

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/ 167 /2023

15th May 2023

ORDER

In the matter of Mr. Mahesh Venkataraman, 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. IBBI/IP/INSP/2021/65 dated 19.09.2022, issued to Mr. Mahesh Venkataraman Venkataraman, 39/19 Aspen Court, 3rd Floor, R.A. Puram 6th Main Road, R.A. Puram, Chennai, Tamil Nadu, 600028 (hereinafter referred as "IP") 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-N00307/2017-18/10865

1. Background

- 1.1 The National Company Law Tribunal, Chennai (AA) had admitted the application under Section 9 of the Code for corporate insolvency resolution process (CIRP) of M/s Vasan Health Care Private Limited (CD-1) vide Order dated 21.04.2017 whereby Mr. Mahesh Venkataraman was appointed as Interim Resolution Professional (IRP), however later *vide* order dated 23.04.2021, the AA replaced him by appointing Mr. Rajendran Shanmugam as Resolution Professional (RP).
- 1.2 The National Company Law Tribunal, Amravati Bench, (AA) had admitted the application under Section 9 of the Code for CIRP of M/s Kei-Rsos Maritime Limited (CD-2) *vide* order dated 28.08.2019. The IP Mr. Mahesh Venkataraman was appointed as RP in CD-2 on 24.12.2019,
- 1.3 In exercise of its powers under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, the IBBI appointed an Inspecting Authority to conduct an inspection of Mr. Mahesh Venkataraman in the matter of his appointment as IRP in the CIRP of CD-1 and CD-2. The Draft Inspection Report dated 05.05.2022, was shared with the IP and the same was replied by IP on 20.05.2022. The IA sought additional information from IP on 15.06.2022 and the same was provided by IP on 17.06.2022. Thereafter, the IA submitted the Inspection Report to IBBI on 18.06.2022.
- 1.4 The IBBI on 19.09.2022, had issued the SCN to Mr. Mahesh Venkataraman, based on findings in the Inspection Report in respect of his role as IRP/RP. The SCN alleged contraventions of several provisions of the Insolvency and Bankruptcy Code, 2016 (Code), IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), IBBI (Inspection and Investigation) Regulations, 2017 (Inspection and

Investigation Regulations), the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations), and the Code of Conduct for Insolvency Professionals as specified in the First Schedule of IBBI (Insolvency Professionals) Regulations, 2016. Mr. Mahesh Venkataraman submitted his reply to the SCN on 03.10.2022.

- 1.5 The SCN, response of Mr. Mahesh Venkataraman to the SCN and other material available on record were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Mahesh Venkataraman availed an opportunity of personal hearing virtually before the DC on 10.03.2023.

2. Alleged Contraventions, Submissions of IP and Findings

The contraventions alleged in the SCN and submissions of Mr. Mahesh Venkataraman are summarized as follows:

In the matter of Vasan Healthcare Private Limited

2.1 Delay in verification of claim

- 2.1.1 Section 18(1)(b) of the Code casts a duty upon the IRP to receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under Section 13 and Section 15 of the Code. Regulation 13(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), the IRP or the RP is required to verify each claim received within seven days from last date of receipt of the claims.
- 2.1.2 It was alleged in the SCN that Essilor India Private Limited (ESSILOR) had submitted a claim of Rs. 64,95,63,720 (Rupees sixty-four crores ninety-five lakhs sixty-three thousand seven hundred and twenty only) in Form-B on October 17, 2019. However, their claim was not admitted till submission of reply to the DIR by the IP.
- 2.1.3 It is noted that the IP attributed this delay to substantial difference between the books of the CD-1 and the amount claimed by ESSILOR due to which additional documentations were being sought from ESSILOR. He further submitted that he duly communicated and kept ESSILOR informed about the situation. However, it is noted that in response to the IA's e-mail dated 17.06.2022, requiring him to provide copy of the record of any formal communication made with ESSILOR suggesting the intention of keeping ESSILOR informed of its claim, he failed to submit any such communication to the IA. Thus, it was alleged in the SCN that the delay in verification of claim of ESSILOR was inordinate and without any valid justification.
- 2.1.4 Accordingly, the Board was of the *prima facie* opinion that IP had, *inter alia*, contravened Section 18(1)(b) of the Code, Regulation 13(1) of the CIRP Regulations, Clause 1, 2, 13, 14 and 25 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Submission by IP

