

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)**

No. IBBI/DC/267/2025

19th February 2025

ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI/C/2023/00858/869/269 dated 21.05.2024, issued to Mr. S. Muthuraju (herein referred as Mr. Muthuraju/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- N00009/2016-17/10013.

1. Background

- 1.1 The National Company Law Tribunal, Chennai Bench, (AA) *vide* order dated 04.10.2018 had admitted the application under Section 9 of the Insolvency and Bankruptcy Code (IBC/Code) for Corporate Insolvency Resolution Process (CIRP) of M/s Sri Textiles Erode Private Limited (CD) and Mr. N. Sivakumar was appointed as the IRP. Later on, the AA appointed Mr. S. Muthuraju as Resolution Professional (RP) on 11.01.2019. Thereafter, Mr. S. Muthuraju was appointed as the Liquidator by the AA *vide* its order dated 29.04.2019.
- 1.2 On 12.10.2023, the AA took note of the suspension of Mr. Muthuraju's registration, effective from 11.05.2023, as per DC Order No. IBBI/DC/157/2023 dated 12.04.2023, due to his conduct in the CIRP of M/s Thirupur Suriya Textiles Private Limited. Consequently, Mrs. Bhagyalakshmi Ramesh Boosam was appointed as the Liquidator of the M/s Sri Textiles Erode Private Limited (CD).
- 1.3 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. S. Muthuraju in the CIRP of the CD. Thereafter, the IA served the notice of investigation to Mr. S. Muthuraju as per Regulation 8(1) of the Inspection and Investigation Regulations and in response thereof, he submitted his reply on 13.03.2023 and 25.09.2023. After considering his reply, the IA submitted the Investigation Report (IR) to the Board.
- 1.4 Thereafter, based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the Board formed a *prima facie* view that Mr. S. Muthuraju had contravened the provisions of the Code and Regulations made thereunder and issued the SCN to Mr. S. Muthuraju on 21.05.2024. The reply of Mr. S. Muthuraju to the SCN was received on 27.05.2024.
- 1.5 The Board referred the SCN and the response of Mr. Muthuraju to the SCN to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. S. Muthuraju availed an opportunity of personal hearing before the DC on 12.02.2025 through virtual mode.

2. Alleged Contraventions, Submissions of Mr. S. Muthuraju, and Findings of the DC

The contraventions alleged in the SCN and submissions by Mr. S. Muthuraju and findings

of the DC are summarized as under:

Contravention

2.1 Irregular treatment of claim of EPFO Erode

- 2.1.1** Section 25(2)(b) of the Code provides that the resolution professional shall represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings as part of duty of resolution professional to preserve and protect assets of the corporate debtor. Section 36(4) of the Code provides that all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund shall not be included in the liquidation estate assets and shall not be used for recovery in liquidation.
- 2.1.2** It is noted that during the liquidation process of the CD, Employees Provident Fund Organisation (EPFO) Erode requested Mr. S. Muthuraju for payment of outstanding PF dues to which Mr. Muthuraju responded by asking EPFO to submit its claim. EPFO Erode issued summons to Mr. Muthuraju for appearance and submission of records, to which Mr. Muthuraju responded by submitting that no coercive action be taken against him. It is noted that there was constant communication between EPFO Erode and Mr. Muthuraju starting from 11.06.2019 to 04.03.2020. The AA stayed the issue of warrant of arrest against Mr. Muthuraju by EPFO Erode.
- 2.1.3** The final report in the liquidation process was submitted by Mr. Muthuraju on 05.01.2021. Even thereafter, there was ongoing communication with EPFO Erode and eventually, it passed an order for dues of Rs. 6.09 Crore for the period 03/2016 to 06/2018 and thereafter on 28.02.2022, EPFO filed its claim for the aforesaid amount. Mr. Muthuraju rejected the claim by stating that the same has not been filed within the timeline mentioned in the public announcement. Thereafter, on 14.12.2022 EPFO Erode revised its claim to Rs.17.85 Crore.
- 2.1.4** It was observed that Mr. Muthuraju had knowledge of the claim of EPFO Erode throughout the liquidation process as early as from 11.06.2019 which was approximately 45 days from liquidation commencement date. Despite the same, Mr. Muthuraju failed to make a provision for such a claim during the process as required under Section 36(4) of the Code. It was also noted that Mr. Muthuraju failed to comply with the summons of EPFO thereby failing to represent the CD before statutory authority as was required under Section 25(2)(b) of the Code.
- 2.1.5** By not properly representing the interest of CD and distributing proceeds from liquidation estate without provisioning for the EPFO dues, the Board held the *prima facie* view that Mr. Muthuraju had contravened Sections 25(2)(b) and 36(4) of the Code read with Regulations 7(2)(a), (h) of IBBI (Insolvency Professionals) Regulation, 2016 (IP Regulations) read with clause 14 of the Code of Conduct for Insolvency Professionals contained in schedule I of IP Regulations (Code of Conduct).

