

# **INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

## **(Disciplinary Committee)**

No. IBBI/DC/258/2024

30 December 2024

### **ORDER**

This Order disposes of the Show Cause Notice (SCN) No. COMP-11015/20/2024-IBBI/854/172 dated 23.08.2024, issued to Mr. Abhishek Anand, 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/Board) 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 filed under Section 9 of the Code filed by the Operational Creditor (OC) for initiating 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. Abhishek Anand was confirmed as Resolution Professional vide order of the 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 A Show Cause Notice (SCN) under section 219 of the Insolvency and Bankruptcy Code, 2016 (code) read with Regulations 11 and 12 of IBBI (Inspection and Investigation) Regulations, 2017 (Inspection and Investigation Regulations) was issued to Mr. Abhishek Anand vide letter dated 05.09. 2022 in the matter of the CIRP of Macro Commerce Private Limited. In terms of Regulation 23A of IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (Model Bye-Laws Regulations), pursuant to the issuance of aforesaid SCN dated 05.09.2022, the authorisation for assignment (AFA) of Mr. Abhishek Anand was suspended and he was made ineligible to take any assignment under the Code pending disposal of the SCN in his favour.
- 1.3 However, it was observed that Mr. Abhishek Anand has accepted assignments as Interim Resolution Professional (IRP) in the matter of CIRP of 'A.ES Engineers Private

Limited' and 'Samyak Metals Private Limited' even after suspension of his AFA.

- 1.4 Accordingly, the Board in exercise of its powers under Regulations 11(2) of Inspection and Investigation Regulations, issued SCN to Mr. Abhishek Anand seeking explanation as to why one or more of the actions listed under regulation 13 of the Inspection and Investigation Regulations read with Section 220 of the Code should not be taken against him for contraventions of the provisions of the Code and regulations made thereunder. The reply of Mr. Abhishek Anand seeking the SCN was received by the Board on 07.05.2024.
- 1.5 The SCN, the response of the IP to the SCN and other materials available on record was referred to the Disciplinary Committee (DC) for disposal of the SCN. The IP availed an opportunity of a personal hearing before DC on 17.10.2024.

## **2. Alleged Contravention, submissions of Mr. Abhishek Anand and findings of the DC**

- 2.1 In terms of Regulation 7A of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations), an Insolvency Professional (IP) shall not accept or undertake an assignment unless he holds a valid AFA on the date of such acceptance or commencement of such assignment, as the case may be. Further, as per Regulation 23A of Model Bye-Laws Regulations, the AFA shall stand suspended upon initiation of disciplinary proceedings by the Agency or by the Board, as the case may be. The Explanation under Regulation 23A of Model Bye-laws Regulations further provides that a disciplinary proceeding shall be considered as pending against the professional member from the date he has been issued a show cause notice by the Agency or the Board, as the case may be, till its disposal by the Disciplinary Committee of the Insolvency Professional Agency or the Board, as the case may be. Thus, pursuant to the issuance of the aforesaid SCN dated 05.09.2022, the AFA was suspended and Mr. Abhishek Anand was made ineligible to take any assignment under the Code pending disposal of the SCN.
- 2.2 Further, the aforesaid SCN dated 05.09.2022 had been disposed of by the Disciplinary Committee (DC) of the Board vide order dated 30.01.2023 by suspending registration of Mr. Anan as an IP for a period of one year. This order of DC clearly disqualified Mr. Abhishek Anand from acting as a registered IP during the suspension period.

- 2.3 It was however observed that Mr. Abhishek Anand accepted assignments as IRP in the matter of 'A.ES Engineers Private Limited' and 'Samyak Metals Private Limited' even after the suspension of AFA pursuant to the issue of SCN dated 05.09.2022 in utter defiance of law and disciplinary action initiated against him.
- 2.4 As per Rule 9 of IBBI (Application to Adjudicating Authority) Rules, 2016, an IP is required to give his written consent in Form 2 in which he *inter alia* has to certify that no disciplinary proceedings are pending against him. However, acceptance of assignments as IRP clearly indicates that he had suppressed the material fact regarding the pendency of disciplinary proceedings from the creditor/ Adjudicating Authority. Further, even after appointment as IRP/RP by the order of the Adjudicating Authority on the basis of consent given prior to suspension of AFA, it was incumbent upon Mr. Anand to inform the Adjudicating Authority about not having valid AFA as on the date when he was appointed as IRP/RP, as Regulation 7A clearly prevents an IP to undertake any assignment unless he has valid AFA on the date of acceptance or commencement of such assignment.
- 2.5 As the SCN and DC order as stated above have been duly served and delivered upon Mr. Anand, the above facts and circumstances clearly suggest that Mr. Abhishek Anand has actively concealed the fact of being disqualified in view the said SCN and the DC order from the creditors and AA. The facts and circumstances as aforesaid suggest *mala fide* on his part and act and conduct of repeated defiance is utterly blameworthy considering the degree of responsibility bestowed upon him under the Code and Regulations.
- 2.6 In view of the above, the Board was of the *prima facie* view that by accepting assignments as IRP without having valid AFA, Mr. Abhishek Anand has contravened provisions of Section 208 of the Code and Regulation 7A of Insolvency Professionals Regulations 2016 read with Clause 1, 2, 12 and 14 of the Code of Conduct for Insolvency Professionals under First Schedule of IP Regulations (Code of Conduct).

