

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/168/2023

16th May 2023

ORDER

In the matter of Mr. Ramasamy Shanmuggam, 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. COMP-11012/156/2022-IBBI/155/695 dated 03.02.2023, issued to Mr. Ramasamy Shanmuggam (hereinafter referred as "IP") who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00811/2017-2018/11378.

1. Background

- 1.1 The National Company Law Tribunal, Chennai, (AA) had admitted the application under section 9 of the Code for corporate insolvency resolution process (CIRP) of M/s RLS Alloys Private Limited (CD) *vide* Order dated 03.12.2018 and Mr. Ramasamy Shanmuggam was appointed as Interim Resolution Professional (IRP) *vide* the same order. Mr. Ramasamy Shanmuggam was appointed as (Resolution Professional) RP in the first meeting of Committee of Creditors (CoC) held on 18.01.2019. The order for liquidation of the CD was passed on 14.06.2019 and Mr. Ramasamy Shanmuggam was appointed as liquidator *vide* the same order.
- 1.2 The IBBI, in exercise of its powers under section 218 of the Code read with regulations 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017, appointed an Investigating Authority (IA) to conduct investigation into the observations made by the AA *vide* order dated 02.06.2022, in the matter of liquidation process of the CD. The IA served a notice of investigation to the IP on 23.06.2022. Pursuant to the said notice, Mr. Ramasamy Shanmuggam submitted his reply *vide* email dated 13.07.2022. The IA submitted the Investigation Report to the IBBI on 04.11.2022. The IBBI issued the SCN to Mr. Ramasamy Shanmuggam on 03.02.2023 based on findings in the Investigation Report in respect of his role as IRP of CD. Mr. Ramasamy Shanmuggam submitted his reply to the SCN on 05.03.2023.
- 1.3 The IBBI referred the SCN, response of the IP to the SCN, 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. The IP availed the opportunity of personal hearing through virtual mode before the DC on 25.04.2023.

2. Alleged Contraventions, Submissions of IP and Findings

The contraventions alleged in the SCN and submissions by Mr. Ramasamy Shamuggam are summarized as under:

3. Contravention

Conduct of the e-Auction process

- 3.1 The Board noted that Mr. Ramasamy Shanmuggam was appointed as a liquidator in the liquidation process of the CD. He published an e- auction notice dated 10.09.2020 for sale of the properties of the CD on 23.09.2020 with reserve price of Rs. 1,06,55,550/-. It is noted that in the e-auction held on 23.09.2020, he received the highest bid of Rs. 15,65,55,550/- from Mr. S. Ramalingam and the second highest bid was received from Mr. G. Subramanian for Rs. 1,55,55,550/-. However, it is noted that Mr. S. Ramalingam, the highest bidder *vide* affidavit dated 24.09.2020 requested the IP for cancellation of e-auction held on 23.09.2020 urging that due to error in typing he inadvertently stated the amount as Rs. 15,65,55,550/- instead of the actual bid amount as Rs.1,56,55,550/-.
- 3.2 It is further noted that without issuing a fresh sale notice, Mr. Ramasamy Shanmuggam rescheduled the e-auction to 25.09.2020 with same reserve price i.e., Rs. 1,06,55,550/-. It is noted that in the said rescheduled e-auction, Mr. G. Subramanian was declared as successful bidder with an offer of Rs. 1,10,55,550/- which was Rs. 45 lakh below his previous bid.
- 3.3 It is noted that the AA in its order dated 02.06.2022, also made adverse observations against the IP and remarked *inter alia* that,

“The entire episode smacks of wrongdoings and malafide on the conduct of the Liquidator in conducting the two auctions on 23.09.2020 and 25.09.2020.”
- 3.4 It was noted on the basis of the aforesaid that it was evident that Mr. Ramasamy Shanmuggam conducted a fresh e-auction without publishing any notice for the same thereby failing in his responsibility to explore as many potential bidders as possible for maximizing the value for the stakeholders.
- 3.5 It is noted that regulation 33 (1) of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) provides that the liquidator shall ordinarily sell the assets of the CD through an auction in the manner specified in Schedule I. It is further noted that Clause 1(5) under Schedule I (Mode of Sale) of the Liquidation Regulations provides that the liquidator shall make a public announcement of an auction in the manner specified in Regulation 12(3).
- 3.6 It is noted that clause 14 of the Code of Conduct for Insolvency Professionals under First Schedule to IBBI (Insolvency Professionals) Regulations, 2016 (Code of conduct) also requires that the IP must not act with *malafide* or be negligent while performing his functions and duties under the Code.

3.7 Accordingly, the Board was of the *prima facie* view that, by conducting fresh auction without issuing notice, Mr. Ramasamy Shanmuggam has contravened section 208 (2)(a) of the Code, regulation 33 of Liquidation Regulations read with clause 1(5) of Schedule I on Mode of Sale, regulation 7(2)(h) of the IP Regulations and clauses 3, 5 and 14 of the Code of Conduct.

