

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
(Disciplinary Committee)

No. IBBI/DC/70/2021

16<sup>th</sup> April, 2021

**Order**

**In the matter of Mr. Venkataramanarao Nagarajan, Insolvency Professional (IP) under Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 read with section 220 of the Insolvency and Bankruptcy Code, 2016.**

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/MON/2019/25 [COMP-12016/1/2020] dated 20.05.2020 issued to Mr. Venkataramanarao Nagarajan, New No. 29 Kavarai Street, West Mambalam, Chennai, Tamil Nadu - 600033 who is a Professional Member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (**Board/IBBI**) with Registration No. IBBI/IPA-002/IP-N00055/2017-2018/10107.

**1. Background**

- 1.1 Mr. V. Nagarajan was appointed as an interim resolution professional (IRP) and/ or resolution professional (RP) in corporate insolvency resolution process (CIRP) of three Corporate Debtors (CDs), viz., Oceanic Tropical Fruits Private Limited *vide* order dated 12.09.2017 passed by Hon'ble NCLT, Chennai Bench, Rathna Stores Private Limited *vide* order dated 03.11.2017 passed by Hon'ble NCLT, Chennai Bench and Cethar Limited *vide* order dated 16.06.2017 passed by Hon'ble NCLT, Chennai Bench.
- 1.2 The IBBI in exercise of its power under section 196 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017 ('Inspection Regulations'), appointed an Inspecting Authority ('IA') *vide* order dated 17.01.2019 to conduct an inspection of Mr. V. Nagarajan, for the purposes as provided under sub-regulation (4) of regulation 3 of the Inspection Regulations.
- 1.3 The IA, in its report dated 30.09.2019 observed that Mr. V. Nagarajan has violated section 21(10), 22(1), 24(8), 25(2)(j), 25(2)(g), 28(1)(e), 29(1), section 208 (2) (a) & (e) of the Insolvency and Bankruptcy Code, 2016 (Code), regulation 17(2), 19(2), 21(1), 23(1), 23(3)(b), 23(3)(f), 24(7), 25(5), 26(1), 34, 36 and 36A(1) of CIRP Regulations, 2016, regulations 4(4), (5) and (7) of Inspection Regulations, regulations 7(2) (a), (g) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 ('IP Regulations') read with clauses 10, 13, 14, 15, 16, 18 and 19 of the Code of Conduct contained in the First Schedule of the IP Regulations.
- 1.4 The Board had issued the SCN on 20.05.2020 to Mr. V. Nagarajan on the basis of material available on record including Final Inspection Report in respect of his role as an IRP and/or RP in the CIRPs of M/s Oceanic Tropical Fruits Private Limited (OTFFPL), Rathna

Stores Pvt. Ltd. (RSPL) and Cethar Ltd. (CL).

- 1.5 The Board referred the SCN, his reply 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. V. Nagarajan availed an opportunity of personal virtual hearing before the DC on 18.02.2021 wherein he was represented by Mr. R. Subramanian, Advocate. Thereafter, Mr. V. Nagarajan submitted synopsis of the submissions made during the hearing *vide* email dated 26.02.2021.

### **Alleged Contraventions and Submissions**

Contraventions alleged in the SCN and written and oral submissions of Mr. V. Nagarajan are summarised as follows.

### **In the matter of Oceanic Tropical Fruits Pvt. Ltd.**

#### **Contraventions**

- 2.1 Regulation 34 of CIRP Regulations states that fees of RP and other professionals appointed by RP during that tenure should be approved from the CoC members. As per the Information Memorandum, Mr. V. Nagarajan had mentioned fees of Rs. 18 lakhs as IRP/RP remuneration and Rs. 4 lakhs as legal charges. However, IRP/RP remuneration and legal charges were not found specifically mentioned in minutes of 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> CoC meetings. He failed to get the said fees approved from the CoC. It has been further observed from the minutes of 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> CoC meetings that Mr. V. Nagarajan did not take CoC approval for incurring CIRP costs. It has been noticed (from request letters by Mr. V. Nagarajan to SBI Overseas Branch for making payments) that various payments were made through the said bank account without CoC's approval. In view of the above, the Board is of the *prima facie* view that Mr. V. Nagarajan violated section 28(1)(e), 208(2)(a) and (e) of the Code, Regulation 34 of CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of the IP Regulations, Clause 15 of Code of Conduct in the Schedule 1 of IP Regulations.
- 2.2 An IP is expected to exercise professional due care and diligence in preparation and presentation of Information Memorandum (IM). Section 25(2)(g) of the Code requires resolution professional to prepare the IM in accordance with Section 29 in order to preserve and protect the assets of the corporate debtor. In this case, ICICI Bank, a CoC member, *vide* email dated 16.07.2018 had observed discrepancies in the IM and requested Mr. V. Nagarajan to remove such discrepancies. However, he did not rectify discrepancies in the IM and shared the IM containing discrepancies with resolution applicant on 08.06.2018 before sharing the same with CoC on 14.06.2018. He also invited resolution applicants to present their resolution plan in the 8<sup>th</sup> CoC meeting held on 12.07.2018 based on the IM with many factual discrepancies, which were pointed out to him and he agreed to rectify the same. Mr. V. Nagarajan had convened 9<sup>th</sup> CoC meeting on 23.08.2018 without rectifying discrepancies in the IM. He focused entirely on inviting the resolution applicants for presentation which was not agreed and

approved by the CoC. In view of the same, the Board is of the *prima facie* view that Mr. V. Nagarajan violated Section 25(2)(g), 208(2)(a) & (e) of the Code and regulation 36 of CIRP Regulations.

- 2.3 Another contravention pertains to section 25(2) (j) of the Code which explicitly imposes a duty on RP to file application for the avoidance transactions in accordance with chapter III of part II of the Code to preserve and protect the assets of the CD. It was observed that CoC requested Mr. V. Nagarajan to scrutinize transactions of CD involving funds diversion, preferential treatment and to immediately carry out forensic audit in 4<sup>th</sup> CoC meeting held on 15.03.2018 but the agreement appointing forensic auditor was entered into on 13.07.2018. Further, Mr. V. Nagarajan failed to file application for avoidance of transactions in accordance with chapter III of Part II of the Code. Therefore, the Board is of the *prima facie* view that Mr. V. Nagarajan violated section 25(2)(j), 208(2)(a) and (e) of Code.
- 2.4 It was observed that a) notice dated 20.02.2018 for 3<sup>rd</sup> CoC meeting to be held on 21.02.2018 at 10:30 AM was sent on 21.02.2018 at 10:36 AM, and b) Notice dated 25.03.2018 for 5<sup>th</sup> CoC meeting to be held on 26.03.2018 at 12 noon was sent on 25.03.2018 at 9:27 PM. As per Regulation 19(2) of the CIRP Regulations, Mr. V. Nagarajan was required to give notice of at least 24 hours (reduced from 7 days with prior CoC approval) before the CoC meeting. Mr. V. Nagarajan conducted the 3<sup>rd</sup> and 5<sup>th</sup> CoC meeting with less than 24 hours' notice without sufficient reasons in clear violations of regulation 19(2) of the CIRP regulations. In view of the same, the Board is of the *prima facie* view that Mr. V. Nagarajan violated section 208(2)(a) and (e) of the Code, Regulation 19(2) of CIRP Regulations, Regulations 7(2)(a) and (h) of the IP Regulations read with Clause 13 of Code of Conduct in the Schedule 1 of IP Regulations.
- 2.5 As per regulation 24(7) of the CIRP Regulations, the minutes of CoC meetings are to be circulated to all the participants by electronic means within 48 hours of the meeting. Further, clause 16 of the Code of conduct of IPs requires an IP to maintain written contemporaneous records for any decision taken, the reasons for taking the decision and the information and evidence in support of such decision. However, it was noted from copies of Mr. V. Nagarajan's e-mails dated 12.03.2018, 22.03.2018, 11.05.2018, 10.07.2018, and 18.08.2018 that minutes of CoC meetings were not shared within 48 hours of the meetings. One of its Financial creditors, ICICI Bank *vide* e-mail dated 16.07.2018 had conveyed to him that minutes of 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> CoC meetings did not capture the exact proceedings of CoC meetings. Hence, Mr. V. Nagarajan failed to capture the exact proceedings of CoC meetings in the minutes. In view of the same, the Board is of the *prima facie* view that Mr. V. Nagarajan violated section 208(2)(a) and (e) of Code, regulation 24(7) of CIRP Regulations, regulation 7(2)(a) and (h) of IP Regulations, clauses 10, 13, 14 and 16 of the Code of Conduct in the Schedule 1 of IP Regulations.
- 2.6 Section 21(9) of the Code stipulates that the committee of creditors shall have the rights to require the resolution professional to furnish any financial information in relation to

