

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/134/2022

13th October, 2022

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2021/95/4002/600 dated 7th September, 2022 issued to Mr. Vijaykumar Subramaniam Varun, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 (Code) 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. Vijaykumar Subramaniam Varun is a Professional Member of ICSI Institute of Insolvency Professionals (ICSI-IIP) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-002/IP-N00290/2017-2018/10848.

1. Developments in relation to resolution of the CD

- 1.1. The Hon'ble NCLT, Bengaluru Bench (AA) vide order dated 29.05.2020 admitted the application under section 7 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of Unishire Regency Park LLP (CD). The AA appointed Mr. Vijaykumar Subramaniam Varun as an Interim Resolution Professional (IRP) who was replaced by Mr. Mr. Balady Shekar Shetty, Resolution Professional (RP) by vide order dated 15.02.2021.

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

- 2.1. The Board, in exercise of the powers conferred to it under section 218 of the Code read with the Inspection Regulations, appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Vijaykumar Subramaniam Varun vide order dated 04.08.2021. A draft inspection report (DIR), prepared by the IA, was shared with Mr. Varun on 30.06.2022 followed by addendum vide e-mail dated 04.08.2022. Mr. Varun did not reply either to DIR or addendum to DIR. The IA submitted the Inspection Report to the Board on 16.08.2022.
- 2.2. Based on the Inspection Report, the Board issued the SCN to Mr. Varun on 07.09.2022. The SCN alleged contravention of section 18(b), 208(2)(a) and (e) of the Code, regulation 13(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), regulation 4(7) of Inspection Regulations, regulation 7(2)(a) and (h) of IP Regulations, clauses 1, 2, 13, 14, 18 and 19 of Code of Conduct of IP Regulations. Mr. Vijaykumar Subramaniam Varun has not submitted any reply to the SCN and vide his e-mail dated 7.09.2022, he communicated to the Board that he has been sick and bed ridden for a long period of time. He has further added due to his advanced age, recovering from sickness may take time. He is about 71 years old and the same may be considered. On DC hearing notice he neither submitted any confirmation nor sought time for getting the

hearing postponed. As he didn't appear for the hearing, he was contacted over mobile and responded by saying that his age led health problems is not conducive enough for any possibility of appearing before the DC on any future date as well.

- 2.3. The Board referred the SCN along-with DIR and inspection report submitted by IA to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. An opportunity of personal hearing before DC was provided to the IP on 11.10.2022 through virtual mode, however, as explained in para 2.2 above, Mr. Vijaykumar Subramaniam Varun did not appear and on being contacted on phone informed that he did not wish to avail a personal hearing. Hence DC had little choice but to dispose of the SCN on the basis of available materials on record.

3. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN thereof are summarized below:

3.1. Contravention

Non-Cooperation with Inspecting Authority:

- 3.1.1 As per Regulation 4(4) of the Inspection Regulations, it shall be the duty of the service provider and an associated person to produce before the IA such records in his custody or control and furnish to the IA such statements and information relating to its activities within such time as the IA may require. As per regulation 4(7) of Inspection Regulations, it shall be the duty of the service provider and an associated person to give to the IA all assistance which the IA may reasonably require in connection with the inspection.
- 3.1.2 It is observed that Mr. Vijaykumar Subramaniam Varun has not cooperated with the IA all throughout the inspection. The following specific instances substantiate the allegation of non-cooperation:
- (a) The IA vide e-mail dated 09.08.2021 requested Mr. Varun to provide soft copies of duly enlisted documents by 19.08.2021. Vide e-mail dated 10.08.2021, he sought extension citing his medical condition.
 - (b) Due to non-receipt of requisite documents even after passage of substantial time, IA vide e-mail dated 31.01.2022, again requested Mr. Varun to submit requisite documents. However, vide e-mail dated 1.02.2022, Mr. Varun again informed the IA that he was still undergoing treatment.
 - (c) Vide email dated 6.05.2022, IA sought documentary evidence of the medical treatment undergone by Mr. Varun, in response to which he submitted a medical certificate dated 6.05.2022 to the IA on 7.05.2022.
 - (d) The DIR prepared by the IA based on data available with the Board was shared with Mr. Varun vide e-mail dated 30.06.2022 requiring him to submit his reply, if any, within 15 days from the date of receipt of the DIR in pursuance of regulation 6(1) of the Inspection Regulations. However, Mr. Varun failed to respond to the same.

3.1.3 It is, thus, evident that Mr. Vijaykumar Subramaniam Varun has failed to submit the records/documents as well reply to DIR and further has not extended sufficient and appropriate co-operation to the IA as may be required to carry out the inspection, which is his duty as per regulation 4(4) of the Inspection regulations.

3.1.4 Hence, the Board is of the *prima facie* view that Mr. Vijaykumar Subramaniam Varun has *inter alia* violated regulation 4(4) and 4(7) of Inspection Regulations read with Clause 18 and 19 of the Code of Conduct.