Submission by IP

3.8 Mr. Ramasamy Shanmuggam submitted that before scheduling the auction sale dated 23.09.2020, the assets of the company under liquidation were put to sale many times (11 times) and failed especially the land and building for which a reserve price of Rs. 1,06,55,550/- was fixed after obtaining valuation report from approved valuers in consultation with the stakeholder applicant i.e. Indian Bank. The IP provided a list of failed auctions conducted by him as below:

Sr. No.	Date of auction	Asset in auction	Result
1.	09.09.2019	Plant and Machinery and Land and Building	Not sold
2.	16.10.2019	Plant and Machinery and Land and Building	Not sold
3.	18.11.2019	Plant and Machinery and Land and Building	Not sold
4.	12.12.2019	Plant and Machinery and Land and Building	Not sold
5.	10.01.2020	Plant and Machinery and Land and Building	Not sold
6.	10.02.2020	Plant and Machinery and Land and Building	Not sold
7.	16.03.2020	1. Plant and Machinery 2. Land and Building	Sold for Rs. 1,07,01,850/- Not Sold
8.	15.04.2020	Land and Building	Not sold
9.	11.08.2020	Land and Building	Postponed to 21/08/2020 Not sold
10.	21.08.2020	Land and Building	Not sold
11.	09.09.2020	Land and Building	Not sold
12.	23.09.2020 cancelled and E-auction held on 25.09.2020	Land and Building	Sold for Rs.1,10,55,550/-

3.9 He further submitted that as per the terms and condition of the e-auction dated 23.09.2020, more specifically point 12 thereof, (rescheduling of which in essence had been impugned)

"The liquidator has absolute right to accept or reject the bid or adjourn, postpone, extend the auction without assigning any reason". He submitted that by rescheduling the auction, he as a liquidator had acted well within the powers and capacity available to him in the sale notice and no fault whatsoever can be found with him in rescheduling auction sale as soon the error in the process was reported.

- 3.10 Mr. Ramasamy Shanmuggam submitted that the reserve price of the lot under sale was fixed only Rs. 1,06,55,550/- with extensions in multiples of Rs. 1,00,000/- only. He submitted that when he was informed by the bidder of erroneous bidding for Rs. 15,65,55,550/- instead of Rs. 1,56,55,550/- which is many times more than the amount of enhanced bid, it was realized to be a genuine error and accordingly within the power available in the e-auction notice, he rescheduled the auction.
- 3.11 He submitted that the contention of the applicant bank that in the rescheduled auction the upset price would have been fixed at around Rs. 1,55,55,550/- only fortified his action that the bidding done of over 15 crore rupees was an error by the bidder and that the said bidding was rightly called off. He submitted that any auction sale is advertised with a reserve price and such reserve price (conveniently stated in the application as upset price) can only be changed by issuing a fresh e-auction notice and not otherwise.
- 3.12 He submitted that when the e-auction notice was not under challenge, the applicant bank could on no ground seek the quashing of the auction sale done upon the basis of the same which admittedly had fetched more than the reserve price. He further submitted that once an auction sale is cancelled by any reasons, in the rescheduled auction the earlier participants cannot be compelled by the liquidator to join as a must.
- 3.13 He further submitted that the duty of the liquidator is to liquidate the assets of the company under liquidation on a price equal or above the reserve price of the asset as set out with the consultation of the stakeholders within the applicable terms and conditions. He submitted that the liquidator cannot compel any bidder to increase any bid for any specified amount and the allegations of the applicant. are completely uncalled for being frivolous and vexatious and are liable to be dismissed. He submitted that he had immediately taken a legal opinion on the actions taken by him in rescheduling the auction and no error has been identified in his actions.
- 3.14 He submitted that it was observed in the SCN that the auction was rescheduled by the liquidator without issuing a fresh sale notice on the same reserve price at Rs. 1,06,55,550/-. He submitted that there is no *mala fide* on the part of the liquidator in rescheduling the auction on 25.09.2020, since the said rescheduling was done after informing the bank and which consented for such rescheduling in the backdrop that the auction failed for 11 times for the sale of said assets. He further submitted that no guidance in law is available to fix an option on a higher reserve price just because an auction is rescheduled due to the intimation of the highest bidder about mistake in bidding and refusing to pay the bid price of the price of highest bidding. He submitted that he had forfeited the earnest money of Rs. 10,65,555/- deposited by Mr. S. Ramalingam. He submitted that incidentally, in the fresh bidding process which was conducted with the consent of Bank Mr. G. Subramaniam the highest bidder of the auction dated 25.09.2020 and

the second highest bidder of said auction dated 23.09.2020 did not bid beyond Rs.1,10,55,550/- and law does not provide any mechanism to compel any person to increase his bids to any particular amount.

