INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/269/2025 20th February 2025

ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11015/192/2020-IBBI /872/313 dated 11.06.2024, issued to Mr. Guru Prasad Makam ("Mr. Makam/IP") who is a professional member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with registration No. IBBI/IPA-001/IP- P00932/2017-18/11550.

1. Background

1.1 The National Company Law Tribunal, Bengaluru Bench, (AA) had admitted the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC/Code) for Corporate Insolvency Resolution Process (CIRP) of M/s Sovereign Developers and Infrastructure Limited (CD) *vide* its Order dated 16.07.2019 and Mr. Guru Prasad Makam was appointed as Interim Resolution Professional (IRP). Later on, the Committee of Creditors (CoC) resolved to replace the IRP and subsequently, Mr. Balakrishnan Venkatachalama was appointed as the RP on 13.09.2019.

1.2 The IBBI, in the exercise of its powers under Section 218 of the Code, read with Regulations 7(1) and 7(2) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to investigate the conduct of Mr. Makam in the CIRP of the CD. Thereafter, the IA served the notice of investigation on Mr. Makam as per Regulation 8(1) of the Inspection and Investigation Regulations and in response thereto, Mr. Makam submitted his reply on 24.05.2024. After considering the reply of Mr. Makam, the IA submitted the Investigation Report (IR) to the Board.

1.3 Thereafter, based on the findings of the Investigation Report submitted by the IA, the IBBI issued the SCN to Mr. Makam on 11.06.2024. The reply of the IP on the SCN was received on 25.06.2024.

1.4 The IBBI referred to the SCN, the response of Mr. Makam 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. Makam availed an opportunity of personal hearing before the DC on 14.02.2025, through virtual mode.

2. Alleged Contraventions, Submissions of Mr. Makam and Findings

The contraventions alleged in the SCN, submissions by Mr. Makam, analysis and findings of the DC are summarized as under:

Contraventions

Failure to monitor assets of CD and file appropriate application before the AA

2.1 The Section 18(a) of the Code provides that the IRP shall collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor. Further, Section 18(d) of the Code provides that the IRP shall monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors. Furthermore, Section 18(f) of the Code provides that the IRP shall take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets. Also, Section 19(2) of the Code provides that where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the IRP does not assist or cooperate, the IRP may make an application to the AA for necessary action.

2.2 It was observed from the submission of Mr. Makam to the IA that Mr. Makam wrote letters to six Banks on 24.07.2019 *inter alia* stating that existing authorized signatories of CD be removed, and Mr. Makam be appointed as the authorized signatory of CD. However, Mr. Makam did not write a similar letter to the Karnataka Bank Limited which resulted in this encashment of demand draft of Rs. 30 Lakhs issued by the Karnataka Bank by the promoter of the CD. It was further observed from the minutes of 2nd COC recorded the following:

> *"IRP informed the following information has been sought by the IRP, and he again sought it in the meeting to Deepakk Kumar which has not been handed over and serious objection was placed on record. and the CoC also urged the IRP to take action required to get the below information.*
>
> *.. All demand draft, cheque in the compromise petition with Corporate Debtor and the landowner of Sovereign Lake view...IRP updated to the participants that demand draft of to the tune of Rs. 10.5 Crores received from the compromise petition of Lakeview project is still lying with Mr. Deepakk Kumar and it has not been provided to IRP.*

2.3 The minutes of the 2nd COC meeting indicated that Mr. Makam was fully aware about drafts received from compromise petition of Lakeview project still lying with promoters of the CD but preferred not to file application seeking cooperation from promoters in this regard under Section 19(2) of the Code. Rather Mr. Makam filed a memo before the AA which was unclear and not a Section 19(2) application. That due to abovesaid non-intimation, the promoter of CD illegally encashed the abovesaid demand draft thereby causing substantial loss to the CD.

2.4 It was further alleged in the SCN that Mr. Makam not only failed to inform the Karnataka bank regarding initiation of CIRP of the CD and the authorized signatory to the CD's Bank Accounts, but Mr. Makam also failed to file application under Section 19(2) for seeking cooperation from the promoter in whose control and custody demand drafts worth Rs.10.5 crore was lying even after more than a month after initiation of CIRP. Mr. Makam's failure to inform the Karnataka Bank about CIRP of the CD, filing an improper memo and not a proper application under Section 19(2) indicated Mr. Makam's negligence which resulted in the promoter of the CD to illegally encash the demand draft of CD for his own benefits. Being aware of this material fact about existence of the DD from Banks, it was duty of Mr. Makam to make all banks of the CD aware of initiation of CIRP. This conduct indicates brazen negligence that has caused loss of value to the CD.

