

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/93/2022
6th May, 2022

ORDER

In the matter of Mr. Chakravarthi Srinivasan, Insolvency Professional (IP) under Section 220 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017.

This order disposes of the Show Cause Notice (SCN) No. IBBI/IP/INSP/2020/47/2596 dated 22.10.2021, issued to Mr. Chakravarthi Srinivasan, R/o 1-4-211/42/1, Pradhamapuri Colony, Sainik Puri, Hyderabad, Telangana - 500062 who is a professional member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-002/IP-N00649/2018-2019/11990 dated 10.09.2018.

1. Background

- 1.1 Mr. Chakravarthi Srinivasan, was appointed as an interim resolution professional (IRP) for the corporate insolvency resolution process (CIRP) in the matter of IRIS Electro Optics Pvt. Ltd., Corporate Debtor (CD-1) *vide* order of the National Company Law Tribunal, Hyderabad (AA) in CP (IB)-181/7/HDB/2019, dated 28.03.2019 which admitted an application for CIRP under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) filed by Mr. Laxmi Kantha Rao Thota, husband of Ms. Archana Thota, Director of the CD-1. The IRP was confirmed as the Resolution Professional (RP) on 01.05.2019.
- 1.2 In the matter of Shree Rudra Shakti Industries Pvt. Ltd. (CD-2), the AA *vide* order dated 14.05.2019 in CP (IB)-430/09/HDB/2018, admitted an application for CIRP under Section 9 of the Code and appointed Ms. Narala Varalakshmi as interim resolution professional (IRP). Mr. Srinivasan was appointed as RP *vide* order dated 06.12.2019.
- 1.3 The IBBI, in exercise of its powers under section 219 of the Code, on having reasonable grounds to believe that Mr. Srinivasan contravened provisions of the Code, Regulations and Circulars, issued SCN dated 22.10.2021 to Mr. Srinivasan.
- 1.4 The SCN alleged contraventions of provisions of section 21(1), first proviso to section 21(2), sections 208(2)(a) and (e) of the Code, regulations 14(1) and 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016

(CIRP Regulations), 7(2)(a) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and clauses 1, 2, 3, 5, 9, 11 and 12 of the Code of Conduct specified in First Schedule of the IP Regulations.

- 1.5 The IBBI referred the SCN, response of Mr. Srinivasan 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. Mr. Srinivasan availed an opportunity of virtual personal hearing before erstwhile DC on 23.12.2021. Thereafter, due to the completion of the term of Dr. Mukulita Vijayawargiya, who constituted earlier Disciplinary Committee, new Disciplinary Committee was constituted to dispose of the aforesaid show cause notice which granted another opportunity of personal hearing to Mr. Srinivasan on 22.04.2022. Mr. Srinivasan availed an opportunity of e-hearing before the DC on 22.04.2022. The DC heard the oral submissions of Mr. Srinivasan on 22.04.2022. The DC has considered the SCN, the reply to SCN, oral and written submissions of Mr. Srinivasan, other material available on record and proceeds to dispose of the SCN.

2. Alleged Contraventions, Submissions, Analysis and Findings

A summary of contraventions alleged in the SCN, Mr. Srinivasan's written and oral submissions thereon and their analysis with findings of the DC are as under:

In the matter of IRIS Electro Optics Pvt. Ltd. (CD-1)

2.1 Contravention I

- 2.1.1 It was observed from the minutes of the 2nd CoC meeting dated 28.05.2019 that the RP informed the CoC members that claim of related party, Ms. Archana Thota has been received. The status of Ms. Archana Thota as a related party of the instant CD-1 is also noted in the Information Memorandum. Furthermore, it was also observed that the Hon'ble AA vide its order dated 19.08.2019 noted that alleged resignation of director, Mrs. Archana Thota was not uploaded on RoC's website. The Company master data of CD-1 on the website of MCA records that Ms. Archana Thota is a director of the CD-1 since 03.10.2017. As Ms. Archana Thota is a related party of CD-1, her spouse Mr. Laxmi Kantha Thota Rao is also a related party in terms of section 5(24)(a) of the Code.
- 2.1.2 It was also observed from the minutes of 1st CoC meeting dated 01.05.2019 that Mr. Thota was the sole financial creditor with 100% vote share of CoC. As Mr. Thota is a related party, he ought not to have been assigned any vote share in the CoC. Furthermore, the minutes of 1st CoC meeting dated 01.05.2019 show that agenda for appointment of Mr. Srinivasan as RP of the CD was approved by CoC constituted only of related party Mr. Thota having 100% vote share.

