

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/225/2024

05 July 2024

Order

This Order disposes of the Show Cause Notice (SCN) No. COMP-11015/155/2021-IBBI/739/528 dated 19.04.2023 issued to Mr. Arun Jain who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with registration No. IBBI/IPA-001/IP-P00590/2017-18/11029 and a Professional Member of the Indian Institute of Insolvency Professionals of ICAI (IIIP of ICAI) residing at Villa No. 34, Block 4, 2nd Floor, Eros Garden, Charmwood Village, Faridabad, Haryana- 121009.

1. Background

- 1.1 The NCLT, New Delhi (AA) vide order dated 28.02.2020, admitted application under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code), filed by Indu Kumar & Ors., Shraddha Kalhan and Sandeep Kalhan, Financial Creditors (FCs) for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s Saha Infratech Private Limited (Corporate Debtor/CD) and appointed Mr. Arun Jain as Interim Resolution Professional (IRP). Later, the AA vide order dated appointed Mr. Shiv Nandan Sharma as IRP who was later confirmed as Resolution Professional (RP).
- 1.2 The AA vide its' order dated 05.04.2021 made certain observations regarding Mr. Arun Jain and referred to the Board to initiate disciplinary proceedings against him. The IBBI, 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 Mr. Arun Jain in the CIRP of CD. Accordingly, a notice under regulation 8(1) of the Investigation Regulations was issued to Mr. Arun Jain on 04.07.2022 to which he submitted his reply on 27.07.2022.
- 1.3 The IBBI formed a *prima facie* view based on the findings in the investigation report in respect of his role as an IRP of the CD alleging contravention of various provisions of the Code and its underlying regulations and issued the SCN to Mr. Arun Jain on 19.04.2023. Mr. Arun Jain did not provide any reply to the SCN.
- 1.4 The Board referred the SCN to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Arun Jain availed opportunity of personal hearing through virtual mode before the DC on 25.04.2024.

2. Alleged Contraventions, Submissions, Analysis and Findings

The contravention alleged in the SCN and Mr. Arun Jain's oral submissions thereof are summarized as follows.

3. Contravention

Non- communication to AA about ineligibility.

- 3.1 It was observed that Mr. Arun Jain had submitted a letter of consent on 12.12.2018 to the AA for the proposed CIRP against the CD. On admission of the application under Section 7 of the Code on 28.02.2020, wherein he was appointed as IRP for the CD, on the same day email was sent by Court Officer, New Delhi, Bench II to him communicating the said order of the AA. Meanwhile, regulation 7A was incorporated in IBBI (Insolvency Professionals) Regulation (IP regulation) *vide* notification dated 23.07.2019, providing that an IP shall not accept or undertake an assignment after 31.12.2019 unless he holds a valid Authorization for Assignment (AFA) issued by the insolvency professional agency (IPA) on the date of such acceptance or commencement of such assignment, as the case may be.
- 3.2 It was further noted that on 28.02.2020 when Mr. Arun Jain was appointed IRP, he did not have a valid AFA. Hence, in terms of newly inserted regulation 7A of the IP Regulations, he was not qualified to act as IRP in the CIRP of the CD. As the CIRP is a time bound process, he was required to immediately inform the AA as well as other stakeholders about his ineligibility to act as an IRP.
- 3.3 It was further observed that Mr. Arun Jain failed to inform the AA about his ineligibility to act as the IRP. The AA *vide* its order dated 19.10.2020 passed in an application filed for seeking replacement of Mr. Arun Jain as IRP, noted that no such application has been filed by Mr. Arun Jain and he was directed to explain the reasons as to why contempt proceedings should not be initiated against him.
- 3.4 The AA *vide* its' order dated 05.04.2021, also raised doubt on his conduct by stating that “*---an inference can be drawn that the IRP Mr. Arun Jain in connivance/ collusion with the Corporate Debtor as well as the applicants/Financial Creditors obstructed the proceedings of CIRP and in this way, caused a serious and irreversible obstruction to the judicial proceedings. The CIRP, which is required to be completed within the prescribed period, has been virtually kept in abeyance due to conduct of the IRP*”. The fact that Mr. Arun Jain did not inform the AA about his ineligibility for more than 6 months and during this period, settlement between CD and applicant was under progress gives strength to the inference drawn by the AA.