the corporate debtor at any time during the corporate insolvency resolution process. Further, section 21(10) of the Code requires the resolution professional to make available any financial information so required by the committee of creditors under subsection (9) within a period of 7 days of such requisition. It has been observed from copy of Mr. V. Nagarajan's e-mail dated 16.07.2018 that he delayed in replying to ICICI Bank Limited (one of the CoC members) seeking financial information *vide* e-mail dated 05.07.2018 by more than 7 days in violation of section 21(10) of the Code. It was further noted that he did not provide clarification on audited financial statements for the FY 2016-17 and 2017-18 sought by ICICI Bank Limited. It is observed from the copy of minutes of 8<sup>th</sup> CoC meeting dated 12.07.2018 that Mr. V. Nagarajan stated that CoC members can seek clarification from the auditors. In view of the same, the Board is of the *prima facie* view that Mr. V. Nagarajan violated section 21(10), 208(2)(a) and (e) of the Code, Regulation 7(2)(a) and (h) of IP Regulations and Clause 10 of Code of Conduct in the First Schedule of IP Regulations.

### **Submissions**

- 2.7 With respect to the first issue in the matter of Oceanic Tropical fruits Pvt. Ltd. where approval of CoC for the fee of RP fees and legal expenses was not obtained, it was submitted by Mr. Nagarajan that his appointment as RP was made after the IRP was removed by the CoC. He stated that prior to IRP's removal, he was asked at the first CoC meeting to continue till the decision was made by the CoC on the person to be appointed as the RP in the matter.
- 2.7.1 Mr. Nagarajan stated that the IRP was paid fees at the rate of Rs 1.5 Lakhs per month both for the period prior to 1st CoC meeting and for the extended period. He submitted that CoC consisted of three Financial Creditors, *i.e.*, State Bank of India, Central Bank of India and ICICI Bank Limited and he was advised by State Bank of India, Central Bank of India that the same fee can be charged by him. He stated that it was on this basis that he provisionally provided for a fee of Rs 18 lakhs (considering a period of 12 months assuming 180 days plus 90 days plus overrun period pending approval in the IM issued) and that the legal expenses at the stage of IM were also only an estimate.
- 2.7.2 Mr. Nagarajan submitted that the actual fee of RP drawn by him till date was only Rs.9.96 lakhs. He stated that at the 3rd COC meeting, he had placed the estimated RP cost and the legal cost before the CoC as part of demand for interim finance. That while the interim finance was not approved, he was directed to meet the expenses from internal accruals. He submitted that as such the proposed expenses were approved. He submitted that he charged only the agreed fees of Rs 1.5 lakhs per month and as there was no money with the CD, he had drawn only Rs.9.96 lacs even though he was entitled to a fees of more than the amount drawn by him for the period of the CIRP of the CD which was from the date of his appointment by NCLT, Chennai on 09.02.2018 and till date of the liquidation of the CD *vide* the NCLT, Chennai order dated 31.10.2018.
- 2.7.3 Mr. Nagarajan submitted that the combined figure of Rs 22 lakhs provided for the RP's fee and the legal cost in the IM was part of the Rs 50 lakhs provided for these together with Security and Office expenses at the 3rd Meeting of the CoC. While the same was set out as a break-up of the need for interim finance, it was to be noted that the CoC only refused the

interim finance but directed the expenses be met out of the internal accruals. He stated that the RP expenses and legal expenses cannot be set out as not got approved. He concluded by stating that for reasons stated above, his action in setting out the estimate of RP cost and legal cost at Rs 18 Lakhs and Rs 4 Lakhs respectively was not an act made without approval

- 2.8 In respect of the second issue of lack of reasonable care in preparation and presentation of the IM, Mr. Nagarajan submitted that the issue of discrepancy in the IM raised by ICICI was placed before the CoC at its eight meeting and the same was taken on record. He stated that the minutes extensively mentioned the ICICI Bank e-mails and the concerns on the IM and the same was suitably replied by Mr. Nagarajan to the knowledge of the CoC members which is evident from the minutes of the said meeting. The position that the IM was in order and was duly accepted by the CoC. The CoC had stamped its approval to the IM and rejected, in effect, the issues raised by ICICI Bank, therefore, the same does not survive for consideration. He further stated that the correctness and veracity of the said minutes were at no stage challenged by ICICI Bank or even by the other CoC members and have, thus, become final.
- 2.9 With respect to the third issue of non-filing of avoidance application, Mr. Nagarajan submitted that there was no delay in filing the avoidance applications. He stated that the forensic audit was initiated by him as per CoC instructions, however, as the bills for the interim report were not paid, the Forensic Auditor stopped his work. Thereafter, the Banks who were part of the CoC cut him off from the matter of Forensic Audit and entered into a direct arrangement with the Forensic Auditor and presumably paid the Auditor by themselves. He further stated that the forensic audit report was not shared with him either by the Banks or by the Forensic Auditor. He stated that the delay in entering into an agreement for Forensic Audit was due to non-commitment from the Banks to pay. Even electricity supply was cut off and he had to move NCLT to get back power supply and then, took up some contract manufacturing to keep cash flows going. He concluded that the Banks finally shared the forensic report with him only on 04.02.2020 and thereafter, on 04.03.2020, he filed the application for avoidance of transaction at NCLT, Chennai and the same is pending adjudication.
- 2.10 With respect to the fourth issue of non-adherence to the timelines for conducting CoC meetings on two occasions, Mr. Nagarajan submitted that in the first case, all the CoC members and the CD representative attended the meeting and as such the meeting intimation was given. He stated that the mistake was in his furnishing the correct mail copy. He submitted that even *ex facie* the meeting could not have been held with 100% participation if the meeting was not communicated in timely manner. He admitted the error in record keeping on his part and stated that he would ensure that all such records are printed and stored in future rather than merely rely on E-storage of the records.
- 2.10.1 Mr. Nagarajan submitted that there was admittedly only 15 hours' notice instead of 24 hours as per the e-mail. He stated that he had notified the meeting much earlier to the CoC but the e-mail was delayed in view of his being stuck outside office on IP work and hence, he was able to send the mail only on return to office late evening. He admitted that in both these matters, there was an error on his part. He requested that the same may be condoned as no prejudice was caused to any one and all attended the meetings. He promised that he would exercise full care in future.

- 2.11 With respect to the fifth issue that the minutes of the CoC meeting did not capture the exact proceedings thereof, Mr. Nagarajan submitted that claim of ICICI Bank that the minutes of 3<sup>rd</sup> to 6<sup>th</sup> meeting did not correctly reflect the proceedings was false. He submitted that each minute of the meeting was on hand with ICICI Bank before the next Meeting and that there was no reason for ICICI Bank to wait till 16.07.2018 to object to minutes circulated months earlier. He stated that once the minutes are confirmed at the next meeting, no person can seek to hold the same as incorrect. As far as the issue of delay in the circulation of minutes beyond 48 hours was concerned, Mr. Nagarajan admitted the delay on his part. He stated that he was aware that timely circulation of minutes was mandatory under the Regulations but there was delay in some occasions. He stated that he would be vigilant in this regard in future.
- 2.12 With respect to the sixth issue of non-furnishing of financial information to the Financial Creditor (FC), Mr. Nagarajan submitted that he had taken a strict legal view that the provision of section 21(9) and (10) of the Code do not vest such right on each FC to seek and obtain financial information of CD as the right is vested not on each FC but on CoC. He stated that ICICI Bank alone is not the CoC and ICICI Bank was merely a member of CoC. It was submitted by him that unless there was a resolution of CoC there can be no right of any member of the CoC to invoke section 21(9) of the Code. He concluded that the refusal to furnish information to ICICI Bank was in terms of the Code and ICICI Bank was not entitled to seek such information at all in the first place. Further, he stated that there was also an issue as the statutory auditor had died and he had to appoint a new auditor to complete the audits of last two financial years as per the Code. He submitted in the additional submissions that he had understood that as an RP, he should take the entire CoC with him and would, thus, ensure that the same is followed in the future.