- 2.1.5 Mr. Mahesh Venkataraman submitted that he was not provided with the copy of the Final Inspection Report or the relevant portion of the Final Inspection Report, or has it been considered by the Board as required under Regulation 11(1) of the IBBI (Inspection and Investigation) Regulations, 2017 which provides that the Board shall consider the Inspection Report. He submitted that amendment to Regulation 11(2) of the IBBI (Inspection and Investigation) Regulations, 2017 came into effect on 14.06.2022 inserting the word “or on the basis of material otherwise available on record”, prior to that Regulation 11(2) would be read to mean that the show cause notice could be issued based only on consideration of the Final Report and not otherwise.
- 2.1.6 He submitted that all the claims were received, collated, and verified by the IP in line with the provisions of the Code read together with relevant Regulations and within the prescribed timelines. He further submitted that the claims were filed in a wrong format or filed in duplication to the IRP, which further led to a lot of confusions in finalisation of list of Creditors and the wrong claims were asked to be revised and resubmitted.
- 2.1.7 He submitted that there were certain other cases with unexplained differences between the claims filed by the Claimants and the Books of Accounts of the Corporate Debtor, to the extent made available. He further submitted that, additional information was sought by him from both the Claimant and the CD-1, and according to information provided to the IRP, it was reconciled. He further submits that every Audit Report of the CD-1 at least for 4 years before commencement of the CIRP has been a qualified and adverse Report.
- 2.1.8 He submitted that the records of the CD-1 were in shambles and even the Auditor had clearly specified that he was unable to comment upon the existence, completeness, recoverability and carrying values of all the items under Non-Current Liabilities, Current Liabilities, Non-Current Assets, and Current Assets. Mr. Mahesh Venkataraman submitted that there were genuine difficulties towards admitting the claim in view of the inadequate accounting records of the CD-1 and that there was no delay, but it was basically lack of clarity, communications, and correct entity/claims vis-à-vis what was submitted.
- 2.1.9 Mr. Mahesh Venkataraman submitted that the submission of claim under one consolidated head had created the substantial difference and mismatch between the amount claimed and the Books of the corporate debtor. He submitted that from the published list of Creditors by the present RP that ESSILOR had wrongly filed a claim under a consolidated name to him, that created unnecessary confusion since it was a compilation of various claimants under their group. Thus, he submitted that it was erroneous for ESSILOR to make wild allegations against the IP, when they had filed a consolidated Claim instead of separate claims for each of their entities individually, which was pointed out to their office and they subsequently complied with much later, being even duly accepted by the RP.
- 2.1.10 He further submitted that he should not be blamed for inadequate availability of information, data and books of Accounts. He further submitted that as an IP, he could

finalise claim only based on available information and whatever additional clarification was sought for by the IP to the CD-1, was yet to be received. As per ESSILOR's own statement, they submitted additional clarifications and/or documents only on 18.12.2020, almost more than a year after their original claim form, and around that time, the CoC had discussions to appoint a new RP in place of the existing IP and that several IAs were pending in this regard.

- 2.1.11 He further submitted that if the Operational Creditor (OC) was truly aggrieved by the delay in accepting or not accepting their claim by the IP, they could have approached the Hon'ble NCLT under the relevant provisions of the law and got their grievances addressed. Since the OC did not undertake such a legal recourse available to them, it would not be fair and proper to attribute any motives to the IP who admittedly had to collate, verify, examine, and compile vast data of the CD-1 where thousands of OC Claims were received. He submitted that after the forms were submitted correctly to the present RP, their claims were duly accepted without any further confusion.
- 2.1.12 He submitted that in respect of ESSILOR claims, there was no prejudice that was caused to them, and that because of their wrong filing of claims, he was unable to verify the claim within the stipulated time. He submitted that there were genuine difficulties in view of the inadequate accounting records of the CD-1 and that the delay, if any in this regard was purely inadvertent and unintentional and not deliberate.

