

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/180/2023

19th June, 2023

ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/250/2022-IBBI/756/603 dated 18.05.2023 issued to Mr. C. Ramasubramaniam, 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 (Investigation Regulations). Mr. C. Ramasubramaniam, is a Professional Member of the Insolvency Professional Agency (IPA) of the ICSI Institute of Insolvency Professionals (ICSI-IIP) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with registration No. IBBI/IPA-002/IP-N00052/2016-17/10096.

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

1.1. The Hon'ble NCLT, Chennai Bench (AA) *vide* order dated 05.12.2017 admitted the application under section 9 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) of M/s Inland Facilities Management Private Limited (CD) where Ms. A Satyadevi was appointed as the Interim Resolution Professional (IRP) who was replaced by Mr. C. Ramasubramaniam as Resolution Professional (RP) by AA on 07.03.2018. The Committee of Creditors (CoC) in its 8th meeting decided to liquidate the CD as no viable resolution plan has come up. The AA ordered the liquidation of CD on 13.07.2018. The CD has now been dissolved by order of AA dated 26.04.2023.

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 Investigating Authority (IA) to conduct the inspection of Mr. C. Ramasubramaniam in CIRP of CD. The IA served notice of investigation as per regulation 8(1) of the Investigation Regulations on 29.11.2022. Pursuant to the said notice, Mr. C. Ramasubramaniam submitted his reply *vide* email dated 08.12.2022. Thereafter, IA submitted the investigation report to the Board.

2.2. Based on the material available on record including the Inspection Report, the Board issued the SCN to Mr. C. Ramasubramaniam on 18.05.2023. The SCN alleged contravention of sections 208(2)(a) of the Code, regulation 44(2) of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations), regulation 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clauses 13, 14 and 22 of the Code of Conduct. Mr. C. Ramasubramaniam replied to the SCN on 01.06.2023.

- 2.3. The Board referred the SCN, written submissions of Mr. C. Ramasubramaniam, 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. C. Ramasubramaniam availed an opportunity for a personal hearing before DC on 16.06.2023 through virtual mode.

3. Alleged contraventions and submissions of the IP

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

Contravention – I

3.1. Non-filing of extension application.

- 3.1.1 It is observed that the last approved extended liquidation period in the liquidation process of the CD was upto 01.04.2022 which was allowed by AA *vide* order dated 05.10.2021. It is, however, noted that an application for seeking further extension of the liquidation period beyond 01.04.2022 was filed by Mr. C. Ramasubramaniam, after almost six months on 30.09.2022. It is, thus, evident that Mr. C. Ramasubramaniam failed to file an application for an extension of the liquidation period prior to the expiry of the approved extended period meaning thereby that process conducted by him during that period was without authority.
- 3.1.2 It is further observed that although the AA *vide* its order dated 15.11.2022 approved the extension of the liquidation period of the CD by a further period of six months also covering the period of liquidation without any order of extension of liquidation, however, it took serious note of Mr. C. Ramasubramaniam's conduct and observed that:

“3. It is seen that this Application has been filed on 30.09.2022. As such for the period between 02.04.2022 till the date of this order, the Liquidator has functioned without the liquidation period being extended by this Tribunal and thus without authority. Moreover, it is seen that there is no specific prayer in this Application for condonation of the delay for belated filing of the present Application. The matter was heard on 01.11.2022 when the Ld. Liquidator was not present and the matter was again posted for hearing on 02.11.2022. During the hearing on 02.11.2022, when question was posed by this Bench to the Ld. Liquidator for the reasons of delay in filing this present application and thereby lapse on the part of Liquidator to obtain extension of liquidation period, the Ld. Liquidator could not come up with any satisfactory answer except stating that the matter was (name not disclosed) who failed to file the Application seeking extension of the Liquidation Period and Liquidator was under impression that steps are taken to file application. He agreed that thereafter he could not follow up and

further accepted that not filing an application for extension of liquidation period is a serious lapse on part of the Ld. Liquidator.”