### **In the matter of Rathna Stores Private Limited**

#### **Contraventions**

- 2.13 Preparation of Information Memorandum (IM) and inviting resolution plans is one of the crucial tasks of insolvency professional. It has been observed that Ms. V. Nagarajan failed to prepare the IM and failed to invite resolution plans as per provisions of Code/Regulation. As per his e-mail dated 12.11.2018 to the board, he admitted that no EOI was published. Hence, EOI was not published even though in 2<sup>nd</sup> and 3<sup>rd</sup> CoC meetings, CoC directed Mr. V. Nagarajan to take steps for the same. In view of the same, the Board is of the *prima facie* view that Mr. V. Nagarajan violated section 25(2)(g), 208(2)(a) and (e) of the Code, Regulation 36A(1) of CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of the IP Regulations and clause 14 of Code of Conduct in the Schedule 1 of IP Regulations.
- 2.14 As per Regulation 19(2) of the CIRP Regulations, Mr. V. Nagarajan was required to give notice for meeting of the CoC at least 24 hours prior to the CoC meeting (with prior approval of CoC). As per Regulation 24(7) of the CIRP Regulations, minutes of CoC meetings are to be shared with the participants within 48 hours of the meeting. It was observed that notice for 2<sup>nd</sup> CoC meeting was e-mailed on 05.03.2018 at 2:15 PM for the meeting to be held on same day at 5:30 PM. Hence, Mr. V. Nagarajan conducted 2<sup>nd</sup>

CoC meeting without adequate notice. No prior approval for shorter notice was taken from CoC and ratification was sort after the meeting was over. He also delayed sharing of 2<sup>nd</sup> CoC meeting minutes. It was observed from the copies of e-mails exchanged between him and CoC member that 2<sup>nd</sup> CoC meeting was held on 05.03.2018 while the draft minutes were circulated on 13.03.2018. In view of the same, the Board is of the *prima facie* view that Mr. V. Nagarajan violated section 208(2)(a), 208(2)(e) of the Code, Regulation 19(2) and 24(7) of CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IP Regulations, Clause 13 and 14 of Code of Conduct in the Schedule 1 of IP Regulations.

- 2.15 An IP is expected to ensure that he maintains written contemporaneous records for any decisions taken, the reasons for taking the decision and the information and evidence in support of such decision. Further, an IP must not be negligent while performing his functions and duties under the Code. As per the e-mail dated 13.03.2018 from ICICI Bank which is one of the CoC members, it was pointed out that certain matters discussed in 2<sup>nd</sup> CoC meeting were not included in the minutes. The same was also noted from the minutes of 2<sup>nd</sup> CoC meeting. In view of the same, the Board is of the *prima facie* view that Mr. V. Nagarajan violated section 208(2)(a) and (e) of the Code, regulation 7(2)(a) and (h) of the IP Regulations and clauses 14 and 16 of Code of Conduct in the Schedule 1 of IP Regulations.

### **Submissions**

- 2.16 With respect to the first issue of non-publication of EOI, Mr. Nagarajan submitted that the CIRP in the matter was initiated by ICICI Bank which was a minor creditor while the major creditors were UCO Bank (with 50.86% share in CoC) and Canara Bank (with 42.62% share in CoC). He stated that from the outset, these major creditors with 93% share in CoC were not keen on initiating CIRP as they felt it was foisted by ICICI Bank on them and all costs were to be borne by them as they were the major creditors. Mr. Nagarajan submitted that there were large attachments by Income Tax and other statutory agencies and there was no financial account of the CD for years together and even at stage of CIRP commencement, accounts were in arrears for 7 years. He stated that the business conducted at the premises of the CD was claimed as not being part of the CD but as a private business of the firm of the promoters who had the property on long use basis. As such there was neither accounts nor any assets except the immovable property which was in the possession of the promoters and not the CD.
- 2.16.1 Mr. Nagarajan further stated that the major creditors wanted liquidation without any effort being taken in the CIRP as they were sure that CIRP costs would not be useful as there can be no resolution applicant with no financial details of the CD. At the 3<sup>rd</sup> CoC meeting, Mr. Nagarajan wanted to take up steps for EOI, however, he was stopped from pursuing the same and was asked by the CoC to take up EOI after valuation was done.
- 2.16.2 Mr. Nagarajan immediately sought some funds for effecting valuation by way of interim finance, on which he was informed that the sanctioning authority was not willing to provide interim finance. Without funds he could not pay to the valuer and he was refused funds even to publish the EOI. He stated that the majority banks did not want him to go to Hon'ble NCLT for a liquidation order as they felt that NCLT would not permit liquidation at early

stage of CIRP, thus, they wanted him to wait so that liquidation would happen by efflux of time itself and the NCLT would approve Liquidation.

- 2.16.3 Mr. Nagarajan further submitted that at the CoC meeting, there were different stance of ICICI Bank and the major creditor banks. The majority banks always took the stance that they cannot be forced to bear costs for CIRP initiated by ICICI Bank in which ICICI Bank had very less financial interest, while ICICI Bank did not offer interim finance nor did it insist on any EOI being issued as it was aware that with no money being provided for interim finance, valuation or EOI was not possible. It was in such circumstance that liquidation was filed after direction of the majority banks in the CoC meeting.
- 2.16.4 Mr. Nagarajan categorically stated that there was no failure on his part as he followed the decision of the CoC and its commercial wisdom. Moreover, despite having initiated the CIRP, ICICI Bank kept quiet and never offered any interim finance to kick-start valuation to allow the process to move to EOI. He stated that as such there was no failure on his part as the CoC did not allow him to proceed with the valuation and in such a scenario, the question of issuing any EOI did not arise.
- 2.17 With respect to the second issue of delay in circulation of CoC minutes, Mr. Nagarajan submitted that the meeting notice was sent by hand delivery well over 24 hours in advance as required under Regulation 19 of the CIRP Regulations. He stated that the e-mail notice while mandatory, was not necessary to be sent 24 hours in advance. He stated that having already hand delivered the notice of CoC, he complied with the mandatory email requirement by sending meeting notice *via* email on the meeting date. He submitted that the requisite consent for shorter notice is not required to be recorded in the COC minutes when all the CoC members attend the meeting called at short notice. He stated that when 100% of CoC is present for a short notice meeting, it was evident that the short notice was approved as no one would come to a meeting to oppose the short notice. He stated that as a practice, he would also not convene a meeting at short notice without taking oral approval of the CoC members. In such position there was no contravention in this regard.
- 2.17.1 As regard the issue of minutes circulation for meeting dated 05.03.2018 was concerned, Mr. Nagarajan admitted that there was a delay of 6 days in circulating the same. He stated that the reason for the same was that he wanted to take legal advice on the manner of recording the EOI as the CoC wanted the process to await the valuation but refused to give any commitment to fund the valuation exercise. The delay was not intentional nor *mala fide* and was only so that the minutes were reflective of the discussions and not in violation of the Code.
- 2.18 As far as the third issue of non-recording of minutes of second CoC meeting is concerned, Mr. Nagarajan submitted that the ICICI bank's claim was false as the minutes of the 2<sup>nd</sup> CoC meeting were approved at the meeting of 3<sup>rd</sup> CoC. He submitted that the 2<sup>nd</sup> CoC minutes were circulated on 05.03.2018 itself and that if ICICI bank had any issues on the same, the objection should have come immediately thereafter. He stated that no other CoC member including the majority two banks with 90% share have raised any issue with the 2<sup>nd</sup> CoC minutes. He stated that the 3<sup>rd</sup> CoC approved the 2<sup>nd</sup> CoC minutes despite the email of ICICI bank which shows that the claim of ICICI bank was *malafide* and false. He concluded by stating that the delay in ICICI bank contesting the 2<sup>nd</sup> CoC minutes and the approval of the minutes by the CoC reveal that ICICI bank's claim was false and only an afterthought.