Findings of DC

- 2.1.13 The DC notes that the contentions of Mr. Venkataraman that copy of the final inspection report or the relevant portion of the same was not shared with him or whether inspection report of IA was considered by Board as provided under Regulation 11(1) of the IBBI (Inspection and Investigation) Regulations, 2017, have no merit as after due consideration of the inspection report of the IA by the Board, SCN was issued to IP. The documents as required under Regulation 12(5) of IBBI (Inspection and Investigation) Regulations, 2017 were provided to Mr. Venkataraman
- 2.1.14 The DC notes the bonafide conduct and diligent attempts made by Mahesh Venkataraman in verification of claims. The DC notes the conduct of Mr. Mahesh Venkataraman in verifying claims was based on the material and data available with him and due to consolidated claim filed by ESSILOR for its group, the confusion arose and IP could not finalise the claim to be admitted in time. The DC accepts the submission of the IP on this count.

2.2 Breach of Moratorium

- 2.2.1 It was alleged in the SCN that Mr. Mahesh Venkataraman was appointed as Interim Resolution Professional (IRP) *vide* Hon'ble NCLT Chennai (AA) order dated 21.04 .2017, however the CIRP of CD-1 was stayed by the Hon'ble High Court of Madras *vide* order dated 04.05 2017 and later the stay was vacated *vide* order dated 05.09 2019. It is noted

that *vide* order dated 03.10 2019, the AA had revived the CIRP and directed the IP to continue the CIRP. Therefore, the CIRP of CD-1 was revived *vide* order 03.10 2019.

- 2.2.2 It was alleged in the SCN that one of the bank accounts of CD-1 (ICICI Bank Account No. 613405024599) was being operated by the suspended management of CD-1 even after the commencement of the CIRP. It is noted that in the submission to the reply to the DIR, the IP stated his ignorance about the existence of the said bank account of the CD-1 citing non-cooperation and concealment on the part of the suspended management.
- 2.2.3 However, it is noted that the Preliminary Report dated 8th March, 2021 of HSA and Associates, a professional appointed by the IP, Mr. Mahesh Venkataraman, in his key findings in connection with verification of Bank account of ICICI Bank, stated that during the period from 3rd October 2019 to 31st October, 2020, the said account had receipts of Rs. 21.32 crore towards insurance claim of patients and payments to the tune of Rs. 11.96 crores to the accounts of Dr. AM Arun (one of the promoters of CD-1) and his related parties. It is further noted that the Transaction Audit Report dated 12th March, 2021 listed 10 top bank accounts out of 37 bank accounts of the CD-1 and the said account of ICICI bank was at number 6, accounting for 4.64% of CD-1's revenue during the review period which was two years prior to CIRP commencement date.
- 2.2.4 It is further alleged in the SCN that the act of suspended management of continuing to operate the bank account of CD-1 is in contravention of moratorium under Section 14 of the Code, and that by not taking adequate measures, Mr. Mahesh Venkataraman has contravened Section 18 of the Code which required him to take custody and control of the assets of the CD-1, and this contributed towards the breach of moratorium.
- 2.2.5 It was further alleged that the plea of ignorance taken about the existence of this bank account by Mr. Mahesh Venkataraman lacks credence since the said account of the CD-1 had receipts of Rs. 21.32 crore towards insurance claims and that exchange of communications took place prior to, as well as post such transactions. The IP being the RP in the CIRP of CD-1 and vested with the powers and functions of suspended management cannot be allowed to claim ignorance of existence of an account of CD-1 wherein receipts in the nature of insurance claims have been credited.
- 2.2.6 Accordingly, the Board was of the *prima facie* opinion that IP had, *inter alia*, violated Section 14 (1) (b) and 18(f) of the Code and Clause 12 and 14 of the Code of Conduct.

Submission by IP

- 2.2.7 Mr. Mahesh Venkataraman submitted that he, on his own volition came to know about the Hon'ble Madras High Court, Division Bench Order vacating the stay on 05.09.2019, and that with the E-copy of the said order, *suo motu* moved an Application and ensured that the CIRP of the CD-1 was revived on 03.10.2019. He submitted that immediately upon the takeover of the CD-1, the IP wrote a letter to the Promoters of the CD-1 and to the same ICICI Bank seeking details of all the accounts maintained by them w.r.t CD-1

