

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/153/2023

20th February 2023

ORDER

In the matter of Mr. C. Ramasubramaniam, Insolvency Professional (IP) under Section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 and Regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No IBBI/IP/INSP/2022/110/66/688 dated 24th January, 2023, issued to Mr. C. Ramasubramaniam, 'RAJI', 3B1, 3rd Floor, Gaiety Palace, No. 1L, Blackers Road, Mount Road, Chennai, Tamil Nadu, 600002 (hereinafter referred as "IP") 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) with Registration No. IBBI/IPA-002/IP-N00052/2016-2017/10096.

1. Background

- 1.1 This order deals with observed contravention against Mr. C. Ramasubramaniam in connection with two different Corporate Debtors.
- 1.2 In the first case, the National Company Law Tribunal, Division Bench- I, Chennai (AA) had admitted the application under Section 7 of the Code for corporate insolvency resolution process (CIRP) of **M/s SLO Industries Limited (CD-1)** vide Order dated 4th November 2019 and appointed Mr. C. Ramasubramaniam as Interim Resolution Professional (IRP). Further, Mr. C. Ramasubramaniam was confirmed as Resolution Professional during the third meeting of CoC held on 27th December, 2019. The AA ordered for liquidation of CD-1 *vide* its order dated 21st January 2022.
- 1.3 In second case, the National Company Law Tribunal, Chennai, had admitted the application under section 7 of the code for CIRP of **M/s Aqua Designs India Private Limited (CD-2)** *vide* its order dated 17th October 2018 and appointed Mr. Ramasubramaniam, as IRP. The AA ordered for liquidation of CD-2 *vide* its order dated 23rd December 2019 and appointed Mr. Ramasubramaniam as the liquidator by way of the same order.
- 1.4 In exercise of its powers under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, the IBBI vide Order dated 18th January, 2022 (corrigendum issued *vide* order dated 30th March, 2022) appointed an Inspecting Authority (IA) to conduct an inspection of work done by Mr. C. Ramasubramaniam. The IA shared the draft Inspection Report with Mr. Ramasubramaniam on 29th June 2022. Thereafter, the IA submitted the Inspection Report to IBBI on 1st August 2022.

- 1.5 The IBBI on 24th January 2023 had issued the SCN to Mr. C. Ramasubramaniam, based on findings in the inspection report in respect of his role as IRP/RP in the CIRP of CD-1 and CD-2. The SCN alleged contraventions of several provisions of the Insolvency and Bankruptcy Code, 2016 (Code), IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (CIRP Regulations), the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and the Code of Conduct. Mr. C. Ramasubramaniam replied to the SCN on 6th February 2023.
- 1.6 The SCN, response of Mr. C. Ramasubramaniam to the SCN and other material available on record were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. C. Ramasubramaniam availed an opportunity of personal hearing before the DC on 16th February 2023 wherein he elaborated the submissions made by him in his written reply.

2. Alleged Contraventions, Submissions of IP, and Findings

The contraventions observed in the SCN and submissions made by Mr. C. Ramasubramaniam are summarized as follows:

In the matter of CIRP of M/s SLO Industries Limited

2.1 Non-filing of Avoidance Application:

- 2.1.1 Section 43(1) of the Code provides that the RP or liquidator shall apply to the AA for avoidance of preferential transaction where he is of the opinion that the CD has at a relevant time, given a preference in such transactions and in such manner as laid down. Regulation 35A of CIRP Regulations states that on or before the 75th day of the insolvency commencement date (ICD), the RP shall form an opinion whether the CD has been subjected to any transaction covered under Sections 43, 45, 50 or 66. It further provides that where the RP is of the opinion that the CD has been subjected to any transactions covered under sections 43, 45, 50 or 66 he shall make a determination on or before the 115th day of the ICD. Moreover, where the RP makes a determination, he shall apply to the AA for appropriate relief on or before the 135th day of the ICD (as per then applicable regulations), the same has been reiterated under Regulation 40A of the CIRP Regulations which prescribes the model timeline for CIRP to ensure timely completion. Further, Clause 13 of the Code of Conduct under First Schedule of IP Regulations provides that an IP must adhere to the time limits prescribed in the Code and the Rules, Regulations, and guidelines thereunder for insolvency resolution, liquidation, or bankruptcy process, as the case may be, and must carefully plan his actions, and promptly communicate with all stakeholders involved for the timely discharge of his duties.
- 2.1.2 It is noted that the CIRP in the matter of CD-1 commenced on 4th November, 2019 and Mr. C. Ramasubramaniam, in the 1st CoC meeting dated 30th November, 2019 had formed an opinion regarding the need to conduct transaction audit of the CD. It is further noted that in the 3rd CoC meeting dated 27th December, 2019, M/s BDO India LLP was engaged as the forensic auditor to help determine the avoidance transactions of CD-1, and that the M/s BDO India LLP submitted its transaction audit report on 31.07.2020.

