

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/165/2023

12th May, 2023

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2021/104/93/689 dated 27.01.2023 issued to Mr. Srigopal Choudhary, 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). Mr. Srigopal Choudhary is a Professional Member of Insolvency Professional Agency (IPA) of the Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with registration No. IBBI/IPA-001/IP-P01238/2018-19/11893.

1. Developments in relation to resolution/liquidation of the CDs

1.1. The Hon'ble NCLT, Mumbai Bench (AA) *vide* order dated 06.11.2019 admitted the application under section 7 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of Shree Ram Urban Infrastructure Limited (CD) where Mr. Srigopal Choudhary was appointed as the Interim Resolution professional (IRP). Mr. Srigopal Choudhary was later confirmed as Resolution Professional by AA on 06.01.2022. Mr. Srigopal Choudhary was removed as RP by AA *vide* order dated 28.11.2022 and Mr. Sapan Mohan Garg was appointed as RP. The appointment of Mr. Sapan Mohan Garg as RP was challenged by some financial creditors (FCs) of the CD before Hon'ble National Company Appellate Law Tribunal (NCLAT) which set aside the appointment *vide* order dated 21.12.2022. Consequently, AA *vide* order dated 22.12.2022 appointed Mr. Pankaj Ramandas Majithia as RP.

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. Srigopal Choudhary *vide* order dated 22.11.2021. A draft inspection report (DIR), prepared by the IA, was shared with Mr. Srigopal Choudhary on 23.05.2022, to which Mr. Srigopal Choudhary submitted his comments on 08.06.2022. Subsequently, the IA submitted the Inspection Report to Board.

2.2. Based on the material available on record including the Inspection Report, the Board issued the SCN to Mr. Srigopal Choudhary on 27.01.2023. The SCN alleged contravention of section 208(2)(e), regulation 4(4) and 4(7) of Inspection Regulations, regulation 7(2)(h) of IBBI (Insolvency Professional) Regulations, 2017 (IP Regulations) read with clauses 1,

3, 18, 19 and 26 of the Code of Conduct as specified in the First Schedule of the IP Regulations. Mr. Srigopal Choudhary replied to the SCN on 10.02.2023 and 27.02.2023.

- 2.3. The Board referred the SCN, written and oral submissions of Mr. Srigopal Choudhary, 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.
- 2.4. Mr. Srigopal Choudhary availed an opportunity of personal hearing before DC on 04.05.2023 through virtual mode where he along with Mr. Kushal Bansal, Advocate were present. During the hearing, Mr. Srigopal Choudhary requested to submit additional written submissions; which were submitted on 10.05.2023.

3. Alleged contraventions and submissions of the IP

Contraventions alleged in the SCN and Mr. Srigopal Choudhary's submissions thereof are summarized below:

Contravention – I

3.1. Non-cooperation to the Inspecting Authority in conduct of inspection

- 3.1.1. Regulation 4(4) of the Inspection and Investigation Regulations provides that it shall be the duty of the service provider to produce records in his custody or control and furnish to the Inspecting Authority. Further, Regulation 4(7) of Inspection Regulations also requires IP to give to the IA all assistance which they may reasonably require. Clause 18 of Code of Conduct also requires that the IP must cooperate and be available for inspection carried out by the Board and clause 19 of the said Code of Conduct also directs the IP to provide all information and records as may be required by the Board or the insolvency professional agency with which he is enrolled.
- 3.1.2. The Inspection Authority (IA) served notice of inspection on 23.11.2021 upon Mr. Srigopal Choudhary along with the list of required documents, checklist and pre-inspection questionnaire requiring him to submit the requisite documents and records pertaining to CIRP of the CD. The notice of inspection was followed by reminders *vide* email dated 07.12.2021, 20.12.2021 and 29.12.2021 requesting Mr. Srigopal Choudhary to provide copies of documents duly enlisted. However, he, on one or other pretext, did not provide the enlisted documents other than copies of minutes of 4 meetings of Committee of Creditors (CoC) and orders dated 28.11.2019 and 23.01.2020 of Hon'ble High Court of Bombay. Due to his non-cooperation, the IA finalised and submitted the DIR on 23.05.2022 based on the materials available on record.
- 3.1.3. It was also noted that in continuation with the said inspection, the IA had sought further clarification from Mr. Srigopal Choudhary regarding details of claims admitted by him. However, he failed to provide the requested documents and did not respond to emails from IA in this regard. It was, thus, evident that Mr. Srigopal Choudhary have not rendered

necessary cooperation to the IA in submission of relevant records for inspection. In view of the above, the Board held the *prima facie* view that Mr. Srigopal Choudhary has contravened section 208(2)(e) of the Code, regulation 4(4) and 4(7) of Inspection Regulations, regulation 7(2)(h) of the Insolvency Professionals Regulations read with and clauses 18 and 19 of the Code of Conduct.