- 2.2.8 He further submitted that upon becoming aware on 4.11.2020 about the unauthorized bank account being operated illegally, he issued Show Cause Notice dated 09.11.2020, to the directors of the CD-1 and to ICICI Bank. The reply to the said show cause notice to ICICI Bank was given on 16.11.2020, while in the meantime, the IP had filed an application under section 19 of the Code on 10.11.2020. He informed the CoC about the unauthorized bank being in operation on 18.11.2020, and thereafter Report of HAS & Associates dated 08.03.2021, and Transaction Audit Report of CD-1 dated 12.03.2021 was finalized.
- 2.2.9 He submitted that the Transaction Audit Report from HAS & Associates and inference by the IA in this specific matter of unauthorized ICICI Bank Account are only consequential to the actions taken by the IP. He submitted that he acted with utmost diligence, discretion, professionalism, integrity, sincerity without siding with any parties or stakeholders and has conducted the proceedings of the CIRP in a very fair and reasonable manner.
- 2.2.10 He submitted that he placed his request that the Transaction Audit for the CD-1 should be conducted from the original date of CIRP (April 2017) and not from October, 2019 as several transactions would not be covered if it is 1 or 2 years from October, 2019. However, there was no unanimity in the CoC, hence, it was getting delayed.
- 2.2.11 He further submitted that shortly after the CIRP commenced, the IP and his team personally visited 75 centres of the CD-1 out of 95 and made an extensive analysis on the revenues, operations, receipts, patient details and other relevant details which was not in line with the revenues generated. The matter was repeatedly discussed in the CoC on several occasions and the IP even sought permission from the CoC to carry out Transaction Audit even during the CIRP, given the vastness and wide spread operations and peculiar nature of the CD-1.
- 2.2.12 The IP submitted that on 13.01.2020, he had written to all the CoC Members independently to disclose if any of them have got any amount from the CD/promoter or their associates. It was repeated again on 20th October *vide* e-mail dated 05.10.2020.
- 2.2.13 He submitted that it could be seen from the Transaction Audit Report that some of the CoC members were beneficiaries from this Bank Account, which was operated by the Suspended Promoter, since deceased, of the CD-1 even after the commencement of CIRP. However, none of this was brought to his knowledge, even though the said promoter was aware of the said Bank Account. He further submitted that after the onset of the pandemic in March, 2020, there were enormous constraints placed on the IP and his team in ensuring the CD-1 remains a going Concern, viable, feasible, as the only value proposition of this CD-1 was 'Enterprise Value', i.e., Business Operations and they had no clear Fixed Assets in terms of land and building. The IP, submitted that he vehemently denies the fact that the IP was in anyway, even indirectly responsible for the said Acts of the Promoter and that he breached the moratorium period without any shred of evidence.
- 2.2.14 He submitted that immediately after coming to know of the existence of this Bank Account

secretly operated by the suspended promoter, since deceased, the IP, swiftly took actions and froze the Bank account and filed a detailed application under Section 19 read with other applicable provisions of IBC, 2016. He submitted that these matters were under further investigation and proceedings pending before the Hon'ble NCLT and are sub-judice, and that he extended all the necessary help, assistance, support, and shared all the information available with him to the RP in this regard.

2.2.15 Mr. Mahesh Venkataraman submitted that the operational details and data furnished to the CoC, clearly mentioning all the parameters of the CD-1, like revenue bifurcation, expenses, area-wise, centre-wise, services etc. would throw light on the sincerity, commitment, integrity, honesty, and steadfast approach of the IP, in the most trying circumstances.

2.2.16 He further submitted that he, undertook a personal trip immediately after the demise of the promoter to important centres, even at the grave risk of contracting Covid and possibly fatal, as this was pre-vaccination period. Thus, he submitted, that such efforts of the IRP or IP should not be trivialised by making charges or allegations, without proper appreciation of ground realities.

Findings of DC

2.2.17 The DC notes that the CIRP of CD I had been stayed by order of Hon'ble High Court of Madras dated 04.05.2017 and the same was vacated vide order dated 05.09 2019 and CIRP was revived on 03.10.2019. It is evident from the transaction audit report of HAS and Associates that during the period from 03.10. 2019 to 31.10.2020, the said account had receipts of Rs. 21.32 crore towards insurance claim of patients and payments to the tune of Rs. 11.96 crores to the accounts of Dr. AM Arun (one of the promoters of CD) and his related parties and it has been admitted by Mr. Venkataraman that he became aware about the unauthorized operation of the Bank account of ICICI Bank on 04.11.2020. The findings in the transaction audit report evidences gross negligence and carelessness on the part of Mr. Venkataraman in taking control and custody of the assets of CD-1. Had Mr. Mr. Venkataraman been diligent in examining the accounts of the CD-1, he would have come to know about the account of CD-1 maintained with ICICI Bank, and huge amount siphoned off from the said account of CD-1 with ICCI Bank, could have been avoided.

