

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/163/2023

10th May 2023

ORDER

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

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/174/2022-IBBI/724/352 dated 16.03.2023, issued to Mr. S Amarendran, House No. AVS Villa HIG 428, TNHB Phase 3, Sholinganallur, Chennai, Tamil Nadu, 600119 who is a Professional Member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00634/2018-2019/11962.

1. Background

- 1.1 The National Company Law Tribunal, Chennai, (AA) had admitted the application under Section 7 of the Code for corporate insolvency resolution process (CIRP) of M/s Sabari Realtors Private Limited (CD) vide Order dated 30.09.2019. Mr. S Amarendran was appointed as Resolution Professional (RP) *vide* order dated 15.06.2020.
- 1.2 The IBBI, in exercise of its powers under section 218 of the Code read with regulations 7(2) and 7(3) of the IBBI (Inspection and Investigation) Regulations, 2017, appointed an Investigating Authority (IA) to conduct investigation in the matter of the CD. The IA served a notice of investigation to Mr. S Amarendran on 29.06.2022. Pursuant to the said notice, Mr. S Amarendran replied vide email dated 12.07.2022. The IA submitted the Investigation Report to the IBBI on 16.09.2022.
- 1.3 The IBBI issued the SCN to Mr. S Amarendran on 16.03.2023 based on findings in the Investigation Report in respect of his role as RP. Mr. S Amarendran submitted his reply to the SCN on 29.03.2023.
- 1.4 The IBBI referred the SCN, response of Mr. S Amarendran 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. S Amarendran availed the opportunity of personal hearing through virtual mode before the DC on 27.04.2023, where he was represented by Mr. Ashish Makhija, Advocate. Mr. S. Amarendran further gave his written submissions on 29.04.2023.

2. Alleged Contraventions, Submissions and Findings

The contraventions alleged in the SCN and submissions by Mr. S. Amarendran are summarized as under:

3. Contravention

- 3.1 It is noted that CIRP of the CD was initiated *vide* order dated 30.09.2019, and thereafter the Mr. S Amarendran was appointed as RP by AA *vide* order dated 15.06.2020. It is noted that no progress was made in the CIRP of the CD since November 2020 to January 2021 except 8th meeting of CoC on 28th January 2021 wherein CoC resolved to seek CIRP extension of 90 days. It is further noted that even after extension of CIRP period for 90 days by AA *vide* order dated 07.04.2021, no action was taken by the Mr. S Amarendran to make any progress in the CIRP of the CD till August 2021. Mr. S Amarendran's contention that the prevalent Covid situation did not allow him to conduct any meeting of CoC is not acceptable as meeting of CoC could also have taken place virtually like the 9th CoC meeting conducted through electronic platform on 06.09.2021. It is further noted that AA, in its order dated 26.11.2021 also noted inaction on his part from January 2021 till September 2021 in the CIRP of the CD.
- 3.2 Accordingly, the Board held the *prima facie* opinion that the Mr. S. Amarendran had *inter alia* violated Section 25(1) and section 208(2)(a) of the Code, regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with clause 2, 13 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Submission by Mr. S. Amarendran

- 3.3 Mr. S Amarendran has submitted that apart from the other CIRP related work, he had conducted three CoC meetings during November, 2020 to January 2021, which includes 6th CoC meeting dated 10.11.2020, 7th CoC meeting dated 23.12.2020, and 8th CoC meeting dated 28.01.2021. The CIRP period was about to expire on 17.02.2021 and the CoC in its 8th CoC meeting held on 28.01.2021 approved the agenda for extension of CIRP by 90 days extension with 89.28% majority, thereafter, an application seeking extension of 90 days was filed before the AA and the same was approved by the AA on 07.04.2021. He submitted that it could not be said that he had not conducted the CIRP during the period January to April, 2021, as apart from updating the CoC, he also sent emails to various claimants with respect to their claims, responded to the queries raised by the claimants, finalized pleadings in application filed under section 43 and 44 of the Code. He further submitted that he attended physical hearing in Honible NCLT and has also handed over the flats to the homebuyers in the month of February, March and April.
- 3.4 He further submitted that in April, 2021, India reported a new record rise in daily Covid-19 cases, spreading like a wildfire where there was halt on all activities and a tremendous loss of life, due to which it was not advisable to hold any meetings either physically or virtually as most of the families suffered in one way or the other due to the effect of Covid-19 Pandemic situation. The Revenue and Disaster Management (DM-IV) Department has imposed lockdown in the state of Tamil Nadu in the month of April 2021 and subsequently extended the lockdown at a regular interval. It was submitted that during this period, his wife who is a medical doctor, became Covid-19 positive and entire family had to isolate during the month of July, 2021, due to which

he was not in a position to hold or convene any CoC meeting as it was a very critical phase for him and his family.