3.2. Findings

3.2.1 The regulation 4(4) and 4(7) of Inspection Regulations regarding providing assistance to the IA and to furnish records in custody, provides as follows:

“4. Conduct of Inspection.

...(4) It shall be the duty of the service provider and an associated person to produce before the Inspecting Authority such records in his custody or control and furnish to the Inspecting Authority such statements and information relating to its activities within such time as the Inspecting Authority may require.

...(7) It shall be the duty of the service provider and an associated person to give to the Inspecting Authority all assistance which the Inspecting Authority may reasonably require in connection with the inspection.”

3.2.2 In the present context it is observed that the IA vide e-mails dated 09.08.2021 and 31.01.2022 had requested Mr. Varun to provide the enlisted documents. However, vide e-mail dated 10.08.2021 and 1.02.2022, the IP informed that he was undergoing medical treatment and was away from his place of work. Also, by e-mail dated 07.05.2022 he submitted a medical certificate to confirm the same.

3.2.3 The DC also notes that the DIR was sent by IA to Mr. Varun vide e-mail dated 30.06.2022 followed by addendum vide e-mail dated 04.08.2022 but Mr. Varun failed to respond to the same. Even reply to the SCN issued dated 07.09.2022 has not been provided. Though umpteen opportunities were provided to Mr. Varun, for submission of reply to DIR, addendum to DIR and SCN, no reply was received. In absence of any response from Mr. Varun, DC has very little option but to rely on the material available on record including the SCN.

4.1 Contravention

Verification of claims and improper constitution of CoC:

4.1.1 Section 18(1)(b) of the Code casts duty upon IRP to receive and collate all the claims submitted by creditors, pursuant to the public announcement made under sections 13 and 15 of the Code. As per regulation 13(1) of CIRP Regulations, the IRP or the RP, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of receipt of claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

- 4.1.2 It is observed that CIRP of the CD was initiated vide AA's order dated on 29.05.2020 and Mr. Vijaykumar Subramaniam Varun was appointed as the IRP. The public announcement was made by him on 7.06.2020 wherein the last date of submission of claim form was mentioned as 18.06.2020.
- 4.1.3 The minutes of the 1st Committee of Creditors (CoC) meeting held on 6.07.2020 record that only two Financial Creditors (FCs) namely IIFL Finance Ltd and Nippon Life India AIF Management Ltd had submitted their claims. The said minutes further state that the claims of the said two FCs were still under process of verification. Further, in the report certifying constitution of CoC dated 6.07.2020 filed on 9.07.2020, Mr. Varun mentioned that the claims of Nippon and IIFL were still in process of verification.
- 4.1.4 The deliberations mentioned under para (5) of minutes of 2nd CoC meeting held on 22.07.2022 clearly indicate that the claims were still under verification. It is, thus, evident that claims were not verified within the timelines prescribed under regulation 13(1) of CIRP Regulations and also CoC was constituted without verifying the claims of creditors. At least two meetings of CoC were held without verification of claims. Further, the casual approach of verifying claims has also been noted by AA in its order 15.02.2021.
- 4.1.5 Thus, in view of the above, the Board is of the *prima facie* view that Mr. Varun has *inter alia* violated section 18(b) of the Code, regulation 13 (1) of CIRP Regulations and clause 1, 2, 13 and 14 of the Code of Conduct.

4.2 Findings

- 4.2.1 The section 18(b) of the Code regarding duties of the IRP/RP to receive and collate claim is provided as follows:
*“18. Duties of interim resolution professional. –
The interim resolution professional shall perform the following duties, namely: -
...(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15; ...”*
- 4.2.2 In this regard the regulation 13 (1) of CIRP Regulations also provides the duty of IRP to verify claims within seven days of its receipt as follows,
*“13. Verification of claims.
(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.”*
- 4.2.3 An IRP/ RP is appointed by the AA and is duty bound to conduct CIRP with fairness and diligence and must maintain absolute integrity and objectivity in discharge of his statutory duties while ensuring that the interest of all stakeholders is met. The entire resolution

process of a CD hinges on the competence of the IRP/ RP who is primarily responsible for efficiently and effectively steer it towards resolution. It is due to this reason that the role of the IRP/ RP becomes of paramount importance during CIRP.

- 4.2.4 The DC observes that in the present case, Mr. Varun had issued the public announcement on 7.06.2020 wherein the last date of submission of claim form by various creditors was mentioned as 18.06.2020. Thereafter, the 1st CoC Meeting was held on 06.07.2020 which noted as follows:

“4. CLAIMS RECEIVED SO FAR

Chairman stated that claims have been received from two financial Creditors as detailed:

a) Financial Creditors:

<i>SL. No.</i>	<i>Name of the Creditor</i>	<i>Amount claimed (As per Form C), Rs</i>
<i>1</i>	<i>IIFL Finance Limited</i>	<i>18,90,09,629</i>
<i>2</i>	<i>Nippon Life India AIF Management Limited</i>	<i>433,00,88,111</i>
	<i>TOTAL</i>	<i>451,90,97,740</i>

He stated that the claims are yet to verified since the company has not updated accounts for quite some time. Efforts are on to verify the details at the earliest.”

