

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/118/2022
28th July, 2022

ORDER

In the matter of Mr. Mudappallur Varieth Gangadharan, Insolvency Professional 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 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017.

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2021/83/540/3606 dated 31st May 2022 issued to Mr. Mudappallur Varieth Gangadharan, who is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIIP-ICAI) and an Insolvency Professional ('IP') registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-001/IP-00438/2017-2018/10761

1. Background

- 1.1 Mr. Mudappallur Varieth Gangadharan was appointed as an interim resolution professional ('IRP') for the corporate insolvency resolution process ('CIRP') in the matter of Padmaadevi Sugars Limited, Corporate Debtor ('CD') *vide* order of the National Company Law Tribunal, Chennai Bench, New Delhi ('AA') dated 15.10.2018 which admitted an application for CIRP under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code').
- 1.2 The IBBI, in exercise of its powers under section 218 of the Code read with Regulation 3(3) and 3(4) of the IBBI (Inspection and Investigation) Regulations, 2017 ('Inspection Regulations') appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Mudappallur Varieth Gangadharan on having reasonable grounds to believe that Mr. Mudappallur Varieth Gangadharan had contravened provisions of the Code, Regulations and Circulars issued thereunder. A draft inspection report (DIR) dated 12.10.2021, prepared by the IA, was shared with Mr. Mudappallur Varieth Gangadharan, to which he submitted reply dated 20.10.2021. The IA submitted the Final Inspection Report in accordance with regulation 6(4) of the Inspection Regulations to IBBI on 18.11.2021.
- 1.3 The IBBI issued the SCN to Mr. Mudappallur Varieth Gangadharan on 31.05.2022, based on the findings in the inspection report in respect of his role as an IRP cum RP in the CIRP of the CD and material available on record. Mr. Mudappallur Varieth Gangadharan replied to the SCN *vide* email dated 21.06.2022.
- 1.4 The IBBI referred the SCN, response of Mr. Mudappallur Varieth Gangadharan 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. Mudappallur Varieth Gangadharan availed an opportunity of e-hearing before the DC on 20.07.2022. The DC has

considered the SCN, the reply to SCN, oral submissions of Mr. Mudappallur Varieth Gangadharan, other material available on record and proceeds to dispose of the SCN.

2. Alleged Contraventions and Submissions

The contraventions alleged in the SCN and Mr. Mudappallur Varieth Gangadharan's written and oral submissions thereof are summarized as follows.

3. Contravention I

- 3.1 It is observed that the forensic audit reporter appointed by Mr. Mudappallur Varieth Gangadharan in the CIRP of aforesaid CD in its report pointed out various avoidable transactions defined under sections 43, 45, 50 and 66 of the code. The said report has been discussed in detail in the adhoc meeting of the stakeholders/committee of creditors held on 3rd February 2021 and 24th March 2021. In the said adhoc CoC meeting held on 24th March 2021, Mr. Mudappallur Varieth Gangadharan requested CoC to adopt the forensic report. In Mr. Mudappallur Varieth Gangadharan's response to DIR in para 22, Mr. Mudappallur Varieth Gangadharan admitted that Forensic Audit Report disclosed avoidable transactions.

As per section 25(2)(j) of Code, it is the duty of the RP to file application for avoidance of transactions in accordance with Chapter III, if any. Regulation 35A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) mandates resolution professional to apply before AA for appropriate relief after determination of transactions mentioned under section 43, 44, 50 and 66 of Code. In this case, although Mr. Mudappallur Varieth Gangadharan had requested CoC to adopt the forensic audit report pointing out various avoidable transactions, he failed to file necessary application before the AA.

- 3.2 In view of the above, the Board is of prima facie view that Mr. Mudappallur Varieth Gangadharan inter-alia violated section 25(2)(j), 43, 45, 50 & 66 of Code r/w regulation 35A of CIRP Regulation and clauses 1 and 14 of Code of Conduct prescribed under regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) (Code of Conduct).