2.5 In view of the above, the Board held the *prima facie* view that Mr. Makam had contravened the Sections 18(a), (d), (f) and 19(2) of the Code read with Clause 14 of the Code of Conduct.

Submissions of Mr. Guru Prasad Makam

2.6 Mr. Guruprasad Makam submitted that within two days of initiation of CIRP of the CD, he wrote a letter on 18.07.2019 to the suspended Board of Directors requesting them to provide access to the Books of Accounts, records and other relevant documents and information for the purpose of identification of the class of creditors of the CD. Further, Mr. Makam submitted that the Board of Directors of the CD were non-cooperative and did not provide the books of accounts and access to the Tally Software for about 15 days from the insolvency commencement date. He further submitted that to trace out all the bank accounts of the CD, he along with his team also met statutory auditors of the CD on two occasions and received oral confirmations in the meetings on the bank accounts of the CD before sending the intimation letters to the bankers. He gathered information that the following banks have accounts in the name of the CD as on 24.07.2019 i.e. Canara Bank, Corporation Bank, HDFC Bank, Kotak Mahindra Bank, SBI Bank, Shushruti Bank, and United Bank of India. Thereafter, he sent intimation letters dated 24.07.2019 in relation to the bank accounts informing the relevant banks that the existing authorized signatories of the CD should be removed by virtue of the management of the Corporate Debtor being vested in his hands. Also, during his (IRP) tenure all the employees in the CD had left the job and there were no accountants present to give the required information to collate all the claims and take complete control of the affairs of the CD.

2.7 It is further contended by Mr. Makam that due to his efforts, after 15 days, he was provided with the books of accounts of the CD in tally format. However, the entries in the books of accounts and bank reconciliation were not updated for 14 months preceding the Insolvency Commencement Date. That apart, there were no supporting documents information or data to verify the information in the limited books of accounts or the claims that he had received. The office of the CD was inaccessible, making it difficult to retrieve vouchers, bills, and documents from the wet-rat-infested storage rooms. Further, Mr. Makam submitted that the suspended Directors of the CD were absent from this meeting. The Directors did not respond to his calls, and they were recorded as absent in the attendance sheet. Mr Makam contended that he had recorded the non-cooperation of the suspended directors in the minutes of the meeting as well.

2.8 Mr. Makam submitted that on the CIRP order date 16.07.2019, the City Civil Court, Bangalore allowed a compromise petition between the CD and H.A Srikanth and others. This compromise petition was regarding a dispute that arose from a Joint Development Agreement dated 24.09.2012 between the CD and H.A Srikanth in respect of the Project **'Sovereign Lakeview'**. As a part of the aforesaid compromise petition, Mr. HA Srikanth and others agreed to pay the CD a sum of Rs. 10.50 crores. Thereafter, on 30.07.2019 the accused (Mr. Deepakk Kumar) proceeded to secure the acceptance of the compromise petitions by the City Civil Court, Bangalore, although they were no longer entitled to represent the CD in such cases where CIRP of the CD had been initiated and moratorium was in place. The powers of the board of directors were suspended and was vested with IRP/RP. Within a few days of coming to know of the compromise petition and the DDs, Mr. Makam had filed memo along with an application before the AA under Section 19(2) of the Code for necessary directions for lack of cooperation without any legal support. It is submitted by Mr. Makam that in the second meeting of the COC itself, majority of homebuyers proposed the appointment of Mr. Balakrishnan Venkatachalam as the RP. Post the appointment of the RP, he could not prosecute that matter further.

2.9 Mr. Makam further submitted that IBBI has filed a complaint under Section 236 of the Code, read with Sections 68, 70,74 and 235(A) and with Sections 190,193 and 200 of the Code of Criminal Procedure, 1973 against Prakash Kumar Singh and Deepakk Kumar the suspended Directors of the Corporate Debtor regarding the illegal encashment of one of the Demand Drafts worth Rs. 30,00,000/- (Rupees Thirty Lakhs). Vide order dated 08.01.2021 the City Civil & Sessions Judge, Court, Bangalore took cognizance of the offence.

