

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/154/2023

7th March 2023

ORDER

In the matter of Mr. K. Vatsa Kumar, 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/C/2022/00683/22/681 dated 4th January, 2023, issued to Mr. K. Vatsa Kumar, Flat No. 101, First Floor, A S Rao Enclave, Road No. 2, Snehapuri Colony, Nacharam, Hyderabad, 500076 (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-N00922/2019-2020/12980.

1. Background

- 1.1 The National Company Law Tribunal, Hyderabad Bench (AA) had admitted the application under Section 9 of the Code for corporate insolvency resolution process (CIRP) of C L Engineering Equipment (India) Private Limited (CD) vide Order dated 3.11.2021, and appointed Mr. K. Vatsa Kumar as Interim Resolution Professional. Further, Mr. K. Vatsa Kumar was appointed as Resolution Professional on 10.02.2022 . The AA passed the order for liquidation of CD on 10.02.2023 and Mr. CA Kamal Prakash Singh, was appointed as Liquidator.
- 1.2 In exercise of its powers under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, the IBBI appointed an Investigating Authority (IA) to conduct an investigation of Mr. K. Vatsa Kumar in the matter of his appointment as IRP in the CIRP of the CD. The IA shared the Notice of Investigation with Mr. K. Vatsa Kumar on 22.06.2022 and the IP submitted his reply on 29.06.2022. Thereafter, the IA submitted the Investigation Report to IBBI on 13.07.2022.
- 1.3 The IBBI on 04.01.2023 had issued the SCN to Mr. K. Vatsa Kumar, based on findings in the Investigation Report in respect of his role as IRP/RP in the CIRP of CD. The SCN alleged contraventions of provisions of the Insolvency and Bankruptcy Code, 2016 (Code), IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (CIRP Regulations), the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and the Code of Conduct under regulation 7(2) thereof. Mr. K. Vatsa Kumar replied to the SCN on 14.01.2023.
- 1.4 The SCN, response of Mr. K. Vatsa Kumar to the SCN and other material available on record were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. K.

Vatsa Kumar availed an opportunity of personal hearing before the DC on 2.03.2023, wherein he reiterated the submissions made in his written reply.

2. Alleged Contraventions, Submissions of IP and Findings

The contraventions alleged in the SCN and submissions by Mr. K. Vatsa Kumar are summarized as follows:

2.1 Non-Filing for liquidation despite direction from CoC:

- 2.1.1 Explanation to Section 33(2) clearly states that committee of creditor may take the decision to liquidate the CD at any time after the constitution of CoC and before confirmation of the resolution plan. It was alleged in the SCN that on the perusal of minutes of 1st CoC and 2nd CoC meeting, that, SREI Equipment Finance Limited (SREI), was the sole financial creditor having 100% voting share in the CIRP of the CD, and that in the first CoC meeting held on 10.02.2022, it was advised by SREI that if no clarity emerged on the business operations and assets of the CD, a meeting of the CoC may be convened in the next week and application for liquidation of the CD was to be filed.
- 2.1.2 It was alleged in the SCN that *vide* e-mail dated 15.03.2022, SREI had inquired about additional claims, if any received by the IP, details of assets and accounts from the promoters, and that Mr, K. Vatsa Kumar, had been further requested to file for liquidatiin immediately in case no details were forthcoming. He had replied to the said e-mail of SREI *vide* e-mail dated 15.03.2022, stating *inter alia* that the CIRP process cannot be short circuited for proceeding with liquidation and also to support suggestion of liquidation with relevant provisions under the Code. Thus, as per the SCN, it was noted that the reply of Mr. K. Vatsa Kumar to SREI, with respect to its request for liquidation was against section 33(2) of the Code read with Explanation to section 33(2) of the Code.
- 2.1.3 It was further alleged that SREI, the sole FC, in the first CoC meeting had itself categorically told the IP to convene the meeting of CoC in the next week for filing application for liquidation if no clarity was to emerge. Thus, Mr. K. Vatsa Kumar was duty bound to convene CoC meeting after a week of 1st CoC meeting with a resolution for initiating liquidation of the CD, if he was not able to ascertain clarity on business operations and assets of the CD, however, he failed to do so. It was the commercial wisdom of the CoC to decide for liquidation, however, the Mr. K. Vatsa Kumar had contested the commercial wisdom of CoC which was against the intent of Section 33(2) and regulation 18(3) of the CIRP Regulations.
- 2.1.4 Accordingly, the Board was of the *prima facie* opinion that IP, *inter alia*, is in contravention of Section 33(2), 208(a), and (e) of the Code read with Regulation 18(3) of the CIRP Regulation, 7(2)(a) and 7(2)(h) of the IP Regulation and Clause 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Submission by IP

