

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/157/2023

12th April, 2023

Order

In the matter of Mr. S. Muthuraju, Insolvency Professional (IP) under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/INSP/2022/138 dated 25.11.2022 issued to Mr. S. Muthuraju, R/o No. 3, Sundaram Brothers Layout, Opposite to All India Radio, Trichy Road, Ramanathapuram, Coimbatore, Tamil Nadu- 641045 who is a Professional Member of the ICSI Institute of Insolvency Professionals (ICSI-IIP) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00009/2016-2017/10013.

1. Background

- 1.1. The Hon'ble NCLT, Chennai Bench (AA) *vide* order dated 14.06.2017 admitted the application under section 10 of the Insolvency and Bankruptcy Code, 2016 (Code) filed for initiating Corporate Insolvency Resolution Process (CIRP) of the M/s Thirupur Suriya Textiles Private Limited (CD) and appointed Mr. S. Muthuraju as Interim Resolution Professional (IRP). Mr. S. Muthuraju was replaced by Mr. GV Ravikumar as Resolution Professional (RP) *vide* the AA's order dated 20.09.2017. The CD was ordered into liquidation *vide* order of AA dated 11.01.2018 and Mr. GV Ravikumar was appointed as liquidator.
- 1.2. The IBBI, in exercise of its powers under section 196 of the Code read with regulation 3(1) and 3(3) of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) appointed an Inspecting Authority (IA) to conduct the inspection of Mr. S. Muthuraju. In compliance with regulation 6(1) of Inspection Regulations, IA shared the Draft Inspection Report (DIR) with Mr. S. Muthuraju on 27.06.2022 to which response was received on 05.07.2022. Thereafter, IA submitted the Inspection Report (IR) on 29.07.2022 in accordance with regulation 6(4) of the Inspection Regulations.
- 1.3. The IBBI issued the SCN to Mr. S. Muthuraju on 25.11.2022, based on the findings in the inspection report in respect of his role as an IRP in the CIRP of CD and material available on record. Mr. S. Muthuraju submitted his reply to SCN *vide* email dated 29.11.2022.
- 1.4. The IBBI referred the SCN, response of Mr. S. Muthuraju 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. Muthuraju availed opportunity of personal hearing through virtual mode before the DC on 09.03.2023.
- 1.5. The DC has considered the SCN, the reply to SCN, submissions of Mr. S. Muthuraju, other material available on record and proceeds to dispose of the SCN.

2. Alleged Contraventions, Submissions, Analysis and Findings

The contravention alleged in the SCN and Mr. S. Muthuraju's written and oral submissions thereof are summarized as follows.

3. Contravention

Breach of moratorium

- 3.1 The Board noted that CIRP of the CD was initiated *vide* order dated 14.06.2017 in CP No. 467 of 2017. Mr. S Muthuraju was appointed as IRP *vide* the said order and he worked as IRP in the CIRP of the CD till he was replaced by Mr. GV Ravikumar as RP *vide* AA's order dated 09.09.2017.
- 3.2 The Board observed that application bearing no. MA/576A/2018 filed by the liquidator of the CD under section 60(5), 68 and 74 of the Code has been disposed of by AA *vide* order dated 27.04.2021 by directing the suspended directors of the CD and Bank of India to contribute to the assets of the CD, a sum of Rs.79,65,090 (Rupees seventy nine lacs, sixty five thousand, ninety only) which was withdrawn during the moratorium period. The AA in the said order has also observed that this transaction took place during tenure of Mr. S. Muthuraju as IRP. It was, thus, noted that there has been breach of moratorium as prescribed under section 14 of the Code during his tenure as IRP.
- 3.3 The Board also noted that Mr. S Muthuraju in his reply to DIR blamed two Financial Creditors (FCs), State Bank of India (SBI) for not handing over physical possession of the CD, and Bank of India for not taking note of public announcement for initiation of CIRP of the CD. However, the AA in its order dated 27.04.2021 noted inter alia that "*-----the Corporate Debtor itself in the Provisional Balance sheet filed as on 28.02.2017 has disclosed the details of banks in which they are maintaining the accounts wherein the name of the 3rd Respondent is also disclosed therein. In such circumstances, immediately after the admission of the petition by this Tribunal on 14.06.2017, if the 4th Respondent had taken efforts to peruse the records, he could have intimated all the concerned bank authorities including the 3rd Respondent Bank about his appointment as IRP and under the circumstances, the present impugned transactions could have been avoided.*"
- 3.4 It is further observed by the AA that his fees for the tenure of the IRP was also paid by the suspended directors from the said account of Bank of India from where the transactions of Rs.79,65,090 (Rupees seventy nine lacs, sixty five thousand, ninety only) had taken place.
- 3.5 As per the provisions of sections 17 and 18 of the Code, the management of the affairs of the CD vests in the IRP from the date of appointment of IRP till appointment of RP. As such, it was his duty to ensure compliance of moratorium declared by the AA under section 14 of the Code. Withdrawal of a sum of Rs.79,65,090 (Rupees seventy nine lacs, sixty five thousand, ninety only) by the suspended management from the CD's account during his tenure as IRP when the moratorium was in force, prima facie, indicates that he has failed to perform his duty as IRP in terms of sections 17 and 18 of the Code.