- 3.5 In view of the above, the Board held the *prima facie* view that Mr. Arun Jain had, *inter alia*, violated Sections 208(2)(a) and 208(2)(e) of the Code, Regulation 7(2)(h) of the IP Regulations read with clauses 1, 13 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

4. Analysis and Findings.

- 4.1 Mr. Arun Jain was provided opportunity to submit his reply to the SCN and/ or any submissions after the hearing before the DC on 25.04.2024. However, he did not provide any written reply or submissions pursuant to the SCN. However, he requested for personal hearing and same was availed by him on 27.04.2024. It was submitted by him during the course of hearing that reply/submission to the SCN dated 19.04.2023 could not be provided because of personal difficulty. He requested further seven days' time to provide any written submissions/ reply along with evidence and/or actions taken by him in support of his submissions. He was also requested to submit evidence regarding any action taken by him regarding the inaction of the advocate and the adverse observation in the AA's order if it does not represent the correct situation. A reminder was also sent through email dated 27.05.2024. However, till date no reply has been received. Hence, the DC proceeds to dispose of the SCN on the basis of his oral submissions and the documents forwarded to the DC by the Board including his reply to the Board on 22.06.2021. The DC notes the timeline for the events as follows:

Date	Remarks
12.12.2018	Mr. Arun Jain gave letter of consent to AA to act as IRP of the CD
23.07.2019	The Board issued notification no. IBBI/2019-20/GN/REG045 notifying provisions related to AFA providing that " <i>An insolvency professional shall not accept or undertake an assignment after 31st December, 2019 unless he holds a valid authorisation for assignment on the date of such acceptance or commencement of such assignment,...</i> "
01.01.2020	Since Mr. Arun Jain had not applied for AFA, he was not qualified to act as IRP for any matter, including the instant CIRP of the CD.
21.02.2020	Mr. Arun Jain applied for issuance of AFA in Form AA to IIIP of ICAI
28.02.2020	The AA admitted the application for initiation of CIRP of the CD and appointed Mr. Arun Jain as IRP. The fact that Mr. Arun Jain did not hold AFA could not be brought in the knowledge of the AA as he was neither a party nor was he aware of the proceedings.

28.02.2020	The AA informed Mr. Arun Jain on the same day <i>vide</i> email that he has been appointed as IRP of the CD and that the order was pronounced in the matter on 28.02.2020.
01.03.2020	Mr. Arun Jain submitted to the Board that on becoming aware of his appointment, he immediately informed counsel of the applicant FCs about his ineligibility. However, the counsel informed that he has no further instructions from his clients/ applicant FCs.
03.03.2020	Mr. Arun Jain submitted that since there was no further response from the counsel of the applicant FCs, he engaged another independent advocate for intimating the AA about his ineligibility.
06.03.2020	IIIP of ICAI intimated Mr. Arun Jain regarding rejection of his application for AFA and also informed that he has option for filing appeal to the Membership Committee of IIIP of ICAI. However, there is no record of any appeal being filed by Mr. Arun Jain.
12.03.2020	Mr. Arun Jain provided scanned copy of affidavit signed by him sent to his advocate for filing before the AA. He submitted to the Board that he shared the scanned copy on email and dispatched hard copy to the office of his counsel for filing. He submitted that he was given to understand that necessary application has been filed before the NCLT and the same would be listed in ordinary course.
16.03.2020	Mr. Arun Jain submitted to the Board that the AA stopped hearing the matters. And he was under impression that the said application would have been filed.
22.03.2020	Mr. Arun Jain submitted that nationwide lockdown was imposed, and normal functioning of the Court came to a halt and only urgent matters were taken up.
11.09.2020	Mr. Arun Jain received one email from counsel of the FC applicants whereby they served him an application seeking withdrawal of proceedings under section 12A read with regulation 30A of CIRP Regulations.
14.09.2020	Mr. Arun Jain informed the counsel of FC applicants that he had never taken charge as IRP of the CD as he was ineligible to take up any assignment under the Code as per revised guidelines applicable from 01.01.2020. He stated that an application to replace him as IRP has been filed on his behalf by Mr Karan Malhotra, Advocate which is pending because of Covid-19 pandemic. He stated that since he never took charge

