issuance of this order.
- 3.3 A copy of this order shall be forwarded to Indian Institute of Insolvency Professionals of ICAI where Mr. Ankit Kumar Agarwal is enrolled as a member.
- 3.4 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.

Sd/-

(Sandip Garg)

Whole Time Member

Insolvency and Bankruptcy Board of India

Dated: 02 January 2025

Place: New Delhi