

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/175/2023

7th June 2023

ORDER

In the matter of Mr. Sai Ramesh Kanuparthi, 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. COMP-11016/3/2022-IBBI/23/738/527 dated 19.04.2023, issued to Mr. Sai Ramesh Kanuparthi (hereinafter referred to as 'IP') who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00910/2017-2018/11510.

1. Background

- 1.1 The National Company Law Tribunal, Hyderabad, (AA) had admitted the application under section 7 of the Code for Corporate Insolvency Resolution Process (CIRP) of M/s Konaseema Gas Power Limited (CD) vide order dated 18.12.2018 and Mr. Kambhammettu Sri Vamsi was appointed as Interim Resolution Professional (IRP) *vide* the same order. Mr. Kambhammettu Sri Vamsi was appointed as the RP (Resolution Professional) in the first meeting of the Committee of Creditors (CoC) held on 24.01.2019. However, due to the failure of CIRP, the liquidation process was initiated vide order dated 20.02.2020 by the AA, and vide the same order, the IP was appointed as the Liquidator. The liquidation process has not attained finality thus far.
- 1.2 The IBBI, in exercise of its powers under section 218 of the Code read with regulations 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017, appointed an Investigating Authority (IA) to conduct the investigation into the observations in the matter of liquidation process of the CD. The IA served a notice of investigation to the IP on 26.12.2022. Pursuant to the said notice, the IP submitted his reply dated 03.01.2023, 18.01.2023, 30.01.2023, and 31.01.2023. The IA submitted the Investigation Report to the IBBI on 29.03.2023. The IBBI issued the SCN to the IP on 19.04.2023 based on findings in the Investigation Report in respect of his role as Liquidator of the CD. The IP submitted his reply dated 22.04.2023 to the SCN.
- 1.3 The IBBI referred the SCN, the response of the IP 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. The IP availed the opportunity of personal hearing through virtual mode before the DC on 01.06.2023.

2. Alleged Contraventions, Submissions of IP, and Findings:

The contraventions alleged in the SCN and submissions by the IP are summarized as under:

3. Contravention

3.1 Private Sale of Assets of CD

3.1.1 Regulation 33(1) of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) mandates the liquidator to ordinarily sell the assets of the CD through an auction. Further, Regulation 33(2) of Liquidation Regulations provides the sale of assets by means of private sale when (a) the asset is perishable; (b) the asset is likely to deteriorate in value significantly if not sold immediately; (c) the asset is sold at a price higher than the reserve price of a failed auction, or (d) the prior permission of the Adjudicating Authority has been obtained for such sale.

3.1.2 It is observed that in the process of the sale of assets of the CD during the liquidation process, one of the assets of the CD, i.e., 12,97,206 VCUs (Verified Carbon Units/ carbon credits) was sold by the IP for Rs.48.84 lakh (plus GST) at the rate of 0.051 USD/ VCU to M/s EKI Energy Services Pvt Ltd. in June 2021 through the mode of the private sale.

3.1.3 Further, it is observed that none of the conditions for selling the assets of the CD by means of private sale prescribed under Regulation 33(2) of the Liquidation Regulations have been fulfilled.

3.1.4 In view of the above, the Board is of the *prima facie* view that Mr. Sai Ramesh Kanuparthi has contravened provisions of Section 35(1)(d) & (o) and 208(2)(a) & (e) of the Code, Regulation 33(2) of the Liquidation Regulations and Regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 13 and 14 of the Code of Conduct for IPs provided under First Schedule of IP Regulations (Code of Conduct).

3.2 Non-listing of VCUs in Asset Memorandum and non-conduct of its Valuation

3.2.1 The Board has further observed that on the perusal of the Asset Memorandum dated 04.09.2020 and the Valuation Report, the VCUs were not valued by the registered valuers and that they were even sold without such valuation. Further, the VCUs have not been listed in the Asset Memorandum and its value and associated details have not been provided as per Regulation 34 of the Liquidation Regulations.

3.2.2 In view of the above, the Board is of the *prima facie* view that the IP has contravened provisions of Section 35(1)(o), 208(2)(a) & (e) of the Code, Regulation 34 and 35 of the Liquidation Regulations and clauses 13 and 14 of the Code of Conduct.