Submissions

- 3.3 With regard to the aforesaid contravention, Mr. Mudappallur Varieth Gangadharan submitted in his reply to the SCN and DIR that Forensic Audit report disclosed avoidable transactions. He further accepted the fact that one of the financial Creditor (FC) i.e., Mr. E. Shanmugam, at the 3rd CoC meeting, had raised concerns regarding the misappropriation of assets of the CD and asserted that important parts of the machinery were stolen when assets of the CD was under the custody of the Banks before the commencement of CIRP. He further submitted in his reply that the banker did not accept the Forensic Audit Report and had they accepted the report, he would have filed the PUFEE application.
- 3.4 Mr. Mudappallur Varieth Gangadharan submitted following reasons for suggesting filing of a complaint with CBI instead of filing application before AA with regard to the avoidance transactions:

- (a) The Suspended Directors were absenting themselves from CoC meetings or in cases before the AA, largely for reasons of being in custody pending trial in certain other connected proceedings.
 - (b) Further, the attachment order dated 01.11.2019 issued by the Income Tax Department in respect of the CD indicated a fraudulent activity of wider proportions which may have far reaching consequences and an application for avoidance transaction in this case may not be entirely appropriate/fruitful.
 - (c) Furthermore, the misappropriation of assets appeared to have happened during the time when Banks had the custody of the assets of the Company. He stated that while this was no suggestion that the Bank may be involved in the misappropriation (in view of the possession being symbolic), it was necessary that a wider and deeper investigation in terms of CrPC was conducted to avoid fading away of evidences.
- 3.5 Mr. Mudappallur Varieth Gangadharan stated that he has not contravened any provisions of the Code and only exercised his professional discretion in terms of the Code.

Analysis and Findings

- 3.6 As per the Code, it is the duty of the RP to file an avoidance application on finding transactions that may prejudice the interests of the CD and that of the other stakeholders. Thus, the Code and regulation 35A of the CIRP Regulations clearly specify that onus of filing avoidance transaction rests with the RP. For filing avoidance transaction application, CoC's permission is neither necessary nor a precondition as a duty is imposed on the RP to file such an application with Adjudicating Authority upon receipt of report to preserve and protect the assets of CD.
- 3.7 The DC further notes that having an alternative remedy does not bar the RP from following his obligations under the Code. This act of Mr. Mudappallur Varieth Gangadharan in omitting to file application in respect of avoidance transactions as he was of the view that a complaint may be filed with CBI is not consistent with the provisions of the Code.
- 3.8 In view of the above, the DC finds that *actus* of Mr. Mudappallur Varieth Gangadharan in exercising his professional discretion with regard to filing the avoidance transaction is in clear violation of provisions of Section 43, 45, 50 & 66 r/w Regulation 35A of the CIRP Regulations, and clauses 1 and 14 of Code of Conduct prescribed under IP Regulations.

4. Contravention-II

- 4.1 It is observed that after discussing various agendas listed for discussion in the 10th CoC meeting held on 7th August 2020, resolutions including one for Mr. Mudappallur Varieth Gangadharan's appointment as Liquidator were put for e-voting. It is however, observed that Mr. Mudappallur Varieth Gangadharan abruptly suspended/terminated the e-voting before the scheduled closure and before all the financial creditors could vote. Two of the financial creditors, namely Indian Overseas Bank (holding 63.80% vote share in CoC) and Bank of India (holding 32.75% vote share in CoC) filed IA/650/IB/2020 before AA inter-alia, stating that e-voting facilities for the 10th CoC meeting were to be made available by Mr. Mudappallur

Varieth Gangadharan from 14th August 2020 to 18th August 2020, however Mr. Mudappallur Varieth Gangadharan suspended/terminated the e-voting on knowledge that Bank of India had voted against his continuation as Liquidator and proposed another insolvency professional as Liquidator. The same has also been seen adversely by the AA.

- 4.2 It is thus evident that Mr. Mudappallur Varieth Gangadharan abruptly terminated the e-voting facility for 10th CoC meeting on ground, *inter-alia*, that one of the CoC members wanted to appoint another insolvency professional as liquidator.
- 4.3 Regulation 26 of CIRP Regulations requires a resolution professional to provide each member of the committee the means to exercise its vote by either electronic means or through electronic voting system in accordance with the provisions of this Regulation. Further, regulation 25(5) of CIRP Regulations, *inter-alia*, requires resolution professional to seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes. The act of Mr. Mudappallur Varieth Gangadharan to terminate the voting is premature, when an agenda bearing his interest was being considered and is mala-fide in nature.
- 4.4 In view of the above, the Board is of prima facie view that Mr. Mudappallur Varieth Gangadharan *inter-alia* violated regulation 25(5) and 26 of CIRP Regulations and also acted in a mala-fide manner to secure his appointment as liquidator in violation of clauses 1, 2, 3, 5 and 14 of Code of Conduct.