	as IRP of the CD he cannot file Section 12A petition and said fact can be brought into the knowledge of the AA.
14.09.2020	The FC applicants filed the application for withdrawal of CIRP before the AA.
19.10.2020	<p>Mr. Arun Jain attended the proceedings before the AA where the application seeking withdrawal of CIRP was listed along with applications seeking appointment of new IRP filed by several applicants whose copy was not supplied to him. The AA observed as follows:</p> <p><i>“The Counsel for the Applicant is present and prayed for appointment of new RP on the grounds that the IRP Mr. Arun Jain who was appointed vide Order dated 28.02.2020 of this Tribunal has failed to take charge of the Corporate Debtor. He has neither made the public announcement of the CD being under CIR Process nor formed the CoC till date. Further, it has been brought to our notice that an email dated 19th June, 2020 sent by the IRP Mr. Arun Jain to the Office of the Counsel for the Applicant has recorded that he had filed an Application before this Authority for Appointment of an alternative RP. Whereas, it does not appear that any such Application has been filed before this Authority. It appears from the conduct of the IRP Mr. Arun Jain that the Order of CIRP admission dated 28th February, 2020 passed by this Authority has been completely flouted and therefore, he should explain the reasons as to why the contempt proceeding should not be initiated against him. The IRP Mr. Arun Jain is present in person. He is directed to file a short Affidavit to explain the reasons for not initiating CIRP till date against the CD and the reasons why he could not inform this Authority about the same. The above said Affidavit shall be filed by the RP, Mr. Arun Jain on or before 23rd October, 2020.”</i></p>
23.10.2020	<p>Mr. Arun Jain submitted that he filed short affidavit before the AA where he stated that <i>“That on 12.03.2020 deponent had shared scan copy of documents with the counsel. Thereafter, the deponent was given to understand that necessary application was / would be filed with the Hon’ble Adjudicating Authority as the deponent had on his part had taken bonafide steps to approach this Hon’ble Adjudicating Authority and the same would be listed in ordinary course. Because of all this the deponent got the genuine and bonafide impression that the said application would have been filed. It was because of the said bonafide inadvertent impression that an application had been filed to this effect, the deponent</i></p>

	<p><i>had also genuinely communicated the same to other stakeholders and parties, without any reasons to believe that the same was not done.”</i></p> <p>Mr. Arun Jain also submitted acknowledgement for uploading of a document on same date on the portal of the AA.</p>
23.02.2021	Appeal was filed by Aashray Social Welfare Society before the NCLAT on 23.02.2021
08.03.2021	<p>The NCLAT disposed of the appeal observing as follows:</p> <p><i>“We dispose the Appeal with directions to the Ld. Adjudicating Authority to urgently pass whatever orders the Adjudicating Authority wants to pass with regard to appointment of IRP in place of Mr. Arun Jain who it is stated has conveyed unwillingness to take up the assignment. If the Adjudicating Authority wants to take action of contempt regarding the conduct of IRP Mr. Arun Jain it would be open for the Adjudicating Authority to proceed with the steps regarding contempt, but CIRP initiated on 28.02.2020 cannot be kept in abeyance. The Adjudicating Authority can consider referring matter of the IRP Mr. Arun Jain to IBBI also if it wants but should immediately pass orders to substitute.”</i></p>
12.03.2021	The AA reserved order in the application filed for withdrawal of CIRP and appointment of new IRP.

4.2 Subsequently, the AA passed the order on 05.04.2021. The AA dismissed the application for withdrawal of CIRP. It also observed as follows:

“3...Here, a question arises, if the IRP after initiation of CIRP on 28.02.2020 failed to perform his duties, why the petitioners did not take appropriate steps for replacement of the IRP and why did they sit over the matter for such a long time. This has not been explained by the applicants. Silence of the applicants on this point makes one to believe that the present application has been filed by them in connivance with the Corporate Debtor and the IRP has also colluded with the Corporate Debtor, who despite his consent and after appointment as IRP of the Corporate Debtor by the Adjudicating Authority, has failed to initiate the CIR process and discharge his duties as required under the IBC, 2016.

