

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/88/2022

7th April, 2022

ORDER

In the matter of Mr. Sripatham Venkatasubramainan Ramkumar, Insolvency Professional (IP) under Section 220 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.

This order disposes of the Show Cause Notice (SCN) No. IBBI/IP/MON/2019/31/468/2807 dated 03.01.2022, issued to Mr. Sripatham Venkatasubramainan Ramkumar, R/o 1605, Block 1, Myhome Vihanga, Gachibowli, Hyderabad, Telangana, 500032 who 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 (IBBI) with Registration No. IBBI/IPA-001/IP-P00015/2016-2017/10039 dated 22.02.2017.

Background

- 1.1 In the matter of Orchid Pharma Ltd., the corporate Debtor (CD), Mr. Rajasekaran was appointed as an interim resolution professional (IRP) for the corporate insolvency resolution process (CIRP), *vide* order of the National Company Law Tribunal, Chennai (AA) in CP-540/IB/CB/2017, dated 17.08.2017 which admitted an application for CIRP under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code). Pursuant to the order dated 26.10.2017, Mr. Sripatham Venkatasubramainan Ramkumar was appointed as the Resolution Professional (RP).
- 1.2 The IBBI, in exercise of its powers under section 218 of the Code, on having reasonable grounds to believe that , Mr. Sripatham Venkatasubramainan Ramkumar contravened provisions of the Code, Regulations and Circulars issued SCN dated 29.07.2021 to , Mr. Sripatham Venkatasubramainan Ramkumar.
- 1.3 The SCN alleged contraventions of provisions of sections 208(2)(a) and (e) of the Code, regulations 7(2)(a) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and clauses 1, 2 and 12 of the Code of Conduct specified in Schedule I of the IP Regulations.
- 1.4 The IBBI referred the SCN, response of Mr. Sripatham Venkatasubramainan Ramkumar dated 21.01.2022 to the SCN and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Sripatham Venkatasubramainan Ramkumar availed an opportunity of physical hearing before the DC on 17.03.2022. Mr. Sripatham Venkatasubramainan Ramkumar was represented by Mr. Pradeep Joy, Advocate who made submissions during the physical hearing.

Alleged Contraventions and Submissions

2. The contraventions alleged in the SCN and Mr. Sripatham Venkatasubramainan

Ramkumar's written and oral submissions thereof are summarized as follows:

Contravention

- 2.1.1 It was seen from the minutes of the 8th CoC meeting held on 17.04.2018 that Mr. Sripatham Venkatasubramanian Ramkumar received approval from the CoC for insurance cover for himself. Thereafter, the minutes of the 9th CoC meeting dated 20.04.2018 reflect that the terms and conditions of insurance policy for sum assured USD 5 mn presented by Mr. Ramkumar before the CoC stated the beneficiaries to be insolvency professional and the insolvency professional entity. However, the extract of the insurance policy from ICICI Lombard General Insurance states that insurance was obtained for Ernst & Young LLP, Ernst & Young Restructuring LLP and the IP.
- 2.1.2 It was seen that Mr. Ramkumar presented to CoC that the beneficiaries of the insurance will be insolvency professional entity i.e. Ernst & Young Restructuring LLP and he himself. However, by obtaining insurance for Ernst & Young LLP in addition to himself and the insolvency professional entity i.e. Ernst & Young Restructuring LLP, Mr. Ramkumar misrepresented/ concealed the facts to unduly benefit the said entity.
- 2.1.3 The Board was of *prima facie* view that Mr. Sripatham Venkatasubramanian Ramkumar contravened section 208(2)(a) and (e) of the Code, regulation 7(2)(a) and (h) of the IP Regulations, clauses 1, 2 and 12 of the Code of Conduct.

Submission

- 2.2.1 Mr. Sripatham Venkatasubramanian Ramkumar submitted that the resolution plan was approved by AA on 27.06.2019 in MA/579/2019. One of the competing resolution applicant challenged approval granted by AA, before Hon'ble NCLAT by filing Comp. App No. 761/2019. *Vide* order dated 13.11.2019, Hon'ble NCLAT set aside order of AA. Subsequently, the order of Hon'ble NCLAT was set aside by Hon'ble SC in Civil Appeal No. 9036/2019 *vide* judgment dated 28.02.2020. The successful resolution applicant Dhanuka Laboratories Ltd. has implemented the resolution plan.
- 2.2.2 Mr. Ramkumar stated that CD was engaged in the pharmaceutical business. The products were exported to regulated markets i.e., US, Europe, Japan, etc. and the laws related to compliance are stringent in these countries. He submitted that he was reliant on the systems and processes set in by the CD and any inadvertent error in manufacturing would have led to claims that would have been substantial in nature as the products supplied were life savings drugs and would have threatened the going concern status of the CD. Therefore, the risk involved was substantial due to the inherent nature of the claims, which could arise upon him/ his support team and the CD. Therefore, it was imperative that he and his support system had insurance protection. Mr. Ramkumar also submitted that at the time of admission of CIRP, the CD did not have any marketing and procurement heads (vital positions for the smooth functioning of CD) and the CoC did not approve new recruitments to fill these positions. Therefore, he and his team had to take up the responsibility of these positions as well.
- 2.2.3 Mr. Ramkumar submitted that the subject insurance was taken as cover for the same with the approval of the CoC and after notifying the CoC of the terms and conditions of the insurance