Submissions

- 4.5 With regard to the aforesaid contravention, Mr. Mudappallur Varieth Gangadharan submitted that the same had to be done because the agenda item — i.e., appointment of Mr. C. Ramasubramaniam as the Liquidator, was introduced by Bank of India *de hors* the meeting of the CoC and contrary to the agreed agenda items of the CoC only at the time of voting, i.e., on 14.08.2020. Admittedly, since application for extension of CIRP Period filed by Mr. Mudappallur Varieth Gangadharan was pending and in the absence of an order extending time, he would be rendered *functus officio*, and thus it would not have been appropriate to proceed with the voting.

Analysis and Findings

- 4.6 In this case, the DC notes that the CIRP period was expired on 17.01.2020 and Mr. Mudappallur Varieth Gangadharan with approval of the CoC approached the AA for extension of the CIRP period. While the application for extension of CIRP period remains pending, the CoC in its 10th CoC meeting held on 07.08.2020 recommended for liquidation of the CD. In continuation to this, CoC decide to take up the remaining agenda's, i.e., regarding the appointment of RP as a liquidator through e-voting w.e.f. 14.08.2020 to 18.08.2020. In the meantime, Mr. Mudappallur Varieth Gangadharan terminated the e-voting facility before all CoC members can cast the votes on agenda for the meeting.

- 4.7 The DC also notes that AA while passing liquidation order dated 20.04.2021 for the CD observed that “...IA/650/IB/2020 filed by the Indian Overseas Bank and Bank of India, have raised various allegation against the present Applicant/RP. The Bankers namely, Indian Overseas Bank holds 63.80 % of the voting rights of the CoC and Bank of India holds 32.75 % of the voting rights of the CoC and together they hold 96.55 % of the voting rights of the CoC of the Corporate Debtor.
There are lot of allegations of mis-management filed by these applicants. The Applicants have also brought to the notice of this Adjudicating Authority that the e-voting facility of 10th CoC meeting on 07.08.2020 was not conducted in the appropriate manner. There has been tremendous lapses on the part of the Applicant/RP.” Further, the AA refused to appoint Mr. Mudappallur Varieth Gangadharan as the liquidator and in his place appointed – Mr. C. Ramasubramaniam in the matter.
- 4.8 The DC notes that RP is required to seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with the provision of regulation 25(5) & 26 of the CIRP Regulation. Regulation 25(5) states that voting window shall be kept open for at least twenty-four hours from the circulation of the minutes. From the documents available on records, the DC has observed that provision of Regulation 25(5) & 26 of the CIRP Regulation were not followed. Termination of the e-voting facility for the 10th CoC meeting as accepted by Mr. Mudappallur Varieth Gangadharan on the ground that one of the CoC member wanted to appoint another IP as liquidator does not appear to be in consonance with provisions of the Code.
- 4.9 Under the scheme of the Code, based on the performance of the IP in conducting the affairs of the CD the satisfaction of the CoC is accorded. The creditors represented by a CoC holds the key to the fate of the CD and its stakeholders as it exercises its commercial wisdom in determining how the processes under the Code will be conducted. Thus, the DC is of view that Mr. Mudappallur Varieth Gangadharan has contravened provision of Regulation 25(5) & 26 of the CIRP Regulation and clauses 1, 2, 3, 5 and 14 of Code of Conduct.

5. Order

- 5.1 In view of the foregoing contraventions, the DC, in exercise of the powers conferred under section 220 of the Code read with Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017, hereby, suspends the registration of Mr. Mudappallur Varieth Gangadharan having registration no. IBBI/IPA-001/IP-00438/2017-2018/10761, for a period of one year.
- 5.2 This Order shall come into force on expiry of 30 days from the date of its issue.
- 5.3 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Mudappallur Varieth Gangadharan is providing his services, if any. The CoC may decide whether to continue his services or not. In case, CoC decide to discontinue his services, CoC may file an appropriate application before AA.

5.4 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI of which Mr. Mudappallur Varieth Gangadharan is enrolled as a member.

5.5 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.

Accordingly, the show cause notice is disposed of.

-Sd-
(Ravi Mital)
Chairperson, IBBI

Dated: 28th July, 2022

Place: New Delhi