Submissions by Mr. S. Muthuraju

- 2.1.6** Mr. Muthuraju submitted that “*since the subject matter is pending before the Adjudicating Authority, (NCLT, Chennai-I) in IA/377/2023 and IA 378/2023, I am refrained to offer*

further comments and to submit further reply in this regard". In his reply to the IA, Mr. Muthuraju had submitted that the claim submitted by the EPF authorities in Form G amounting Rs 6,09,80,164/- was received by him on 01.03.2022 at the first instance. He was not aware of the dues to EPFO till that time. He further submitted that he had completed the distribution of the assets prior to 01.03.2022 i.e. on 05.01.2021. That is why he could not consider the same at the time of distribution of assets, in accordance with the Code.

2.1.7 Mr. Muthuraju further submitted that at the time of distribution of assets, there were various legal issues lingering at various legal forums regarding the PF dues as to whether PF dues will be considered to be excluded from liquidation estate. He submitted that the submissions of claims was not within the prescribed period, thereby he rejected the same. Thereafter, on his rejection, EPFO submitted an application before the AA on 14.01.2023 for condonation of delay of 1,301 days and to accept the claim. Mr. Muthuraju further submitted that since the matter is *sub judice* and he refrained to offer further comments on this matter.

Analysis and Finding

2.1.8 IBBI is a statutory authority established under the Insolvency and Bankruptcy Code, 2016 and vested with powers to regulate the profession of Insolvency professionals. The proceedings before the NCLT and IBBI are independent from each other and can go alongside each other. In this regard, relevant extract of judgement of Hon'ble High Court in the matter of Sandeep Kumar Bhatt vs IBBI & Ors. (para 10) is reproduced as under:

"10. The contention of the learned Counsel for the Petitioner that the IBBI ought to have awaited the proceedings before the Adjudicating Authority instead of rushing with enquiry awarding punishment, cannot be accepted. Both the proceedings are entirely distinct from each other. IBBI has been constituted to oversee the conduct of the IRPs and the Liquidators and to see as to whether the IRPs and Liquidators are acting in compliance with the mandate of the IBC. The IBBI can proceed ahead to investigate into the conduct of the IRPs and the Liquidators even if on getting information that the IRP has committed a misconduct."

2.1.9 The DC notes that the liquidation order was passed on 29.04.2019, and EPFO wrote a letter at the first instance on 11.06.2019, which inter-alia stated as under:

"Whereas Sri Textiles Erode Pvt Ltd 7, KNK Road, Karungalpalayam, Erode-638003. (defaulter) has not paid the PF Dues arrears amounting to Rs.40909/- plus costs of Rs 550/- Recovery charges in respect of certificate No.....

Therefore, under the powers conferred on me under section 8F of the Employees Provident Fund and miscellaneous provision Act, 1952, I require you to pay an amount of Rs 40909/- plus Rs.550 Recovery Charges from out of the money being held by you on account of and on behalf of the defaulter, by demand draft to the credit of the REGIONAL PROVIDENT FUND..."