policy. The market quotes received for the purpose of insurance were placed before the CoC, and the insurance premium amount was discussed during the 7th CoC meeting held on 27.03.2018. He submitted that during the 8th meeting of the CoC held on 17.04.2018, it was agreed that the RP requires to be adequately insured to restrict liabilities. He submitted that all material facts regarding the insurance were duly intimated and discussed during the CoC meetings. He submitted that no material facts were misrepresented or concealed from the CoC.

2.2.4 Mr. Ramkumar submitted that he clarified the terms of the insurance policy in the 9th CoC meeting held on 20.04.2018, specifically at the instance of Punjab National Bank Ltd. He also submitted that the terms and conditions regarding the insurance were duly submitted before the CoC and the lenders of the CD analysed the terms of the policy. Therefore, he submitted that the CoC made a well-informed decision while approving the cost for purchasing the policy and for making the payment towards its premium.

2.2.5 Mr. Ramkumar stated that the CoC duly approved the payment towards the insurance premium in the 9th CoC meeting under the head CIRP cost. He submitted that the insurance policy was taken after exercising due diligence and with prior approval of the CoC. Mr. Ramkumar also submitted that he and his team assessed the insurance premium and policy coverage under different insurance policies, which resulted in huge savings of INR. 1.18 Crores to the CD. Furthermore, he submitted that the aforesaid facts show that he did not violate any provisions of the Code, IP Regulations and the Code of Conduct applicable to IPs.

2.2.6 He states that he took reasonable care and exercised due diligence while performing his functions as the RP of the CD. The need for insurance and terms of insurance was discussed and approved by the CoC. Market quotes were invited, and the best quote among those received was selected. The insurance premium was also paid only after the express approval of the CoC. Hence, Mr. Ramkumar denied the allegation as per the Show Cause Notice. He also pointed that the factors considered by the insurance provider was the legal risk to be covered and the insurance coverage amount for the same. He submitted that the fact that he was supported by a credible support team, reduced the risk to be unwritten. He also has provided the opinion of one Mr. Vikas Agarwala, Senior Vice President, Howden India Insurance Pvt. Ltd who opined that “Insurers are typically wary of providing insurance cover only to an individual. RP which has backing of a credible advisory firm is looked upon more favourably by insurers from a risk and pricing stand-point.

Considering that the RP and the firm/team-members are independent, it would have been extremely difficult to ascertain as to who was at fault in case a loss were to arise, considering that RP/firm/team-members were ‘joined at the hip’; hence, it was prudent to have both firm/team-members as an insured under the policy.”

2.2.7 He submitted that all the required approvals were taken prior to taking the policy and all the material facts regarding the policy was duly disclosed to CoC facilitating an informed decision by the CoC. Further, he submitted that he abided by the provisions of the Code and the Rules, Regulation and Guidelines thereunder. He submitted that he did not make any misrepresentation to the CoC or any other stakeholder of the CD. All material facts regarding the RP insurance policy were disclosed and discussed during the CoC meeting as evident from the minutes. Therefore, there is no concealment regarding the insurance terms and

conditions. In addition, the terms and conditions of the policy were duly examined by the lenders. Therefore, there is no concealment of facts.

