

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/294/2025

10 September 2025

ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11015/54/2025-IBBI/753/823 dated 28.05.2025 issued to Mr. Subburengan Hari Karthik, who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) having Registration No. IBBI/IPA-002/IP-N01201/2021-2022/14009 and a Professional Member of the ICSI Institute of Insolvency Professionals (ICSI).

1. Background

- 1.1 The Corporate Insolvency Resolution Process (CIRP) of Jeypore Sugar Company Limited (Corporate Debtor/CD) was initiated by an order dated 25.02.2019 by the NCLT, Chennai Bench (AA) under Section 7 of the Code filed by M/s IDBI Bank Limited. Subsequently, the AA ordered liquidation of the CD on 29.05.2020 and appointed Mr. V. Venkata Sivakumar as the Liquidator. Later, Mr. V. Venkata Sivakumar was replaced as the liquidator by the AA *vide* its order dated 01.07.2022 and Mr. Subburengan Hari Karthik was appointed as the Liquidator.
- 1.2 The Board received a grievance against Mr. Subburengan Hari Karthik on 31.08.2024 in the matter of the CD. Accordingly, the Board *vide* email dated 08.11.2024 sought clarification on the allegations levelled in the said grievance. Mr. Subburengan Hari Karthik provided his response *vide* email dated 14.11.2024. Subsequently, two other grievances were filed before the Board on 28.04.2025 and 13.05.2025 with similar issues as the earlier complaint dated 31.08.2024. The Board sent emails on 21.01.2025, 03.03.2025 and 14.05.2025 to Mr. Subburengan Hari Karthik seeking some additional documents from him and Mr. Subburengan Hari Karthik provided his response *vide* email dated 04.03.2025 and 16.05.2025.
- 1.3 The Board examined the allegations in the said grievances *vis-à-vis* reply of Mr. Subburengan Hari Karthik to the same and based on such examination, the Board formed a *prima facie* view that Mr. Subburengan Hari Karthik had contravened the provisions of the Code and the Regulations made thereunder and issued an SCN to Mr. Subburengan Hari Karthik on 28.03.2025. The SCN alleged contraventions of several provisions of the Code, IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) and IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations). The reply of Mr. Subburengan Hari Karthik to the SCN was received by the Board on 11.06.2025.
- 1.4 The SCN and the reply of Mr. Subburengan Hari Karthik to the SCN were referred to the Disciplinary Committee (DC) for disposal. Mr. Subburengan Hari Karthik availed an opportunity of personal hearing before the DC on 13.08.2025 through virtual mode wherein he appeared with his Advocate Mr. J. Manivannan. Mr. Subburengan Hari Karthik submitted

additional written submissions on 18.08.2025.

2. Alleged Contraventions, Submissions of Mr. Subburengan Hari Karthik, Analysis and Findings of the DC.

The contraventions alleged in the SCN, oral and written submissions by Mr. Subburengan Hari Karthik and analysis and findings of the DC are summarized in the following paragraphs:

2.1 Forfeiture of the Earnest Money Deposit (EMD) of a Scheme Proponent beyond the Stipulated Conditions in the Expression of Interest/Process Document.