- 2.1.3 It was also seen from the minutes of 2nd CoC meeting that while revising CoC and the vote share of financial creditors, Mr. Srinivasan assigned vote share to related party, Mr. Thota.
- 2.1.4 The Board was of *prima facie* view that Mr. Srinivasan contravened first proviso to section 21(2), 208(2)(a) of the Code read with regulation 7(2)(h) of IP Regulations and clauses 1, 2, 3, 9, 11 and 12 of Code of Conduct prescribed under IP Regulations.

2.2 Submissions

- 2.2.1 Mr. Srinivasan submitted that the question whether Mr. Laxmi Kantha Rao Thota is a related party or not is being decided by the Hon'ble AA in the IA No. 785 of 2019 in CP(IB)No.181/7/HDB/2019 as directed by the Hon'ble National Company Law Appellate Tribunal (NCLAT), *vide* its interim order in Company Appeal (AT)(Insolvency) 49 of 2020 dated 22.05.2020.
- 2.2.2 Mr. Srinivasan submitted that the above IA was pending with the Hon'ble AA, the last hearing having taken place on 26.10.2021. The Hon'ble AA was pleased to reserve the order in the matter and agreed to take up the other connected applications on 15.11.2021 for disposal.
- 2.2.3 Mr. Srinivasan submitted that in order to decide whether Mr. Laxmi Kantha Rao is a related party or not by virtue of his wife being a director on the Board of the CD on the date of filing of application, it has to be first decided whether the wife of Mr. Laxmi Kantha Rao, namely, Mrs. Archana Thota was a director or not on the Board of the CD-1 on the date of filing of application for initiating the CIRP. He stated that the application for initiating the CIRP of the CD-1 was filed on 11.01.2019 while Mrs. Archana Thota had submitted her resignation on 30.11.2018.
- 2.2.4 He further submitted that the resignation statutorily takes effect from the date of receipt of the resignation letter of the director by the company, no matter, whether the resignation is accepted by the company or not, whether the company files the related forms with the Registrar of Companies or not and whether the master data continues to show the name of the director as a director or not. He stated that the statute is clear that once the company receives the resignation letter, the director demits the office without any further act, deed or thing. According to Mr. Srinivasan, the director Mrs. Archana Thota, in her resignation letter, also requested that RoC be intimated by filing DIR 12 regarding her demitting of the office.

3.1 Contravention II

- 3.1.1 Section 21(1) of Code requires that an IRP shall after collation of all claims received against the CD-1 and determination of the financial position of the CD-1, constitute a CoC. Regulation 14(1) of CIRP Regulations states that where the amount claimed by a creditor is not precise due to any contingency or other reason, the IP shall make

the best estimate of the amount of claim based on the information available with him. During the inspection, the following series of events was observed:

Sl.	Dates	Particulars
1.	25.04.2019	Bank of India filed its claim with the Noticee
2.	26.04.2019	Mr. Srinivasan issued notice for conducting 1 st CoC meeting on 1 st May 2019
3.	01.05.2019	Mr. Srinivasan conducted the 1 st CoC meeting with Mr. Thota as the sole financial creditor with 100% vote share of CoC and secured appointment for himself as RP
4.	03.05.2019	Mr. Srinivasan rejected the claim of Bank of India on the ground that affidavit was not notarized and information relating to residence of person making the declaration is to be provided

3.1.2 It was observed from the above that Mr. Srinivasan purposely kept the claim of Bank of India pending, so as to not include it in 1st CoC meeting and secure for himself appointment as RP by the CoC constituting of the related party of CD-1. It was also observed that the rejection of the claim of Bank of India was done on trivial grounds. The RP ought to have followed regulation 14 of CIRP Regulations and make best estimate of claim amount based on the information available.

3.1.3 It was further observed from the order dated 19.08.2019 passed by Hon'ble AA in IA No. 461 & 544/2019 in CP (IB) No. 181/7/HDB/2018 that '*...it is surprising to note IRP constituted CoC without making the Applicant/ Secured Financial Creditor as member in the CoC...*'. Further, in the order dated 22.05.2020 passed by Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 49 of 2020 filed by the Bank of India, the Hon'ble NCLAT noted that '*...the 'Interim Resolution Professional' has acted in violation of statutory provisions by excluding the Appellant as the only 'Secured Financial Creditor' from the 'Committee of Creditors...*'.