- 2.1.5 Mr. K. Vatsa Kumar submitted that SREI Equipment Finance Ltd (SREI) had submitted claim for Rs. 17.85 crore for loans under 2 contracts viz. 19640 (Rs.2.45 crore) & 187746 (Rs.15.40cr), and that in respect of Contract No 187746, SREI showed a sanction of Rs. 12.05 crore in June 2020 to the CD. He submitted that as per the loan cum Hypothecation Schedule (LcH), dated, 30.06.2020, the purpose for which the loan was sanctioned by the company relates to Asset Financing. The Asset details were given of Loan cum Hypothecation Schedule as crushes- 4 No. with Asset cost of Rs. 12.05 crore. He further submitted that the factory and Registered office of the CD was found non-existent during his visit, and subsequently, it was learnt that the CD had shut its operations in FY 2014 itself. The balance sheet filed, as per records was FY 2013, and it was in this background that the sanction of Rs. 12.05 crore in June, 2020 by SREI was shrouded with doubts.
- 2.1.6 Mr. K. Vatsa Kumar submitted that SREI was reluctant to submit information and documents sought by RP. To a query by RP with regard to disbursement particulars of the loan, they had replied *vide* mail dated. 09.03.2022 that, “*the loan of Rs. 12.05 crore has been adjusted towards closure of pre-existing loan contracts executed between SREI and CD.*” He submitted that neither were the particulars of the said pre-existing loan contracts provided, nor was the information sought by the RP viz. Tax invoices of assets financed etc. was made available.
- 2.1.7 He has further submitted that the CD had fixed assets alone of Rs. 10.46 crore in its last balance sheet of FY 2013 and that SREI had created hypothecation charge on assets of Rs. 12.05 crore in FY 2021. The total assets were of approximately Rs. 22.51 crore as against total claims of Rs. 25 crores, received by the IRP. Mr. K. Vatsa Kumar strongly felt that it was necessary to take control of the assets in the interest of all stakeholders and followed up with CD and SREI for the details of the assets. Thus, he submitted that Section 19(2) application was file on 18.03.2022, orders were received on 21.04.2022 and the orders were served on both suspended directors of the CD and SREI *vide* letter dated 22.04.2022 and thereafter were regularly followed up.
- 2.1.8 Furthermore, it is submitted that after considerable follow-up (reminders dated 28.04.2022, 03.05.2022, 13.05.2022), the final letter received from CD and SREI were of 26.05.2022 and 13.05.2022 respectively. He submitted that in spite of NCLT orders under Section 19(2), SREI did not submit critical documents such as Copy of appraisal note for loan of Rs. 12.05 crore, tax invoice of assets financed viz. 4 Nos., crushers, model description, Registration No. etc.
- 2.1.9 Mr. K. Vatsa Kumar submitted that in his banking experience of 26 years, as per Standard Operating Practice applicable to all lenders- the original tax invoice of any asset financed is to be necessarily retained by the Financial Institution/ Bank/ NBFC. Apart from the same, for vehicles, the Registration certificate (RC Book) also has to record that the assets

are hypothecated to the lender. He submitted that SREI has not adhered to this standard operating practise and has evasively stated in his reply dated May 13, 2022 to the RP that, “*The CD was to share the original documents for the creation of charge but eventually was not shared.*”

- 2.1.10 He submitted that he had written to the CD *vide* mail dated 31.05.2022, regarding the position of assets indicated by SREI, the suspended director if CD replied *vide* mail dated 07.06.2022, *inter alia* stating that the dealership had closed in 2014, all operations subsequently had stopped, premises were vacated, and the last balance sheet pertained to 2014. It further stated that no crushers were owned by the company at any point of time and claim of SREI was fictitious, charge was created by SREI to cover up various loans.
- 2.1.11 He submitted that no money was credited to the account and no machinery was purchased except Rs. 3 crores, which was returned the same day, and that there had been no payment to the CD or any supplier by SREI in June, 2020. Thus, that there had not been any outflow of funds from the SREI. He submitted that the loan by SREI under contract no. 187746 for 4 Crushers of asset cost Rs. 12.05 crores, was fictitious and the related claim by SREI was false, for which liability was also provided for Creditors under section 235A of IBC for filing false claims.
- 2.1.12 He submitted that SREI, as part of its reply to the pre-existing loan contracts sought by the RP, had forwarded certain attachments of documents to its mail dated 13.05.2022. It was noted from the attachments that SREI had *inter alia*, given individual loans to I Siva- of the amount of Rs. 3.18 crore on 30.09.2018, Peneti Vikram- of the amount of Rs. 2.50 crore on 28.09.2019, Aliveni- of the amount of Rs. 2.20 crore. He submitted that Aliveni is a director of C L Engineering and Spouse of Anam Venkatramana Reddy, erstwhile MD of CD. He further submitted that I Siva and Peneti Vikram were reported to be driver and cook of the erstwhile CD.
- 2.1.13 He further submitted that SREI in its mail dated 13.05.2022, had stated that “*the loan of Rs. 12.05 crore has been adjusted towards closure of pre-existing loan contracts executed between SREI, the CD and CD’s related parties*”. Thus, he submitted that as part of its pre-existing loan contracts, SREI had clubbed these and other individual loans together and got documents executed by CD for a total liability of Rs. 12.05 crore. To make it secured, it created a Deed of Hypothecation with the mention “4 crushers of value Rs. 12.05 crore’ and created charge with ROC on 02.09.2020, when actually no disbursement had taken place, and no assets had been created, only such record had been created. Thus, he submitted that the FC and CD had acted, hand in glove.