- 2.1.3 It is noted that pursuant to the submission of the report, in the 11th CoC Meeting dated 6th November, 2020 and 19th CoC Meeting dated 29th May, 2021, Mr. C. Ramasubramaniam, had informed the CoC that he would be filing an avoidance application before the AA. However, it is noted that, no avoidance application had been filed by him, despite the lapse of 572 days from the ICD and 302 days from the date of submission of the transaction audit report until the date of the final CoC meeting when resolution for liquidation of the CD was taken.
- 2.1.4 Accordingly, the Board was of the *prima facie* opinion that IP had, *inter alia*, violated Section 43(1) of the Code, Regulation 35A and 40A of the CIRP Regulations read with Clauses 13 of the Code of Conduct.

Submission by IP

- 2.1.5 The IP submitted that based on the observations provided in the Transaction Audit Report and along with the observations identified by him as per Regulation 35A of CIRP Regulations on preferential/fraudulent transactions carried out by the Corporate Debtor before commencement of CIRP, he as RP, had informed the CoC at their meeting that steps are being taken to file an application before the AA under Section 43/45/66 of IBC, 2016. He further submitted that Mr. Varun Srinivasan, Legal Counsel of NVS Associates, was appointed to file the said application before the AA, the same was discussed in the CoC, and intimated and duly recorded in the minutes of the CoC.
- 2.1.6 He submitted that necessary documents and details required for filing of those applications were shared with the said Advocate. However, as a result of the second lockdown imposed by the Government of Tamil Nadu in the wake of COVID-19 pandemic, there was a complete standstill of operations in the entire state, however he was in continuous follow-up with the said advocate over filing of the application, which was recorded in the minutes of the CoC.
- 2.1.7 He submitted that there was a delay in receiving the draft application from the counsel, since due to COVID-19 pandemic there were some casualties in the near family members of his office staff. He submitted that they had also entrusted the work of few other applications with him against the Suspended board and the same were shared as one by one by the said legal counsel, the application under section 43/45/66 got delayed due to the aforesaid reason, and such reasons were also recorded in the 19th COC meeting minutes.
- 2.1.8 He submitted that considering that the CIRP was ending on 31st May, 2021, the sole financial creditor of CD-1 had decided to liquidate the business of the CD at the 19th CoC meeting held on 29th May, 2021, thus he filed an application under Section 33 of the Code before AA for liquidation of CD-1 on 31st May, 2021. He submitted that till the date of filing an application for liquidation, he did not receive the application under Section 43, 45, 66 of the Code from the appointed Legal Counsel due to which he had legal constraints to file the said application in the capacity of Resolution Professional since the CIRP process of the CD had expired on 31st May, 2021.

2.1.9 He further submitted that the AA *vide* order dated 21st January, 2022, passed an order for Liquidation of CD and another IP was appointed as Liquidator, and that he had taken sincere steps with regard to filing of application u/s 43/45/66 of the Code and had forwarded the data available with him to the Legal counsel, the delay which was beyond his control was also recorded properly in the COC minutes. He submitted that after the commencement of liquidation, the details of the same were forwarded to Liquidator and the same legal counsel had been hired by the Liquidator for the continuance of the various applications filed by him.

Findings of DC

2.1.10 Section 43(1) of the Code provides as under:

“43. Preferential transactions and relevant time. –

(1)Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44....”

2.1.11 Regulation 35A of CIRP Regulation provides that on or before the 75th day of the insolvency commencement date (ICD), the RP shall form an opinion whether the CD has been subjected to any transaction covered under Sections 43, 45, 50 or 66. It further provides that where the RP is of the opinion that the CD has been subjected to any transactions covered under sections 43, 45, 50 or 66 he shall make a determination on or before the 115th day of the ICD. Moreover, where the RP makes a determination, he shall apply to the AA for appropriate relief on or before the 135th day of the ICD (as per then prevailing regulations), the same has been reiterated under Regulation 40A of the CIRP Regulations which prescribes the model timeline for CIRP to ensure timely completion.

2.1.12 Clause 13 of the Code of Conduct provides as below:

“13. An insolvency professional must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan his actions, and promptly communicate with all stakeholders involved for the timely discharge of his duties.”

2.1.13 The DC notes that the duty of filing avoidance application rests on the IP, and stating that the application could not be filed due to delay by the legal counsel engaged, shows dereliction of duty on the part of the IP.

In the matter of CIRP of M/s Aqua Designs India Private Limited

2.2 Non-Disclosure of relationship with valuer and forensic auditor:

- 2.2.1 Clause 19 of the Code of Conduct requires an IP to provide all information and records as may be required by the Board or the IPA with which he is enrolled. The IBBI Circular No. IP/005/2018 dated 16th January, 2018 on '*Disclosures by Insolvency Professionals and other Professionals appointed by Insolvency Professionals conducting Resolution Processes*', specifies that, an IP shall ensure disclosure of the relationship, if any, of the other professional engaged by him with himself, the Corporate Debtor (CD), Financial Creditor, Interim Finance Provider and Prospective Resolution Applicant to the Insolvency Professional Agency (IPA) of which he is a member, within the time specified.
- 2.2.2 It is noted that Mr. Ramasubramaniam, appointed three professionals, namely, Mr. R. Vaidyanathan (Registered Valuer), Mr. R. Chandrakani (Registered valuer), and Ms. Sripriya (Forensic and transaction Auditor) during CIRP of CD-2. However, it is noted that the relationship disclosure in respect of these professionals had not been made, as required under the IBBI Circular No. IP/005/2018 dated 16th January 2018. It is further noted that the relationship disclosure filed by Mr. Ramasubramaniam, with the IPA, did not reflect names of these professionals.
- 2.2.3 In view of the foregoing, the Board was of the *prima facie* opinion that the IP had, *inter alia*, violated Section 208(2)(e) of the Code, Regulation 7(2)(h) of the IP Regulations read with Clause 19 of the Code of Conduct and IBBI Circular No. IP/005/2018 dated 16th January 2018.