2.2.18 In the matter of Kei-Rsos Maritime Limited

2.3 Appointment of Expert Professional Advisor

2.3.1 It was alleged in the SCN that in the 7th CoC meeting, Mr. Mahesh Venkataraman informed CoC in the meeting held on 13.10.2020, about the receipt of two resolution plans from Bluemine Marine Solutions Private Limited (Bluemine) and Divetech Marine Engineering Services Private Limited (Divetech), where Divetech was the Successful Resolution Applicant (SRA).

- 2.3.2 It was noted from the minutes of the 11th meeting of the CoC held on 19.04.2021 that Mr. Mahesh Venkataraman appointed Mr. Kulbhushan as the Expert Professional Advisor for a period of 3 months/until a resolution plan is approved, to be further extendable by 3 months on terms and conditions mutually agreed with Mr. Kulbhushan, IP and the CoC. During the said meeting, it was also resolved that Mr. Kulbhushan be authorised to immediately take charge of the CD-2 and report on the status of vessels to Mr. Mahesh.
- 2.3.3 It was noted that that a letter dated 13.04. 2021, written to Mr. Mahesh Venkataraman by Mr. Kulbhushan revealed that Mr. Kulbhushan was working with Divetech, SRA as a Business Development Consultant until August 2020, and was using the designation of Vice-President- Business Development. However, in the notice and agenda for the 11th CoC meeting, incorrect profile of Mr. Kulbhushan was circulated where he was shown working till the present with M/S Techno Gulf Drive Services, which is clearly contradictory.
- 2.3.4 Thus, it was noted that though Mr. Kulbhushan had informed Mr. Mahesh Venkataraman on 13.04.2021 about his past employment with Divetech, one of the PRAs then, yet Mr. Mahesh Venkataraman misled the CoC by circulating his incorrect profile, which indicates malafide intent on his part.
- 2.3.5 It was further noted that two PRAs subsequently revised their respective resolution plans and discussion on the same took place till 14th CoC meeting where he informed it about dispensing the services of Mr. Kulbhushan after obtaining technical report about the operations of the CD-2. It is noted that since there is difference of only Rs. 5 lakhs in the value of resolution plans of two PRAs, the appointment of Mr. Kulbhushan, one of the ex-employees of SRA by knowingly hiding his incorrect profile from CoC raises doubt and suspicion on his conduct.
- 2.3.6 Accordingly, the Board was of the *prima facie* opinion that IP had, *inter alia*, violated Clause 1, 2, 3, 5, 9, 12, 14 of the Code of Conduct.

Submissions by IP

- 2.3.7 Mr. Mahesh Venkataraman submitted that the matters regarding appointment of Kulbhushan as expert technical advisor, the bonafide nature of appointment, his non-participation or no role in the resolution plan and why the CoC approved the Successful Resolution Applicant (SRA) as against the Unsuccessful resolution Applicant (URA) had been dealt in detail with point-by-point explanation by the Adjudicating Authority which had not been objected even by the URA to the Plan. Thus, he submitted that raising the same issues was not warranted as there has been a judicial application of mind in this case, and a clear speaking order had been passed exonerating the RP of any wrongdoing.
- 2.3.8 He further submitted, that the approval of the Resolution Plan was by the sole CoC member using their commercial wisdom and not due to any other reasons. Thus, the IA findings as if the Resolution Plan of the SRA was considered only based on the report of Mr.

Kulbhushan is totally erroneous, wrong, clearly misconceived and is made without any shred of evidence.