Findings And Analysis

- 3.1.1 The role of the RP is crucial and critical to fulfill the objective of the Code. It is imperative that the RP functions and discharges his/ her duties independently in a fair and transparent manner and facilitate the fulfilment of the objectives of the Code. Various checks and balances have been provided in the Code and Regulations made thereunder to ensure independent, fair and transparent functioning of the IRP/RP. It is the duty of an IRP/ RP to perform and discharge his/ her duties in accordance with the Code and the Regulations made thereunder, in letter and spirit to achieve the objectives of the Code.
- 3.1.2 The responsibilities of the IRP/RP under the Code require highest level of standards, caliber and integrity which inspire confidence and trust among the stakeholders and the society. The role of the RP is vital to the efficient operation of the insolvency and bankruptcy resolution process. The IP forms a crucial pillar upon which rests the credibility of the entire resolution process. For that purpose, the Code provides for certain duties, obligations for undertaking due diligence in the conduct of the insolvency process to establish integrity, independence, objectivity and professional competence in order to ensure credibility of both the process and profession as well.
- 3.1.3 Section 208 of the Code provides for the functions and obligations of the IP which provides *inter alia* that the IP shall abide by the Code of Conduct to take reasonable care and diligence when performing his duties and to perform his functions in such manner and subject to such conditions as may be specified.
- 3.1.4 The DC notes that in the instant matter, the CIRP in the case of CD commenced *vide* order of AA dated 17.08.2017 and Mr. Rajasekaran was appointed as IRP. Mr. Sripatham Venkatasubramanian Ramkumar was appointed as RP *vide* order of AA dated 26.10.2017.
- 3.1.5 The issue before the DC is whether taking insurance cover for Ernst & Young LLP, apart from himself and the insolvency professional entity i.e. Ernst & Young Restructuring LLP, was in contravention of the provisions of the Code, Regulations and the Code of Conduct made thereunder.
- 3.1.6 In this regard, the DC notes that the submission of Mr. Sripatham Venkatasubramanian Ramkumar that any inadvertent error in manufacturing of drugs would have led to claims that would have been substantial in nature as the products supplied were life saving drugs and would have threatened the going concern status of the CD. Hence the subject insurance was taken as cover for the same with the approval of the CoC and after notifying the CoC of the terms and conditions of the insurance policy. The insurance covered IP and only other members of the team associated with him in the process.
- 3.1.7 The DC notes the submission made by Mr. Sripatham Venkatasubramanian Ramkumar, during personal hearing that all the members of Ernst & Young LLP and Ernst & Young Restructuring LLP, had insurance cover. The members working with IP needed additional insurance cover due to special risk involved in visiting the drug manufacturing unit, which

was occupational hazard.

- 3.1.8 The DC notes from the submission of Mr. Ramkumar that the CD was a pharmaceutical company with business dealings with USA, Europe, Japan etc. According to Mr. Ramkumar, the regulatory requirements in each of these companies was very stringent and the RP had to sign the compliance documents/ declarations etc. as per the requirement of each country. Mr. Ramkumar stated that the area of business of the CD was very niche and specialized and there was no scope for any regulatory default which would have affected the going concern status of the CD.
- 3.1.9 The DC notes that at the time Mr. Ramkumar was acting as RP, the CD did not have a marketing and procurement head, which were necessary positions for maintaining the going concern status of the CD. It was necessary that the RP was able to meet the regulatory challenges and also maintain the going concern status of the CD and therefore, the RP had a team working with him to manage the business of the CD.
- 3.1.10 The DC notes that since the RP and his team were involved in the day to day working of the CD and also filing documents on behalf of the CD, the liability and possibility of being involved in litigation would increase especially, with the stringent regulatory regime that existed in USA, Europe, Japan etc. with whom the CD was doing business. It was in this backdrop that the RP placed the proposal before the CoC to obtain the insurance policy for protection from litigation that may arise from the duties discharged by the RP and his team on behalf of the CD. The CoC contemplated and considered upon the proposal in the 7th CoC meeting, the 8th CoC meeting and 9th CoC meeting and finally approved the same. Therefore, the decision to obtain the insurance policy and the cost incurred for the same, were known to the CoC and took a decision in its commercial wisdom to approve the cost.
- 3.1.11 The DC notes the submission of Mr. Ramkumar that during his tenure, the financial status of the CD improved. The CD was able to give two increments to its employees and created fixed deposit, to the tune of Rs. 660 crores, when prior to insolvency proceedings the CD was making losses. The DC also notes that the insurance cover given by the insurance provider was based on the risk factor and not the beneficiary of the cover. The DC notes the opinion of Mr. Vikas Agarwala, Senior VP, Howden India Insurance Brokers Pvt. Ltd. who stated that the support of an experienced team and credible advisory firm was looked at favorably by insurers from a risk and price stand-point and it was prudent to have both firm/team-members as an insured under the policy.
- 3.1.12 The DC observes that Mr. Sripatham Venkatasubramanian Ramkumar acted in good faith and for the benefit of the CD, since if any legal issue arose, then it would have affected the financial status as well as the goodwill of the CD, having a ripple effect on its reputation in the market. Therefore, the act of the RP was for the greater good of the CD also. It was a business decision for the protection of the interest of CD as well as that of the RP who was acting on behalf of the CD. Thus, DC finds that Mr. Sripatham Venkatasubramanian Ramkumar did not contravene any of the provisions as alleged in the SCN.

Order

4. In view of the above, the DC, in exercise of the powers conferred under section 220 of the Code read with sub-regulations (7), (8), (9) and (10) of Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 disposes of the SCN without any directions.
5. The Order shall come into force with immediate effect in view of para 4.
6. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI of which Mr. Sripatham Venkatasubramanian Ramkumar is enrolled as a member.
7. 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.
8. Accordingly, the show cause notice is disposed of.

Dated: 7th April, 2022
Place: New Delhi

-Sd-
(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI