

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/102/2022

24th May, 2022

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2019/33/426/2505 dated 6th October 2021 issued to Mr. Venkateswarlu Kari, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) and regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 (IP Regulations). Mr. Venkateswarlu Kari is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-001/IP-00052/2017- 18/10126.

1. Developments in relation to resolution/liquidation of the CD

- 1.1. The Hon'ble. NCLT, Hyderabad Bench (AA) *vide* its order dated 22.01.2018 admitted the application filed by Bay-Forge Private Limited under section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating Corporate Insolvency Resolution Process (CIRP) against Nawa Engineers and Consultants Private Limited (CD) and appointed Mr. Ravichandra Mohan Kadiyala as an Insolvency Resolution Professional who was later confirmed as the Resolution Professional.
- 1.2. As no resolution plan was forthcoming, AA *vide* order dated 10.10.2018 ordered liquidation of the CD and appointed Mr. Venkateswarlu Kari as the Liquidator. Thereafter, Mr. Kari appointed a consultant to conduct e-auction for sale of assets of the CD and published an online sale catalogue. The catalogue mentioned different lots of items/assets by categorizing them into 9 Lots, *i.e.*, Lot No. 1 to 9 and treating each Lot as a single asset.
- 1.3. The e-auction was conducted on 01.03.2019. On 04.03.2019, the letter of award (LoA) was issued by Mr. Kari for Lot No. 3, 4, 5 and 9 in favor of M/s Keshan Trading Corporation (KTC).
- 1.4. The AA *vide* order dated 09.09.2019 *inter-alia* directed the Mr. Kari to issue LoA with regards to Lot No. 1 & 2 to KTC as having been declared as highest bidder and complete his obligation with regard to the sale in terms of the conditions of the auction sale. It also directed Mr. Kari to execute a conveyance deed in respect of said Lots clearly indicating the nature of the properties being conveyed. This execution of this Order was stayed by the Hon'ble NCLAT *vide* order dated 12.12.2019.

1.5. As per list of stakeholders uploaded by Mr. Kari on IBBI's website on 04.04.2021, the total claims received and admitted against the CD during liquidation process are Rs. 75.47 crore and Rs. 52.51 crore, respectively.

2. Issuance of Show Cause Notice (SCN) and hearing before Disciplinary Committee (DC)

2.1. The Board received a complaint dated 10.03.2019 from one Mr. Vikash Kumar Keshan, (Complainant), Proprietor of KTC stating that during liquidation process, e-auction was conducted by Mr. Kari on 01.03.2019 and the bids were received for Lot no. 1 to 5 and 9, only. KTC being the H1 bidder for all lots, requested Mr. Kari to issue LoA for Lot no. 1 to 5 and 9. Thereafter, Mr. Kari issued LoA dated 04.03.2019 only in respect of Lot no. 3, 4, 5 and 9, and in spite of request by KTC to Mr. Kari, no LoA was issued in respect of Lot no. 1 and 2. The Complainant alleged that Mr. Kari had demanded a bribe of Rs. 42 lakhs for allotting Lot no. 1 and 2 and furnished the audio recording as an evidence.

2.2. While the aforesaid complaint was being examined by the Board, *vide* order dated 09.09.2019, on IAs filed by KTC, the AA *inter-alia* made following observations:

"11.....It is amply clear that on close of auction, the Liquidator has to necessarily call upon the highest bidder to pay the balance the sale consideration. The language employed is "shall" in the provision 12 supra which is mandatory in nature and does not allow any role for the Liquidator to reject the highest offer for whatsoever reasons. In view of the such provision, made under the IBBI Liquidation Process Regulations, this Adjudicating Authority finds that the condition inserted in the e-auction sale catalogue which authorizes the Liquidator to reject the highest bid without assigning any reason is void ab initio. The Liquidator appointed by this Adjudicating Authority being an officer of this court has to act in a highly responsible and transparent manner as he is dealing with the valuable assets of the Corporate Debtor under Liquidation.

....

13.... this Adjudicating Authority directs the Liquidator to issue letter of awards with regards to Lot No.1 & 2 to the Applicant herein having been declared as highest bidder forthwith and upon receipt of the same, the Applicant is directed to complete his obligation with regard to the sale in terms of the conditions of the Auction sale.

Further to that Liquidator is directed to execute a conveyance deed in respect of the said Lot of items as contemplated under the transfer of property Act, 1882, clearly indicating the nature of the properties being conveyed i.e., with lease hold rights only and specifying the number of years of lease left in case of lease hold rights.”

2.3. With respect to submissions on demand of bribe, the AA observed as follows -

“14. With regard to the allegation of the demand of bribe by the Liquidator and counter allegation by the Liquidator that it is the Applicant who has induced the Liquidator to demand and discuss bribe, it is out of the purview of this Adjudicating Authority to probe further in this matter. If advised so, the Applicant may approach competent authorities/court of Law to proceed against the Liquidator for appropriate legal action.

15. However, looking at the seriousness of the allegations raised against the liquidator vis-a-vis the conduct of the Liquidator, this Adjudicating Authority directs the registry to send a copy of the Rejoinder of the Applicant in IA No. 181 of 2019 and the certificate filed by the Applicant under Section 65(b) of the Evidence Act together with the pen-drive submitted by the Applicant, to the IBBI (Insolvency and Bankruptcy Board of India) for initiating appropriate enquiry/action in the matter, if warranted so.”

2.4. After examination of the complaint dated 10.03.2019, the responses of Mr. Kari to the complaint, and taking into account the aforesaid facts, IBBI, having reasonable grounds to believe that Mr. Kari had contravened certain provisions of the Code, Regulations and Circulars issued thereunder, ordered Inspection of Mr. Kari *vide* order dated 26.12.2019 under section 218 of the Code read with the Inspection Regulations. The complaint was accordingly disposed of and same was duly communicated to the Complainant.

2.5. Based on the material available on record including the Inspection Report, the Board issued a show cause notice (SCN) to Mr. Kari on 06.10.2021. The SCN alleged contravention of sections 208(2)(a) and (e) of the Code, read with regulation 33(1) of the Liquidation Regulations, clause 12 of Schedule I (Mode of Sale) under regulation 33(1) of the Liquidation Regulations, regulation 7(2)(h) of the IP Regulations and clause 1, 2, 3, 5, 9 and 14 of the Code of Conduct as specified in the First Schedule of the IP Regulations.

2.6. The IBBI referred the SCN, response of Mr. Kari to the SCN and other material available

on record, to the DC for disposal of the SCN in accordance with the Code and Regulations made thereunder.

3. Consideration of the SCN

3.1. The erstwhile DC provided an opportunity of hearing to Mr. Kari on 17.12.2021, which he availed. The SCN could not be disposed by the erstwhile DC, as she demitted the office in between. After reconstitution of the DC, the matter was referred to me on 22.04.2022. In furtherance of principle of natural justice, another opportunity of hearing (through online mode) was provided to Mr. Kari on 19.05.2022, which he availed.

3.2. The DC has considered the SCN, response of Mr. Kari to the SCN and other material available on record and accordingly, proceeds to dispose the SCN.

4. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Mr. **Kari's** submissions thereof are summarized below:

4.1. Contravention with regard to e- auction of Lot No. 1 and 2

4.1.1. E-auction of Lot No. 1 [consisting of Industrial Land, RCC Building with transformer, Lift & Kirby Shed with land area admeasuring 1863.36 Sq. Yards as per lease deed with TSIIC Lease-rent Shed no- D16] & Lot No. 2 [Industrial Land, RCC Building with Kirby Shed, transformer, Mechshot Grid Blasting & Painting Booth with land area admeasuring 5396.28 Sq. Yards (as per Lease deed)] was conducted on 01.03.2019 at 2.00 pm and KTC was the highest bidder (H1 bidder) in the said e-auction for the same.

4.1.2. That no LoA was granted to H1 bidder for Lot No. 1 and 2. *Vide* e-mail dated 06.03.2019, Mr. Kari had informed the H1 bidder that bids for Lot No. 1 & 2 are “*not accepted*”.

4.1.3. The aforesaid act of Mr. Kari i.e. not issuing LoA for Lot No. 1 and 2 to KTC, is *prima facie* not in consonance with clause 12 of schedule I (Mode of Sale) under regulation 33(1) of the Liquidation Regulations read with section 208(2)(a) and 208(2) (e) of the Code.

4.2. Submissions of Mr. Kari

4.2.1. Mr. Kari submitted that the e-auction was conducted on 01.03.2019 and bids were received for Lot No. 1, 2, 3, 4, 5, and 9 only, and no bids were received for other Lots. KTC became the H1 bidder for all lots and by e-mail dated 02.03.2019 requested Mr. Kari to issue a LoA for the said Lots. On 04.03.2019, Mr. Kari informed that their bid for Lot No. 3, 4,5 and 9 was accepted and LoA was issued. However, Mr. Kari was of the opinion that the assets in Lot no. 1 and Lot no. 2 can fetch more value. Also, huge piles of stock (i.e. 300 tons of steel) were lying on the said properties including third party stocks. Accordingly, he decided to postpone the issuance of LoA with an intention to call for fresh bids. As per the terms and condition mentioned in the online auction sale catalogue, it is the discretion of the Liquidator only to accept/reject/cancel any bid and the decision of issuing or rejecting the bid is completely with the Liquidator.

4.2.2. Mr. Kari also submitted that KTC had submitted a copy of the e-auction catalogue duly signed by its authorised representative and also filed an undertaking that it shall abide by the terms and conditions of the e-auction catalogue. Thus, the very participation in the e-auction process by any participant denotes and signifies the acceptance of terms and conditions contained in the online auction sale catalogue since such acceptance is a pre-condition for participation in the e-auction. The relevant terms and conditions mentioned in the online auction sale catalogue are as depicted herein below:

“a. It is post approval auction. The highest bid receipt will be sent for approvals to Seller who may reject or accept it without assigning any reason. The seller issues a confirmation letter or execute a Sale Agreement within 20 working days of Bid closing date, in case of acceptance. Buyers shall not raise any claim for damages against seller or Iquippo in case of rejection of his highest bid.

b. The highest bidder does not get any right to demand for the acceptance of his offer from Seller of Iquippo Seller reserves the right to accept/ reject/ cancel any bid, withdraw any portion of the assets at any stage from Auction even after acceptance of bid/ issue of delivery order or release order/deposit of full value by successful bidder without assigning any reason thereof, in the event of such rejection/cancellation /withdrawal. Seller shall refund the value of assets, if paid for, to the successful bidder. Discretion lies solely on Seller/s regarding this.”

4.3. Summary Findings

4.3.1. It is pertinent to highlight that Mr. Kari had submitted before AA (as recorded in the Order dated 09.09.2019) that “*due to crucial logistical issues, the Liquidator could not immediately decide on the sale of unit 1 & 2 as there is about 300 tonnes of the steel of the Company which is yet to be sold and cleared.*” It was also submitted by him before the AA that “*... till date three rounds of Auction have been conducted in respect of Lots No. 1 & 2 and **there are prospective buyers for the same at a better rate.***” Before Hon’ble NCLAT also, in his counter affidavit, Mr. Kari has submitted that “*...unless the stock and machinery sold, Lot No. 1 and Lot No. 2 cannot be accepted as these lots are for the land, building and shed erected on land and some of the items classified as machinery but attached to the sheds permanently*”. He has reiterated the same before the DC.

4.3.2. Clause 3 of schedule I (Mode of Sale) under regulation 33(1) of the Liquidations Regulations mandates the Liquidator to prepare terms and conditions of the sale. Clause 9 of the same states that the auction shall be transparent. Clause 11 states that “*if required, the liquidator may conduct multiple rounds of auctions to maximize the realization from the sale of the assets, and to promote the best interests of the creditors*”. Lastly, clause 12 states that “*on the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days of the date of such demand.*”

4.3.3. An auction is a process for sale of assets of the CD. The ‘assets’ which are subjected to auction should be such ‘assets’ which are readily available to be sold. On the basis of submissions of Mr. Kari, I note that Lot no. 1 and 2, even if the price would have been acceptable, could not have been sold as there were some “*crucial logistical issues*”. This entail that “Lot no. 1 and 2” should not have been subjected to auction sale at the first place. As per Clause 3 read with Clause 9 of schedule I (Mode of Sale) under regulation 33(1) of the Liquidations Regulations, a Liquidator is required to prepare the terms and conditions of sale in a transparent manner. No material has been brought on record to substantiate that the fact of such “*crucial logistical issues*” were highlighted by Mr. Kari to the participants in the auction process. If the sale of Lot no. 1 and 2 was dependent on certain conditions, same should have been brought in notice to the participants. Accordingly, if there were huge stocks lying on the land of Lot no. 1 & 2, Mr. Kari should not have put Lot no. 1 & 2 on auction without first disposing the said piles of stock (i.e. 300 tons of steel).

- 4.3.4. Further, Mr. Kari has submitted that he did not issue the LoA to KTC as there were better offers available for Lot No. 1 and 2. He has not denied the fact that KTC was the highest bidder for Lot No. 1 and 2. Both these submissions run counter to each other. Moreover, Mr. Kari is unable to substantiate the better offers available with him with any proof. Clause 11 of the Schedule 1 does not entitle the Liquidator to conduct multiple rounds of auctions at his absolute discretion. Rather, such multiple auctions are to be backed by reasons, i.e., (i) for maximization of realisation from the sale of assets and (ii) to promote the interests of the creditors. Mr. Kari has not brought any material on record to prove the existence of these requirements. The denial of LoA to KTC for Lot no. 1 and 2 by way just mentioning ‘*Not accepted*’ without ascribing reasons is against the spirit of a transparent auction sale under the Liquidation Regulations. Accordingly, the rejection of LoA for Lot no. 1 and 2 to KTC, even when it was the highest bidder as “*Not accepted*”, is not a sufficient ground for rejection.
- 4.3.5. I also find it important to highlight here that clause 11A of schedule I (Mode of Sale) under regulation 33(1) of the Liquidations Regulations has been brought *vide* Notification No. IBBI/2021-22/GN/REG079, dated 30.09.2021 wherein if the Liquidator rejects the highest bid in an auction process, he shall intimate the reasons for such rejection to the highest bidder and mention it in the next progress report. Though this clause was brought on 30.09.2021, the intention was never to permit any Liquidator to reject bids at his absolute discretion. It is for this reason that an auction process, at all times, is required to be conducted in a transparent and reasonable manner.
- 4.3.6. Further, despite over 3 years and 8 months have elapsed in between, liquidation process has not been completed yet. Stay from Hon’ble NCLAT has been argued by Mr. Kari as the reason for delay, nevertheless records submitted by him or even at the oral hearing, nothing has been substantiated what efforts he has made to get the final order from Hon’ble NCAT or to vacate the stay. The Liquidator as a professional is very well aware that the delay in disposing of distressed assets invariably leads to value erosion. Therefore, it is against the professional ethics for not making concerted efforts to get the appropriate directions from the Hon’ble NCLAT in the interest of value maximization through early disposal of stressed assets. Moreover, the stay by Hon’ble NCLAT was ordered on 12.12.2019 whereas KTC’s bid was ‘*Not accepted*’ on 06.03.2019. Post 06.03.2019 and till 12.12.2019, nothing has been brought on record to show a good faith attempt on the part of the Liquidator to dispose the said Lot No.

1 & 2 at a higher value than KTC, as claimed by him.

4.3.7. All the above facts, taken together, reflects (i) lack of due diligence on the part of Mr. Kari while conducting the e-auction process, and (ii) omissions by Mr. Kari to take appropriate steps for expediting completion of the liquidation process.

4.4. Contravention No. II with regard to bribe

4.4.1. The Inspecting Authority *vide* email dated 21.10.2020 sought comments of Mr. Kari regarding the complaint filed by the complainant, whereby the complainant had relied upon the audio recording in support of his allegation that Mr. Kari demanded an amount of Rs. 42 Lakh as bribe to which Mr. Kari *vide* email dated 22.10.2020 replied that “*In response to your mail, this is to convey that the above complaint was answered, and inspection also conducted in my office of IBBI officials. I have given replies to your draft inspection report. So please drop the same.*” Mr. Kari has thereby failed to deny the allegation of the said demand of bribe.

4.4.2. Further, it was observed from the order of Hon'ble NCLT dated 09.09.2019 that, Mr. Kari, with respect to the allegation of demand of bribe from the H1 bidder, had raised the counter allegations that it was H1 bidder, who induced Mr. Kari to demand and discuss the bribe and he had not denied the said conversation with H1 bidder.

4.4.3. This conduct of Mr. Kari read with the above action of not granting letter of award raises doubt and is not in consonance with Section 208(2) (a) and 208(2) (e) of the Code read along with clause 1, 2, 3, 5, 9 and 14 of the Code of Conduct as specified in First Schedule as stated under regulation 7(2) (h) of IP Regulations.

4.5. Submissions of Mr. Kari

4.5.1. Mr. Kari submitted that the audio recording submitted by complainant is sham, manipulated, tampered and created with a *mala fide* intention of blackmailing the Liquidator to sell Lot no. 1 and 2 to them at a price lower than the expected price.

4.5.2. He has further submitted that the complainant has tampered with the original source of production making the whole communication and voice recording to his convenience and advantage. The pen drive submitted by KTC shall not be accepted as evidence since

the same is tampered, fabricated, manipulated and concocted.

4.6. **Summary Findings**

The Hon'ble NCLAT vide its Order dated 12.12.2019 has stated that the execution of the impugned order is stayed. I note that the mere fact that Mr. Kari has failed to deny the allegation of bribe, could not be construed as admission of bribe by him. Moreover, no material is available on record to establish that Mr. Kari has actually demanded bribe of Rs. 42 lakh except an audio recording, which is not conclusive.

5. **Order**

5.1. Before proceeding to pass order, I wish to clarify that I am not expressing any opinion on the merits of the pending issues before Hon'ble NCLAT. My findings in this disposal order are limited only to the contraventions mentioned in the SCN pertaining to the conduct of Mr. Kari as the Liquidator of the CD during the liquidation process.

5.2. In view of the submission made by Mr. Kari, and materials available on record, DC notes that Mr. Kari should have been more careful, diligent, and vigilant in conducting the liquidation process and should have been cautious and prompt in discharging his duties as the Liquidator of the CD. While putting the property to auction, he should have seen whether after successful auction property can be transferred to the successful bidder. The plea taken by Mr. Kari that huge stocks were there on the land of Lot no. 1 & 2, cannot be held to be tenable as he was very well aware that auction of Lot 1 and Lot 2 is contingent upon the disposal of stock piled up in these lots.. There is nothing on record to suggest that the Liquidator took any step for disposal of the said stocks. Further, no evidence was produced by Mr. Kari to substantiate his claim that Lot no. 1 & 2 could have been sold for higher value. The DC also finds that no good faith effort has been displayed by the Liquidator to sell Lot no. 1 and 2 during the intervening period of holding the auction and order of stay by Hon'ble NCLAT at a higher value, as claimed by him.

5.3. Accordingly, the DC find that the actions of Mr. Venkateswarlu Kari as the Liquidator of the CD are in violation of section 208(2)(a) and (e) of the Code, Regulation 33(1) of the Liquidation Regulations, clause 3, 9, 11 and 12 of the Schedule I (Mode of Sale) appended to the Liquidation Regulations, Regulation 7(2)(h) of the IP Regulations and clause 1, 2, 3 and 14 of the Code of Conduct under First Schedule of regulation 7(2) thereof.

5.4 The DC hereby imposes a penalty on Mr. Kari equal to 25 percent of the fee he has received during entire period of the Liquidation process accomplished till date and directs him to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of “penalty imposed by IBBI” on <https://bharatkosh.gov.in> within 45 days from the date of issue of this order and submit a copy of the transaction receipt to the Insolvency and Bankruptcy Board of India. Further he is directed to strictly follow the provisions as contained in IBBI (Liquidation Process) (Second Amendment) Regulations, 2021 notified vide Notification No. IBBI/2021-22/GN/REG079, dated 30.09.2021 and submit the periodical progress reports as stipulated therein.

5.5. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Venkateswarlu Kari is enrolled as a member.

5.6. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.

Accordingly, the show cause notice is disposed of.

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(Sudhaker Shukla)

Whole Time Member, IBBI

Dated: 24th May, 2022

Place: New Delhi