

# **Indian Institute of Insolvency Professionals of ICAI**

## **(Disciplinary Committee)**

**DC. No. - IIIPI/DC/30/2020-21**

### **ORDER**

In the matter of Mr Rajesh Samson (Respondent) under Clause 15(1) of the Disciplinary Policy of IIIPI read with Clause 24(1)(c) of IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, (2016)

**1.0** This order disposes of the Show Cause Notice dated 31-08-2020 (SCN) issued to the respondent, Deloitte Touche Tohmastu India LLP 7th Floor, Building 10 Tower B, DLF Cyber City Complex, DLF City Phase II, Gurugram, Haryana, 122002. Respondent is a professional member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No. IBBI/PA-001/IP-P00240/2017-2018/10469. The Disciplinary Committee of IIIPI (DC) issued SCN to respondent, based on the reference received from the Monitoring Committee in respect of taking up assignment without holding valid Authorization for Assignment (AFA), in corporate insolvency resolution process (CIRP) of South East U.P. Power Transmission Company Limited. Respondent submitted his contention to the SCN vide letter dated 21-09-2020. An opportunity for personal hearing was provided to the respondent on 26-10-2020 by the Disciplinary Committee (DC). Accordingly, he appeared before the DC of IIIPI through video conferencing and made oral submissions.

**2.0** The allegation against the respondent is that in spite of insertion of Regulation 7A in the IP Regulations, vide notification dated 23-07-2019, which requires for any IP to procure a valid AFA before undertaking any assignment after 31-12-2019, he accepted the assignment in the CIRP of South East U.P. Power Transmission Company Limited., without holding a valid AFA. The NCLT has confirmed the appointment of the respondent as an IRP vide order dated 16-07-2020.

**3.0** Respondent in reply to SCN submitted that when Respondent was appointed as “IRP on 16-07-2020, he was obligated to accept the appointment as the IRP for the Corporate Debtor, as his consent was given to the Hon’ble Adjudicating Authority as on 04-04-2019”. Respondent further submitted that “without prejudice, a retrospective application cannot be given to Regulation 7A to the matters where acceptance had already been made prior to introduction of Regulation 7A in the IP Regulations.”

During the personal hearing the Respondent reiterated the reply to SCN and added that he demitted the office of IRP on 07.09.2020.

**4.0** The DC after taking into consideration the SCN, the reply to SCN, the oral and written submission of the respondent and also the provisions of the Code, rules and the regulations

made thereunder noted that the Regulation 7A of IP regulations requires every IP to have AFA before undertaking any assignment after 31st December 2019. Regulation 7A reads as follows:

*“7A. 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, as the case maybe:*

*Provided that provisions of this regulation shall not apply to an assignment which an insolvency professional is undertaking as on-*

*(a) 31st December, 2019; or*

*(b) the date of expiry of his authorisation for assignment.”*

**5.0** The DC noted and considered all submissions given by the respondent and is of the opinion that respondent is not guilty of Professional Misconduct, as the regulation i.e. 7A of IP Regulations came into effect from 01-01-2020 whereas the respondent had given his consent on 04-04-2019 and appointment of the respondent as IRP was confirmed by the NCLT, based on his written consent provided on 04-04-2019.

**6.0** In view of the above, in exercise of its powers conferred under Clause 24(1) (c) of IBBI (Model Bye Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 read with clause 15(1) of the Disciplinary Policy of IIPPI, DC hereby decides the respondent as not guilty. Accordingly, the Show Cause Notice is disposed of.

**7.0** This order shall come into force from the date of its issue.

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

**Date: 01-12-2020**

**Place: Delhi**

**CERTIFIED TRUE COPY**

**Sd/-**

**Mr. Satish Marathe, (Chairman)**

**CA. Atul Gupta, (Member)**

**Mr. Satpal Narang, (Member)**

**CA. Rahul Madan, (Member)**

**Copy to:**

1. Insolvency and Bankruptcy Board of India.

2. Indian Institute of Insolvency Professionals of ICAI- Members Record