3.1.4 The IBBI was of *prima facie* view that Mr. Srinivasan contravened section 21(1), 208(2)(a), 208(2)(e) of Code, regulation 14(1) of CIRP Regulations, regulations 7(2)(a) and 7(2)(h) of IP regulations and clauses 1, 2, 3 of Code of Conduct prescribed thereunder.

3.2 Submissions

3.2.1 Mr. Srinivasan submitted that pending detailed scrutiny of corporate debtor's records and discussions, the status of Mrs. Archana Thota was kept as related party in the minutes. Similarly, the same information was extracted to the information memorandum which should not be seen as a separate violation of CIRP Regulations. As the company has not filed even a single document with the RoC, the status of Mrs. Archana Thota continued to be shown as a director. Further, non-filing of a statutory form with the RoC was only a compoundable offence and once

it is filed by paying additional fee, the document was taken on record as per the details filed in the form.

- 3.2.2 Mr. Srinivasan submitted that in his opinion Mr. Thota was not a related party, his wife having resigned long before the date of application to the AA under section 7 of the Code. Further, as stated earlier, the said question was *sub-judice* and therefore, IBBI ought not conclude that Mr. Thota was a related party.
- 3.2.3 Mr. Srinivasan submitted that on the date of constitution of CoC and filing the report under Regulation 17(1) with Registry of AA, i.e, 25.04.2019, no claim was received from the secured financial creditor, namely, Bank of India. This fact was clearly informed to the IBBI during inspection.
- 3.2.4 Mr. Srinivasan submitted that because Bank of India was a secured financial creditor, he intimated the bank regarding submission of the claim. He submitted that if his intention was to exclude Bank of India's claim, the RP would not have informed the bank by email about the admission of the petition by the Hon'ble AA on the very next day of the passing of the Order and attached a copy of the order. If the intention of the RP was to exclude Bank of India's claim, the RP would not have followed up with Bank of India for their claim. As the Bank did not submit its claim even by the last date fixed in the Public Announcement, i.e., 11.04.2019, the RP called the bank and reminded them to submit their claim.
- 3.2.5 Mr. Srinivasan further submitted that he called up the bank on 18.04.2019 when the branch manager informed him that they were not familiar with the claim form. The RP immediately sent the statutory form on 18.04.2019 at their request to the Bank by email. Even then the bank did not act fast. He also submitted that the Bank of India's claim was not rejected but in fact the bank was asked to only rectify the defects. He submitted that it is incorrect that he rejected the claim on trivial grounds, such as when the claim was signed by the power of attorney holder who has not been given such power to submit claims of other than the branch where he is posted.
- 3.2.6 Mr. Srinivasan stated that none of the items in the claim form can be considered to be trivial and no column in the form can be left blank. He also stated that the IRP has unfettered right to reject outrightly such claims which are filled with callousness and without respect to the CIRP Regulations. Therefore, he firmly believes that he was not at all wrong when he asked for the residential address of the person signing the claim form which was left blank, and the amount of debt calculated as on the date of admission of the petition and not as on the date of submission of claim.
- 3.2.7 The RP submitted that as per the timelines prescribed by Regulations, the report under Regulation 17(1) constituting the CoC was filed on the morning of 25.04.2019. He stated that the Registry closes for filing at 3 p.m., whereas, the claim from Bank of India for the first time was received by the RP on 25.04.2019 at 5.20 p.m. Since the Bank's claim was not received until the constitution of CoC, it was obviously not included in the CoC. The final version of Form 'C' with rectification was submitted by the Bank on 08.05.2019 at 11.49 a.m. which is not in dispute. He

stated that had the Bank submitted its claim as per the public notice or in response to the email of the RP informing the bank with a copy of the Order passed by the Hon'ble AA, or when the RP followed up with the bank on the following days, the RP would have been certainly compelled to admit the bank in CoC and assigned its due voting rights. He submitted that the bank's failure to submit its claim in spite of written reminders and verbal follow up cannot be said to be violation by him.

- 3.2.8 Mr. Srinivasan submitted that the comments of the Hon'ble NCLAT which stated that *the interim resolution has acted in violations of the statutory provisions by excluding the Applicant as the only Secured Financial Creditor from the Committee of Creditors*, were passed as part of an ex-parte order in the very first hearing of the appeal filed by Bank of India, without hearing him and when not even the written counter was asked to be submitted. Hence, the RP was unable defend himself in the matter.