- 4.2.5 The IRP’s report Certifying the Constitution of the CoC filed on 09.07.2020 also states that the IRP is yet to verify the claims of the creditors. On perusal of the minutes of the 2nd CoC dated 22.07.2020 it is noted that the records reflect that the claims have again yet to be verified,

“IRP added that he has got claim forms from 2 creditors and the figures have to be verified and confirmed with reference to the details as available in the accounts. He stated that based on primary verifications both the creditors are FCs and what needs to be verified is the quantum. He stated that Nippon is figuring as a charge holder in the RoC website; however the figure appearing therein is different from what is appearing in the claim form.”

- 4.2.6 The AA in its order dated 15.02.2021 also takes note of this conduct of the IRP that claims were not verified while constituting the CoC and replaced him with Mr. Balady Shekar Shetty, RP and made the following observation,

“7. The facts as narrated above show that IRP is stated to have constituted COC based on available material in order to avoid further delay in CIRP. Since there are only two COC Members and claim of IIFL Finance Limited, was fully accepted by the IRP, it cannot have much grievance. However, if the claim of Nippon is reduced, after final verification, it may get some advantage in the process. Though, we are not satisfied with casual approach of the Applicant/ IRP in verifying the claims in question, we are approving the new RP, who will examine afresh basing on evidence and law. Moreover, IIFL Finance Limited cannot become major COC Member, even if the claim of Nippon is reduced to some extent, after verification. Therefore, in order to avoid further delay in CIRP, it would be just and proper to approve the proposal to Mr. Balady Shekar Shetty as the Resolution

Professional, who is qualified Resolution Professional having requisite experience. Also, the new Resolution Professional can be directed to verify the claim of Nippon afresh by taking into consideration the record available and all also allegations made by IIFL Finance Limited in the instant Application.”

- 4.2.7 Taking into account the aforesaid facts, the DC observes that Mr. Varun had received the claims of the two FCs (Nippon Life India and IIFL) prior to the last date of the claim submission as per the public announcement on 18.06.2020. However, Mr. Varun had made a preliminary verification of the claim based on the claim forms and documents submitted therewith along with the CD’s master data to avoid delays in the CIRP. Based on this he had assigned provisional voting share of 95.82% to Nippon Life India and 4.18% to IIFL and conducted CoC meetings. The AA notes that no final verification of claim with the records of the CD have been made by IRP, and the DC finds that despite 242 days having elapsed no final verification of the claims were undertaken by the IRP. Hence, contravention of section 18(b) of the Code, regulation 13 (1) of CIRP Regulations and clause 1, 2, 13 and 14 of the Code of Conduct have been made out.

5. Order

- 5.1 The DC notes that inspection notice was served on him on the 09.08.2021. However, Mr. Varun preferred not to respond to it despite more than one year has elapsed in-between. Furthermore, Mr. Varun has neither responded nor he preferred to be avail personal hearing to put his submissions in response to the SCN issued dated 07.09.2022 leading to this *ex-parte* order. Given the nature of the charges and seriousness of issues involved, to meet the ends of natural justice, reply to the SCN was required to be furnished. Due to non-receipt of reply from Mr. Varun, DC is constrained to dispose of SCN on the basis of the available material on record.
- 5.2 The DC notes that Mr. Varun is 71 years old, and in terms of the clause 12A(2)(e) of the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 he is not entitled to get Authorisation for Assignment and currently he has no IBC cases which he needs to pursue anyway.
- 5.3 Not constituting CoC as per the provisions of the Code and Regulations made thereunder is serious contravention and not submitting reply to Board shows utter disregard and casual approach on the part of Mr. Varun. Though this is a fit case for cancellation of registration of Mr. Varun but considering the fact that Mr. Varun has crossed the age of 70 years, cancelling registration of Mr. Varun will not have any effect as after crossing the age of 70 years, Mr. Varun, anyway, is not entitled to get AFA renewed, DC is inclined to dispose of the SCN without any direction.
- 5.4 In view of the above, the Disciplinary Committee, 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 IBBI (Inspection and Investigation) Regulations, 2017, disposes the SCN without any direction.

- 5.5 The Order shall come into force immediately in view of directions in paragraph 5.4.
- 5.6 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Vijaykumar Subramaniam Varun is enrolled as a member.
- 5.7 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.
- 5.8 Accordingly, the show cause notice is disposed of.

Dated: 13th October, 2022
Place: New Delhi

-Sd-
(Sudhaker Shukla)
Whole Time Member, IBBI