## **In the matter of Cethar Ltd.**

### **Contraventions**

- 2.19 Mr. V. Nagarajan was appointed as an IRP in the matter of Cethar Ltd. on 19.07.2017 and the CoC was constituted on 12.09.2017 and first CoC meeting was held on 19.09.2017. As per Regulation 17(2) of the CIRP Regulations, first CoC meeting should be conducted within 7 days of filing the report certifying constitution of CoC before Adjudicating Authority which has to be done within thirty days from the date of his appointment. Hence, he had delayed the conduct of 1<sup>st</sup> CoC meeting which was conducted on 19.09.2017, *i.e.*, 60 days after his appointment as IRP on 19.07.2017. In view of the same, the Board is of the *prima facie* view that Mr. V. Nagarajan violated section 22(1), 208(2)(a) and (e) of the Code, regulation 17(2) of CIRP Regulations, regulation 7(2)(a) and 7(2)(h) of the IP Regulations & clause 13 of Code of Conduct in the Schedule 1 of IP Regulations.
- 2.20 It was observed that Mr. V. Nagarajan did not circulate the minutes of CoC meetings within 48 hours of the meeting and the same was admitted by him in his reply dated 11.03.2018 to the Board. Therefore, the Board is of the *prima facie* view that Mr. V. Nagarajan violated section 208(2)(a) and (e) of the Code, Regulation 24(7) of CIRP Regulations, Regulation 7(2)(a) and (h) of the IP Regulations and clauses 13 and 14 of Code of Conduct in the Schedule 1 of IP Regulations.
- 2.21 It is noted that ARCIL, one of the CoC members holding 13.82% voting share in the CoC had *vide* e-mail dated 23.11.2017 requested Mr. V. Nagarajan to conduct the meeting after making necessary arrangements to provide the participants with an option to attend the meeting through video conferencing or other audio and visual means in accordance with the CIRP Regulations. However, he failed to provide the Video Conferencing facility or other audio and visual means for CoC meeting held on 14.12.2017 thereby resulting in non-participation of ARCIL in the CoC meeting and impairment of decision-making capacity of ARCIL. Therefore, the Board is of the *prima facie* view that Mr. V. Nagarajan violated section 24(8), 208(2)(a) and (e) of the Code, regulation 21(1), 23(3)(b), 23(3)(f) of CIRP Regulations, regulation 7(2)(a) and (h) of IP Regulations and clauses 10 and 14 of Code of Conduct in the Schedule 1 of IP Regulations.
- 2.22 It is noted that in the CoC meeting held on 08.12.2017 following agendas were considered for approval - i) Shorter notice consent, ii) To take on record the CoC members' approval seeking extension of 152 days (90 days + 62 days) and authorization to RP to file application before NCLT, Chennai. It was observed from copy of Mr. V. Nagarajan's e-mail dated 08.12.2017 and minutes of 6<sup>th</sup> CoC meeting held on 08.12.2017 that e-mail dated 08.12.2017 from ARCIL disapproving the agenda item was considered as negative vote in respect of both the agenda items. Regulation 25(5)(b) of the CIRP Regulations require RP 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 of the CIRP Regulations. As per the scrutinizer's report evidencing holding of e-voting from 12.12.2017 to 13.12.2017 that e-voting was not done on agenda item (i) above, *i.e.*, shorter notice consent. Therefore, the Board is of the *prima facie* view that Mr. V. Nagarajan violated section 208(2)(a) and (e) of the Code, regulation 25(5)

and 26(1) of CIRP Regulations, regulation 7(2)(a) and (h) of the IP Regulations and clause 10 of Code of Conduct in the Schedule 1 of IP Regulations.

- 2.23 It was observed that Mr. V. Nagarajan had delayed in sharing final IM with all the relevant contents and the same was admitted in his reply dated 11.03.2018 to the Board. Therefore, the Board is of the *prima facie* view that Mr. V. Nagarajan violated section 208(2)(a) and (e) of the Code and regulation 36 of CIRP Regulations.

### **Submissions**

- 2.24 With respect to the first issue of delay in conduct of first CoC meeting, Mr. Nagarajan stated that the CIRP in the matter was initiated *vide* order 16.07.2017 of Ld. NCLT, Chennai. And since no IRP was proposed by the petitioner Operational Creditor, Ld. NCLT referred the matter to the Board regarding recommending name of an IRP. He stated that the Ld. NCLT had *vide* order dated 19.07.2017 appointed him as the IRP and as such, all timelines relevant to him started only from that date. He stated that one of the FCs - Indian Bank as the lead bank of the Consortium of Banks had moved the Hon'ble Madras High Court on 01.08.2017 (WP NO. 19868 OF 2017 in WMP No. 21455 of 2017) and obtained stay of the CIRP proceedings. Thereafter, the said Writ Petition at the Madras High Court was withdrawn on 01.08.2017 and the Indian Bank, with the permission of the High Court, moved to the Ld. NCLAT. He submitted that it was under such uncertain circumstances, he was able to conduct the 1<sup>st</sup> CoC meeting only on 19.09.2017. He submitted that in view of the aforementioned circumstances, as such, there was no violation in the conducting the 1<sup>st</sup> CoC meeting.
- 2.25 With respect to the second issue of timeline adherence in respect of circulation of minutes of CoC meeting, Mr. Nagarajan admitted that there was delay in circulation of minutes of CoC meeting beyond the mandated 48 hours. He submitted that during the CIRP of Cethar Ltd. he was overwhelmed with work as the same was extremely challenging given the scale of fraud involved therein. He submitted that the records and the extent of legal proceedings in the same would show that he had strived and acted to discharge his duties without fear or favor. In such circumstances of pressure on multiple fronts, he had inadvertently exceeded the time limit for circulation of minutes. He stated that the delay was not intentional and was for *bonafide* reasons and that the minutes had since been confirmed as well revealing that he did not cause any mistake to creep in even though the draft minutes were circulated with some delay beyond 48 hours.
- 2.26 With respect to the third issue of non-provision of video conference to ARCIL for participation in CoC, Mr. Nagarajan submitted that the meeting in question was in 2017 much before the era of virtual hearings by zoom and Cisco webex. At that stage, ARCIL sought to attend the hearing *via* video conference. Due to constraints of money, Mr. Nagarajan sought help from Indian Bank to make their internal VC infrastructure available for his meeting and VC was arranged for ARCIL from Indian Bank, Mumbai Zonal Office. However, when the same could not be arranged, Mr. Nagarajan provided necessary facility of audio conference for ARCIL to participate.
- 2.26.1 Mr. Nagarajan further submitted that regulation 23 of the CIRP regulation provides for video conferencing and in the alternate, the provision of other audio and visual means. He clarified that in a similar situation in present scenario, he would have offered Zoom or such other

Virtual conference mode, however, such options were not known to him nor suggested by ARCIL or other CoC participants.