#### **Submissions by Mr. Anand**

- 2.7 Mr. Anand, with respect to the Corporate Debtors 'A.ES Engineers Private Limited' and 'Samyak Metals Private Limited' has submitted the chronology surrounding his appointment as follows:

Sl. No.	Name of Corporate Debtor	Date of issuance of consent	Date of NCLT order for admission	Date of NCLT/NCLAT for stay or settlement
1	A.ES Engineers Pvt. Ltd.	16.11.2021	04.10.2022	1) Vide NCLAT order dated 12.10.2022, the NCLT order was stayed.  2) Vide NCLAT order 18.11.2023, NCLT order was set aside.
2	Samyak Metals Private Limited	16.11.2021	14.09.2022	Vide NCLT order 27.09.2022, the matter withdrew

- 2.8 Mr. Abhishek Anand submitted that there is no dispute that the earlier SCN was issued on 05.09.2022, however, inadvertently he was not aware of the suspension of his AFA as nothing was mentioned in the SCN about suspension of the AFA. The AFA was suspended on the basis of IBBI circular no. LA/010/2018 dated 23.04.2018, whereas the said circular was issued before the regime of AFA. The provisions regarding AFA were inserted on 23.07.2019 upon insertion of regulation 7A of the IP Regulation and only provisions of suspension or cancellation of AFA are mentioned in the Regulation 13 of the Inspection and Investigation Regulations.
- 2.9 Mr. Abhishek Anand further submitted that on and about 07.12.2022, when he attempted to renew his AFA, he became aware of the fact that his AFA had been suspended. He submitted that he immediately approached IBBI/ICSI on the call, but it was suggested to send query on the email and accordingly on 07.12.2022, he wrote an email to IBBI and ICSI IPA regarding AFA suspension without his knowledge. Mr. Abhishek Anand has tried to depict his *bonafide* and stated that he has not received response to his query.
- 2.10 Mr. Abhishek Anand further submitted that the moment he became aware of the fact that his AFA has been suspended, he withdrew his consent to act as Liquidator from Asia Telecom Pvt. Ltd. There was no intention on his part to disobey any rules and regulations as been framed by the IBBI or to conceal any material information from the

Adjudicating Authority or Creditors.

- 2.11 Mr. Abhishek Anand has further submitted that as far as his appointment as IRP in the matter of A.ES Engineers Pvt. Ltd and Samyak Metals Pvt. Ltd is concerned, the consent to act as IRP was issued much before the issuance of SCN and moreover both matters either settled or stayed within a period of 8-15 days from the date of order of admission. As a matter of fact, he has not charged any fees in both the matter, hence there were no monetary benefits accrued to him.

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

- 2.12 In terms of sections 7, 9 and 10 of the Code, an Insolvency Professional cannot be appointed as an IRP/RP if any disciplinary proceeding is pending against him. The IBBI vide its circular no. No: LA/010/2018 dated 23.04.2018 had clarified that the disciplinary proceeding shall be considered to be pending from the date of issuance of SCN, as follows:-

- (i) a disciplinary proceeding is considered as pending against an insolvency professional from the time he has been issued a show cause notice by the Insolvency and Bankruptcy Board of India till its disposal by the disciplinary committee; and*
- (ii) an insolvency professional who has been issued a show cause notice shall not accept any fresh assignment as interim resolution professional, resolution professional, liquidator, or a bankruptcy trustee under the Code.*

- 2.13 The DC notes that a discussion paper was introduced by the Board for introduction of the concept of AFA wherein the rationale for AFA was provided in the following words:

*“5. An IP is required to satisfy certain conditions for continuation of registration. He is required to pay fee to the Board and IPA, undertake continued professional education, file certain returns and make certain disclosures, etc. If he fails to satisfy any of the conditions, the Board or the IPA, as the case may be, may initiate disciplinary proceeding against him. If no disciplinary proceeding is initiated, the IP remains on the register even if he does not comply with the conditions. A disciplinary process entails significant costs both on the Board or the IPA and the IP concerned. Such cost may not be justified, particularly when the non-compliance is technical and may not warrant even suspension.*

.....