30. The circumstances suggest that the IRP deliberately did not make the Public Announcement, so that the Corporate Debtor could get time to settle the matter with the Applicants, who initiated the CIR Process. Further, the aforesaid Applicants and IRP in connivance with the Corporate Debtor abused the process of law in order to avoid the strict

condition of terminating the CIRP by 90% Votes of the Member of the CoC as stipulated in Section 12A of IBC, 2016.

31. At this juncture, we would like to make it clear that under Section 7 of the IBC, 2016 at the time of filing of the application, the petitioner is required to mention the name of the IRP in the application and enclose his/her consent form. Accordingly, we notice that the consent form (Form 2) was given by the IRP Mr Arun Jain, which is at page 74 of the main petition and he was appointed IRP. Even then, Mr. Arun Jain IRP failed to perform his duties under the law and the applicants have knowingly not taken any step to file an application for his replacement.”

4.3 The AA while deciding the application for appointment of new IRP observed as follows:

“42. Therefore, we are of the considered view that by not performing his duties as an IRP of the Corporate Debtor after his appointment on 28.02.2020, the Mr. Arun Jain IP, has contravened the provisions of the IBC Code, 2016 as well as Regulations thereunder and his conduct is not free from doubts. And an inference can be drawn that the IRP Mr. Arun Jain in connivance/ collusion with the Corporate Debtor as well as the applicants/ Financial Creditors obstructed the proceedings of CIRP and in this way, caused a serious and irreversible obstruction to the judicial proceedings. The CIRP, which is required to be completed within the prescribed period, has been virtually kept in abeyance due to conduct of the IRP.

43. We further notice that vide order dated 19.10.2020, Mr Arun Jain IRP was asked to explain the reasons as to why contempt proceedings should not be initiated for flouting the order of admission of the CIRP. He was also directed to file a short Affidavit by or before 23.10.2021 to explain the reasons for not initiating CIRP against the CD and the reasons why he could not inform this Authority about the same. Mr Arun Jain IRP neither submitted the explanation as sought for nor filed the Affidavit. All this shows that the IRP not only failed to perform the duty of initiating CIRP of the CD but also disobeyed the directions given by this Adjudicating Authority. The non-initiation of CIRP of the Corporate Debtor is a serious dereliction of duty on the part of the IRP and for which apart from the contempt proceedings, disciplinary proceeding must be initiated against the IRP.”

4.4 Mr. Arun Jain submitted to the Board that he informed the counsel of the applicant FCs regarding not having AFA which is a requirement without which assignment cannot be accepted by him. However, he has not submitted any evidence in this regard. Hence this submission of Mr. Arun Jain remains unsubstantiated.

- 4.5 Mr. Arun Jain in his reply dated 22.06.2021 to the Board submitted that as there was no response from the counsel of applicant FCs, he engaged independent advocate to intimate the AA about his ineligibility to take up the assignment. In this regard, he has submitted a copy of email dated 03.03.2020 to his counsel stating as follows: *“Please inform the Court on my behalf that as on date I am not eligible to take up the assignment. Please do the needful at the earliest”*. This was followed by another email dated 12.03.2020 wherein he has attached the copy affidavit dated 12.03.2020. However, it is seen from the content of email that it does not bring out any reasons about his ineligibility to take up the assignment. It also does not support earlier submissions of Mr. Arun Jain regarding contacting applicant FCs before contacting his independent advocate. Further the signed affidavit dated 12.03.2020 was also examined and it was seen that it is in nature of affirming the content of the application as true and correct. However, it is not backed by any application contents of which have been affirmed. In absence of the same, it is not clear whether the affidavit was to support the application informing the AA that he is ineligible to take up the assignment. Thereafter, there is no submission by Mr. Arun Jain about any follow up regarding filing of the application before the AA or its hearing or listing before the AA. Therefore, it is clear that Mr. Arun Jain did not follow up with his counsel after signing and sending a bare affidavit dated 12.03.2020.
- 4.6 He further stated that he received an email on 11.09.2020 from counsel of FC applicants requesting to file application for withdrawal of CIRP. He replied to the same on 14.09.2020 stating that he had never taken charge as IRP of the CD as he was ineligible to take up any assignment under the Code. He stated that he filed an application to replace IRP through Mr Karan Malhotra, Advocate which is pending because of Covid-19 pandemic. He further stated that he never took charge as IRP of CD, hence, he cannot file Section 12A petition and same facts can be brought to the knowledge of the AA. Even at this stage, Mr. Arun Jain did not take any steps to find out the status of the application and get himself replaced at an early date so that the CIRP can move forward.
- 4.7 The applicant FC filed application for withdrawal of CIRP which was listed on 19.10.2020 where adverse observation was made by the AA against Mr. Arun Jain and he was asked to file his reply before 23.10.2020. He submitted to the Board a copy of the affidavit dated 22.10.2020 and copy of the receipt for filing before the AA on 23.10.2020. However, the AA in its order dated 05.04.2021 observed that no reply has been filed by Mr. Arun Jain.
- 4.8 In the same order after examining the series of events, it was observed by the AA that there was connivance between the IRP, CD and the FC applicants and by not issuing public announcement, it gave time to CD to settle the matter with the FC applicants.
- 4.9 The DC notes that Mr. Arun Jain again failed to ensure that his reply to the explanation sought by the AA, is placed on the record of the AA for its consideration. It shows his lackadaisical attitude of Mr. Arun Jain in informing the AA even in face of contempt.