2.27 With respect to the fourth issue of e-voting not done in respect of agenda item on the issue of shorter notice in CoC meeting dated 8.12.2017, Mr. Nagarajan submitted that regulation 19 of the CIRP Regulations permit a meeting to be held at 24-hour notice if the committee so deems fit. He stated that the permission for a meeting with short notice by the CoC cannot be the subject matter of voting at the CoC itself as once the CoC meeting has been convened with persons constituting over 75% majority votes being present, the meeting was deemed to be authorised. He further stated that the only manner of CoC granting approval to a short notice meeting would be if members constituting more than 25% voting power set out to the RP that they do not want a short notice meeting and such intimation is made before the meeting and that if such intimation is received, the RP cannot go ahead with the meeting at all. That in the event of no such intimation, if at the meeting, only members constituting less than 75% vote share are present then the RP cannot proceed with the meeting and has to seek e-voting confirmation of the notice for shorter meeting. He further submitted that in the present case, the members who were present at the meeting were more than the 75% voting share and by their very presence at the meeting, they had consented to the shorter notice as otherwise they would not have come for the meeting and that there could be no requirement to seek voting on such item.

2.27.1 Mr. Nagarajan stated that in the present case, he had convened the meeting after contacting the CoC members and having been assured of over 75% support to short notice. The same was evidenced by the members attending the proceedings and voting in favour of the substantial agenda item.

2.27.2 He further submitted that as ARCIL did not join validly convened CoC, which by participation of the members constituting over 75% vote share was already held as validly convened, Mr. Nagarajan as per the terms of regulation 25(5) of the CIRP regulations placed the matter for e-voting. Mr. Nagarajan stated that in view of the said regulation and the submissions made in this regard, he did not have to put the issue of short notice convening of CoC for voting as the issue was already over with meeting convened and attended by necessary majority which is required to approve short notice.

2.28 With respect to the fifth issue of delayed sharing of the IM with the CoC, Mr. Nagarajan submitted that the CIRP of Cethar was very complex and the promoters of the CD taking advantage of the gaps from date of order of the CIRP to the date of appointment of IRP, removed the documents and records of the CD out of reach of him and also created back dated records of pre-CIRP period to frustrate the insolvency process. He further stated that the issue of falsification and back dating of records were all proven by the email of the CD promoters itself in respect of the siphoning of Rs 550 crores.

2.28.1 Mr. Nagarajan stated that when he effectively took over the CD, there was hardly any employees as all people with knowledge of facts relating to CD were moved to Dynepro Private Limited - an entity of the promoters competing with the CD and he had no records and no employees. He stated that he had no money and interim finance was not possible till Indian Bank was convinced that CIRP was the right course for the company. It was for these reasons that the IM was delayed. The records of the COC minutes would reveal that the constraints were made known to the COC at all times and the COC barring ARCIL were cooperative at all times.

- 2.28.2 Mr. Nagarajan stated that on the issue of valuation, the scope of the work was vast as there was wide discrepancy between the books and physical stocks and the books were suppressed from him and the computer servers were removed. In view of the same, he believed it reasonable that an IM without relevant verified data would not serve any purpose.
- 2.28.3 Mr. Nagarajan, thus, submitted that the delay in preparation of the IM was in view of the unique circumstances in which the CIRP came to be ordered and the banks resisting the CIRP and moving the High Court and the fraud by the promoters.

### 3. **Analysis and Finding**

The DC after considering the SCN, oral and written submissions of Mr. Nagarajan and also the provisions of the Code and the regulations made thereunder, notes that the Code casts strenuous responsibilities on an IRP/ IP under section 20, 23 and 25 thereof to make every endeavor to protect and preserve the value of the property of the CD and to run the affairs of the CD in distress as a going concern and to maximize the value of the assets. Such responsibilities of an IP require the highest level of professional excellence, dexterity and integrity. As the key objective of the Code is maximization of the value of the assets, one needs credible determination of value of assets to facilitate comparison and informed decision making. The valuations serve as reference for evaluation of choices, including liquidation, and selection of the choices that decides the fate of the firm. Section 20, 23 and 25 of the Code provide as follows:

*“20. Management of operations of corporate debtor as going concern. –*

- (1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.*
- (2) For the purposes of sub-section (1), the interim resolution professional shall have the authority-*
- (a) to appoint accountants, legal or other professionals as may be necessary;*
- (b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;*
- (c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property:*  
*Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.*
- (d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and*
- (e) to take all such actions as are necessary to keep the corporate debtor as a going Concern.”*

*“23. Resolution professional to conduct corporate insolvency resolution process. –*

*(1) Subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period:  
[Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34 is passed by the Adjudicating Authority.]*

*(2) The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.*

*(3) In case of any appointment of a resolution professional under sub-sections (4) of section 22, the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.”*

*“25. Duties of resolution professional. –*

*(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*

*(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -*

- (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;*
- (b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;*
- (c) raise interim finances subject to the approval of the committee of creditors under section 28;*
- (d) appoint accountants, legal or other professionals in the manner as specified by Board;*
- (e) maintain an updated list of claims;*
- (f) convene and attend all meetings of the committee of creditors;*
- (g) prepare the information memorandum in accordance with section 29;*
- (h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.*
- (i) present all resolution plans at the meetings of the committee of creditors;*
- (j) file application for avoidance of transactions in accordance with Chapter III, if*

any; and  
(k) such other actions as may be specified by the Board.”

- 3.1 The UNCITRAL Legislative Guide on Insolvency Law also recognized that effective and efficient insolvency regimes should aim to achieve the key objectives including maximization of value of assets:

*“5. Participants in insolvency proceedings should have strong incentives to achieve maximum value for assets, as this will facilitate higher distributions to creditors as a whole and reduce the burden of insolvency. The achievement of this goal is often furthered by achieving a balance of the risks allocated between the parties involved in insolvency proceedings.*

...  
*6. The first key objective of maximization of value is closely linked to the balance to be achieved in the insolvency law between liquidation and reorganization. An insolvency law needs to balance the advantages of near-term debt collection through liquidation (often the preference of secured creditors) against preserving the value of the debtor’s business through reorganization (often the preference of unsecured creditors and the debtor). Achieving that balance may have implications for other social policy considerations, such as encouraging the development of an entrepreneurial class and protecting employment. Insolvency law should include the possibility of reorganization of the debtor as an alternative to liquidation, where creditors would not involuntarily receive less than in liquidation and the value of the debtor to society and to creditors may be maximized by allowing it to continue. This is predicated on the basic economic theory that greater value may be obtained from keeping the essential components of a business together, rather than breaking them up and disposing of them in fragments.”*

- 3.2 The DC further notes that during CIRP, the management of the affairs of the CD vests in the IRP and the powers of the Board of Directors of the CD is exercised by the IRP under section 17 of the Code. For all practical purposes, the IRP is the alter ego of the CD undergoing CIRP. Every decision of the CD and in respect of the CD is taken by the IRP. Section 17 of the Code reads as follows:

*“17. Management of affairs of corporate debtor by interim resolution professional. –*

*(1) From the date of appointment of the interim resolution professional, -*  
*(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;*  
*(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;*  
*(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;*  
*(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.*

- (2) *The interim resolution professional vested with the management of the corporate debtor, shall-*
- (a) *act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;*
  - (b) *take such actions, in the manner and subject to such restrictions, as may be specified by the Board;*
  - (c) *have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;*
  - (d) *have the authority to access the books of accounts, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as 1 [may be specified; and]*
  - (e) *be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.”*

The BLRC, the recommendations of which has led to the enactment of the Code, in its Final Report, has also laid emphasis on the role of an IP as follows:

*“The Insolvency Professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process....In administering the resolution outcomes, the role of the IP encompasses a wide range of functions, which include adhering to procedure of the law, as well as accounting and finance related functions. The latter include the identification of the assets and liabilities of the defaulting debtor, its management during the insolvency proceedings if it is an enterprise, preparation of the resolution proposal, implementation of the solution for individual resolution, the construction, negotiation and mediation of deals as well as distribution of the realisation proceeds under bankruptcy resolution. In performing these tasks, an IP acts as an agent of the Page 13 of 18 adjudicator. In a way the adjudicator depends on the specialized skills and expertise of the IPs to carry out these tasks in an efficient and professional manner...This creates Role of Resolution Professionals in CIRP the positive externality of better utilisation of judicial time.”*

- 3.3 The role of an IP encompasses a wide range of functions and it is incumbent upon an IP, under section 208(2)(a) of the Code, to take reasonable care and diligence while performing his functions and duties. Section 208(2)(a) reads as under:

*“208. Functions and obligations of insolvency professionals.*

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

*(a) to take reasonable care and diligence while performing his duties; ...”*

- 3.4 It is the duty of the IP to ensure that his conduct establishes the credibility of the process. Therefore, while granting certificate of registration to an IP they are subjected to follow the Code of Conduct specified in the First Schedule to the IP Regulations. In this regard, clauses (a) and (h) of regulation 7(2) of the IP Regulations provides as follows:

*“7. Certificate of registration.*

*(2) The registration shall be subject to the conditions that the insolvency professional shall-*

*(a) at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled;*

...