***Proposed Amendment***

*7. It is proposed to amend the IP Regulations to introduce a concept of Certificate of Practice (CoP) for IPs. Every registered IP needs to have a CoP and get it renewed every year from its IPA subject to meeting certain requirements. These requirements would include: he has paid fees to IPA and the Board, he is not in employment, he has filed all required returns and made all required disclosures, he is under the age of 70, he remains a fit and proper person, he has undertaken continuing professional education, **he has no disciplinary proceeding pending against him**, etc. The CoP would be valid for one year. The IPs may seek renewal of the CoP one month in advance of its expiry. This will enable a person in employment to be registered as an IP, but he has to quit employment when he wishes to have a CoP. This will avoid disciplinary proceedings for technical non-compliances. An IP without a CoP, **however, would be allowed to complete the processes he has in hand.***

2.14 As observed from the above , one of the benefits of the concept of AFA so introduced was to enable the IP to complete the existing assignments unhindered while he is not able to take a new assignment on suspension of AFA.

2.15 Consequent to the above discussion paper, clause 12A in the Schedule of Model Bye-laws Regulations was inserted with effect from 23.07.2019 which empowered the Insolvency professional Agency to issue or renew an AFA, subject to fulfilment of certain conditions by the IP including the condition that no disciplinary proceeding is pending against him before the IPA or the Board.

2.16 Further, Clause 23A of Schedule to Model Bye-Laws Regulations was inserted which provides as follows:

*23A. The authorisation for assignment shall stand suspended upon initiation of disciplinary proceedings by the Agency or by the Board, as the case may be.*

2.17 Furthermore, Regulation 7A of the IP Regulations was inserted with effective from 23.07.2019 which provides as follows:

***Authorisation for assignment.***

*7A. An insolvency professional shall not accept or undertake an assignment after 31st December, 2019 unless it holds a valid authorisation for assignment on the date of such acceptance or commencement of such assignment, as the case may be:*

*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.*

2.18 All the above-said amendments relating to AFA came into effect from 23.07.2019.

2.19 Further, the Board conducted exercise after three years to review all the circulars in the year 2022, so as to examine if it can be assimilated in relevant regulations and then rescind the existing circulars, for the purpose of facilitating stakeholders. In pursuance of such exercise, the above-referred circular dated 23.04.2018 was rescinded and the contents of the same were introduced in manner of Explanation to Clause 23A of Schedule to Model Bye-Laws Regulations as follows:

*Explanation. - A disciplinary proceeding shall be considered as pending against the professional member from the date he has been issued a show cause notice by the Agency or the Board, as the case may be, till its disposal by the Disciplinary Committee of the Agency or the Board, as the case may be.*

2.20 Therefore, it can be seen from the above provisions that it is very clear right from inception of the Code that an Insolvency Professional cannot take assignment if disciplinary proceeding is pending against him. Also, the conjoint reading of sections 219 and 220 of the Code makes it aptly clear that the disciplinary proceedings are pending against a service provider as soon as SCN is issued. This aspect of initiation of disciplinary proceeding was then made abundantly clear by issuance of above-referred circular dated 23.04.2018.

2.21 The DC notes that the introduction of AFA through Regulation 7A of IP Regulation and clause 12A of Schedule of Model Bye-Laws Regulations, and the provision of its

suspension in case of pendency of disciplinary proceedings under clause 23A of Schedule of Model Bye-Laws Regulations was introduced on the same date i.e. 23.07.2019. In this background, it is pertinent to note that Mr. Abhishek Anand was aware about the provisions regarding AFA as he had taken AFA on 21.12.2019, and further renewed it on 24.12.2020 and 29.12.2021, and therefore, Mr. Abhishek Anand cannot claim that he was not aware of the provision regarding suspension of AFA on initiation of disciplinary proceeding as this provision also was introduced on the same date and was an integral part of the whole scheme. The contention made by Mr. Abhishek Anand in this regard is not tenable and therefore cannot be accepted. Notwithstanding the above, Mr. Abhishek Anand being an Insolvency Professional is required at all times to keep himself abreast of the changes in the provisions of the Regulations.

