

**Indian Institute of Insolvency Professionals of ICAI
(Disciplinary Committee)**

DC. No. IIIPI/DC/32/2021-22

ORDER

In the matter of Mr. Shailendra Nath (Respondent), Professional member enrolled under Bye-Law No 10 of the Bye-Laws of Indian Institute of Insolvency Professionals of ICAI.

1.0 This order disposes of the Show Cause Notice (SCN) dated 13th July, 2021 issued to the respondent, C-40 Arya Nagar Apartment, Plot No 9 IP, Extn, Patparganj, Shakarpur, Delhi, - 110092. Respondent is a professional member of the Indian Institute of Insolvency Professionals of ICAI with Enrolment No – IP/P-01477 and yet not registered as an Insolvency Professional (IP) with the Insolvency and Bankruptcy Board of India. The Membership Committee of IIIPI referred the matter to the Disciplinary Committee for concealment of pendency of criminal proceeding against the respondent and his detention made by CBI.

2.0 The DC considered the reference made by Membership Committee and reviewed the records to issue Show Cause Notice (SCN). The SCN was issued for alleged contravention of the following provisions

- I. Section 208(2)(b) of the Code requires that an Insolvency Professional (IP) “to comply with all requirement and terms and conditions specified in the bye- laws of the insolvency professional agency of which he is a member to take reasonable care and diligence while performing his duties.”
- II. Clause (1) of the Code of Conduct requires that “an Insolvency Professional must maintain integrity by being honest, straightforward, and forthright in all professional relationships.”
- III. Clause (2) of the Code of Conduct requires that “an Insolvency Professional must not misrepresent any facts or situations and should refrain from being involved in any action that would bring disrepute to the profession.”
- IV. Clause (12) of the Code of Conduct requires that “an Insolvency Professional must not conceal any material information or knowingly make a misleading statement to the Board, the Adjudicating Authority or any stake holder, as applicable.”

3.0 A summary of contravention alleged in the SCN, written response submitted by the respondent and thereupon the findings of the DC are as under:

4.0 Contravention: In the criminal matter of Indian Technomac Limited, Jagatpura, Paonta Sahib, for which respondent carried out audit for the FY of 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12. In the said matter, after further investigation a supplementary charge sheet u/s 173(8) has been filed, by which, respondent was included as an accused and accordingly he was arrested on 06-02-2019 and was released on bail on 11-03-2019. As such when respondent opted for PREC (22nd Batch held in Delhi from 17-08-2019 to 23-08-2019), he ought to have disclosed the information with regard to the criminal case pending against him. However,

respondent failed to do so and completed PREC without making any such disclosure. Its only in Form A (application for registration as an insolvency professional) dated 30-09-2019 filed by the respondent with IBBI, wherein he has ticked YES for question “Are any criminal proceedings pending against you” under the heading of “Additional Information”.

5.0 Submission: The respondent in his written submission stated that he had filed his Enrolment form alongwith an application for Pre-Registration Educational Course (PREC) with IIIPI on 24-10-2018 and at the time of submitting the abovesaid documents there was no criminal proceeding pending against him.

The respondent further stated that the criminal proceedings were initiated against him in the month of June 2019 by way of supplementary FIR. Initially the inquiry and FIR was registered against one of his clients M/s Technomac Company Limited for whom he conducted audit works. He submitted statutory report of Technomac Limited based on his knowledge, information provided and available with him at the time of certification.

The respondent also submitted that he was not aware about the fact of FIR registered against him and came to know about the proceedings only at the time of filing the enrolment form/application for PREC.

6.0 Finding: An IP has the highest professional responsibility. He, therefore, ought to disclose all the information pertaining to his conduct and workings timely to his IPA, However, in the present matter respondent failed to take proactive approach while discharging his responsibilities. At the same time, DC noted the submission of the respondent, that in the initial FIR which was lodged on April 3rd, 2016, respondent was not arrayed as an accused and his name was included by way of supplementary chargesheet. The DC further noted that the respondent was not aware about the fact that FIR was lodged against him, and he came to know about the proceedings post submission of his application for Enrolment.

Respondent was arrested on 06-02-2019 and was released on bail on 11-03-2019. Further, on perusal of the original and supplementary chargesheet it is noted that on the date of submission of application for enrolment, i.e., 24-10-2018 and also at the time when he is enrolled with IPA in November 2018 (10-11-20218) no criminal case was pending against the respondent.

Hence, it cannot be said that respondent committed any wrong in that regard. However, at time of doing his PREC course in the month of August, 2019 he should have proactively disclosed regarding the pendency of criminal case against him. Though, there was no occasion or platform available for him to make any such disclosure between the period from his enrolment till doing his PREC. The only window/platform available to the respondent to disclose about the pendency of the criminal case against him post his enrolment with IPA was at the time of filing Form A i.e., form for registration as IP with IBBI.

DC took note of the fact that, respondent in his application for registration i.e., Form A, (form for registration with IBBI) has himself made disclosure about the pendency of criminal case against him.

In view of the foregoing, DC also took note of clause 13(j) of the Bye-Laws of IIIPI (inserted vide amended dated 23-03-2021) which states that *“inform IIIPI, about initiation of any criminal proceedings against him, immediately and not later than 30 days from the date of such initiation.”* However, it is pertinent to mention that the above said clause came into force on 23-03-2021 and does not have any retrospective effect, and thus not applicable in the instant matter.

7.0 In absence of any explicit provision regarding disclosure of criminal proceedings at the time cause of action arose or at the time when he filed his enrolment application with IPA and after considering the written submissions of the respondent, DC observes that as no malafide intention seems to be proved on the part of the respondent. Also, DC finds no reason to believe that respondent intentionally concealed the information with any ill intent or with motive to achieve any undue gain for himself. Therefore, the DC is inclined to take a lenient view.

8.0 Accordingly, in exercise of the powers conferred under Regulation 24(1) (c) of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 read with clause 15(1) of the Disciplinary Policy of IIIPI, DC hereby pronounces the respondent as not guilty. However, DC hereby advises the respondent to be diligent and more careful in future while submitting any disclosure. Accordingly, the show cause notice is disposed of.

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

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

Date: 13-12-2021

Place: Delhi

CERTIFIED TRUE COPY

Sd/-

Mr. Satish Marathe, (Chairman)

CA. (Dr.) Debashis Mitra (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