- 2.1.1 Regulation 2B(3) of the Liquidation Regulations states that in case the proposed compromise or arrangement under Section 230 of the Companies Act, 2013 is not sanctioned by the Tribunal under S. 230(6) of the Companies Act, then the cost incurred by the Liquidator in relation to compromise or arrangement shall be borne by the parties who proposed such compromise or arrangement.
- 2.1.2 The liquidation of the CD was ordered on 29.05.2020 by the AA. The RP, Mr. V Venkata Sivakumar was appointed as the Liquidator to carry out the process. Mr. Venkata Sivakumar had made the Public Announcement for inviting Expression of Interest (EOI) for the purpose of proposing a Scheme of Compromise/Arrangement under Section 230 of the Companies Act, 2013 on 03.07.2020. On 31.07.2020, Mr. Venkata Sivakumar had requested Kineta Global Limited to submit a detailed plan under the scheme along with Deposit of Earnest Money Deposit (EMD) of Rs.2,00,00,000 (Rs. Two crore). Kineta Global Limited deposited the requested EMD and submitted its Scheme on 14.08.2020 and Mr. Venkata Sivakumar had given it status as H1 Bidder in letter dated 19.10.2020 addressed to the secured creditors of the CD.
- 2.1.3 The Secured Lenders of the CD i.e., IDBI Bank Limited, Bank of India, Prithvi Asset Reconstruction and Securitisation Company Ltd., Bank of Baroda, Indian Overseas Bank, The District Co-Operative Central Bank Limited (hereinafter referred to as “Secured Lenders”) challenged the process on account of exclusion of approximately 784 acres of Rayagada lands from the liquidation estate, flaws in the valuation conducted by the former Liquidator; and circulation of such valuation reports to Kineta Global Limited and other scheme proponents.
- 2.1.4 The AA *vide* its order dated 17.11.2021 annulled the scheme process and directed the initiation of a fresh scheme process with an updated asset memorandum and fresh valuation. Aggrieved by the order of the AA dated 17.11.2021, Kineta Global Limited secured an *ad-interim* stay *vide* order dated 03.12.2021 of the NCLAT against the fresh scheme process. Mr. Venkata Sivakumar also filed a Company Appeal (AT) (CH) (Ins) No.8/2022 before the NCLAT.
- 2.1.5 Subsequently, the Liquidator Mr. V. Venkata Sivakumar was replaced by Mr. Subburengan Hari Karthik *vide* order of the AA dated 01.07.2022.
- 2.1.6 Thereafter, Mr. Subburengan Hari Karthik had made a paper publication inviting the EOI on 29.01.2024 for a fresh scheme of Compromise or Arrangement under Section 230 of the Companies Act and fixed the EMD of Rs.50,00,000 (Rupees fifty lakh) along with submission

of EOI, and Rs.2,50,00,000 (Rupees two crore fifty lakh) along with submission of the scheme.

2.1.7 Kineta Global Limited *vide* its letter dated 16.02.2024 expressed their interest in the Fresh Scheme and requested Mr. Subburengan Hari Karthik to adjust the EMD requirement of Rs.50,00,000 (Rs. Fifty Lakh) against the EMD of Rs.2,00,00,000 (Rs. Two crore) made during the 1st Scheme process. However, Mr. Subburengan Hari Karthik refused to adjust the EMD amount previously submitted by Kineta Global Limited.

2.1.8 Mr. Subburengan Hari Karthik, in his reply to the Board, submitted that the previous EMD submitted by Kineta Global Limited was forfeited by him to cover the expenses incurred during the appeal filed by Kineta Global Limited as the said appeal was baseless and frivolous. Mr. Subburengan Hari Karthik further stated that the said appeal filed by Kineta Global Limited caused the entire liquidation process to stand still for over two years and forced the Liquidator to incur various costs.

2.1.9 The Board noted that the terms and conditions for forfeiture of the EMD as stipulated in the letter dated 31.07.2020 sent by Mr. V. Venkata Sivakumar to Kineta Global Limited mentioned that if the successful bidder failed to pay the upfront amount agreed upon, the EMD would be forfeited. The Board observed that no other condition was stipulated in the terms and conditions for forfeiture of the EMD as stipulated in the said letter. The relevant extract of the letter dated 31.07.2020 of Mr. V. Venkata Sivakumar is reproduced below:

“4. The proposal shall be accompanied by EMD of Rs. 2 crore (DD), the same will be returned without interest to the unsuccessful bidders within 90 days of short listing by the SCC/Liquidator, in case if the successful bidder fails to pay the upfront amount agreed upon, EMD will be forfeited.”

2.1.10 The Board further observed from the letter of Mr. V. Venkata Sivakumar dated 21.01.2021 addressed to the scheme proponents including Kineta Global Limited that the AA, on an application filed by one of the bidders had directed Mr. V. Venkata Sivakumar to re-negotiate with all the three scheme proponents and file revised proposal for the consideration of the AA. Taking into consideration the directions of the AA, Mr. V. Venkata Sivakumar requested all three bidders including Kineta Global Limited to submit revised proposals/scheme. In the said letter Mr. V. Venkata Sivakumar had laid out the conditions to be complied with, wherein it was stated that if there was any default/withdrawal/non-compliance of the terms, the amount of Rs two crore paid as EMD could be forfeited in favour of the CD in Liquidation. The relevant extract of the said letter is reproduced below:

“All the sponsors must give an undertaking that in the event of any default/withdrawal/non-compliance of the terms the amount of Rs. 2 crores paid as EMD can be forfeited in favor of the CD in liquidation”

2.1.11 Therefore, the Board observed that Mr. Subburengan Hari Karthik’s conduct in forfeiting the EMD of Rs.2,00,00,000 (Rupees two crore) was beyond the conditions of Expression of Interest/Process Document as stipulated in the said letters of Mr. V. Venkata Sivakumar dated 31.07.2020 and 21.01.2021 addressed to the prospective scheme proponents. The AA also *vide*

its order dated 02.05.2025 directed Mr. Subburengan Hari Karthik to refund the EMD and it was further observed by the AA as follows:

“53. The matter of refund of EMD has to be examined only with reference to terms and conditions of expression of interest.”