3.6 In view of the above, the Board held the *prima facie* view that he had, *inter alia*, violated sections 14(1)(b), 18(f), 208(2)(a) and (e) of the Code, regulations 7(2)(a) and (h) of IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and clauses 1, 2, 5, 12 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Submissions

3.7 Mr. S Muthuraju submitted that he has performed his duties as an IRP of the CD for the period from 14.06.2017 to 20.09.2017, until the time he was replaced by the RP. That he has conducted CIRP of the CD in strict compliance with the provisions of the Code, Rules and Regulations formulated by the IBBI and professional ethics.

3.8 Since all the records/documents were kept in the premises, which was under the physical possession of the Financial Creditor (FC), he did not have an opportunity to verify the records including the Provisional Balance Sheet. So that the details of banks and the funds lying with them mentioned in the Balance Sheet had not come to his knowledge at all. As per the information gathered from the Promoters, he had given instruction to close the bank accounts in the following banks.

1. State Bank of India — Tiruppur,
2. IDBI Bank Ltd — Tiruppur
3. Karur Vysya Bank — Dindigul

3.9 He submitted that had it been known to him regarding the bank accounts with Bank of India, Tiruppur by the CD, he would have given instruction to the Bank to close the accounts or he would have authorised the payments, if it were within the purview of the rules and regulations of the Code.

3.10 Due to the facts mentioned above, he submitted that he may not be held responsible for the acts which did not come to his knowledge at all. It may be true that his fees as IRP, paid by the suspended directors of CD, came from M/s Bank of India, Tiruppur. Since the said payment was made through net banking mode, he submitted that he was under the impression that the suspended promoters made the payment from their personal bank account. Later it was adjusted in the final payment as directed by NCLT. Since the said matter is pending before the Hon'ble NCLAT, Chennai Bench and next hearing is fixed on 19.12.2022, he is constrained to offer further comments on it.

3.11 In view of the reply as given above, he submitted that he had not breached the moratorium as prescribed under section 14 of the Code and not violated the alleged provisions.

Analysis and Findings

3.12 Section 17 of the Code provides 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 account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as 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.

3.13 The above provisions clearly specify the duties vested with IRP from the date of appointment. Section 17(1)(b) clearly provides that the powers of the board of directors of the CD are suspended and be exercised by IRP which was Mr. Muthuraju in the given case. Further under section 18(f) of the Code, Mr. S. Muthuraju being IRP of the CD from 14.06.2017 to 20.09.2017 was required to take control and custody of any asset over which the CD has ownership rights, as recorded in the balance sheet of the CD.

3.14 The DC notes that AA in its order dated 27.04.2021 observed that CD itself in the provisional balance sheet filed as on 28.02.2017 has disclosed the details of banks in which they are maintaining the accounts wherein the name of the Bank of India was also disclosed. Mr. Muthuraju should have obtained the details of bank accounts from the available records as mandated under section 18(f) of the Code which has also been observed by AA. Such lack of due diligence has led to withdrawal of Rs. 79,65,090 (Rupees seventy nine lacs, sixty five

thousand, ninety only) from the bank account of CD by the suspended directors of the CD, after imposition of moratorium by the AA on 14.06.2017.

- 3.15 The DC further notes that Bank of India had submitted before the AA, as observed from its order dated 27.04.2021, that Mr. S Muthuraju did not inform the admission order passed by AA and his appointment as IRP to it. This was also observed by the AA which stated that if IRP had taken efforts to peruse the records, he could have intimated all the concerned bank authorities including the Bank of India, about his appointment as IRP.
- 3.16 In light of above facts and observations by the AA, the submissions of Mr. S Muthuraju, that the details of bank accounts and the funds lying therein had not come to his knowledge at all, are not tenable.

4. Order

- 4.1 In view of the forgoing discussion, SCN, reply to the SCN, oral and written submission made by Mr. S Muthuraju and the other materials made available to the DC, the DC finds Mr. S Muthuraju in violation of sections 14(1)(b), 18(f), 208(2)(a) and (e) of the Code, regulations 7(2)(a) and (h) of IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and clauses 1, 2, 5, 12 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).
- 4.2 The DC, in exercise of the powers conferred under section 220(2) of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Mr. S Muthuraju for a period of one year.
- 4.3 This Order shall come into force on expiry of 30 days from the date of its issue.
- 4.4 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. S Muthuraju is providing his services, if any.
- 4.5 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. S Muthuraju is enrolled as a member.
- 4.6 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.
- 4.7 Accordingly, the show cause notice is disposed of.

-sd-

(Jayanti Prasad)
Whole-time Member, IBBI

Dated: 12th April, 2023
Place: New Delhi