- 3.15 Mr. Ramasamy Shanmuggam submitted that the bank which is a stakeholder in the process, did not say anything to the bidding and rather they were happy that the property in question is somehow sold in the 12th auction and they did not do anything before filing an application impugning the actions of liquidator on the 90th day of the auction sale by which time the entire auction money was received, sales certificate was issued and the property was also given in possession of the said person. He submitted that the application filed by the bank was not pursued by them for more than one year which showed that they were satisfied with auction and happy with the sale, and that an application was filed only to insulate any contingency in the process which is now fixed on the head of the liquidator.
- 3.16 He submitted that the remark of the AA in the order dated 02.06.2022 is a matter of challenge before the Hon'ble National Company Law Appellate Tribunal, Chennai Bench and hence cannot be said to have attained finality. He submitted that the said observation by no stretch of imagination could be said to be a finding on the conduct of the liquidator but an observation and the circumstances leading to the said auction are being explained by him which if given due consideration and weightage shall have the effect of exonerating the liquidator from the allegation of any rambling.
- 3.17 He submitted that though it was correct that re scheduled auction was conducted without publishing any fresh notice but same was done in the backdrop as the rescheduled option was the 12th such auction for selling the assets in question and it was genuinely believed by him that he will be able to maximise price if the participants of auction dated 23.09.2020 would participate in the process. He submitted that there was no *mala fide* on his part as a liquidator and the process adopted was well within the powers of the liquidator as prescribed in the auction notice. He submitted that there was no allegation by any party that he was involved in any malpractices in the process, and that the said rescheduling could not be said even an error of judgement as it was continued with the same parties who heartily participated in the process of auction sale on 23.09.2020.
- 3.18 He submitted that there was no notional loss of Rs. 45 lakh as alleged by the bank and taken on the show cause notice, as no money was received, and earnest money deposited by non-participant highest bidder was forfeited by him. He submitted that the auction dated 25.09.2020 was not a fresh e-auction but a continuation of / rescheduling of the auction dated 23.09.2020 and same was done only with sole purpose to maximise the value of the assets of CD. He submitted that earlier he had conducted 10 earlier failed of the same assets and which were duly published and duly advertised and as such he was of *bonafide* belief that a publication to the 12th time may not have a better potential of attracting bidders beyond those who came and joined the process till 11th time.
- 3.19 He submitted that the present case was not a case where the liquidator had sold the assets at a lesser price than the reserve price and that the allegations of any notional losses could not be

attributed to the actions of the bank.

- 3.20 He submitted that the sale conducted by him had been done in the manner prescribed under Schedule I. He submitted that he had made the sale by public announcement and the rescheduling, not being a fresh auction, was done on the basis of the auction notice which had led to the rescheduling of the auction on 25th.
- 3.21 He submitted that the entire controversy in the matter had arisen only because in the auction rescheduled on 25.09.2020, the highest bidder of the auction 23.09.2020 did not participate and the second highest bidder of the auction dated 23.09.2020 did not bid for the properties to the extent he had bid on 23.09.2020.
- 3.22 He further submitted that had there been a similar type of competitive bidding on 25.09.2020, which was obviously beyond the control of the liquidator, there would have been no occasion for any controversy in the matter to get issued an adverse comment by the AA followed by the present SCN. He submitted that the genesis of the issue leading to the disciplinary case against the liquidator was not the rescheduling of the erroneous auction of 23.09.2020 to 25.09.2020, but it was actually on the issue as to why in the rescheduled auction 25.09.2020, the liquidator could not muster the identical competitiveness as happened in 23.09.2020.
- 3.23 He submitted that the controversy in question was not with regard to any *malafide* on the part of the liquidator or violation of any law, rules, regulations and provisions of the IBC, but with regard to perceived notional losses that are stated to have occurred because of the rescheduling of the auction. He submitted that the entire controversy is not good in law and required to be re-looked from an angle which gave credibility and credence to the defence put forth by him.

Findings

- 3.24 The DC notes that in the 11th auction held by Mr. Shanmuggam on 23.09.2020, there were five bidders and after 52 rounds, following was the position -:

Sr. No.	Name of the bidder	Final Bid amount
1.	S. Ramalingam	Rs. 15,65,55,550/-
2.	G. Subramanian	Rs. 1,55,55,550/-
3.	M. Abdullah	Rs. 1,54,55,550/-
4.	A. Srinivasan	Rs. 1,31,55,550/-
5.	Bhadrashree Steel and Power Ltd.	Rs. 1,20,55,550/-

- 3.25 On 24.09.2020, Mr. Shanmuggam received communication from the successful bidder Mr. S Ramlingam that while submitting bid on 23.09.2020, he wanted to place bid for Rs.1,56,55,550/- but due to tension and time pressure, he inadvertently punched Rs.15,65,55,550/-, and hence requested for cancellation of auction.
- 3.26 Even if it is conceded that mistake committed by the bidder is not of *malafide* nature, hence forfeiture of EMD amount was appropriate action, yet from the documents made available it is not clear why Mr. Ramalingam was allowed to participate in the auction held on 25.09.2020 without submitting a fresh EMD, as forfeited EMD can't constitute a basis for participation in

the auctions. This is first grave error on part of the liquidator.