3.2. Submissions made by the IP

- 3.2.1. Mr. Srigopal Choudhary submitted that CIRP of the CD was stalled several times due to several stay granted by the judicial forums.
- 3.2.2. Mr. Srigopal Choudhary submitted that M/s Action Barter Private Limited had filed a petition seeking the winding up of the CD before Hon'ble High Court of Judicature at Bombay. *Vide* a conditional order dated 05.10.2016, the petition was admitted by the Hon'ble High Court on the failure of the CD to deposit Rs. 5.90 crores. The appeal instituted by the CD against this order was dismissed by the Division Bench of the Hon'ble High Court on 17.01.2017, whereas the appeal instituted by M/s Action Barter Private Limited was allowed *vide* the same order and the amount to be deposited by the CD was enhanced from Rs. 5.90 crores to Rs. 18 crores. The same was challenged before the Hon'ble Supreme Court wherein on 27.02.2017, the CD agreed to deposit Rs. 3 crores on the same day and a balance of Rs. 15 crores within six months. However, the CD and M/s Action barter Private Limited, later on, settled for Rs. 15 Crores, payable in instalments. Apart from the payment of the first instalment of Rs. 25 lakhs, no further instalment was paid, as a result of which the winding up petition stood revived on 24.08.2017. Consequently, on 17.04.2018, the provisional liquidator took over the physical possession of the assets of the CD, which also included all the documents related to the company. The custody of assets and all the documents of the CD is still in possession of the Official Liquidator pursuant to order passed by the Hon'ble Bombay High Court and due to the pendency of reimbursement of expenses incurred by the Official Liquidator (approximately Rs. 88 lakhs) as per the High Court orders. He filed an application before the Hon'ble Bombay High Court informing about the CIRP and also seeking documents from the Official Liquidator. However, *vide* order dated 28.11.2019, the Hon'ble Bombay High Court directed Mr. Srigopal Choudhary to pay Rs. 21,25,510/- and Rs. 66,42,403/- to the Official Liquidator and only on payment, the documents/records of the CD will be handed over to him.
- 3.2.3. Mr. Srigopal Choudhary submitted that he was appointed as IRP and later confirmed as RP of the CD. However, he couldn't take any actions as M/s Action Barter Private Limited has challenged the admission order dated 06.11.2019 passed by AA before NCLAT *vide* Company Appeal (AT) (Ins) 1434/ND/2019 which was dismissed by the Hon'ble NCLAT *vide* order dated 07.02.2020 and further issued clarification order dated 21.09.2020. Against the said orders, M/s Action Barter Private Limited filed Civil Appeal Nos. 3422-3424/2020 wherein the Hon'ble Supreme Court stayed the proceedings *vide* order dated 27.10.2020.

- 3.2.4. Mr. Srigopal Choudhary submitted that due to the pendency of the appeal before the NCLAT and later on stay by the Hon'ble Supreme Court, he could not constitute the CoC, AA granted an exclusion of 493 days on account of the above stays which resulted in the delay of the CIRP. He submitted that despite a number of appeals made to the CoC members, no funds were contributed by the CoC members. The interim finance also could not be raised due to the existence of many litigations scaring away any potential interim finance provider. Consequently, the amounts as stipulated by High Court orders could not be paid to the Official Liquidator and consequently, the custody of assets and records or documents of the CD was not provided by the Official Liquidator to the IRP/RP till his demitting the office in December 2022.
- 3.2.5. Mr. Srigopal Choudhary submitted that he sent not one or two but eleven requests and reminders to the Official Liquidator seeking an inspection of the records and documents, but the Official Liquidator didn't pay any heed to it.
- 3.2.6. Mr. Srigopal Choudhary submitted that *vide* his reply dated 23.12.2021, he informed the IA regarding the situation at hand and also shared the minutes of the meetings conducted by CoC along with the order dated 28.11.2019, passed by the Hon'ble Bombay High Court. The promoters also never cooperated with him and participated in the CIRP and failed to provide any information. The application under section 19 (2) was filed against them.
- 3.2.7. Mr. Srigopal Choudhary submitted that due to plethora of litigation and injunction orders passed by various forums like NCLAT and Hon'ble Supreme Court led to no significant progress in the CIRP. The CIRP, therefore, could proceed only for 3 months from 01.03.2021 to 31.05.2021 and only the 4 CoC could be conducted in absence of custody of assets and documents of the CD.