2.10 Mr. Makam also submitted that on 21.05.2020, he received a mail from IBBI asking him to reply to the review of a compliant in the matter of Sovereign Developers and Infrastructure Limited.

Earlier, the complaint was decided in his favour on 27.02.2020. Thereafter, on 06.04.2020, the complainant filed a review under Regulation 7(5) of the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017. He replied on 25.05.2020 with supporting documents and then on 03.09.2020, a clarification was asked by IBBI regarding the allegation that why the IRP had not taken action against the illegal encashment of Rs. 30 lakhs. Thereafter, one Mr. Rachit Garg filed a review of the complaint. The complaint again on very similar ground is regarding the illegal encashment. Thereafter, in the year 2023, he received another letter from IBBI regarding investigation of the complaint against him and he provided his reply and rendered all necessary assistance to the Investigating Authority. It is further submitted by Mr. Makam that the DD of Rs. 30 lakhs in question was not encashed through the then existing bank accounts of the CD. On the contrary, the Suspended Director of the CD clandestinely and illegally opened a bank account during the CIRP with a new Bank, namely the Karnataka Bank and encashed such DD. Therefore, the illegal encashment of the DD of Rs. 30 Lakhs was a direct result of the fraudulent and malicious acts of the suspended Directors of the CD. Mr. Makam further submitted that as per his knowledge, the CD did not have any bank account with Karnataka Bank. Therefore, there was no requirement for him to inform Karnataka Bank of the CIRP Order of the CD.

2.11 Mr. Makam contended that the Compromise Petition merely states that a demand draft was drawn on Karnataka Bank, without indicating that there was an existing account in the name of the CD at Karnataka Bank. It is the submission of Mr. Makam that expecting to send such intimations to unlawfully opened bank accounts after the initiation of CIRP which he was unaware of is unreasonable especially since the demand drafts could have been encashed at any Bank whatsoever. Further, the impugned bank account, which was illegally opened and operated by the suspended Director after the initiation of CIRP, was not reflected as an asset or liability as of the initiation date nor recorded in the balance sheet of the CD, nor registered with any information utility, depository of securities, or any other registry that records the ownership of assets.

2.12 Further, Mr Makam submitted that the CoC did not support him with his request of appointing a legal advisor and he was constrained to take all legal measures by himself in the interest of CD. Therefore, it was due to the CoC's lack of support that the Application filed by him was not in a proper format. He is a Chartered Accountant and therefore was not aware of the proper format to file an application under Section 19(2) of the Code. Within eight days of such filing, Mr. Balakrishnan Venkatachalam was appointed as the RP of the CD and he was replaced. If he was appointed as a RP, he would have had the opportunity to pursue the application filed by him and the NCLT Bangalore would have given suitable instructions to cure the defects. Also, he was under the impression that it would be open to him to place all relevant documents and facts before the NCLT at the hearing which he was willing to do. The essence of Section 19(2) of the Code is to ensure that the IRP can seek necessary directions from the NCLT to address non-cooperation by suspended directors, which he did in good faith. Therefore, any technical defects in the application format should not undermine his substantive compliance with Section 19(2) of the Code.

2.13 Mr. Makam made submissions that the parties who have made the complaint against him have not come to the IBBI Board with clean hands. There is enough evidence against them to show that they have sent emails that tarnished his reputation as a Chartered Accountant, and he has filed a defamation suit on 13.09.2019 against them (homebuyers) which is pending adjudication before the Hon'ble High Court of Karnataka. The complainant namely, Mr. Rachit Garg, Mr. Gaurav Gupta along with Mr. Pramod T.P and Mr. Prashanth Gupta ('Homebuyers') were all homebuyers of the CD. The homebuyers created a domain called 'Unnathi' and started sending bulk emails to all the home buyers of the CD, making false allegations against him, which were defamatory. Further, the home buyers alleged that he did not perform his duties as an IRP as per the law without any substantial proof. In this regard they had filed two Interlocutory Applications 366 of 2019 and I.A 367 of 2019 in CP(IB) 267 / BB/ 2018 both of which were decided in favour of the IRP and disposed of by the NCLT Bangalore.