- 3.1.3 The said order clearly brings out that despite being aware of the expiry of the liquidation period on 01.04.2022, the extension application was filed by Mr. C. Ramasubramaniam only on 30.09.2022 after a lapse of 182 days, and that too without any application for condonation of delay.
- 3.1.4 Regulation 44(2) of the Liquidation Regulations provides that if the liquidator fails to liquidate the CD within one year, he shall make an application to the AA to continue such liquidation, along with a report explaining why the liquidation has not been completed and specifying the additional time that shall be required for liquidation. It is the responsibility of a liquidator to take prudent steps to expeditiously file an extension/exclusion application before the AA and to act with a strong sense of urgency and with utmost care and diligence to ensure the maximization of the value for the CD and its stakeholders. However, Mr. C. Ramasubramaniam has failed to file the application thereby affecting the interests of the stakeholder and the objective of the liquidation process.
- 3.1.5 In view of the above, the Board held the prima facie view that Mr. C. Ramasubramaniam has contravened 208(2)(a) of the Code, regulation 44(2) of the Liquidation Regulations, regulation 7(2)(h) of the IP Regulations read with clauses 13 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

3.2. Submissions made by the IP

- 3.2.1. Mr. C. Ramasubramaniam submitted that the liquidation process of the CD commenced on 13.07.2018. Further based on the extension application filed by him seeking an extension of the liquidation period for one year, AA has extended the liquidation period by further six months till 01.04.2022 vide order dated 05.10.2021. In April 2021 the ESIC filed the application (IA/95/2022) seeking considering the addendum to the claim and direction to the liquidator to admit the same. At the time of expiry of the extended Liquidation period i.e., 01.04.2022 the said application was pending for adjudication before AA. In view of the pendency of said application filed by ESIC, it was decided to file an application for an extension of the liquidation period of the CD. Accordingly, he handed over the documents pertaining to the CD to an Advocate in March 2022 for filing a necessary application for an extension of the liquidation period and he has assured to file an application for an extension of the liquidation period but he missed to file the application in time.
- 3.2.2. Mr. C. Ramasubramaniam submitted that after the expiry of the above-extended liquidation period, well before March 2022, he shared the set of documents pertaining

to the CD to one legal counsel for filing an application for the extension of the liquidation period, however, he came to know that the advocate has not filed the relevant application before AA. The Liquidator tried to reach the Advocate through various modes but the advocate was not responded since he didn't file an extension application even after the expiry of the liquidation period.

- 3.2.3. Mr. C. Ramasubramaniam further submitted that he has approached another advocate, Mr. S. Sathiyarayanan, and briefly explained the requirement of filing an extension application for the CD. He also informed the incident mentioned above and also handed over the requisite documents to him for filing the extension application. Thereafter, the application for the extension of the liquidation period was filed by Mr. S. Sathiyarayanan on 30.09.2022, and the said application was numbered as IA/1078/2022. On 01.11.2022 and 02.11.2022 the case was listed for hearing and after detailed arguments, AA has reserved for orders. On 15.11.2022 the case was listed for pronouncement for orders. AA took into consideration the facts as stated in the application for the extension of the liquidation period and approved the extension application for a further period of 6 months from the date of the order.
- 3.2.4. Mr. C. Ramasubramaniam further submitted that he has filed the final report with a compliance certificate in Form H before AA in IA 32 of 2023 in accordance with the provisions of the Code and the same was listed for hearing on 30.01.2023. AA took up the matter and passed its orders stating that the Final Report and Compliance Certificate taken on record with all just exceptions. He submitted the final report along with the compliance certificate in Form H was submitted to the Board through mail/registered Post with acknowledgment due.
- 3.2.5. Mr. C. Ramasubramaniam submitted that on 18.01.2023, he filed an application in IA 200 of 2023 under section 54 of the Code seeking the dissolution of the CD. On 13.03.2023, AA directed him to file written synopsis of arguments within a week and posted the matter for further hearing on 28.03.2023 for final disposal. He filed a written argument before AA as per the directions of AA.
- 3.2.6. Mr. C. Ramasubramaniam submitted that on 28.03.2023, the dissolution application was listed for hearing, and the same was reserved for orders. On 26.04.2023, AA allowed the dissolution application and the liquidator was directed to comply with the necessary compliances. After receiving the order from AA, he intimated the same to the Board, ROC-Chennai, Financial Creditor — Indian Overseas Bank, and also filed an e-form INC-28 in the MCA portal for changing the status of the CD from liquidation to dissolved.
- 3.2.7. Mr. C. Ramasubramaniam submitted that same explanations as above including the hiring of an advocate who has failed to file the application was first given by the present advocate and since AA was not satisfied with the reply, he was asked to

appear. He appeared and also humbly submitted the same fact before AA. However, AA was not satisfied with the reply and reserved the orders.