- 4.10 The DC notes that despite opportunities granted to him for submitting reply to the SCN dated 19.04.2023, he did not file any reply or any evidence and/or actions taken by him in support of his submissions. He also did not submit evidence regarding any action taken by him regarding the inaction of the advocate and the adverse observation in the AA's order if it does not represent the correct situation. It is observed that the AA has made serious observations being in connivance/ collusion with the CD as well as the applicants FCs by ensuring that CIRP does not proceed due to his inaction. However, he has not rebutted these observations by way of a miscellaneous application or an appeal. He has also not made any effort to get his affidavit (stated to have been filed on 23.10.2020) to be placed before the AA and considered by the AA.
- 4.11 Since Mr. Arun Jain has not taken any steps in the CIRP of CD, the promoters of the CD were still in the possession of the CD which makes the order of the AA admitting CD into CIRP ineffective and adversely affecting the interest of the stakeholders. The carelessness of Mr. Arun Jain led to delay of more than one year in CIRP as the new IRP was appointed only on 05.04.2021 by the AA. The plight of the stakeholders can be noted from the applications filed by them before the AA and the NCLAT for appointment of a new IRP.
- 4.12 Thus, the conduct of Mr. Arun Jain for not presenting the facts of his disqualification before the AA in a timely and diligent manner, has hampered the CIRP. It is a well admitted fact that CIRP is a time bound process, and such act has caused enough suffering to the timelines stipulated under Code for completion of CIRP. The act of Mr. Arun Jain in not informing the AA in a timely manner not only shows his ineptitude but appears to be a deliberate attempt to ensure that the CIRP does not proceed. Hence, the DC upholds the contravention stated in the SCN.

5. Order

- 5.1 In view of the forgoing discussion, SCN, reply to the SCN, and oral submissions made by Mr. Arun Jain, the DC finds Mr. Arun Jain in contravention of section 208(2)(a) and (e) of the Code, regulation 7(2)(h) of IP Regulations read with clauses 1, 13 and 14 of the Code of Conduct.
- 5.2 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 suspends the registration of Mr. Arun Jain (registration no. IBBI/IPA-001/IP-P00590/2017-18/11029) for a period of four years.
- 5.3 This Order shall come into force after expiry of 30 days from the date of its issuance.

- 5.4 A copy of this order shall be sent to the CoC/Stakeholders Consultation Committee (SCC) of all the corporate debtors in which Mr. Arun Jain is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Arun Jain.
- 5.5 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.
- 5.6 Accordingly, the show cause notice is disposed of.

Sd/-
(Sandip Garg)
Whole Time Member
Insolvency and Bankruptcy Board of India

Sd/-
(Jayanti Prasad)
Whole Time Member
Insolvency and Bankruptcy Board of India

Dated: 05 July 2024
Place: New Delhi