- 3.27 Further, the DC cannot accept the submission of Mr. Shanmuggam that on the request of Mr. Ramlingam, he rescheduled the auction on 25.09.2020 as Mr. Ramalingam had no *locus-standi* to guide the process, which the liquidator is supposed to run in a fair and transparent manner as per the provisions of the Code and Regulations made thereunder.
- 3.28 Furthermore, on 24.09.2020, Mr. Shanmuggam had sent one email to the financial creditor Indian Bank stating that “*The e-auction held on 23-09-2020 was cancelled and the same will be done in due course of time.*” Despite this communication, on 25.09.2020, Mr. Shanmuggam went ahead with re-initiating the auction with the same participants with no intimation to the financial creditor. This clearly demonstrate undue haste on part of the liquidator. As auction process was cancelled, he should have conducted fresh auction and fresh auction notice should have been published.
- 3.29 Alternatively, in view of the wrong quoting of the bid amount in the e-auction on 23.09.2020, the liquidator could have adjourned or extended the same e-auction process and all the bidders should have been informed that highest bid received so far should be read as Rs. 1,56,55,550.00, in place of Rs.15,65,55,550.00 and accordingly other bidders should have been given an opportunity to revise their bids, if they wished so.
- 3.30 It is very disturbing to note that in the so called rescheduled e-auction held on 25.09.2020, Mr. Ramlingam, who only two days before wanted to bid for Rs. 1,56,55,550.00, submitted bid for Rs.1,07,55,550.00 only, and Mr. G Subramanian, who had submitted bid for Rs.1,55,55,550.00 on 23.09.2020, submitted bid for Rs.1,10,55,550.00, and became successful bidder. So within a span of two days, by reducing the bid amount by Rs.45,00,000.00, Mr. G Subramanian became the successful bidder. A similar pattern in downsizing of the bid amount around reserve price is nothing but deliberate attempt to game the process. This speaks volumes about the irrational approach adopted in the so called rescheduled auction on 25.09.2020. Taking note of this glaring malpractice, AA was pleased to cancel the said rescheduled auction held on 25.09.2020.

4. Order

- 4.1 The sub-regulation (1) and (10) of Regulation 31A of IBBI (Liquidation Process) Regulations, 2016, requires a liquidator to take advice of consultation committee in respect of sale under regulation 32 and such advice shall not be binding on the liquidator: Provided that where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing. This procedure stands violated, as liquidator, in the instant matter, had conducted the auction on 25.09.2020 in violation of sub-regulation (1) and (10) of Regulation 31A of IBBI (Liquidation Process) Regulations, 2016 as he had neither taken advice of the consultation committee nor recorded the reason in writing for the same.

4.2 Further, his act of cancellation of auction dated 23.09.2020 and conducting auction on a very short notice on 25.09.2020 that too through limited participation of the eligible bidders of cancelled auction dated 23.09.2020, at best, aimed towards substantial loss to the liquidation estate/stakeholders.

4.3 In view of forgoing, it is noted that the liquidator has failed to perform duty of conducting liquidation for the beneficial liquidation of the CD, thus violating -

- The clause (e) and (f) of sub-section (1) of section 35 of the Code.
- The sub-regulation (1) and (10) of Regulation 31A of IBBI (Liquidation Process) Regulations, 2016

4.4 In view of the forgoing discussion, the DC finds the conduct of Mr. Ramasamy Shanmuggam contravening section 208 (2)(a) of the Code, regulation 33 of Liquidation Regulations read with clause 1(5) of Schedule I on Mode of Sale, regulation 7(2)(h) of the IP Regulations and clauses 3, 5 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations.

4.5 The DC, in exercise of the powers conferred under section 220(2) of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Mr. Ramasamy Shanmuggam for a period of two years.

4.6 This Order shall come into force on expiry of 30 days from the date of its issue.

4.7 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Ramasamy Shanmuggam is providing his services under the Code, if any.

4.8 A copy of this order shall be forwarded to the ICAI Institute of Insolvency Professionals where Mr. Ramasamy Shanmuggam is enrolled as a member.

4.9 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.

4.10 Accordingly, the show cause notice is disposed of.

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

Dated: 16th May, 2023

Place: New Delhi