Submission by IP

- 2.2.4 He submitted that the professionals were appointed with the prior approval of the CoC, necessary quotations were obtained on appointment of the said professionals and the appointment of these professionals was also recorded in the minutes of meeting of CoC. He further submitted that none of the valuers or any professionals appointed by him in any of the IBC assignments were related to him or to any of his staff personnel, and that the appointments of any professionals including valuers was at Arm's length basis and purely based on merit and their work experience in the relevant field only.
- 2.2.5 He submitted that he obtained Quotation from the Valuers and carried out necessary due diligence to confirm that the above stated Valuers were independent and not the persons as stated in Reg. 35 of IBBI (Liquidation Process) Regulations, 2016. Mr. C. Ramasubramaniam submitted that he had instructed his office staff to file necessary relationship disclosures with ICSI IIP with regard to the appointment of above said professional as per the IBBI Circular No. IP/005/2018 dated 16th January, 2018 for relationship disclosures by Insolvency Professionals, however, the said relationship disclosure was not filed by his office staff, and was inadvertence of his staff, and not due to any malicious intent.
- 2.2.6 He further submitted that he had filed the necessary CIRP Forms within the due date with the IBBI, and filed various reports before the AA and the same was reported to the Board. He submitted that non-filing of relationship disclosure with ICSI IIP was only a procedural lapse which will not directly or indirectly affect any of the

stakeholders/creditors/authority, considering the fact that the appointment was on an arm's length basis with no relative being appointed as Valuer/Forensic Auditor. He submitted that he has handled other cases as IRP/RP/Liquidator wherein he has made necessary relationship disclosure before the ICSI IIP as per the IBBI Circular No. IP/005/2018 dated 16th January, 2018, where there was also no timeline deviation.

Findings of DC

2.2.7 Section 208(2)(e) of the Code provides as follows:

“208. Functions and obligations of insolvency professionals

(2) Every insolvency professional shall abide by the following code of conduct: –

....

(e) to perform his functions in such manner and subject to such conditions as may be specified.”

2.2.8 Clause 19 of the Code of Conduct provides as follows:

“ An insolvency professional must provide all information and records as may be required by the Board or the insolvency professional agency with which he is enrolled.”

2.2.9 IBBI Circular No. IP/005/2018 dated 16th January, 2018 on ‘*Disclosures by Insolvency Professionals and other Professionals appointed by Insolvency Professionals conducting Resolution Processes*’, specifies that, an insolvency professional (IP) shall ensure disclosure of the relationship, if any, of the other professional engaged by him with himself, the Corporate Debtor (CD), Financial Creditor, Interim Finance Provider and Prospective Resolution Applicant to the Insolvency Professional Agency (IPA) of which he is a member, within the time specified.

2.2.10 The DC takes note of the submissions of Mr. Ramasubramaniam, citing absence of malice and inadvertent mistake on his part.

3. ORDER

3.1 It is observed that in both the instances of contravention, Mr. C. Ramasubramaniam has built up the case that mistake has occurred on part of delegated person and not by him. This itself proves his careless approach bereft of any professional justification. Passing on the responsibility to some other person when responsibility under the provisions the Code and Regulations, framed thereunder, rests with the insolvency professional designated with the task, reflects poorly on his approach. His admission of mistake and difficulties faced due to disruption of activities have been duly noted. Recognizing the mistakes committed by Mr. C. Ramasubramaniam are procedural in nature, I am inclined to take rather lenient view on both the counts.

3.2 In view of above, 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 disposes of the SCN by cautioning Mr. C. Ramasubramaniam to be more careful

and cautious while dealing with the matter under the Code and Regulations made therein.

- 3.3 The conduct of Mr. C. Ramasubramaniam constitutes procedural lapses, and he is thereby warned not to repeat the same in future. IP Monitoring Division of IBBI, is directed to keep his name under constant watchlist and, in case, any similar contravention is observed in future, his case may be further examined for harsher penalty.
- 3.4 This Order shall come into effect immediately in view of Para 3.2 of the order.
- 3.5 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. C. Ramasubramaniam is providing his services, if any.
- 3.6 In view of the above Order, a copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. C. Ramasubramaniam is enrolled as a member for their further necessary action.
- 3.7 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.
- 3.8 Accordingly, the show cause notice is disposed of.

Sd/-

(Sudhaker Shukla)
Whole Time Member, IBBI

Dated: 20th February 2023

Place: New Delhi