- 2.22 Further, contrary to the submission of Mr. Abhishek Anand that he had not received any response to his query regarding suspension of his AFA, the perusal of his email dated 07.12.2022 reflects that he was informed about the possible reason for suspension of AFA i.e. issuance of SCN. Also, the email communication shows that Mr. Abhishek Anand has challenged the suspension of his AFA, post issuance of SCN to him, on the grounds that no interim order has been passed. Mr. Abhishek Anand has referred to various provisions of the Code and regulations to support his point. Therefore, Mr. Abhishek Anand does not appear to be ignorant of the regulations and circulars issued under the Code as is being made out by him at present.
- 2.23 The DC further notes that in the instant matters, the show cause notice was issued to Mr. Abhishek Anand on 05.09.2022 and therefore in accordance with the provisions as mentioned above, it was incumbent on him not to accept any new assignment after 05.09.2022. However, Mr. Abhishek Anand was appointed as IRP vide respective orders of NCLT in the matter of A.ES Engineers Pvt. Ltd on 04.10.2022 and in Samyak Metals Pvt. Ltd on 14.09.2022. Mr. Abhishek Anand has submitted that he had already given consent for his appointment prior to issuance of show cause notice.
- 2.24 The DC further notes that although Mr. Abhishek Anand had submitted his consent for assignments prior to the issuance of his SCN (i.e. 16.11.2021 for both the Corporate Debtors), the orders for admission of CIRP application and his appointment as IRP by the AA was passed thereafter at a later point of time. However, it was the duty of Mr.



Abhishek Anand to apprise the NCLT, while the admission order was yet to be passed, regarding his inability to take up assignment because of pending show cause notice. In terms of sections 7,9 and 10 of the Code, an Insolvency Professional cannot be appointed as an IRP/RP if any disciplinary proceeding is pending against him. Therefore, the relevant point of time for checking non-pendency of disciplinary proceeding is at the time when the admission is done, and not at the time when an IP gives his consent for taking assignment. This is evident from section 9(4) of the Code which provides that the operational creditor may propose a resolution professional to act as interim resolution professional, whereas, at later stage, at the time of admission the non-pendency of disciplinary proceeding is again checked. Accordingly, the plea of Mr. Abhishek Anand that his consent was given prior to suspension of his AFA does not help his case as the AFA needs to be valid at both points of time viz. at the time of him giving consent and also at the time of his appointment. Further, Mr. Abhishek Anand has not produced any material on record to prove his *bonafide* that he has intimated the suspension of his AFA to the NCLT, which could have been considered by the DC.

- 2.25 Accordingly, the DC finds Mr. Abhishek Anand to be in contravention of Section 208 of the Code and Regulation 7A of IP Regulations read with Clause 1, 2, 12 and 14 of the Code of Conduct.

### **3. ORDER**

- 3.1 The 'Authorisation for Assignment' enables an Insolvency Professional, who has duly adhered with all the regulatory compliances stipulated by the IPA / Board, to accept assignments under the Code. Since, issuance / renewal of AFA to the IP by IPA is subject to all the regulatory compliances (inter-alia including that no disciplinary proceeding is pending against him by the IPA), it aims to strengthen the regulatory control exercised by an IPA and Board over IPs. In the present matter, the DC also takes note of the mitigating factors in favour of Mr. Abhishek Anand with respect to the fact that in the matter of A.ES Engineers Private Limited the CIRP was initiated on 04.10.2022 and was stayed on 12.10.2022, and later on 18.11.2023 the admission order was set aside. Similarly, in the matter of Samyak Metals Private Limited, the application for initiation of CIRP was initiated on 14.09.2022, however on 27.09.2022 the CIRP was withdrawn. It is noted that in both these cases, the CIRP had not progressed in any

substantial manner.

- 3.2 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 suspends the AFA of Mr. Abhishek Anand (Registration No. IBBI/IPA-002/IP-N00038/2016-17/10077) for a period of six months.
- 3.3 This Order shall come into force after 30 days from the date of issuance of this order.
- 3.4 A copy of this order shall be sent to the CoC/Stake Holders Consultation Committee (SCC) of all the corporate debtors in which Mr. Abhishek Anand is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Abhishek Anand.
- 3.5 A copy of this order shall be forwarded to ICSI Institute of Insolvency Professionals where Mr. Abhishek Anand is enrolled as a member.
- 3.6 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.
- 3.7 Accordingly, the show cause notice is disposed of.

Sd/-

(Sandip Garg)

Whole Time Member  
Insolvency and Bankruptcy Board of India

Dated: 30 December 2024

Place: New Delhi