2.1.12 The AA further observed that the grounds provided by Mr. Subburengan Hari Karthik for forfeiture of EMD were unreasonable. The relevant extract of the observation of the AA is as follows:

“52. The 1st Scheme process was annulled on the ground of technicality and was directed to carry out again freshly after rectifying the irregularities. The applicant act of preferring an appeal is a statutory right which cannot be denied. Therefore, we are of the view that the liquidator’s reasoning on the above grounds and reliance on Regulation 2B (3) of Liquidation Process, for the purpose of forfeiture of EMD is unreasonable...”

Further *vide* the order dated 02.05.2025, the AA gave the following directions to Mr. Subburengan Hari Karthik:

*“57... i. Liquidator is directed to refund the EMD deposited by the applicant for the purpose of 1st Scheme Process, which is available with the CD within a period of 30 days; or
ii. Alternatively, Liquidator is directed to consider the possibilities of adjusting the available EMD deposited by the applicant towards the Fresh Scheme Process, only in case of applicant fulfilling the eligibility and other terms & conditions provided for the Fresh Scheme Process.”*

2.1.13 In view of the above, the Board held the *prima facie* view that Mr. Subburengan Hari Karthik had contravened Sections 208(2)(a) & (e) of the Code, Regulation 2B(3) of the Liquidation Regulations, Regulation 7(2) (a) and (h) of IP Regulations read with Clause 14 of the Code of Conduct for Insolvency Professionals, as given in the first schedule of the IP Regulations, hereinafter referred to as Code of Conduct.

2.2 Submissions by Mr. Subburengan Hari Karthik.

2.2.1 Mr. Subburengan Hari Karthik submitted that the erstwhile Liquidator initiated a scheme process under Sections 230 of the Companies Act, 2013, read with Regulation 2B of the Liquidation Regulations. Kineta Global Limited, in consortium with Power Mech Projects Limited, was one of the scheme proponents. The secured lenders challenged the process on account of:

- Exclusion of approximately 784 acres of Rayagada lands from the liquidation estate
- Flaws in the valuation conducted by the Former Liquidator; and
- Circulation of such valuation reports to the Complainant and others.

2.2.2 He submitted that the AA *vide* its order dated 17.11.2021 annulled the previous scheme process and directed the initiation of a fresh scheme process with an updated asset memorandum and fresh valuation. Aggrieved by the order of the AA dated 17.11.2021, Kineta Global Limited secured an *ad-interim* stay *vide* order dated 03.12.2021 of the NCLAT against the fresh scheme process. The erstwhile liquidator also filed a Company Appeal (AT) (CH) (Ins) No.8/2022 with the NCLAT. These appeals, particularly Kineta Global Limited’s appeal

resulted in a prolonged stay with no logical conclusion. Subsequently, the erstwhile liquidator was removed, and Mr. Subburengan Hari Karthik was appointed as the Liquidator. Upon reviewing pending litigations, Mr. Subburengan Hari Karthik withdrew the erstwhile liquidator's appeal which was recorded in the order dated 05.01.2024 of the NCLAT and a fresh counter-affidavit was filed by Mr. Subburengan Hari Karthik to oppose the frivolous CA (AT) (CH) (Ins) No.302/2021) filed by Kineta Global Limited. The Hon'ble Supreme Court in the matter of IDBI Bank Limited vs M/s Kineta Global Limited & Ors Civil Appeal No. 6257 of 2023 directed the NCLAT *vide* its order dated 09.10.2023 to dispose of the appeal expeditiously. Accordingly, the NCLAT proceeded with the matter and finally dismissed the CA (AT) (CH) (Ins) No.302/2021, filed by Kineta Global Limited on 16.01.2024, holding that Kineta Global Limited had no locus to challenge the fresh Section 230 process. This paved the way for the initiation of the current scheme process. Mr. Subburengan Hari Karthik further submitted that due to the prolonged stay caused by the Kineta Global Limited's appeal, the CD incurred approximately Rs.7.70 crore towards asset preservation and other liquidation costs.