3.3 Analysis & Findings of Contraventions I and II

- 3.3.1 In para VII of the minutes of the first CoC, it has been recorded that apart from Mr. Thota two more claims were received from financial creditors but the same was not considered as the both the claims were not supported and substantiated by documentary evidence. The DC observes that the claim of Bank of India was filed on 25.04.2019 and first CoC was held on 01.05.2019. In 1st CoC, resolution for appointing Mr. Srinivasan as RP was passed with 100% vote and Mr. Thota was the only financial creditor with 100% voting share. The claim of Bank of India was admitted subsequently as reflects in minutes of 2nd CoC meeting and Bank of India was assigned voting share of 57.04%. Had Bank of India been admitted as financial creditor in the 1st CoC meeting, the possibility that Mr. Srinivasan could not have been appointed as RP, cannot be ruled out. It is clear that Mr. Srinivasan intentionally did not admit claim of Bank of India to include it in the 1st CoC. The DC also notes the fact that Bank of India had raised objections to the inclusion of Mr. Thota to CoC and grant of voting right in the CoC.

- 3.3.2 The DC also notes the observations of AA in its order dated 14.02.2022 that *"It may also be pertinent to state herein, that the Resolution Professional though ought to have ensured that Bank of India, an important Financial Creditor is given due weightage in the CoC. By adopting a biased approach, the Resolution Professional got reduced the Bank's legitimate voting share below 66% so that the petitioner cannot have its firm say in the CoC meetings. The Resolution Professional also denied opportunity to the Bank by returning the claim submitted by the Bank on technical grounds. Having known that the Bank of India is a Public Sector Undertaking (PSU), which is also a Financial Creditor in the fray, the Resolution Professional had deliberately ensured that the Bank is not available for voting in the first CoC Meeting and thereby for himself confirmed as RP. Thereafter, he started deciding voting percentage of the CoC Members by applying yardsticks which are unheard of."*

- 3.3.3 With regard to the first issue of assigning voting share to a related party in the CoC the DC observes that the question of related party stands decided by the AA *vide* order dated 14.02.2022. The DC notes the decisions of the AA that Mr. Thota was a related party to the CD-1 and “*this matter is one of the classic cases of fraudulent and also malicious initiation of CIRP, against the Corporate Debtor, for the purpose other than for the resolution of insolvency, to wit, to gain entry into CoC, and jeopardize/dodge the lawful measures initiated by the applicant bank under the SARFAESI Act, for recovery of public money admittedly lent to the corporate debtor/1st respondent Company, in which the wife of the Financial Creditor herein, Mrs. Archana Thota, is one of the directors*”
- 3.3.4 In view of the above, the DC finds that Mr. Srinivasan contravened section 21(1), proviso to section 21(2), 208(2)(a), 208(2)(e) of Code, regulation 14(1) of CIRP Regulations, regulations 7(2)(a) and 7(2)(h) of IP regulations and clauses 1, 2, 3, 9, 11 and 12 of Code of Conduct prescribed thereunder.

4.1 **Contravention III**

- 4.1.1 Regulation 27 of the CIRP Regulations requires an insolvency professional to appoint two registered valuers within forty-seven days of insolvency commencement date. The insolvency commencement date of the CD-1 was 28.03.2019. The Appointment of registered valuers was discussed in the 2nd CoC meeting dated 28.05.2019. Thereafter, a valuer, Mr. Achaya P C was appointed on 15.06.2019 and another valuer, Mr. P. Kanaka Rao Garu was appointed on 28.06.2019 i.e. after 79 and 92 days, respectively.
- 4.1.2 The IBBI was of *prima facie* view that Mr. Srinivasan contravened sections 208(2)(a) and (e), regulation 27 of CIRP Regulations, regulation 7(2)(a) of IP Regulations.

4.2 **Submissions**

- 4.2.1 The RP submitted that the reason for delay in the appointment of valuers was that no valuer came forward to accept the assignment without advance payment of 50% of the fee. The CD-1 did not have any funds in its bank accounts, Bank of India refused to pay for the valuation and the financial creditor also refused to fund the valuation on the lines of Bank of India. With no funds available for paying the valuers, Mr. Srinivasan, with great difficulty, searched for two valuers with assurance to pay them 100% after the cases are disposed of. The RP, on his part, also filed an application before the Hon’ble AA praying for a direction to the financial creditors to share the CIRP expenses in proportion to their voting rights. Even though the Hon’ble AA passed an order directing Bank of India to share the CIRP expenses in proportion to their voting rights, the Bank has not honoured the direction till date. He submitted that the two valuers are yet to be paid their fee even after a lapse of two years. He also submitted that the delay in the appointment of valuers on the part of RP was not intentional, but unavoidable.

4.3 Analysis & Findings

4.3.1 The third issue was with respect to delayed appointment of registered valuers. The DC observes that in case of insolvency proceedings, registered valuers are to be appointed within 7 days of appointment but not later than 45 days by the RP. In the present case, the RP submitted that no valuer was willing to conduct valuation without being paid in advance for the same. The payment of fee to the registered valuers is to be approved by the CoC and therefore, until the CoC agrees to pay for the expenses, the RP could not have been able to get valuation done. The DC accepts Mr. Srinivasan's submission that he was unable to appoint registered valuer earlier due to non-approval of fee of RVs by the CoC.

In the matter of Shree Rudra Shakti Pvt. Ltd. (CD-2)

5.1 Contravention IV

5.1.1 Regulation 7(2)(h) of IP Regulations requires an IP to abide by the Code of Conduct specified in the First Schedule of IP Regulations. Clause 3 and 5 of Code of Conduct of IP Regulations, inter-alia, require an IP to be objective in professional dealings by ensuring that his decisions be made without undue influence of any party and conduct the insolvency resolution independent of external influences.

5.1.2 It was observed that the minutes of 8th CoC meeting record (a) the allegations of financial creditors regarding the PUFEE applications, (b) resolution of CoC to withdraw them. The minutes of 9th CoC meeting record that Mr. Srinivasan informed CoC that the PUFEE applications filed by erstwhile RP had been withdrawn.

5.1.3 The Board was of *prima facie* view that Mr. Srinivasan contravened regulation 7(2)(h) of IP Regulations and clauses 3 and 5 of Code of Conduct.

5.2 Submissions

5.2.1 Mr. Srinivasan submitted that the Hon'ble AA passed the order approving the withdrawal after hearing all the connected parties. He submitted that Company Appeal (AT) (Ins.) No.460/2020 was filed by one of the operational creditors before the Hon'ble NCLAT, Chennai, challenging the order passed by the AA.

5.2.2 The RP submitted that he went through the applications filed before the Hon'ble AA and opined that the applications were filed based on un-professional approach of the previous RP and the valuation report itself was with serious and questionable practices. Mr. Srinivasan stated that the property which was the subject matter of withdrawal before the AA, was fully securitized by the financial creditor, M/s Mahesh Co-operative bank which had issued notice to the CD-2 under

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) and initiated steps for recovery.

5.3 Analysis & Findings

- 5.3.1 With respect to the CIRP of CD-2, the DC observes that PUFÉ applications are important to the process of CIRP. The DC notes the events that lead to withdrawal of PUFÉ applications by Mr. Srinivasan and observes from the minutes of the 8th CoC meeting that the CoC had resolved to withdraw all the applications filed by the erstwhile IRP/RP since there were many irregularities in the way the erstwhile IRP/RP performed his duties. Further, the subject matter of the PUFÉ applications was a property securitized by the financial creditor, M/s Mahesh Co-operative bank under the SARFAESI Act, 2002 and the recovery action by the bank cannot be considered as a preferential/ undervalued transaction. The DC, therefore, accepts the submission of Mr. Srinivasan.

ORDER

- 6.1 In view of the foregoing serious contravention no. I and II, the DC, in exercise of the powers conferred under section 220(2) of the Code read with sub-regulations (7) and (8) of Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017, hereby cancels the registration of Mr. Chakravarthi Srinivasan as Insolvency Professional, having Registration No.IBBI/IPA-002/IP-N00649/2018-2019/11990.
- 6.2 The order shall come into force on expiry of 30 days from the date of its issue.
- 6.3 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Srinivasan is providing his services, if any. The CoC may decide whether to continue his services or not. In case, CoC decide to discontinue his services, CoC may file an appropriate application before AA.
- 6.4 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. Chakravarthi Srinivasan is enrolled as a member.
- 6.5 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.
- 6.6 Accordingly, the show cause notice is disposed of.

-Sd-
(Ravi Mital)
Chairperson, IBBI

Dated: 6th May, 2022
Place: New Delhi