Findings of DC

2.1.14 Section 33(2) of the Code provides that:

“33. Initiation of liquidation. -

... (2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors 1 [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]”

2.1.15 Regulation 18(3) of CIRP Regulations provides as below:

“18. Meetings of the committee.

... (3) A resolution professional may place a proposal received from members of the committee in a meeting, if he considers it necessary and shall place the proposal if the same is made by members of the committee representing at least thirty-three per cent of the voting rights.]”

2.1.16 Section 208 (a) and (e) of the Code provides that:

“208. Functions and obligations of insolvency professionals. –

(1) Where any insolvency resolution, fresh start, liquidation or bankruptcy process has been initiated, it shall be the function of an insolvency professional to take such actions as may be necessary, in the following matters, namely: –

(a) a fresh start order process under Chapter II of Part III;

... (e) liquidation of a corporate debtor firm under Chapter III of Part II...”

2.1.17 The DC notes that Preamble of the Code makes it clear that all out efforts are to be made for resolution of the Corporate Debtor. CoC having sole FC has shown undue haste in reaching the conclusion, that CD has to be pushed towards direct liquidation. In the process, it discouraged the RP from even identifying/verifying the assets.

2.1.18 The Insolvency and Bankruptcy Code 2016 envisages market led solutions in the insolvency space driven by professionals and committee of creditors. For realization of

optimum results, it is imperative that all the stakeholders driving the process shall function in tandem.

- 2.1.19 As per prevailing framework, the CoC is the custodian of public trust during resolution process. The CoC has a statutory role and it discharges a sort of public function. The pain and gain emanating from resolution of the CD are to be shared by all stakeholders with fairness and equity. It must, therefore, apply the highest standard, duty of care, follow due process, be fair to all stakeholders and also act in a transparent manner in discharge of its responsibilities. The IP who conducts the process also performs his duties under the guidance and supervision of the CoC. The role of CoC is vital for timely completion of activities and successful resolution.
- 2.1.20 Sequence of event also points towards the fact that there was no deliberate attempt on part of Mr Vatsa. SREI has vide email dated 15.03.2022 submitted clarification on points raised by Mr. Vatsa with regards to non-furnishing of assets financed by SREI. On 16.03.2022, Mr. Vatsa replied the points raised by SREI with regards to the lenders not having particulars of assets financed by it. Vide email dated 17.03.2022, SREI formally requested Mr. Vatsa to convey next CoC meeting to discuss and vote on replacement of RP and any other matters. Mr. Vatsa sent notice for next CoC meeting on 18.03.2022 for holding meeting in 21.03.2022. No laxity on part of Mr Vatsya has been observed. Initially while passing the order, AA made certain observations, however in its order dated 02.09.2022 those observations were expunged. The relevant para of the order reads as under:

"We have perused the records and found that the above observation of the COC on the conduct of the erstwhile RP in the resolution dated 22.03.2022 RP are neither warranted nor even necessary besides not supported by any acceptable basis. It is settled proposition that that a part it may be stated that in the event for the replacement of RP, COC need not come out with any reason much less the so called reasons found in the resolution dated 22.03.2022 suffice if the resolution to replace RP/IRP is passed with requisite voting share, and the Adjudicating Authority will normally accept the CoC decision on replacement. Needless to say, that in this settled legal frame Members of COC while passing resolutions for the replacement of IRP/RP should avoid casting aspersions against IRP/RP's conduct.

In view of our discussion above, while conforming the replacement of the then RP Mr. Vatsa Kumar, we hereby order that the observations made in our order dated 06.06.2022 in IA No. 467/2022 to the effect the "the IRP Shri K. Vatsa Kumar, was initially appointed and has not been acted in the best interest of the Corporate Debtor. The RP has not been acting under the instructions and guidance of the COC. Therefore, lost confidence in the RP. Accordingly, we replace the RP" be eschewed from the order."

3. ORDER

- 3.1 In view of the forgoing, the DC is of the view that conduct of Mr. K. Vatsa Kumar was not *mala fide* by any count. In contrary, in pursuit of setting high standard, he took every step for running the process in desired manner. Hence alleged contraventions do not stand. Accordingly, the SCN is disposed of without any direction.

- 3.2 This Order shall come into effect immediately in view of Para 3.1 of the order.
- 3.3 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. K. Vatsa Kumar 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. K. Vatsa Kumar 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.

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Sudhaker Shukla
Whole Time Member, IBBI

Dated: 7th March 2023
Place: New Delhi