- 3.2.8. The Liquidator has submitted that the ESIC has already submitted its claim and the same was admitted and they are included in the list of stakeholders. Further, they submitted an addendum to the claim which was rejected. It is further submitted by the Liquidator that he had given his full effort with the support of his team to conduct and complete the liquidation period as per the provisions of the Code, but the advocate who was hired by him has missed out to file the extension application and put the Liquidator in deep trouble due to which the Liquidator lost the peace of mind.
- 3.2.9. The Liquidator has further submitted that the delay in filing the application for extension of liquidation is neither willful nor wanton, but due to *bona fide* reasons set forth herein above and there is no *mens rea* or any personal negligence on his part. He also submitted that he has carried out his duty as a liquidator without receiving any fees for this assignment, there is no timeline deviation in any other compliances pertaining to CD and he along with his team were diligent in performing the duties as prescribed under the Code.
- 3.2.10. The Liquidator has submitted that due to the delay in filing the said application, no material thing is affected as the FC has decided to initiate action under section 52 of the code and realized the personal properties/corporate guarantor properties only and there were no assets with the CD to liquidate.

3.3. **Analysis and Findings**

- 3.3.1. It is an admitted position that the Liquidator failed to file the extension application even after the expiry of the liquidation period, i.e., 01.04.2022. The application was filed on 30.09.2020 with delay of approximately five-month from the date of expiry of the liquidation period that too without the application or prayer for condonation of delay. The above defense of the Liquidator seems merely a submission without any substance. Merely handing over the requisite document for filing the extension application to the Advocate cannot be said a mere bonafide omission on the part of the Liquidator. It is the duty of the Liquidator to follow up with the Advocate for filing the extension application, but the Liquidator failed to do so.
- 3.3.2. The filing of the extension application after five months of the expiry of the liquidation period points to the gross negligence on the part of the Liquidator and dereliction of the duty assigned under the Code and the Regulations made thereunder.
- 3.3.3. Accordingly, the submission of the Liquidator is not acceptable.

Contravention – II

3.4. Handling too many assignments.

- 3.4.1. Clause 22 of the Code of Conduct states that an IP must refrain from accepting too many assignments if he is unlikely to be able to devote adequate time to each of his assignments.
- 3.4.2. On perusal of AA's order dated 15.11.2022, it is observed that Mr. C. Ramasubramaniam replied to AA on a question being posed to him by the AA that he was handling nearly 17 other assignments including the present assignment. Mr. C. Ramasubramaniam's absence in the hearing held on 01.11.2022 as noted by AA in its order dated 15.11.2022 indicates that he has accepted assignments beyond his capacity which is further reflected in his inability to keep track of important filings regarding the case.
- 3.4.3. In view of the above, the Board held the prima facie view that Mr. C. Ramasubramaniam has contravened 208(2)(a) of the Code, Regulation 7(2)(h) of the IP Regulations read with Clauses 22 of the Code of Conduct.

3.5. Submissions made by the IP

- 3.5.1. Mr. C. Ramasubramaniam submitted that the question regarding the number of assignments was raised by AA at the time of the hearing. He submitted before AA that he was handling 18 assignments (all under liquidation).
- 3.5.2. Mr. C. Ramasubramaniam also submitted before AA that he is the first person to get enrolled as an IP from Chennai during the month of March 2017 and due to the early bird criteria he has been allotted 3 to 4 cases in a given span of every 6 to 9 months time initially and was handling not more than 4 assignments out of every 6 months of CIRP period in the last 6 years and there are few assignments (5)where he has been appointed as only IRP and later did not continue as RP/Liquidator and the balance assignments in his name are voluntary liquidation assignments which are also at the fag or already been completed.
- 3.5.3. Mr. C. Ramasubramaniam submitted that he is very careful in choosing any assignment and most of his assignments except one is non-going concern. All the cases he has chosen are considerably very small in nature (except the few assignments) and undertook fresh assignments after the closing of that CIRP period only. Moreover, the majority of assignments except the initial a few are section 7 cases and he never solicits any assignments on his own with any banks only because of his successful performance in a few assignments, out of the 27 banks, 4 or 5 banks repeatedly gave