*(h) abide by the Code of Conduct specified in the First Schedule to these Regulations;...*”

- 3.5 The DC, in the light of the aforesaid provisions, proceeds to dispose of the SCN with respect to CIRP of said three CDs as follows:

**In the matter of Oceanic Tropical Fruits Pvt. Ltd.:**

- 3.6 The DC notes that the RP had included Rs. 18 lakhs of IRP/RP remuneration and Rs. 4 lakhs of legal charges in the IM without any approval from CoC. The DC has found that the IRP/RP remuneration and legal charges were not specifically mentioned in minutes of 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> CoC meetings. In this regard, it is pertinent to refer the contents of regulation 34 of the CIRP regulations, which reads as under:

*“34. Resolution professional costs. The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.*

*Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.”*

In this respect, the DC notes the submission made by Mr. Nagarajan that the erstwhile IRP was paid fees at the rate of Rs 1.5 Lakhs per month both for the period prior to 1<sup>st</sup> CoC meeting and for the extended period and that he was advised by the FCs - State Bank of India and Central Bank of India that the same fee can be charged by him. The DC notes his submission that it was on this basis that Mr. Nagarajan provisionally provided for a fee of Rs 18 lakhs and Rs. 4 lakhs as the legal expenses at the stage of IM as only an estimate and that the actual RP fee drawn by him till date for 8 months and 12 days was only Rs.9.96 lakhs although he was eligible for the fees of Rs. 12.6 lakhs. The DC also notes his submission that the CoC had not objected to the fees and charges and had merely refused to make available interim finance and instead asked Mr. Nagarajan to meet the same from other resources evidencing that there was no disapproval. In view of the same, the DC accepts the submissions of Mr. Nagarajan that his action in setting out the estimate of RP cost and legal cost at Rs 18 Lakhs and Rs 4 Lakhs respectively was not an act made without approval. Hence, alleged contravention in this regard is not made out.

- 3.7 With respect to the second contravention of lack of reasonable care in respect of the IM, the DC notes that despite being asked by the CoC to prepare the IM in compliance with regulation 36 of the CIRP Regulations and to remove the factual discrepancies, Mr. Nagarajan did not do comply with the directions and suggestions of the CoC. The DC also notes that Mr. Nagarajan did not rectify the said discrepancies in the IM and shared the IM with resolution applicants (RAs) on 08.06.2018 before sharing the same with CoC on



14.06.2018 and also invited RAs to present their resolution plan in the eighth CoC meeting held on 12.07.2018 based on the same IM. Further, Mr. V. Nagarajan had convened 9<sup>th</sup> CoC meeting on 23.08.2018 without rectifying discrepancies in the IM. The DC also notes the submission of Mr. Nagarajan that the minutes of the eight CoC meeting extensively mentioned the concerns on the IM and the same was suitably replied by him to the knowledge of the CoC members. The DC also notes his submission that position that the IM was in order which was duly accepted by the CoC. The CoC had stamped its approval to the IM and rejected, in effect, the issues raised by ICICI Bank with respect the factual discrepancies, therefore, the same does not survive for consideration. Hence, the DC takes a lenient view in view of the approval of IM by CoC.

3.8 With respect to the third contravention of non-filing of avoidance applications, the DC observed that Mr. V. Nagarajan failed to immediately carry out forensic audit and to file application for avoidance of transactions in accordance with chapter III of part II of the Code in respect of transactions of CD involving funds diversion, preferential treatment. The DC notes the submissions of Mr. Nagarajan that there was no delay in filing the avoidance applications and that the forensic audit was initiated by him as per CoC instructions, however, as the bills for the interim report were not paid, the work by the Forensic Auditor was stopped. That thereafter, the banks who were part of the CoC entered into a direct arrangement with the Forensic Auditor for the said purpose. In such circumstances, the DC accepts the submission of Mr. Nagarajan for the delay in filing the application as the banks finally shared the forensic report with him only on 04.02.2020 and thereafter, on 04.03.2020, he filed the application for avoidance of transaction at NCLT, Chennai and the same is pending adjudication. The DC notes his submission that the Banks shared the Forensic Audit report on 04.02.2020, thereafter he could file the application for avoidance transaction. The DC accepts his contention and no contravention is made out in this regard.

3.9 With respect to the fourth contravention of non-adherence of timeline for notice of CoC meeting, the DC notes that Mr. V. Nagarajan conducted the 3<sup>rd</sup> and 5<sup>th</sup> CoC meeting with less than 24 hours' notice without any sufficient reasons in clear violations of regulation 19(2) of the CIRP regulations. Regulation 19(2) of the CIRP regulations provides that:

*“19. Notice for meetings of the committee.*

*(1) Subject to this Regulation, a meeting of the committee shall be called by giving not less than seven days' notice in writing to every participant, at the address it has provided to the resolution professional and such notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means in accordance with Regulation 20.*

*(2) The committee may reduce the notice period from seven days to such other period of not less than twenty-four hours, as it deems fit.”*

3.9.1 The DC has notes the submission made by Mr. Nagarajan that that in both the instances of non-compliance of 24 hours' notice before the CoC meeting, there was an error on his part. His request that the delay may be condoned as no prejudice was caused to any one and all the members attended the meetings is duly accepted by this DC. In view of the assurance given by Mr. Nagarajan that he would exercise full care in future, the DC takes a lenient view.

3.10 With respect to the fifth contravention of delay in circulation of the minutes of the meeting, the DC notes that Mr. Nagarajan has failed to circulate the minutes of various CoC meeting within the stipulated timeline of 48 hours and in addition to that, he failed to record the actual proceeding of the 3<sup>rd</sup> to 8<sup>th</sup> CoC meeting. Regulation 24(7) of the CIRP Regulations is relevant in this regard which provides as follows:

*“24. Conduct of meeting-  
.....(7) The resolution professional shall circulate the minutes of the meeting to all participants by electronic means within forty eight hours of the said meeting.”*

Further, Clause 16 of the Code of Conduct as provided in First Schedule of the IP Regulations provide as follows:

*“16. An insolvency professional must ensure that he maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his decisions and actions.”*

3.10.1 The DC notes the submission of Mr. Nagarajan that the minutes of the CoC meeting as prepared by him, reflect the proceedings as conducted and the same were also approved at the next meeting as in none of the instances, did the CoC choose to amend the draft minutes circulated by him. In respect of the issue of delay in the circulation of minutes beyond 48 hours, the DC notes the submission of Mr. Nagarajan wherein he has stated that he was aware that timely circulation of minutes was mandatory under the Regulations and he admitted the delay on his part in the same. The DC notes that this is not the case where minutes were not circulated. The minutes of CoC were circulated and also notes his submission that he admitted the fact of delay and his submission that he would be vigilant in this regard in future, hence the DC takes a lenient view.