2.2.3 He further submitted that Kineta Global Limited thereafter sought to participate in the current scheme process by seeking an adjustment of their earlier EMD. In view of their obstructive conduct and also in view of Regulation 2B of Liquidation Regulations read with the principles laid down in *Jai Narayan Gupta v. Radhasiriya Properties (P) Ltd., 2023 SCC OnLine NCLAT 2311*, he categorically informed Kineta Global Limited that the EMD had been appropriated towards liquidation costs and that a fresh EMD would have to be deposited in line with the Process Memorandum. The Process Document required Rs.50,00,000 (Rupees fifty lakh) along with submission of EOI, and Rs.2,50,00,000 (Rupees two crore fifty lakh) along with submission of the definitive scheme. The Kineta Global Limited challenged the decision of Liquidator before the AA, which, by order dated 02.05.2025 directed either adjustment or refund of the earlier EMD. In compliance with the order dated 02.05.2025, Mr. Subburengan Hari Karthik requested Kineta Global Limited to remit the balance EMD of Rs. 1 crore, submit necessary undertakings, and file a definitive scheme within 14 days. Kineta Global Limited instead sought multiple site visits and repeated extensions. However, despite these extensions, Kineta Global Limited failed to submit its scheme by 28.06.2025. On their eventual request, Mr. Subburengan Hari Karthik informed them that belated submissions would not be considered. Kineta Global Limited later sought a refund of its EMD.

2.2.4 He further submitted that Kineta Global Limited originally submitted its EOI as a consortium with Power Mech Projects Limited. However, despite repeated communications (emails dated 10.07.2025 and 21.07.2025), no confirmation was received from Power Mech Projects Limited. This raised serious doubts about the genuineness of the consortium claim and suggested an attempt to scuttle the scheme process once again. An appeal has been filed by Mr. Hari Karthik before the NCLAT against order dated 02.05.2025 of the AA.

2.2.5 He further submitted that that the decision to appropriate the earlier EMD was taken in good faith after due diligence and legal advice. The decision was taken within the authority vested in him as Liquidator under the IBC. This decision was necessitated because the Complainant's frivolous appeal stalled the process for over two and a half years, caused significant costs, and undermined the sanctity of the liquidation process. Mr. Subburengan Hari Karthik took the decision in belief that this was supported by Regulation 2B of the Liquidation Regulations; and principles laid down in *Jai Narayan Gupta v. Radhasiriya Properties (P) Ltd., 2023 SCC*

OnLine NCLAT 2311. While the AA has taken a different view, he submitted that divergence of judicial interpretation does not amount to professional misconduct.

2.2.6 He submitted that allowing Kineta Global Limited to reclaim EMD benefits despite its obstructive conduct would amount to unjust enrichment and defeat the objectives of the IBC. The decision regarding appropriation of EMD was a judicial call, in the best interests of the CD and its stakeholders. It is well settled that a professional decision later overturned by a judicial forum does not automatically amount to misconduct, provided it was taken in good faith and within statutory authority. An IP, taking bonafide action, cannot be subjected to disciplinary consequences merely because another forum adopts a different view. Similarly, as long as the IP has acted within the framework of the IBC and Regulations, no malafides can be attributed, even if the AA takes a contrary view. The IPs are required to take difficult commercial and judicial calls in dynamic circumstances, and such decisions, unless shown to be perverse or malafide, do not amount to misconduct. Applying the same principles, decision to appropriate the EMD was entirely in alignment with Regulation 2B of the Liquidation Regulations, duly supported by judicial precedents, and was motivated by the overriding need to preserve the integrity and sanctity of the liquidation process. The matter is pending before the NCLAT, and therefore, no adverse inference should be drawn pending final adjudication. He submitted that his actions were aligned with the core objectives of the IBC, particularly the integrity and sanctity of the liquidation process. If such conduct by unscrupulous proponents were permitted without consequence, it would embolden them to repeatedly scuttle the process at no cost, thereby undermining the liquidation framework and causing undue hardship and irreparable injury to stakeholders. The issue being *sub-judice*, no disciplinary consequences should arise at this stage. Permitting unscrupulous proponents to repeatedly scuttle the process without bearing any cost would seriously undermine the liquidation framework and cause undue hardship and irreparable injury to stakeholders.