- 3.5 He submitted that the AA had observed on 26.11.2021 that he could have issued another Form G after the extension order passed by the Adjudicating Authority on 07.04.2021. He submitted that he was not authorised to issue fresh Form G as the CoC in exercise of its commercial wisdom, had decided in its 6th, 7th and 8th CoC meeting to extend the time period for submission of EOI. He further submitted that due to Covid-19, no Resolution Applicant would have come forward and submit EOI as it was very difficult and challenging for the Resolution Applicant to conduct physical verification of the assets of the corporate debtor who is engaged in the business of Real estate. He submitted that issuance of Form G at that point of time would have been a complete waste of resources of the corporate debtor considering the fact that the homebuyers were willing to propose the plan for revival of the corporate debtor. He submitted that upon improvement of the Covid situation, he requested the CoC members in the 1st week of August, 2021 to hold 9th CoC meeting, and thereafter a notice for convening 9th meeting of CoC was sent to all CoC members on 12.08.2021 to conduct the 9th CoC meeting on 23.08.2021. However, the said meeting was rescheduled at the request of the CoC members to 06.09.2021.
- 3.6 He submitted that during the period July and August, he visited the project site of the corporate debtor for inspection, responded to the emails received from claimants, filed statutory forms and returns, followed up with the homebuyers for the plan, identified amount of Rs. 5.10 crores to be recovered from Promoter Director, and other CIRP related work. He submitted that his conduct had not any prejudice or any loss to any of the stakeholders of the CD, and the delay, if any, was on account of reasons beyond his control arising from Covid-19 situation, for which exclusion was sought and granted by the AA. He submitted that the gap in the meeting of the CoC occurred due to extraneous factors beyond his control.

Analysis and Finding

- 3.7 The DC notes that Mr. S Amarendran was appointed as an RP by AA *vide* order dated 15.06.2020. The DC further notes the submission of Mr. S Amarendran that apart from the other CIRP related work, he had conducted three CoC meetings during November 2020 to January 2021. The CoC in its 8th CoC meeting held on 28.01.2021 approved the agenda for extension of CIRP by 90 days. Accordingly, Mr. S Amarendran had filed an application before AA and the same was approved by the AA on 07.04.2021. Mr. S Amarendran has further submitted that due to Covid-19, he could not convene any CoC meeting till July 2021. In the 1st week of August 2021, he had requested the CoC to hold 9th CoC meeting but at the request of the CoC members, the meeting was scheduled on 06.09.2021.
- 3.8 The DC observes that there is substantial gap between the 8th and 9th CoC meetings held on 28.01.2021 and 06.09.2021, respectively. It may be noted that CIRP is a time bound process and RP appointed by the CoC is responsible to conduct the entire CIR proceedings in a time bound manner. To execute its functions, the RP is vested with the power of management of the affairs of the CD. Thus, it is utmost necessary that RP should continuously update all CoC members about the progress of the matter and seek assistance as necessary to ensure strict adherence to

timelines. RP must also carefully plan his actions to promptly communicate with all the members for the timely discharge of his duties. Thus, to apprise the members about the progress of the CIRP proceedings and seek instructions from the CoC, if any, Mr. S Amarendran could have conducted the CoC meetings virtually. He could have discussed with the CoC members for further line of action for the timely discharge of his duties including inviting fresh Expression of Interest etc.

- 3.9 Taking into consideration the facts and circumstances of this case, the Covid-19 situation and submissions made by Mr. S Amarendran, the DC holds the contravention and warns Mr. S Amarendran to perform his duties with due diligence and care and proactively plan his actions ensuring effective communication with all the CoC members for timely decisions and actions.

4. ORDER

- 4.1 In view of the foregoing discussion, the DC, in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 disposes of the SCN with a strict warning to Mr. S Amarendran to be extremely careful, diligent and ensure full compliance with the provisions of the Code and Regulations made thereunder. The DC also directs Mr. S Amarendran to keep CoC well informed about all the activities performed and actions to be taken in the CIR proceedings of the CD for timely discharge of his functions, in his present and future assignments under the Code.
- 4.2 This Order shall come into force with an immediate effect.
- 4.3 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. S Amarendran is enrolled as a member.
- 4.4 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.
- 4.5 Accordingly, the show cause notice is disposed of.

Sd/-
(Ravi Mital)
Chairperson, IBBI

Dated: 10th May, 2023
Place: New Delhi