3.11 With respect to the sixth contravention on the issue of non-furnishing of financial information to one of the FC, *i.e.*, ICICI Bank, the DC notes that Mr. Nagarajan did not provide clarification on audited financial statements for the FY 2016-17 and 2017-18 as sought by ICICI Bank Limited. The DC notes that section 21(9) of the Code mandates that the committee of creditors shall have the rights to require the resolution professional to furnish any financial information in relation to the corporate debtor at any time during the corporate insolvency resolution process. Further, section 21(10) of the Code requires the resolution professional to make available any financial information so required by the committee of creditors under sub-section (9) within a period of 7 days of such requisition. In this regard, the DC notes the submission of Mr. Nagarajan that he was under the impression that provision of section 21(9) and (10) of the Code do not vest such right on each FC to seek and obtain financial information of CD as the right is vested not on each FC but on CoC. The DC notes his submission that unless there was a resolution of CoC there can be no right of any member of the CoC to invoke section 21(9) of the Code and that the refusal to furnish information to ICICI Bank was in terms of the Code and ICICI Bank was not entitled to seek such information at all in the first place. Further, he stated that there was also an issue as the statutory auditor had died and he had to appoint a new auditor to complete the audits of last two financial years as per the Code. Eventually, in the additional submissions made by Mr. Nagarajan, he submitted that he should take the entire CoC with him and he would, thus, ensure that the same is followed in the future. The DC finds that

provision of section 21 (9) of the Code provides the CoC a right to require the RP to furnish any financial information in relation to the CD sat any time during the corporate insolvency resolution process, while sub-section (10) of section 21 casts an obligation on the RP to make available any financial information so required by the CoC under sub-section (9) within a period of seven days of such requisition. The DC notes that Mr. Nagarajan has acted as per the literal rule of the interpretation of the provisions of section 21(9) and (10) of the Code.

- 3.11.1 The DC notes that statutes are embodiment of authoritative legal formulae and the very words used constitute a part of law. It is said that the words themselves best declare the intention of the law-giver. In constructing a statutory provision, the Primary Rule of Interpretation of Statutes is called "Literal Interpretation" or "Literal Construction". It is also known as "Plain Rule of interpretation. As per this rule, the “words” used in the statute are construed according to their “literal” meaning or according to the popular and dictionary meaning of the term, in other words its plain sense. Chief Justice *Jervis* in *Abley v Gale (1851)* had explained the expression ‘literal meaning’. He pointed out that “*if the precise words used are plain and unambiguous, in our judgment we are bound to construe them in their ordinary sense even though it too leads in our view of the case to an absurdity or manifest injustice.*”
- 3.11.2 The Literal rule follows the legal maxim, *verbis legis non est recelendum*, which means from the words of law there should be no departure unless the context requires. In *Bengal Immunity Co. Ltd. v. State of Bihar*, A.I.R.1955 S.C.661 the Supreme Court observed-“*It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress.*”
- 3.11.3 Thus the DC finds that the act of Mr Nagarajan under section 21(9) and (10) was in accordance with the literal rule of interpretation which is the primary principal to be applied for the purpose of interpretation unless the context otherwise requires or such application of interpretation leads to an anomaly. Hence, no contravention is made out in this regard.

### **In the matter of Rathna Stores Private Limited:**

- 3.12 With respect to the first contravention of the issue of non-publication of EOI, the DC notes that Mr. Nagarajan failed to prepare the IM and failed to invite resolution plans as per provisions of Code/Regulation. The DC notes the submission of Mr. Nagarajan that there was no failure on his part as the CoC did not allow him to proceed with the valuation and in such a scenario, the question of issuing any EOI did not arise. The DC also notes the submission of Mr. Nagarajan that the CIRP in the matter was initiated by ICICI Bank which was a minor creditor while the major creditors were UCO Bank (with 50.86% share in CoC) and Canara Bank (with 42.62% share in CoC). He stated that from the outset, these major creditors with 93% share in CoC were not keen on initiating CIRP as they felt it was foisted by ICICI Bank on them and all costs were to be borne by them as they were the major creditors. The DC further notes that submission of Mr. Nagarajan that at the 3rd CoC, he wanted to take up steps for EOI, however, he was stopped from pursuing the same and was asked by the CoC to take up EOI after valuation was done. The DC notes the submission of Mr. Nagarajan that when he sought some funds for effecting valuation by way of interim finance, he was informed that the Sanctioning Authority was not willing to provide interim

finance. Without funds he could not pay to the valuer and he was refused funds even to publish the EOI. That it was in such circumstance that liquidation was filed after direction of the majority banks. Thus, the DC accepts the submission of Mr. Nagarajan that there was no failure on his part in this regard as he acted as per the decision of the CoC.

- 3.13 With respect to the second contravention of delay in circulation of CoC minutes and non-compliance of mandatory notice period of 24 hours, the DC notes that Mr. V. Nagarajan was required to give notice for meeting of the CoC at least 24 hours prior to the CoC meeting, however, he conducted 2<sup>nd</sup> CoC meeting without adequate notice. No prior approval for shorter notice was taken from CoC and ratification was sort after the meeting was over. The DC also notes that he delayed sharing the minutes of 2<sup>nd</sup> CoC meeting as the same were shared after a delay of six days. The DC notes the submission of Mr. Nagarajan that the reason for delay in sharing the minutes of the CoC meeting was that he wanted to take legal advice on the manner of recording the EOI as the CoC wanted the process to await the Valuation but refused to give any commitment to fund the valuation exercise. The delay was not intentional nor *mala fide* and was only so that the minutes were reflective of the discussions and not in violation of the Code. The DC finds that there was a procedural delay, therefore, the DC takes a lenient view.
- 3.14 With respect to the third contravention of non-recording of the discussions in the minutes of 2<sup>nd</sup> CoC meeting, the DC notes that ICICI Bank, one of the CoC members, has raised the contention that certain matters discussed in 2<sup>nd</sup> CoC meeting were not included in the minutes. The DC also notes the submission of Mr. Nagarajan that ICICI bank's claim was false as the minutes of the 2<sup>nd</sup> CoC meeting were approved at the 3<sup>rd</sup> meeting of CoC. He submitted that the 2<sup>nd</sup> CoC minutes were circulated on 05.03.2018 itself and that if ICICI bank had any issues on the same, the objection should have come immediately thereafter. The DC further notes that no other CoC member including the majority two banks with 90% share have raised any issue with the minutes of 2<sup>nd</sup> meeting of CoC. It is also noted that at the 3<sup>rd</sup> meeting, the CoC approved the minutes of 2<sup>nd</sup> CoC meeting despite the email of ICICI bank. The DC notes from the aforesaid submissions of Mr. Nagarajan that the approval of the minutes of the 2<sup>nd</sup> CoC meeting by the CoC in the subsequent meeting reveal that ICICI bank's claim was false and only an afterthought. Hence, alleged contravention in this regard is not made out.

**In the matter of Cethar Ltd.:**

- 3.15 With respect to the first contravention on the issue of delay in conduct of the first CoC meeting, the DC notes that Mr. V. Nagarajan was appointed as an IRP in the matter on 19.07.2017 and the CoC was constituted on 12.09.2017 and first CoC meeting was held on 19.09.2017. Regulation 17(2) of the CIRP regulations is relevant in this regard which provides as under:

*“17. First meeting of the committee.*

*(1) The interim resolution professional shall file a report certifying constitution of the committee to the Adjudicating Authority on or before the expiry of thirty days from the date of his appointment.*

*(2) The interim resolution professional shall convene the first meeting of the committee*