3.3. Summary Findings

- 3.3.1. The DC notes that Mr. Srigopal Choudhary informed that IA that custody of assets and bank accounts remains with the Official Liquidator *vide* email dated 17.12.2021 and forwarded the orders of Bombay High Court dated 28.11.2019 and 23.01.2020 to the IA. The DC notes of the order of Bombay High Court dated 28.11.2019 where following direction had been issued in Company Petition No. 1066 of 2015:

The IRP is accordingly directed to pay a sum of Rs.21,25,510/- and Rs. 66,42,403/- as incurred by the Official Liquidator within two weeks from the date of communication of the details of the expenses incurred by the Official Liquidator. It is made clear that the Official Liquidator shall handover the records of the company in liquidation along with assets to the IRP within two weeks from the date of receipt of such payment.

Further in order dated 23.01.2020 by Bombay High Court in Interim Application no. 1 of 2020 Company Petition No. 1066 of 2015, it was stated as follows:

“Learned Company Prosecutor states that the Official Liquidator has already offered inspection of the records of the respondent company in liquidation to the I.R.P. Learned Counsel for the I.R.P. states that his client would take inspection of the records of the respondent in the office of the Official Liquidator within two weeks from today. The Official Liquidator is directed to provide such inspection as demanded. Parties to cooperate with each other.”

The above directions has been acknowledged by Supreme Court in its order dated 01.03.2021 in CA 4230-4234 of 2020.

“the Bombay High Court has itself, by the orders dated 28.11.2019 and 23.01.2020, directed the provisional liquidator to hand over the records and assets of SRUIL to the IRP in the Section 7 proceeding that is pending before the NCLT. No doubt, this has not yet been done as the IRP has not yet been able to pay the requisite amount to the provisional liquidator for his expenses”

3.3.2. The DC notes that in 3rd meeting of Committee of Creditors (CoC) of CD held on 24.07.2020 it was stated as follows:

“RP advised that, the Corporate Debtor records are still under Lock and key with the ‘Official Liquidator’ and the latest annual financial statements available to the RP team is the ‘Audited financial statements of the corporate debtor for the Financial year 2016-17. The Ex Director of the suspended Board of Directors has also repeatedly expressed their inability to provide any other information about the Financial position of the Corporate Debtor post the last date of ‘Latest Audited financial Statement for the Financial year 2016-17. They have also stated that no other transactions were undertaken after the said date of ‘Latest Audited financial Statement for the Financial year 2016-17’.

3.3.3. From the above, the DC observes that Mr. Srigopal Choudhary did not extend the comprehensive information as he didn't had the custody of assets and documents of the CD. However, the fact remains that documents required by IA pertained not only to documents of CD but with respect to CIRP of CD. To narrate a few, IA required issuance of public announcement, claim forms, documents pertaining to claim verification and collation, filing before AA regarding composition of CoC, application filed under section 19(2) of the Code, notice and agenda of CoC meetings, voting sheets on resolutions, appointment of registered valuers, valuation reports, information memorandum, disclosures to be filed before the Board and IPA, details regarding CIRP cost etc. Mr. Srigopal Choudhary simply pleaded non-receipt of documents from Official Liquidator and did not make effort to attend the checklist where documents were specifically asked along with applicable provisions of the Code and underlying

regulations. Mr. Srigopal Choudhary under the relevant regulations was duty bound for making available all the documents to the IA which were available with him. During CIRP, it is the utmost responsibility of an IP to conduct the entire CIRP in a transparent manner by duly submitting complete copies of records to the Board in a timely manner. The DC further observes that Civil Appeal nos. 3422-3424/2020 were dismissed as withdrawn by Supreme Court on 09.02.2021. Thereafter, Mr. Srigopal Choudhary conducted 1st CoC meeting on 19.04.2021 and 4th CoC meeting on 29.09.2021 while the inspection notice was sent by IA only on 23.11.2021 which shows that some activities were undertaken in the CIRP before initiation of inspection. Thus, the conduct of Mr. Srigopal Choudhary in not providing requisite information/document evidences deliberate and wilful non-cooperation with IA. Such information/documents were in possession of Mr. Choudhary and not in possession of the Official liquidator and there was no injunction order from any court/tribunal for not providing such information/document. Hence the DC finds him contravened section 208(2)(e) of the Code, regulation 4(4) and 4(7) of Inspection Regulations, regulation 7(2)(h) of the Insolvency Professionals Regulations read with and clauses 18 and 19 of the Code of Conduct.