2.1.10 The DC further notes that Mr. Muthuraju replied to EPFO on 14.06.2019 and asked to submit its claims stating that

"M/s Sri Textile Erode Private Limited is under liquidation, a Copy of the order issued by NCLT Chennai, Bench is enclosed. The Company is not functioning for the past several months. You are kindly requested to submit your claim as per the provisions of IBC 2016."

2.1.11 The DC notes that from 11.06.2019 to 04.03.2020, there has been many correspondences

between EPFO and Mr. Muthuraju regarding summons issued by EPFO for submissions of records and personal appearance etc. The AA stayed the issue of warrant of arrest against Mr. Muthuraju by EPFO Erode.

2.1.12 The DC further notes the submission of Mr. Muthuraju to the IA that the claim submitted by the EPF authorities in Form G amounting Rs 6,09,80,164/- was received by him on 01.03.2022. Mr. Muthuraju was not aware of the dues to EPFO till that time. He further submitted that he had completed the distribution of the assets prior to 01.03.2022 i.e. on 05.01.2021. Mr. Muthuraju also submitted that the submission of claims was not within the prescribed period, thereby he rejected the same. Thereafter, on his rejection, EPFO submitted an application before the AA on 14.01.2023 for condonation of delay of 1,301 days and to accept the claim. Mr. Muthuraju also submitted that the matter is *sub judice* and he refrained to offer further comments on the matter.

2.1.13 In the present case, the liquidation process for the Corporate Debtor (CD) commenced on 29.04.2019, and the EPFO issued a letter on 11.06.2019 requesting payment of Rs. 41,459/. Mr. Muthuraju as a liquidator replied to EPFO to file a claim as per the provisions of the Code. Thereafter, the EPFO submitted its first claim of Rs. 6.09 crore on 28.02.2022 -nearly three years after the commencement of process and over a year after the submission of the final report of the liquidation process on 05.01.2021. Mr. Muthuraju rejected the claim stating that the same has not been filed within the timeline mentioned in the public announcement. Thereafter, on 14.12.2022, EPFO revised its claim to Rs. 17.85 crore.

2.1.14 It is also to be noted that it is the primary duty of the Liquidator to meticulously and prudently prepare the list of claimants. Section 36 of the Code provides that the liquidator shall hold the liquidation estate in the fiduciary capacity for the benefit of all the creditors. Further, the IP/Liquidator is bound to abide by the Code of Conduct and to take reasonable care and diligence while performing its duties. It is the duty of the liquidator to verify the claim submitted by the creditor and take the decision on the claim based on documents made available. In case, the claim submitted by the creditor is not in the prescribed manner, the liquidator must assist the creditor to submit the claim. Subsequently, the Liquidator must verify the claim in accordance with the provisions of the Code and applicable Regulations. Most importantly, the Liquidator is obligated to communicate the decision on the claim, whether admitted or rejected, to the claimant. In case of rejection, the Liquidator must provide a written explanation detailing the reasons. It is crucial to emphasize that it was the responsibility of the EPFO to submit its claim in the prescribed form accompanied by all the necessary supporting documents. This is essential to enable the liquidator to verify and assess the claim.

2.1.15 In view of the above, the DC finds that Mr. S Muthuraju exhibited negligence in his conduct by failing to consider the letter of EPFO in the first instance as the claim of the EPFO. This reflects a clear lack of diligence and care in the performance of his duties.

3 ORDER

3.1 In view of the above, the DC, in exercise of 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, hereby, imposes a penalty on Mr. S. Muthuraju of Rs. 50,000/- (Rupees Fifty thousand only). This amount will be deposited in the liquidation estate of the CD.

- 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 ICSI Institute of Insolvency Professionals where Mr. S. Muthuraju 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: 19th February 2025
Place: New Delhi