- 2.3.9 Mr. Mahesh Venkataraman submitted that he had received the Resolution Plans from two Prospective Resolution Applicants (PRA) viz. Divetech and Bluemine on 10.10.2020, and the same was placed before the CoC meetings held on 13.10.2020. He submitted that both the Resolution Plans submitted were ‘Incomplete’ due to pending inspection of vessels and due diligence of the sites, and both the PRAs requested further time to submit the Revised Resolution Plans post due diligence which was granted by the CoC.
- 2.3.10 Mr. Mahesh Venkataraman submitted that both the Resolution Applicants submitted their respective Final Resolution Plans on 31.02.21, and thus, both SRA and URA submitted their respective Resolution Plans much before the CoC meeting on 19.04.2021 in which the appointment of Technical Advisor took place.
- 2.3.11 He submitted that the CIRP period after extension got over in February, 2021, and an extension was filed with the Hon’ble NCLT before the expiry of the period in first week of February, 2021, seeking additional time for consideration of the Resolution Plans. He submitted that this was heard on 04.03.2021 and reserved for orders, but the order was pronounced only on 30.04.2021, thus, it was not even known to the IP and the CoC on 19.04.2021, whether extension as sought for, would have been granted or refused, and that if not granted, Liquidation would have been automatic in that case. Thus, he submitted that at the CoC meeting held on 19.04.2021, it was very important for the CoC to know the technical and operational conditional of the Vessels or Tugs, which were used for Contracts, as the officers of the CD-2 were not transparent and forthcoming in these matters.
- 2.3.12 He submitted that that since the RP was not a domain expert, thus, it was decided to appoint a technical person to submit a report, regarding the operational viability and feasibility of these vessels. Thus, it is only in this context that the entire appointment of Mr. Kulbhushan Parashar for a short duration has to be viewed, where he never participated nor was aware of the resolution Plan and their contents, much less the commercials.
- 2.3.13 He further submitted that Mr. Kulbhushan Parashar was not present in this meeting held on 19.04.2021, and that he was permitted, in the CoC meetings subsequently only for the limited purposes of appraising the CoC on the technical issue of Vessels or tugs, and rest of the time, he would be kept in the lobby, as the CISCO Webex was in control of the RP and CoC, all of which facts form a part of the Hon’ble NCLT Order.
- 2.3.14 He submitted that there were two running contracts of the CD -2 with Vedanta Ltd. and MRPL at the start of the CIRP, and that all of the contracts of the CD-2 came to an end on 31.3.2021. He submitted that all the vessels of the CD-2 were either due for dry dock or repair, costing huge sum or for scrap. Thus, in the absence of adequate and reliable, trust worthy, technical information about the Vessels and its operational condition and/or status from the Operational management of the CD-2 was incurring huge expenditure for Crew,

Fuel, maintenance cost etc. thus, it was decided, with the approval of CoC to appoint a Technical Advisor, who was a Freelance consultant earlier to some of the Co's, in terms of IBC provisions, to submit to the IP and the CoC a report on the condition of Vessels and the statutory compliances as per Marine Law.

- 2.3.15 He submitted that the technical advisor was appointed for a very short period of time, for about 1 to maximum 3 months after taking due normal precautions and diligence, like non disclosure agreement and assurance from him that there is no conflict of interest and that he is not employed with any Company, at that point of time, i.e. April 21.
- 2.3.16 He submitted that the appointment of a Technical Advisor was the prerogative of the CoC and that the RP had taken the approval of the CoC for the same. He submitted that the appointee is not barred from the Technical Advisor role either under the IBC or under common law, and that appropriate NDA and other disclosure regarding No conflict of interest had been obtained from the Appointee.
- 2.3.17 The IP submitted, that the technical advisor informed the IP that he was not employed in any company but was a freelance consultant offering consultancy to a lot of marine Companies including Techno Gulf, Divetech Engineering LLC etc. The IP circulated the profile which was given by the Technical Advisor and that he had mentioned that he was not employed anywhere and that he was engaged as a free-lance consultant for various Companies, and each of those Companies used to give him a designation which suited their business requirements, which was explained in detail to the CoC.
- 2.3.18 The IP submitted that the entire appointment was done in complete good faith and trust and in compliance of law. The IP had done adequate, fair, and reasonable due diligence of the appointee as per law, when the terms of the Appointment itself were for a limited period and a specified purpose. Once that purpose was fulfilled, namely, technical and operational Report of Vessels/Tugs, his tenure was to be ended, and that he had no access to the process documents of the CIRP, Finance and Commercial or other material or significant documents of the CD-2 and in no manner the confidentiality of the CIRP and IBC process was in any manner compromised or vitiated. The IP submitted that due compliance had been made with all the provisions of IBC, 2016, with respect to the appointment of the consultant with the concurrence of the CoC.
- 2.3.19 The IP submitted that this issue had been dealt with in detail by the Hon'ble NCLT in the Order passed on 3.01.2022, where the Hon'ble NCLT after thorough examination of all these facts had clearly adjudicated that the appointment of Mr. Kulbhushan Parashar was not prejudicial to the approval of Resolution Plan, and was not in violation of any law for the time being in force. The Order clearly exonerated the RP of any 'bias'. He further submitted that the SRA, Divetech, in their affidavit before NCLT, dated 26.7.2021 had clearly stated that the said advisor was never in the rolls of the Company, which was a clear indication that there was no violation as alleged.
- 2.3.20 The IP submitted that the findings of the IA questioning the commercial wisdom of the