Contravention-II

4. Demanding bribe for acceptance of claim of UPPL Projects Private Limited

- 4.1.1. Regulation 7(2)(h) of the IP Regulations provides that the IP shall abide by the Code of Conduct. Further, clause 1 of the Code of Conduct requires that an IP to maintain integrity by being honest, straightforward, and forthright in all professional relationships and clause 3 of the Code of Conduct mandates that an IP must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party. Clause 26 of the Code of Conduct also requires that an IP shall not accept any fees or charges other than those which are disclosed to and approved by the persons fixing his remuneration.
- 4.1.2. The Board observed that a complaint was received from Dr. Santosh Kumar Bagla, Director UPPL Projects Pvt. Ltd. alleging that Mr. Srigopal Choudhary had made a demand of bribe of 10% of claim amount which is calculated at around Rs. 90.00 Crores for extending help in admitting UPPL's claim. Mr. Bagla had also submitted an audio recording of his purported conversation with Mr. Srigopal Choudhary suggesting that he demanded bribe from him as quid pro quo for accepting UPPL's claim. This allegation had been included in DIR.
- 4.1.3. The Board, noted from his reply to DIR that although he has denied the allegation but he failed to provide necessary documents to enable the Board to examine the veracity of the allegation. Mr. Srigopal Choudhary's conduct of mere denial of allegation without substantiating his contention can not be said to be in confirmity with the requirement of being straightforward and forthright in professional relationship. In view of the above, the Board held the *prima facie* view that Mr. Srigopal Choudhary has contravened section

208(2)(e) of the Code, regulation 7(2)(h) of the IP Regulations read with clauses 1, 3 and 26 of the Code of Conduct.

4.2. Submissions made by the IP

- 4.2.1. Mr. Srigopal Choudhary submitted that said audio recording is ‘inadmissible in evidence’, since the same has not been proved in accordance with the law. He submitted that no electronic evidence can be relied upon unless and until the same has been proven in accordance with the law. In the instant case, UPPL Projects Pvt. Ltd., ie, the complainant has not even filed the mandatory certificate under section 65B of the Evidence Act to place on the record electronic record. Superior Courts of the country have time and again cautioned against relying upon electronic recordings unless and until the same pass the strict test of law as prescribed under extant laws. All electronic evidence has to be proven in accordance with provisions contained in Evidence Act and/or Information Technology Act and till they are proven, the same is not admissible in law. The alleged audio recording is illegal and is in-admissible in evidence. He submitted that the said transcript does not inspire any confidence, since there is no mention of any time and date. The audio recording seems to be a work of forgery, fabrication and/or concoction on the part of Mr. Bagla, who incidentally is known to have indulged in various frauds as is evident from a simple internet search. The Insolvency Professional vehemently denies the said audio recording as being fraudulent and being concocted.
- 4.2.2. Mr. Srigopal Choudhary submitted that the Board does not have the jurisdiction and/or the power to verify such an audio recording as such a power exists either only with civil courts or with the criminal courts of the country. He submitted that he never had any such talk with Mr. Bagla as alleged or at all. He submitted that the transcript provided by the complainant has no date, time or any context and shows that the same is nothing but a concocted document which needs to be disregarded based on obvious flaws and infirmities as required in law.
- 4.2.3. Mr. Srigopal Choudhary submitted that M/s UPPL has filed a series of complaints against him. In first complaint dated 25.08.2021, the complainant did not mention any audio conversation, or anything related to a bribe which shows that it is an afterthought. In second complaint dated 15.09.2021 also the complainant didn’t mention anything about the bribe.
- 4.2.4. Mr. Srigopal Choudhary submitted that an application bearing IA No. 2127/2021 has been filed on 11.08.2021 before AA against him seeking various reliefs stated in the application but not mentioning the purported ‘event of bribe- allegedly arisen in the year 2019’. In the said application, the Complainant herein had further filed a rejoinder on 13.06.2022 before AA wherein it had for the first time raised allegations of bribery against him. The said IA No. 2127/2021 is pending adjudication before AA.
- 4.2.5. Mr. Srigopal Choudhary submitted that the said communication had been alleged to be held ‘around end of 2019’. There are no specific date or time has been provided in the SCN