4. Submission of the IP

- 4.1 The IP has submitted that the adoption of a private sale process without following the requirements of the Liquidation Regulations was entirely on account of misunderstanding on his part as to the applicability of the Regulations in the instant case which involved intangible assets which were not part of the assets forming part of the books of accounts of the CD.
- 4.2 The IP further submitted that the contravention of the regulations was neither intentional nor caused a wrongful loss to the CD or its creditors. The IP has also submitted that due to an over-eagerness to earn certain revenue for the CD from the sale of an asset that was not even known to exist till the unsolicited offer was received from the buyer.
- 4.3 Incidentally, this was the first assignment of the IP as a liquidator, and the nuances of the sale of such a unique product which was neither identified during the CIRP period nor found mentioned in the annual accounts of the CD meant that the procedure followed suffered from a lack of rigor which it otherwise demanded.

5. Analysis and Findings

- 5.1 DC notes that the IP has admitted his mistake that the VCUs were sold to a private party through a private sale for an amount of Rs. 48,84,409/- lakhs approximately without following due procedure. However, while admitting to the contravention, he added that he negotiated the appropriate value of the VCUs based on limited market survey and in the process, he was able to fetch more than what was offered as the initial price. Further, he pleaded that the additional realization was reported to SCC and there was no *mala fide* intention on his part.
- 5.2 The IP, in his defense, has mentioned that availability of green credits in the form of VCUs emerged as surprise element and since they were not constituted as part of asset memorandum, they were not notified as part of the auction. Had the knowledge about VCUs were available through any channel, he would have been alert towards disposing them through public auction.
- 5.3 It is acknowledged that carbon trading is a complex area and there is dearth of players in this field, however, it no way justifies the procedural infirmities which are evident from this case. IP failed to observe ordinary due care and caution in selling the asset of the CD and the relevant provisions of Liquidation Regulations for sale of asset of CD were not followed.
- 5.4 As Liquidation Regulations spell out clearly that though private sale is not prohibited, however for invoking such a preference, conditionalities as enunciated in regulation 33(2) needs to be strictly adhered to. Particularly, regulation 33(2)(d) regarding the prior permission of the Adjudicating Authority to be obtained for a private sale is unambiguous and was needed to be followed. Therefore, in case the IP was in state of confusion, directions were needed to be obtained from the AA.
- 5.5 Further, it is clear that the IP merely informed the SCC about the private sale but at no time made any attempt to get the advice from the SCC on this important issue.

6. Order

- 6.1 In view of the above discussion, it is evident that Mr. Sai Ramesh Kanuparthi has erred in his judgement in going for private sale without following the prescribed regulations guiding the issue. In view of contravention being established, the DC, in exercise of the powers conferred under section 220(2) of the Code read with IBBI (Insolvency Professionals) Regulations, 2016 and the IBBI (Inspection and Investigation) Regulations, 2017, hereby, imposes a penalty of Rs. 2,00,000/- (Rs. Two Lakh only) on Mr. Sai Ramesh Kanuparthi and directs him to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of “penalty imposed by IBBI” on <https://bharatkosh.gov.in> within 45 days from the date of issue of this order and submit a copy of the transaction receipt to the Insolvency and Bankruptcy Board of India.
- 6.2 It is also evident that Mr. Sai Ramesh Kanuparthi is not aware about the provisions of Liquidation Regulations, particularly with respect to auction of the assets of CD and how to prepare asset memorandum of the assets of CD to include tangible as well as intangible assets. Hence DC directs Mr. Kanuparthi to work as probationer for four months with other experienced IP so nominated by her IPA under which he is registered. Till completion of this probation, the Authorisation for assignment (AFA) of Mr. Kanuparthi will remain in suspended animation and he will not take any fresh assignment or service under the Code in the capacity of Insolvency Professional.
- 6.3 This order will come into force immediately in view of para 6.1 and 6.2 of the order.
- 6.4 The DC further directs the Board to investigate why IRP/RP could not find out availability of VCUs, as asset of CD and why the valuer appointed could not do the valuation of the said VCUs.
- 6.5 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Sai Ramesh Kanuparthi is providing his services under the Code, if any.
- 6.6 A copy of this order shall be forwarded to the ICAI Institute of Insolvency Professionals where Mr. Sai Ramesh Kanuparthi is enrolled as a member.
- 6.7 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.
- 6.8 Accordingly, the show cause notice is disposed of.

Sd/-

(Sudhaker Shukla)
Whole Time Member, IBBI

Dated: 7th June, 2023

Place: New Delhi