CoC approving the resolution plan of the Successful Resolution Applicant over the Resolution plan of the Unsuccessful Resolution Applicant was not correct. He submitted that the CoC had filed a very detailed counter to the application filed by the Unsuccessful Resolution Applicant explaining point wise reasons for approving the Resolution Plan of the Successful Resolution Applicant.

- 2.3.21 The IP submitted that both Bluemine and Divetech had given their respective Resolution Plans before the appointment of the technical consultant on 19.04.2021 and the same was placed before the CoC for their consideration along with the Evaluation Matrix.
- 2.3.22 The evaluation Matrix in terms of financial and technical parameters were totally in favour of Divetech as opposed to Bluemine. On 16th and 17th May, 2021, an unfortunate event occurred by which one of the assets/vessels CS-IX was caught in cyclone “Tauktae” and its usefulness was severely compromised, hence the CoC in its meeting dated 17.05.2021 requested both Resolution Applicants to amend their Plan “Only to the extent of modifying their respective Resolution Plans consequent to said event”. Thus, both the Resolution Applicant revised their respective commercials, as if this Vessel was “NOT AVAILABLE”, submitted the same on 25.5.21.
- 2.3.23 He submitted that one resolution applicant had reduced the resolution plan amount by Rs.175 lakh and another by Rs,75 lakh, so there could be no reason, to even doubt the commercials, offered by one party to another. He stated that it was neither possible nor that it happened, except in the imagination of the Unsuccessful Resolution Applicant (URA), and that mere conjectures or assumptions could not be a basis for questioning the integrity or ethical standards of a professional who has an impeccable record of 25 years in his Practicing Profession.
- 2.3.24 He submitted that this final, modified, and completed Resolution Plan, changed only to the extent of reducing the Plan amount due to wreckage of vessel, (No other changes in the commercials were made) which was placed before CoC for approval. It was reiterated that the Modified Resolution Plan (Due to wreck of vessel CS IX) was first given by Divetech on 25.5.2021 by way of e-mail at 16:17 hrs and thereafter Bluemine submitted their Resolution Plan at 17:48 hrs through e-mail. The said e-mails were immediately shared by the RP herein to the CoC. Thus, he stated that it was improbable to even imagine that the resolution plan of URA would have been shared with the successful resolution applicant (SRA), which fact had also been captured and dealt with by the Hon’ble, NCLT, Amravati Bench, and resultantly, these allegations had no substance or basis.
- 2.3.25 Mr. Mahesh Venkataraman submitted that Bluemine, had always, throughout the process, lacked bonafide, contradicted their Source of Funds, business pan, claims of domain expertise and their experience was not convincing and finally their hobnobbing with CD-2 employees had come to light. He submitted that the Plan submitted by Bluemine, was conditional, and had no clarity on Source of Funds, the score obtained by them, as per the Evaluation Matrix, was much below Divetech.