assignments to him considering the office infrastructure and the team strength of 25+ person in his office. He has never marketed himself before any banks in his career either as company secretary or IP. The Liquidator further submitted that the banks also generally enquire about the number of CIRP assignments in the hand of the IP before giving fresh assignments. He submitted that currently there are no CIRP assignments in his hand and the cases are either closed or under liquidation and that too in the final stages.

3.6. Summary Findings

- 3.6.1. It is the duty of the Liquidator to follow his duty with due diligence and comply with all the applicable provisions of the Code and Regulations made thereunder. Clause 22 of the Code of Conduct clearly states that the Insolvency Professional must refrain from accepting too many assignments if he is unlikely to be able to devote adequate time to each of his assignments. The conduct of the Liquidator in the present matter shows that he was not able to properly manage the assignments entrusted to him.
- 3.6.2. Though the clarification under clause 22 of the Code of Conduct for handling the maximum assignment by IP as a resolution professional is given, but otherwise also, clause 22 of the Code of Conduct, clearly stipulates that insolvency professionals must not accept the assignment beyond his/her capacity. As per his own admission, the Liquidator was having 18 assignments. Due to being involved in too many assignments, he was not able to take proper care of his assignments which resulted in non filing of extension application for the liquidation period, within time as he had no time to follow up with the advocate for filing of the extension application.

Order

- 4.1. DC notes that recently on similar kind of violation, Mr. C. Ramasubramaniam was warned as he built up the case that mistake has occurred on part of delegated person and not by him as designated person could file the requisite documents with considerable delays, as one off gesture. Now with contravention of similar nature coming to the notice of the Board, it is evident that number of assignments being handled by him is so large that he is not able to exercise the needed due diligence as Liquidator. Despite the fact reasonableness in terms of handling number of assignment has been left with the professional but surely as professional he has to be mindful about his capacity to simultaneously handle so many assignment.
- 4.2. Section 35 (n) of the Code specifically provide as his duty, “to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board”. Furthermore, regulation 15 of the Liquidation Regulations provides that the liquidator shall submit progress reports to Adjudicating

Authority within stipulated timeframe. 208(2)(d) of the Code provides that every IP shall submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member. Therefore, Liquidator is under duty to submit all request including extension request in a timely manner. Not following the same and delegating it to some other person without any follow-up reflects poorly on the conduct of the RP on the professional front. The observations of AA on his lapses has been well noted. Therefore, to deter the professional in repeating similar mistakes again and again, necessary action is warranted.

- 4.3. In view of the submission made by Mr. C. Ramasubramaniam, and materials available on record, DC notes that Mr. C. Ramasubramaniam has contravened sections Sections 35 (n) and 208(2)(a) of the Code, regulation regulation 15 and 44(2) of the Liquidation Regulations, regulation 7(2)(h) of the Insolvency Professionals Regulations read with clauses 13, 14 and 22 of the Code of Conduct.
- 4.4. The Disciplinary Committee, in exercise of the powers conferred under section 220 (2) of the Code read with Regulation 13 of the Inspection Regulations hereby suspends the registration of Mr. C. Ramasubramaniam for a period of one year.
- 4.5. This Order shall come into force after 30 days from the date of this order.
- 4.6. A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. C. Ramasubramaniam is providing his services, if any.
- 4.7. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. C. Ramasubramaniam is enrolled as a member.
- 4.8. 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.
- 4.9. Accordingly, the show cause notice is disposed of.

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(Sudhaker Shukla)
Whole Time Member, IBBI

Date: 19th June, 2023
Place: New Delhi