2.3 Analysis and Findings of the DC.

2.3.1 The DC notes that the forfeiture of Earnest Money Deposit (EMD) must be strictly in accordance with the terms and conditions communicated to the bidders, as the EMD represents a security linked to compliance with the bidding process and not a penalty to be imposed for subsequent litigation or conduct of the scheme proponents. The letters dated 31.07.2020 and 21.01.2021 issued by the erstwhile liquidator clearly stipulated that forfeiture of the EMD could only occur in the event of default/withdrawal or non-compliance with the terms by the successful bidder, particularly failure to pay the upfront amount. No other condition for forfeiture was envisaged therein.

2.3.2 The DC further observes that the annulment of the first scheme process by the AA was on the ground that valuation of one of the assets of the CD i.e., Rayagada property was not proper and it is not attributable to Kineta Global Limited. The appeal preferred by Kineta Global Limited thereafter was in exercise of a statutory right, as also recognised by the AA. Resort to appellate remedies cannot be equated with “withdrawal” or “default” under the process terms, nor can it justify forfeiture of the EMD. The reasoning adopted by the Liquidator in relying upon Regulation 2B(3) of the Liquidation Regulations to appropriate the EMD towards liquidation costs is misplaced. The said Regulation 2B(3) provides as under -:

“(3) Any cost incurred by the liquidator in relation to compromise or arrangement shall be borne by the corporate debtor, where such compromise or arrangement is sanctioned by the Tribunal under sub-section (6) of section 230.

Provided that such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230.”

2.3.3 The proviso of the Regulation 2B(3) casts the burden of costs of a failed scheme on the proponents of such scheme if such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230. However, it cannot be stretched to justify unilateral forfeiture of the entire EMD when the scheme is rejected by AA on technical grounds.

2.3.4 The DC notes that the AA, after examining the issue of forfeiture, directed refund/adjustment of the EMD to the complainant while clearly recording that the forfeiture was unreasonable and beyond the terms of the invitation documents. The AA further clarified that forfeiture of EMD has to be strictly tested against the conditions mentioned in the expression of interest and process documents, and reliance on Regulation 2B (3) as an independent ground was erroneous.

2.3.5 The DC also observes that while IPs are required to take commercial and judicial calls in a dynamic environment, such decisions must be taken with due diligence, transparency, and in conformity with the governing regulatory framework. A decision to forfeit the EMD, cannot be justified on varied other grounds, when it is in direct contravention of the express terms under which the EMD was obtained. The facts of the judgment relied upon by the Liquidator, *Jai Narayan Gupta v. Radhasiriya Properties (P) Ltd.* (supra), are not applicable to the present case. In that matter, the scheme was rejected by the Stakeholders’ Consultation Committee (SCC) members, and the NCLAT held that at best the Liquidator was entitled to recover costs incurred, excluding the Liquidator’s fees. In contrast, in the present case, the scheme was never placed before the SCC for approval and prior to that secured lenders who were the member of the SCC filed an IA before the AA challenging the process on account of exclusion of Rayagada lands from the liquidation estate, flaws in the valuation conducted by the Former Liquidator; and circulation of such valuation reports to Kineta and others. The scheme was annulled by the AA at the very outset.

2.3.6 The DC, therefore, holds that the act of forfeiting the EMD of rupees two crore deposited by Kineta Global Limited is beyond the terms of the process documents. Hence, the DC holds the contravention.

3. Order.

3.1. In view of the foregoing discussion, the DC in exercise of the powers conferred under section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends registration of Mr. Subburengan Hari Karthik

(Registration No. IBBI/IPA-002/IP-N01201/2021-2022/14009) for a period of one year.

- 3.2. This Order shall come into force on expiry of 30 days from the date of its issue.
- 3.3. A copy of this order shall be sent to the CoC/Stake Holders Consultation Committee (SCC) of all the corporate debtors in which Mr. Subburengan Hari Karthik is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Subburengan Hari Karthik.
- 3.4. A copy of this order shall be forwarded to the ICSI where Mr. Subburengan Hari Karthik is enrolled as a member.
- 3.5. A copy of this order shall be sent to the CoC/ Stakeholder Consultation Committee (SCC).
- 3.6. 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.
- 3.7. Accordingly, the show cause notice is disposed of.

-sd/-

(Dr. Bhushan Kumar Sinha)

Whole Time Member

Insolvency and Bankruptcy Board of India

-sd/-

(Jayanti Prasad)

Whole Time Member

Insolvency and Bankruptcy Board of India

Dated: 10 September 2025

Place: New Delhi