about when the said purported conversation may have happened. He further submitted that in terms of regulation 3(4) of Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017, a grievance or complaint has to be filed within 45 days of occurrence of cause of action for the grievance or complaint which can be further extended by 30 days with reasons justifying the delay. He submitted that the complainant has preferred to file a complaint regarding the said allegation of demanding bribery in May 2022 whereas it has been claimed that the purported conversation had happened 'somewhere' in end of 2019. He submitted that the complainant has approached the Board after a considerable delay post expiry of the timeline prescribed under Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017. In view of the same, the present allegation against him ought not to be considered and withdrawn as the same is not only barred by time but also has been made with mala fide intent.

4.3. Summary Findings

4.3.1. The DC takes note of regulation 3(4) of Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017, which provides that a grievance or complaint has to be filed within 45 days of occurrence of cause of action for the grievance or complaint which can be further extended by 30 days with reasons justifying the delay. Without going into the procedural technicalities, there is no bar to open up the investigation on the basis of serious charges of fraudulent activity whenever it is brought to the notice of the Board with conclusive proof. The recording of the alleged conversation and its transcript, point towards sharing of vital nature of information regarding claims; collation of which is the exclusive domain of an IP. However, there is no wherewithal available with the Board to establish the authenticity of the provided evidence and it cannot be said with certainty that the voices recorded in the conversation is that of Mr. Srigopal Choudhary and the complainant. Therefore, evidence regarding allegation that Mr. Srigopal Choudhary demanded the bribe is not conclusive. Mr. Srigopal Choudhary has denied the allegation of bribe during his submissions before the DC and before AA *vide* his affidavit dated 09.02.2023. However, the IA 2127/ 2021 filled with NCLT is still pending for final adjudication. The Board is directed to keep track of the outcome of said IA and investigate the matter in case of any adverse observations by AA.

Order

5.1. In view of the discussions above, contravention in relation to non-cooperation with IA is established beyond doubt. Despite repeated efforts, refraining from extending the cooperation and the relevant documents to the IA is clearly in violation to section 208(2)(e) of the Code, regulation 4(4) and 4(7) of Inspection Regulations, regulation 7(2)(h) of the Insolvency Professionals Regulations read with and clauses 18 and 19 of the Code of Conduct. The Board being regulator of professionals has been bestowed with powers to oversee the conduct of the IP on continuous basis. Inspection, investigation and scrutiny of forms submitted by the IP under relevant provisions of the Code and regulations made thereunder, constitutes an integral part of this continuous vigil. Until and unless information sought is of strictly confidential nature or its implicitly barred to be shared by

higher judicial authority, the IP is duty bound to respond to the queries to the Board in a time bound manner. Refraining from sharing the required information, creates doubt about the intention of the professional and even if one does not ascribe to any motive, wilful non-submission of information falls within the category of suspect action.

- 5.2. On the second contravention, the benefit of doubt rest with Mr. Srigopal Choudhary. While transcript of the recording indicate vital leak of information regarding claims, however corroborative evidence as available, in form of admitted claims, does not follow what has been transpired in the script. The admitted claims of the complainant are significantly different what have been mentioned in the alleged conversation. Furthermore, admitting voice recording as evidence is fraught with substantial issues around its veracity, as there is no means to ascertain whether or not it involves the intended persons or whether or not recording is edited or fabricated through any technical means. While levying the charge, the onus of producing the credible evidence rests with complainant. Furthermore, if such a credible evidence of legal consequence was available with the complainant, it is not clear why he has not filed an FIR for initiating suitable action in this case. It is given to understand that similar complaint is pending with AA as well, therefore it would be premature for the Board to come out with some concrete findings based on fragile evidence.
- 5.3. In view of contravention related to non-cooperation as detailed in para 5.1 above, the Disciplinary Committee, hereby warns Mr. Srigopal Choudhary to be extremely careful and ensure compliance with the provisions of Code and its underlying regulations in performing his duties as an IP in his assignments. The Adjudication Division of the Board is directed to keep this Order in active record as negative points against him warranting continuous vigil, and follow other cases being handled by him to deter him from making such mistakes repeatedly.
- 5.4. This Order shall come into force immediately.
- 5.5. A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Srigopal Choudhary is providing his services, if any.
- 5.6. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Srigopal Choudhary 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.

-sd/-

(Sudhaker Shukla)
Whole Time Member, IBBI

Date: 12th May 2022
Place: New Delhi