- 2.3.26 He submitted that it was very clear that the Resolution Plan of Bluemine provided for payment of Rs. 1500 lakhs + Rs. 200 lakhs CIRP cost. However, Resolution plan of Divetech provided for payment of Rs. 1700 lakhs + CIRP cost at actuals and not pegged at Rs. 200 lakhs, which was not in accordance with IBC.
- 2.3.27 The IP, Mr. Mahesh Venkataraman, submitted that the Resolution Plan provided by Bluemine, had failed miserably to convince the CoC, on several counts, not the least, the Net Worth, financial strength, source of funds, etc. He submitted that it was a matter of conjecture if Bluemine's Resolution Plan, would have been considered favourably, for approval by CoC, even if it was the only Resolution Plan. On the contrary, Bluemine had no qualms about the decision of the CoC, and immediately approached the RP and took back their EOI Deposit amount of Rs. 5,00,000/- and Bank Guarantee Amount of Rs. 50,00,000/-. He further submitted that, only as an after-thought, they approached the AA, questioning the rejection of their resolution plan, and that in law, by the time they filed the Application, they were a Third Party to the CIRP, having withdrawn their EOI and EMD much earlier and had no locus.
- 2.3.28 The IP, Mr. Mahesh Venkataraman submitted that all these matters had been vehemently argued and debated at length before the Hon'ble NCLT, over several hearings from July to December, 2021 and that the Hon'ble Judicial Member, had elaborately in a speaking Order, dealt with all the issues threadbare on law, on facts, and on merits and had passed a well-reasoned order on 03.01.2022.
- 2.3.29 He submitted that the Hon'ble Bench did not find any bias or wrong doing on the part of the IP and had adjudicated the matter with fairness and equity. He submitted that none of the parties had appealed against the said Order, and that the Judicial Pronouncement, on all these matters, had attained finality. The very same matters had been raised in the Inspection Report, which was unfortunate and surprising.
- 2.3.30 He submitted that the commercial wisdom of CoC in choosing a Resolution Plan vis-à-vis another had been held sacrosanct by the Hon'ble Supreme Court, in a number of Judgements and that the Board was too well aware of the same. He submitted that the CoC was also made a party to the proceedings and it was clearly explained, why and how they had acted in good faith, in accordance with law and IBC, whilst approving the Resolution Plan of Divetech as against Bluemine.
- 2.3.31 Mr. Mahesh Venkataraman submitted that he had done his duties as an RP for the CD-2, in an exemplary manner, and had ensured that a Resolution Plan had not only got approved, *albeit* after a protracted legal battle, but implemented as on date in accordance with the Order of the Hon'ble NCLT, Amravati Bench.
- 2.3.32 The IP, Mr. Mahesh Venkataraman, further submitted, that he had used his personal funds, especially for CD-2, to the tune of several lakhs, during the pandemic time, when the Bank Account Operations, could not be done, due to COVID issues, and that the IP would provide details of the same, if so required. Similarly, the IP submitted that in CD-1, he refused to claim his fees, during the worst pandemic months of April and May, 2020 and

after suggestions from CoC, took it much later.

- 2.3.33 He submitted that all the meetings of these two CD's CoC were mostly held in the office of the IP, and that not a single rupee would be claimed from the CD-2 for the same, though both were operating and going concern and were generating enough revenues. He submitted that even several trips to outstation, by flight on work for these CDs were borne by the IP personally, and not burdened on the CDs, and that in most of the hearings before the NCLT, he used to appear, argue, make submissions and get positive Orders, on merits, thus reducing the legal expenses. He submitted that all these were well appreciated even by those CoC members, who wanted to replace him, in CD-1 and that this is a matter of record, and submitted that he had carried out his work with *bonafide* intention as an IRP/RP in these matters.

Findings of DC

2.3.34 DC finds that the IP, Mr. Mahesh Venkataman should have disclosed past association of the Expert Professional Advisor, Mr. Kulbhushan with Divetech specially when Mr. Kulbhushan had informed Mr. Venkataraman, his past association with Divetech. In order to maintain transparency in the process, Mr. Venkataraman should have shared the complete profile of Mr. Kulbhushan with CoC wherein past association of Mr. Kulbhushan with Divetech had been disclosed. Suppressing this vital portion of the profile of the professional engaged by Mr. Venkataraman, from CoC evidences that Mr. Venkataraman failed to act in a transparent manner.

3. ORDER

- 3.1 In view of the forgoing discussion, SCN, reply to the SCN, oral and written submission made by Mr. Mahesh Venkataraman and the other materials made available to the DC, the DC is of the view that Mr. Mahesh Venkataraman failed in taking proper custody and control of the assets of CD-1 due to which breach of moratorium was done by management of suspended board by operating account with ICICI Bank, and with respect to CD-2, Mr. Venkataraman failed to maintain complete transparency in sharing profile of the professional engaged by him, with CoC.
- 3.2 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. Mahesh Venkataraman for a period of one year.
- 3.3 This Order shall come into force on expiry of 30 days from the date of its issue.
- 3.4 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Mahesh Venkataraman is providing his services, if any.
- 3.4 In view of the above Order, a copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Mahesh Venkataraman is enrolled as a member for their further necessary action.

- 3.5 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.
- 3.6 Accordingly, the show cause notice is disposed of.

Sd/-
(Jayanti Prasad)
Whole Time Member, IBBI

Dated: 15th May 2023
Place: New Delhi