*within seven days of filing the report under this Regulation.”*

- 3.15.1 The DC notes that Mr. Nagarajan delayed the conduct of 1<sup>st</sup> CoC meeting as the same was conducted on 19.09.2017, *i.e.*, 60 days after his appointment as IRP on 19.07.2017. The DC notes his submission that that the CIRP in the matter was initiated *vide* order 16.07.2017 of Ld. NCLT, Chennai. And since no IRP was proposed by the petitioner Operational Creditor, Ld. NCLT referred the matter to the Board regarding recommending name of an IRP. He stated that the Ld. NCLT had *vide* order dated 19.07.2017 appointed him as the IRP and as such, all timelines relevant to him started only from that date. He stated that one of the FCs - Indian Bank as the lead bank of the Consortium of Banks had moved the Hon'ble Madras High Court on 01.08.2017 (*vide* WP No. 19868 OF 2017 in WMP No. 21455 of 2017) and the Hon'ble High Court *vide* order dated 01.08.2017 granted interim stay upto 18.08.2017. The DC notes from his submission that it was under these uncertain circumstances, he was able to conduct the 1<sup>st</sup> CoC meeting only on 19.09.2017. Hence, the DC is of the view that his conduct reflects his bonafide intent and therefore, DC finds that no contravention is made out in this regard.
- 3.16 With respect to the second contravention of non-adherence of the timeline for circulation of minutes of the CoC meeting, the DC Notes that Mr. V. Nagarajan did not circulate the minutes of CoC meetings within 48 hours of the meeting and the same was admitted by him in his reply dated 07.12.2020 to the Board. The DC notes the submission of Mr. Nagarajan that during the CIRP of Cethar Ltd. he was overwhelmed with work as the same was extremely challenging given the scale of fraud involved therein and due to the said reason he inadvertently exceeded the time limit for circulation of minutes. The DC also notes his submission that the delay was not intentional and was for bonafide reasons and that he did not cause any mistake to creep in even though the draft minutes were circulated with some delay beyond 48 hours. The DC observes that he should be careful and take due diligence so that there is no delay. The DC takes a lenient view.
- 3.17 With respect to the third contravention of non-provision of Video Conference to ARCIL for participation in CoC meeting, the DC notes that Mr. Nagarajan failed to provide the Video Conferencing facility or other audio and visual means for CoC meeting held on 14.12.2017 to ARCIL thereby resulting in non-participation of ARCIL in the CoC meeting and impairment of decision-making capacity of ARCIL. The DC also notes the submission of Mr. Nagarajan that that the meeting in question took place in 2017, much before the era of virtual hearings by zoom and Cisco webex. The DC further notes the submission made by Mr. Nagarajan that due to technical and financial constraints, he sought help from Indian Bank to make their internal VC infrastructure available for his meeting and tried to arrange the same for ARCIL. However, when the same could not be arranged, Mr. Nagarajan provided necessary facility of audio conference for ARCIL to participate. In this regard, the DC takes a lenient view.
- 3.18 With respect to the fourth contravention of e-voting in respect of agenda on the issue of Shorter notice at the 6<sup>th</sup> CoC meeting dated 08.12.2017, the DC notes that as per the scrutinizer's report evidencing holding of e-voting from 12.12.2017 to 13.12.2017, e-voting was not done on the said agenda item, *i.e.*, shorter notice consent. The DC observed from copy of Mr. Nagarajan's e-mail dated 08.12.2017 and minutes of 6<sup>th</sup> CoC meeting held on 08.12.2017 that e-mail dated 08.12.2017 from ARCIL disapproving the agenda item was considered as negative vote in respect of both the agenda items. Regulation 25(5)(b) and regulation 26(1) of the CIRP Regulations are relevant in this regard. Regulation 25(5)(b)

provides as under:

***“25. Voting by the committee.***

*(5) The resolution professional shall-*

*(a) circulate the minutes of the meeting by electronic means to all members of the committee within forty-eight hours of the conclusion of the meeting; and*

*(b) 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 twenty-four hours from the circulation of the minutes.”*

***“26. Voting through electronic means.***

*(1) The resolution professional shall 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.*

*Explanation- For the purposes of these Regulations-*

*(a) the expressions “voting by electronic means” or “electronic voting system” means a “secured system” based process of display of electronic ballots, recording of votes of the members of the committee and the number of votes polled in favour or against, such that the voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security;*

*(b) the expression “secured system” means computer hardware, software, and procedure that –*

*(i) are reasonably secure from unauthorized access and misuse;*

*(ii) provide a reasonable level of reliability and correct operation;*

*(iii) are reasonably suited to perform the intended functions; and*

*(iv) adhere to generally accepted security procedures.”*

3.19 In this regard, the DC notes the submission of Mr. Nagarajan that regulation 19 of the CIRP Regulations permits a meeting to be held at 24-hour notice if the committee so deems fit. He stated that the permission for a meeting with short notice by the CoC cannot be the subject matter of voting at the CoC itself as once the CoC meeting has been convened with persons constituting over 75% majority votes being present, the meeting was deemed to be authorised. The DC further notes his submission that if at the meeting, only members constituting less than 75% vote share are present then the RP cannot proceed with the meeting and has to seek e-voting confirmation of the notice for shorter meeting. The DC further notes his submission that in the present case, he had convened the meeting after contacting the CoC members and having been assured of over 75% support to short notice and the members who were present at the meeting were more than the 75% voting share and by their very presence at the meeting, they had consented to the shorter notice as otherwise they would not have come for the meeting and that there could be no requirement to seek voting on such item.

3.19.1 The DC has noted Mr. Nagarajan’s submission that as ARCIL did not join the validly convened CoC meeting, Mr. Nagarajan as per the terms of Regulation 25(5) of the CIRP

regulations did place the matter for e-voting. Mr. Nagarajan stated that in view of the said regulation and the submissions made hereinbefore, he did not have to put the issue of short notice convening of CoC for voting as the issue was already over with meeting convened and attended by necessary majority which was required to approve short notice. The DC observed that in view of this situation, Mr. Nagarajan had put only the issue of extension of CIRP for e-voting, this is because he believed that the requirement of e-voting arises only if the meeting is held and the requirement to convene the meeting by short notice cannot be a matter for e-voting. In view of the submissions made hereinbefore, the DC takes a lenient view.

- 3.20 With respect to the fifth contravention of delayed sharing of the IM with the CoC, the DC notes that Mr. V. Nagarajan had delayed in sharing final IM with all the relevant contents and the same was admitted in his reply dated 07-12-2020 to the Board. Regulation 36 of the CIRP Regulations which provides provision with respect to submission of the IM is reproduced as under:

*36. Information memorandum*

*“(1) Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to-*

*(a) each member of the committee within two weeks of his appointment as resolution professional; and*

*(b) to each prospective resolution applicant latest by the date of invitation of resolution plan under clause (h) of sub-section (2) of section 25 of the Code.”*

- 3.20.1 The DC notes the submission of Mr. Nagarajan that the CIRP of Cethar Ltd. was very complex and the promoters of the CD took advantage of the gaps from date of order of the CIRP to the date of appointment of IRP and moved the documents and records of the CD out of his reach and also created back dated records as though of pre-CIRP period to frustrate the insolvency process. The DC notes his submission that the issue of falsification and back dating of records were all proved by the email of promoters of the CD itself in respect of the siphoning of Rs 550 crores. He stated that on the issue of valuation, the scope of the work was vast as there was wide discrepancy between the books and physical stocks and the books were suppressed from him and the computer servers were removed. In view of the same, he believed it reasonable that an IM without relevant verified data would not serve any purpose.
- 3.20.2 The DC notes his submission that when Mr. Nagarajan took over the CD, there was hardly any employees as all people with knowledge of facts relating to CD were moved to Dynepro Private Limited - an entity of the promoters competing with the CD and he had no records and employees. The DC further notes that he had no money and interim finance was not possible till Indian Bank was convinced that CIRP was the right course for the company and it was for these reasons that the IM was delayed. The DC observes from the records of the CoC minutes that the constraints were made known to the CoC from time to time. The DC, therefore, notes in consequence that the delay in preparation of the IM was in view of the unique circumstances in sharing of the IM with CoC. Hence, the DC observes that no contravention is made by Mr. Nagarajan.

4. In view of the above, the Disciplinary Committee, 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 IBBI (Inspection and Investigation) Regulations, 2017, disposes of the SCN without any direction. Mr. Venkataramanarao Nagarajan is advised to be extremely careful and take reasonable care in complying with the provisions of the Code.

- (i) The Order shall come into force with immediate effect as the SCN has been disposed of without any directions.
- (ii) A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Venkataramanarao Nagarajan is enrolled as a member.
- (iii) A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal for information.

Accordingly, the show cause notice is disposed of.

-sd-

(Dr. Mukulita Vijayawargiya)  
Whole Time Member, IBBI

Dated: 16<sup>th</sup> April, 2021  
Place: New Delhi