Analysis and Findings

2.14 On perusal of the minutes of 2nd CoC, the DC notes that Mr. Makam as the IRP, mentioned before the CoC that

> "*IRP along with representatives of Home buyers and Phoenix ARC Pvt. Ltd. objected on Mr. Deepakk Kumar's full non co-operation from the date of appointment of IRP. IRP updated to the participants that the demand draft of Rs. 10.50 crores received from the compromise petition of Lakeview project is still lying with Mr. Deepakk Kumar and it has not been provided to IRP. It was noted that all assets of the corporate debtors are required to be in control of IRP after the CIRP process start date i.e..16th July, 2019. Mr. Deepakk Kumar, by keeping the Demand Draft in his custody has violated the provisions of the IBC code. Mr. Deepakk Kumar tried to convince the participants that Demand Draft was kept in his custody since he has still not received any resolution plan. IRP along with authorised representative of Home buyers and Phoenix ARC Pvt. Ltd. Seriously objected to the wrongful withholding of the drafts/cheques in contravention of the provisions of the Code, and urged Mr. Deepakk Kumar to immediately hand them over to the IRP/RP updated Mr. Deepakk Kumar to hand over Demand draft to RP immediately as Deepakk Kumar should not hold any assets of the Company under CIRP as per IBC Code*."

2.15 The DC further notes that subsequently, Mr. Makam had filed a memo for Section 19(2) application before the AA. However, nothing was mentioned regarding custody of DD of Rs.10.5 crore with the Deepakk Kumar in this application. The DC notes the submission of Mr. Makam that the CoC did not support him with his request of appointing a legal advisor and he was constrained to take all legal measures by himself in the interest of CD. Therefore, the application filed by him was not in a proper format. Within eight days of such filing, Mr. Balakrishnan Venkatachalam was appointed as the RP of the CD, who replaced him as RP of the CD. Mr. Makam had submitted that if he was appointed as a RP, he would have had the opportunity to pursue the application filed by him.

2.16 Further, regarding non-intimation of Karnataka bank about the initiation of CIRP, which resulted in encashment of Rs.30 lakhs through Karnataka bank to the promoter of the CD, Mr. Makam has submitted the DD of Rs. 30 lakhs in question was not encashed through the then existing bank accounts of the CD. On the contrary, the Suspended Director of the CD clandestinely and illegally opened a bank account during the CIRP with a new Bank, namely the Karnataka Bank and encashed such DD. Therefore, the illegal encashment of the DD of Rs. 30 Lakhs was a direct result of the fraudulent and malicious acts of the suspended Directors of the CD. Mr. Makam further submitted that as per his knowledge the CD did not have any bank account with Karnataka Bank. Therefore, there was no requirement for him to inform Karnataka Bank of the CIRP Order of the CD. The DC also notes that IBBI had filed a complaint under Section 236 of the Code, read with Sections 68,70,74 and 235(A) and with Sections 190,193 and 200 of the Code of Criminal Procedure, 1973 against Prakash Kumar Singh and Deepakk Kumar, the suspended Directors of the Corporate Debtor regarding the illegal encashment of one of the Demand Drafts worth Rs.30 lakhs.

2.17 The DC further notes that Mr. Makam was the IRP for only a short period i.e. from 16.07.2019 to 13.09.2019. In his reply, Mr. Makam has outlined the various steps taken by him to monitor assets of the CD. In view of the view of the same, the DC cautions Mr. Makam to carry out his duties as the IRP/RP with the utmost care and diligence.

3. Order

3.1 In view of the forgoing discussion, the DC, 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 the IBBI (Inspection and Investigation) Regulations, 2017, disposes of the SCN with a warning to Mr. Guruprasad Makam to be extremely careful and ensure full compliance with the provisions of the Code and Regulations made thereunder in his assignments under the Code.

3.2 This Order shall come into force immediately in view of para 3.1 of the order.

3.3 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Guru Prasad Makam is enrolled as a member.

3.4 A copy of this order shall be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.

3.5 Accordingly, the show cause notice is disposed of.

Sd/-
(Jayanti Prasad)
Whole Time Member
Insolvency and Bankruptcy Board of India

Sd/-
(Ravi Mital)
Chairperson
Insolvency and Bankruptcy Board of India

Dated: 20th February 2025
Place: New Delhi